BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001, Part 4F53c Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 Filed on May 22, 2020 City of Norwalk, Claimant	Case No.: 19-0304-I-02 *Municipal Storm Water and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 28, 2022*) (*Served January 28, 2022*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on January 28, 2022.

Heather Halsey, Executive Director

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IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001, Part 4F5c3 Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013 Filed on May 22, 2020 City of Norwalk, Claimant	Case No.: 19-0304-I-02 *Municipal Storm Water and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted January 28, 2022*) (*Served January 28, 2022*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on January 28, 2022. Lisa Kurokawa appeared for the State Controller's Office. Brittany Thompson appeared for the Department of Finance. No appearances were made for the claimant. Annette Chinn of Cost Recovery Systems, Inc. did not appear on behalf of the claimant at the hearing and was not sworn as a witness, but did provide statements on the record at the hearing.

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

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

Member	**Vote**
Lee Adams, County Supervisor	Yes
Sam Assefa, Director of the Office of Planning and Research	Absent
Keely Bosler, Director of the Department of Finance, Chairperson	Yes
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Yvette Stowers, Representative of the State Controller, Vice Chairperson	Yes
Spencer Walker, Representative of the State Treasurer	Yes

Summary of the Findings

This IRC challenges the State Controller's Office's (Controller's) reduction to reimbursement claims filed by the City of Norwalk (claimant) for the *Municipal Storm Water and Urban Runoff Discharges* program for fiscal years 2002-2003 to 2012-2013 (the audit period).

During the audit period, the claimant filed reimbursement claims totaling $1,441,130 to perform the mandated activities of installing and maintaining trash receptacles at its transit stops.[1] The Controller's final audit found that $361,058 was allowable and $1,079,622 was unallowable.[2] The Controller's reductions were set forth in the following three findings: the claimant overstated the amount of one-time activities related to the number of transit stop trash receptacles installed (Finding 1); the claimant overstated ongoing costs related to the maintenance of trash receptacles for the audit period by overstating the number of trash collections (Finding 2); and the claimant used Proposition A and C Local Return funds to pay for the program, but did not report those revenues as offsetting revenues (Finding 3).[3]

The Commission finds that the IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission finds that the Controller's reduction of the claimant's one-time activities related to the purchase and installation of transit stop trash receptacles (Finding 1) is not arbitrary, capricious, or entirely lacking in evidentiary support. To support its claim for reimbursement, the claimant provided a maintenance agreement from Nationwide Environmental Services Inc. (Nationwide) stating that it would maintain 217 bus stops.[4] The agreement, however, does not identify the transit receptacles actually installed by the claimant during the audit period.[5] To verify the claimant's request for reimbursement, the Controller reviewed a city-generated spreadsheet from 2007 that identified the 217 transit locations that the Controller used to determine that 23 transit stops were either abandoned or did not contain a trash receptacle.[6] The Controller also reviewed a Geographical Information System (GIS) transit map that identified 194 bus stop locations, and the claimant's 2012-2013 budget that acknowledged 194 bus stops.[7] The claimant contends that it submitted invoices supporting its claim of receptacles installed, but the claimant's reimbursement claim for fiscal year 2006-2007 states that Olivas Valdez, Inc. "[f]urnished all labor and materials for installation of 194 litter receptacles at specified bus stop locations."[8] The Controller considered the claimant's claims and documentation, conducted a diligent inquiry into claimant's claims, and came to its

[1] Exhibit A, IRC, filed May 22, 2020, pages 190-215 (Audit Report).

[2] Exhibit A, IRC, filed May 22, 2020, pages 190-215 (Audit Report).

[3] Exhibit A, IRC, filed May 22, 2020, pages 190-215 (Audit Report).

[4] Exhibit A, IRC, filed May 22, 2020, page 3.

[5] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[6] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[7] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[8] Exhibit A, IRC, filed May 22, 2020, page 307.

determination that the claimant was only allowed reimbursement for the installation of 194 trash receptacles. This decision has not been rebutted with any evidence by the claimant.

The Commission finds that the Controller's reduction to the number of trash collections claimed (Finding 2) is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant failed to provide adequate supporting documentation required by section VII. of the Parameters and Guidelines showing the number of trash collections during the audit period. The claimant relies on two service agreements with Conservation Corps and Nationwide, but these agreements do not prove the number of trash collections claimed. Thus, the reduction is correct as a matter of law. The Controller reviewed the GIS transit map provided by the claimant, Google images dating back to 2007, discussions with the Los Angeles Metropolitan Transit Authority's (Metro's) Manager of Strategic Planning and Administrative Services, the city-generated spreadsheet, the claimant's fiscal year 2012-2013 budget, and the claimant's service agreements with Conservation Corps and Nationwide to determine the allowable number of trash collections during the audit period.[9] The claimant contends that the Controller's conclusion is supported by speculation as to bus stop locations and routes that may change over the years, but fails to provide any evidence demonstrating that their claim for reimbursement is accurate or that the Controller's findings are inaccurate. The Controller's field audit was deliberate and the findings are rationally tied to the evidence it reviewed in the audit.

The Commission further finds that the Controller's reduction, based on its determination that Proposition A and Proposition C local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Proposition A and Proposition C are transactions and use taxes levied by Metro. A portion of the Proposition A and Proposition C tax revenues are distributed to the claimant cities and county through the Proposition A and Proposition C local return programs for use on eligible transportation projects. These taxes, however, are not levied "by or for" the city, as that constitutional phrase is interpreted by the courts, because the claimant does not have the authority to levy Proposition A and C taxes, and thus, these taxes are not the claimant's local proceeds of taxes.[10] Nor are the proceeds subject to the city's appropriations limit.[11] Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.[12]

Accordingly, the Commission denies this IRC.

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[9] Exhibit A, IRC, filed May 22, 2020, pages 204-208 (Audit Report).

[10] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32; Article XIII B, section 8(b) of the California Constitution.

[11] Government Code section 7904; Public Utilities Code sections 130350, 130354; Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 6.

[12] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

COMMISSION FINDINGS

I. Chronology

09/28/2011 The claimant signed its fiscal year 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011 reimbursement claim(s).[13]

01/16/2013 The claimant submitted its fiscal year 2011-2012 reimbursement claim.[14]

02/06/2014 The claimant submitted its fiscal year 2012-2013 reimbursement claim.[15]

04/11/2017 The Controller issued the draft audit report.[16]

05/23/2017 The Controller issued the final audit report.[17]

05/22/2020 The claimant filed the IRC. [18]

09/02/2020 The Controller filed a two-month request for extension of time to respond to the IRC.

09/02/2020 The Commission denied the Controller's request for extension of time to respond to the IRC due to the Controller's failure to follow the certification requirement in the Commission's regulations.

12/10/2021 Commission staff issued the Draft Proposed Decision.[19]

II. Background

A. The *Municipal Storm Water and Urban Runoff Discharges* Program

The *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 program arose from a consolidated test claim filed by the County of Los Angeles and cities within the county alleging that various sections of a 2001 stormwater permit issued by the Los Angeles Regional Water Quality Control Board, a state agency, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[20]

On July 31, 2009, the Commission adopted the Test Claim Decision, finding that the following activity in part 4F5c3 of the permit imposed a reimbursable state mandate on those local agencies subject to the permit that are not subject to a trash total maximum daily load (TDML):

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[13] Exhibit A, IRC, filed May 22, 2020, pages 224-230 (Annual Reimbursement Claims).

[14] Exhibit A, IRC, filed May 22, 2020, page 466.

[15] Exhibit A, IRC, filed May 22, 2020, page 468.

[16] Exhibit A, IRC, filed May 22, 2020, pages 196, 217.

[17] Exhibit A, IRC, filed May 22, 2020, pages 190-215 (Audit Report cover letter and Report).

[18] Exhibit A, IRC, filed May 22, 2020, page 1.

[19] Exhibit B, Draft Proposed Decision, issued December 10, 2021.

[20] Exhibit A, IRC, filed May 22, 2020, page 166-173 (Parameters and Guidelines).

Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[21]

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.[22] The Parameters and Guidelines provide for reimbursement as follows:

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

A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
4. Purchase or construct receptacles and pads and install receptacles and pads.
5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):

1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*
2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable.*
4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.[23]

Section IV. of the Parameters and Guidelines further provides that only actual costs may be claimed for the one-time activities in Section IV.A. Actual costs are those costs actually incurred to implement the mandated activities.[24] Actual costs must be traceable and supported

[21] Exhibit A, IRC, filed May 22, 2020, page 166 (Parameters and Guidelines).

[22] Exhibit A, IRC, filed May 22, 2020, pages 166-173 (Parameters and Guidelines).

[23] Exhibit A, IRC, filed May 22, 2020, pages 166-173 (Parameters and Guidelines).

[24] Exhibit A, IRC, filed May 22, 2020, page 168 (Parameters and Guidelines).

by contemporaneous source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities, and may include employee time records or time logs, sign-in sheets, invoices, and receipts.[25]

The ongoing activities in Section IV. B. are reimbursed under a reasonable reimbursement methodology (RRM).[26] Section VI. of the Parameters and Guidelines describes the RRM as follows:

> Under the RRM, the unit cost of $6.74, during the period of July 1, 2002 to June 30, 2009, for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.[27]

Section VII. of the Parameters and Guidelines further requires the claimant to retain documentation to support the RRM that shows the number of trash receptacles, collections, and pickups as follows:

> Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.[28]

Section VIII. of the Parameters and Guidelines for this program also requires offsetting revenues to be identified and deducted from reimbursement claims:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or nonlocal source shall be identified and deducted from this claim.[29]

B. Proposition A and Proposition C Local Return Funds

One of the issues in this IRC is the claimant's use of Proposition A and Proposition C Local Return Funds to pay for the mandated program, the history of which is provided below.

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency[30] and

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[25] Exhibit A, IRC, filed May 22, 2020, page 168 (Parameters and Guidelines).

[26] Exhibit A, IRC, filed May 22, 2020, page 168 (Parameters and Guidelines).

[27] Exhibit A, IRC, filed May 22, 2020, pages 171-172 (Parameters and Guidelines).

[28] Exhibit A, IRC, filed May 22, 2020, page 172 (Parameters and Guidelines).

[29] Exhibit A, IRC, filed May 22, 2020, page 172 (Parameters and Guidelines).

[30] Public Utilities Code section 130050.

authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.[31]

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[32]

Public Utilities Code section 130354 states that "revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes."[33]

In 1980, Los Angeles County voters approved Proposition A, a one-half percent transactions and use tax to fund public transit projects throughout the county.[34] Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax.

In *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only a majority of voters, instead of the two-thirds required under article XIII A, section 4.[35] The court reasoned that "special district" within the meaning of article XIII A, section 4 included only those districts with the authority to levy a tax on real property, and because the Transportation Commission had no such authority, it did not constitute a "special district."[36] While the court noted that the terms "special districts" and "special taxes" as used in section 4 were both ambiguous, it did not address whether Proposition A constituted a

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[31] Public Utilities Code sections 130231(a), 130350.

[32] Public Utilities Code section 130350 (Stats. 1976, ch. 1333). Section 130350 was amended in 2007 to reflect the two-thirds vote requirement for special taxes under article XIII A, section 4.

[33] Public Utilities Code section 130354.

[34] Exhibit A, IRC, filed May 22, 2020, page 96 (Local Return Guidelines 2007 Edition).

[35] In 1978, California voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A, section 4 provides:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

[36] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

"special tax" within the meaning of section 4.[37] Nor did the court address whether the Transportation Commission or the Proposition A tax were subject to the government spending limitations imposed by article XIII B.

In *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the California Supreme Court addressed "a question previously left open" in *Richmond*, regarding the validity of a supplemental sales tax "enacted for the apparent purpose of avoiding the supermajority voter approval requirement" under article XIII A, section 4.[38] The court ruled that a "special district" within the meaning of article XIII A, section 4 includes "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13," regardless of whether the district has the authority to levy real property taxes.[39] However, the court declined to overrule *Richmond* with respect to local agencies created prior to Proposition 13 and which lacked the authority to levy property taxes, such as the Transportation Commission.[40] The court further held that a "special tax" within the meaning of article XIII A, section 4, "is one levied to fund a specific government project or program," even when that project or program is the agency's sole reason for being.[41]

In 1990, voters approved Proposition C, a second one-half percent transactions and use tax, also used to fund public transit projects countywide.[42] Similar to Proposition A, Proposition C was also approved by a majority of voters, not the two-thirds required under Proposition 13 and Proposition 62.[43] In an unpublished decision, the Second District Court of Appeal upheld a challenge to Proposition C, finding that the proposition did not require a two-thirds vote under either Proposition 13 or Proposition 62.[44] The court reasoned that the Transportation Commission was not a "district" within the meaning of Proposition 13 or Proposition 62 because it lacked the power to levy a property tax and was formed prior to the enactment of Proposition 13.[45]

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[37] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

[38] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

[39] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

[40] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

[41] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

[42] Exhibit A, IRC, filed May 22, 2020, page 96 (Local Return Guidelines 2007 Edition).

[43] *Vernon v. State Bd. of Equalization* (*Los Angeles County Transp. Com'n*) (1992) 5 Cal.Rptr.2d 414, 416.

[44] *Vernon v. State Bd. of Equalization* (*Los Angeles County Transp. Com'n*) (1992) 5 Cal.Rptr.2d 414, 423. Proposition 62 was a statutory initiative adopted by California voters in 1986, which added a new article to the Government Code (sections 53720-53730). Under Proposition 62, no local government or district may impose a special tax, defined as a tax imposed for specific purposes, without two-thirds voter approval. Government Code sections 53721, 53722.

[45] *Vernon v. State Bd. of Equalization* (*Los Angeles County Transp. Com'n*) (1992) 5 Cal.Rptr.2d 414, 423.

Public Utilities Code section 99550, which was added in 1992, states as follows:

> The decision of the California Supreme Court in *Los Angeles County Transportation Agency v. Richmond* (1982), 31 Cal.3d 197, shall be applicable to and control, and the decision of the California Supreme Court in *Rider v. County of San Diego* (1991), 1 Cal. 4th 1, shall not be applicable to and shall not control, any action or proceeding wherein the validity of a retail transactions and use tax is contested, questioned, or denied *if the ordinance imposing that tax was adopted by a transportation agency and approved prior to December 19, 1991, by a majority of the voters.*
>
> For purposes of this section, "transportation agency" means any agency, authority, district, commission, or other public entity organized under provisions of this code and authorized to impose a retail transactions and use tax.[46]

The Transportation Commission is statutorily authorized to levy both the Proposition A and Proposition C transaction and use taxes.[47]

> The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the approval by the voters of the commission's Ordinance No. 16 [Proposition A] in 1980 and its Ordinance No. 49 [Proposition C] in 1990, and has the authority and power vested in the Southern California Rapid Transit District to plan, design, and construct an exclusive public mass transit guideway system in the County of Los Angeles, including, but not limited to, Article 5 (commencing with Section 30630 of Chapter 5 of Part 3 of Division 11).[48]

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[46] Public Utilities Code section 99550 (Stats. 1992, c. 1233), emphasis added. In *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, 236, the California Supreme Court held that "district" within the meaning of Proposition 62 was not limited to "special districts" as construed by the *Richmond* court but instead encompassed all "districts," as defined by Government Code section 53720(b) (a provision of Proposition 62), including those without the power to levy real property taxes. Government Code section 53720(b) defines "district" as "an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."

In 1996, Proposition 218 added some of the statutory language from Proposition 62 to the California Constitution, including the definitions of "special district" and "special tax." California Constitution, article XIII C, section 1. Under article XIII C, section 2, any tax imposed by a local government is either general or special, and special districts have no authority to levy general taxes. California Constitution, article XIII C, section 2(a).

[47] Public Utilities Code section 130231(a).

[48] Public Utilities Code section 130231(a).

The Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to the Transportation Commission's appropriations limit.[49] The Proposition C Ordinance, however, expressly includes a provision establishing an appropriations limit for the Transportation Commission for the Proposition C proceeds.[50]

> 3-10-080 Appropriations Limit. A [Los Angeles County Transportation] Commission appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.[51]

In 1993, the Transportation Commission was abolished and the Los Angeles County Metropolitan Transportation Authority (Metro) was created and succeeded to the Transportation Commission's and the Southern California Rapid Transit District's powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.[52] Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A and Proposition C taxes.[53]

The purpose of the Proposition A tax is to "improve and expand existing public transit Countywide, including reduction of transit fare, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit

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[49] Exhibit C(1), Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on February 22, 2021).

[50] Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 6.

[51] Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 6.

[52] Public Utilities Code sections 130050.2, 130051.13. Section 130051.13 states as follows:

> On April 1, 1993, the Southern California Rapid Transit District and the Los Angeles County Transportation Commission are abolished. Upon the abolishment of the district and the commission, the Los Angeles County Metropolitan Transportation Authority shall succeed to any or all of the powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.

[53] Exhibit A, IRC, filed May 22, 2020, page 96 (Local Return Guidelines 2007 Edition).

assessments, and fares."[54] Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses[55] and are allocated as follows:

a. Twenty-five percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.

b. Thirty-five percent, calculated on an annual basis, to the commission for construction and operation of the System.

c. The remainder shall be allocated to the Commission for public transit purposes.[56]

The purpose of the Proposition C tax is to "improve transit service and operations, reduce traffic congestion, improve air quality, efficiently operate and improve the condition of the streets and freeways utilized by public transit, and reduce foreign fuel dependence."[57] The enumerated purposes of the tax include:

(1) Meeting operating expenses; purchasing or leasing supplies, equipment or materials; meeting financial reserve requirements; obtaining funds for capital projects necessary to maintain service within existing service areas;

(2) Increasing funds for existing public transit service programs;

(3) Instituting or increasing passenger or commuter services on rail or highway rights of way;

(4) Continued development of a regional transportation improvement program.[58]

Under the Proposition C Ordinance, tax revenues are allocated as follows:

(1) Forty percent to improve and expand rail and bus transit, including fare subsidies, graffiti prevention and removal, and increased energy-efficiency;

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[54] Exhibit C(1), Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on February 22, 2001), page 3.

[55] Exhibit C(1), Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on February 22, 2001), page 4.

[56] Exhibit C(1), Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on February 22, 2001), page 4.

[57] Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 3.

[58] Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 3.

(2) Five percent to improve and expand rail and bus security;

(3) Ten percent to increase mobility and reduce congestion;

(4) Twenty percent to the Local Return Program; and

(5) Twenty-five percent to provide transit-related improvements to freeways and state highways.[59]

Local jurisdictions receive transportation funding from Metro through the Proposition A and Proposition C local return programs. Twenty-five percent of Proposition A funds and twenty percent of Proposition C funds are allocated to the local return programs for local jurisdictions to use for "in developing and/or improving public transit, paratransit, and the related transportation infrastructure."[60] Metro allocates and distributes local return funds to cities and the county each month, on a "per capita" basis.[61]

Use of Proposition A tax revenues is restricted to "eligible transit, paratransit, and Transportation Systems Management improvements" and cities are encouraged to use the funds to improve transit services.[62]

> The Proposition A Ordinance requires that LR [Local Return] funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds.[63]

The Proposition C Ordinance requires that Proposition C local return funds be used to benefit "public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act."[64] Eligible projects include "Congestion Management Programs, bikeways and bike lanes, street improvements supporting public transit service, and Pavement Management System projects."[65]

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[59] Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), pages 3-4.

[60] Exhibit A, IRC, filed May 22, 2020, page 123 (Local Return Guidelines 2007 Edition).

[61] Exhibit A, IRC, filed May 22, 2020, pages 123(Local Return Guidelines 2007 Edition).

[62] Exhibit C(1), Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on February 22, 2001), page 3.

[63] Exhibit A, IRC, filed May 22, 2020, page 96 (Local Return Guidelines 2007 Edition).

[64] Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 4.

[65] Exhibit A, IRC, filed May 22, 2020, page 96 (Local Return Guidelines 2007 Edition).

Amongst the eligible uses of Proposition A and Proposition C local return funds are bus stop improvements and maintenance projects.[66] The Local Return Guidelines provide as follows:

> Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:
>
> - Concrete landings – in street for buses and at sidewalk for passengers
> - Bus turn-outs
> - Benches
> - Shelters
> - *Trash receptacles*
> - Curb cut
> - Concrete or electrical work directly associated with the above items.[67]

Proposition A local return funds may also "be given, loaned or exchanged" between local jurisdictions, provided that certain conditions are met, including that the traded funds be used for public transit purposes.[68] Proposition C funds cannot be traded.[69] Jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by "federal, state, or local grant funding, or private funds."[70] Subsequent reimbursement funds must then be deposited into the Proposition A or Proposition C Local Return Fund.[71]

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

During the audit period, the claimant filed reimbursement claims of $1,441,130 for the costs to perform the mandated activities to install and maintain its transit stops.[72] The Controller reduced the claims by $1,079,622, separating the reductions into three different findings: ineligible one-time costs; overstated ongoing maintenance costs; and unreported offsetting revenues.[73]

1. Finding 1 (ineligible one-time costs)

The claimant initially sought reimbursement for the installation of 359 trash receptacles: 165 in fiscal year 2002-2003 and 194 trash receptacles in fiscal year 2006-2007.[74] After review, however, the Controller determined that the majority of the trash receptacles claimed for fiscal

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[66] Exhibit A, IRC, filed May 22, 2020, page 102 (Local Return Guidelines 2007 Edition).

[67] Exhibit A, IRC, filed May 22, 2020, page 102 (Local Return Guidelines 2007 Edition), emphasis added.

[68] Exhibit A, IRC, filed May 22, 2020, pages 96, 108, 122 (Local Return Guidelines 2007 Edition).

[69] Exhibit A, IRC, filed May 22, 2020, pages 96, 122 (Local Return Guidelines 2007 Edition).

[70] Exhibit A, IRC, filed May 22, 2020, pages 123, 125 (Local Return Guidelines 2007 Edition).

[71] Exhibit A, IRC, filed May 22, 2020, page 125 (Local Return Guidelines 2007 Edition).

[72] Exhibit A, IRC, filed May 22, 2020, pages 190-215 (Audit Report).

[73] Exhibit A, IRC, filed May 22, 2020, pages 190-215 (Audit Report).

[74] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

year 2006-2007 were improvements to existing bus stops and were not reimbursable as one-time activities.[75] The Controller found that the 165 trash receptacles installed in 2002-2003 and 29 trash receptacles installed in 2006-2007 were reimbursable.[76] The claimant does not dispute the Controller's limitation of reimbursement for one time per transit stop. The claimant asserts, however, that the actual number of transit stop receptacles was 217, not 194. In support of this contention, the claimant relies on a maintenance agreement between the claimant and Nationwide Environmental Services Inc. (Nationwide), dated April 3, 2008.[77] The claimant contends that this document, which was provided to the auditor, shows the claimant maintained 217 receptacles, 23 more receptacles than what was allowed by the Controller.

The Controller reviewed and acknowledged the Nationwide agreement during the audit, but found that the agreement did not support the claimant's claim of having installed 217 trash receptacles. The Nationwide agreement does not include a transit stop listing with street locations for the Controller to corroborate.[78] In addition, based on a city-generated spreadsheet entitled "Project 7709 – Bus Stop Work," dated September 16, 2007, which identifies the 217 transit locations by street and cross-street, the Controller confirmed that 23 transit stops are either abandoned or do not contain a trash receptacle.[79] To corroborate the information identified in this spreadsheet, the claimant provided the Controller with a GIS transit map, which identified only 194 bus stop locations.[80] The Controller's review of the claimant's fiscal year 2012-2013 budget also found that the claimant acknowledges that only 194 transit stops exist through the statement "NTS [Norwalk Transit System] is continuing its bus stop improvement program since the completion of 194 bus stops in July 2007."[81]

2. Finding 2 (overstated ongoing maintenance costs)

Of the $936,653 claimed for ongoing maintenance of transit stop trash receptacles for the audit period, the Controller found that $795,376 was allowable and $141,277 was unallowable.[82] Specifically, the claimant identified 136,526 trash collections and the Controller allowed 116,484 following the audit.[83]

The claimant did not provide documentation to support the annual number of trash collections claimed.[84] Thus, the Controller worked with the documentation provided during audit fieldwork

[75] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[76] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[77] Exhibit A, IRC, filed May 22, 2020, page 3.

[78] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[79] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[80] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[81] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[82] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[83] Exhibit A, IRC, filed May 22, 2020, page 204 (Audit Report).

[84] Exhibit A, IRC, filed May 22, 2020, page 205 (Audit Report).

to determine the allowable number of annual trash collections.[85] The Controller reviewed the GIS transit map, Google images back to 2007, discussions with Metro's Manager of Strategic Planning and Administrative Services, the city-generated spreadsheet, the claimant's fiscal year 2012-2013 budget, and the claimant's service agreements with Conservation Corps and Nationwide.[86]

Reimbursement for fiscal year 2002-2003 was reduced by the Controller from 80 stops to 59.[87] The reduction was made after reviewing the claimant's Conservation Corps maintenance agreement (which noted 80 transit stops, but only listed 79) and determining that Metro maintained 16 receptacles and that four stops had no trash receptacles.[88]

The Controller reduced reimbursement for fiscal year 2003-2004 from 242 stops to 178 after determining that Metro maintained 36 of those stops and four stops had no trash receptacles.[89] For April 2003 through June 2003 the Conservation Corps agreement listed 242 transit stops, but the agreement did not include a transit stop listing so the Controller applied the allowable percentage computed during the prior agreement period and determined that 178 trash receptacles were allowable.[90]

Reimbursement for fiscal years 2003-2004 and 2004-2005 was reduced from 242 stops to 178.[91] The Conservation Corps agreement listed 242 transit stops, but did not include a transit stop listing so the Controller applied the allowable percentage computed during the agreement period of February through March 2003, which is when the list of transit stops was last included, and determined that 178 trash receptacles were allowable.[92]

Reimbursement for fiscal years 2005-2006 and 2006-2007 was reduced from 280 stops to 206.[93] The Conservation Corps agreement was amended to list 280 transit stops, but did not include a transit stop listing so the Controller applied the allowable percentage computed during the agreement period of February through March 2003, which is when the list of transit stops was last included, and determined that 206 trash receptacles were allowable (280 transit receptacles per agreement × 73.68%).[94]

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[85] Exhibit A, IRC, filed May 22, 2020, page 205 (Audit Report).

[86] Exhibit A, IRC, filed May 22, 2020, pages 204-208 (Audit Report).

[87] Exhibit A, IRC, filed May 22, 2020, page 205 (Audit Report).

[88] Exhibit A, IRC, filed May 22, 2020, page 205 (Audit Report).

[89] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[90] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[91] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[92] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[93] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[94] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

Reimbursement for fiscal years 2007-2008 through 2011-2012 was reduced to 194 stops.[95] In determining this number, the Controller used the Nationwide maintenance agreement, which noted 217 transit stops but did not provide a listing of the stop sites.[96] The Controller used the GIS transit map provided during audit fieldwork and determined that only 194 of the transit stops included a trash receptacle.[97] The other stops were found to be either abandoned or did not include a trash receptacle.[98]

3. Finding 3 (offsetting revenues)

The claimant did not offset any revenues on its claim forms for the audit period. The Controller found that the city should have offset "restricted" funds received from the Proposition A and C Local Return Funds used to pay for one-time costs relating to materials and supplies ($134,626) and contract services ($1,263).[99] The Controller also found that the claimant should have offset funds received from the Proposition C Local Return Funds in the amount of $450,469, which was used by the claimant to pay for ongoing maintenance costs.[100] The Controller calculated the offsetting revenues used for ongoing maintenance as follows:

> As the allowable ongoing maintenance costs identified in Finding 2 are calculated using the Commission-adopted reasonable reimbursement methodology, and are not based on actual costs, we calculated the offsetting revenue amount using the following methodology:
>
> A. For FY 2002-03 through FY 2004-05, we did not apply any offsets, as the city did not use any restricted funds to pay for the ongoing maintenance costs of the transit stops.

[95] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[96] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[97] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[98] Exhibit A, IRC, filed May 22, 2020, page 206 (Audit Report).

[99] Exhibit A, IRC, filed May 22, 2020, pages 209-211 (Audit Report). The Controller also found that the claimant used restricted funds from the Transit System Fund, the Equipment Maintenance Fund, the Community Development Block Grant Fund, and the Water Utility Fund to pay for one-time costs ($20,468 in salaries and benefits and $20,586 in contract services) and that such funds should have been identified as an offset. (Exhibit A, IRC, filed May 22, 2020, pages 209-211 (Audit Report).) The claimant's IRC does not address these findings. Section 1185.1(f) of the Commission's regulations requires the IRC narrative to include "comprehensive description of the reduced or disallowed areas of costs." Accordingly, this Decision does not address the reductions related to the Transit System Fund, the Equipment Maintenance Fund, the Community Development Block Grant Fund, and the Water Utility Fund, and only addresses the $135,889 in Proposition A and C funds used for one-time costs.

[100] Exhibit A, IRC, filed May 22, 2020, page 211 (Audit Report).

B. For FY 2005-06 through FY 2007-08, we offset the exact amount of Proposition C funds used to pay for the ongoing maintenance costs of the transit stops.

C. For FY 2008-09 and FY 2009-10, we allowed the ongoing maintenance costs paid for from the General Fund and offset the Proposition C amount used in excess of the General Fund, but not for an amount in excess of allowable costs.

D. For FY 2010-11 through FY 2012-13, as the city did not use any General Funds to pay for the ongoing maintenance costs of the transit stops, we offset all of the Proposition C funds used, but not for an amount in excess of allowable costs.[101]

III. Positions of the Parties

A. City of Norwalk

The claimant disputes the audit findings as follows:

1. Finding 1

The claimant agrees with the Controller's office limiting the reimbursement of trash receptacles to a one-time purchase. The claimant, however, argues that the actual number of trash receptacles was 217, not 194 as found by the Controller.[102] The claimant contends that the 217 count is supported by the April 2008 maintenance agreement between the claimant and Nationwide.[103] The maintenance agreement specifically lists 217 bus stops that require trash collection.[104]

2. Finding 2

For the relevant audit period, the claimant identified 136,526 trash collections and the Controller allowed 116,484 following the audit.[105] The claimant contends that the service agreement with and invoices paid to Conservation Corps of Long Beach (Conservation Corps) supports its claim for the number of trash collections for fiscal years 2002-2003 through 2006-2007.[106] The claimant notes that the Controller excluded a number of stops because they were allegedly maintained by Metro.[107] The claimant also notes that the Controller states in its Audit Report that it determined which stops were maintained by Metro by viewing "historical photos back to the summer of 2007" and determining which were current Metro stops and "corroborat[ing] the Google images with physical observations of a few sampled locations during audit fieldwork"

[101] Exhibit A, IRC, filed May 22, 2020, page 212 (Audit Report).

[102] Exhibit A, IRC, filed May 22, 2020, page 3.

[103] Exhibit A, IRC, filed May 22, 2020, page 3.

[104] Exhibit A, IRC, filed May 22, 2020, page 81.

[105] Exhibit A, IRC, filed May 22, 2020, page 204 (Audit Report).

[106] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

[107] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

(again – conducted decades later in 2016).[108] The claimant contends that looking for bus stop locations in 2016 or "historical photos from 2007" and assuming Metro stops in 2016 were the same as they were in the 2002-2007 timeframe is purely speculative.[109]

The claimant contends that the service agreement with and invoices paid to Nationwide supports its claim for the number of trash collections for fiscal years 2007-2008 through fiscal year 2011-2012.[110] The claimant contends that the Controller's reduction from 217 to 194 trash receptacles is based the auditor's decision to try to verify the exact locations of those 217 receptacles.[111] The claimant further notes that the Controller's auditor obtained a 2016 GIS map to accomplish this task and was only able to locate 194 receptacles.[112] The claimant argues that bus routes, and subsequently bus stop locations, often change over the years and trying to observe receptacle locations five to ten years after the fact is not a reasonable method of determining actual receptacle locations that were in service in the past.[113]

3. Finding 3

The claimant contends that the Controller incorrectly classified the Proposition A and C funds as offsetting revenues. The claimant argues that Proposition A and Proposition C funds are not a federal, state, or non-local sources within the meaning of the Parameters and Guidelines.[114] The claimant contends that it did not receive any reimbursement specifically intended for or dedicated to this mandate.[115] The claimant avers that the funds could have been used for various transportation related city priorities such as street improvements, congestion management programs and supplementing local transit programs.[116]

The claimant argues that it has the ability to pay back Proposition A and C funds if State Mandate reimbursement payments are received and then can use those funds for true city priorities, and not those mandated by the state.[117] The claimant contends that it was entirely proper for the city to use Proposition A and C funds as an advance with the expectation that the funds would be paid back to the Proposition A and C funds, because the guidelines specifically provide the Proposition A and C Local Return funds may be used as an advance with respect to a project.[118] And the claimant argues that it would be arbitrary and capricious to find that the

[108] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

[109] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

[110] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

[111] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

[112] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

[113] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

[114] Exhibit A, IRC, filed May 22, 2020, pages 6-7.

[115] Exhibit A, IRC, filed May 22, 2020, page 7.

[116] Exhibit A, IRC, filed May 22, 2020, page 7.

[117] Exhibit A, IRC, filed May 22, 2020, pages 7-9.

[118] Exhibit A, IRC, filed May 22, 2020, pages 7-9.

Parameters and Guidelines retroactively prohibited an advancement of Proposition A or Proposition C funds in a way that was lawful when those funds were advanced.[119] At the time the claimant advanced its Proposition A and C funds to use for the maintenance of the trash receptacles, it was operating under the understanding, consistent with Proposition A and C Guidelines, that it could advance those funds and then return them to the Proposition A and C account for other uses once the city obtained a subvention of funds from the state.[120]

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

B. State Controller's Office

The Controller has not filed comments on the IRC or on the Draft Proposed Decision.

IV. Discussion

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

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations require 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.[121] 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."[122]

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

[119] Exhibit A, IRC, filed May 22, 2020, pages 7-9.

[120] Exhibit A, IRC, filed May 22, 2020, pages 7-9.

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

[122] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[123] Under this standard, the courts have found that:

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[124]

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.[125] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[126]

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

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558(c) to notify the claimant in writing, specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment.[127] The claimant may then file an IRC with the Commission "pursuant to regulations adopted by the Commission" contending that the

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

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

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

[126] 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.

[127] Government Code section 17558.5(c).

Controller's reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.[128]

In this case, the Audit Report, dated May 23, 2017, specifies the claim components and amounts adjusted, and the reasons for the adjustments and thus, complies with the notice requirements in Government Code section 17558.5(c).[129]

The Commission's regulations require that an IRC be timely filed within three years of the date the claimant is notified of a reduction, and the notice complies with Government Code section 17558.5(c), as follows:

> All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reasons for the adjustment.[130]

Because the claimant filed the IRC on May 22, 2020,[131] within three years of the Audit Report, the IRC was timely filed.

B. The Controller's Reduction of Costs for the One-Time Installation of Trash Receptacles From 217 to 194 is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The Controller found that 165 trash receptacles installed in 2002-2003 and 29 trash receptacles installed in 2006-2007, for a total of 194 trash receptacles, were reimbursable under section IV.A. of the Parameters and Guidelines.[132] The claimant contends that the actual number of trash receptacles installed, and eligible for reimbursement, is 217. The claimant contends that the 217 count is supported by the maintenance agreement, dated April 3, 2008, between Nationwide and the City of Norwalk.[133] According to the audit report, the Controller reviewed the Nationwide maintenance agreement, which does indicate that Nationwide would maintain 217 bus stops, but noted that it did not include a transit stop listing with street locations for the Controller to corroborate, as the claimant's prior agreement with Conservation Corps, which

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

[129] Exhibit A, IRC, filed May 22, 2020, pages 190-196 (Audit Report cover letter and Audit Report).

[130] California Code of Regulations, title 2, sections 1185.1(c), 1185.2(a), as amended operative October 1, 2016.

[131] Exhibit A, IRC, filed May 22, 2020, page 1.

[132] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[133] Exhibit A, IRC, filed May 22, 2020, pages 69-88.

listed 152 bus stop locations in 2003.[134] To verify the claim of 217 trash receptacle installations, the Controller conducted audit fieldwork. The Controller obtained a city-generated spreadsheet entitled "Project 7709 – Bus Stop Work," dated September 16, 2007, which identified the 217 transit locations by street and cross-street, and confirmed that 23 transit stops are either abandoned or do not contain a trash receptacle.[135] To corroborate the information identified in this spreadsheet, the claimant provided the Controller with a 2016 GIS transit map, which identified only 194 bus stop locations.[136] Also, the Controller's review of the claimant's fiscal year 2012-2013 budget acknowledged that only 194 transit stops existed through the statement "NTS [Norwalk Transit System] is continuing its bus stop improvement program since the completion of 194 bus stops in July 2007."[137]

According to the Parameters and Guidelines, the installation of trash receptacles is a one-time reimbursable activity under section IV.A.[138] To be eligible for reimbursement for any fiscal year, only actual costs may be claimed for the one-time activities in section IV.A.[139] The Parameters and Guidelines require the claimant to provide contemporaneous documentation to support the costs claimed. Under section IV. "Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A contemporaneous source document is a document created at or near the same time the actual costs were incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts."[140]

Although the Parameters and Guidelines are regulatory in nature, due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.[141] Thus, if provisions in parameters and guidelines affect substantive rights or liabilities of the parties that change the legal consequences of past events, then the application of those provisions may be considered unlawfully retroactive under due process principles.[142] Provisions that

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[134] Exhibit A, IRC, filed May 22, 2020, pages 28-32 (Exhibit B-1, Bus Stop Locations), and 204 (Audit Report).

[135] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[136] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[137] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[138] Exhibit A, IRC, filed May 22, 2020, page 169 (Parameters and Guidelines).

[139] Exhibit A, IRC, filed May 22, 2020, page 168 (Parameters and Guidelines).

[140] Exhibit A, IRC, filed May 22, 2020, page 168 (Parameters and Guidelines).

[141] *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

[142] *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

impose new, additional, or different liabilities based on past conduct are unlawfully retroactive.[143]

Here, the claimant was not on notice of the *contemporaneous* source document requirement when the costs were incurred in fiscal years 2002-2003 and 2006-2007 because the Parameters and Guidelines were not adopted until March 24, 2011. This is similar to the *Clovis Unified School Dist. v. Chiang* case*,* where the court addressed the Controller's use of the contemporaneous source document rule in audits before the rule was included in the parameters and guidelines, finding that the rule constituted an underground regulation. The court recognized that "it is now physically impossible to comply with the CSDR's requirement of contemporaneousness . . . ."[144] The Controller, however, requested that the court take judicial notice that the Commission adopted the contemporaneous source document rule by later amending the parameters and guidelines. The court denied the request since the issue concerned the use of the rule in earlier years, when no notice was provided to the claimant. The court stated:

> We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR *during the 1998 to 2003 fiscal years*, when the CSDR was an underground regulation. This issue is not resolved by the Commission's *subsequent* incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P & G's. (Emphasis in original.)[145]

In this case, the Controller is not requiring contemporaneous documentation and did not reduce the costs claimed to $0; thus the contemporaneous source document rule was not strictly used. Instead, the Controller found that the documentation provided by the claimant did not support claimant's claim of having installed 217 trash receptacles.[146] The Commission finds that this

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[143] *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

[144] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

[145] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.

[146] The Controller has not filed comments on the claimant's IRC. The claimant, however, attached the Controller's Final Audit Report to the IRC. The Final Audit Report contains findings and statements of fact which amount to hearsay, and unless an exception applies, may not be considered for the truth of the matter asserted to support a conclusion in this matter. (California Code of Evidence, section 1200.) Under the Commission's regulations, the Commission may not consider hearsay evidence alone to support a finding or conclusion; hearsay evidence may only be used to explain or supplement other direct evidence, which the Controller has not provided. (California Code of Regulations, title 2, section 1187.5(a).) The Controller's final audit report, however, falls under the public employee hearsay exception (California Code of Evidence, section 1280) and, thus, the audit findings and the facts stated in the Audit Report may be fully considered by the Commission because: (1) the Final Audit Report was issued by a public agency employee: Jeffrey Brownfield, in his role as Chief of the Division of Audits for the Controller; (2) the Final Audit Report was made at or near the time of the audit because the Final Audit Report issued on May 23, 2017 (Exhibit A, IRC, filed May 22, 2020, page 191), following the issuance of the Draft Audit Report on April 11, 2017,

reduction is not 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.[147] The Commission must ensure that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choices made, and the purposes of the enabling statute.[148]

Here, the Controller used the information provided by the claimant (invoices and maintenance agreements) in an attempt to verify claimant's claim that it installed 217 trash receptacles.[149] The Nationwide maintenance agreement, which the claimant relies on, was signed in March 2008 and simply states "[t]he different types of bus stops will determine the new scope of services for all 217 bus stops." The agreement then defines the work to be performed at the claimant's three different types of bus stops, which includes language about emptying trash receptacles.[150] As noted by the Controller, this maintenance agreement does not contain a specific listing of the addresses of the alleged 217 stops, as had been provided in the claimant's prior agreement with Conservation Corps, which listed 152 bus stop locations in 2003.[151] The claimant has not provided any documents detailing the actual installation of 217 trash receptacles. The claimant attached contractor invoices to their original reimbursement claim, but nothing in these invoices shows that 217 trash receptacles were installed. In fact, the claimant's reimbursement claim for fiscal year 2006-2007 states that Olivas Valdez, Inc. "[f]urnished all labor and materials for installation of 194 litter receptacles at specified bus stop locations."[152]

Due to a lack of identifying information regarding the location of these alleged installations and whether the claimant actually installed 217 receptacles during the fiscal years in question, the Controller reviewed a city-generated spreadsheet from 2007 that identified the 217 transit locations and determined 23 transit stops were either abandoned or did not contain a trash receptacle; a GIS transit map that identified 194 bus stop locations; and the claimant's 2012-2013 budget that acknowledged 194 bus stops.[153] Aside from the Nationwide maintenance

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and the claimant's response to the Draft Audit Report on April 20, 2017 (Exhibit A, IRC, filed May 22, 2020, page 217), which was all conducted in a step-by-step process in compliance with Government Code Section 17558.5; and (3) is trustworthy because it was written based upon observations of a public employee who had a duty to observe the facts and report and record them correctly. (*McNary v. Department of Motor Vehicles* (1996) 45 Cal.App.4th 688.)

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

[148] *Stone v. Regents of Univ. of Cal.* (1999) 77 Cal.App.4th 736, 745.

[149] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

[150] Exhibit A, IRC filed May 22, 2020, page 81.

[151] Exhibit A, IRC, filed May 22, 2020, pages 28-32 (Exhibit B-1, Bus Stop Locations), and 204 (Audit Report).

[152] Exhibit A, IRC, filed May 22, 2020, page 307.

[153] Exhibit A, IRC, filed May 22, 2020, pages 201-204 (Audit Report).

agreement, which does not identify the number of receptacles actually installed in the fiscal years at issue, the claimant has provided no source documents to prove their claim of 217 reimbursable trash receptacle installations. The Controller considered the claimant's claims and documentation, conducted a diligent inquiry into the claimant's claims, and came to its determination that claimant was only allowed reimbursement for the installation of 194 trash receptacles. The claimant has provided no evidence to rebut the Controller's findings.

The Commission therefore finds that the Controller's reduction of costs for the one-time installation of trash receptacles from 217 to 194 is not arbitrary, capricious, or entirely lacking in evidentiary support.

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

The claimant claimed $936,653 for ongoing maintenance of transit stop trash receptacles for the audit period.[154] The Controller found that $795,376 was allowable and $141,277 was unallowable.[155] Specifically, the claimant identified 136,526 trash collections and the Controller allowed 116,484 following the audit.[156]

According to the Parameters and Guidelines, the maintenance of trash receptacles, including trash collection, is an ongoing activity reimbursable under the reasonable reimbursement methodology (RRM).[157] Under the RRM, the unit cost of $6.74, during the period of July 1, 2002 to June 30, 2009, for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per week.[158]

Section VII. of the Parameters and Guidelines requires that "[l]ocal agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups."[159]

Here, the claimant, did not provide any documentation to support the annual number of trash collections claimed as required by the Parameters and Guidelines.[160] The Controller reviewed the GIS transit map, Google images back to 2007, discussions with the MTA Manager of Strategic Planning and Administrative Services, the city-generated spreadsheet, the claimant's fiscal year 2012-2013 budget, and the claimant's service agreements with Conservation Corps

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[154] Exhibit A, IRC, filed May 22, 2020, pages 204-208 (Audit Report).

[155] Exhibit A, IRC, filed May 22, 2020, pages 204-208 (Audit Report).

[156] Exhibit A, IRC, filed May 22, 2020, pages 204-208 (Audit Report).

[157] Exhibit A, IRC, filed May 22, 2020, pages 168-172 (Parameters and Guidelines).

[158] Exhibit A, IRC, filed May 22, 2020, pages 171-172 (Parameters and Guidelines).

[159] Exhibit A, IRC, filed May 22, 2020, page 172 (Parameters and Guidelines).

[160] Exhibit A, IRC, filed May 22, 2020, pages 204-205 (Audit Report).

and Nationwide.[161] The claimant contends that its service agreements with Conservation Corps and Nationwide support their claim for reimbursement.[162] These agreements, however, do not provide enough specificity to demonstrate the actual number of trash collections conducted during the reimbursement period. This is why the Controller conducted its field audit – to verify the claims for reimbursement. The claimant has not provided any documentation showing the number of trash collections or pickups, as required by section VII. of the Parameters and Guidelines. Thus, the Controller's reduction is correct as a matter of law.

The Commission further finds that the Controller's determination of the annual number of trash collections is not arbitrary, capricious, or entirely lacking in evidentiary support. Aside from the two service agreements with Conservation Corps and Nationwide, the claimant has provided no documentation to prove that it serviced the amount of transit stops claimed. The Controller was therefore required to conduct an audit to verify claimant's claims. In conducting its audit, the Controller used the maintenance agreements, the GIS transit map, Google images back to 2007, discussions with Metro's Manager of Strategic Planning and Administrative Services, the city-generated spreadsheet, and the claimant's fiscal year 2012-2013 budget to determine the allowable number of trash collections or pickups.[163] The claimant contends that the Controller's assumptions of trash receptacle locations are speculative due to the passage of time, but has provided no specific evidence to rebut the Controller's findings. The Controller's conclusions are rationally tied to the evidence it reviewed in the audit. Therefore, the Controller's audit conclusions and allowance of 116,484 trash collections, instead of the 136,526 collections claimed, are not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Reduction, Based on the Determination that Proposition A and C Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.

The claimant used Local Return funds from the Proposition A and C sales tax to pay for one-time costs amounting to $135,889, and used $450,469 in Local Return Funds from Proposition C for ongoing maintenance costs.[164] The claimant did not identify and deduct the Proposition A and C Local Return funds as offsetting revenues in its reimbursement claims.[165] The claimant alleges that the Controller improperly designated the Proposition A and C Local Return Funds as offsetting revenue because the revenue was not specifically intended for the mandated program, as the claimant argues is required by the Parameters and Guidelines.[166] The claimant asserts that the Proposition A and C funds are not a federal, state, or non-local source within the meaning of the Parameters and Guidelines.[167] The claimant also contends that it has the ability to pay back

[161] Exhibit A, IRC, filed May 22, 2020, pages 204-208 (Audit Report).

[162] Exhibit A, IRC, filed May 22, 2020, pages 4-5.

[163] Exhibit A, IRC, filed May 22, 2020, pages 204-208 (Audit Report).

[164] Exhibit A, IRC, filed May 22, 2020, pages 209-212 (Audit Report).

[165] Exhibit A, IRC, filed May 22, 2020, pages 209-215 (Audit Report).

[166] Exhibit A, IRC, filed May 22, 2020, page 7.

[167] Exhibit A, IRC, filed May 22, 2020, pages 6-7.

the Proposition A and C funds if State mandate reimbursement payments are received and, thus, in effect it is using its own general revenue funds.[168] Finally, the claimant alleges that "[i]t would be arbitrary and capricious to find that the Parameters and Guidelines retroactively prohibited an advancement of Proposition A or Proposition C funds in a way that was lawful when those funds were advanced."[169]

The Commission finds that the Controller's designation of the funds as offsetting revenues and the resulting reduction of costs claimed is correct as a matter of law.

1. Proposition A and Proposition C local return funds constitute reimbursement from a non-local source within the meaning of the Parameters and Guidelines.

Section VIII. of the Parameters and Guidelines states:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or *nonlocal* source shall be identified and deducted from this claim.[170]

While the Parameters and Guidelines do not expressly require that funds from Proposition A or Proposition C be identified as offsetting revenue, they do state that "reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim."[171] The Parameters and Guidelines do not stand alone, but must be interpreted in a manner that is consistent with the California Constitution[172] and principles of mandates law.[173] As explained below, to qualify as reimbursable "proceeds of taxes" under mandates law, a "local tax" cannot be levied "by or for" an entity other than the local agency claiming reimbursement, nor can it be subject to another entity's appropriations limit, even if that entity is another local agency.[174] To find otherwise would disturb the balance of local government financing upon which the tax and spend limitations of articles XIII A and XIII B are built.[175]

Neither Proposition A nor Proposition C are the claimant's local "proceeds of taxes" because they are neither levied by nor for the claimant, nor subject to the claimant's appropriations limit. Any costs incurred by the claimant in performing the mandated activities that are funded by

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[168] Exhibit A, IRC, filed May 22, 2020, pages 7-9.

[169] Exhibit A, IRC, filed May 22, 2020, pages 9-11.

[170] Exhibit A, IRC, filed May 22, 2020, page 172 (Parameters and Guidelines), emphasis added.

[171] Exhibit A, IRC, filed May 22, 2020, page 172 (Parameters and Guidelines), emphasis added.

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

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

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

[175] See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 492 (Arabian, J., concurring).

Proposition A or Proposition C, non-local taxes, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

2. Proposition A and Proposition C local return tax revenues are not the claimant's "proceeds of taxes" within the meaning of article XIII B of the California Constitution because the taxes are not levied by the claimant nor subject to the claimant's appropriations limit.

Interpreting the reimbursement requirement in article XIII B, section 6 of the California Constitution requires an understanding of articles XIII A and XIII B, which "work in tandem, together restricting California governments' power both to levy and to spend taxes for public purposes."[176]

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that "the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value" and that the one percent (1%) tax was to be collected by counties and "apportioned according to law to the districts within the counties…"[177] In addition to limiting property tax revenue, section 4 also restricts a local government's ability to impose special taxes by requiring a two-thirds approval by voters.[178]

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A, and was billed as "the next logical step to Proposition 13."[179] While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[180]

Article XIII B established "an appropriations limit," or spending limit for each "local government" beginning in fiscal year 1980-1981.[181] Section 1 of article XIII B defines the appropriations limit as follows:

> The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided by this article.[182]

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[176] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

[177] California Constitution, article XIII A, section 1.

[178] California Constitution, article XIII A, section 1.

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

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

[181] California Constitution, article XIII B, section 8(h).

[182] California Constitution, article XIII B, section 1.

No "appropriations subject to limitation" may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[183]

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on "appropriations subject to limitation," meaning "any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity*."[184] For local agencies, "proceeds of taxes" subject to the appropriations limit include all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).[185]

No limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes."[186] For example, appropriations subject to limitation do not include "local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities."[187]

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. Thus, contrary to the claimant's assertions, the courts have consistently found that the purpose of section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local governmental entities, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose.*"[188] The California Supreme Court, in *County of Fresno v. State of California*,[189] explained:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.; see Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such

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[183] California Constitution, article XIII B, section 2.

[184] California Constitution, article XIII B, section 8(b), emphasis added.

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

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

[187] California Constitution, article XIII B, section 8(i).

[188] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81), emphasis added.

[189] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

> revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[190]

Article XIII B, section 6 must therefore be read in light of the fact that "articles XIII A and XIII B severely restrict the taxing and spending powers of local governments"; it requires the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.[191]

a. The Proposition A and Proposition C sales taxes are not proceeds of taxes levied by or for the claimant.

The revenue at issue in this IRC consists of transportation sales tax receipts from the claimant's share of the Proposition A and C Local Return program. However, the Proposition A and C funds are not subject to claimant's appropriations limit. "Appropriations subject to limitation" for local government means "any authorization to expend during a fiscal year the 'proceeds of taxes levied by or for that entity' and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes."[192] It has been the long-held position, supported by case law, that only state mandates that require the expenditure of a claimant's "proceeds of taxes" limited by the tax and spend provisions in articles XIII A and XIII B are reimbursable, and that local governments authorized to recoup costs through non-tax sources are not eligible for reimbursement under article XIII B, section 6.[193] While the claimant seeks to characterize Proposition A and Proposition C as "local taxes," for purposes of mandates reimbursement, they are not the claimant's proceeds of taxes.

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.[194] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[195] In other words, a local government's taxing authority is derived from statute.

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A and Proposition C transactions and use taxes throughout Los

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

[191] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

[192] California Constitution, article XIII B, section 8(b).

[193] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 (Article XIII B "was not intended to reach beyond taxation").

[194] California Constitution, article XIII, section 24(a).

[195] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ("Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government").

Angeles County.[196] Public Utilities Code section 130350, as originally enacted, states as follows:

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[197]

Under the Proposition A and Proposition C ordinances, twenty-five percent of Proposition A taxes and twenty percent of Proposition C taxes, respectively, are allocated to the local return program funds for cities and the county to use for public transit purposes.[198] As discussed above, local jurisdictions are then permitted to use those funds on public transit projects as prescribed by the Local Return Guidelines.[199] Permissible uses include bus stop improvements and maintenance projects, which include the installation, replacement and maintenance of trash receptacles.[200]

The claimant does not dispute receiving Proposition A and Proposition C revenues through the local return program during the audit period, at least a portion of which was used for the eligible purposes of installing and maintaining trash receptacles at transit stops. Nonetheless, the claimant misunderstands what constitutes a local agency's "local sales tax revenues" for purposes of determining eligibility for reimbursement under article XIII B, section 6. Contrary to the claimant's assertions, the Proposition A and Proposition C transactions and use taxes are *not* the claimant's local "proceeds of taxes" because they are neither levied by nor for the claimant.

> The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430–432, 109 P. 1104; *County of Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 710–711, 112 P.2d 10.) The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P.

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[196] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

[197] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

[198] Exhibit A, IRC, filed May 22, 2020, page 123 (Local Return Guidelines 2007 Edition).

[199] See Exhibit A, IRC, filed May 22, 2020, page 96 (Local Return Guidelines 2007 Edition).

[200] Exhibit A, IRC, filed May 22, 2020, page 102 (Local Return Guidelines 2007 Edition).

> 340.) In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. (*Griggs*, *supra*, 13 Cal.App. at p. 432, 109 P. 1104.)
>
> Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity.[201]

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimant here does not have the power to levy the Proposition A and Proposition C taxes.[202] Public Utilities Code section 130350 authorizes the Los Angeles Transportation Commission (through its successor, Metro) to levy the Proposition A and Proposition C retail transactions and use taxes. The Proposition A and Proposition C ordinances authorize Metro to allocate a portion of those tax proceeds to local jurisdictions within Los Angeles County for use on specified local transit programs.[203] Therefore, Metro is not levying the Proposition A and Proposition C taxes "for" the claimant. The claimant's receipt and use of Proposition A and Proposition C tax revenues through the local return programs does not render those funds the claimant's "proceeds of taxes."

b. <u>The Proposition A and Proposition C local return funds allocated to the claimants are not subject to the claimant's appropriations limit.</u>

The reimbursement requirement in article XIII B, section 6 "was included in recognition of the fact 'that articles XIII A and XIII B severely restrict the taxing and spending powers of local government.'"[204] In other words, it was "designed to protect the tax revenues of local governments from state mandates that would require the expenditure of such revenues."[205] Article XIII B does not limit a local government's ability to expend tax revenues that are not its

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[201] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

[202] See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27 [Because redevelopment agency did not have the authority to levy a tax to fund its efforts, allocation and payment of tax increment funds to redevelopment agency by county, a government taxing agency, were not "proceeds of taxes levied by or for" the redevelopment agency and therefore were not subject to the appropriations limit of Article XIII B].

[203] Exhibit C(1), Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on February 22, 2001), page 3; Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), pages 3-4.

[204] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.

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

"proceeds of taxes."[206] Therefore, where a tax is neither levied by nor for the local government claiming reimbursement, the resulting revenue is not the local government's "proceeds of taxes" and is therefore not the local government's "appropriations subject to limitation."[207]

Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."[208] Where a local agency expends tax revenues other than its own proceeds of taxes, the need under article XIII B, section 6 to protect the local agency's own tax revenues is not present; the agency is not called upon to expend its limited tax proceeds, nor does it bear the burden of increased financial responsibility for carrying out state governmental functions.[209] Because the Proposition A and Proposition C local return funds are not the claimants' "proceeds of taxes levied by or for that entity," they are not the claimants' "appropriations subject to limitation."[210]

In addition, Government Code section 7904 states: "In no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state."

i. The Proposition A tax is not subject to an appropriations limit.

Los Angeles County has passed four separate half-cent transportation sales taxes over the past 40 years: Proposition A (1980), Proposition C (1990), Measure R (2008), and Measure M (2016).[211] With the exception of Proposition A, the remaining three tax ordinances, all adopted since 1990, expressly state that their respective transportation sales tax revenues are subject to either the Los Angeles County Transportation Commission's (as predecessor to Metro) or Metro's appropriations limit.[212]

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

[207] California Constitution, article XIII B, section 8.

[208] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[209] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 492-493 (Arabian, J., concurring).

[210] California Constitution, article XIII B, section 8.

[211] Exhibit C(5), Local Return Program 2021, https://www.metro.net/projects/local_return_pgm/ (accessed on December 9, 2021), page 1.

[212] Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on February 22, 2021), page 6; Exhibit C(3), Measure R Ordinance, https://www.dropbox.com/s/bgam2405bekeciq/2009-MeasureR-ordinance-amended-July-2021.pdf?dl=0 (accessed on January 3, 2022), page 16; Exhibit C(4) Measure M Ordinance, https://www.dropbox.com/s/vs6sse7hzyw8s0h/2017-MeasureM-ordinance-with-expenditure-plan.pdf?dl=0 (accessed on January 3, 2022), page 22.

The Proposition A tax is not subject to an appropriations limit. Under *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, the Transportation Commission is not a "special district" subject to the taxation limitations of article XIII A and could therefore impose the Proposition A tax without the two-thirds voter approval required by article XIII A, section 4. Therefore, consistent with Public Utilities Code section 99550, any tax imposed by the Transportation Commission that was approved prior to December 19, 1991 is exempt from the taxing limitations of article XIII A.

While article XIII A "imposes a direct constitutional limit on state and local power to adopt and levy taxes,"[213] the purpose of article XIII B is to provide discipline in government spending "by creating appropriations limits to restrict the amount of such expenditures."[214] As discussed above, articles XIII A and XIII B work together to impose restrictions on local governments' ability to both levy and spend taxes.[215] Because the Transportation Commission's power to adopt and levy taxes is not limited by article XIII A, it is not surprising that an appropriations limit was not established for the Proposition A revenues under article XIII B.

Furthermore, if the Transportation Commission were considered a "special district," article XIII B, section 9 states that "Appropriations subject to limitation" for each entity of government do *not* include

> (c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.[216]

The Transportation Commission was created prior to January 1, 1978 and did not levy real property taxes. Therefore, whether or not the Transportation Commission is considered to be a special district, Proposition A funds are not subject to an appropriations limit.

ii. The Proposition C tax is subject to the Transportation Commission's appropriations limit.

Proposition C establishes an appropriations limit applicable to Metro as follows:

> A Commission [former LACTC, now MTA] appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.[217]

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[213] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, footnote 1.

[214] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 491 (Arabian, J., concurring).

[215] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

[216] California Constitution, article XIII B, section 9(c).

[217] Exhibit C(2), Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf

Based on the plain language of the Proposition A and C ordinances, the authorizing statutes, and the Local Return Guidelines, the Local Return funds do not constitute the claimant's "proceeds of taxes" and are not subject to the claimant's appropriations limit.[218] The Local Return funds do not raise the general revenues of the claimant, but are restricted to public transit purposes approved by Metro.

Additionally, under Government Code section 7904, "[i]n no event shall the appropriation of the same proceeds of taxes be subject to the appropriations limit of more than one local jurisdiction or the state."[219] Because the Proposition C taxes are levied "by and for" Metro, Proposition C tax revenues are subject *only* to Metro's appropriations limit; they cannot be subject to both Metro and the claimants' appropriations limits.

Reimbursement under article XIII B, section 6 is required only when the mandated program forces local government to incur increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit.[220] Local agencies cannot accept the benefits of revenue that is not subject to their appropriations limits, while asserting an entitlement to reimbursement under article XIII B, section 6.[221] The Proposition A and C Local Return revenue is not the claimant's proceeds of taxes, nor is it subject to the claimant's appropriation limit.

Therefore, the Controller's finding, that the claimant is not eligible for reimbursement for mandated activities already paid for with Local Return funds that should have been identified and deducted as offsetting revenues, is correct as a matter of law.

3. The advancement of Proposition A or Proposition C funds to pay for the installation and maintenance of the trash receptacles does not alter the nature of those funds as offsetting revenues, nor does the deduction of those funds from the costs claimed constitute a retroactive application of the law.

The claimant argues that because the Local Return Guidelines permitted the claimants to use Proposition A and Proposition C funds on mandated activities "on or around FY 2002-03" and then, upon reimbursement from the state, apply those funds to other transit projects, the

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(accessed on February 22, 2021), page 6. In 1987, the Legislature enacted the Local Transportation Authority and Improvement Act, which authorized any other county board of supervisors to create a "local transportation authority," and to adopt an ordinance imposing a retail transactions and use tax—i.e., a sales tax—on a countywide basis at a rate not to exceed one percent for public transit purposes, which must be approved by the voters. (Pub. Utilities Code, §§ 180050, et seq., 180201.) Part of the Act, Public Utilities Code section 180202, requires that the sales tax ordinance "include an appropriations limit for that [transportation] entity pursuant to Section 4 of Article XIII B of the California Constitution."

[218] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451.

[219] Government Code section 7904.

[220] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

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

claimants cannot now be penalized for doing so through retroactive application of the Parameters and Guidelines (which were not adopted until 2011).[222] The claimant alleges that the Controller's application of the Parameters and Guidelines is both incorrect as a matter of law and arbitrary and capricious.[223] Whether the Controller correctly interpreted the Parameters and Guidelines in finding that Proposition A and Proposition C are non-local sources of funds that must be deducted from the reimbursement claims is purely a question of law subject to the de novo standard of review and to which the arbitrary and capricious standard does not apply.[224]

Because the claimant used "non-local source" funds to install and maintain trash receptacles, the claimant was required to identify and deduct those funds from its claims for reimbursement. As discussed above, the Proposition A and Proposition C funds received by the claimant are not the claimant's "proceeds of taxes" within the meaning of article XIII B, section 8. The requirement in section VIII. of the Parameters and Guidelines that reimbursement received from any "non-local source" must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes.[225] A rule that merely restates or clarifies existing law "does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same."[226]

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes (e.g., revenue from a tax levied by a separate local government entity), it is required to deduct those revenues from its reimbursement claim. The fact that the Commission did not adopt the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program until well into the audit period[227] does not alter the analysis, nor does the claimants' ability under the Local Return Guidelines to expend Proposition A or Proposition C funds on the installation and maintenance of transit stop trash receptacles prior to mandate reimbursement.

The Commission finds that the Controller's determination, that the Proposition A and Proposition C local return funds are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law.

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[222] Exhibit A, IRC, filed May 22, 2020, pages 9-10.

[223] Exhibit A, IRC, filed May 22, 2020, pages 9-10.

[224] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64, 71, fn. 15; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

[225] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487; see also Government Code section 17553(b)(1)(F)(iii) and California Code of Regulations, title 2, section 1183.7(g)(2).

[226] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[227] The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program were adopted March 24, 2011. (Exhibit A, IRC, filed May 22, 2020, page 166.) The reimbursement claims at issue range from fiscal years 2002-2003 through 2012-2013. (Exhibit A, IRC, filed May 22, 2020, pages 224-230, 466, 468.)

V. Conclusion

Based on the forgoing, the Commission concludes that the Controller's reduction of costs is correct as a matter of law. Accordingly, the IRC is denied.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F53c Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 Filed on June 8, 2020 City of Arcadia, Claimant	Case No.: 19-0304-I-03 *Municipal Storm Water and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 25, 2022*) (*Served March 29, 2022*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on March 25, 2022.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001, Part 4F5c3 Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009 Filed on June 8, 2020 City of Arcadia, Claimant	Case No.: 19-0304-I-03 *Municipal Storm Water and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 25, 2022*) (*Served March 29, 2022*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on March 25, 2022. Lisa Kurokawa appeared on behalf of the State Controller's Office. No appearances were made for the City of Arcadia.

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

The Commission adopted the Proposed Decision to deny the IRC by a vote of 7-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Natalie Kuffel, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Yvette Stowers, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

Summary of the Findings

This IRC challenges the State Controller's Office's (Controller's) reduction to reimbursement claims filed by the City of Arcadia (claimant) for the *Municipal Storm Water and Urban Runoff Discharges* program for fiscal years 2002-2003 through 2008-2009. The Controller reduced 100 percent of the costs claimed on the ground that the claimant failed to identify non-local, restricted funds from the Proposition A Local Return program, which were used by the claimant to pay for the reimbursable activities.

The Commission finds that this IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission further finds that the Controller's reduction, based on its determination that Proposition A local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Proposition A funds are transactions and use taxes levied by the Los Angeles Metropolitan Transit Authority (Metro). A portion of the Proposition A tax revenues are distributed to cities and the county through the Proposition A local return program for use on eligible transportation projects. These taxes, however, are not levied "by or for" the claimant, as that constitutional phrase is interpreted by the courts, because the claimant does not have the authority to levy Proposition A taxes, and thus, these taxes are not the claimant's local proceeds of taxes.[1] Nor are the proceeds subject to the claimant's appropriations limit.[2] Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.[3]

Accordingly, the Controller's reduction is correct as a matter of law and the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

09/28/2011 The claimant filed its initial reimbursement claim for fiscal years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009.[4]

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[1] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32; Article XIII B, section 8(b) of the California Constitution.

[2] Government Code section 7904; Public Utilities Code sections 130350, 130354; Exhibit D, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on October 14, 2020), page 6.

[3] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

[4] Exhibit A, IRC, filed June 8, 2020, page 119 (Claim Receipt).

09/05/2017 The Controller issued the Final Audit Report.[5]

06/08/2020 The claimant filed the IRC.[6]

01/21/2022 Commission staff issued the Draft Proposed Decision.[7]

01/24/2022 The Controller filed comments on the Draft Proposed Decision.[8]

II. Background

A. The *Municipal Storm Water and Urban Runoff Discharges* Program

The *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 program arose from a consolidated test claim filed by the County of Los Angeles and cities within the county alleging that various sections of a 2001 stormwater permit issued by the Los Angeles Regional Water Quality Control Board, a state agency, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.[9]

On July 31, 2009, the Commission adopted the Test Claim Decision, finding that the following activity in part 4F5c3 of the permit imposed a reimbursable state mandate on those local agencies subject to the permit that are not subject to a trash total maximum daily load (TDML):

> Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[10]

On March 24, 2011, the Commission adopted the Parameters and Guidelines with the following reimbursable activities:

A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):

1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.

[5] Exhibit A, IRC, filed June 8, 2020, pages 111-117 (Final Audit Report).

[6] Exhibit A, IRC, filed June 8, 2020.

[7] Exhibit B, Draft Proposed Decision, issued January 21, 2022.

[8] Exhibit C, Controller's Comments on the Draft Proposed Decision, filed January 24, 2022.

[9] Exhibit A, IRC, filed June 8, 2020, page 87 (Parameters and Guidelines).

[10] Exhibit A, IRC, filed June 8, 2020, page 87 (Parameters and Guidelines).

4. Purchase or construct receptacles and pads and install receptacles and pads.

5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.

B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):

1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*

2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.

3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. *Graffiti removal is not reimbursable*.

4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.[11]

The ongoing activities in Section IV. B. are reimbursed under a reasonable reimbursement methodology (RRM).[12]

Section VIII. of the Parameters and Guidelines requires offsetting revenues and reimbursements to be identified and deducted from reimbursement claims as follows:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[13]

B. Proposition A Local Return Funds

At issue in this IRC is the claimant's use of Proposition A Local Return Funds to pay for the mandated program, the history of which is provided below.

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency[14] and

[11] Exhibit A, IRC, filed June 8, 2020, pages 89-100 (Parameters and Guidelines), emphasis in original.

[12] Exhibit A, IRC, filed June 8, 2020, pages 92-93 (Parameters and Guidelines).

[13] Exhibit A, IRC, filed June 8, 2020, page 93 (Parameters and Guidelines).

[14] Public Utilities Code section 130050.

authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.[15]

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[16]

Public Utilities Code section 130354 states that "revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes."[17]

In 1980, Los Angeles County voters approved Proposition A, a one-half percent transactions and use tax to fund public transit projects throughout the county.[18] Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax.

In *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only a majority of voters, instead of the two-thirds required under article XIII A, section 4.[19] The court reasoned that "special district" within the meaning of article XIII A, section 4 included only those districts with the authority to levy a tax on real property, and because the Transportation Commission had no such authority, it did not constitute a "special district."[20] While the court noted that the terms "special districts" and "special taxes" as used in section 4 were both ambiguous, it did not address whether Proposition A constituted a

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[15] Public Utilities Code sections 130231(a), 130350.

[16] Public Utilities Code section 130350 (Stats. 1976, ch. 1333). Section 130350 was amended in 2007 to reflect the two-thirds vote requirement for special taxes under article XIII A, section 4.

[17] Public Utilities Code section 130354.

[18] Exhibit A, IRC, filed June 8, 2020, page 17 (Local Return Guidelines 2007 Edition).

[19] In 1978, California voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A, section 4 provides:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

[20] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

"special tax" within the meaning of section 4.[21] Nor did the court address whether the Transportation Commission or the Proposition A tax were subject to the government spending limitations imposed by article XIII B.

In *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the California Supreme Court addressed "a question previously left open" in *Richmond*, regarding the validity of a supplemental sales tax "enacted for the apparent purpose of avoiding the supermajority voter approval requirement" under article XIII A, section 4.[22] The court ruled that a "special district" within the meaning of article XIII A, section 4 includes "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13," regardless of whether the district has the authority to levy real property taxes.[23] However, the court declined to overrule *Richmond* with respect to local agencies created prior to Proposition 13 and which lacked the authority to levy property taxes, such as the Transportation Commission.[24] The court further held that a "special tax" within the meaning of article XIII A, section 4, "is one levied to fund a specific government project or program," even when that project or program is the agency's sole reason for being.[25]

The Transportation Commission is statutorily authorized to levy Proposition A transaction and use taxes.[26]

> The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the approval by the voters of the commission's Ordinance No. 16 [Proposition A] in 1980 and its Ordinance No. 49 [Proposition C] in 1990, and has the authority and power vested in the Southern California Rapid Transit District to plan, design, and construct an exclusive public mass transit guideway system in the County of Los Angeles, including, but not limited to, Article 5 (commencing with Section 30630 of Chapter 5 of Part 3 of Division 11).[27]

The Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to the Transportation Commission's appropriations limit.[28]

In 1993, the Transportation Commission was abolished and the Los Angeles County Metropolitan Transportation Authority (Metro) was created and succeeded to the Transportation

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[21] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

[22] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

[23] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

[24] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

[25] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

[26] Public Utilities Code section 130231(a).

[27] Public Utilities Code section 130231(a).

[28] Exhibit D, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020).

Commission's and the Southern California Rapid Transit District's powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.[29] Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A taxes.[30]

The purpose of the Proposition A tax is to "improve and expand existing public transit Countywide, including reduction of transit fare, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit assessments, and fares."[31] Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses[32] and are allocated as follows:

a. Twenty-five percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.

b. Thirty-five percent, calculated on an annual basis, to the commission for construction and operation of the System.

c. The remainder shall be allocated to the Commission for public transit purposes.[33]

Local jurisdictions receive transportation funding from Metro through the Proposition A local return program. Twenty-five percent of Proposition A funds is allocated to the local return programs for local jurisdictions to use for "in developing and/or improving public transit,

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[29] Public Utilities Code sections 130050.2, 130051.13. Section 130051.13 states as follows:

> On April 1, 1993, the Southern California Rapid Transit District and the Los Angeles County Transportation Commission are abolished. Upon the abolishment of the district and the commission, the Los Angeles County Metropolitan Transportation Authority shall succeed to any or all of the powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.

[30] Exhibit A, IRC, filed June 8, 2020, page 96 (Local Return Guidelines 2007 Edition).

[31] Exhibit D, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020), page 3.

[32] Exhibit D, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020), page 4.

[33] Exhibit D, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020), page 4.

paratransit, and the related transportation infrastructure."[34] Metro allocates and distributes local return funds to cities and the county each month, on a "per capita" basis.[35]

Use of Proposition A tax revenues is restricted to "eligible transit, paratransit, and Transportation Systems Management improvements" and cities are encouraged to use the funds to improve transit services.[36]

> The Proposition A Ordinance requires that LR [Local Return] funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds.[37]

Amongst the eligible uses of Proposition A local return funds are bus stop improvements and maintenance projects.[38] The Local Return Guidelines provide as follows:

> Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:
>
> - Concrete landings – in street for buses and at sidewalk for passengers
> - Bus turn-outs
> - Benches
> - Shelters
> - *Trash receptacles*
> - Curb cut
> - Concrete or electrical work directly associated with the above items.[39]

Proposition A local return funds may also "be given, loaned or exchanged" between local jurisdictions, provided that certain conditions are met, including that the traded funds be used for public transit purposes.[40] Jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by "federal, state, or local grant funding, or private funds."[41]

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[34] Exhibit A, IRC, filed June 8, 2020, page 17 (Local Return Guidelines 2007 Edition).

[35] Exhibit A, IRC, filed June 8, 2020, page 17 (Local Return Guidelines 2007 Edition).

[36] Exhibit D, Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on August 31, 2020), page 3.

[37] Exhibit A, IRC, filed June 8, 2020, page 17 (Local Return Guidelines 2007 Edition).

[38] Exhibit A, IRC, filed June 8, 2020, page 23 (Local Return Guidelines 2007 Edition).

[39] Exhibit A, IRC, filed June 8, 2020, page 23 (Local Return Guidelines 2007 Edition), emphasis added.

[40] Exhibit A, IRC, filed June 8, 2020, page 29 (Local Return Guidelines 2007 Edition).

[41] Exhibit A, IRC, filed June 8, 2020, page 46 (Local Return Guidelines 2007 Edition).

Subsequent reimbursement funds must then be deposited into the Proposition A Local Return Fund.[42]

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

The claimant filed reimbursement claims for seven fiscal years in its initial claim totaling $349,403. No claim was made for one-time activities; only for ongoing costs subject to the reasonable reimbursement methodology.[43] Upon audit, the Controller reduced the claims by 100 percent of the amount claimed on the ground that the claimant had not reported Proposition A Local Return revenues that completely offset the claim amount.[44]

Based on a review of the claimant's operating budgets and discussions with the claimant, the Controller ascertained that the claimant has a transit fund fully funded by Proposition A and other restricted funding sources.[45] According to the claimant's payroll reports, the salaries of those employees performing the state-mandated activities of ongoing maintenance of transit trash receptacles were paid from the Proposition A Local Return funds within the claimant's transit fund.[46] The Controller noted that the state-mandated activities were listed as a proper use of Local Return funds in the Proposition A Local Return Guidelines, section II. Project Eligibility, as follows:

> 2. BUS STOP IMPROVEMENTS AND MAINTENANCE
> (Codes 150, 160, & 170)
>
> Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:
>
> - Concrete landings – in street for buses and at sidewalk for passengers
> - Bus turn-outs
> - Benches
> - Shelters
> - Trash Receptacles
> - Curb cuts
> - Concrete or electrical work directly associated with the above items[47]

The Controller concluded that, in compliance with Section VIII. of the Parameters and Guidelines, the claimant should have offset $349,403 in Proposition A Local Return funds used

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[42] Exhibit A, IRC, filed June 8, 2020, page 46 (Local Return Guidelines 2007 Edition).

[43] Exhibit A, IRC, filed June 8, 2020, pages 120-133 (Initial Reimbursement Claims).

[44] Exhibit A, IRC, filed June 8, 2020, pages 111-112 (Cover letter to the Final Audit Report).

[45] Exhibit A, IRC, filed June 8, 2020, page 116 (Final Audit Report).

[46] Exhibit A, IRC, filed June 8, 2020, pages 113-117 (Final Audit Report).

[47] Exhibit A, IRC, filed June 8, 2020, page 117 (Final Audit Report) quoting IRC, page 23 (Guidelines, Proposition A and Proposition C Local Return).

to pay for the state-mandated activities.[48] The Controller found that the claimant was able to use non-local funds to pay for the state-mandated activities and did not have to rely on the claimant's discretionary general funds.[49]

III. Positions of the Parties

A. City of Arcadia

The claimant argues that the reductions are incorrect because the Proposition A Local Return funds are not revenue "in the same program as a result of the same statute or executive orders found to contain the mandate" nor are they "reimbursement for this mandate received from any federal, state or non-local source" as set forth in Section VIII., Offsetting Revenues and Reimbursements, of the Parameters and Guidelines. The claimant further argues that the Local Return funds are not "additional revenues specifically intended to fund the costs of the state mandate" or those "dedicated…for the program" as set forth in Government Code sections 17556(e) and 17570(d)(1)(D).[50] The claimant explains that the Local Return funds could have been used for various transit-related projects. Using them to pay for the costs of the mandated activities was not the claimant's preference, but this use was proper and the claimant can repay the funds from the state's subvention of costs in compliance with the Local Return Guidelines.[51]

Relying on *County of Fresno v. State of California* (1991) 53 Cal.3d 482, the claimant argues that the Controller's position is contrary to article XIII B, section 6, which was adopted to protect local government's tax revenues. The claimant reasons that since Proposition A funds are derived from a sales tax, they are no different from any other sales tax and do not require offset.[52]

The claimant asserts that the Controller's reduction constitutes a retroactive application of the Parameters and Guidelines to prohibit the use of Proposition A Local Return funds, in a manner that was lawful at the time, is arbitrary and capricious, and violates the California Constitution:

> In this regard, as a general rule a regulation will not be given a retroactive effect unless it merely clarifies existing law. *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135. Retroactivity is not favored in the law. *Aktar v. Anderson* (1957) 58 Cal.App.4th 1166, 1179. Regulations that 'substantially change the legal effect of past events' cannot be applied retroactively. *Santa Clarita Organization for Planning and the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 315.
>
> That rule applies here. At the time the City advanced its Proposition A funds to use for the maintenance of the trash receptacles, it was operating under the understanding, consistent with Proposition A Guidelines, that the City could

[48] Exhibit A, IRC, filed June 8, 2020, page 116 (Final Audit Report).

[49] Exhibit A, IRC, filed June 8, 2020, page 117 (Final Audit Report).

[50] Exhibit A, IRC, filed June 8, 2020, pages 3-4.

[51] Exhibit A, IRC, filed June 8, 2020, page 4.

[52] Exhibit A, IRC, filed June 8, 2020, page 5.

advance those funds and then return them to the Proposition A and C account for other use once the City obtained a subvention of funds from the state. To retroactively apply the Parameters and Guidelines, adopted in 2011, to preclude a subvention, i.e., to now find that the City did not use its Proposition A fund as an advance only, substantially changes the legal effect of these past events. Such an application is unlawful.[53]

Finally, the claimant asserts that it had very limited general revenue funds, so using those funds was not a fiscally viable option.[54] Having used the Local Return funds for the mandated activities, the claimant had to forego using the funds for other allowable purposes as prioritized by the claimant.[55] The claimant did not file comments on the Draft Proposed Decision.

B. State Controller's Office

The Controller did not file comments on this IRC. However, the Controller did file comments agreeing with the Draft Proposed Decision.[56]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[57] 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

[53] Exhibit A, IRC, filed June 8, 2020, pages 5-6.

[54] Exhibit A, IRC, filed June 8, 2020, page 8 (Declaration of Hue Quach, Administrative Services Director and Chief Financial Officer for the City of Arcadia).

[55] Exhibit A, IRC, filed June 8, 2020, pages 8-9 (Declaration of Hue Quach, Administrative Services Director and Chief Financial Officer for the City of Arcadia and declaration of Vanessa Hevener, Environmental Services Officer for the City of Arcadia).

[56] Exhibit C, Controller's Comments on the Draft Proposed Decision, filed January 24, 2022.

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

apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[58]

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

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[60]

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.[61] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[62]

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, which Complies with Government Code Section 17558.5(c).

Section 1185.1(c) of the Commission's regulations states: "All incorrect reduction claims and amendments thereto shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with

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[58] *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.

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

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

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

[62] 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.

Government Code section 17558.5(c)[63] by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment."[64]

The Controller initiated the audit in September 2016[65] and issued its final audit report on September 5, 2017,[66] resulting in a September 4, 2020, deadline for the filing of an incorrect reduction claim. The claimant filed this IRC on June 8, 2020, within three years following the date of the Controller's final audit report.[67] Accordingly, this IRC was timely filed.

B. The Controller's Reduction of Costs, Based on the Determination that Proposition A Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.

The claimant used Local Return funds from the Proposition A sales tax to pay for its ongoing maintenance costs.[68] The claimant did not identify and deduct the Proposition A Return funds as offsetting revenues in its reimbursement claims.[69] Because Proposition A Local Return funds constitute reimbursement from a non-local source and are not the claimant's proceeds of taxes within the meaning of article XIII B of the California Constitution, the Commission finds that the Controller's designation of the funds as offsetting revenues and the resulting reduction of costs claimed is correct as a matter of law.

1. Proposition A local return funds constitute reimbursement from a non-local source within the meaning of the Parameters and Guidelines.

Section VIII. of the Parameters and Guidelines states:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate

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[63] Government Code section 17558.5(c) states: "The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review."

[64] California Code of Regulations, title 2, section 1185.1(c), Register 2020, No. 4 (eff. April 1, 2020).

[65] Exhibit A, IRC, filed June 8, 2020, page 3.

[66] Exhibit A, IRC, filed June 8, 2020, pages 111-112 (Cover Letter to Final Audit Report).

[67] Exhibit A, IRC, filed June 8, 2020, page 1 (IRC Form).

[68] Exhibit A, IRC, filed June 8, 2020, page 116 (Audit Report).

[69] Exhibit A, IRC, filed June 8, 2020, page 116 (Audit Report).

> received from any federal, state or *non-local* source shall be identified and deducted from this claim.[70]

While the Parameters and Guidelines do not expressly require that funds from Proposition A be identified as offsetting revenue, they do state that "reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim." The Parameters and Guidelines do not stand alone, but must be interpreted in a manner that is consistent with the California Constitution[71] and principles of mandates law.[72] As explained below, to qualify as reimbursable "proceeds of taxes" under mandates law, a "local tax" cannot be levied "by or for" an entity other than the local agency claiming reimbursement, nor can it be subject to another entity's appropriations limit, even if that entity is another local agency.[73] To find otherwise would disturb the balance of local government financing upon which the tax and spend limitations of articles XIII A and XIII B are built.[74]

Proposition A Local Return funds are not the claimant's local "proceeds of taxes" because they are neither levied by nor for the claimant, nor subject to the claimant's appropriations limit. Any costs incurred by the claimant in performing the mandated activities that are funded by Proposition A, non-local taxes, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on "appropriations subject to limitation," meaning "any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity*."[75] For local agencies, "proceeds of taxes" subject to the appropriations limit include all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).[76]

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on "appropriations subject to limitation," meaning "any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity*."[77] No limitation is placed on the expenditure of those revenues that do not constitute "proceeds of

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[70] Exhibit A, IRC, filed June 8, 2020, page 93 (Parameters and Guidelines), emphasis added.

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

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

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

[74] See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 492 (Arabian, J., concurring).

[75] California Constitution, article XIII B, section 8, emphasis added.

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

[77] California Constitution, article XIII B, section 8(b), emphasis added.

taxes."[78] For example, appropriations subject to limitation do not include "local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities."[79]

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. Thus, contrary to the claimant's assertions, the courts have consistently found that the purpose of section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local governmental entities, which are 'ill equipped' to assume increased financial responsibilities *because of the taxing and spending limitations that articles XIII A and XIII B impose.*"[80] The California Supreme Court, in *County of Fresno v. State of California*,[81] explained:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.; see Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[82]

Article XIII B, section 6 must therefore be read in light of the tax and spend limitations imposed by articles XIII A and XIII B; it requires the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.[83]

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

[79] California Constitution, article XIII B, section 8(i).

[80] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81), emphasis added.

[81] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

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

[83] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

2. Proposition A Local Return funds are not the claimant's proceeds of taxes and are not subject to the claimant's appropriations limit.

a. The Proposition A Local Return Funds are not the *claimant's* proceeds of taxes.

The revenue at issue in this IRC consists of transportation sales tax receipts from the claimant's share of the Proposition A Local Return program. However, Proposition A funds are not subject to the claimant's appropriations limit. "Appropriations subject to limitation" for local government means "any authorization to expend during a fiscal year the 'proceeds of taxes levied by or for that entity' and the proceeds of state subventions to that entity (other than subventions made pursuant to Section 6) exclusive of refunds of taxes."[84] It has been the long-held position, supported by case law, that only state mandates that require the expenditure of a claimant's "proceeds of taxes" limited by the tax and spend provisions in articles XIII A and XIII B are reimbursable and that local governments authorized to recoup costs through non-tax sources are not eligible for reimbursement under article XIII B, section 6.[85] While the claimant seeks to characterize Proposition A Local Return funds as "local taxes," for purposes of mandates reimbursement, they are not the claimant's proceeds of taxes.

The power of a local government to tax is derived from the Constitution and requires the Legislature's authorization.[86] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[87] In other words, a local government's taxing authority is derived from statute. In this case, the Transportation Commission was authorized by statute to adopt an ordinance setting transactions and use taxes to be used for public transit purposes.[88] Since 1993, Metro, the successor agency, has been authorized to levy the Proposition A transactions and use tax and to distribute the revenues from those taxes as set forth within ordinances and the Local Return Guidelines.[89]

b. The Proposition A tax is not subject to the claimant's appropriations limit.

The voters of Los Angeles County approved four separate half-cent transportation sales taxes over the past 40 years: Proposition A (1980), Proposition C (1990), Measure R (2008), and Measure M (2016).[90] With the exception of Proposition A, the remaining three tax ordinances, all adopted since 1990, expressly state that their respective transportation sales tax revenues are

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[84] California Constitution, article XIII B, section 8(b).

[85] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 (Article XIII B "was not intended to reach beyond taxation").

[86] California Constitution, article XIII, section 24(a).

[87] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450.

[88] Public Utilities Code former section 130350; 64 Ops.Cal.Atty.Gen. 156 (1981).

[89] Public Utilities Code section 130351.13.

[90] Exhibit D, Local Return Program 2021, https://www.metro.net/about/local_return_pgm/#overview (accessed on January 20, 2022), page 1.

subject to either the Los Angeles County Transportation Commission's (as predecessor to Metro) or Metro's appropriations limit.[91]

The Proposition A tax is not subject to an appropriations limit. Under *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, the Transportation Commission is not a "special district" subject to the taxation limitations of article XIII A and could therefore impose the Proposition A tax without the two-thirds voter approval required by article XIII A, section 4. Therefore, consistent with Public Utilities Code section 99550, any tax imposed by the Transportation Commission that was approved prior to December 19, 1991 is exempt from the taxing limitations of article XIII A.

While article XIII A "imposes a direct constitutional limit on state and local power to adopt and levy taxes,"[92] the purpose of article XIII B is to provide discipline in government spending "by creating appropriations limits to restrict the amount of such expenditures."[93] As discussed above, articles XIII A and XIII B work together to impose restrictions on local governments' ability to both levy and spend taxes.[94] Because the Transportation Commission's power to adopt and levy taxes is not limited by article XIII A, it is not surprising that an appropriations limit was not established for the Proposition A revenues under article XIII B.

Furthermore, if the Transportation Commission were considered a "special district," article XIII B, section 9 states that "Appropriations subject to limitation" for each entity of government do *not* include

> (c) Appropriations of any special district which existed on January 1, 1978, and which did not as of the 1977-78 fiscal year levy an ad valorem tax on property in excess of 12 ½ cents per $100 of assessed value; or the appropriations of any special district then existing or thereafter created by a vote of the people, which is totally funded by other than the proceeds of taxes.[95]

The Transportation Commission was created prior to January 1, 1978, and did not levy real property taxes. Therefore, whether or not the Transportation Commission is considered to be a special district, Proposition A funds are not subject to an appropriations limit.

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[91] Exhibit D, Proposition C Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_c_ordinance.pdf (accessed on October 14, 2020), page 6; Exhibit D, Measure R Ordinance, https://www.dropbox.com/s/bgam2405bekeciq/2009-MeasureR-ordinance-amended-July-2021.pdf?dl=0 (accessed on January 3, 2022), page 16; Exhibit D, Measure M Ordinance, https://www.dropbox.com/s/vs6sse7hzyw8s0h/2017-MeasureM-ordinance-with-expenditure-plan.pdf?dl=0 (accessed on January 3, 2022), page 22.

[92] *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 59, footnote 1.

[93] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 491 (Arabian, J., concurring).

[94] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

[95] California Constitution, article XIII B, section 9(c).

Accordingly, the revenue from the Proposition A transactions and use tax are Metro's proceeds of taxes, are not subject to an appropriations limit, and the portion distributed as Local Return funds are a non-local source of funds to the claimant.

Despite the claimant's ability to obtain and use Local Return funds, the Proposition A transactions and use tax was not levied by the claimant nor did the claimant have authorization to levy it.[96] Metro did not levy the taxes for the claimant.[97] In order to have done so, Metro would have had to use the claimant's power to levy taxes and acted as ex-officio officers of the claimant.[98] As the claimant was not authorized to levy the Proposition A taxes, the Local Return funds are not the claimant's proceeds of taxes as defined by article XIII B of the California Constitution.[99] Indeed, the claimant does not claim Local Return funds as part of its proceeds of taxes and not part of general fund revenues in its Comprehensive Annual Financial Report, but instead labels the revenue as "intergovernmental."[100] In addition, the claimant has not shown that the Local Return funds are subject to its appropriations limit. Since the Local Return funds are not the claimant's proceeds of taxes nor subject to the claimant's appropriations limit, the amount of Local Return funds used for the state-mandated activities should have been offset from the amounts claimed for reimbursement, as explained below.

3. The claimant used Proposition A funds, a non-local funding source and not the claimant's proceeds of taxes, to pay for the state-mandated activities, but did not deduct those funds as offsetting revenue in compliance with Section VIII. of the Parameters and Guidelines; therefore, the Controller's reduction of costs is correct as a matter of law.

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

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[101]

The claimant asserts that it has no revenue to offset because Proposition A is a local source of funds, the Local Return funds are revenue from taxes, and these funds are not revenue as defined in Section VIII. of the Parameters and Guidelines; nor are they intended or dedicated for the

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[96] Public Utilities Code section 130351.13 and former section 130350.

[97] California Constitution, article XIII B, section 8(b).

[98] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

[99] Article XIII B, section 8 of the California Constitution.

[100] Exhibit D, Excerpt from City of Arcadia, California, Comprehensive Annual Financial Report, June 30, 2010, page 5 (https://www.arcadiaca.gov/discover/administrative_services/comprehensive_annual_financial_report.php#outer-589 (accessed on October 2, 2020).

[101] Exhibit A, IRC, filed June 8, 2020, page 93 (Parameters and Guidelines).

program under Government Code sections 17556(e) and 17570(d)(1)(D).[102] The claimant argues that the use of Proposition A funds to advance an eligible program and then to repay those funds after subvention from the state was lawful and was permitted by the Local Return Guidelines.[103] The claimant concludes that the retroactive application of the Parameters and Guidelines is arbitrary and capricious and violates the California Constitution.[104]

The Commission finds that the Controller's reduction is correct as a matter of law.

The Parameters and Guidelines must be interpreted in a manner that is consistent with the California Constitution and "the fundamental legal principles underlying state-mandated costs."[105] As explained above, the revenue from Proposition A is not the claimant's proceeds of taxes within the meaning of article XIII B and as such, the revenue derives from a non-local source within the meaning of the Parameters and Guidelines, Section VIII. Parameters and Guidelines are regulatory in nature and are binding on the parties.[106]

The claimant errs in relying on Government Code sections 17556(e) and 17570(d)(1)(D) to argue that Local Return funds are not dedicated or intended to fund the program.[107] These provisions govern test claim proceedings and whether there are any exceptions to the finding of costs mandated by the state. The Commission approved this Test Claim and, thus, found there were costs mandated by the state. Thus, these code sections are not relevant.

Further, the claimant's assertion that its use of the funds complied with the Local Return Guidelines is not relevant as consistency with the Guidelines is not at issue in this IRC and the Guidelines do not address mandate reimbursement. The rule at issue in this case stems directly from Section VIII. of the Parameters and Guidelines: Reimbursement for this mandate received "from any . . . non-local source shall be identified and deducted from this claim."

Finally, the claimant incorrectly asserts that the Parameters and Guidelines are being applied retroactively in violation of law. The claimant states that the general rule is "a regulation will not be given a retroactive effect unless it merely clarifies existing law" citing *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135.[108] The claimant also cites *Aktar v. Anderson* (1957) 58 Cal.App.4th 1166, 1179, for the proposition that the law disfavors retroactive application and *Santa Clarita Organization for Planning and the Environment (SCOPE) v. Abercrombie* (2015) 240 Cal.App.4th 300, 315, noting that "[r]egulations that 'substantially change the legal effect of past events' cannot be applied retroactively."[109]

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[102] Exhibit A, IRC, filed June 8, 2020, pages 3-4.

[103] Exhibit A, IRC, filed June 8, 2020, pages 4-5.

[104] Exhibit A, IRC, filed June 8, 2020, pages 5-6.

[105] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812.

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

[107] Exhibit A, IRC, filed June 8, 2020, pages 3-4.

[108] Exhibit A, IRC, filed June 8, 2020, page 6.

[109] Exhibit A, IRC, filed June 8, 2020, page 6.

In *SCOPE v. Abercrombie,* the court found that "[a]lthough regulations that 'substantially change[ ] the legal effect of past events' cannot be applied retroactively,"[110] the law in question did apply retroactively because it has "*the same legal effect*--as the regulations it replaced."[111] In *Aktar v. Anderson,* the court explained that " '[r]etroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.' "[112] Finally, the court in *People ex rel. Deukmejian v. CHE, Inc.* recites the rule as follows:

> For, "[w]hile it is true that as a general rule statutes are not to be given retroactive effect unless the intent of the Legislature cannot be otherwise satisfied [Citation.], an exception to the general rule is recognized in a case where the legislative amendment *merely clarifies the existing law*. [Citations.] The rationale of this exception is that in such an instance, in essence, no retroactive effect is given to the statute because *the true meaning of the statute has been always the same*." [Citations.] This statutory rule of construction applies equally to administrative regulations. [Citations.][113]

Thus, a rule is not barred as retroactive when the rule merely clarifies existing law. Like the situations in *SCOPE v. Abercrombie* and *People ex rel. Deukmejian v. CHE, Inc*, the Parameters and Guidelines clarify existing law by merely applying what article XIII B, section 6 has always required — the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B — and they do not impose any new or different limitations. The claimant did not use its own proceeds of taxes for the costs of complying with the state-mandated activities. Instead, the claimant used Local Return funds, derived from Proposition A's transactions and use taxes, as an advance and intended to repay the funds with a subvention of costs from the state. In so doing, the claimant complied with the Proposition A Guidelines, but failed to use the proceeds of taxes that are subject to reimbursement under article XIII B, section 6. The claimant expended funds from a non-local source within the meaning of Section VIII. of the Parameters and Guidelines, which are required to be deducted from the claimant's reimbursement claims.

V. Conclusion

Based on the forgoing analysis, the Commission finds that the IRC was timely filed and the Controller's reduction is correct as a matter of law. Accordingly, the Commission denies this IRC.

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[110] *Santa Clarita Organization for Planning and the Environment (SCOPE) v. Abercrombie* (2015) 240 Cal.App.4th 300, 315, footnote 5 citing *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 504-505.

[111] *Santa Clarita Organization for Planning and the Environment (SCOPE) v. Abercrombie* (2015) 240 Cal.App.4th 300, 315, footnote 5, emphasis added.

[112] *Aktar v. Anderson* (1957) 58 Cal.App.4th 1166, 1179 citing *Bowen v. Georgetown University Hospital* (1988) 488 U.S. 204, 208.

[113] *People ex rel. Deukmejian v. CHE, Inc.* (1983) 150 Cal.App.3d 123, 135 citing *Tyler v. State of California* (1982) 134 Cal.App.3d 973, 976-977, internal citations omitted, emphasis added.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F53c Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, and 2008-2009, 2009-2010, 2010-2011, 2011-2012 Filed on June 10, 2020 City of La Puente, Claimant	Case No.: 19-0304-I-05 *Municipal Stormwater and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted May 27, 2022*) (*Served May 27, 2022*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on May 27, 2022.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182, Permit CAS004001, Part 4F5c3 Fiscal Years 2002-2003 through 2011-2012 Filed on June 10, 2020 City of La Puente, Claimant	Case No.: 19-0304-I-05 *Municipal Stormwater and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted May 27, 2022*) (*Served May 27, 2022*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on May 27, 2022. Lisa Kurokawa appeared on behalf of the State Controller's Office. The claimant did not appear.

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

The Commission adopted the Proposed Decision to deny the IRC by a vote of 5-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Keely Bosler, Director of the Department of Finance, Chairperson	Yes
Natalie Kuffel, Representative of the Director of the Office of Planning and Research	Absent
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Absent
David Oppenheim, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

Summary of the Findings

This Incorrect Reduction Claim (IRC) alleges that the State Controller's Office (Controller) incorrectly reduced reimbursement claims filed by the City of La Puente for costs arising from the *Municipal Stormwater and Urban Runoff Discharges* program. The Controller found that the claimant failed to identify and deduct as offsetting revenues funds received from the Los Angeles County Metropolitan Transportation Authority under the Proposition A Local Return Program that were used by the claimant to maintain trash receptacles at transit stops as required by the mandated program.

The Commission finds that this IRC was timely filed.

The Commission finds that the Controller's reduction, based on its determination that the Proposition A local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Proposition A is a transactions and use tax levied by the Los Angeles County Metropolitan Transportation Authority. A portion of the Proposition A tax revenues are distributed to the City of La Puente, and other cities within the county, through the Proposition A Local Return Program for use on eligible transportation projects. Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.[1] The Proposition A local return funds distributed to the claimant are not the claimant's "proceeds of taxes" because the tax is not levied by or for the claimant, nor is the tax subject to the claimant's appropriations limit.

Accordingly, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

09/27/2011	The claimant filed its reimbursement claims for fiscal years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011.[2]
01/22/2013	The claimant filed its reimbursement claim for fiscal year 2011-2012.[3]
12/15/2017	The Controller issued the Final Audit Report.[4]
06/10/2020	The claimant filed the IRC.[5]

[1] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

[2] Exhibit A, IRC, filed June 10, 2020, pages 124, 127, 130, 133, 136, 139, 142, 145, 148.

[3] Exhibit A, IRC, filed June 10, 2020, page 150.

[4] Exhibit A, IRC, filed June 10, 2020, page 90.

[5] Exhibit A, IRC, filed June 10, 2020, page 1.

02/24/2021	The Controller filed late comments on the IRC.[6]
03/16/2022	Commission staff issued the Draft Proposed Decision.[7]
04/06/2022	The Controller filed comments on the Draft Proposed Decision.[8]

II. Background

This IRC challenges the Controller's reductions of reimbursement claims filed by the City of La Puente for the *Municipal Stormwater and Urban Runoff Discharges* program for fiscal years 2002-03 through 2011-2012 (the audit period).[9]

A. The *Municipal Stormwater and Urban Runoff Discharges* Program

The *Municipal Stormwater and Urban Runoff Discharges* program arose from a consolidated test claim filed by the County of Los Angeles and cities within the County alleging various activities related to, amongst other things, placement and maintenance of trash receptacles at transit stops to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board, a state agency.[10] The purpose of the permit was "to protect the beneficial uses of receiving waters in Los Angeles County."[11]

On July 31, 2009, the Commission adopted the test claim Decision, finding that the following activity in part 4F5c3 of the permit imposed a reimbursable state mandate on those local agencies subject to the permit that are not subject to a trash total maximum daily load (TDML):

> Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[12]

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[6] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 1.

[7] Exhibit C, Draft Proposed Decision, issued March 16, 2022.

[8] Exhibit D, Controller's Comments on the Draft Proposed Decision, filed April 6, 2022.

[9] Exhibit A, IRC, filed June 10, 2020, page 1. The Incorrect Reduction Claim refers to the reimbursement claim as seeking reimbursement for both the one-time activities of installing trash receptacles at transit stops and the ongoing activities of maintaining the trash receptacles. See Exhibit A, IRC, filed June 10, 2020, pages 4-6. Neither the Schedule – Summary of Program Costs in the Final Audit Report nor the reimbursement claim summary forms include any costs claimed by the City of La Puente for one-time activities. See Exhibit A, IRC, filed June 10, 2020, pages 92-94, 126, 129, 132, 135, 138, 141, 144, 147, 149, 151. Accordingly, reference herein to the mandated activities for which the claimant is seeking reimbursement refers solely to the ongoing activities of maintaining trash receptacles.

[10] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, pages 23-24 (Test Claim Decision, pages 1-2).

[11] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 30 (Test Claim Decision, page 8).

[12] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, pages 23-24.

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.[13] The Parameters and Guidelines provide for reimbursement as follows:

> For each eligible local agency, the following activities are reimbursable:
>
> A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
>
> 1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
> 2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
> 3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
> 4. Purchase or construct receptacles and pads and install receptacles and pads.
> 5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.
>
> B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
>
> 1. Collect and dispose of trash at a disposal/recycling facility. This activity is limited to no more than three times per week.
> 2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
> 3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. Graffiti removal is not reimbursable.
> 4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.[14]

The ongoing activities in Section IV. B. are reimbursed under a reasonable reimbursement methodology (RRM).[15]

Section VIII. of the Parameters and Guidelines provides the following regarding offsetting revenues and reimbursements:

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[13] Exhibit A, IRC, filed June 10, 2020, page 82 (Parameters and Guidelines).

[14] Exhibit A, IRC, filed June 10, 2020, page 85 (Parameters and Guidelines).

[15] Exhibit A, IRC, filed June 10, 2020, pages 84-85 (Parameters and Guidelines).

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[16]

B. Proposition A Local Return Funds

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency[17] and authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.[18]

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[19]

Public Utilities Code section 130354 states that "revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes."[20]

In 1980, Los Angeles County voters approved Proposition A, a one-half percent transactions and use tax to fund public transit projects throughout the County.[21] Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation

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[16] Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines).

[17] Public Utilities Code section 130050.

[18] Public Utilities Code sections 130231(a), 130350.

[19] Public Utilities Code section 130350 (Stats. 1976, ch. 1333). Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax. The case went before the California Supreme Court, which held in *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 19 that that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only the majority of voters, as opposed to two-thirds. Section 130350 was amended in 2007 to reflect the two-thirds vote requirement.

[20] Public Utilities Code section 130354.

[21] Exhibit A, IRC, filed June 10, 2020, page 16 (Local Return Guidelines).

Commission filed a petition for writ of mandate to compel the executive director to implement the tax.

In *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only a majority of voters, instead of the two-thirds required under article XIII A, section 4.[22] The court reasoned that "special district" within the meaning of article XIII A, section 4 included only those districts with the authority to levy a tax on real property, and because the Transportation Commission had no such authority, it did not constitute a "special district."[23] While the court noted that the terms "special districts" and "special taxes" as used in section 4 were both ambiguous, it did not address whether Proposition A constituted a "special tax" within the meaning of section 4.[24] Nor did the court address whether the Transportation Commission or the Proposition A tax were subject to the government spending limitations imposed by article XIII B.

In *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the California Supreme Court addressed "a question previously left open" in *Richmond*, regarding the validity of a supplemental sales tax "enacted for the apparent purpose of avoiding the supermajority voter approval requirement" under article XIII A, section 4.[25] The court ruled that a "special district" within the meaning of article XIII A, section 4 includes "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13," regardless of whether the district has the authority to levy real property taxes.[26] However, the court declined to overrule *Richmond* with respect to local agencies created prior to Proposition 13 and which lacked the authority to levy property taxes, such as the Transportation Commission.[27] The court further held that a "special tax" within the meaning of article XIII A, section 4, "is one levied to fund a specific government project or program," even when that project or program is the agency's sole reason for being.[28]

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[22] In 1978, California voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A, section 4 provides:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

[23] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

[24] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

[25] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

[26] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

[27] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

[28] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

The Los Angeles Transportation Commission is statutorily authorized to levy the Proposition A tax.[29]

> The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the approval by the voters of the commission's Ordinance No. 16 [Proposition A] in 1980…[30]

The purpose of the Proposition A tax is to "improve and expand existing public transit Countywide, including reduction of transit fare, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit assessments, and fares."[31] Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses[32] and are allocated as follows:

a. Twenty-five percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.

b. Thirty-five percent, calculated on an annual basis, to the commission for construction and operation of the System.

c. The remainder shall be allocated to the Commission for public transit purposes.[33]

In 1993, the Transportation Commission merged with the Southern California Rapid Transit District to form the Los Angeles County Metropolitan Transportation Authority (Metro).[34] Metro succeeded to the Transportation Commission's and the Southern California Rapid Transit District's powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its

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[29] Public Utilities Code section 130231(a).

[30] Public Utilities Code section 130231(a).

[31] Exhibit E, Proposition A Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf (accessed on August 19, 2020), page 3.

[32] Exhibit E, Proposition A Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf (accessed on August 19, 2020), page 4.

[33] Exhibit E, Proposition A Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf (accessed on August 19, 2020), page 4.

[34] Public Utilities Code sections 130050.2, 130051.13. Section 130050.2 states as follows: "There is hereby created the Los Angeles County Metropolitan Transportation Authority. The authority shall be the single successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission as provided by the act that enacted this section."

governing body.[35] Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A tax.[36]

Local jurisdictions receive transportation funding from Metro through the Local Return Program. Twenty-five percent of Proposition A local return funds are allocated to the Local Return Program for cities to use "in developing and/or improving public transit, paratransit, and the related transportation infrastructure."[37] Metro distributes local return funds to cities and the County on a monthly "per capita" basis.[38]

Use of Proposition A tax revenues by local jurisdictions is restricted to "eligible transit, paratransit, and Transportation Systems Management improvements."[39] Local jurisdictions are encouraged to use the funds to improve transit services.[40]

> The Proposition A Ordinance requires that LR [Local Return] funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds.[41]

Amongst the eligible uses of Proposition A local return funds are Bus Stop Improvements and Maintenance projects.[42] The Local Return Guidelines provide as follows:

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

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[35] Public Utilities Code sections 130050.2, 130051.13. Section 130051.13 states as follows:

> On April 1, 1993, the Southern California Rapid Transit District and the Los Angeles County Transportation Commission are abolished. Upon the abolishment of the district and the commission, the Los Angeles County Metropolitan Transportation Authority shall succeed to any or all of the powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.

[36] See Exhibit A, IRC, filed June 10, 2020, page 16 (Local Return Guidelines).

[37] Exhibit A, IRC, filed June 10, 2020, page 16 (Local Return Guidelines).

[38] Exhibit A, IRC, filed June 10, 2020, page 43 (Local Return Guidelines).

[39] Exhibit E, Proposition A Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf (accessed on August 19, 2020), page 3.

[40] Exhibit E, Proposition A Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf (accessed on August 19, 2020), page 5.

[41] Exhibit A, IRC, filed June 10, 2020, page 16 (Local Return Guidelines).

[42] Exhibit A, IRC, filed June 10, 2020, page 22 (Local Return Guidelines).

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- *Trash receptacles*
- Curb cut
- Concrete or electrical work directly associated with the above items.[43]

Proposition A local return funds may also "be given, loaned or exchanged" between local jurisdictions, provided that certain conditions are met, including that traded funds be used for public transit purposes.[44] Jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by "federal, state, or local grant funding, or private funds."[45] Subsequent reimbursement funds must then be deposited into the Proposition A Local Return Fund.[46]

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

The Controller determined in its Final Audit Report that the entire claimed amount of $202,214 was unallowable.[47] The Final Audit report contains one finding: the claimant "did not offset any revenues or reimbursements on its claim forms for the period of July 1, 2002, through June 30, 2012" and "should have offset $202,214 in Proposition A local return funds that were used to pay for the ongoing maintenance of transit stop trash receptacles."[48] The Controller characterized Proposition A local return funds as "restricted" funds because the claimant was required to expend them on the "development and/or improvement of public transit services."[49] The Controller further reasoned that because the claimant was authorized to use and did use "restricted" Proposition A local return funds to pay for the mandated activities, "it did not have to rely on the use of discretionary general funds."[50] The Controller determined that under the Parameters and Guidelines, the Proposition A local return funds were required to be identified and deducted from the reimbursement claims because they constituted payment toward the mandated activities from a non-local source.[51]

> [W]e find that the city had sufficient funds to pay for ongoing maintenance of the transit stop trash receptacles, as it had Proposition A local return funds available.

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[43] Exhibit A, IRC, filed June 10, 2020, page 22 (Local Return Guidelines), emphasis added.

[44] Exhibit A, IRC, filed June 10, 2020, page 28 (Local Return Guidelines).

[45] Exhibit A, IRC, filed June 10, 2020, page 45 (Local Return Guidelines).

[46] Exhibit A, IRC, filed June 10, 2020, page 45 (Local Return Guidelines).

[47] Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

[48] Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

[49] Exhibit A, IRC, filed June 10, 2020, page 98 (Final Audit Report).

[50] Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

[51] Exhibit A, IRC, filed June 10, 2020, pages 97-98 (Final Audit Report).

In addition, the city has not provided documentation to support that the Proposition A Local Returns funds are subject to the city's appropriation limit and thus considered proceeds of taxes.[52]

III. Positions of the Parties

A. City of La Puente

The claimant challenges the Controller's finding that the claimant should have offset the entire claim amount of $202,214 in revenues or reimbursements on its claim forms for the audit period.[53] The claimant does not dispute using Proposition A local return funds to perform mandated activities, but rather argues that the Controller's finding is erroneous because: (1) Proposition A is a local tax, not a federal, state, or non-local source within the meaning of the Parameters and Guidelines; and (2) because the claimant was permitted under the Proposition A Local Return Guidelines to advance the Proposition A local return funds and then repay them after reimbursement from the state, it is unconstitutional and arbitrary and capricious to apply the Parameters and Guidelines to retroactively to prohibit advancement of the Proposition A local return funds in a way that was lawful at the time.[54]

According to the claimant, Proposition A is a "local tax, generated from sales tax imposed on local citizens," not a non-local source within the meaning of Section VIII. of the Parameters and Guidelines.[55] Section VIII. states as follows:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[56]

The claimant contends that it was not required to use Proposition A local funds to fund the mandated activities.[57] Proposition A is a general-use tax, the claimant argues, and not a restricted-use tax as determined by the Controller.[58] The claimant cites to Government Code sections 17556(e) and 17570.3(d)(1)(D) for the proposition that "funding sources" are defined as "additional revenues *specifically intended* to fund the costs of the state mandate" and "*dedicated*…for the program."[59] The claimant argues that the Proposition A local return funds are not revenue "in the same program as a result of the same statutes or executive orders found to

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[52] Exhibit A, IRC, filed June 10, 2020, page 98 (Final Audit Report).

[53] Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

[54] Exhibit A, IRC, filed June 10, 2020, pages 4-6.

[55] Exhibit A, IRC, filed June 10, 2020, page 4.

[56] Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines).

[57] Exhibit A, IRC, filed June 10, 2020, page 4.

[58] Exhibit A, IRC, filed June 10, 2020, pages 3-4.

[59] Exhibit A, IRC, filed June 10, 2020, page 3, emphasis in IRC.

contain the mandate," nor reimbursement "specifically intended" or "dedicated" for the *Municipal Stormwater and Urban Runoff Discharges* program.[60] Under the Proposition A Local Return Guidelines, the claimant was permitted to expend the Proposition A local return funds on any number of transportation-related priorities and was not required to use the money for any specific purpose, including the mandated program.[61]

Finding that Proposition A must be offset against the claims for reimbursement violates article XIII B, section 6, which was adopted to protect local government tax revenues.[62] Proposition A is a local sales tax, no different from any other sales tax.[63] If the claimant had expended other sales tax revenue to install and maintain the trash receptacles, the Controller would not have reduced the claim.[64]

According to the claimant, the Local Return Guidelines permit the claimant to advance Proposition A local return funds on an eligible transit project and then return the funds upon reimbursement from another source.[65] Furthermore, the Parameters and Guidelines were not adopted until after the claimant advanced the Proposition A local return funds to pay for the mandated activities.[66] Because the claimant's use of the Proposition A local return funds was lawful at the time, the claimant asserts that it is both unconstitutional and arbitrary and capricious to retroactively prohibit such an advancement.[67]

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

B. State Controller's Office

The Controller maintains that all costs claimed are unallowable because the claimant did not offset Proposition A local return revenues from its reimbursement claims and that the Controller correctly reduced the claimant's claims for fiscal years 2002-2003 through 2011-2012.[68]

The Controller asserts that the claimant's costs for ongoing transit stop maintenance are recorded in Fund 210 – Proposition A, which is a special revenue fund type.[69] Contrary to the claimant's assertion, Proposition A local return funds are not "general in nature" because they are generated by a "special supplementary sales tax" and are restricted to use on public transit projects, as

[60] Exhibit A, IRC, filed June 10, 2020, page 3.

[61] Exhibit A, IRC, filed June 10, 2020, page 4.

[62] Exhibit A, IRC, filed June 10, 2020, page 5.

[63] Exhibit A, IRC, filed June 10, 2020, page 5.

[64] Exhibit A, IRC, filed June 10, 2020, page 5.

[65] Exhibit A, IRC, filed June 10, 2020, pages 4-5.

[66] Exhibit A, IRC, filed June 10, 2020, page 6.

[67] Exhibit A, IRC, filed June 10, 2020, pages 5-6.

[68] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 11.

[69] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 11.

opposed to an unrestricted general sales tax, which can be used for any general governmental purpose.[70]

The Controller asserts that to be reimbursable, "costs" incurred in performing mandated activities must be "paid from the proceeds of taxes."[71] The Controller posits that "[w]hen a local agency has raised revenues outside its appropriation limit to cover the cost of mandated activities, funds thus expended are not reimbursable." Because the claimant has not provided any records showing that the Proposition A local return funds are its "proceeds of taxes" and therefore subject to its appropriations limit, the funds do not "fall directly within the protection of Article XIII B, section 6" and are therefore ineligible for reimbursement.[72]

The Controller takes issue with the claimant's argument that the claimant was not required to offset Proposition A local return funds because it did not receive reimbursement "specifically intended for or dedicated for this mandate."[73] Under the Local Return Guidelines, trash receptacle maintenance is an eligible use of Proposition A local return funds.[74] The Controller cites to the Commission's test claim Decision in the *Two-Way Traffic Control Signal Communication*, CSM 4504 for the proposition that just as the Commission found that reimbursement was not required to the extent local agencies chose to use their gas tax proceeds to pay for mandated activities, here, the claimant similarly chose to use Proposition A local return funds to maintain transit stop trash receptacles.[75] To the extent that the claimant paid for the mandated activities using Proposition A local return funds, reimbursement is not required.[76]

The Controller challenges the claimant's assertion that it would be arbitrary and capricious to apply the Parameters and Guidelines to retroactively prohibit advancement of Proposition A local return funds.[77] The Controller argues that the claimant's use of Proposition A local return funds during the audit period was not an advance pending reimbursement from the State; the claimant began contracting for transit stop maintenance almost nine years prior to the Commission's adoption of the *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 test claim Decision and therefore could not have known that it would obtain mandate reimbursement.[78] Furthermore, the claimant provided no records showing that the Proposition A local return funds are an advancement.[79]

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[70] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 15.

[71] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 15.

[72] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 15.

[73] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 15.

[74] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 16.

[75] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 16.

[76] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 16.

[77] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, pages 16-17.

[78] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 17.

[79] Exhibit B, Controller's Late Comments on the IRC, filed February 24, 2021, page 17.

The Controller filed comments on the Draft Proposed Decision, stating that it agreed with the Proposed Decision to reduce the claimant's costs for the engagement period.[80]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[81] 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."[82]

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

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational

[80] Exhibit D, Controller's Comments on the Draft Proposed Decision, filed April 6, 2022, page 1.

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

[82] *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.

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

connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[84]

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.[85] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[86]

A. The Claimant Timely Filed this IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, which Complies with Government Code Section 17558.5(c).

Section 1185.1(c) of the Commission's regulations requires an incorrect reduction claim to be filed with the Commission no later than three years after the date the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c).[87] Under Government Code section 17558.5(c), the Controller must notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review.[88] The notice must specify which claim components were adjusted and in what amount, as well as interest charges on claims adjusted, and the reason for the adjustment.[89]

The Controller issued its Final Audit Report on December 15, 2017.[90] The Final Audit Report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments.[91] The Final Audit Report complies with the notice requirements of section 17558.5(c). The claimant filed the IRC on June 10, 2020.[92] The IRC was filed less than three years from the date of the Final Audit Report and was therefore timely filed.

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

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

[86] 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.

[87] California Code of Regulations, title 2, section 1185.1.

[88] Government Code section 17558.5(c).

[89] Government Code section 17558.5(c).

[90] Exhibit A, IRC, filed June 10, 2020, page 90 (Final Audit Report).

[91] Exhibit A, IRC, filed June 10, 2020, pages 90-98 (Final Audit Report).

[92] Exhibit A, IRC, filed June 10, 2020, page 1.

B. The Controller's Reduction of Costs, Based on the Determination that Proposition A Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.

The Controller found that the claimant failed to report offsetting reimbursements for the audit period in the amount of $202,214.[93] Specifically, the Controller determined that the claimant had received tax revenues from the Los Angeles County Metropolitan Transportation Authority's Proposition A Local Return Program and used those funds to perform the ongoing mandated activities of maintaining trash receptacles at transit stops throughout the claimant's jurisdiction.[94]

The claimant does not contest receiving and using Proposition A local return funds in the manner alleged. Rather, the claimant argues that the Controller's determination, that the Proposition A local return funds are an unreported offset that must be deducted from the reimbursement claims, violates article XIII B, section 6 of the California Constitution, is inconsistent with the Parameters and Guidelines, and constitutes an invalid retroactive application of the Parameters and Guidelines.[95]

1. Proposition A local return funds constitute reimbursement from a non-local source within the meaning of the Parameters and Guidelines because Proposition A Local Return tax revenues are not the claimant's "proceeds of taxes" within the meaning of article XIII B of the California Constitution since the tax is not levied by or for the claimant nor is it subject to the claimant's appropriations limit.

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

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[96]

The claimant asserts that the Proposition A local return funds at issue do not constitute "revenue…in the same program as a result of the same statutes or executive orders found to contain the mandate."[97] Citing to Government Code sections 17556(e) and 17570.3(d)(1)(D), the claimant argues that "funding sources" are defined as "additional revenues *specifically intended* to fund the costs of the state mandate" and "*dedicated*…for the program."[98] The claimant reasons that because the Proposition A local return funds are general funds and can be used by the claimant for any transportation-related purpose, they do not constitute revenues

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[93] Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

[94] Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

[95] Exhibit A, IRC, filed June 10, 2020, pages 3-6.

[96] Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines).

[97] Exhibit A, IRC, filed June 10, 2020, page 3.

[98] Exhibit A, IRC, filed June 10, 2020, page 3, emphasis in IRC.

"specifically intended" to fund the mandated activities or "dedicated" to the *Municipal Stormwater and Urban Runoff Discharges* program.[99]

As an initial matter, the Government Code does not contain a section 17570.3. Based on the content referenced, it appears the claimant intended to cite to section 17570(d)(1)(D). Regardless, neither Government Code section 17570(d)(1)(D) or section 17556(e) applies here.

Section 17570(d)(1)(D) addresses requests to adopt a new test claim decision, and requires the requester to identify dedicated state and federal funds appropriated for the program.[100] However, the phrase "dedicated...funds appropriated for the program" as used in section 17570 has no bearing on the meaning of offsetting revenues and reimbursements within the Parameters and Guidelines.

The claimant also cites to Government Code section 17556(e) for its use of the language "specifically intended" to support the claimant's position that because Proposition A local return funds are general funds and the claimant was not required to use them for the specific purpose of funding the mandated activities, they do not constitute offsetting revenue or reimbursement under the Parameters and Guidelines.[101] Section 17556(e) states that the Commission shall not find costs mandated by the state when the statute, executive order, or an appropriation includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the costs of the mandate.[102] However, Government Code section 17556 applies only at the test claim phase to determine whether one of several exemptions from the subvention requirement applies, which would result in a finding of no costs mandated by the state and a denial of the test claim. The *Municipal Stormwater and Urban Runoff Discharges* program was approved and, therefore, section 17556 has no relevance to this IRC.

The claimant next argues that because Proposition A is a local tax, it does not constitute a federal, state, or non-local source within the meaning of Section VIII. of the Parameters and Guidelines.[103] While the Parameters and Guidelines do not expressly require that funds from a countywide tax, such as Proposition A, be identified as offsetting revenue, they do state that "reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim.[104]

The Parameters and Guidelines must be interpreted in a manner that is consistent with the California Constitution[105] and principles of mandates law.[106] Proposition A local return funds

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[99] Exhibit A, IRC, filed June 10, 2020, page 3.

[100] Government Code section 17570(d)(1)(D), emphasis added.

[101] Exhibit A, IRC, filed June 10, 2020, pages 3-4.

[102] Government Code section 17556(e), emphasis added.

[103] Exhibit A, IRC, filed June 10, 2020, page 4.

[104] Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines), emphasis added.

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

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

are not the claimant's local "proceeds of taxes" because they are neither levied by nor for the claimant, nor subject to the claimant's appropriations limit. "Appropriations subject to limitation" means "any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity*."[107] Proposition A taxes are levied by and for the Transportation Commission for its transportation project funding purposes. Furthermore, because Proposition A is a non-local source of revenue, whether Proposition A local return funds were "specifically intended to fund the costs of the state mandate" or whether the claimant was free to apply the funds to other transportation projects is immaterial. Any costs incurred by the claimant in performing the mandated activities that are funded by non-local tax revenue, such as Proposition A, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

a. Not all revenues are subject to the appropriations limit.

Interpreting the reimbursement requirement in article XIII B, section 6 of the California Constitution requires an understanding of articles XIII A and XIII B, which "work in tandem, together restricting California governments' power both to levy and to spend taxes for public purposes."[108]

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that "the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value" and that the one percent (1%) tax was to be collected by counties and "apportioned according to law to the districts within the counties…"[109] In addition to limiting property tax revenue, section 4 also restricts a local government's ability to impose special taxes by requiring a two-thirds approval by voters.[110]

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A, and was billed as "the next logical step to Proposition 13."[111] While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[112]

Article XIII B established "an appropriations limit," or spending limit for each "local government" beginning in fiscal year 1980-1981.[113] Section 1 of article XIII B defines the appropriations limit as follows:

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[107] California Constitution, article XIII B, section 8, emphasis added.

[108] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

[109] California Constitution, article XIII A, section 1.

[110] California Constitution, article XIII A, section 1.

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

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

[113] California Constitution, article XIII B, section 8(h).

> The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided by this article.[114]

No "appropriations subject to limitation" may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[115]

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on "appropriations subject to limitation," meaning "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity."[116] For local agencies, "proceeds of taxes" subject to the appropriations limit include all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).[117]

No limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes."[118] For example, appropriations subject to limitation do not include "local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities."[119]

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. The California Supreme Court, in *County of Fresno v. State of California*,[120] explained:

> Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.; see Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such

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[114] California Constitution, article XIII B, section 1.

[115] California Constitution, article XIII B, section 2.

[116] California Constitution, article XIII B, section 8.

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

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

[119] California Constitution, article XIII B, section 8(i).

[120] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

> revenues. Thus, although its language broadly declares that the "state shall provide a subvention of funds to reimburse … local government for the costs [of a state-mandated new] program or higher level of service," read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[121]

The purpose of section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local governmental entities, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[122] Article XIII B, section 6 must therefore be read in light of the tax and spend limitations imposed by articles XIII A and XIII B; it requires the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.[123]

b. The Proposition A sales tax is not levied by or for the claimant.

The claimant argues that Proposition A is a local tax because it is a "sales tax imposed on local citizens" and therefore does not fall into any of the offsetting revenue categories enumerated in Section VIII. of the Parameters and Guidelines, which include "federal, state, or non-local source" revenue.[124] In support of this position, the claimant cites to the fact that under the Local Return Guidelines, the claimant was permitted to use the Proposition A local return funds on any number of transportation projects, not only the mandated program.[125]

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.[126] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[127] In other words, a local government's taxing authority is derived from statute.

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A transactions and use tax throughout Los Angeles County.[128] Public Utilities Code section 130350, as originally enacted, states as follows:

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

[122] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

[123] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

[124] Exhibit A, IRC, filed June 10, 2020, page 4.

[125] Exhibit A, IRC, filed June 10, 2020, page 4.

[126] California Constitution, article XIII, section 24(a).

[127] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ["Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government"].

[128] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[129]

Under the Proposition A Ordinance, twenty-five percent of the annual Proposition A tax revenues are allocated to local jurisdictions for local transit purposes on a per capita basis.[130] As discussed above, local jurisdictions are then permitted to use those funds on public transit projects as prescribed by the Local Return Guidelines.[131] Permissible uses include Bus Stop Improvements and Maintenance projects, which include the installation, replacement and maintenance of trash receptacles.[132]

The parties do not dispute that the claimant received Proposition A tax revenue through the Local Return Program during the audit period, at least a portion of which was used for the eligible purpose of maintaining trash receptacles at transit stops.[133] Nonetheless, the claimant misunderstands what constitutes claimant's "local sales tax revenues" for purposes of determining reimbursement eligibility under article XIII B, section 6. Contrary to the claimant's assertions, the Proposition A transactions and use tax is *not* the claimant's "local tax" because it is neither levied by nor for the claimant.

> The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430–432, 109 P. 1104; *County of Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 710–711, 112 P.2d 10.) The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P. 340.) In levying taxes for the city the county was levying "municipal taxes"

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[129] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

[130] Exhibit E, Proposition A Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf (accessed on August 19, 2020), page 4.

[131] See Exhibit A, IRC, filed June 10, 2020, pages 11-80 (Local Return Guidelines).

[132] Exhibit A, IRC, filed June 10, 2020, page 22 (Local Return Guidelines).

[133] Exhibit A, IRC, filed June 10, 2020, pages 4, 98 (Final Audit Report).

> through the ordinary county machinery. (*Griggs*, *supra*, 13 Cal.App. at p. 432, 109 P. 1104.)
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> Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity.[134]

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimant here does not have the power to levy the Proposition A tax.[135] Therefore, Metro is not levying the Proposition A tax "for" the claimant. The claimant's receipt and use of Proposition A tax revenue through the Local Return Program does not change the nature of the local return funds as Metro's "proceeds of taxes" and subject to Metro's appropriations limit.

c. Proposition A local return funds allocated to the claimant are not subject to the claimant's appropriations limit.

Article XIII B does not limit a local government's ability to expend tax revenues that are not the claimant's "proceeds of taxes."[136] Where a tax is not levied by or for the local government claiming reimbursement, the revenue of such a tax is not the local government's "proceeds of taxes" and is therefore not the local government's "appropriations subject to limitation."[137] Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."[138] Because the Proposition A local return funds are not the claimant's "proceeds of taxes levied by or for that entity," they are not the claimant's "appropriations subject to limitation."[139]

While the Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to Metro's appropriations limit,[140] Metro receives the revenues of any transactions and use tax it

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[134] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

[135] See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27 (Because redevelopment agency did not have the authority to levy a tax to fund its efforts, allocation and payment of tax increment funds to redevelopment agency by county, a government taxing agency, were not "proceeds of taxes levied by or for" the redevelopment agency and therefore were not subject to the appropriations limit of Article XIII B).

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

[137] California Constitution, article XIII B, section 8.

[138] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[139] California Constitution, article XIII B, section 8.

[140] Exhibit E, Proposition A Ordinance, http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf (accessed on August 19, 2020), pages 1-9.

levies and then allocates and distributes them to local jurisdictions in accordance with the applicable tax ordinances.[141] Los Angeles County has passed four separate half-cent transportation sales taxes over the past 40 years: Proposition A (1980), Proposition C (1990), Measure R (2008), and Measure M (2016).[142] With the exception of Proposition A, the remaining three tax ordinances expressly state that their respective transportation sales tax revenues are subject to either Transportation Commission (as predecessor to Metro) or Metro's appropriations limit. The claimant has submitted no evidence, and the Commission is aware of none, to show that the Proposition A local return funds it received during the audit period were subject to the claimant's appropriations limit.

The claimant is incorrect in asserting that using Proposition A local return funds to pay for the maintenance of trash receptacles is no different than if the claimant had used the proceeds of "any other sales tax."[143] While, as the claimant asserts, Proposition A is indeed imposed on the "local citizens" of the claimant's jurisdiction, the tax is levied throughout Los Angeles County by Metro, who then distributes a portion of the revenues to the County of Los Angeles and cities within the County. Because the Proposition A tax is neither levied by nor for the claimant, nor subject to the claimant's appropriations limit, the Proposition A Local Return revenues do not constitute the claimant's "local proceeds of taxes" for which the claimant is entitled to reimbursement under article XIII B, section 6. Local government cannot accept the benefits of non-local tax revenue that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.[144] To the extent that the claimant funded the mandated activities using Proposition A tax revenues, reimbursement is not required under article XIII B, section 6 of the California Constitution.

2. The advancement of Proposition A local return funds to pay for the installation and maintenance of the trash receptacles does not alter the nature of those funds as offsetting revenues, nor does the deduction of those funds from the costs claimed constitute a retroactive application of the law.

The claimant argues that because the Local Return Guidelines permit the claimant to advance Proposition A local return funds to pay for mandated activities and then, upon reimbursement from the state, use those funds on other transportation-related priorities, the Controller cannot retroactively apply the Parameters and Guidelines and find that the Proposition A local return funds constitute reimbursement from a non-local source.[145] The claimant argues that retroactively applying the Parameters and Guidelines to prohibit an advancement of Proposition

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[141] Public Utilities Code section 130354, which states: "The revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes"; Exhibit A, IRC, filed June 10, 2020, page 63 (Local Return Guidelines).

[142] Exhibit E, Metro, Local Return Program, https://www.metro.net/about/local_return_pgm/ (accessed on April 7, 2022), page 1.

[143] Exhibit A, IRC, filed June 10, 2020, page 5.

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

[145] Exhibit A, IRC, filed June 10, 2020, pages 4-5.

A local return funds in a way that was legal at the time the funds were advanced is both unconstitutional and arbitrary and capricious.[146] Whether the Controller correctly interpreted the Parameters and Guidelines in finding that Proposition A is a non-local source of funds that must be deducted from the reimbursement claims is purely a legal question, to which the arbitrary and capricious standard does not apply.

Because the claimant used "non-local source" funds to install and maintain trash receptacles, it was required to identify and deduct those funds from its claim for reimbursement. As discussed above, the Proposition A local return funds received by the claimant are not the claimant's "proceeds of taxes" within the meaning of article XIII B, section 8. The requirement in Section VIII. of the Parameters and Guidelines that reimbursement received from any "non-local source" must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes. A rule that merely restates or clarifies existing law "does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same."[147]

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes (e.g., revenue from a tax levied by a separate local government entity), it is required to deduct those revenues from its reimbursement claim. The fact that the Commission's adoption of the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program postdates the audit period does not alter the analysis,[148] nor does the claimant's ability under the Local Return Guidelines to expend Proposition A local return funds on the installation and maintenance of transit stop trash receptacles prior to mandate reimbursement.

The Commission finds that the Controller's Finding is correct as a matter of law.

V. Conclusion

Based on the forgoing analysis, the Commission finds that the IRC was timely filed and the Controller's reduction of costs, based on the determination that Proposition A local return funds are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Accordingly, the Commission denies this IRC.

[146] Exhibit A, IRC, filed June 10, 2020, page 6.

[147] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[148] Exhibit A, IRC, filed June 10, 2020, pages 6, 95.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001 Part 4F5c3 Fiscal Years 2002-2003 through 2012-2013 Filed on October 22, 2020 City of Lakewood, Claimant	Case No.: 20-0304-I-07 *Municipal Stormwater and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted July 22, 2022*) (*Served July 26, 2022*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on July 22, 2022.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182 Permit CAS004001 Part 4F5c3 Fiscal Years 2002-2003 through 2012-2013 Filed on October 22, 2020 City of Lakewood, Claimant	Case No.: 20-0304-I-07 *Municipal Stormwater and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted July 22, 2022*) (*Served July 26, 2022*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 2022. Lisa Kurokawa appeared on behalf of the State Controller's Office. The claimant did not appear, but contacted staff to indicate that they were standing on the written record.

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

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

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Absent
Sarah Olsen, Public Member	Yes
Renee Nash, School Board Member	Yes
Shawn Silva, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

Summary of the Findings

This Incorrect Reduction Claim (IRC) challenges reductions by the State Controller's Office (Controller) to reimbursement claims filed by the City of Lakewood (claimant) for fiscal years 2002-2003 through 2012-2013 (audit period) under the *Municipal Stormwater and Urban Runoff Discharges* program. At issue are the Controller's reduction of costs claimed, based on its findings that the claimant did not provide contemporaneous source documentation to support its claim under the reasonable reimbursement methodology for the number of weekly trash collections performed during the audit period and reduced the number of collections claimed from twice weekly (104 annual collections) to once weekly (52 annual collections); and that the claimant failed to offset from its claim forms Proposition A local return funds – non-local tax revenues – used to purchase trash receptacles in fiscal years 2005-2006 and 2008-2009.

The Commission finds that this IRC was timely filed.

The Commission further finds that the Controller's reduction of costs claimed for twice weekly trash collection based on the claimant's failure to provide contemporaneous source documents is incorrect as a matter of law. The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program do not require the claimant to provide contemporaneous source documentation to support a claim for ongoing maintenance activities, including trash collection, under the reasonable reimbursement methodology. Rather, "[t]he RRM is in lieu of filing detailed documentation of actual costs."[1] Thus, section VII. B, which pertains to costs claimed using a reasonable reimbursement methodology, simply requires that "Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups."[2]

Furthermore, even assuming the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying such a requirement to the claiming period before the Parameters and Guidelines were adopted (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.[3] The claimant was not on notice of a contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011.

The documents provided by the claimant, however, contain inconsistencies and do not verify that trash collection was performed twice per week during the audit period. Accordingly, the Commission remands the reimbursement claims back to the State Controller's Office to further

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[1] Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines).

[2] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

[3] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802-813; *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527; *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

review and verify the costs claimed under the reasonable reimbursement methodology based on the number of weekly trash collections during the audit period and reinstate those costs that are deemed eligible for reimbursement in accordance with this decision.

The Commission also finds that the Controller's reductions, based on its determination that Proposition A local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Proposition A is a transactions and use tax levied by the Los Angeles County Metropolitan Transportation Authority. A portion of the Proposition A tax revenues are distributed to the claimant through the Proposition A Local Return Program for use on eligible transportation projects. Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.[4] The Proposition A local return funds distributed to the claimant are not the claimant's "proceeds of taxes" because the claimant does not levy the tax, nor is the tax subject to the claimant's appropriations limit.

Accordingly, the Commission partially approves this IRC and remands the reimbursement claims to the Controller to further review and reinstate those costs that are deemed eligible for reimbursement in accordance with this Decision.

COMMISSION FINDINGS

I. Chronology

09/28/2011	The claimant dated its reimbursement claims for fiscal years 2002-2003 through 2010-2011.[5]
01/15/2013	The claimant filed its reimbursement claim for fiscal year 2011-2012.[6]
02/05/2014	The claimant filed its reimbursement claim for fiscal year 2012-2013.[7]
08/24/2017	The Controller issued the Draft Audit Report.[8]
09/06/2017	The claimant filed comments on the Draft Audit Report.[9]

[4] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

[5] Exhibit A, IRC, filed October 22, 2020, pages 460 (2002-2003 claim), 463 (2003-2004 claim), 466 (2004-2005 claim), 469 (2005-2006 claim), 477 (2006-2007 claim), 480 (2007-2008 claim), 483 (2008-2009 claim), 495 (2009-2010 claim), and 502 (2010-2011 claim). The reimbursement claims for fiscal years 2002-2003 through 2010-2011 are dated September 27, 2011. A cover sheet entitled "Claims Receipt," which lists the claims for fiscal years 2002-2003 through 2010-2011, is stamped "received" with the date September 28, 2011 (Exhibit A, IRC, filed October 22, 2020, page 459).

[6] Exhibit A, IRC, filed October 22, 2020, page 504 (2011-2012 claim).

[7] Exhibit A, IRC, filed October 22, 2020, page 506 (2012-2013 claim).

[8] Exhibit A, IRC, filed October 22, 2020, page 433 (Final Audit Report).

[9] Exhibit A, IRC, filed October 22, 2020, page 433 (Final Audit Report).

11/27/2017	The Controller issued the Final Audit Report.[10]
10/22/2020	The claimant filed the IRC.[11]
05/24/2022	Commission staff issued the Draft Proposed Decision.[12]
06/14/2022	The claimant and the Controller both filed comments on the Draft Proposed Decision.[13]

II. Background

This IRC challenges the Controller's reductions of costs claimed for fiscal years 2002-2003 through 2012-2013 (the audit period) under Part 4F5c3 of the *Municipal Stormwater and Urban Runoff Discharges* program to install and maintain trash receptacles at public transit stops.[14]

A. The *Municipal Stormwater and Urban Runoff Discharges* Program

The *Municipal Stormwater and Urban Runoff Discharges* program arose from the consolidated Test Claim filed by the County of Los Angeles and several cities within the County alleging various sections of a 2001 stormwater permit issued by the Los Angeles Regional Water Control Board, a state agency, constituted a reimbursable state-mandate program within the meaning of article XIII B, section 6 of the California Constitution.[15]

On July 31, 2009, the Commission adopted the Test Claim Decision, finding that the following activities in part 4F5c3 of the permit imposed a reimbursable state mandate on those local agencies subject to the permit that are not subject to a trash total maximum daily load (TDML):

> Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[16]

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.[17] Section IV. A, identifies the following one-time reimbursable activities:

> A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
>
> 1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

[10] Exhibit A, IRC, filed October 22, 2020, page 427 (Final Audit Report).

[11] Exhibit A, IRC, filed October 22, 2020, page 1.

[12] Exhibit B, Draft Proposed Decision, issued May 24, 2022.

[13] Exhibit C, Claimant's Comments on the Draft Proposed Decision, filed June 14, 2022; Exhibit D, Controller's Comments on the Draft Proposed Decision, filed June 14, 2022.

[14] Exhibit A, IRC, filed October 22, 2020, pages 1, 438, 445 (Final Audit Report).

[15] Exhibit A, IRC, filed October 22, 2020, page 391 (Parameters and Guidelines).

[16] Exhibit A, IRC, filed October 22, 2020, page 391 (Parameters and Guidelines).

[17] Exhibit A, IRC, filed October 22, 2020, page 391 (Parameters and Guidelines).

2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.

3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.

4. Purchase or construct receptacles and pads and install receptacles and pads.

5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.[18]

Section IV. B. lists the following ongoing activities as reimbursable:

B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):

1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*

2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.

3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. Graffiti removal is not reimbursable.

4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.[19]

Under section IV., only "actual costs" are reimbursed for one-time activities, whereas ongoing activities are reimbursed under a "reasonable reimbursement methodology."[20]

"Actual costs" are defined as "those costs actually incurred to implement the mandated activities" and which "must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities."[21] Under section IV., "contemporaneous source documents" are required to support actual costs: "document[s] created at or near the same time the actual costs were incurred for the event or activity in question" and "may include, but are not limited to, employee time records or

[18] Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines).

[19] Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines), emphasis in original.

[20] Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

[21] Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

time logs, sign-in sheets, invoices, and receipts."[22] Section IV. further provides as follows regarding corroborating evidence:

> Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[23]

Under section VII. A, a reimbursement claim for actual costs requires the claimant to retain "[a]ll documents used to support the reimbursable activities, as described in Section IV."[24]

Section VI. describes the reasonable reimbursement methodology for the ongoing costs, including the costs to collect trash "no more than three times per week":

> The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) The RRM is in lieu of filing detailed documentation of actual costs. Under the RRM, the unit cost of $6.74, during the period of July 1, 2002 to June 30, 2009, for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.[25]

Section VII. B, which pertains to costs claimed using a reasonable reimbursement methodology, requires as follows:

> Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.[26]

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[22] Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

[23] Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

[24] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

[25] Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines).

[26] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

Section VIII. provides the following regarding offsetting revenues and reimbursements:

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[27]

B. Proposition A Local Return Funds

At issue in this IRC is the claimant's use of Proposition A Local Return Funds to pay for the mandated program, the history of which is provided below.

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency[28] and authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.[29]

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[30]

Public Utilities Code section 130354 states that "revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes."[31]

In 1980, Los Angeles County voters approved Proposition A, a one-half percent transactions and use tax to fund public transit projects throughout the county.[32] Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax.

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[27] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

[28] Public Utilities Code section 130050.

[29] Public Utilities Code sections 130231(a), 130350.

[30] Public Utilities Code section 130350 (Stats. 1976, ch. 1333). Section 130350 was amended in 2007 to reflect the two-thirds vote requirement for special taxes under article XIII A, section 4.

[31] Public Utilities Code section 130354.

[32] Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

In *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only a majority of voters, instead of the two-thirds required under article XIII A, section 4.[33] The court reasoned that "special district" within the meaning of article XIII A, section 4 included only those districts with the authority to levy a tax on real property, and because the Transportation Commission had no such authority, it did not constitute a "special district."[34] While the court noted that the terms "special districts" and "special taxes" as used in section 4 were both ambiguous, it did not address whether Proposition A constituted a "special tax" within the meaning of section 4.[35] Nor did the court address whether the Transportation Commission or the Proposition A tax were subject to the government spending limitations imposed by article XIII B.

In *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the California Supreme Court addressed "a question previously left open" in *Richmond*, regarding the validity of a supplemental sales tax "enacted for the apparent purpose of avoiding the supermajority voter approval requirement" under article XIII A, section 4.[36] The court ruled that a "special district" within the meaning of article XIII A, section 4 includes "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13," regardless of whether the district has the authority to levy real property taxes.[37] However, the court declined to overrule *Richmond* with respect to local agencies created prior to Proposition 13 and which lacked the authority to levy property taxes, such as the Transportation Commission.[38] The court further held that a "special tax" within the meaning of article XIII A, section 4, "is one levied to fund a specific government project or program," even when that project or program is the agency's sole reason for being.[39]

The Transportation Commission is statutorily authorized to levy Proposition A transaction and use taxes.[40]

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[33] In 1978, California voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A, section 4 provides:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

[34] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

[35] *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

[36] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

[37] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

[38] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

[39] *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

[40] Public Utilities Code section 130231(a).

> The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the approval by the voters of the commission's Ordinance No. 16 [Proposition A] in 1980 and its Ordinance No. 49 [Proposition C] in 1990, and has the authority and power vested in the Southern California Rapid Transit District to plan, design, and construct an exclusive public mass transit guideway system in the County of Los Angeles, including, but not limited to, Article 5 (commencing with Section 30630 of Chapter 5 of Part 3 of Division 11).[41]

The Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to the Transportation Commission's appropriations limit.[42]

In 1993, the Transportation Commission was abolished and the Los Angeles County Metropolitan Transportation Authority (Metro) was created and succeeded to the Transportation Commission's and the Southern California Rapid Transit District's powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.[43] Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A tax.[44]

The purpose of the Proposition A tax is to "improve and expand existing public transit Countywide, including reduction of transit fare, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit assessments, and fares."[45] Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses[46] and are allocated as follows:

a. Twenty-five percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.

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[41] Public Utilities Code section 130231(a).

[42] Exhibit A, IRC, filed October 22, 2020, page 25-33 (Proposition A Ordinance).

[43] Public Utilities Code sections 130050.2, 130051.13. Section 130051.13 states as follows:

> On April 1, 1993, the Southern California Rapid Transit District and the Los Angeles County Transportation Commission are abolished. Upon the abolishment of the district and the commission, the Los Angeles County Metropolitan Transportation Authority shall succeed to any or all of the powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its governing body.

[44] Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

[45] Exhibit A, IRC, filed October 22, 2020, page 27 (Proposition A Ordinance).

[46] Exhibit A, IRC, filed October 22, 2020, page 28 (Proposition A Ordinance).

b. Thirty-five percent, calculated on an annual basis, to the commission for construction and operation of the System.

c. The remainder shall be allocated to the Commission for public transit purposes.[47]

Local jurisdictions receive transportation funding from Metro through the Proposition A local return program. Twenty-five percent of Proposition A funds is allocated to the local return programs for local jurisdictions to use for "in developing and/or improving public transit, paratransit, and the related transportation infrastructure."[48] Metro allocates and distributes local return funds to cities and the county each month, on a "per capita" basis.[49]

Use of Proposition A tax revenues is restricted to "eligible transit, paratransit, and Transportation Systems Management improvements" and cities are encouraged to use the funds to improve transit services.[50]

> The Proposition A Ordinance requires that LR [Local Return] funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds.[51]

Amongst the eligible uses of Proposition A local return funds are bus stop improvements and maintenance projects.[52] The Local Return Guidelines provide as follows:

> Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:
>
> - Concrete landings – in street for buses and at sidewalk for passengers
> - Bus turn-outs
> - Benches
> - Shelters
> - *Trash receptacles*
> - Curb cut
> - Concrete or electrical work directly associated with the above items.[53]

Proposition A local return funds may also "be given, loaned or exchanged" between local jurisdictions, provided that certain conditions are met, including that the traded funds be used for

[47] Exhibit A, IRC, filed October 22, 2020, page 28 (Proposition A Ordinance).

[48] Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

[49] Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

[50] Exhibit A, IRC, filed October 22, 2020, page 27 (Proposition A Ordinance).

[51] Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

[52] Exhibit A, IRC, filed October 22, 2020, page 46 (Local Return Guidelines).

[53] Exhibit A, IRC, filed October 22, 2020, page 46 (Local Return Guidelines), emphasis added.

public transit purposes.[54] Jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by "federal, state, or local grant funding, or private funds."[55] Subsequent reimbursement funds must then be deposited into the Proposition A Local Return Fund.[56]

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

The Controller determined that of the total claimed amount of $1,661,278 for fiscal years 2002-2003 through 2012-2013 (audit period), $740,995 was reimbursable and $920,283 was not.[57] The Final Audit report contains two findings, both pertaining to reductions of costs claimed: (1) the claimant overstated ongoing maintenance costs by overstating the number of trash receptacles, failing to provide sufficient documentation to support the annual number of trash collections performed, and claiming ineligible costs; and (2) the claimant failed to offset any revenues or reimbursements despite using Proposition A and federal grant funds to purchase trash receptacles.[58]

The claimant does not dispute the reduction of eligible trash receptacles from 237 units to 230 units for fiscal years 2009-2010 through 2012-2013 (Finding 1); the Controller's determination that the reimbursement claim period for fiscal year 2012-2013 ended on December 27, 2012, when the stormwater permit expired (Finding 1); nor the reduction of $4,114 based upon the claimant's use of federal grant funds to purchase trash receptacles in fiscal year 2008-2009 (Finding 2).

The claimant challenges only the following findings: the claimant overstated the number of trash collections (Finding 1); and the claimant should have offset Proposition A local return funds used to purchase trash receptacles from its fiscal years 2005-2006 and 2008-2000 reimbursement claims (Finding 2).[59] The Controller's findings pertaining to the issues in dispute are described below.

1. Finding 1 – Overstated Ongoing Maintenance Costs (Number of Trash Collections)

The claimant's ongoing maintenance reimbursement claims totaled $1,584,852. The Controller found that $738,509 was allowable and $846,343 was unallowable.[60] At issue in Finding 1 is the Controller's determination that the claimant overstated the number of trash collections.

> For the period of July 1, 2002, through June 30, 2013, the city claimed two collections per trash receptacle per week, totaling 104 annual collections. We

[54] Exhibit A, IRC, filed October 22, 2020, page 52 (Local Return Guidelines).

[55] Exhibit A, IRC, filed October 22, 2020, page 69 (Local Return Guidelines).

[56] Exhibit A, IRC, filed October 22, 2020, page 69 (Local Return Guidelines).

[57] Exhibit A, IRC, filed October 22, 2020, page 427 (Final Audit Report).

[58] Exhibit A, IRC, filed October 22, 2020, pages 439, 445 (Final Audit Report).

[59] Exhibit A, IRC, filed October 22, 2020, page 3.

[60] Exhibit A, IRC, filed October 22, 2020, page 438 (Final Audit Report).

found that one collection per trash receptacle per week, totaling 52 annual collections, is allowable.[61]

The claimant provided the Controller with the following documentation to support its claimed trash collection costs:

- Email excerpts from the Parks Superintendent, dated August 2011, stating that city staff collect the transit stop trash receptacles two times a week.
- A statement under penalty of perjury from the Director of Recreation and Community Services, dated May 2017, certifying that city employees maintained the transit stop trash receptacles twice weekly during the audit period.
- Names of the Park Maintenance Worker and Maintenance Training classifications who performed the trash collection activities during the audit period.
- Park Maintenance Worker and Maintenance Worker job flyers, dated Spring 2016.
- Simulated trash pickup route (July 4, 2016 and July 8, 2016) documentation.[62]

The Controller found that the documentation provided did not meet the criteria outlined in the Parameters and Guidelines, namely that the claimant failed to provide "contemporaneous source documents."

> We requested that the city provide us with source documents maintained during the audit period, such as policy and procedural manuals regarding trash collection activities, duty statements of the employees performing weekly trash collection activities, and/or trash collection route maps. The city stated that it does not keep these types of records. As the documentation provided was not contemporaneous and was not created during the audit period, we found that the city did not provide sufficient source documentation to support two weekly trash collection activities, totaling 104 annual collections.[63]

To support its position regarding the contemporaneous source document requirement, the Controller cited to the following portions of the Parameters and Guidelines:

> Section VII. (Records Retention) of the parameters and guidelines states, in part:
>
> > Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B. of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.

[61] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[62] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[63] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

Section IV. (Reimbursable Activities) of the parameters and guidelines states, in part:

> Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual costs were incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.
>
> ... Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[64]

Because the Controller "physically observed a number of the transit trash receptacles located throughout the city" during audit fieldwork and "confirmed that the city is currently performing trash collection activities," the Controller found one weekly trash collection (52 annual collections) to be allowable.[65]

2. Finding 2 – Unreported offsetting revenues and reimbursements

The Controller determined that the claimant used Proposition A funds to purchase trash receptacles during the 2005-2006 and 2008-2009 fiscal years.[66] The Controller characterized Proposition A local return funds as "special supplementary sale tax" funds, which are "restricted solely for the development and or improvement of public transit services."[67] The Controller further reasoned that because the claimant used "restricted" Proposition A funds to pay for the mandated activities, it did not have to rely on the use of its general funds.[68] The Controller determined that under the Parameters and Guidelines, the Proposition A funds were required to

[64] Exhibit A, IRC, filed October 22, 2020, page 440 (Final Audit Report).

[65] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[66] Exhibit A, IRC, filed October 22, 2020, page 445 (Final Audit Report). The Controller also determined that the claimant used a federal grant to pay for trash receptacles during the 2008-2009 fiscal year and failed to offset those funds from its reimbursement claim, which the claimant does not dispute. See Exhibit A, IRC, filed October 22, 2020, pages 3, 446 (Final Audit Report).

[67] Exhibit A, IRC, filed October 22, 2020, page 448 (Final Audit Report).

[68] Exhibit A, IRC, filed October 22, 2020, page 448 (Final Audit Report).

be identified and deducted from the reimbursement claims because they constituted payment toward the mandated activities from a non-local source.[69]

> The city states that Proposition A funds are "'proceeds of taxes', subject to the taxing and spending limitations." The city has not provided documentation to support that the Proposition A Local Return funds have been included in the city's appropriations subject to the limit. Further, in regards to the "proceeds of taxes," Proposition A Local Return funds are a special supplementary sales tax approved by Los Angeles County voters in 1980 and are restricted solely for the development and or improvement of public transit services. A special supplementary sales tax is not the same as unrestricted general sales tax, which can be spent for any general governmental purposes, including public employee salaries and benefits.[70]

III. Positions of the Parties

A. City of Lakewood

1. Finding 1: Ongoing maintenance costs – frequency of trash collection

The claimant challenges the Controller's reduction in Finding 1 of the Final Audit Report of the annual number of trash collections performed by the claimant during the audit period.[71] The claimant asserts that the documentation provided to prove twice weekly collection frequency satisfies the requirements of the Claiming Instructions, Parameters and Guidelines, and the federal Government Accountability Office audit guidelines.[72] The claimant provided the Controller with multiple forms of documentation to support twice weekly trash collections, including emails from 2011 between maintenance staff and management showing that the receptacles were emptied twice weekly, signed statements from claimant staff verifying the maintenance schedule, and a field study showing the frequency of trash pickup.[73]

The claimant argues that under section IV. B of the Parameters and Guidelines, ongoing activities related to maintaining trash receptacles are reimbursed under a reasonable reimbursement methodology, and that "actual costs" are costs which are actually incurred to implement the mandated activities and must be traceable and supported by source documents showing the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.[74] The claimant also points to sections VI. and VII. of the Parameters and Guidelines, which state, respectively, that the "RRM [reasonable reimbursement methodology] is in lieu of filing detailed documentation of actual costs…each trash collection or 'pick up' is multiplied by the annual number of trash collections" and that local agencies much retain

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[69] Exhibit A, IRC, filed October 22, 2020, page 448 (Final Audit Report).

[70] Exhibit A, IRC, filed October 22, 2020, page 448 (Final Audit Report).

[71] Exhibit A, IRC, filed October 22, 2020, page 3.

[72] Exhibit A, IRC, filed October 22, 2020, page 6.

[73] Exhibit A, IRC, filed October 22, 2020, page 3.

[74] Exhibit A, IRC, filed October 22, 2020, page 4.

documentation supporting reimbursement of ongoing maintenance costs, "including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups."[75]

The claimant alleges that the emails from 2011 constitute an eligible form of contemporaneous documentation.[76] The emails consist of communications between line and supervisory staff and specify that trash receptacles were emptied on the first and last day of the week.[77] The claimant challenges the Controller's determination in the Final Audit Report that the emails from 2011 were not created "at or near" the audit period and therefore not source documents.[78] The claimant points out that the mandate was still active in 2011, claiming instructions were not released until 2011, and claims for fiscal year 2010-2011 were due February 15, 2012. Therefore, the claimant provided documentation created "at or near the same time actual costs were incurred" showing that twice weekly pickups were being actively performed.[79]

In further support of its position that the emails from 2011 constitute "contemporaneous source documents," the claimant cites to the federal Government Auditing Standards Manual for the proposition that small organizations may satisfy source documentation requirements for policies and procedures through "more informal methods" of documentation, including "manual notes, checklists, and forms."[80]

The claimant asserts it provided some of the documentation requested by the Controller, such as job descriptions showing trash collection duties and time sheets for maintenance employees showing hours worked, but that the documents did not contain the level of detail required by the Controller (e.g., the exact location and frequency of each trash pickup).[81] The claimant argues, that the additional documents required by the Controller as a condition of receiving full reimbursement (e.g., policy and procedure manuals showing exact trash collection activities and schedules, duty statements for employees performing weekly trash collection activities and showing exactly when and how often each individual trash receptacle is serviced, and GPS trash collection route maps) are not specified in nor required by the Claiming Instructions, Parameters and Guidelines, or federal government auditing standards.[82] Furthermore, the claimant states, requiring such detailed and specific documentation for ongoing costs is arbitrary and capricious and directly contradicts the intent of utilizing a reasonable reimbursement methodology, which is supposed to serve "in lieu of detailed documentation of actual costs."[83]

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[75] Exhibit A, IRC, filed October 22, 2020, page 5.

[76] Exhibit A, IRC, filed October 22, 2020, page 5.

[77] Exhibit A, IRC, filed October 22, 2020, pages 5, 106-113.

[78] Exhibit A, IRC, filed October 22, 2020, page 5.

[79] Exhibit A, IRC, filed October 22, 2020, page 5.

[80] Exhibit A, IRC, filed October 22, 2020, pages 6, 248.

[81] Exhibit A, IRC, filed October 22, 2020, pages 6-7.

[82] Exhibit A, IRC, filed October 22, 2020, page 6.

[83] Exhibit A, IRC, filed October 22, 2020, page 7.

The claimant further asserts, in contrast to the Controller's assertion that the documents requested to show trash collection frequency are commonly maintained by local agencies, the results of the claimant's own investigation show otherwise. The claimant states that it reviewed the audit outcomes of 32 other local agencies with reimbursement claims for the *Municipal Stormwater and Urban Runoff Discharges* program and determined that no other local agency performing its own trash receptacle maintenance had satisfied the Controller's documentation requirements to support trash collection exceeding once per week.[84] The claimant argues that it is unreasonable and unrealistic to expect local agencies to have the highly specific and uncommon types of documentation to show trash collection frequency for the approximately ten years the mandate program was operative prior to the Claiming Instructions being issued in 2011.[85]

Furthermore, the claimant argues, requiring such specific, non-standard types of documentation violates due process.[86] Neither the Parameters and Guidelines adopted in March 2011 nor the revised Claiming Instructions issued in July 2015 list the types of documentation requested by the Controller as part of the audit.[87] While the Parameters and Guidelines are regulatory in nature, due process requires reasonable notice to the claimant of any law affecting its substantive rights and liabilities.[88] A provision that imposes new, additional, or different liabilities based on past conduct is unlawfully retroactive.[89] As such, the claimant asserts, if a provision in the Parameters and Guidelines affects a claimant's substantive rights or liabilities and changes the legal consequences of past events, then such a provision may be deemed unlawfully retroactive under due process principles.[90]

In *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, the court found that the Controller's use of the Contemporaneous Source Documentation Rule (CSDR) in audits prior to the Rule being included in parameters and guidelines constituted an underground regulation and that it was "physically impossible to the comply with the CSDR's requirement of contemporaneousness."[91] Here, the Controller's request for specific forms of contemporaneous

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[84] Exhibit A, IRC, filed October 22, 2020, page 7.

[85] Exhibit A, IRC, filed October 22, 2020, page 8.

[86] Exhibit A, IRC, filed October 22, 2020, pages 8-9.

[87] Exhibit A, IRC, filed October 22, 2020, page 9.

[88] Exhibit A, IRC, filed October 22, 2020, page 8 (citing *In re Cindy B*. (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805).

[89] Exhibit A, IRC, filed October 22, 2020, page 9 (citing *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527).

[90] Exhibit A, IRC, filed October 22, 2020, page 9 (citing *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

[91] Exhibit A, IRC, filed October 22, 2020, page 9 (citing *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805).

documentation at a time when the claimant did not have notice of such a requirement or that the ongoing trash collection costs would be reimbursable, violates due process.

The claimant points out that under the Parameters and Guidelines reasonable reimbursement methodology, trash collection frequency is limited to three times per week; as such, the claimant's request of twice weekly was both reasonable and allowable.[92]

In comments on the Draft Proposed Decision, the claimant states its agreement with staff's recommendation regarding Finding 1, and reiterates its position that the claiming instructions for ongoing maintenance costs utilize a reasonable reimbursement methodology (RRM) as a simplified and uniform method for calculating trash receptacle maintenance costs, thus alleviating the need for contemporaneous source documentation.[93]

2. Finding 2: Unreported offsetting revenues and reimbursements

The claimant challenges the reduction, based on the Controller's determination that Proposition A local return funds used by the claimant to purchase trash receptacles during fiscal years 2005-2006 and 2008-2009 are offsetting revenues or reimbursements that should have been reported as such on the claims forms.[94]

The claimant does not challenge the Controller's finding that the claimant used Proposition A funds to perform mandated activities. Rather, the claimant argues that because Proposition A is a local sales tax, and the claimant was not required to use the Proposition A funds to pay for the mandated activities, the Controller's determination that the Proposition A funds are an unreported offset that must be deducted from the reimbursement claims violates article XIII B, section 6 of the California Constitution, is inconsistent with the Parameters and Guidelines, and constitutes an invalid retroactive application of the Parameters and Guidelines.[95]

The claimant asserts that "Article XIII B, section 6 does not distinguish between general and 'restricted' taxes."[96] Proposition A is a local sales tax, no different from any other sales tax.[97] If the claimant had expended other sales tax revenue to install and maintain the trash receptacles, the Controller would not have reduced the claim.[98]

The claimant argues that Proposition A is a "local tax, generated from sales tax imposed on local citizens," not a non-local source within the meaning of section VIII. of the Parameters and Guidelines.[99] Section VIII. states as follows:

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[92] Exhibit A, IRC, filed October 22, 2020, page 10.

[93] Exhibit C, Claimant's Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

[94] Exhibit A, IRC, filed October 22, 2020, page 95 (Final Audit Report).

[95] Exhibit A, IRC, filed October 22, 2020, pages 10-17.

[96] Exhibit A, IRC, filed October 22, 2020, page 12.

[97] Exhibit A, IRC, filed October 22, 2020, page 16.

[98] Exhibit A, IRC, filed October 22, 2020, page 16.

[99] Exhibit A, IRC, filed October 22, 2020, page 14.

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[100]

The claimant reasons that it was not required to use Proposition A funds to pay for the mandated activities.[101] Proposition A is a general-use tax, the claimant argues, and not a restricted-use tax as determined by the Controller.[102] The claimant cites to Government Code sections 17556(e) and 17570.3(d)(1)(D) for the proposition that "funding sources" are defined as "additional revenues *specifically intended* to fund the costs of the state mandate" and "*dedicated*…for the program."[103] The claimant argues that the Proposition A local return funds are not "revenue in the same program as a result of the same statutes or executive orders found to contain the mandate," nor "reimbursement specifically intended for or dedicated for" the *Municipal Stormwater and Urban Runoff Discharges* program.[104] Under the Proposition A Local Return Guidelines, the claimant was permitted to expend the Proposition A funds on any number of transportation-related priorities and was not required to use the money for any specific purpose, including the mandated program.[105]

According to the claimant, the Local Return Guidelines permit the claimant to advance Proposition A funds on a project and then return the funds upon reimbursement from another source.[106] The claimant asserts that it was therefore proper to use the Proposition A funds as an advance, with the expectation of returning the funds after receiving reimbursement from the state.[107] Because the claimant used the Proposition A funds in way that was lawful at the time, the Controller's finding that those funds are non-local funds that must be offset against the claims is contrary to article XIII, section 6 of the California Constitution.[108]

The claimant argues that it would be arbitrary and capricious to retroactively apply the Parameters and Guidelines, which were not adopted until after the claimant advanced the Proposition A funds to pay for the mandated activities, to now find that the claimant was prohibited from advancing the funds when it was permitted to do so at the time.[109] Because regulations are not given retroactive effect except for the limited purpose of clarifying existing

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[100] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

[101] Exhibit A, IRC, filed October 22, 2020, page 13.

[102] Exhibit A, IRC, filed October 22, 2020, page 13.

[103] Exhibit A, IRC, filed October 22, 2020, page 12, emphasis in IRC.

[104] Exhibit A, IRC, filed October 22, 2020, page 13.

[105] Exhibit A, IRC, filed October 22, 2020, pages 13-14.

[106] Exhibit A, IRC, filed October 22, 2020, page 15.

[107] Exhibit A, IRC, filed October 22, 2020, page 15.

[108] Exhibit A, IRC, filed October 22, 2020, page 16.

[109] Exhibit A, IRC, filed October 22, 2020, pages 16-17.

law, the claimant asserts that Controller's finding substantially changes the legal effect of past events and is therefore improper.[110]

In comments on the Draft Proposed Decision, the claimant states its disagreement with staff's conclusion that Proposition A funds should have been deducted from the reimbursement claims.[111] The claimant maintains that it should be reimbursed for costs to implement a state-mandated program, particularly because those costs were incurred in good faith and with the expectation that they would be reimbursed so that the claimant could direct them to "true city priorities."[112] The claimant notes that "[p]aying for expensive State Mandated programs from General Funds is often not possible and local agencies are forced to seek other funding sources to comply with State laws."[113]

B. State Controller's Office

The Controller did not file comments on the IRC and the Controller's comments on the Draft Proposed Decision state that the Controller agrees with staff's recommendations in regard to both findings 1 and 2.[114]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[115] 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

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[110] Exhibit A, IRC, filed October 22, 2020, pages 16-17.

[111] Exhibit C, Claimant's Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

[112] Exhibit C, Claimant's Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

[113] Exhibit C, Claimant's Comments on the Draft Proposed Decision, filed, June 14, 2022, page 1.

[114] Exhibit D, Controller's Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

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

apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[116]

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

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[118]

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.[119] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[120]

A. The Claimant Timely Filed the IRC.

Section 1185.1(c) of the Commission's regulations requires an incorrect reduction claim to be filed with the Commission no later than three years after the date the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c).[121] Under Government Code section 17558.5(c), the Controller must notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that

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[116] *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.

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

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

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

[120] Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of Code of Civil Procedure 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.

[121] California Code of Regulations, title 2, section 1185.1.

results from an audit or review.[122] The notice must specify which claim components were adjusted and in what amount, as well as interest charges on claims adjusted, and the reason for the adjustment.[123]

The Controller issued its Final Audit Report on November 27, 2017.[124] The Final Audit Report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments.[125] The Final Audit Report complies with the notice requirements of section 17558.5(c). The claimant filed the IRC on October 22, 2020.[126] The IRC was filed less than three years from the date of the Final Audit Report and therefore the Commission finds that the IRC was timely filed.

B. The Controller's Reduction of Costs Claimed, Based on its Determination in Finding 1 That the Claimant Failed to Provide Contemporaneous Source Documentation to Support the Number of Trash Collections Performed During the Audit Period, Is Incorrect as a Matter of Law.

At issue in Finding 1 is the Controller's reduction of costs claimed, based on its determination that the claimant overstated the annual number of trash collections performed during the audit period.

> For the period of July 1, 2002, through June 30, 2013, the city claimed two collections per trash receptacle per week, totaling 104 annual collections. We found that one collection per trash receptacle per week, totaling 52 annual collections, is allowable.[127]

In finding that the claimant provided insufficient documentation in support of its claim of twice weekly trash collection for the duration of the audit period, the Controller explained that the claimant failed to provide contemporaneous source documentation.

> We requested that the city provide us with source documents maintained during the audit period, such as policy and procedural manuals regarding trash collection activities, duty statements of the employees performing weekly trash collection activities, and/or trash collection route maps. The city stated that it does not keep these types of records. As the documentation provided was not contemporaneous and was not created during the audit period, we found that the city did not provide sufficient source documentation to support two weekly trash collection activities, totaling 104 annual collections.[128]

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[122] Government Code section 17558.5(c).

[123] Government Code section 17558.5(c).

[124] Exhibit A, IRC, filed October 22, 2020, page 428 (Final Audit Report).

[125] Exhibit A, IRC, filed October 22, 2020, pages 428-456 (Final Audit Report).

[126] Exhibit A, IRC, filed October 22, 2020, page 1.

[127] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[128] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

The Controller allowed once weekly collections (52 annual collections) because the Controller "physically observed a number of the transit trash receptacles located throughout the city" during audit fieldwork and "confirmed that the city is currently performing trash collection activities."[129]

The claimant challenges the Controller's request for highly specific and detailed contemporaneous source documentation as beyond the scope of the Parameters and Guidelines and asserts that the documentation provided was sufficient. Furthermore, the claimant argues, the emails from 2011, containing communications between claimant's employees and supervisory and which specify that trash collection was performed twice each week, constitute an ineligible form of contemporaneous source documentation.[130]

At the crux of these arguments is the claimant's assertion that the Controller's finding of insufficient evidence and reduction of the claimed trash collection activities on that basis was arbitrary and capricious.[131] Whether the Controller correctly interpreted the documentation requirements of Parameters and Guidelines applicable to trash collection activities is purely a legal question, and does not require the Commission to examine whether the Controller acted in an arbitrary and capricious manner.[132]

1. The Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim based on the reasonable reimbursement methodology for ongoing maintenance activities, including trash collection.

The Controller asserts in the Final Audit Report that the documentation provided by the claimant to support twice weekly trash collection activities was insufficient because it did not include "source documents maintained during the audit period" and "was not contemporaneous and was not created during the audit period."[133] The Parameters and Guidelines impose no such requirement. The contemporaneous source document requirement is not applicable to the ongoing costs reimbursed under the reasonable reimbursement methodology (RRM).

The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program allow for two categories of reimbursable activities: installing and maintaining transit stop trash receptacles.[134] Installation activities are categorized as "one-time" activities and are

[129] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[130] Exhibit A, IRC, filed October 22, 2020, page 5.

[131] Exhibit A, IRC, filed October 22, 2020, page 7.

[132] The Parameters and Guidelines are regulatory in nature, and are binding on the parties. (*California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.)

[133] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[134] Exhibit A, IRC, filed October 22, 2020, page 391 (Parameters and Guidelines).

reimbursed using the actual cost method.[135] Maintenance activities are categorized as "ongoing" activities, and are reimbursed using a RRM.[136] Section IV. states as follows:

> To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed for the one-time activities in section IV. A below. The ongoing activities in section IV. B below are reimbursed under a reasonable reimbursement methodology.[137]

Section IV. B lists trash collection as an ongoing maintenance activity and states that the activity "is limited to no more than three times per week."[138]

Section VI., which addresses claim preparation for the reimbursable ongoing activities identified in section IV. B, reiterates the limited and exclusive use of a RRM for ongoing activities "in lieu of filing detailed documentation of actual costs."[139]

> The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ l7557, subd. (b) & 17518.) *The RRM is in lieu of filing detailed documentation of actual costs*.[140]

The records retention requirements set forth in section VII. of the Parameters and Guidelines separately address which records must be retained for a claim for actual costs, versus using the RRM.[141] Section VII. B, which pertains solely to the ongoing costs using the RRM, states that local agencies are required to retain "documentation which supports the reimbursement of maintenance costs" including documentation showing the number of trash collections, as follows:

> Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.[142]

Section VII. B. does not require that the documentation supporting the number of trash collections under the RRM be contemporaneous. Nor does section VII. B. refer back to the

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[135] Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines).

[136] Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines).

[137] Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

[138] Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines).

[139] Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines).

[140] Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines), emphasis added.

[141] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

[142] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

contemporaneous source document requirement in section IV. of the Parameters and Guidelines for "actual costs" claimed. The Parameters and Guidelines instead state that reimbursement for trash collection using the "RRM is in lieu of filing detailed documentation of actual costs."[143] This language is consistent with Government Code sections 17518.5 and 17557(f), which provide that a RRM "shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs," and that the reimbursement methodology balances "accuracy with simplicity."

In contrast, section VII. A., which describes the record retention requirements for the reimbursement of one-time activities using the actual cost method, expressly refers to the documentation requirements in section IV. of the Parameters and Guidelines, which in turn requires that the supporting documentation be contemporaneous. Section VII. A. states in relevant part: "All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit."[144]

And section IV. summarizes the contemporaneous source documents required for "actual costs;" namely, documents created at or near the same time the actual costs were incurred, as follows:

> Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual costs were incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.
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> Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[145]

Therefore, based on the plain language of the Parameters and Guidelines, the contemporaneous source document requirements applicable to claims using the actual cost method do not apply to costs claimed under the RRM.

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[143] Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines), emphasis added.

[144] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

[145] Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

This conclusion is further supported by the analysis adopted by the Commission on the Parameters and Guidelines. On March 24, 2011, the Commission adopted the Parameters and Guidelines and the Final Staff Analysis as its decision on the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program.[146] As part of the parameters and guidelines drafting process, the claimants initially requested the adoption of a RRM for the ongoing trash receptacle maintenance activities listed in section IV. B of the Parameters and Guidelines.[147] The Controller opposed adoption of a RRM and instead sought "actual costs incurred, supported by documentation of the costs."[148]

> Finance and the State Controller's Office oppose the adoption of an RRM and, instead, request that the parameters and guidelines require eligible claimants to claim actual costs incurred, supported by documentation of the costs. [149]

In discussing how to calculate trash collection frequency under the Parameters and Guidelines, the analysis adopted by the Commission states as follows:

> Claimants did not propose how frequently the trash receptacles would be emptied. Survey data submitted with the revised parameters and guidelines indicates that frequency of collection varies from weekly for some local agencies (e.g., Bellflower, Covina, Signal Hill), to 2.57 times per week for Carson. (The pickup frequency data is unclear for Los Angeles County, as the survey appears to state 156 pickups per year, or three times per week, but an August 2010 declaration from William Yan states that pickup frequency is 48-52 times per year). Trash will accumulate at different rates at different transit stops. However, based on the survey data and accompanying declaration, staff finds that the most reasonable method of complying with the mandate is to reimburse collection frequency no more than three times per week."[150]

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[146] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 1.

[147] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 31.

[148] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11.

[149] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11.

[150] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 27.

In comments on the Draft Staff Analysis, the claimants proposed adding language to section IV. B that would allow reimbursement for repetitive trash collection activities under either the actual cost method or the RRM.

> In its February 25, 2011 comments on the draft staff analysis, city claimants propose adding the following: "Claimants may elect to use either actual costs, including costs based on time studies (as set forth below) or RRM [reasonable reimbursement methodology] rates for repetitive trash collection tasks." Claimants further include the option to use time studies for repetitive tasks.[151]

In rejecting the language proposed by the claimants, the Commission determined that allowing the claimants to choose how to claim costs would frustrate the purpose of using a RRM, which is to balance "accuracy with simplicity."[152]

> The RRM is intended to balance "accuracy with simplicity." (Gov. Code, § 17557, subd. (f).) Allowing claimants to elect to claim costs by using either an RRM, a time study, or actual costs does not conform to this standard. Instead, it would allow claimants to maximize their reimbursement depending on whether or not their costs are higher than the RRM. This is not the purpose of an RRM. For this reason, staff finds that the language allowing claimants to claim costs by electing either the RRM, time studies, or actual costs should not be included under section IV.B."[153]

The Commission instead added the following record retention language "for any audits conducted by the State Controller's Office of the costs claimed using the RRM" to section VII. B of the Parameters and Guidelines.

> Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. Pursuant to Government Code section 17561,

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[151] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 28.

[152] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, pages 28-29.

[153] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, pages 28-29.

subdivision (d)(2), the Controller has the authority to audit the application of a reasonable reimbursement methodology.

Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups. If an audit has been initiated by the Controller during the period subject to audit, the record retention period is extended until the ultimate resolution of any audit findings.[154]

There is no discussion in the Draft Staff Analysis for the Parameters and Guidelines, the comments filed by the parties thereon, or the Final Staff Analysis adopted by the Commission regarding any objection to or request to change the record retention requirements for costs claimed using the RRM, as stated in section VII. B of the Parameters and Guidelines.

Accordingly, the Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim based on the RRM for ongoing maintenance activities, including trash collection. Therefore, the Controller's reduction of costs claimed, based on its determination in Finding 1 that the claimant failed to provide contemporaneous source documentation to support the number of trash collections performed during the audit period, is incorrect as a matter of law.

2. Even assuming the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying such a requirement to the claiming period before the Parameters and Guidelines were adopted (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.

The claimant argues that requiring it to maintain the highly specific and uncommon types of documentation requested by the Controller as part of the audit, when such documentation is included in neither the Parameters and Guidelines adopted in March 2011 nor the revised Claiming Instructions issued in July 2015, violates due process.[155] The claimant asserts that any provision in the Parameters and Guidelines that affects the claimant's substantive rights or liabilities and changes the legal consequences of past events is unlawfully retroactive and therefore in violation of the claimant's due process rights.[156]

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[154] Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 7, emphasis added.

[155] Exhibit A, IRC, filed October 22, 2020, pages 8-9.

[156] Exhibit A, IRC, filed October 22, 2020, page 9 (citing *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912).

Parameters and guidelines are regulatory in nature and are interpreted the same as regulations and statutes.[157] As such, they cannot be applied retroactively where due process considerations prevent it.[158] Due process requires reasonable notice of any substantive change affecting the substantive rights and liabilities of the parties.[159] A change is substantive if it imposes new, additional, or different liabilities on past conduct.[160] "The retroactive application of a statute is one that affects rights, obligations or conditions that existed before the time of the statute's enactment, giving them an effect different from that which they had under the previously existing law."[161] Therefore, if a provision in the parameters and guidelines affects the substantive rights or liabilities of the parties such that it changes the legal effects of past events, it may be considered unlawfully retroactive under principles of due process.[162]

In *Clovis Unified School Dist. v. Chiang*, the Controller used the contemporaneous source document rule (CSDR) to reduce reimbursement claims for state-mandated school district programs.[163] The Controller had revised its claiming instructions to include the CSDR, whereas the operative parameters and guidelines did not include such a requirement.[164] The CSDR read as follows:

> To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.
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> Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, 'I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge.' Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local,

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

[158] *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

[159] *In. re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784

[160] *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

[161] *In re Cindy B.* (1987) 192 Cal.App.3d 771, 779.

[162] *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

[163] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 797.

[164] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 801–802.

> state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[165]

The court held that the rule was an invalid underground regulation under the Administrative Procedure Act for the audit period at issue and overturned the Controller's audits. Notably, and of relevance here, the court found substantial evidence showing that prior to the Controller's use of the CSDR in performing audits, the Controller had approved reimbursement based on (1) declarations and certifications from employees that set forth, after the fact, the time they spent on mandated tasks; or (2) an annual accounting of time based upon the number of mandated activities and the average duration of each activity.[166] The court recognized that "it is now physically impossible to comply with the CSDR's requirement of contemporaneousness . . . ."[167]

The Controller, however, requested that the court take judicial notice that the Commission adopted the contemporaneous source document rule by later amending the parameters and guidelines. The court denied the request and did not apply the CSDR, since the issue concerned the use of the rule in earlier years, when no notice was provided to the claimant. The court stated:

> We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR during the 1998 to 2003 fiscal years, when the CSDR was an underground regulation. This issue is not resolved by the Commission's subsequent incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P & G's. (Emphasis in original.)[168]

The court determined that the parameters and guidelines in effect at the time the mandated costs were incurred were the parameters and guidelines that governed the audit.[169]

Here, the claimant was not on notice of a contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011. Thus, requiring the claimant to provide contemporaneous source documentation for costs incurred during the fiscal years preceding adoption of the Parameters and Guidelines (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.

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[165] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

[166] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

[167] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

[168] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.

[169] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812-813.

3. Because the Controller did not apply the correct standard in determining whether the documentation provided was sufficient to show twice weekly trash collection, this matter must be remanded to the Controller for further review.

The Controller is authorized by Government Code section 17561(d) to conduct an audit in order to verify the application of a reasonable reimbursement methodology and to reduce any claims that are excessive or unreasonable. Government Code section 12410 also provides that

> The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.

The courts have also held that the Controller's duty to audit includes the duty to ensure that expenditures are authorized by law.[170] Thus, even without the Parameters and Guidelines, the Controller is authorized by law to audit a claim for reimbursement and require the claimant to provide documentation supporting the claim for twice weekly trash collection per receptacle in order to verify the costs claimed under the reasonably reimbursement methodology. As indicated above, prior to the Controller's use of the contemporaneous source document rule, the Controller approved reimbursement based on (1) declarations and certifications from employees that set forth, after the fact, the time they spent on mandated tasks; or (2) annual accountings of time.[171]

According to the Final Audit Report, the claimant provided the Controller with the following documentation to support costs incurred for two trash collections per receptacle per week (104 annual collections) for the period of July 1, 2002 through June 30, 2013:

- Email excerpts from the Parks Superintendent, dated August 2011, stating that city staff collect the transit stop trash receptacles two times a week.[172]
- The names of the Park Maintenance Worker and Maintenance Trainee classifications who performed the trash collection activities during the audit period.[173]
- Job flyers for the Park Maintenance Worker and Maintenance Trainee classifications, dated Spring 2016.[174]
- Simulated trash pickup route (July 4, 2016 and July 8, 2016) documentation with a statement under penalty of perjury from the Parks Superintendent certifying the information contained therein.[175] The simulation took place over a two day period and

[170] *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.

[171] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

[172] Exhibit A, IRC, filed October 22, 2020, pages 106-113, 439 (Final Audit Report).

[173] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[174] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[175] Exhibit A, IRC, filed October 22, 2020, pages 117-127, 439 (Final Audit Report).

was intended to demonstrate that the claimant was able to perform trash receptacle inspection and collection at all transit stops in a single day.[176]

- A statement under penalty of perjury from the Director of Recreation and Community Services, dated May 2017, certifying that city employees maintained the transit stop trash receptacles twice weekly during the audit period.[177]

Of these documents, the claimant provided the Commission with only the August 2011 emails, 2016 trash simulation document, and 2017 statement as part of the Incorrect Reduction Claim.[178] These documents, alone, do not verify that trash collection was performed twice per week during the audit period, however.

The emails from 2011 were written during the audit period, but contain contradictory statements. An email sent by Kerry Musgrove on August 9, 2011 states that trash collection was not uniformly performed twice per week on each trash receptacle, as the claimant alleges.

> We send staff out on the first day of the week and the last day of the week to empty half to full cans. *Some areas the cans in busy locations are emptied twice a week others only once a week*. Depends on the location. This summer staff is spending more time to empty half to full cans after the weekend. It's now taking a day and half at the first of the week.[179]

The 2017 statement by Lisa Litzinger, Director of Recreation and Community Services, is dated May 24, 2017 and states as follows:

> I certify and declare under penalty of perjury under the laws of the State of California, to the best of my knowledge, that the waste pick up schedule at transit locations in the City of Lakewood was twice weekly for the entire period between FY 02-03 through present.[180]

The statement, however, contains no facts establishing Ms. Litzinger's personal knowledge of the trash collection schedule for the duration of the audit period (several years before the statement was signed). The document simply states that the statement is made to the best of her knowledge, but does not describe what that knowledge is based on or how she knows that information.

The 2016 data in the trash pickup route simulation was collected in response to the audit, and not as part of the claimant's official or business duties, and does not provide any information about

[176] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[177] Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

[178] Exhibit A, IRC, filed October 22, 2020, pages 106-127. The Commission cannot evaluate the other documentation referenced in Final Audit Report as those documents were not included with the Incorrect Reduction Claim.

[179] Exhibit A, IRC filed October 22, 2020, pages 108-109, emphasis added.

[180] Exhibit A, IRC, filed October 22, 2020, page 116.

the number of weekly trash collections during the earlier audit period, or show how the simulation adequately represents the trash collections during the earlier audit period.

The claimant also filed a statement under penalty of perjury by Philip Lopez, Parks Superintendent, dated October 15, 2020 (after the final audit report was issued in November 2017). Thus, the Controller did not review this statement as part of the audit, but it states the following:

> I, Phillip Lopez, do hereby declare as follows:
>
> 1) I am the Parks Superintendent for the City of Lakewood and I have been employed by the City in this capacity since October 4, 2010.
> 2) I have personal knowledge of the matters set forth herein, and if called as a witness to testify, could and would testify competently thereto.
> 3) As the Parks Superintendent, I am the direct supervisor of staff who clean and maintain city trash receptacles, including bus stop receptacles. Transit trash receptacles were maintained by city staff at a minimum of twice weekly since FY 2002-03.
>
> 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 October 15, 2020, in Lakewood, California.[181]

Since Mr. Lopez first became employed as the Superintendent in 2010, it is not clear from his statement how he knows that transit trash receptacles were maintained by city staff at a minimum of twice weekly since fiscal year 2002-2003.

Accordingly, the Commission remands the reimbursement claims back to the State Controller's Office to further review and verify the costs claimed under the reasonable reimbursement methodology based on the number of weekly trash collections during the audit period and reinstate those costs that are deemed eligible for reimbursement in accordance with this Decision. In comments filed on the Draft Proposed Decision, the Controller stated that it agrees with the reimbursement claims being remanded and will work with the claimant to reinstate the costs deemed eligible.[182]

C. The Controller's Reduction, Based on Its Determination in Finding 2 That the Proposition A Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.

The Controller found that the claimant failed to report offsetting reimbursements for the audit period in the amount of $73,940.[183] The Controller determined that the claimant had received tax revenues from the Los Angeles County Metropolitan Transportation Authority's Proposition

[181] Exhibit A, IRC, filed October 22, 2020, page 22.

[182] Exhibit D, Controller's Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

[183] Exhibit A, IRC, filed October 22, 2020, page 445 (Final Audit Report).

A Local Return Program and used those funds to perform the mandated activities of purchasing trash receptacles in fiscal years 2005-2006 and 2008-2009.[184] The claimant does not contest receiving and using Proposition A local return funds in the manner alleged by the Controller. Rather, the claimant argues that the Controller's determination that the Proposition A funds are an unreported offset that must be deducted from the reimbursement claims violates article XIII B, section 6 of the California Constitution, is inconsistent with the Parameters and Guidelines, and constitutes an invalid retroactive application of the Parameters and Guidelines.[185]

1. Proposition A local return funds constitute reimbursement from a non-local source within the meaning of the Parameters and Guidelines.

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

> Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.[186]

The claimant asserts that the Proposition A local return funds at issue do not constitute "revenue…in the same program as a result of the same statutes of [sic] executive orders found to contain the mandate".[187] Citing to Government Code sections 17556(e) and 17570.3(d)(1)(D), the claimant argues that "funding sources" are defined as "additional revenues *specifically intended* to fund the costs of the state mandate" and "*dedicated*…for the program."[188] The claimant reasons that because the Proposition A funds are general funds and could be used by the claimant for any transportation-related purpose, they do not constitute revenues "specifically intended" to fund the mandated activities or "dedicated" to the *Municipal Stormwater and Urban Runoff Discharges* program. [189]

As an initial matter, the Government Code does not contain a section 17570.3. Based on the content referenced, it appears the claimant intended to cite to section 17570(d)(1)(D). Regardless, neither Government Code section 17570(d)(1)(D) or section 17556(e) applies here.

Section 17570(d)(1)(D) addresses requests to adopt a new test claim decision, and requires the requester to identify dedicated state and federal funds appropriated for the program.[190] However, the phrase "dedicated...funds appropriated for the program" as used in section 17570 has no

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[184] Exhibit A, IRC, filed October 22, 2020, page 445 (Final Audit Report).

[185] Exhibit A, IRC, filed October 22, 2020, pages 10-17.

[186] Exhibit A, IRC, filed October 22, 2020, page 416 (Parameters and Guidelines).

[187] Exhibit A, IRC, filed October 22, 2020, page 13.

[188] Exhibit A, IRC, filed October 22, 2020, page 12, emphasis in IRC.

[189] Exhibit A, IRC, filed October 22, 2020, page 13.

[190] Government Code section 17570(d)(1)(D), emphasis added.

bearing on the meaning of offsetting revenues and reimbursements within the Parameters and Guidelines.

The claimant also cites to Government Code section 17556(e) for its use of the language "specifically intended" to support the claimant's position that because Proposition A local return funds are general funds and the claimant was not required to use them for the specific purpose of funding the mandated activities, they do not constitute offsetting revenue or reimbursement under the Parameters and Guidelines.[191] Section 17556 states that the Commission shall not find costs mandated by the state when the statute, executive order, or an appropriation includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the costs of the mandate.[192] However, Government Code section 17556 applies only to the test claim phase for a legal determination whether there are costs mandated by the state. The *Municipal Stormwater and Urban Runoff Discharges* program was approved and, therefore, section 17556 has no relevance to this incorrect reduction claim.

The claimant next argues that because Proposition A is a local tax, it does not constitute a federal, state, or non-local source within the meaning of section VIII. of the Parameters and Guidelines.[193] While the Parameters and Guidelines do not expressly require that funds from a countywide tax, such as Proposition A, be identified as offsetting revenue, they do state that "reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim.[194]

The Parameters and Guidelines must be interpreted in a manner that is consistent with the California Constitution[195] and principles of mandates law.[196] Proposition A is not the claimant's "local tax" because it is neither levied by the claimant nor subject to the claimant's appropriations limit. Furthermore, because Proposition A is a non-local source of revenue, whether Proposition A funds were "specifically intended to fund the costs of the state mandate" or whether the claimant was free to apply the funds to other transportation projects is immaterial. Any costs incurred by the claimant in performing the mandated activities that are funded by non-local tax revenue, such as Proposition A, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

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[191] Exhibit A, IRC, filed October 22, 2020, pages 12-13.

[192] Government Code section 17556(e), emphasis added.

[193] Exhibit A, IRC, filed October 22, 2020, pages 13-14.

[194] Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines), emphasis added.

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

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

2. Proposition A Local Return tax revenues are not the claimant's "proceeds of taxes" within the meaning of article XIII B of the California Constitution because the tax is not levied by the claimant nor subject to the claimant's appropriations limit.

Interpreting the reimbursement requirement in article XIII B, section 6 of the California Constitution requires an understanding of articles XIII A and XIII B, which "work in tandem, together restricting California governments' power both to levy and to spend taxes for public purposes."[197]

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that "the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value" and that the one percent (1%) tax was to be collected by counties and "apportioned according to law to the districts within the counties…"[198] In addition to limiting property tax revenue, section 4 also restricts a local government's ability to impose special taxes by requiring a two-thirds approval by voters.[199]

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A, and was billed as "the next logical step to Proposition 13."[200] While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, "the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the state and local government level; in particular, Article XIII B places limits on the authorization to expend the 'proceeds of taxes.'"[201]

Article XIII B established "an appropriations limit," or spending limit for each "local government" beginning in fiscal year 1980-1981.[202] Section 1 of article XIII B defines the appropriations limit as follows:

> The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided by this article.[203]

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[197] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

[198] California Constitution, article XIII A, section 1.

[199] California Constitution, article XIII A, section 1.

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

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

[202] California Constitution, article XIII B, section 8(h).

[203] California Constitution, article XIII B, section 1.

No "appropriations subject to limitation" may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.[204]

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on "appropriations subject to limitation," meaning "any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity."[205] For local agencies, "proceeds of taxes" subject to the appropriations limit include all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).[206]

No limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes."[207] For example, appropriations subject to limitation do not include "local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities."[208]

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. The California Supreme Court, in *County of Fresno v. State of California*,[209] explained:

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

[204] California Constitution, article XIII B, section 2.

[205] California Constitution, article XIII B, section 8.

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

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

[208] California Constitution, article XIII B, section 8(i).

[209] *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

> historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.[210]

The purpose of section 6 is to preclude "the state from shifting financial responsibility for carrying out governmental functions to local governmental entities, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[211] Article XIII B, section 6 must therefore be read in light of the tax and spend limitations imposed by articles XIII A and XIII B; it requires the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.[212]

a. The Proposition A sales tax is not levied by or for the claimant.

The claimant argues that Proposition A is a local tax because it is a "sales tax imposed on local citizens" and therefore does not fall into any of the offsetting revenue categories enumerated in section VIII. the Parameters and Guidelines, which include "federal, state, or non-local source" revenue.[213] The claimant disagrees with the Controller's characterization of Proposition A as a restricted use tax, as opposed to a general tax, and argues that the claimant was not required to use the Proposition A local return funds for any specific purpose, including paying for the mandate program.[214] In support of this position, the claimant cites to the fact that under the Local Return Guidelines, the claimant was permitted to use the Proposition A funds on any number of transportation projects, not only the mandate program.[215]

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.[216] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[217] In other words, a local government's taxing authority is derived from statute.

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

[211] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

[212] *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

[213] Exhibit A, IRC, filed October 22, 2020, page 14.

[214] Exhibit A, IRC, filed October 22, 2020, pages 12-13.

[215] Exhibit A, IRC, filed October 22, 2020, pages 13-14.

[216] California Constitution, article XIII, section 24(a).

[217] *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ("Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government.").

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A transactions and use tax throughout Los Angeles County.[218] Public Utilities Code section 130350, as originally enacted, states as follows:

> A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.[219]

Under the Proposition A ordinance, twenty-five percent of the annual Proposition A tax revenues are allocated to local jurisdictions for local transit purposes on a per capita basis.[220] As discussed above, local jurisdictions are then permitted to use those funds on public transit projects as prescribed by the Local Return Guidelines.[221] Permissible uses include Bus Stop Improvements and Maintenance projects, which include the installation, replacement and maintenance of trash receptacles.[222]

The parties do not dispute that the claimant received Proposition A tax revenue through the Local Return Program during the audit period, at least a portion of which was used for the eligible purpose of purchasing trash receptacles.[223] Nonetheless, the claimant misunderstands what constitutes claimant's "local sales tax revenues" for purposes of determining eligibility for reimbursement under article XIII B, section 6. Contrary to the claimant's assertions, the Proposition A transactions and use tax is *not* the claimant's "local tax" because it is neither levied by nor for the claimant.

> The phrase "to levy taxes by or for an entity" has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes "by or for" municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430–432, 109 P. 1104; *County of Los Angeles v. Superior Court* (1941) 17 Cal.2d 707, 710–711, 112 P.2d 10.) The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's

[218] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

[219] Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

[220] Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

[221] See Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

[222] Exhibit A, IRC, filed October 22, 2020, page 46 (Local Return Guidelines).

[223] Exhibit A, IRC, filed October 22, 2020, pages 15, 445 (Final Audit Report).

> taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P. 340.) In levying taxes for the city the county was levying "municipal taxes" through the ordinary county machinery. (*Griggs*, *supra*, 13 Cal.App. at p. 432, 109 P. 1104.)
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> Thus, the salient characteristics of one entity levying taxes "for" another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the "levied for" entity.[224]

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimant here does not have the power to levy the Proposition A tax.[225] Therefore, Metro is not levying the Proposition A tax "for" the claimant. The claimant's receipt and use of Proposition A tax revenue through the Local Return Program does not change the nature of the local return funds as Metro's "proceeds of taxes" and subject to Metro's appropriations limit.

b. Proposition A local return funds allocated to the claimant are not subject to the claimant's appropriations limit.

Article XIII B does not limit a local government's ability to expend tax revenues that are not the claimant's "proceeds of taxes."[226] Where a tax is not levied by or for the local government claiming reimbursement, the revenue of such a tax is not the local government's "proceeds of taxes" and is therefore not the local government's "appropriations subject to limitation."[227] Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."[228] Because the Proposition A local return funds are not the claimant's "proceeds of taxes levied by or for that entity," they are not the claimant's "appropriations subject to limitation."[229]

While the Proposition A ordinance does not state whether Proposition A tax proceeds are subject to Metro's appropriations limit,[230] Metro receives the revenues of any transactions and use tax it

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[224] *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

[225] See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27 (Because redevelopment agency did not have the authority to levy a tax to fund its efforts, allocation and payment of tax increment funds to redevelopment agency by county, a government taxing agency, were not "proceeds of taxes levied by or for" the redevelopment agency and therefore were not subject to the appropriations limit of Article XIII B.).

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

[227] California Constitution, article XIII B, section 8.

[228] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

[229] California Constitution, article XIII B, section 8.

[230] Exhibit A, IRC, filed October 22, 2020, pages 25-33 (Proposition A Ordinance).

levies and then allocates and distributes them to local jurisdictions in accordance with the applicable tax ordinances.[231] Los Angeles County has passed four separate half-cent transportation sales taxes over the past 40 years: Proposition A (1980), Proposition C (1990), Measure R (2008) and Measure M (2016).[232] With the exception of Proposition A, the remaining three tax ordinances expressly state that their respective transportation sales tax revenues are subject to either Transportation Commission (as predecessor to Metro) or Metro's appropriations limit. The claimant has submitted no evidence, and the Commission is aware of none, to show that the Proposition A local return funds it received during the audit period were subject to the claimant's appropriations limit.

The claimant is incorrect in asserting that using Proposition A funds to pay for the mandated activities is no different than if the claimant had used "other local tax funds."[233] While, as claimant asserts, Proposition A is indeed imposed on the "local citizens" of claimant's jurisdiction, the tax is levied throughout Los Angeles County by Metro, who then distributes a portion of the revenues to cities and the County of Los Angeles. Because the Proposition A tax is neither levied by nor for the claimant, nor subject to the claimant's appropriations limit, the Proposition A Local Return revenues do not constitute the claimant's "local proceeds of taxes" for which claimant is entitled to reimbursement under article XIII B, section 6. Local government cannot accept the benefits of non-local tax revenue that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.[234] To the extent that the claimant funded the mandated activities using Proposition A tax revenues, reimbursement is not required under article XIII B, section 6 of the California Constitution.

3. The advancement of Proposition A funds to purchase trash receptacles does not alter the nature of those funds as not the claimant's proceeds of taxes and therefore required under the Parameters and Guidelines to be deducted from the reimbursement claims, nor does the reduction of those funds from the costs claimed constitute a retroactive application of the law.

The claimant argues that because the Local Return Guidelines permit the claimant to advance Proposition A funds to pay for mandated activities and then, upon reimbursement from the state, use those funds on other transportation-related priorities, the Controller cannot retroactively apply the Parameters and Guidelines "to preclude a subvention."[235] The claimant argues that retroactively applying the Parameters and Guidelines to prohibit an advancement of Proposition

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[231] Public Utilities Code section 130354, which states: "The revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes;" Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

[232] Exhibit E (2), Metro, Local Return Program, https://www.metro.net/projects/local_return_pgm/ (accessed on February 25, 2021), page 1.

[233] Exhibit A, IRC, filed on October 22, 2020, page 15.

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

[235] Exhibit A, IRC, filed October 22, 2020, pages 16-17.

A funds in a way that was legal at the time the funds were advanced is arbitrary and capricious.[236] Whether the Controller correctly interpreted the Parameters and Guidelines and the law in finding that Proposition A is a non-local source of funds that must be deducted from the reimbursement claims is purely a question of law subject to the de novo standard of review and to which the arbitrary and capricious standard does not apply.

Because the claimant used "non-local source" funds to install and maintain trash receptacles, it was required to identify and deduct those funds from its claim for reimbursement. As discussed above, the Proposition A funds received by the claimant are not the claimant's "proceeds of taxes" within the meaning of article XIII B, section 8. The requirement in section VIII. of the Parameters and Guidelines that reimbursement received from any "non-local source" must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes. A rule that merely restates or clarifies existing law "does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same."[237]

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes (e.g., revenue from a tax levied by a separate local government entity), it is required to deduct those revenues from its reimbursement claim. The fact that the Commission's adoption of the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program postdates the audit period does not alter the analysis,[238] nor does the claimant's ability under the Local Return Guidelines to expend Proposition A funds on the installation and maintenance of transit stop trash receptacles prior to mandate reimbursement.

Accordingly, the Controller's reduction of costs claimed, based on its determination in Finding 2, that the Proposition A local return funds are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law.

V. Conclusion

For the foregoing reasons, the Commission partially approves this IRC and concludes as follows:

1. The incorrect reduction claim was timely filed;
2. The Controller incorrectly reduced the costs claimed under the reasonable reimbursement methodology pertaining to the weekly number of trash collections during fiscal years 2002-2003 through 2012-2013;
3. The Controller correctly reduced the costs claimed by the claimant pertaining to the claimant's purchase of trash receptacles in fiscal years 2005-2006 and 2008-2009 using Proposition A local return funds and failure to offset its reimbursement claims to account for those funds.

[236] Exhibit A, IRC, filed October 22, 2020, page 16.

[237] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[238] Exhibit A, IRC, filed October 22, 2020, pages 6, 95.

The reimbursement claims are hereby remanded back to the Controller to further review and verify the costs claimed under the reasonable reimbursement methodology based on the number of weekly trash collections during the audit period and reinstate those costs that are deemed eligible for reimbursement in accordance with this Decision.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Los Angeles Regional Water Quality Control Board Order No. 01-182,Permit CAS004001, Part 4F5c3 Fiscal Years 2002-2003 through 2011-2012 Filed on February 18, 2021 City of Hawaiian Gardens, Claimant	Case No.: 20-0304-I-12 *Municipal Stormwater and Urban Runoff Discharges* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted September 23, 2022*) (*Served September 27, 2022*)

INCORRECT REDUCTION CLAIM

The Commission on State Mandates adopted the attached Decision on September 23, 2022.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

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DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 23, 2022. Lisa Kurokawa appeared on behalf of the State Controller's Office. The claimant did not appear.

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

The Commission adopted the Proposed Decision, with minor changes at the hearing, to approve the IRC by a vote of 7-0, as follows:

Member	**Vote**
Lee Adams, County Supervisor	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Sarah Olsen, Public Member	Yes
Renee Nash, School District Board Member	Yes
Shawn Silva, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

Summary of the Findings

This IRC challenges reductions by the State Controller's Office (Controller) to reimbursement claims filed by the City of Hawaiian Gardens (claimant) for fiscal years 2002-2003 through 2011-2012 (audit period) under the *Municipal Stormwater and Urban Runoff Discharges* program. At issue is the Controller's reduction based on its finding that the claimant did not provide contemporaneous source documentation to support its claim under the reasonable reimbursement methodology (RRM) for the number of weekly trash collections claimed during the audit period. The Controller reduced the number of collections claimed from twice weekly (104 annually) to once weekly (52 annually).

The Commission finds that this IRC was timely filed.

The Commission further finds that the Controller's reduction of costs claimed for twice-weekly trash collection, based on the claimant's failure to provide contemporaneous source documents, is incorrect as a matter of law. The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program do not require the claimant to provide contemporaneous source documentation to support a claim for ongoing maintenance activities, including trash collection, under the RRM. Rather, "[t]he RRM is in lieu of filing detailed documentation of actual costs."[1] Thus, section VII.B. of the Parameters and Guidelines, which pertains to costs claimed using an RRM, simply requires that "Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups."[2]

Even if the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying this requirement to the claiming period before the Parameters and Guidelines were adopted (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.[3] The claimant was not on notice of a contemporaneous source document requirement when incurring the costs during fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011.[4]

Included with the IRC is a Time Log that lists the number of trash pickups (two per week) per fiscal year from 2002-2003 to 2010-2011, which is signed by Joe Vasquez, Public Works Superintendent, and states that "I hereby certify under the penalty of perjury the [sic] laws of the State of California that the foregoing is true and correct based upon my personal knowledge."

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[1] Exhibit A, IRC, filed February 18, 2021, page 279 (Parameters and Guidelines).

[2] Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

[3] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802-813; *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527; *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

[4] Exhibit A, IRC, filed February 18, 2021, page 274 (Parameters and Guidelines).

The log is dated September 27, 2011.[5] However, there is no evidence in the record showing that Mr. Vasquez was employed by the claimant as a public works superintendent during the audit period, so it is unclear what his "personal knowledge" is based on. The mandated program began July 1, 2002, up to nine years before the Time Log was signed by Mr. Vasquez in September 2011.

The other two documents included with the IRC are a letter from the claimant's Finance Director indicating that 24 receptacles were cleaned twice per week in fiscal year 2011-2012, and a reimbursement claims receipt that lists the amounts claimed during the audit period.[6]

The Final Audit Report does not indicate that the auditors received or considered these documents filed with the IRC.

Because the Controller did not apply the correct (RRM) standard to determine whether the documentation provided was sufficient to show twice-weekly trash collection during the audit period, and the claimant provided additional documentation that the Controller may not have reviewed, the Commission approves this IRC and remands the reimbursement claims back to the Controller to further review and verify the costs claimed and reinstate those costs that are eligible for reimbursement in accordance with this decision.

COMMISSION FINDINGS

I. Chronology

09/28/2011 The claimant dated its reimbursement claims for fiscal years 2002-2003 through 2010-2011 with this date.[7]

01/17/2013 The claimant dated its reimbursement claim for fiscal year 2011-2012 with this date.[8]

06/27/2018 The Controller issued the Draft Audit Report.[9]

07/09/2018 The claimant filed comments on the Draft Audit Report.[10]

[5] Exhibit A, IRC, filed February 18, 2021, page 29 (Time Log).

[6] Exhibit A, IRC, filed February 18, 2021, pages 31 and 307 (Nov. 8, 2012 Letter from Claimant to Cost Recovery Systems, Claims Receipt).

[7] Exhibit A, IRC, filed February 18, 2021, pages 308 (2002-2003 claim), 310 (2003-2004 claim), 312 (2004-2005 claim), 314 (2005-2006 claim), 316 (2006-2007 claim), 318 (2007-2008 claim), 320 (2008-2009 claim), 322 (2009-2010 claim), and 324 (2010-2011 claim). A cover sheet entitled "Reimbursement Claims Receipt," that lists the claims for fiscal years 2002-2003 through 2010-2011, is dated September 28, 2011 (Exhibit A, IRC, filed February 18, 2021, page 307).

[8] Exhibit A, IRC, filed February 18, 2021, page 326 (2011-2012 reimbursement claim).

[9] Exhibit A, IRC, filed February 18, 2021, page 296 (Final Audit Report).

[10] Exhibit A, IRC, filed February 18, 2021, page 296, 303 (Final Audit Report).

08/09/2018 The Controller issued the Final Audit Report.[11]

02/18/2021 The claimant filed the IRC.[12]

07/12/2022 Commission staff issued the Draft Proposed Decision.[13]

08/02/2022 The Controller filed comments on the Draft Proposed Decision.[14]

08/02/2022 The claimant filed comments on the Draft Proposed Decision.[15]

II. Background

This IRC challenges the Controller's reductions of costs claimed for fiscal years 2002-2003 through 2011-2012 under the *Municipal Stormwater and Urban Runoff Discharges* program to install and maintain trash receptacles at public transit stops.[16]

A. The *Municipal Stormwater and Urban Runoff Discharges* Program

The *Municipal Stormwater and Urban Runoff Discharges* program resulted from a Consolidated Test Claim filed by the County of Los Angeles and several cities within the County alleging various activities related to, amongst other things, installation and maintenance of trash receptacles at transit stops to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board, a state agency.[17] The purpose of the permit was to protect the beneficial uses of receiving waters in Los Angeles County by reducing the discharge of pollutants into storm water to the maximum extent practicable.[18]

On July 31, 2009, the Commission adopted the Test Claim Decision,[19] finding that the following activities in part 4F5c3 of the permit imposed a reimbursable state mandate on those local agencies subject to the permit that are not subject to a trash total maximum daily load:

[11] Exhibit A, IRC, filed February 18, 2021, page 292 (Final Audit Report).

[12] Exhibit A, IRC, filed February 18, 2021, page 1.

[13] Exhibit B, Draft Proposed Decision, issued July 12, 2022.

[14] Exhibit C, Controller's Comments on the Draft Proposed Decision, filed August 2, 2022.

[15] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed August 2, 2022.

[16] Exhibit A, IRC, filed February 18, 2021, pages 1, 292, 294, 300 (Final Audit Report).

[17] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11, (Final Staff Analysis).

[18] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11, (Final Staff Analysis).

[19] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, pages 3, 12, (Final Staff Analysis).

> Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.[20]

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.[21] Section IV.A., identifies the following one-time reimbursable activities:

> A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
>
> 1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
> 2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
> 3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
> 4. Purchase or construct receptacles and pads and install receptacles and pads.
> 5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.[22]

Section IV.B. lists the following ongoing activities as reimbursable:

> B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
>
> 1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*
> 2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
> 3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. Graffiti removal is not reimbursable.

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[20] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 3, 12, (Final Staff Analysis).

[21] Exhibit A, IRC, filed February 18, 2021, page 274 (Parameters and Guidelines).

[22] Exhibit A, IRC, filed February 18, 2021, page 277 (Parameters and Guidelines).

4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.[23]

Under section IV., only "actual costs" are reimbursed for one-time activities (A.1.-A.5.), whereas ongoing activities (B.1.-B.5.) are reimbursed under the "reasonable reimbursement methodology."[24]

"Actual costs" are defined as "those costs actually incurred to implement the mandated activities" and which "must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities."[25] Under section IV., "contemporaneous source documents" are required to support actual costs: "document[s] created at or near the same time the actual costs were incurred for the event or activity in question" and "may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts."[26] Section IV. further provides as follows regarding corroborating evidence:

> Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[27]

Under section VII.A., a reimbursement claim for actual costs requires the claimant to retain "[a]ll documents used to support the reimbursable activities, as described in Section IV."[28]

Section VI. describes the RRM for the ongoing costs, including the costs to collect trash "no more than three times per week":

> The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) The RRM is in lieu of filing detailed documentation of actual costs. Under the RRM, the unit cost of

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[23] Exhibit A, IRC, filed February 18, 2021, page 277 (Parameters and Guidelines). Emphasis in original.

[24] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[25] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[26] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[27] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[28] Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

> $6.74, during the period of July 1, 2002 to June 30, 2009, for each trash collection or "pickup" is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.[29]

Section VII.B., which pertains to ongoing costs claimed using an RRM, requires as follows:

> Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.[30]

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

In its sole audit finding, the Controller found that of the $169,503 in total costs claimed, $84,754 was reimbursable and $84,749 was not reimbursable because the claimant did not provide contemporaneous source documentation to support its claim under the reasonable reimbursement methodology for the twice-per-week trash collections claimed for the audit period.[31] As stated in the audit report: "The city claimed two transit-stop trash collections per week, totaling 104 annual collections. We found that one transit-stop trash collection per week, totaling 52 annual collections, is allowable."[32]

The claimant provided the Controller with the following documentation to support its claimed trash collection costs:

- A bus stop list (date generated unknown) indicating that the transit-stop trash receptacles were maintained twice a week by city employees.
- A letter addressed to its consultant, dated December 17, 2014, stating that the transit-stop trash receptacles are maintained twice per week.[33]

The Controller found that the documentation provided did not meet the criteria outlined in the Parameters and Guidelines. According to the Final Audit Report:

> We requested that the city provide us with source documents maintained during the audit period, such as policy and procedural manuals regarding transit-stop trash collection activities, duty statements of the employees performing weekly trash collections activities, and/or trash collection route maps. The city stated that it does not keep these types of records. As the documentation provided was not contemporaneous and was not created during the audit period, we found that the

[29] Exhibit A, IRC, filed February 18, 2021, pages 279-280 (Parameters and Guidelines).

[30] Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

[31] Exhibit A, IRC, filed February 18, 2021, pages 292, 294, 300 (Final Audit Report).

[32] Exhibit A, IRC, filed February 18, 2021, page 300 (Final Audit Report).

[33] Exhibit A, IRC, filed February 18, 2021, page 300 (Final Audit Report).

city did not provide sufficient source documentation to support two weekly trash collection activities, totaling 104 annual collections.[34]

To support its position regarding the contemporaneous source document requirement, the Controller cited to the following portions of the Parameters and Guidelines:

Section VII. (Records Retention) of the parameters and guidelines states, in part:

> Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B. of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.[35]

The Controller said it "physically observed the ongoing maintenance of the transit-stop trash receptacles located throughout the city. Absent source documentation to support two weekly collections," the Controller "determined that one weekly collection, totaling 52 annual collections, is allowable."[36]

III. Positions of the Parties

A. City of Hawaiian Gardens

The claimant maintains that the documentation provided to the auditors was contemporaneous and in compliance with the Claiming Instructions, which it argues require only two pieces of information: the number of eligible receptacles serviced and the maintenance frequency (trash pickups) at these receptacles.[37] According to the IRC:

> The City was first made aware of this claiming opportunity on May 31, 2011 when the Claiming Instructions were released. To prepare claims for State Reimbursement, then Public Works Superintendent, Joe Vasquez, completed the attached Time Log form in September, 2011 attesting and certifying under the penalty of perjury that eligible transit stops were maintained on a twice weekly schedule during FY 2002-03 through FY 2010-11; a time period during which Mr. Vasquez was employed and would have had first-hand knowledge of as the direct supervisor of this program (See Exhibit C).
>
> The document was "contemporaneous" because in September 2011 the mandate was still active and the eligible activities were being actively performed. In addition, this would have been the earliest any document could have been generated to support mandated costs as it was prepared almost immediately after claiming instructions were released.

[34] Exhibit A, IRC, filed February 18, 2021, pages 300-301 (Final Audit Report).

[35] Exhibit A, IRC, filed February 18, 2021, page 301 (Final Audit Report).

[36] Exhibit A, IRC, filed February 18, 2021, page 301 (Final Audit Report).

[37] Exhibit A, IRC, filed February 18, 2021, page 4.

> On November 8, 2012 the City's Finance Director sent Cost Recovery Systems the attached letter (See Exhibit D) for purposes of submitting the FY 11-12 reimbursement claims. This also was a contemporaneous record of activities being actively performed by the city having been generated "at or near the time" that the activities were begin [sic] performed. . . .
>
> [¶] . . . [¶]
>
> The city disputes the SCO's [Controller's] positions that 1) "… the documentation provided was not contemporaneous and was not created during the audit period, 2) the documentation the city provided was not adequate to prove maintenance frequency, and 3) that requesting these very specific and non-standard forms of documentation after the fact and without proper notice would be unfair, arbitrary, and capricious and would violate "Due Process".[38]

The claimant points out that the Parameters and Guidelines and Claiming Instructions were released on May 2011, and authorized two claiming methods, one for one-time costs and one for on-going maintenance costs. Ongoing activities are reimbursed under a Reasonable Reimbursement Methodology, which the Parameters and Guidelines say is "in lieu of filing detailed documentation of actual costs." The claimant argues that the Claiming Instructions contain "no requirement to or mention of "policy and procedure manuals regarding trash activities, duty statements of the employees performing weekly trash collection activities, and/or trash collection route maps."[39]

The claimant also argues that "the form signed by Public Works Supervisor Vasquez only 4 months after the release of the claiming instructions and the letter from the finance director the following year to support FY 2011-12 costs were actual, contemporaneous forms of documentation."[40] According to the claimant:

> The mandate was still active at the time the 2011 log and the 2012 letter were prepared and the staff that provided the information would have had first-hand knowledge of the activities. The State Controller could not say that the 2011 and 2012 documents provided by the city were not "created at or near the same time actual costs were incurred" as claims for FY 2010-11 and FY 2011-12 would have been actual and contemporaneous.[41]

The claimant "believes that documentation provided satisfied the requirements of the Claiming Instructions, Parameters and Guidelines, and the Federal GAO Audit Guidelines."[42] The claimant also argues that the types of records and documentation the Controller requested to

[38] Exhibit A, IRC, filed February 18, 2021, pages 3-4.

[39] Exhibit A, IRC, filed February 18, 2021, pages 4-5.

[40] Exhibit A, IRC, filed February 18, 2021, pages 5-6.

[41] Exhibit A, IRC, filed February 18, 2021, page 6.

[42] Exhibit A, IRC, filed February 18, 2021, page 7.

support maintenance frequency are not the types of records commonly maintained by local agencies.[43]

The claimant further contends that the Controller's request for new material violates due process, which requires that claimants have reasonable notice of any law that affects their substantive rights and liabilities. The claimant cites *Clovis Unified School Dist. v. Chiang* regarding the court's refusal to apply the contemporaneous source document rule because it was an underground regulation as applied to the time before the rule was incorporated into the parameters and guidelines.[44]

The claimant further notes that the claiming instructions specify that the frequency of trash pickups is limited to no more than three times per week, so the claimant's twice weekly pickups are "well within "reasonable' standards established under the instructions and supported by actual records and documentation."[45]

In its comments on the Draft Proposed Decision, the claimant concurs with the staff recommendation and states, "We look forward to working with the State Controller's Office to reach an equitable resolution for these costs."[46]

B. State Controller's Office

The Controller did not file comments on the IRC. However, the Controller filed comments concurring with the Draft Proposed Decision.[47]

IV. Discussion

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

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

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

[43] Exhibit A, IRC, filed February 18, 2021, page 7.

[44] Exhibit A, IRC, filed February 18, 2021, page 8. *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794.

[45] Exhibit A, IRC, filed February 18, 2021, page 9.

[46] Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed August 2, 2022.

[47] Exhibit C, Controller's Comments on the Draft Proposed Decision, filed August 2, 2022.

the California Constitution.[48] 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."[49]

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

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[51]

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.[52] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[53]

A. <u>The Claimant Timely Filed the IRC.</u>

Section 1185.1(c) of the Commission's regulations requires an IRC to be filed with the Commission no later than three years after the date the claimant first receives from the Controller

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

[49] *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.

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

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

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

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

a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c).[54] Under Government Code section 17558.5(c), the Controller must notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review.[55] The notice must specify which claim components were adjusted and in what amount, as well as interest charges on claims adjusted, and the reason for the adjustment.[56]

Here, the Controller issued its Final Audit Report on August 9, 2018. [57] The Final Audit Report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments.[58] Thus, the Final Audit Report complies with the notice requirements of section 17558.5(c). The claimant filed the IRC on February 18, 2021, within three years of the date of the Final Audit Report.[59] Therefore, the Commission finds that the IRC was timely filed.

B. The Controller's Reduction of Costs Claimed, Based on Its Finding That the Claimant Failed to Provide Contemporaneous Source Documentation to Support Its Claim Under the Reasonable Reimbursement Methodology for the Number of Trash Collections Performed During the Audit Period, Is Incorrect as a Matter of Law.

At issue is the Controller's reduction of costs claimed, based on its finding that the claimant overstated the annual number of trash collections performed during the audit period. "The city claimed two transit-stop trash collections per week, totaling 104 annual collections. We found that one transit-stop trash collection per week, totaling 52 annual collections, is allowable."[60]

In finding that the claimant provided insufficient documentation in support of its claim of twice-weekly trash collection for the duration of the audit period, the Controller explained that the claimant failed to provide contemporaneous source documentation.

> We requested that the city provide us with source documents maintained during the audit period, such as policy and procedural manuals regarding transit-stop trash collection activities, duty statements of the employees performing weekly trash collections activities, and/or trash collection route maps. The city stated that it does not keep these types of records.
>
> As the documentation provided was not contemporaneous and was not created during the audit period, we found that the city did not provide sufficient source

[54] California Code of Regulations, title 2, section 1185.1.

[55] Government Code section 17558.5(c).

[56] Government Code section 17558.5(c).

[57] Exhibit A, IRC, filed February 18, 2021, page 292 (Final Audit Report).

[58] Exhibit A, IRC, filed February 18, 2021, pages 292-301 (Final Audit Report).

[59] Exhibit A, IRC, filed February 18, 2021, page 1.

[60] Exhibit A, IRC, filed February 18, 2021, page 300 (Final Audit Report).

documentation to support two weekly trash collection activities, totaling 104 annual collections.[61]

The Controller allowed once weekly collections (52 annually) because the Controller "physically observed the ongoing maintenance of the transit-stop trash receptacles located throughout the city" during audit fieldwork.[62]

The claimant challenges the Controller's request for highly specific and detailed contemporaneous source documentation as beyond the scope of the Parameters and Guidelines and asserts that the documentation provided was sufficient.[63]

1. The Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim based on the reasonable reimbursement methodology for ongoing maintenance activities, including trash collection.

The Controller asserts in the Final Audit Report that the claimant's documentation to support twice-weekly trash collection activities was insufficient because it did not include "source documents maintained during the audit period" and "was not contemporaneous and was not created during the audit period."[64] The Parameters and Guidelines impose no such requirement. The contemporaneous source document requirement does not apply to the ongoing costs reimbursed under the RRM.

The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program allow for two categories of reimbursable activities.[65] In Section IV.A., installation activities are categorized as "one-time" activities and are reimbursed using the actual cost method.[66] In Section IV.B. are maintenance activities that are categorized as "ongoing" activities, and are reimbursed using an RRM.[67] Section IV. states:

> To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed for the one-time activities in section IV. A below. The ongoing activities in section IV.B below are reimbursed under a reasonable reimbursement methodology.[68]

Section IV.B. lists trash collection as an ongoing maintenance activity and states that the activity "is limited to no more than three times per week."[69]

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[61] Exhibit A, IRC, filed February 18, 2021, pages 300-301 (Final Audit Report).

[62] Exhibit A, IRC, filed February 18, 2021, page 301 (Final Audit Report).

[63] Exhibit A, IRC, filed February 18, 2021, pages 4-8.

[64] Exhibit A, IRC, filed February 18, 2021, pages 300-301 (Final Audit Report).

[65] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[66] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[67] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[68] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[69] Exhibit A, IRC, filed February 18, 2021, page 277 (Parameters and Guidelines).

Section VI., which addresses claim preparation for the reimbursable ongoing activities identified in section IV.B., reiterates the limited and exclusive use of an RRM for ongoing activities "in lieu of filing detailed documentation of actual costs."[70]

> The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ l7557, subd. (b) & 17518.) *The RRM is in lieu of filing detailed documentation of actual costs*.[71]

The records retention requirements in section VII. of the Parameters and Guidelines separately address which records must be retained for a claim for actual costs versus using the RRM.[72] Section VII.B., which pertains solely to the ongoing costs using the RRM, states that local agencies are required to retain "documentation which supports the reimbursement of maintenance costs" including documentation showing the number of trash collections:

> Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.[73]

Section VII.B. does not require that the documentation supporting the number of trash collections under the RRM be contemporaneous. Nor does section VII.B. refer back to the contemporaneous source document requirement in section IV. of the Parameters and Guidelines for "actual costs" claimed. The Parameters and Guidelines instead state that reimbursement for trash collection using the "RRM is in lieu of filing detailed documentation of actual costs."[74] This language is consistent with Government Code sections 17518.5 and 17557(f), which provide that the RRM "shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs," and that the reimbursement methodology balance "accuracy with simplicity."

In contrast, section VII. A., which describes the record retention requirements for the reimbursement of one-time activities using the actual cost method, expressly refers to the documentation requirements in section IV. of the Parameters and Guidelines, which in turn requires that the supporting documentation be contemporaneous. Section VII.A. states in

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[70] Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

[71] Exhibit A, IRC, filed February 18, 2021, pages 279-280 (Parameters and Guidelines). Emphasis added.

[72] Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

[73] Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

[74] Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

relevant part: "All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit."[75]

And section IV. summarizes the contemporaneous source documents required for "actual costs;" namely, documents created at or near the same time the actual costs were incurred, as follows:

> Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual costs were incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.
>
> Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[76]

Therefore, based on the plain language of the Parameters and Guidelines, the contemporaneous source document requirement applicable to claims using the actual cost method does not apply to ongoing costs claimed under the RRM.

This conclusion is further supported by the analysis adopted by the Commission on the Parameters and Guidelines on March 24, 2011, for the *Municipal Stormwater and Urban Runoff Discharges* program.[77] As part of the Parameters and Guidelines drafting process, the claimants initially requested an RRM for the ongoing trash receptacle maintenance activities listed in

[75] Exhibit A, IRC, filed February 18, 2021, page 280 (Parameters and Guidelines).

[76] Exhibit A, IRC, filed February 18, 2021, page 276 (Parameters and Guidelines).

[77] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11, (Final Staff Analysis).

section IV.B. of the Parameters and Guidelines.[78] The Controller opposed the RRM and instead sought "actual costs incurred, supported by documentation of the costs."[79]

> Finance and the State Controller's Office oppose the adoption of an RRM and, instead, request that the parameters and guidelines require eligible claimants to claim actual costs incurred, supported by documentation of the costs.[80]

In discussing how to calculate trash collection frequency under the Parameters and Guidelines, the Commission's adopted analysis states:

> Claimants did not propose how frequently the trash receptacles would be emptied. Survey data submitted with the revised parameters and guidelines indicates that frequency of collection varies from weekly for some local agencies (e.g., Bellflower, Covina, Signal Hill), to 2.57 times per week for Carson. (The pickup frequency data is unclear for Los Angeles County, as the survey appears to state 156 pickups per year, or three times per week, but an August 2010 declaration from William Yan states that pickup frequency is 48-52 times per year). Trash will accumulate at different rates at different transit stops. However, based on the survey data and accompanying declaration, staff finds that the most reasonable method of complying with the mandate is to reimburse collection frequency no more than three times per week."[81]

In comments on the Draft Staff Analysis, the claimants proposed adding language to section IV.B. that would allow reimbursement for repetitive trash collection activities under either the actual cost method or the RRM.

> In its February 25, 2011 comments on the draft staff analysis, city claimants propose adding the following: "Claimants may elect to use either actual costs, including costs based on time studies (as set forth below) or RRM [reasonable

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[78] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 21, (Final Staff Analysis).

[79] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 21, (Final Staff Analysis).

[80] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 21, 40-42, (Final Staff Analysis).

[81] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 37, (Final Staff Analysis).

> reimbursement methodology] rates for repetitive trash collection tasks." Claimants further include the option to use time studies for repetitive tasks.[82]

In rejecting the claimants' proposed language, the Commission determined that allowing the claimants to choose how to claim costs would frustrate the purpose of using an RRM, which is to balance "accuracy with simplicity."[83]

> The RRM is intended to balance "accuracy with simplicity." (Gov. Code, § 17557, subd. (f).) Allowing claimants to elect to claim costs by using either an RRM, a time study, or actual costs does not conform to this standard. Instead, it would allow claimants to maximize their reimbursement depending on whether or not their costs are higher than the RRM. This is not the purpose of an RRM. For this reason, staff finds that the language allowing claimants to claim costs by electing either the RRM, time studies, or actual costs should not be included under section IV.B."[84]

The Commission instead added the following record retention language "for any audits conducted by the State Controller's Office of the costs claimed using the RRM" to section VII.B of the Parameters and Guidelines.

> Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. Pursuant to Government Code section 17561, subdivision (d)(2), the Controller has the authority to audit the application of a reasonable reimbursement methodology.
>
> *Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.* If an audit has been initiated by the Controller during the

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[82] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 38, (Final Staff Analysis).

[83] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 38, (Final Staff Analysis).

[84] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, pages 38-39, (Final Staff Analysis).

period subject to audit, the record retention period is extended until the ultimate resolution of any audit findings.[85]

There is no discussion in the Draft Staff Analysis for the Parameters and Guidelines, the comments filed by the parties thereon, or the Final Staff Analysis adopted by the Commission regarding any objection to or request to change the record retention requirements for costs claimed using the RRM, as stated in section VII.B. of the Parameters and Guidelines.

Accordingly, the Commission finds that the Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim based on the RRM for ongoing maintenance activities, including trash collection. Therefore, the Controller's reduction of costs claimed, based on its finding that the claimant failed to provide contemporaneous source documentation to support the number of trash collections claimed during the audit period is incorrect as a matter of law.

2. Assuming the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying that requirement to the claiming period before the Parameters and Guidelines were adopted (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.

The claimant argues that requiring it to maintain the "specific and non-standard types of documentation" the Controller requested as part of the audit, when such documentation is included in neither the Parameters and Guidelines adopted in March 2011 nor the revised Claiming Instructions issued in July 2015, violates due process.[86] The claimant asserts that any provision in the Parameters and Guidelines that affects the claimant's substantive rights or liabilities and changes the legal consequences of past events is unlawfully retroactive and therefore violates the claimant's due process rights.[87]

Parameters and guidelines are regulatory in nature and are interpreted the same as regulations and statutes.[88] As such, they cannot be applied retroactively where due process considerations prevent it.[89] Due process requires reasonable notice of any substantive change affecting the substantive rights and liabilities of the parties.[90] A change is substantive if it imposes new, additional, or different liabilities on past conduct.[91] "The retroactive application of a statute is

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[85] Exhibit E, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 43. Emphasis added, (Final Staff Analysis).

[86] Exhibit A, IRC, filed February 18, 2021, page 8.

[87] Exhibit A, IRC, filed February 18, 2021, page 8 (citing *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912).

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

[89] *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

[90] *In. re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784

[91] *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

one that affects rights, obligations or conditions that existed before the time of the statute's enactment, giving them an effect different from that which they had under the previously existing law."[92] Therefore, if a provision in the parameters and guidelines affects the substantive rights or liabilities of the parties such that it changes the legal effects of past events, it may be considered unlawfully retroactive under principles of due process.[93]

In *Clovis Unified School Dist. v. Chiang*, the Controller used the contemporaneous source document rule (CSDR) to reduce reimbursement claims for state-mandated school district programs.[94] The Controller had revised its claiming instructions to include the CSDR, whereas the operative Parameters and Guidelines did not include such a requirement.[95] The CSDR stated:

> To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.
>
> Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, 'I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge.' Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.[96]

The court held that the CSDR was an invalid underground regulation under the Administrative Procedure Act for the audit period at issue and overturned the Controller's audits. Notably, and of relevance here, the court found substantial evidence showing that prior to the Controller's use of the CSDR in performing audits, the Controller had approved reimbursement based on (1) declarations and certifications from employees that set forth, after the fact, the time they spent on mandated tasks; or (2) an annual accounting of time based upon the number of mandated

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[92] *In re Cindy B.* (1987) 192 Cal.App.3d 771, 779.

[93] *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

[94] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 797.

[95] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 801–802.

[96] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

activities and the average duration of each activity.[97] The court recognized that "it is now physically impossible to comply with the CSDR's requirement of contemporaneousness . . . ."[98]

The Controller, however, requested that the court take judicial notice that the Commission adopted the CSDR by later amending the Parameters and Guidelines. The court denied the request and did not apply the CSDR, since the issue concerned the use of the rule in earlier years, when no notice was provided to the claimant. The court stated:

> We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR during the 1998 to 2003 fiscal years, when the CSDR was an underground regulation. This issue is not resolved by the Commission's subsequent incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P & G's.[99]

The court determined that the Parameters and Guidelines in effect at the time the mandated costs were incurred were the Parameters and Guidelines that governed the audit.[100]

Here, the claimant was not on notice of a contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011. Thus, requiring the claimant to provide contemporaneous source documentation for costs incurred during the fiscal years preceding adoption of the Parameters and Guidelines (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.

C. Because the Controller Did Not Apply the Correct (RRM) Standard to Determine Whether the Documentation Provided was Sufficient to Show Twice-Weekly Trash Collection, and the Claimant Provided Additional Documentation That the Controller May Not Have Reviewed, This Matter Is Remanded to the Controller for Further Review.

Government Code section 17561(d) authorizes the Controller to conduct an audit in order to verify the application of a reasonable reimbursement methodology and to reduce any claims that are excessive or unreasonable. Government Code section 12410 also provides:

> The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.

The courts have also held that the Controller's duty to audit includes the duty to ensure that expenditures are authorized by law.[101] Thus, even without the Parameters and Guidelines, the Controller is authorized by law to audit a claim for reimbursement and require the claimant to

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[97] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

[98] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

[99] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5. Emphasis in original.

[100] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812-813.

[101] *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.

provide documentation supporting the claim for twice-weekly trash collection per receptacle in order to verify the costs claimed under the RRM. As indicated above, prior to the Controller's use of the CSDR, the Controller approved reimbursement based on (1) declarations and certifications from employees that set forth, after the fact, the time they spent on mandated tasks; or (2) annual accountings of time.[102]

According to the Final Audit Report, the claimant provided the Controller with the following documentation to support costs incurred for two trash collections per receptacle per week (104 annually) for the period of July 1, 2002 through June 30, 2012:

- A bus stop list (date generated unknown) indicating that the transit-stop trash receptacles were maintained twice a week by city employees.
- A letter addressed to its consultant, dated December 17, 2014, stating that the transit-stop trash receptacles are maintained twice per week.[103]

Neither of the above documents are included in the record for this IRC.

The documentation the claimant provided in the IRC consists of:

- A Time Log for the municipal stormwater mandate. This is a spreadsheet that lists the number of trash pickups (two per week) per fiscal year from 2002-2003 to 2010-2011. The spreadsheet includes a column for "24 receptacles" as well as hourly rate information and the last column for "eligible reimbursement." Above the signature of Joe Vasquez, Public Works Superintendent, it says, "I hereby certify under the penalty of perjury the [sic] laws of the State of California that the foregoing is true and correct based upon my personal knowledge." The log is dated September 27, 2011.[104]
- A letter from the claimant (signed by David Sung, Finance Director) to its consultant dated November 8, 2012, stating in pertinent part: "The information for the stormwater data for FY 11-12 is as follows: 24 receptacles, cleaned out twice a week, At an hourly rate of $23.69, cleaning time 0.5 each, Time Frame for 52 weeks. There have been no changes from last year for the data needed to complete your report."[105]
- A 'reimbursement claims receipt' that lists the fiscal years and amounts claimed from 2002-2003 to 2010-2011, and states "The following claims were submitted to and received by the State Controller's Office by Cost Recovery Systems on behalf of the City of Hawaiian Gardens." It is signed by Finance Director David Sung and dated September 28, 2011.[106]

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[102] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

[103] Exhibit A, IRC, filed February 18, 2021, page 300 (Final Audit Report).

[104] Exhibit A, IRC, filed February 18, 2021, page 29 (Time Log). According to the narrative in the IRC (page 3), this log was "to prepare claims for reimbursement."

[105] Exhibit A, IRC, filed February 18, 2021, page 31 (Nov. 8, 2012 Letter from Claimant to Cost Recovery Systems).

[106] Exhibit A, IRC, filed February 18, 2021, page 307 (Claims Receipt).

The only indication in the record that the Controller received the documents above during the course of the audit is the IRC narrative that says the first two documents (the time log and letter) were provided to the auditors.[107] Although the Final Audit Report describes other documents that were provided to the auditors, the report does not indicate that the auditors received, reviewed, or considered them.

The Time Log filed with the IRC is signed by the Public Works Superintendent Joe Vasquez under penalty of perjury and states that it is based on his personal knowledge. The IRC narrative contends that Mr. Vasquez was employed during the audit years "and [he] would have had first-hand knowledge of [the number of trash collections per receptacle per week] as the direct supervisor of this program."[108] However, there is no statement in the declaration or evidence in the record showing that the claimant employed Mr. Vasquez as a public works superintendent during the audit period, so it is not clear on what his "personal knowledge" is based. Thus, more information is needed to determine if his declaration is reliable. The mandate began July 1, 2002, more than nine years before the Time Log was signed by Mr. Vasquez in September 2011.

Similarly, the November 8, 2012 letter from the claimant to Cost Recovery Systems gives information regarding the number of receptacles, frequency of trash collection, hourly rate, cleaning time and time frame (52 weeks), for the mandate. However, the letter does not indicate the source of the author's knowledge of the alleged facts in the letter. The same is true of the reimbursement claims receipt signed by the claimant's Finance Director on September 28, 2011. None of the documentation in the record describes what the declarant's knowledge is based on or how he knows that information (e.g., how long he has been employed by the city or in what capacity).

Accordingly, since the Controller did not correctly apply the documentation requirements to determine the number of trash collections, and the claimant has provided additional documentation that the Controller may not have reviewed, the Commission remands the reimbursement claims back to the Controller to further review and verify the costs claimed under the RRM based on the number of weekly trash collections during the audit period and reinstate those costs that are eligible for reimbursement in accordance with this Decision.

V. Conclusion

For the foregoing reasons, the Commission approves this IRC and concludes that the IRC was timely filed, and that the Controller incorrectly reduced the costs claimed under the RRM pertaining to the number of weekly trash collections during fiscal years 2002-2003 through 2011-2012.

The Commission also remands the reimbursement claims back to the Controller to further review and verify the costs claimed under the RRM based on the number of weekly trash collections during the audit period and reinstate those costs that are eligible for reimbursement in accordance with this Decision.

[107] Exhibit A, IRC, filed February 18, 2021, page 4.

[108] Exhibit A, IRC, filed February 18, 2021, page 3.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Penal Code Sections 11165.9, 11166, 11166.2, 11166.9,[1] 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916 California Code of Regulations, Title 11, Section 903 (Register 98, No. 29)[2] "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91) Fiscal Years 1999-2000 through 2011-2012 Filed on May 13, 2021 City of South Lake Tahoe, Claimant	Case No.: 20-0022-I-02 *Interagency Child Abuse and Neglect Investigation Reports* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted December 2, 2022*) (*Served December 5, 2022*)

INCORRECT REDUCTION CLAIM

[1] Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

[2] The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

The Commission on State Mandates adopted the attached Decision on December 2, 2022.

Heather Halsey, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM Penal Code Sections 11165.9, 11166, 11166.2, 11166.9,[1] 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531 and 1459; Statutes 1988, Chapters 269, 1497 and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363 and 1603; Statutes 1992, Chapters 163, 459 and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843 and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916 California Code of Regulations, Title 11, Section 903 (Register 98, No. 29)[2] "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91) Fiscal Years 1999-2000 through 2011-2012 Filed on May 13, 2021 City of South Lake Tahoe, Claimant	Case No.: 20-0022-I-02 *Interagency Child Abuse and Neglect Investigation Reports* DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted December 2, 2022*) (*Served December 5, 2022*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on December 2, 2022. Annette Chinn, Jeffrey Roberson, and Olga Tikhomirova appeared on behalf of the claimant. Lisa Kearney appeared on behalf of the State Controller's Office.

[1] Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

[2] The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

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

The Commission adopted the Proposed Decision to deny the IRC by a vote of 7-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Renee Nash, School District Board Member	Yes
Sarah Olsen, Public Member	Yes
Shawn Silva, Representative of the State Controller	Yes
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	Yes

Summary of the Findings

This IRC addresses reductions made by the State Controller's Office (Controller) to costs claimed by the City of South Lake Tahoe (claimant) for fiscal years 1999-2000 through 2011-2012 (audit period) for the *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*) program. The *ICAN* program requires child protective agencies, including law enforcement agencies, to submit a report to the Department of Justice (DOJ, Form SS 8583), when the agency receives a report of suspected child abuse (SCARs, Form SS 8572) from a mandated reporter and the agency determines that the suspected child abuse is "not unfounded." The claimant disputes reductions totaling $638,346 for the audit period.

The Controller found that the claimant overstated the number of SCARs investigated for purposes of preparing and submitting Form SS 8583 to DOJ, on the basis that the claimant failed to exclude SCARs generated by mandated reporters employed by its own police department and included other agency-generated SCARs for which a full initial investigation was either not performed or documented (Finding 2). The Controller also found that the claimant overstated indirect costs based on its determination that the public safety dispatcher and evidence technician positions do not perform any indirect job duties and therefore the Controller excluded these positions from the indirect cost pool (Finding 3). The claimant disputes these findings.

As a preliminary matter, the Commission finds that the claimant timely filed the IRC.

The Commission finds that the Controller's reduction of investigation costs in Finding 2, based on the Controller's exclusion of the SCARs submitted by mandated reporters employed by the claimant's police department, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. Under the Parameters and Guidelines, claimants are eligible for reimbursement to complete an investigation for purposes of preparing and submitting the Form SS 8583 to the Department of Justice (DOJ).[3] Submitting the Form SS 8583 to DOJ is

[3] Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines).

required when a report of abuse is "not unfounded." However, in cases where the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, where the mandated reporter determines "in his or her professional capacity or within the scope of his or her employment" that the report of suspected child abuse or severe neglect is "not unfounded," the mandated reporter, in most cases, has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement (i.e., to prepare and submit the Form SS 8583 to DOJ), and no further investigation would be required, and there is no evidence in the record in this case to the contrary.[4] Thus, this reduction is correct as a matter of law.[5]

The Commission further finds that the Controller's reduction of investigation costs in Finding 2, based on the number of SCARs referred to the claimant's police department by other agencies for which the claimant alleges the police department completed a full initial investigation, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The Controller determined that the police department completed a full initial investigation for only 10 percent of the SCARs referred by other agencies.[6] For the remaining 90 percent, the Controller allowed additional time increments for partial initial investigation activities, consistent with the Parameters and Guidelines, despite the fact that the claimant did not provide supporting documentation.[7] The claimant asserts that four additional investigative activities, though not expressly stated in the Parameters and Guidelines, should have been eligible for reimbursement for those 90 percent of cases that the Controller deemed not fully investigated, because without performing these additional investigative activities, it would have been impossible to determine case disposition.[8] None of the additional activities proposed by the claimant were approved by the Commission as reasonably necessary activities and therefore the claimant's proposed activities are not eligible for reimbursement.

The Commission finds that the Controller's reduction of indirect costs in Finding 3, which excluded the public safety dispatcher and evidence technician classifications from the indirect cost pool, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require the claimant to choose between two methodologies when calculating an ICRP, one in which the cost objective is a department as a whole, and the other in which the cost objective is a group, such as a division or program, within the department. Under the applicable ICRP methodology of classifying the police department's expenditures as a whole into direct and indirect costs, the degree to which the job duties performed by the public safety dispatcher and evidence technician are direct or indirect is based on the relationship of those duties to the police department's direct and indirect functions as a whole. The Controller correctly interpreted the Parameters and Guidelines and analyzed the public safety dispatcher and evidence technician duty statements and did not identify any duties that were indirect in nature, or "in support of general business functions and which are not

[4] Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines).

[5] Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

[6] Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

[7] Exhibit A, IRC, filed May 13, 2021, page 485 (Final Audit Report).

[8] Exhibit A, IRC, filed May 13, 2021, pages 5-7, 10.

attributable to a special project or unit."[9] There is no evidence in the record that the Controller failed to explain its position or consider the claimant's documentation. Rather, the record shows that the Controller adequately considered all relevant factors and demonstrated a rational connection between those factors and the decisions made. Under these circumstances, the Commission's review of the Controller's audit decisions is limited, out of deference to the Controller's authority and presumed expertise. The Commission may not reweigh the evidence or substitute its judgement for that of the Controller.[10]

Therefore, the Commission denies this IRC.

COMMISSION FINDINGS

I. Chronology

12/06/2007	The Commission adopted the Test Claim Decision.
12/16/2013	The Commission adopted the Parameters and Guidelines.
03/07/2014	The Controller issued claiming instructions for costs incurred in fiscal years 1999-2000 through 2012-2013.
04/28/2014	The Controller issued revised claiming instructions for costs incurred in fiscal years 1999-2000 through 2012-2013.
07/06/2015	The claimant signed amended reimbursement claims for fiscal years 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, and 2011-2012.[11]
10/14/2016	The Controller commenced the audit.[12]
02/28/2018	The Controller issued the Draft Audit Report.[13]
03/07/2018	The claimant filed comments on the Draft Audit Report.[14]
05/21/2018	The Controller issued the Final Audit Report.[15]

[9] Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report), emphasis added.

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

[11] Exhibit A, IRC, filed May 13, 2021, pages 521, 531, 540, 548, 556, 565, 573, 580, 589, 598, 607, 616, 625 (dated reimbursement claims).

[12] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 5 (Declaration of Lisa Kurokawa).

[13] Exhibit A, IRC, filed May 13, 2021, page 470 (Final Audit Report).

[14] Exhibit A, IRC, filed May 13, 2021, page 470 (Final Audit Report).

[15] Exhibit A, IRC, filed May 13, 2021, page 463 (Final Audit Report).

05/13/2021	The claimant filed the IRC.[16]
02/16/2022	The Controller filed late comments on the IRC.[17]
09/12/2022	Commission staff issued the Draft Proposed Decision.[18]
09/14/2022	The Controller filed comments on the Draft Proposed Decision.[19]
10/04/2022	The claimant filed late comments on the Draft Proposed Decision.[20]

II. Background

A. *Interagency Child Abuse and Neglect Investigation Reports* Program

The *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*) program addresses amendments to California's mandatory child abuse reporting laws under The Child Abuse and Neglect Reporting Act (CANRA). CANRA provides rules and procedures for child protective agencies, including law enforcement, when these agencies receive reports of suspected child abuse or neglect from a mandated reporter.[21] Mandated reporters are individuals identified by their profession as having frequent contact with children and include law enforcement personnel, physicians, teachers, social workers, and members of a number of other professions, who are required to report to "an agency specified in [Penal Code] section 11165.9," whenever the mandated reporter knows or reasonably suspects that a child has been the victim of abuse or severe neglect.[22] Once a child abuse reporting form (known as the "Suspected Child Abuse Report" Form SS 8572) is received, the Act requires cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys' offices.[23] The Act requires any city or county police or sheriff's department, county probation department if designated by the county to receive mandated reports, or county welfare department to complete a "Child Abuse Investigation Report" (Form SS 8583) and submit it to DOJ, who maintains reports of child abuse statewide in the Child Abuse Central Index (CACI), when a report of suspected child abuse is "not unfounded."[24] The Act imposes additional cross-reporting and

[16] Exhibit A, IRC, filed May 13, 2021.

[17] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022.

[18] Exhibit C, Draft Proposed Decision, issued September 12, 2022.

[19] Exhibit D, Controller's Comments on the Draft Proposed Decision, filed September 14, 2022.

[20] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022.

[21] Penal Code section 11164 et seq. The terms "Suspected Child Abuse Report," "SCAR," and "Form SS 8572" are used interchangeably to refer to the mandatory child abuse reporting form adopted by the Department of Justice.

[22] Penal Code section 11166.

[23] Exhibit A, IRC, filed May 13, 2021, page 237-241 (Parameters and Guidelines).

[24] Exhibit A, IRC, filed May 13, 2021, pages 241-244 (Parameters and Guidelines). Beginning January 1, 2012, law enforcement agencies are no longer required to report to DOJ. See Penal Code section 11169(b).

recordkeeping duties in the event of a child's death from abuse or neglect.[25] The Act requires agencies and DOJ to keep records of investigations for a minimum of 10 years, and to notify suspected child abusers that they have been listed in the CACI.[26] The Act also provides due process protections for persons listed in the index.[27]

On December 6, 2007, the Commission adopted the Test Claim Decision, finding that cities and counties, through their police and sheriff's departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorney offices, and county licensing agencies, are mandated to perform the following categories of reimbursable activities:[28]

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters;
- Receive reports from mandated reporters of suspected child abuse; refer those reports to the correct agency when the recipient agency lacks jurisdiction; cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices; report to licensing agencies; and make additional reports in the case of a child's death from abuse or neglect;
- Investigate reports of suspected child abuse to determine whether to report to the Department of Justice (DOJ);
- Notify suspected abusers of listing in the Child Abuse Central Index;
- Retain records, as specified; and
- Provide due process procedures to those individuals reported to the Child Abuse Central Index.

On December 6, 2013, the Commission adopted the Parameters and Guidelines, with the period of reimbursement beginning fiscal year 1999-2000.[29]

At issue in this IRC is the scope of the investigative activities of suspected child abuse performed by the claimant's law enforcement agency necessary to determine whether to report to DOJ and to complete the report (SS Form 8583). As is discussed at length in the Parameters and Guidelines and Test Claim Decision, "reimbursement is not required for the full course of investigative activities performed by law enforcement agencies [when they receive a report of suspected child abuse], but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ."[30] Accordingly, the Parameters and

[25] Exhibit A, IRC, filed May 13, 2021, pages 240-241 (Decision and Parameters and Guidelines).

[26] Exhibit A, IRC, filed May 13, 2021, pages 244-246 (Decision and Parameters and Guidelines).

[27] Exhibit A, IRC, filed May 13, 2021, page 247 (Decision and Parameters and Guidelines).

[28] Exhibit A, IRC, filed May 13, 2021, pages 158-165 (Decision and Parameters and Guidelines).

[29] Exhibit A, IRC, filed May 13, 2021, page 234 (Decision and Parameters and Guidelines).

[30] Exhibit A, IRC, filed May 13, 2021, page 183 (Decision and Parameters and Guidelines).

Guidelines define and specify the scope of the investigation activities necessary to satisfy the DOJ reporting requirement to include:

- Review the initial Suspected Child Abuse Report prepared by the mandated reporter (SCAR or Form SS 8572);
- Conduct initial interviews with parents, victims, suspects, or witnesses, where applicable; and
- Make a report of the findings of those interviews, which may be reviewed by a supervisor.[31]

The Parameters and Guidelines further provide that reimbursement is *not* required in the following circumstances:

- Investigative activities conducted by a mandated reporter to complete the SCAR (Form SS 8572);
- In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement; and
- Investigative activities undertaken subsequent to the determination whether the report is substantiated, inconclusive, or unfounded for purposes of preparing the report for DOJ (Form SS 8583), including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.[32]

Section IV.B.5. of the Parameters and Guidelines authorizes reimbursement for the mandate to retain copies of the SCAR (Form SS 8572) and Form SS 8583, with the original investigative report, when a report is filed with DOJ:

> a. City and county police or sheriff's departments, and county probation departments if designated by the county to receive mandated reports shall:
>
> Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[33]
>
> This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

[31] Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines).

[32] Exhibit A, IRC, filed May 13, 2021, page 242 (Decision and Parameters and Guidelines).

[33] Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133(AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.[34]

Under the Parameters and Guidelines, "actual costs" may be claimed for reimbursement, supported by contemporaneous source documents. However, for task repetitive activities, time studies to support salary and benefit costs is allowed. Section IV. of the Parameters and Guidelines states the following:

> Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.
>
> Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.
>
> Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.
>
> The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.[35]

Section V.B. addresses indirect costs:

> B. Indirect Cost Rates
>
> Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2)

[34] Exhibit A, IRC, filed May 13, 2021, page 245 (Parameters and Guidelines).

[35] Exhibit A, IRC, filed May 13, 2021, page 236 (Parameters and Guidelines).

the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

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

> 1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected; or
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> 2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.[36]

All documents used to support reimbursable activities must be retained during the period subject to an audit by the Controller.[37]

[36] Exhibit A, IRC, filed May 13, 2021, pages 248-249 (Parameters and Guidelines).

[37] Exhibit A, IRC, filed May 13, 2021, page 249 (Parameters and Guidelines).

Beginning January 1, 2012, law enforcement agencies are no longer required to report to DOJ.[38]

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

The reimbursement claims for fiscal years 1999-2000 through 2011-2012 totaled $1,505,262. The Controller found that $239,395 is allowable and $1,265,867 is unallowable.[39] The following two findings are in dispute:

1. Finding 2: Unallowable salaries and benefits – Reporting to the State Department of Justice: Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component

The claimant computed claimed costs based on estimated average time increments. For each fiscal year of the audit period, the claimant estimated that it took, on average, four hours and 18 minutes (4.3 hours) to perform the initial investigation activities for each SCAR (Form SS 8572) received for purposes of preparing the SS 8583 Report Form for DOJ. The claimant multiplied the estimated average time increments for different employee classifications by the total number of SCARs to calculate the claimed hours. The claimant then used the productive hourly rates for each classification, and department-wide benefit rates to calculate the claimed salaries and benefits for this component.[40]

In Finding 2, the Controller found that of the claimed total of $883,519 in salaries and benefits for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component, $146,055 is allowable and $737,464 is unallowable.[41] The Controller determined that the claimant's misinterpretation of the Parameters and Guidelines resulted in the claimant overstating the number of SCARS investigated, estimating time increments, and misstating productive hourly rates.[42] The claimant's challenge to Finding 2 in this IRC is limited to the adjusted total number of SCARS investigated for purposes of preparing the SS 8583 for DOJ.

The claimant provided the Controller with revised SCAR statistics during the audit, which included a total of 3,802 SCARs investigated for the audit period.[43] The Controller determined that the claimant failed to exclude: (1) SCARs generated by the claimant's police department, and (2) other agency-generated SCARS that were cross-reported to, but not investigated by, the claimant's police department.[44] These two determinations comprise the first two issues raised by the claimant in the IRC.

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[38] Exhibit A, IRC, filed May 13, 2021, page 241 (Parameters and Guidelines [citing Penal Code section 11169(b)]).

[39] Exhibit A, IRC, filed May 13, 2021, page 463 (Final Audit Report).

[40] Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

[41] Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

[42] Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

[43] Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

[44] Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

The Controller reasoned that under the Parameters and Guidelines, the reimbursable activities for completing an initial investigation for purposes of preparing the Form SS 8583 include: reviewing the initial SCAR (Form SS 8572); conducting initial interviews with involved parties; and making a written report of those interviews which may be reviewed by a supervisor.[45] The Controller excluded all SCARs generated by the claimant's police department when calculating the total number of initial investigations, based on its finding that the case file documentation did not support that reimbursable investigative activities were performed by the claimant's police department.[46] The Controller calculated the weighted average number of SCARs generated by other agencies at 81.76 percent (3,107), meaning that 18.24 percent (693) were excluded on the basis that they were initiated by claimant's police department.[47]

Based on a review of a random sampling of case files, the Controller concluded that "contrary to what the city had claimed, the police department investigated very few of the other agency-generated SCARs that had been cross-reported to them, as no additional follow-up was deemed necessary."[48] Specifically, the Controller reviewed 148 case files for three years of the audit period (fiscal years 2008-2009 through 2010-2011) and determined that "a vast majority" of the other agency-generated SCARs were referred from Child Protective Services (CPS) and "very few came from other mandated reporters."[49]

> The files showed that CPS regularly and systematically cross-reported SCARs to the Police Department. The Police Department received these CPS referrals and made notes of the referrals in their files, but typically did not perform an investigation on these cases before closing the files. For the vast majority of SCARs referred from CPS, the Police Department identified CPS as the investigating agency and closed the cases if no further investigation was deemed necessary.
>
> For the few cases in which the Police Department did in fact perform an investigation, the SCAR files contained clear evidence and support that an investigation had been performed. For these SCARs, the files contained very detailed written narratives of the investigation(s) performed and of the interviews conducted. These narratives identified the officers involved, the type of investigative work performed, the type of crimes committed, any follow-up investigations needed, who had been interviewed, and dates and times of the interviews, etc.[50]

The Controller found that of the 81.76 percent of total SCARS generated by other agencies, a weighted average of 10 percent (311) had complete and documented initial investigations

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[45] Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

[46] Exhibit A, IRC, filed May 13, 2021, pages 482-483, 494-496 (Final Audit Report).

[47] Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

[48] Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

[49] Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

[50] Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

performed by the police department.[51] In describing the methodology employed, the Controller stated as follows:

> Reviewed and analyzed the city's listing of SCARs investigated for FY 1999-2000 through FY 2011-12. To confirm the validity of the number of SCARs investigated, we performed random non-statistical case sampling for the three most recent fiscal years of the audit period (FY 2008-09, FY 2009-10, and FY 2010-11). The three years sampled were representative of all fiscal years, as the investigation process had not changed throughout the audit period. We sampled and reviewed 148 cases (32 out of 163 in FY 2008-09, 66 out of 654 in FY 2009-10, and 50 out of 456 in FY 2010-11). Our review of these 148 cases yielded an identical common deviation with identical nature and cause of the error. Our sampling results indicated that only 10% of the SCAR cases in the city's listing had actually been investigated. Consistent with the American Institute of Certified Public Accountants (AICPA) Audit Sampling Guide, we projected the error to the population of all SCAR cases claimed as investigated for the audit period (see Finding 2).[52]

Based on discussions with claimant's police department during the audit, the Controller revised these numbers to include additional cases where the claimant asserted that some preliminary investigative activities had occurred but a full initial investigation was not performed, and no investigative activities were documented in the SCAR case files.[53] The Controller explained that while the Parameters and Guidelines authorize reimbursement for the Complete an Investigation cost component for reviewing the initial SCAR, conducting initial interviews, and making a report of the findings of those interviews, "Reimbursement for these activities is allowable only to the extent that the city obtains information required to prepare and submit the SS 8583 report form to the DOJ."[54] Nonetheless, the Controller determined that "preliminary activities might have helped to corroborate the information reported by CPS, make a determination if the cases were unfounded, and then close the cases."[55]

Specifically, the Controller found that a review of the initial SCAR is a necessary and reimbursable activity for every other agency-generated SCAR referred to the police department, regardless of whether a full initial investigation is completed.[56] The Controller also found that closing and documenting the other agency-generated SCAR cases are also reasonable activities, but only for those cases that were not fully investigated.[57] Partial initial investigations were calculated by subtracting allowable SCARS that were fully investigated from the total number of

[51] Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

[52] Exhibit A, IRC, filed May 13, 2021, page 469 (Final Audit Report).

[53] Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

[54] Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

[55] Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

[56] Exhibit A, IRC, filed May 13, 2021, page 484 (Final Audit Report).

[57] Exhibit A, IRC, filed May 13, 2021, page 484 (Final Audit Report).

other agency-generated SCARs for each fiscal year in the audit period, despite a lack of supporting documentation.[58]

2. Finding 3: Unallowable indirect costs

In Finding 3, the Controller found that of the $589,348 in indirect costs claimed by the claimant for the audit period, $68,134 is allowable and $521,214 is unallowable.[59] The Controller summarized the claimed and allowable indirect costs as follows:

Fiscal Year	Claimed Indirect Costs	Allowable Indirect Costs	Audit Adjustment
1999-2000	$ 10,967	$ 1,317	$ (9,650)
2000-2001	15,401	1,991	(13,410)
2001-2002	18,241	2,900	(15,341)
2002-2003	29,653	3,969	(25,684)
2003-2004	32,331	3,368	(28,963)
2004-2005	36,433	4,678	(31,755)
2005-2006	41,922	5,204	(36,718)
2006-2007	48,886	5,250	(43,636)
2007-2008	48,966	5,599	(43,367)
2008-2009	68,206	3,563	(64,643)
2009-2010	110,850	16,186	(94,664)
2010-2011	91,644	9,025	(82,619)
2011-2012	35,848	5,084	(30,764)
Total	$ 589,348	$ 68,134	$ 521,214

The Controller determined that the indirect costs were unallowable because the claimant overstated its indirect cost rates for the audit period and then applied those overstated indirect cost rates to overstated salaries.[60]

The claimant determined its indirect costs by calculating an Indirect Cost Rate Proposal (ICRP) for each fiscal year of the audit period.[61] The claimant calculated the ICRP by combining expenditures from five accounts within its police department: administration, operations, certified training, joint dispatch center, and support and then allocated the total salaries, benefits, and services and supplies for these accounts between direct and indirect cost categories and added overhead costs to the indirect cost pool.[62] The claimant then divided total indirect costs by direct salaries and overtime to get indirect cost rates.[63]

[58] Exhibit A, IRC, filed May 13, 2021, page 484 (Final Audit Report).

[59] Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

[60] Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

[61] Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

[62] Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

[63] Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

The Controller found that the claimant incorrectly included overtime when calculating indirect costs, and should have used only direct salaries as the base.[64] The claimant does not dispute the reduction of indirect costs on this basis.

However, the claimant classified 21 positions as 100 percent indirect at some point during the audit period and allocated the related salary and benefit costs to the indirect cost pool.[65] The Controller determined that 13 of these 21 job classifications "are support roles or are mostly administrative in nature" and accepted the claimant's assessment.[66] But the Controller flagged the eight remaining positions as unlikely to be 100 percent indirect, due to the nature of the positions and the duties performed.[67]

The Controller then reviewed duty statements to determine the extent to which each classification's respective duties related to the police department's direct functions versus indirect administration or support roles.[68] The Controller reasoned that generally, "any classification involved in providing specific, identifiable, and direct services should be considered as direct labor costs," whereas "indirect labor costs are those which are not readily identifiable or assignable to one unit and typically would benefit more than one department."[69]

The Controller analyzed the representative duties for the eight positions in order to calculate the fractional percentages of indirect labor for each, and determined that the public safety dispatcher and evidence technician positions did not perform any indirect duties.[70] The Controller recalculated allowable indirect costs by applying the audited indirect cost rates to the allowable salaries.[71]

III. Positions of the Parties

A. City of South Lake Tahoe

The claimant's submitted claims for fiscal years 1999-2000 through 2011-2012 total $1,505,262.[72] The claimant seeks reinstatement of $638,346.[73] The claimant alleges that the Controller's reductions as a result of Findings 2 and 3 are incorrect. First, the claimant challenges the Controller's exclusion of SCARs generated by the police department from the total number of SCARs used to determine the claimant's time spent performing an initial

[64] Exhibit A, IRC, filed May 13, 2021, page 500 (Final Audit Report).

[65] Exhibit A, IRC, filed May 13, 2021, page 500 (Final Audit Report).

[66] Exhibit A, IRC, filed May 13, 2021, page 500 (Final Audit Report).

[67] Exhibit A, IRC, filed May 13, 2021, page 500 (Final Audit Report).

[68] Exhibit A, IRC, filed May 13, 2021, page 501 (Final Audit Report).

[69] Exhibit A, IRC, filed May 13, 2021, page 501 (Final Audit Report).

[70] Exhibit A, IRC, filed May 13, 2021, page 501 (Final Audit Report).

[71] Exhibit A, IRC, filed May 13, 2021, page 502 (Final Audit Report).

[72] Exhibit A, IRC, filed May 13, 2021, page 466 (Final Audit Report).

[73] Exhibit A, IRC, filed May 13, 2021, page 1.

investigation to prepare and submit the Form SS 8583 to DOJ.[74] Second, the claimant asserts that the Controller erred in finding that the police department did not fully investigate most of the SCARs reported to it by other agencies.[75] Lastly, the claimant argues that the Controller incorrectly reduced indirect costs by excluding the public safety dispatcher and evidence technician positions when calculating the Indirect Cost Rate Proposal (ICRP).[76]

The claimant submitted the following supporting documentation with the IRC:

- A declaration by South Lake Tahoe Police Department Lieutenant Shannon Laney, stating that he oversees child abuse and neglect investigations, is responsible for assisting with recovery of state-mandated costs, and was directly involved in the audit at issue. Mr. Laney also declares the authenticity of claimant's Exhibits A and B (2015 crime analysis report, time studies), E (child abuse reports), and G (job descriptions) to the IRC;[77]
- A declaration by claimant representative Annette Chinn, describing the exhibits submitted with the IRC;[78]
- Time studies, police department-generated time reports, time analysis, and correspondence related to the computation of time for the reimbursement claims, all of which were provided to the Controller during the audit (claimant's Exhibits A and B);[79]
- Spreadsheets provided by the Controller to the claimant showing how the Controller determined child abuse case eligibility and the percentage of allowable cases (claimant's Exhibit C);[80]
- A 2005 DOJ guide on reporting child abuse (claimant's Exhibit D);[81]
- Copies of child abuse reports and supporting documents provided by the claimant to the Controller during the audit (claimant's Exhibit E);[82]
- Job descriptions for the Public Safety Dispatcher and Property/Evidence Technician positions (claimant's Exhibit G);[83]

[74] Exhibit A, IRC, filed May 13, 2021, page 3.

[75] Exhibit A, IRC, filed May 13, 2021, page 5.

[76] Exhibit A, IRC, filed May 13, 2021, page 11.

[77] Exhibit A, IRC, filed May 13, 2021, page 17 (Declaration of Shannon Laney).

[78] Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn).

[79] Exhibit A, IRC, filed May 13, 2021, pages 20-38; 39-59.

[80] Exhibit A, IRC, filed May 13, 2021, pages 20-38; 60-70.

[81] Exhibit A, IRC, filed May 13, 2021, pages 71-95.

[82] Exhibit A, IRC, filed May 13, 2021, pages 96-154.

[83] Exhibit A, IRC, filed May 13, 2021, pages 251-256.

- A list of "common clerical duties" from the website indeed.com (claimant's Exhibit H);[84]
- Excerpts from the July 2015 edition of the State of California Local Agencies Mandated Cost Manual (claimant's Exhibit I);[85] and
- U.S. Office of Management and Budget Uniform Guidance (2 CFR Part 200) (claimant's Exhibit J).[86]

The claimant states that time claimed "was based on a sampling analysis of actual police department records (claimant's Exhibit A) as well as by using results from a time study conducted in 2015 (claimant's Exhibit B)," documentation which the claimant states it provided to the Controller at the beginning of the audit.[87]

The claimant filed late comments on the Draft Proposed Decision disagreeing with the findings on all issues, but focused its comments on Audit Finding 3, reduction to indirect costs, as explained further below.[88]

1. Reduction of initial investigation time (Audit Finding 2)

a. Exclusion of police department-generated Suspected Child Abuse Reports (Form SS 8572) from the number of reports investigated

The claimant asserts that the Controller incorrectly interpreted the Parameters and Guidelines in determining that all investigative time spent on suspected child abuse cases reported directly to the claimant's police department was not eligible for reimbursement.[89] The claimant asserts that for "a number of cases," in order to make the determination required to complete the Form SS 8583, the police department was required to perform a level of investigation beyond that necessary for the mandated reporter employed by the police department to complete the Form SS 8572.[90]

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[84] Exhibit A, IRC, filed May 13, 2021, pages 257-261.

[85] Exhibit A, IRC, filed May 13, 2021, pages 262-282.

[86] Exhibit A, IRC, filed May 13, 2021, pages 282-428.

[87] Exhibit A, IRC, filed May 13, 2021, page 3. While the IRC states that claimant calculated time claimed based in part upon a 2015 time study, supporting documentation submitted by the claimant contradicts this statement in at least two other places: "2015 time studies not used in claim[,] done for verification in case of audit" (page 27 [claimant's Exhibit A]) and "Please clarify that the 2015 time study, while not used in developing the time in the claim, has all the info needed to show all the eligible time and activities pertinent to the claim in detail" (page 41 [claimant's Exhibit B]). The audit report does not mention a 2015 time study as the basis for the claimant's computation of time claimed to perform investigative activities.

[88] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 1.

[89] Exhibit A, IRC, filed May 13, 2021, page 3.

[90] Exhibit A, IRC, filed May 13, 2021, page 4.

The claimant challenges the Controller's determination that "[t]here is no correlation between the severity of a case and the scope of information needed" and asserts that while the Form SS 8572 only requires interviewing one reporting party, completing the Form SS 8583 requires interviewing victims, witnesses, and suspects to determine whether the case is substantiated, unfounded, or inconclusive.[91] The claimant cites to a 2015 DOJ guide as support (claimant's Exhibit D).[92] According to the claimant, police department personnel can complete the Form SS 8572 in 15 minutes by interviewing one reporting party.[93] The claimant contends that during the audit, it provided the Controller with police department-generated suspected child abuse case files wherein "it was shown that multiple officers had to interview multiple parties (victims, witnesses, suspects) to determine if the case was unfounded, substantiated, or inconclusive."[94] The claimant points to Exhibit A of the IRC, which consists of time studies, police department-generated time reports, time analysis, and related correspondence as showing the number of eligible interviews conducted per case, all of which were provided to the Controller during the audit, and argues that the 2015 time study should be used to calculate the time performing reimbursable interviews (36 minutes per interview), which are those interviews above and beyond interviewing one party and completing the Form SS 8572 (15 minutes).[95]

The claimant also contests the Controller's determination that of the 10 police department-generated cases cited by the claimant as requiring additional investigative activities beyond those needed to complete the Form SS 8572, only one case file contained a completed Form SS 8572 and none had a completed Form SS 8583.[96] The claimant argues that the Form SS 8583 is only prepared when a case is determined to be "not unfounded" *and the suspect is contacted*, again pointing to a 2015 DOJ guide as support (claimant's Exhibit D).[97] The claimant further asserts that the police department's child abuse case files do not always retain copies of the Form SS 8572 and Form SS 8583; and because approximately 10 years passed from the date the cases occurred and the audit was conducted, with no prior notice that reimbursement would be conditioned upon retention of the forms, it would violate due process to retroactively require so at this late date.[98]

The claimant therefore requests that the total number of allowable cases be revised to include police department-generated cases in which the case file documentation shows that more than one party (victims, witnesses, suspects) was interviewed.[99]

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[91] Exhibit A, IRC, filed May 13, 2021, page 4.

[92] Exhibit A, IRC, filed May 13, 2021, page 4.

[93] Exhibit A, IRC, filed May 13, 2021, page 4.

[94] Exhibit A, IRC, filed May 13, 2021, page 4.

[95] Exhibit A, IRC, filed May 13, 2021, page 4.

[96] Exhibit A, IRC, filed May 13, 2021, page 4.

[97] Exhibit A, IRC, filed May 13, 2021, page 4.

[98] Exhibit A, IRC, filed May 13, 2021, page 5.

[99] Exhibit A, IRC, filed May 13, 2021, page 5.

b. Reduction of other agency-generated SCARs

The claimant disputes the Controller's finding that the police department "investigated very few of the other agency-generated SCARs that had been cross-reported to them, as no additional follow-up was deemed necessary."[100] Specifically, the claimant challenges the Controller's determination that claimant's police department either did not investigate or only partially investigated 90 percent of the total SCARs claimed.[101] The claimant asserts that additional preliminary investigative activities, though not expressly stated in the Parameters and Guidelines, should have been eligible for reimbursement for those 90 percent of cases that the Controller deemed not fully investigated.[102]

The claimant cites to a time study it performed in 2015 to show the steps taken when a SCAR report is forwarded to the police department for investigation, with corresponding times and whether the Controller allowed the claimed activities:

1) Detective reads and reviews SCAR and attached documentation (allowed by Controller at 18 minutes per case).
2) Detective verifies if a report was previously prepared (not allowed by Controller, proposed at six minutes per case).
3) Records technician verifies if a report was previously prepared (not allowed by Controller, proposed at six minutes per case).
4) Detective checks prior case history to determine if the case is within agency's jurisdiction and not duplicate (not allowed by Controller, proposed at 36 minutes per case).
5) Detective or Sergeant contacts the reporting agency or at least one adult with information regarding the allegations to obtain more details in order to determine if in-person interviews are necessary and how to proceed on the case (not allowed by Controller, proposed at 26-36 minutes per case).
6) Sergeant approves and closes case (allowed by Controller at 10 minutes per case).
7) Records technician documents and closes case (allowed by Controller at six minutes per case).[103]

The claimant concedes that the Controller allowed time spent performing preliminary investigative activities even where a full initial investigation was not done, but disputes the Controller's determination regarding which proposed investigative activities constitute preliminary investigative activities.[104] The Controller allowed time spent performing the following preliminary activities:

[100] Exhibit A, IRC, filed May 13, 2021, page 5.

[101] Exhibit A, IRC, filed May 13, 2021, page 5.

[102] Exhibit A, IRC, filed May 13, 2021, page 10.

[103] Exhibit A, IRC, filed May 13, 2021, pages 5-6.

[104] Exhibit A, IRC, filed May 13, 2021, page 6.

1) Read and review SCAR.

6) Approve closing the case.

7) Document and file the closed case.[105]

The Controller did not allow time for verifying if a report was previously prepared (Activities 2 and 3 above), checking prior case history (Activity 4), or contacting the reporting agency or a person with information about the allegations to determine if in-person interviews are necessary (Activity 5).[106]

The claimant challenges the Controllers assessment that the additional preliminary investigative activities proposed by the claimant are outside the scope of the Parameters and Guidelines.[107] The claimant asserts that contacting the reporting agency or a person with information about the case to determine whether to conduct in-person interviews falls under the eligible investigative activity of "conduct initial interview with involved parties," as listed in the Parameters and Guidelines.[108] Furthermore, the claimant argues, these additional activities are reasonably necessary to determine whether the allegations are unfounded (and thus, to close the case) or whether to proceed with the investigation by conducting in-person interviews.[109] The claimant alleges that without performing these additional activities, it would be unable to determine "whether or not the allegations were founded and a SS 8583 report was required to be sent to DOJ."[110]

The claimant cites to the Department of Social Services' (CDSS) position, as summarized in the Decision and Parameters and Guidelines, to support its argument that prior to actual interviews, it is necessary to first determine whether an in-person investigation is required.[111] The claimant alleges that its proposed additional preliminary activities (Activities 2 through 5 above) are nearly identical to the activities the Department of Social Services stated it performs before determining whether to find the SCAR unfounded and close the case or conduct an in-person investigation.[112] The claimant asserts that, similarly, the police department must perform these additional preliminary activities to determine whether a SCAR is founded, unfounded, or inconclusive.[113]

The claimant argues that the Controller has erred by strictly interpreting the Claiming Instructions, despite the fact that they function as general guidelines, not an exclusive and

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[105] Exhibit A, IRC, filed May 13, 2021, page 6.

[106] Exhibit A, IRC, filed May 13, 2021, page 6.

[107] Exhibit A, IRC, filed May 13, 2021, page 6.

[108] Exhibit A, IRC, filed May 13, 2021, page 6.

[109] Exhibit A, IRC, filed May 13, 2021, page 7.

[110] Exhibit A, IRC, filed May 13, 2021, pages 6-7.

[111] Exhibit A, IRC, filed May 13, 2021, page 7.

[112] Exhibit A, IRC, filed May 13, 2021, page 8.

[113] Exhibit A, IRC, filed May 13, 2021, page 8.

exhaustive list of every eligible task that might occur during the preliminary investigative process.[114] To assume otherwise, the claimant contends, would violate the intent of state mandate statutes, which ensure reimbursement of actual costs incurred to comply with the program.[115] Specifically, the claimant alleges that the Controller erred by interpreting the Claiming Instructions as limiting eligible investigative activities to "conducting initial interviews with parents, victims, witnesses, or suspects" and concluding that if the case file did not contain a detailed narrative report of those interviews, then an investigation did not occur.[116]

The claimant contends that the Controller's requirement that the case file contain a written narrative report showing all interviews and investigative activities is not supported by the Parameters and Guidelines.[117] According to the claimant, police department procedures do not require detailed narrative reports for cases that are deemed unfounded or inconclusive.[118] Instead, the reports contain brief descriptions and identification of the officer who reviewed the report, demonstrating that investigative activities took place in order to make a determination of unfounded or inconclusive and close the case.[119] While the reports are in short form, the claimant argues that this alone is insufficient to disallow the claimant's valid and eligible investigation costs, particularly when viewed in tandem with the SCAR, time studies, and command staff assertions that the short report format is standard practice for unfounded or inconclusive cases.[120] The claimant offers as evidence the 2015 time study submitted to the Controller during the audit, which it claims documents the time and process for reviewing other-agency generated SCARs and shows that interviews and preliminary investigative activities occurred, even when no detailed narrative was prepared.[121] The claimant also points to redacted copies of child abuse reports and supporting documents submitted to the Controller during the audit (claimant's Exhibit E), namely the South Lake Tahoe Police Department 11166 PC Referral Form, as showing through brief descriptions in the "comments" section, in combination with the identification of the assigned officer as the reviewing party, that investigative activities occurred: "A case could not be signed of [sic] as 'not substantiated' without some review and action" by the police department.[122]

The claimant further argues that the Controller's request for detailed investigation reports violates due process.[123] The claimant cites to *Clovis Unified School Dist. v. Chiang* (2010) 188

[114] Exhibit A, IRC, filed May 13, 2021, page 8.

[115] Exhibit A, IRC, filed May 13, 2021, page 8.

[116] Exhibit A, IRC, filed May 13, 2021, page 9.

[117] Exhibit A, IRC, filed May 13, 2021, page 9.

[118] Exhibit A, IRC, filed May 13, 2021, page 9.

[119] Exhibit A, IRC, filed May 13, 2021, page 9.

[120] Exhibit A, IRC, filed May 13, 2021, page 9.

[121] Exhibit A, IRC, filed May 13, 2021, pages 9, 20-38, 39-59.

[122] Exhibit A, IRC, filed May 13, 2021, pages 7, 9, 97-154.

[123] Exhibit A, IRC, filed May 13, 2021, page 9.

Cal.App.4th 794 in support, where the court declined to apply the Controller's Contemporaneous Source Documentation Rule (CSDR) to the portion of an audit period that preceded inclusion of the CSDR in the parameters and guidelines, finding that the claimant in that case did not have sufficient notice of the rule.[124]

Because the detailed investigation report requirement was not enumerated in the Parameters and Guidelines, the claimant was given no advance notice that reimbursement would be contingent upon maintaining such documentation.[125] Furthermore, the reimbursement period began in 1999 but the Claiming Instructions were not released until 2014.[126] The claimant argues that it therefore would have been impossible to track the eligible investigative activities in the manner now required by the Controller.[127]

2. Reduction of indirect costs (Audit Finding 3)

The claimant challenges the Controller's determination that the public safety dispatcher and evidence technician classifications do not perform any indirect duties and therefore do not account for any indirect costs incurred by the claimant.[128]

The claimant argues that the Controller erred in finding that the duties performed by the public safety dispatcher and evidence technician are not administrative or clerical in nature.[129] Asserting that the dispatcher's primary duty is to serve as a receptionist to the police department, which "clearly is a clerical function," the claimant cites to a "List of Common Clerical Duties" from the hiring website Indeed.com (claimant's Exhibit H) and the public safety dispatcher job description (claimant's Exhibit G) to show that "eight of the twelve 'clerical' tasks listed are performed by Police Department Dispatchers."[130] The claimant argues that the evidence technician similarly performs "standard" clerical duties, including: compiling, tracking transactions, and filing important company records.[131] The claimant further argues that excluding these classifications from indirect costs contradicts the Controller's claiming instructions manual (claimant's Exhibit I), which specifically identifies "communications" costs as an allowable expense in an example of how to calculate an Indirect Cost Rate Proposal (ICRP) rate.[132]

[124] Exhibit A, IRC, filed May 13, 2021, page 10.

[125] Exhibit A, IRC, filed May 13, 2021, page 9.

[126] Exhibit A, IRC, filed May 13, 2021, page 9.

[127] Exhibit A, IRC, filed May 13, 2021, page 9.

[128] Exhibit A, IRC, filed May 13, 2021, page 11.

[129] Exhibit A, IRC, filed May 13, 2021, page 11.

[130] Exhibit A, IRC, filed May 13, 2021, pages 11, 252-253, 257-261.

[131] Exhibit A, IRC, filed May 13, 2021, page 12.

[132] Exhibit A, IRC, filed May 13, 2021, pages 12, 275.

The claimant disagrees with the Controller's determination that indirect duties are limited to administrative and clerical duties.[133] The claimant points out that the police maintenance worker, a janitorial classification, and the police department's information technology classifications were claimed and allowed as indirect positions and included in the ICRP rate despite the fact that these classifications do not perform administrative or clerical functions.[134]

The claimant also argues that the Controller's definitions of direct and indirect costs do not adhere to either state or federal guidelines.[135] In the audit report, the Controller defines direct costs as "those which can be identified specifically with particular unit or function (cost objective) and accounted for separately."[136] In contrast, the claimant maintains, the Claiming Instructions define direct costs as "those costs incurred specifically for the reimbursable activities."[137] The claimant challenges the Controller's determination that indirect costs are not attributable to a specific unit, arguing that such an interpretation is unsupported by federal guidelines and directly contradicts the Claiming Instructions, which permit computation of the ICRP costs by division or section.[138] The claimant further asserts that what constitutes an eligible indirect cost "is based on the function or benefit that unit performs or provides to the eligible direct 'cost objective.'"[139]

The claimant challenges the Controller's reasoning that direct costs are those which can be specifically identified with a unit or function,[140] and alleges that neither the dispatcher nor evidence technician positions are direct costs of the *Interagency Child Abuse and Neglect Investigation Reports* program or "cost objective" because they do not directly perform any of the mandated program activities and their costs cannot be specifically identified as part of the mandated program.[141]

Furthermore, the claimant argues that according to the Controller's claiming instructions manual (claimant's Exhibit I), costs from outside departments that provide indirect services can

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[133] Exhibit A, IRC, filed May 13, 2021, page 12.

[134] Exhibit A, IRC, filed May 13, 2021, page 12.

[135] Exhibit A, IRC, filed May 13, 2021, pages 13-14, citing to pages 414-416 (U.S. Office of Management and Budget Uniform Guidance (2 CFR Part 200)), 450 (Claiming Instructions); Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 2.

[136] Exhibit A, IRC, filed May 13, 2021, page 13.

[137] Exhibit A, IRC, filed May 13, 2021, page 13.

[138] Exhibit A, IRC, filed May 13, 2021, pages 13-14, citing to pages 414-416 (U.S. Office of Management and Budget Uniform Guidance (2 CFR Part 200)), 450 (Claiming Instructions).

[139] Exhibit A, IRC, filed May 13, 2021, page 13.

[140] Exhibit A, IRC, filed May 13, 2021, page 15.

[141] Exhibit A, IRC, filed May 13, 2021, page 13.

constitute eligible indirect costs,[142] which it argues the Controller allowed here as part of the claimant's city-wide overhead costs when calculating the ICRP rates.[143]

The claimant's late comments on the Draft Proposed Decision, which are limited to the issue of reduction of indirect costs, reiterate the same arguments raised in the test claim: that the Controller failed to comply with state and federal guidelines when determining what constitutes indirect costs; and that the Controller made incorrect factual findings as to the nature of the job duties performed by the public safety dispatcher and evidence technician positions, namely whether those positions provide support services to the entire police department, "as well as to the staff performing the direct activities of the mandate," such that they constitute indirect costs for purposes of calculating the ICRP.[144]

The claimant agrees that the ICRP rates were calculated based on the police department as a whole, but argues that the public safety dispatcher and evidence technician positions are allowable indirect costs because "those positions provided benefit and support to the entire department. The rates were not calculated based on a specific program – in fact, those same rates were also use[d] to claim indirect costs for all other law enforcement State Mandate claims submitted to the State for reimbursement."[145] The claimant explains that:

> The dispatcher is the integral communication link between the public and the officers. The public is not calling to obtain service from a dispatcher - they are calling to contact and obtain service from other members of its staff, typically its sworn staff. Therefore, the dispatchers service as a calling center or central reception function for the entire body of officers and are necessary support of the general business function of the department.
>
> [¶]
>
> … According to the City's job descriptions which were provided to the auditors and are included in our IRC: "Dispatchers ... receive(s) and process(es) incoming 911 calls, nonemergency calls, and voice radios calls." Further they "log *all* calls for service, both for emergency and non-emergencies" (see Public Safety Dispatcher job description, item number 5 included in our IRC).
>
> Therefore, we believe it has been shown that the dispatcher does in fact provide necessary support/services to the entire police department as well as to the staff performing the direct activities of the mandate and the SCO was incorrect in the

[142] Exhibit A, IRC, filed May 13, 2021, pages 14, 272.

[143] Exhibit A, IRC, filed May 13, 2021, pages 14, 519-633.

[144] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 1-2.

[145] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 1.

complete removal of those position from the City's indirect costs in the overhead/lCRP rate computations.[146]

The claimant further argues that "Similarly, Evidence staff must collect, store, maintain and process evidence from child abuse cases, as well as from **all** other cases that the police department responds to. Both dispatch and evidence staff provide benefit and necessary support to the sworn staff working on the activities of the child abuse mandate program, as well on all types of cases."[147]

In support, the claimant has provided over 300 pages of additional documentation, including email correspondence between the parties pertaining to the ICRP and indirect cost issues addressed in the audit report; audit reports from other jurisdictions, where it contends that the Controller allowed ICRPs from "other similar audits"; claimant's police department organizational chart; job descriptions for the cities of Fresno and Rialto pertaining to certain dispatcher classifications; and claimant's other law enforcement-related state mandated reimbursement claims, which it asserts shows that all of its law enforcement claims use the same departmental ICRP rate of 93.4 percent.[148]

B. State Controller's Office

The Controller filed late comments on the IRC, which reiterates the Controller's position as stated in the final audit report and provides a more detailed explanation of Findings 2 and 3.[149]

1. Finding 2 – Unallowable salaries and benefits – Reporting to the State Department of Justice: Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component

The Controller maintains its determination, as stated in the audit report, that $737,464 in claimed costs for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component is unallowable because the claimant overstated the number of SCARs investigated, estimated time increments, and misstated the productive hourly rates for this cost component.[150]

a. Ineligibility of all law enforcement agency-generated cases

In stating its disagreement with the claimant's position that 10 police department-generated SCARs should have been included in the total number of allowable cases, the Controller provides detailed information pertaining to each case to show why those SCARs were not

[146] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 2-3.

[147] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 4, emphasis in original.

[148] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 2, 6, 9-57 (Exhibit A), 58-263 (Exhibit B), 264-274 (Exhibit C), 275-313 (Exhibit D).

[149] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 7-43.

[150] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 14.

allowed.[151] The Controller rejects the claimant's contention that documentation in these case files showing that multiple interviews were conducted indicates that the police officers involved were unable to obtain enough information to complete both the Form SS 8572 and Form SS 8583.[152] As the Commission's Test Claim Decision explains, a mandated reporter has a preexisting duty under Penal Code section 11166(a) to report suspected child abuse using the Form SS 8572.[153] This preexisting duty to investigate is frequently sufficient to also complete the Form SS 8583, as the "number of information items required to make the SS 8583 Report Form retainable is relatively low. Investigative work performed to identify suspects or gather proof for criminal charges is not necessary to complete the SS 8583 Report Form."[154]

The Controller reiterates that during the audit, the claimant failed to provide supporting documentation for all costs claimed, despite the requirement under the Parameters and Guidelines that all costs claimed be traceable to source documents that evidence the validity of such costs.[155] The claimant argues that requiring it to retain and provide contemporaneous source documentation would violate due process because more than 10 years has passed since the cases occurred and the audit was conducted and there was no prior notice that the claimant had to retain the Form SS 8572 and Form SS 8583 as a condition for reimbursement.[156] In challenging this assertion, the Controller points out that the SCAR case files reviewed during the course of the audit showed that, regardless of the fiscal year, the claimant consistently maintained the same documentation year after year and consistently failed to retain the Form SS 8572 and Form SS 8583 for the SCAR files.[157] Furthermore, the sample of SCAR cases selected by the Controller for testing purposes ended in fiscal year 2010-2011, which is only five years from the date the claimant filed its claims (July 15, 2015) and six years from the date the Controller initiated the audit (October 14, 2016).[158]

The claimant has failed to provide any additional documentation to show that allowable costs should be increased. Only one of the 10 SCAR case files included a completed Form SS 8572.[159] Furthermore, because that case file shows that the Form SS 8572 was completed the day *after* the occurrence date and the date of the initial interviews, the Controller was able to confirm that an investigation occurred *prior* to completion of the Form SS 8572, making those costs ineligible for reimbursement.[160] In other words, the documentation shows that the level of

[151] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 15-16.

[152] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 20-21.

[153] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 21.

[154] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 21.

[155] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 22.

[156] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 22.

[157] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 22.

[158] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 22.

[159] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 22.

[160] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 22.

investigation required to complete the Form SS 8572 was sufficient to complete the necessary information in the Form SS 8583.[161]

Because the remaining nine case files do not contain a Form SS 8572, the Controller is unable to confirm that the Forms SS 8572 were completed and cross-reported to CPS and the District Attorney's Office, or whether an investigation occurred prior to the completion of the Form SS 8572, and therefore cannot determine whether the claimant obtained sufficient information to make a determination and complete the essential information items on Form SS 8583, or whether an investigation was conducted prior to completing the Form SS 8572.[162] As such, the claimant's argument that the fact that multiple interviews were conducted shows that additional investigatory work was necessary and is therefore reimbursable is irrelevant; "Regardless of the number of interviews conducted, if they occurred prior to the completion of the SCAR Form SS 8572 they are ineligible for reimbursement."[163]

Despite the fact that the reimbursable activity for this cost component is to "complete an investigation for purposes of preparing a SS 8583 Report form," only one case file had a completed Form SS 8583.[164] Thus, because the documentation does not show that the claimant prepared the required Forms SS 8583 for these 10 SCAR cases, they were correctly excluded from the sampling analysis, and investigative costs determined to be ineligible for reimbursement for police department-generated SCARs should remain unchanged.[165]

b. No investigation for vast majority of cases reported to police department by other agencies

The Controller rejected the claimant's position that four additional preliminary investigative activities, which are not included in the Parameters and Guidelines, are eligible for reimbursement for those SCAR cases referred to claimant's police department by other agencies.[166] The Controller states that as the Commission repeatedly made clear throughout the Decision and Parameters and Guidelines, reimbursement is limited to the activities listed in the Parameters and Guidelines.[167]

In conducting the audit, the Controller selected a non-statistical sample of 148 SCAR case files to review, and found that the contents of the files typically included: (1) a referral form completed by the police department, with a summary of the case and comments stating whether the case was inconclusive, unfounded, or closed; (2) a pre-disposition sheet completed by CPS, with general information about the case, included to which agency the case was cross-reported; (3) a disposition sheet completed by CPS, with the case status after CPS review or investigation,

[161] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

[162] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

[163] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

[164] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

[165] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

[166] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 24.

[167] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 24.

to which agency the case was cross-reported, and the final case disposition (no immediate risk, situation stabilized, closed, opened service case, evaluated out); (4) a narrative report completed by the police department; (5) a person profile form completed by the police department, which lists the contact information of the suspected child abuser; (6) CPS investigative report completed by CPS when the SCAR case was investigated by CPS; (7) SCAR Form SS 8572 completed by CPS.[168] The Controller states that it thoroughly reviewed the contents of each file and recorded its findings in a detailed Excel spreadsheet. The claimant provided examples of these documents, as well as the Excel spreadsheet, in support of the IRC.[169]

The Controller found that the police department investigated very few of the other agency-generated cases, or if the police department did investigate, it failed to document such in the case files.[170] Based on the Controller's review, most of the referral forms for these SCAR cases showed that CPS was the investigating agency; the others stated that an investigation was unnecessary.[171] For those where CPS was the investigating agency, the documentation in the case files showed that CPS cross-reported to the police department, who then made a note of the referral in the file, but did not perform an investigation.[172] The Controller notes that in contrast, for the few cases where the Controller found that the police department performed an investigation, the case files contained detailed written narratives of the investigative activities, including the interviews conducted.[173]

The Controller rejects the claimant's assertion that the Controller denied all preliminary investigative time for the 90 percent (2,796) of other agency-generated cases that were found not fully investigated.[174] The Controller notes that in contrast, the cases in which it found that a full investigation was performed by the claimant's police department, the Controller accepted the claimant's time increments without adjustment and worked with the claimant during the audit to allow time increments for the three partial investigative activities, despite no documentation in the case files.[175] The Controller asserts, as it did in the audit report, that it worked with the claimant's detective to find that three preliminary investigative activities may have taken place to confirm the information reported by CPS in order to determine whether a case was unfounded, and allowed 28 minutes per case for those preliminary investigative activities based on the detective's proposal.[176] The other preliminary investigative activities proposed by the claimant were also discussed with claimant officials but were found to be outside the scope of the

[168] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31.

[169] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31.

[170] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31.

[171] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 31-32.

[172] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32.

[173] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32.

[174] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 33.

[175] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

[176] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 33.

Parameters and Guidelines and therefore not reimbursable.[177] Therefore, the claimant's 2015 time study is irrelevant; the purpose of a time study is to approximate the average time needed to perform a specific activity, not whether certain activities are reimbursable under the Parameters and Guidelines.[178]

In response to the claimant's contention that detailed narrative reports are not necessary for those other agency-generated cases determined to be unfounded or inconclusive, the Controller cites to Section IV.B.3.a.1 of the Parameters and Guidelines. Section IV.B.3.a.1 states that for the complete an investigation cost component, the reimbursable activities are limited to (1) reviewing the initial SCAR (Form SS 8572); (2) conducting initial interviews, where applicable; and (3) making a report of the findings of those interviews, which may be reviewed by a supervisor.[179] The Controller disputes that the documentation maintained in the SCAR case files at issue, or the claimant's 2015 time studies and assertions by command staff, are sufficient to show that the claimant conducted initial interviews or prepared written reports to document those interviews. The Controller asserts that "although it may not be the City's procedure to write a report to document an interview, doing so is a condition for reimbursement under the mandate," or, put differently, "conducting in-person interviews and writing a report of the findings are necessary to comply with the mandate."[180] Furthermore, the claimant has failed to provide any additional documentation to support its position that the number of other agency-generated SCARs was improperly reduced or that the time spent performing the investigative activities should be changed.[181]

2. Finding 3: Unallowable indirect costs

In response to the claimant's position that the Controller erred in disallowing the Public Safety Dispatcher and Evidence Technician classifications from the indirect cost rate proposal (ICRP) calculation and that those positions should be allowed at 100 percent indirect labor costs, the Controller notes that of the 21 job classifications the claimant included as 100 percent indirect in its ICRPs, Controller accepted 13 and questioned 8 as potentially not 100 percent indirect.[182] The Controller states that it then worked with the claimant "to determine a reasonable allocation of direct and indirect labor for these eight classifications" by analyzing duty statements, holding discussions with claimant officials, and considering their input to determine reasonable allocations, such that six of the eight classifications were ultimately found to be varying combinations of both direct and indirect duties.[183]

The distinction between the Dispatcher and Evidence Technician classifications and the six classifications determined to be a combination of direct and indirect duties is that the Controller

[177] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 33.

[178] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 33.

[179] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

[180] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

[181] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 36.

[182] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 40.

[183] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41.

found that the Dispatcher and Evidence Technician classification did not perform *any* indirect duties: the duty statements for these two positions do not identify general duties benefiting the entire police department, but rather identify duties that benefit a particular unit or function within the police department.[184] For example, the Public Safety Dispatcher position may serve as a receptionist to a specific unit within the police department but does not provide receptionist services to the *entire* police department.[185] The claimant appears to be confused on this point, as it interchangeably identifies the cost objective as the "child abuse program" and "child abuse investigations," arguing that the Dispatcher and Evidence Technician positions benefit more than one cost objective (child abuse investigation, missing persons, theft, DUI, etc.), despite the fact that both the claimant's claimed rates and the Controller's audited rates were based on the police department's expenditures as a whole, meaning that the cost objective is the *entire* police department, not the ICAN program.[186] Under this rubric, direct labor includes "the overall functions of the Police Department assignable to specific units and functions" and indirect cost rates are department-wide rates.[187] The Controller contends the claimant has not provided any additional documentation to show otherwise.[188]

The Controller asserts that the Commission should find that its reductions to the claimant's reimbursement claims are correct.

The Controller filed comments on the Draft Proposed Decision stating its agreement with Commission staff's conclusion that the Controller's reduction of costs as challenged by the claimant were correct as a matter of law and were not arbitrary, capricious, or entirely lacking in evidentiary support.[189]

IV. Discussion

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the

[184] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41.

[185] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41.

[186] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 41-42.

[187] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 42.

[188] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 42.

[189] Exhibit D, Controller's Comments on the Draft Proposed Decision, filed September 14, 2022, page 1.

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.[190] 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."[191]

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

> When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.] When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "[193]

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.[194] In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[195]

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

[191] *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.

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

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

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

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

A. The Claimant Timely Filed the IRC.

At the time the Controller issued the audit report, section 1185.1(c) of the Commission's regulations required an IRC to be filed no later than three years after the date the claimant receives a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c). Under Government Code section 17558.5(c), the Controller is required to notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a reimbursement claim resulting from an audit or review. The notice must specify which claim components were adjusted and in what amount, as well as interest charges, and the reason for the adjustment.[196]

Here, the Controller issued the final audit report on May 21, 2018.[197] The audit report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments, and therefore complies with the section 17558.5(c) notice requirements.[198] The claimant filed the IRC on May 13, 2021, within three years of the final audit report.[199] The Commission finds that the IRC was timely filed.

B. The Controller's Reduction in Finding 2 of Costs Claimed to Complete an Investigation for Purposes of Preparing Form SS 8583, Based on the Exclusion of 10 Suspected Child Abuse Reports (SCARs) Received by the Claimant's Police Department, Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The claimant alleges that the Controller erred by excluding the suspected child abuse reports (SCAR or Form SS 8572) prepared by mandated reporters in the claimant's police department from the total number of SCARs investigated during the audit period.[200] According to the audit report, the claimant initially claimed 3,952 total SCARs that were investigated for purposes of preparing the SS 8583 Form, but revised that number to 3,802 during the audit.[201] Based on a sampling of 148 SCAR cases,[202] the Controller found that the claimant misinterpreted the program's Parameters and Guidelines and as a result, overstated the number of SCARs investigated for purposes of preparing the SS 8583 Form.[203] The Controller concluded, in part,

[196] Government Code section 17558.5(c).

[197] Exhibit A, IRC, filed May 13, 2021, page 463 (Final Audit Report).

[198] Exhibit A, IRC, filed May 13, 2021, pages 463-508 (Final Audit Report).

[199] Exhibit A, IRC, filed May 13, 2021, page 1.

[200] Exhibit A, IRC, filed May 13, 2021, page 3.

[201] Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

[202] 32 of 163 for fiscal year 2008-2009, 66 of 654 for fiscal year 2009-2010, and 50 of 457 for fiscal year 2010-2011.

[203] Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

that "time spent performing an initial investigation of a SCAR is only reimbursable for those SCARs which were *not* initiated by the Police Department."[204]

In response, the claimant provided the Controller with a list of 10 police department-generated cases from the three sampled fiscal years and argued, as it does again here, that those cases should have been included as eligible cases in the sampling analysis.[205] The claimant argues that the files for those cases show that there were often multiple officers on the scene and multiple parties interviewed to determine whether the cases were unfounded, substantiated, or inconclusive. The claimant contends that this "level of effort" shows that the officers were not able to obtain enough information from completing the SCAR (Form SS 8572) to also complete the Form SS 8583.[206] Thus, the claimant requests that the total number of allowable cases be revised to include the 10 police department-generated cases in which the case file documentation shows that more than one eligible party (victims, witnesses, suspects) was interviewed.[207]

The Controller reviewed the documentation provided by the claimant and determined that the documents do not support the claim that the investigation was conducted for purposes of preparing the Form SS 8583 for DOJ.[208]

Based on the following analysis, the Commission finds that the Controller's exclusion of the 10 SCARs prepared by mandated reporters employed by claimant's police department from the total number of SCARs investigated during the audit period for purposes of preparing the Form SS 8583 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. **The Controller's interpretation and application of the Parameters and Guidelines is correct as a matter of law.**

    a. The Parameters and Guidelines authorize reimbursement for investigation only after the SCAR (Form SS 8572) is prepared and only to determine whether a case of child abuse is "not unfounded" and a report (Form SS 8583) is required to be forwarded to DOJ.

When the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, and the mandated reporter determines "in his or her professional capacity or within the scope of his or her employment" that the report of suspected child abuse or severe neglect is "not unfounded," the mandated reporter, in most cases, has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement. Additional interviews may be reimbursable if conducted before evidence is being gathered for criminal prosecution and solely for the purpose of preparing and submitting Form SS 8583 to DOJ, and if those costs are supported by documentation.

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[204] Exhibit A, IRC, filed May 13, 2021, pages 481-482 (Final Audit Report).

[205] Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

[206] Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

[207] Exhibit A, IRC, filed May 13, 2021, page 5.

[208] Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

The Parameters and Guidelines authorize reimbursement to "complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state-issued 'Child Abuse Investigation Report' Form SS 8583" to DOJ, which includes the following investigative activities:

- Reviewing the initial Suspected Child Abuse Report (SCAR or Form 8572);
- Conducting initial interviews with parents, victims, suspects, or witnesses, where applicable; and
- Making a report of the findings of those interviews, which may be reviewed by a supervisor.[209]

The Parameters and Guidelines also specify when reimbursement is *not* required, including:

- Investigative activities conducted by a mandated reporter to complete the SCAR;
- In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement; and
- Investigative activities undertaken subsequent to the determination whether the report is substantiated, inconclusive, or unfounded for purposes of preparing the report for DOJ (Form SS 8583), including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.[210]

The scope of reimbursement for investigative activities performed by an agency for purposes of preparing and submitting a child abuse investigation report to DOJ is discussed at length in the Decision and Parameters and Guidelines and the Test Claim Decision.[211] The SCAR is the suspected child abuse reporting form adopted by DOJ for use by mandated reporters. Mandated reporters are required to report to "an agency specified in [Penal Code] section 11165.9," whenever they know or reasonably suspect that a child has been the victim of abuse or severe neglect.[212] This duty is triggered whenever a mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.[213] "Reasonable suspicion" means "that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position,

[209] Exhibit A, IRC, filed May 13, 2021, page 241 (Parameters and Guidelines).

[210] Exhibit A, IRC, filed May 13, 2021, page 242 (Parameters and Guidelines).

[211] Exhibit A, IRC, filed May 13, 2021, pages 180-203 (Decision and Parameters and Guidelines); Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, pages 29-32.

[212] Penal Code section 11166(a).

[213] Penal Code section 11166(a)

drawing, when appropriate, on the person's training and experience, to suspect child abuse or neglect."[214]

Notably, the investigative activities conducted by a mandated reporter to complete the SCAR are *not* reimbursable: Only those investigative activities conducted by an agency after receipt of a SCAR to determine whether the Form SS 8583 is required to be submitted to DOJ are reimbursable.[215] Furthermore, investigation by law enforcement beyond what is required for all child protective agencies (which include county probation departments, county welfare departments, CPS, and district attorney offices), is not reimbursable.

> [R]eimbursement is not required for the *full course of investigative activities* performed by law enforcement agencies [when they receive a SCAR], but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ."[216]

The Commission also recognized that when the mandated reporter is an employee of a child protective agency (i.e., a law enforcement officer), some of the same information obtained in the course of the mandated reporter's duties, may also satisfy the agency's requirements to report to DOJ:

> [A] mandated reporter's duty to investigate under section 11166(a) pursuant to the holding in *Alejo* is not reimbursable. The precise scope of this investigative duty is not specified, but all mandated reporters are expected to employ the Form SS 8572 to report suspected child abuse to one of the identified child protective agencies. This duty is triggered whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.[217] Given that the scope of employment within a law enforcement agency, county probation department, or county welfare agency generally includes investigation and observation for crime prevention, law enforcement and child protection purposes, information may be obtained by an employee which triggers the requirements of section 11166(a), and ultimately leads to an investigation and report to DOJ under section 11169(a). *Ultimately, some of the same information necessary to satisfy the reporting requirements of section 11169 and the DOJ regulations may be obtained in the course of completing a mandated reporter's (non-reimbursable)*

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[214] Penal Code section 11166(a) (Stats. 1990, ch. 1603). The definition was later amended to clarify that "reasonable suspicion" "does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any 'reasonable suspicion' is sufficient." (Pen. Code, § 11166(a)(1), as last amended by Stats. 2013, ch. 76).

[215] Exhibit A, IRC, filed May 13, 2021, page 196 (Decision and Parameters and Guidelines).

[216] Exhibit A, IRC, filed May 13, 2021, page 183 (Decision and Parameters and Guidelines).

[217] Penal Code section 11166(a) (Stats. 2000, ch. 916).

> *duties under section 11166(a)* (as discussed above, section 11169 requires a determination whether a report is unfounded, inconclusive, or substantiated, and Code of Regulations, title 11, section 903, as amended by Register 98, No. 29, requires certain information items in order to complete a "retainable report").[218]

The Commission found that a mandated reporter who is an employee of a child protective agency necessarily has a greater responsibility to investigate when he or she has reasonable suspicion of child abuse and, therefore, in these cases, the test claim statutes "impose a very low standard of investigation for reporting to DOJ regarding instances of known or suspected child abuse."[219]

> Because… a mandated reporter is expected to do what is reasonable within the scope of his or her experience and employment, *a mandated reporter who is an employee of a child protective agency necessarily has a greater responsibility to investigate when he or she has reasonable suspicion of child abuse*.[220] *Therefore the regulations and statutes approved in the test claim statement of decision impose very little beyond what would otherwise be expected of a mandated reporter in the employ of a child protective agency*, and therefore reimbursement must be limited to only such investigative activity as is necessary to satisfy the mandate of section 11169, but not mandated on the individual employee under section 11166.
>
> Therefore, any investigation conducted by an employee of a county law enforcement agency, county welfare department, or county probation department, prior to the completion of a Form SS 8572 under section 11166(a), is not reimbursable under this mandated program. And, if the Form SS 8572 is completed by an employee of the same agency, and the information contained in the Form SS 8572 is sufficient to make the determination and complete the essential information items required by section 11169 and the regulations, no further investigation is reimbursable.[221]

As noted in the Decision and Parameters and Guidelines, while more recent amendments to the regulatory sections pled in the Test Claim require completion of *all* information items in the Form SS 8583, the Test Claim Decision approved California Code of Regulations, title 11, section 903, as added by Register 98, No. 29, which adopted the Form SS 8583, and required that

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[218] Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines), emphasis added.

[219] Exhibit A, IRC, filed May 13, 2021, page 198 (Decision and Parameters and Guidelines).

[220] See *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180 ("duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse").

[221] Exhibit A, IRC, filed May 13, 2021, page 198 (Decision and Parameters and Guidelines), emphasis added.

only "*certain* information items… be completed."[222] California Code of Regulations, title 11, section 903, as approved in the Test Claim Decision, states as follows:

> All information items on the standard report form SS 8583 *should* be completed by the investigating CPA [child protective agency]. Certain information items on the SS 8583 *must* be completed by the CPA in order for it to be considered a "retainable report" by DOJ and entered into [the index]. Reports without these items will be returned to the contributor. These information items are:
>
> (1) The complete name of the investigating agency and type of agency.
>
> (2) The agency's report number or case name.
>
> (3) The action taken by the investigating agency.[223]
>
> (4) The specific type of abuse.
>
> (5) The victim(s) name, birth date or approximate age, and gender.
>
> (6) Either the suspect(s) name or the notation "unknown."[224]

While the Form SS 8583 guidelines specify the other information items that "should be completed" on the Form SS 8583, including the name of the investigating party, the date and location of the incident, the suspect's address and relationship to the victim, and the victim's present location, among other items, "the investigation approved in the test claim statement of decision is only that required to comply with Penal Code section 11169 and to complete the Form 8583, as those authorities existed at the time of the test claim decision."[225]

Thus, under the Decision and Parameters and Guidelines, when a mandated reporter is employed by the same agency required to investigate and submit the Form SS 8583 to DOJ, reimbursement is *not* required if the investigation necessary to complete the Form SS 8572 is also sufficient to complete the required information items in Form SS 8583. The Decision and Parameters and Guidelines expressly state that:

> In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the

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[222] Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines).

[223] The Form SS 8583 and accompanying DOJ guidelines explain that "the action taken by the investigating agency" refers to whether the suspected child abuse was substantiated, unsubstantiated, or unfounded. See Exhibit F (1), Form 8583, pages 1-2.

[224] California Code of Regulations, title 11, section 903 (Register 98, No. 29), emphasis added. The Form SS 8583 guidelines state that while all shaded information blocks must be completed, exceptions are "victim" and "suspect" blocks, at least one of which must be entered on the form. See Exhibit F (1), Form 8583, page 2.

[225] Exhibit A, IRC, filed May 13, 2021, pages 185-186 (Decision and Parameters and Guidelines [citing Penal Code section 11169 (Stats. 2000, ch. 916); California Code of Regulations, title 11, section 903 (Register 98, No. 29)]).

> investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement.[226]

The Decision and Parameters and Guidelines also reasoned that the test claim statutes were not focused on criminal investigation and prosecution, but were instead focused on the protection of children and early intervention in abusive or neglectful situations, and that the investigation mandate specifically arises in the context of early reporting requirements.[227] Thus, reimbursement is only allowed for the investigation activities if they are conducted for the sole purpose of determining whether a case is "not unfounded" and a report forwarded to DOJ. "[O]nce evidence is being gathered for *criminal prosecution*, the determination that a report is 'not unfounded' has been made, and the investigative mandate approved in the Test Claim Decision has been satisfied."[228] In this respect, the Commission rejected the test claimant's argument "that a complete report filed with DOJ requires a more extensive investigation than that provided for in the test claim decision."[229] Thus, reimbursement is *no*t required for any investigation conducted for purposes of criminal prosecution. The Commission reasoned as follows:

> The point at which the decision is made to close the case (an unfounded report), or continue the investigation (an inconclusive or substantiated report), *is the point at which a determination sufficient to control whether a report will be forwarded to DOJ has been made*. The claimant's evidence demonstrates that an investigation that results in a finding of no child abuse will conclude with the patrol officer's interviews and the filing of a closure report, which must be approved by a supervisor.[230]

As indicated above, a mandated reporter, in his or her professional capacity or within the scope of his or her employment, has a duty to complete a SCAR (Form 8572) when he or she has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.[231] "Reasonable suspicion" means "that it is objectively reasonable for a person to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing, when appropriate, on the person's training and experience, to suspect child abuse or neglect."[232]

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[226] Exhibit A, IRC, filed May 13, 2021, page 242 (Decision and Parameters and Guidelines).

[227] Exhibit A, IRC, filed May 13, 2021, pages 190-191 (Decision and Parameters and Guidelines).

[228] Exhibit A, IRC, filed May 13, 2021, page 193 (Decision and Parameters and Guidelines).

[229] Exhibit A, IRC, filed May 13, 2021, page 193 (Decision and Parameters and Guidelines).

[230] Exhibit A, IRC, filed May 13, 2021, page 192 (Decision and Parameters and Guidelines), emphasis added.

[231] Penal Code section 11166(a).

[232] Penal Code section 11166(a) (Stats. 1990, ch. 1603). The definition was later amended to clarify that "reasonable suspicion" "does not require certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect; any

Therefore, as applied to cases in which the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, and the mandated reporter determines "in his or her professional capacity or within the scope of his or her employment" that the report of suspected child abuse or severe neglect is "not unfounded," the mandated reporter has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement (i.e., to complete the Form SS 8583 and submit it to DOJ), and no further investigation is required. Since a mandated reporter is expected to do what is reasonable within the scope of employment and experience, a mandated reporter employed by a police department necessarily has a greater responsibility to investigate when child abuse or severe neglect is reasonably suspected.[233]

The Decision and Parameters and Guidelines contemplate, however, that there may be a few circumstances where the receipt of the SCAR may require the police department to conduct additional interviews for the sole purpose of preparing and submitting a retainable report to DOJ ("Conducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*").[234] However, once evidence is being gathered for purposes of *criminal prosecution,* the mandate to investigate ends.

> Therefore, because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that county welfare departments take before determining whether to forward the report to DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. All further investigative activities are not reimbursable under the mandate, because, in a very practical sense, once evidence is being gathered for criminal prosecution, the determination that a report is "not unfounded" has been made, and the investigative mandate approved in the test claim statement of decision has been satisfied.[235]

The Decision and Parameters and Guidelines require documentation to support the costs claimed for investigation after the receipt of the SCAR (Form SS 8572) and before evidence is being gathered for criminal prosecution, and solely for the purpose of preparing and submitting a retainable Form SS 8583 to DOJ when a report of child abuse is not unfounded.[236]

'reasonable suspicion' is sufficient." (Pen. Code, § 11166(a)(1), as last amended by Stats. 2013, ch. 76).

[233] Exhibit A, IRC, filed May 13, 2021, page 198 (Decision and Parameters and Guidelines, page 42, footnote 152 (citing *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1187 ["duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse"]).

[234] Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

[235] Exhibit A, IRC, filed May 13, 2021, page 193 (Decision and Parameters and Guidelines).

[236] Exhibit A, IRC, filed May 13, 2021, pages 236, 249 (Decision and Parameters and Guidelines).

b. The Controller's interpretation of the Decision and Parameters and Guidelines is correct as a matter of law.

The claimant alleges that the Controller misinterpreted the Decision and Parameters and Guidelines in finding that *all* cases in which an employee of the police department generated the SCAR, or Form SS 8572, are ineligible for reimbursement.[237] While some of the language used in the audit report initially appears to categorically reject all police department-generated SCARS ("time spent performing an initial investigation of a SCAR is only reimbursable for those SCARs which were not initiated by the Police Department"),[238] the Controller did *not*, in fact, automatically exclude police department-generated SCARs. Rather, the Controller reasoned that a police department's investigation when completing the SCAR is often enough to also determine whether the report of child abuse is not unfounded and to complete the Form SS 8583.

> Per PC section 11166(a), a mandated reporter is already compelled by the nature of his/her duty to report instances of suspected child abuse via the SS 8572 form. There is no higher level of service mandated, and therefore, the duty to investigate under PC section 11166(a) is not reimbursable. Furthermore, the level of investigation performed by the mandated reporter to gather the necessary information for completing the SS 8572 form *is frequently sufficient* to complete form SS 8583.[239]

Furthermore, in comments on the IRC, the Controller cites extensively to the Decision and Parameters and Guidelines for the point that the mandate imposes very little investigation beyond what a mandated reporter is already required to do under preexisting law because the number of information items required to make the Form SS 8583 retainable impose a "very low standard of investigation" and in fact the "level of information for completing the SS 8572 form is *frequently sufficient* to complete form SS 8583 Report Form."[240] Thus, the Controller's comments make clear that it did not incorrectly interpret the Parameters and Guidelines as *never* permitting reimbursement when the mandated reporter completing the Form SS 8572 is employed by the same child protective agency required to investigate and submit the Form SS 8583, but rather, in such a situation, as is the case with claimant's police department, the mandated reporter's investigation preceding completion of the Form SS 8572 is "frequently sufficient" to complete the Form SS 8583, given the low number of information items required for completing the Form SS 8583.

The Controller instead based the reduction on its finding that the claimant provided no documentation showing that police department personnel performed investigative activities "for purposes of" completing the Form SS 8583.

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[237] Exhibit A, IRC, filed May 13, 2021, page 3.

[238] Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

[239] Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report), emphasis added.

[240] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 21-22, emphasis added.

> The city's claim that the 10 cases cited should be included as eligible in the sampling analysis is unsupported. For these 10 cases, only one completed SCAR (form SS 8572) was documented in the file, and none of the cases had completed SS 8583 forms documented in the files. For this particular component, the reimbursable activity is to complete an investigation "*for purposes of"* [emphasis added] preparing an SS 8583 report form. The documentation in the case files does not support that the city prepared the required SS 8583 forms.[241]

The Controller further explains that because the remaining nine case files do not contain a Form SS 8572, the Controller is unable to confirm that the Forms SS 8572 were completed and cross-reported to CPS and the District Attorney's Office, or whether an investigation occurred prior to the completion of the Form SS 8572, and therefore cannot determine whether the claimant obtained sufficient information to make a determination whether a Form SS 8583 had to be prepared and completed with the essential information items on the form.[242]

The claimant nevertheless argues the investigation is reimbursable for the 10 cases because there is a direct correlation between the severity of a case and the scope of investigation required to determine whether the suspected child abuse is "not unfounded" and the Form SS 8583 has to be prepared and submitted to DOJ.[243] Specifically, the claimant asserts that while completing the Form SS 8572 requires interviewing one reporting party and takes approximately 15 minutes, completing the Form SS 8583 requires multiple interviews, including "the interviews of 'victim(s), any known suspects, and witnesses' to determine case disposition (substantiated, unfounded or inconclusive)."[244]

However, there is nothing in the plain language of the Decision and Parameters and Guidelines that requires the investigating agency to conduct multiple interviews to complete the Form SS 8583. In contrast, the Parameters and Guidelines state that "[c]onducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*" in order "to satisfy the DOJ reporting requirement" when a case of child abuse is not unfounded is a reimbursable activity.[245] Furthermore, as the Decision and Parameters and Guidelines make clear, "the mandate *only required enough information to determine whether to file a Form 8583*, . . . and enough information to render the Form 8583 a "retainable report" under [California Code of Regulations, title 11,] section 903 [(Register 98, No. 29)]."[246]

> [T]he scope of reimbursable investigative activities is limited by the plain language of the statute, which requires an investigation to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated. In

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[241] Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

[242] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

[243] Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

[244] Exhibit A, IRC, filed May 13, 2021, page 4.

[245] Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

[246] Exhibit A, IRC, filed May 13, 2021, page 185 (Decision and Parameters and Guidelines).

> addition, the scope of investigation is limited to the degree of investigation that DOJ has allowed to constitute a "retainable report;" in other words, the *minimum* degree of investigation that is sufficient to complete the reporting requirement is the *maximum* degree of investigation reimbursable under the test claim statute.[247]

As stated above, when the SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, and the mandated reporter determines "in his or her professional capacity or within the scope of his or her employment" that the report of suspected child abuse or severe neglect is "not unfounded," the mandated reporter, in most cases, has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement. Additional interviews after the receipt of the SCAR (From SS 8572) may be reimbursable if conducted before evidence is being gathered for criminal prosecution and solely for the purpose of determining if the report of child abuse is not unfounded, which triggers the requirement to prepare and submit Form SS 8583 to DOJ. As the Controller correctly notes:

> The Commission, when crafting the Statement of Decision, was aware of the potential of over-claiming when a mandated reporter is also the investigating agency. Page 40 of the Statement of Decision states, "the parameters and guidelines must be crafted to avoid over-claiming when the mandated reporter in a particular case is also an employee of the child protective agency that will complete the investigation under section 11169."[248]

Therefore, the Commission finds that the Controller correctly interpreted the Parameters and Guidelines and did not, as a matter of law, wholly exclude police department-generated SCARs from the sample pool. Consistent with the Commission's Decision and Parameters and Guidelines, the Controller understood that "the level of investigation performed by the mandated reporter [who is an employee of the police department] to gather the necessary information for completing the SS 8572 form *is frequently sufficient* to complete form SS 8583" and that supporting documentation is required to determine if additional investigation conducted by the police department is reimbursable and conducted solely for the purpose of preparing and submitting Form SS 8583 to DOJ.[249]

Thus, the issue becomes whether the Controller's review of the audit records and reduction of the total number of SCARs by disallowing those generated by the claimant's police department is arbitrary, capricious, or entirely lacking in evidentiary support.

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[247] Exhibit A, IRC, filed May 13, 2021, page 189 (Decision and Parameters and Guidelines), emphasis in original.

[248] Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

[249] Exhibit A, IRC, filed May 13, 2021, page 495 (Final Audit Report).

2. The Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the exclusion of 10 Suspected Child Abuse Reports (SCARs, Form SS 8572) generated by mandated reporters employed by the claimant's police department, is not arbitrary, capricious, or entirely lacking in evidentiary support.

When reviewing an audit decision of the Controller, the Commission's scope of review is limited to whether the decision was arbitrary, capricious or entirely lacking in evidentiary support.[250]

> "[T]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" … "In general … the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support…." [Citations.]" When making that inquiry, the " ' "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]'"[251]

The Commission may *not* reweigh the evidence or substitute its own judgment for that of the Controller. Instead, the Commission's inquiry is limited to whether the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made.[252] Furthermore, the claimant bears the initial burden of providing evidence for a reimbursement claim, and any assertions of fact by the claimant must be supported by documentary evidence.[253]

Based on the evidence in the record, the Commission finds that the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made and, thus, the reduction of costs in Finding 2 based on the exclusion of the 10 SCARs (Form SS 8572) generated by the claimant's police department is not arbitrary, capricious, or entirely lacking in evidentiary support.

The audit report states that the claimant computed claimed costs based on estimated average time increments. For each fiscal year of the audit period, the city estimated that it took, on average, four hours and 18 minutes (4.3 hours) to perform the initial investigation activities for each SCAR received. The city multiplied the estimated average time increments for different employee classifications by the total number of SCARs to calculate the claimed hours.[254] The

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

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

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

[253] *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275; Government Code section 17559; California Code of Regulations, title 2, sections 1185.1(f)(3) and 1185.2(d), (e).

[254] Exhibit A, IRC, filed May 13, 2021, page 480 (Final Audit Report).

claimant initially claimed 3,952 SCARs investigated during the audit period, which it revised to 3,802 during the audit fieldwork.[255] The claimant did not exclude SCARs initiated by mandated reporters employed by its police department, nor did the claimant exclude the SCARs that had not been investigated.[256]

The Controller then requested a representative sample of 148 cases for the three-year period, from fiscal year 2008-2009 through fiscal year 2010-2011, to review.[257]

> We sampled and thoroughly reviewed the contents of 148 cases (32 out of 163 in FY 2008-09; 66 out of 654 in FY 2009-10; and 50 out of 457 in FY 2010-11). In reviewing the case files, we made note of those SCARs generated by another mandated reporter (other agency-generated) and those generated by the Police Department (LEA-generated).[258]

Following the Controller's initial determination to exclude all SCARs generated by the claimant's police department from the sample pool, the claimant asserted that for 10 police department-generated cases,[259] "the reports and call histories show that there were often multiple officers on the scene and multiple parties being interviewed" to determine whether the cases were unfounded, substantiated, or inconclusive, evidencing that a higher level of effort beyond that needed to complete the Form SS 8572 was necessary for purposes of preparing Form SS 8583 and requested that the cases be reassessed and included in the percentage of eligible SCAR cases.[260]

The Controller reexamined the case file documentation for each of the 10 cases and summarized the documentation as follows:

> **FY 2008-09 . . .**
>
> • Case Number 0810-0181: LEA [Law Enforcement Agency]-generated SCAR case. *No SCAR on file*. Father accused of hitting his daughter. The LEA spoke with victim, mother, and suspect. Allegations of child abuse was unfounded.
>
> • Case Number 0810-1766 (Case Number 0801-1766 was transposed in the auditee's response identified in the final audit report and should be as noted): LEA-generated SCAR case. *No SCAR on file*. Father accused of beating his son. The LEA spoke with victim, suspect, and witness. Allegations of child abuse were unfounded.

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[255] Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

[256] Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

[257] Exhibit A, IRC, filed May 13, 2021, pages 481-482 (Final Audit Report).

[258] Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

[259] Four cases from fiscal year 2008-2009, two cases from fiscal year 2009-2010, and four cases from fiscal year 2010-2011. Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 15.

[260] Exhibit A, IRC, filed May 13, 2021, pages 491-492 (Final Audit Report).

• Case Number 0904-0493: LEA-generated SCAR case. *No SCAR on file*. Father accused of child abuse. The LEA spoke to the victim, suspect, victim's mother, and victim's sister. Supplemental report written at the request of the DA's Office. Allegations of child abuse were not confirmed.

• Case Number 1003-1190: LEA-generated SCAR case. *No SCAR on file*. Grandfather touched granddaughter's private parts. The LEA spoke with a Women's Center Advocate, mother, victim, and suspect. Allegations of sexual abuse were substantiated. *The SS 8583 Report Form was on file*.

FY 2009-10 . . .

• Case Number 0907-2506: LEA-generated SCAR case. *No SCAR on file*. Male accused of hitting stepsons. The LEA spoke to mother, victim (1 and 2), siblings, and suspect. Arrest made. *The SS 8583 Report Form was not on file*.

• Case Number 0909-2714: LEA-generated SCAR case. *No SCAR on file*. A father reported that his daughter and a female cousin may have been sexually abused by a male cousin. LEA spoke to mother, mother's sister, father, victim (1 and 2), and suspect. Allegations of sexual abuse substantiated. *The SS 8583 Report Form was not on file*.

FY 2010-11 . . .

• Case Number 1009-1848: LEA-generated SCAR case. *No SCAR on file*. Father who lives out of jurisdiction requests welfare check on his children. LEA checks residence and school and children are not located. Case is forwarded to CPS for follow up.

• Case Number 1010-0549: LEA-generated SCAR case occurrence date October 7, 2010. *SCAR on file* completed on October 8, 2010. Older brother sexually assaulted younger brother. The LEA spoke to the mother, father, victim, suspect, and older sister. Allegations of sexual abuse substantiated. *No SS 8583 Report Form on file*.

• Case Number 1104-1560: LEA-generated SCAR case. *No SCAR on file*. Father reported that mother physically abused son. Allegations of child abuse were substantiated. *No SS 8583 Report Form on file*.

• Case Number 1106-2117: LEA-generated SCAR case. *No SCAR on file*. Mother reported daughter was victim of sexual abuse by daughter's boyfriend. The LEA spoke to victim, mother, father, and suspect. Allegations of sexual abuse were unfounded.[261]

The Controller found that one out of the 10 LEA-generated SCAR cases listed above, Case Number 1010-0549 (FY 2010-2011), included a completed SCAR Form SS 8572.[262] As the

[261] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 16; Exhibit A, IRC, filed May 13, 2021, page 496 (Final Audit Report).

[262] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 22-23.

Controller found, the SCAR for Case Number 1010-0549 is dated October 8, 2010, and was prepared by the same officer that initially responded to the report of child abuse on October 7, 2010 ("Date time and day of occurrence, 10/07/10 21:25 Thursday").[263] Interviews with the mother, the victim, the brother, the father, and the suspect were conducted by the police on October 7, 2010,[264] and beginning at 12:50 a.m. on October 8, 2010,[265] and the suspect was arrested and booked into juvenile hall on October 8, 2010.[266] The SCAR was completed on October 8, 2010.[267] Thus, the evidence in the record supports the Controller's review of this case and finding that the interviews occurred before the completion of the SCAR and, therefore, reimbursement for the investigation alleged for Case Number 1010-0549 is not reimbursable. Under the Parameters and Guidelines, the investigative activities conducted by a mandated reporter to complete the SCAR are *not* reimbursable: only those investigative activities conducted by an agency *after* receipt of a SCAR to determine whether the Form SS 8583 is required to be submitted to DOJ are reimbursable.[268]

For the remaining nine cases summarized above, the Controller states that no SCAR Forms SS 8572 were on file.[269] In addition, only one case file contained a Form SS 8583: Case Number 1003-1190 from fiscal year 2008-2009.[270] And the claimant only provided the Commission with documentation pertaining to one of these 10 cases, Case Number 1003-1190, which is the same case that the Controller determined had a Form SS 8583 was on file. The documentation provided with the IRC for Case Number 1003-1190 consists of one, one-page document: the revised Form SS 8583 (BCIA 8583).[271] The Controller's review of the case file documentation found as follows:

> • Case Number 1003-1190: LEA-generated SCAR case. No SCAR on file. Grandfather touched granddaughter's private parts. The LEA spoke with a Women's Center Advocate, mother, victim, and suspect. Allegations of sexual abuse were substantiated. The SS 8583 Report Form was on file.[272]

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[263] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 156, 175.

[264] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 156-161.

[265] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 161 ("At approximately 0050 (12.50 a.m.) we returned and I interviewed …The interview took place in his room.")

[266] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 174.

[267] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, pages 156-160.

[268] Exhibit A, IRC, filed May 13, 2021, page 196 (Decision and Parameters and Guidelines).

[269] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 23.

[270] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 16; Exhibit A, IRC, filed May 13, 2021, page 102.

[271] Exhibit A, IRC, filed May 13, 2021, page 102.

[272] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 16.

The revised Form SS 8583 in Case Number 1003-1190 is not sufficient to support the finding that the claimant was required to perform additional investigative activities for purposes of completing Form SS 8583 beyond those necessary to complete the Form SS 8572. For example, there is no indication in the record when the interviews were conducted, or when the SS 8572 and SS 8583 were prepared, or what information was available to the officer when preparing the SS 8583, or whether the interviews were conducted within the limited scope of the mandate (i.e., solely for purpose of preparing the SS 8583 for DOJ).

Furthermore, there is no mention by either the claimant or the Controller as to whether any of these 10 files contained original investigative reports, beyond the Controller's detailed descriptions of the case file documentation as quoted above. The descriptions of the case files show that for at least seven of the nine cases, police department personnel conducted interviews with more than one party.[273] However, there is no evidence to show that the interviews in these seven cases took place *as a result of* the police department being unable to obtain enough information when completing the SCAR (Form SS 8572) to also complete the Form SS 8583.

Additionally, the claimant's contention that "Actual documentation (See Exhibit A) showed the number of eligible interviews performed per case as required by SS 8583" is puzzling.[274] Claimant's Exhibit A consists of time studies, police department-generated time reports, time analysis, and correspondence related to the computation of time for the reimbursement claims, all of which were provided to the Controller during the audit.[275] The claimant does not point to which of these documents show that eligible interviews were conducted, nor do the documents speak for themselves. The only documents in claimant's Exhibit A that make any reference to interviews are police department detective time logs from 2015, with a handwritten note stating "2015 time studies not used in claim[,] done for verification in case of audit."[276] While six of the 12 pages of time logs contain entries showing that interviews were conducted, they do not "show the number of eligible interviews performed per case": the time logs simply state the date that an interview was performed and on occasion, who was interviewed, along with the time spent on the activity. The time logs do not consistently reference case numbers, making it impossible to know whether multiple interviews were conducted in the same case, or whether the interviews listed were conducted prior to completion of the Form SS 8572.[277]

Therefore, the claimant has not satisfied its initial burden of providing evidence that the Controller's exclusion of police-department generated cases from the total number of SCARs for which an investigation was completed for purposes of filing the Form SS 8583 is wrong, or arbitrary, capricious, or entirely lacking in evidentiary support.

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[273] Case numbers 0810-0181; 0810-1766; 0904-0493; 0907-2506; 0909-2714; 1010-0549; and 1106-2117.

[274] Exhibit A, IRC, filed May 13, 2021, page 4.

[275] See Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn), pages 20-38.

[276] Exhibit A, IRC, filed May 13, 2021, page 27.

[277] Only two time logs contain some case numbers, and none of the interviews listed therein pertain to the same case number. Exhibit A, IRC, filed May 13, 2021, pages 28, 32.

In response, the claimant argues that the Form SS 8572 and Form SS 8583 are not available because the Form SS 8572 was not always retained for each suspected child abuse case, and no Form SS 8583 was prepared if a case was determined to be unfounded. The claimant also argues that because approximately 10 years passed between when the cases occurred and the audit was conducted, with no prior notice that reimbursement would be conditioned upon retention of these forms, it would violate due process to retroactively require so now.[278]

The Parameters and Guidelines, adopted in 2013, require that claims for actual costs be traceable and supported by contemporaneous source documentation (i.e., documents created at or near the same time the actual cost was incurred) that show the validity of such costs, when they were incurred, and their relationship to reimbursable activities.[279] Source documents include employee time records or time logs, sign-in sheets, invoices, and receipts.[280] Although the Parameters and Guidelines are regulatory in nature, due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.[281] Here, the claimant was not on notice of the contemporaneous source document rule (CSDR) when costs were incurred in fiscal years 1999-2000 through 2011-2012 because the Parameters and Guidelines were not adopted until December 2013.

The Controller, however, is *not* strictly enforcing the CSDR. The Controller did not reduce costs because contemporaneous documents were not provided or reduce the salaries and benefits for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component to $0. Instead, the Controller found that the documentation provided by the claimant to support the inclusion of 10 police department-generated cases from the sample pool as eligible SCAR cases investigated was insufficient to support the claimant's position that extensive investigative work was performed by the agency for purposes of Form SS 8583 beyond that required of the mandated reporter to complete the initial Form SS 8572. Government Code section 17561(d) authorizes the Controller to audit the records of any local agency or school district to verify the actual amount of mandated costs and under Section VI. of the Parameters and Guidelines, the claimant is responsible for maintaining documentation for the time period during which the claims were subject to audit.[282]

Moreover, regardless of the CSDR, the claimant was on notice of the legal requirement in Penal Code sections 11169 and 11170 to retain Form SS 8572 and Form SS 8583 with the initial investigative reports for a 10-year period, whenever a Form SS 8583 is filed with DOJ. Statutes

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[278] Exhibit A, IRC, filed May 13, 2021, page 5.

[279] Exhibit A, IRC, filed May 13, 2021, page 236 (Parameters and Guidelines).

[280] Exhibit A, IRC, filed May 13, 2021, page 236 (Parameters and Guidelines).

[281] *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

[282] Exhibit A, IRC, filed May 13, 2021, page 249 (Decision and Parameters and Guidelines). See also, *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335, and Government Code section 12410, which states: "The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

1997, chapter 842 added the 10-year minimum records retention requirement to Penal Code sections 11169 and 11170,[283] meaning the claimant was required to maintain the specified documentation for all cases determined "not unfounded" (and thus, reported to DOJ), and was on notice of that requirement long before the Parameters and Guidelines were adopted in 2013. The Commission found that the costs for the last eight years of retention of those records were new state-mandated costs and thus eligible for reimbursement.[284] This is reflected in Section IV.B.5. of the Parameters and Guidelines, which provides as follows:

> City and county police or sheriff's departments, and county probation departments if designated by the county to receive mandated reports shall:
>
> > Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice *for a minimum of eight years (a higher level of service above the two-year record retention requirement* pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.[285]
> >
> > This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.
> >
> > ***Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.***[286]

As such, the claimant's duty to retain the suspected child abuse case forms (Form SS 8572 and Form SS 8583) and original investigative reports for all cases reported to DOJ exists irrespective of the enforceability of the CSDR. Given that the 10 cases the claimant seeks to add occurred during fiscal years 2008-2009 through 2010-2011, and the Controller initiated the audit in December 2017 and issued the final audit report in May 2018, the claimant was required to retain the two state-issued forms and the original investigative report for any of these cases determined to be "not unfounded."

The documentation provided by the claimant shows that the claimant retained the Form SS 8583 for only one of the ten cases (Case Number 1003-1190). Because the allegations of child abuse were determined to be "substantiated," the claimant retained the Form SS 8583 as required.

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[283] Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, page 38.

[284] Exhibit A, IRC, filed May 13, 2021, pages 208-209 (Decision and Parameters and Guidelines [discussing the Test Claim Decision's approval of reimbursement for record retention by law enforcement agencies, pursuant to Penal Code sections 11169 and 11170, Statutes 1997, chapter 842]).

[285] Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133(AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

[286] Exhibit A, IRC, filed May 13, 2021, page 246 (Decision and Parameters and Guidelines), emphasis in original.

Therefore, since the claimant did not retain a completed Form SS 8583 for the other nine cases, and it is presumed the claimant complied with the retention requirements imposed by the Penal Code,[287] then it must be presumed that the nine remaining cases of suspected child abuse for which the claimant seeks reimbursement for "extensive investigative work," were *all* determined to be unfounded, even though the cases were reported by the claimant's law enforcement employees, who have a duty to investigate and must have had "knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect."[288] Yet the case file documentation shows that of these nine remaining cases, only three were unfounded.[289] Therefore, for the six remaining cases that were determined to be "not unfounded," the claimant was required to report to DOJ and was required to retain the Form SS 8572 and Form SS 8583 with the original investigation report. As stated above, the claimant was on notice of this records retention requirement long before the adoption of the Parameters and Guidelines in 2013.

The claimant also cites to a 2005 version of the DOJ's child abuse reporting guidelines, which includes discussion of the regulations and requirements that were amended *after* the Test Claim was filed, to assert that even where a case was determined to be "not unfounded," the Form SS 8583 was only prepared if a suspect was contacted.[290] The claimant refers to the following language in the 2005 guidelines:

> What Not to Report
>
> 11169(a) PC identifies what may not be reported to DOJ.
>
> [¶]…[¶]
>
> If you have not contacted the suspect
>
> This does not apply if you were unable to locate the suspect or another agency (i.e., law enforcement) has asked you not to notify the suspect. Please use the Comment field to identify the reason suspect was not contacted.[291]

However, neither the test claim statutes nor the 2005 guidelines and later versions of the Form SS 8583 and DOJ regulations add an additional requirement that the suspect be contacted before the Form SS 8583 is required to be filed. While the test claim statutes require written notice to a suspect when the suspect has been reported to the Child Abuse Central Index (CACI), filing the

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[287] Evidence Code section 664 states that "It is presumed that official duty has been regularly performed."

[288] Penal Code section 11166(a).

[289] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 16 (case numbers 1106-2117; 0810-0181; and 0810-1766).

[290] Exhibit A, IRC, filed May 13, 2021, page 4.

[291] Exhibit A, IRC, filed May 13, 2021, page 84 (Department of Justice, A Guide to Reporting Child Abuse to the California Department of Justice).

Form SS 8583 does not require the identification of the suspect.[292] The Test Claim Decision approved only California Code of Regulations, title 11, section 903, as amended by Register 98, No. 29, which adopted the Form SS 8583, and required that only "certain information items...must be completed,"[293] including – as is relevant here – either the suspect's name *or the notation "unknown."*[294] Furthermore, Section IV.B.3.a. of the Parameters and Guidelines, which enumerates the reimbursable activities for reporting to DOJ, makes clear that the investigating agency is required to file the Form SS 8583 with DOJ once it has determined that the allegations of child abuse are "not unfounded."[295] There is no additional requirement that the suspect also be contacted for the Form SS 8583 to be filed. In contrast, the Parameters and Guidelines expressly state that completing an investigation for purposes of preparing the Form SS 8583 "includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*, and making a report of the findings of those interviews, which may be reviewed by a supervisor."[296] Even under the 2005 guidelines, there is no requirement to first contact the suspect before submitting Form SS 8583 if the agency is "unable to locate the suspect or another agency (i.e., law enforcement) has asked you not to notify the suspect."[297]

Accordingly, the claimant's assertion that the requirement to complete the Form SS 8583 is contingent upon making contact with a suspect is at odds with the requirements of the test claim statutes and regulations, and is inconsistent with the Parameters and Guidelines.

The claimant also argues that because each of the 10 cases at issue required multiple police officers to conduct multiple interviews with various parties before a determination could be made whether the cases were "not unfounded," they are necessarily reimbursable.[298] At the core of the claimant's argument is the *assumption* that evidence of multiple interviews is alone sufficient to show that the investigative effort required of the police department exceeded that needed for a mandated reporter, employed by the police department, to complete the Form SS 8572. That assumption is not legally correct. As indicated above, when a SCAR (Form SS 8572) is generated by a mandated reporter employed by a police department, and the reporter determines "in his or her professional capacity or within the scope of his or her employment" that the report of suspected child abuse or severe neglect is "not unfounded," the reporter has completed the requisite level of investigation necessary to trigger the DOJ reporting requirement (i.e., to complete the Form SS 8583 and submit to DOJ), and no further investigation is required.

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[292] Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, pages 32-33.

[293] Exhibit A, IRC, filed May 13, 2021, page 197 (Decision and Parameters and Guidelines).

[294] California Code of Regulations, title 11, section 903 (Register 98, No. 29), emphasis added.

[295] Exhibit A, IRC, filed May 13, 2021, page 242 (Decision and Parameters and Guidelines).

[296] Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

[297] Exhibit A, IRC, filed May 13, 2021, page 84 (Department of Justice, A Guide to Reporting Child Abuse to the California Department of Justice).

[298] Exhibit A, IRC, filed May 13, 2021, page 4.

A mandated reporter employed by a police department has a "greater responsibility to investigate" when child abuse or severe neglect is reasonably suspected.[299] The Parameters and Guidelines contemplate that there *may* be some circumstances where the receipt of the SCAR may require the police department to conduct additional interviews for the sole purpose of preparing and submitting a retainable report to DOJ ("Conducting initial interviews with parents, victims, suspects, or witnesses, *where applicable*").[300] However, documents or evidence supporting that claim are required to be provided by the claimant to show that the costs incurred were within the scope of reimbursement.[301]

The record shows that the Controller reviewed all available documentation provided by the claimant, and determined that it did not support a finding that the claimant performed extensive investigative work for the purpose of completing the Form SS 8583. The claimant has not submitted any additional documentation with this IRC beyond what it provided to the Controller during the audit.[302]

Based on this record, the Commission finds that the Controller's reduction and recalculation in Finding 2 of the total number of SCARs investigated for fiscal years 1999-2000 through 2011-2012, based on its exclusion of the claimant's police department-generated cases, is not arbitrary, capricious, or entirely lacking in evidentiary support.

C. The Controller's Reduction in Finding 2 for the Costs Claimed to Complete an Investigation for Purposes of Preparing Form SS 8583, Based on the Reduction to the Number of Suspected Child Abuse Reports (SCARs) Referred to the Claimant's Police Department by Other Agencies, Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As discussed above, when auditing the costs claimed to complete an investigation for purposes of preparing Form SS 8583, the Controller performed a sampling analysis of 148 randomly selected cases from fiscal years 2008-2009 through 2010-2011.[303] The Controller determined based on the documentation provided that the claimant investigated very few of the other agency generated SCARs that had been cross-reported to them, as no additional follow-up was deemed

[299] Exhibit A, IRC, filed May 13, 2021, page 198 (Decision and Parameters and Guidelines, footnote 152, citing *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1187 ["duty to investigate and report child abuse is mandatory under section 11166, subdivision (a) if a reasonable person in Officer Doe's position would have suspected such abuse"]).

[300] Exhibit A, IRC, filed May 13, 2021, page 241 (Decision and Parameters and Guidelines), emphasis added.

[301] Exhibit A, IRC, filed May 13, 2021, page 236 (Decision and Parameters and Guidelines); Government Code section 17561(d); California Code of Regulations, title 2, sections 1185.1(f)(3), 1185.2(d), (e).

[302] See Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn).

[303] Exhibit A, IRC, filed May 13, 2021, pages 481-482 (Final Audit Report).

necessary"[304] and that a full initial investigation was not performed by the police department for 90 percent of other agency-generated cases.[305]

> A vast majority of other agency-generated SCARs were referred from Child Protective Services (CPS), and very few came from other mandated reporters. For other agency-generated SCARs, we searched for documentation supporting that the Police Department had conducted an initial investigation. *Our review of the 148 sampled cases revealed that very few other agency-generated SCARs were investigated by the Police Department or no investigation was documented in these cases.*
>
> The files showed that CPS regularly and systematically cross-reported SCARs to the Police Department. The Police Department received these CPS referrals and made notes of the referrals in their files, but typically did not perform an investigation on these cases before closing the files. For the vast majority of SCARs referred from CPS, *the Police Department identified CPS as the investigating agency* and closed the cases if no further investigation was deemed necessary.
>
> *For the few cases in which the Police Department did in fact perform an investigation, the SCAR files contained clear evidence and support that an investigation had been performed.* For these SCARs, the files contained very detailed written narratives of the investigation(s) performed and of the interviews conducted. These narratives identified the officers involved, the type of investigative work performed, the type of crimes committed, any follow-up investigations needed, who had been interviewed, and dates and times of the interviews, etc.[306]

Nonetheless, during the course of the audit, the Controller accepted the claimant's position that for cases where a full initial investigation was not completed, initial investigative activities may have been performed but not documented in the case files in order to corroborate information reported by CPS.[307] The Controller determined, with input from the claimant, that the following activities comprised a partial initial investigation, despite the claimant's lack of supporting evidence, and were reimbursable for all the 90 percent of the cases not fully investigated by the claimant: (1) review the initial SCAR; (2) approve closing the case; and (3) document and file the closed case.[308]

The claimant proposes here, as it did during the audit, that the time to conduct the following four investigative activities, which takes an additional 74-84 minutes per case, should also be reimbursable:

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[304] Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

[305] Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

[306] Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report), emphasis added.

[307] Exhibit A, IRC, filed May 13, 2021, pages 483, 497 (Final Audit Report).

[308] Exhibit A, IRC, filed May 13, 2021, pages 484, 497 (Final Audit Report).

1. For a Detective to verify if a report was already written (6 minutes)
2. For a Records Technician to verify if a report was already written (6 minutes)
3. For a Detective to check prior history and "determine if the case is actually in the agencies [sic] jurisdiction and determine that the case is not a duplicate and has not already been investigated by the department. This often requires phone calls to other involved agencies and also may work with internal staff such as records and dispatch to determine the history of the case to determine what action is required" (36 minutes)
4. "Then the Detective and/or Sergeant must contact the Department of Social Services, reporting agency, or involved individuals (at least one adult who has information regarding allegations) to obtain more details of the case to determine if in-person interviews are necessary. Detective and/or Lieutenant must decide on how to proceed on each case" (26-36 minutes).[309]

The claimant also alleges that the Controller erred in its finding that a full initial investigation was not performed by the police department for 90 percent of other agency-generated cases since the Controller conditioned reimbursement on whether a case file contained a detailed narrative in the police report.[310]

Based on the following analysis, the Commission finds that the Controller's reduction of costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the number of SCARs referred to the claimant's police department by other agencies, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

1. The Controller's reduction of costs for the additional investigation activities proposed by the claimant is correct as a matter of law since the activities were not approved by the Commission as eligible for reimbursement.

Under the Parameters and Guidelines, reimbursement for the Complete an Investigation cost component is limited to three activities: (1) review the initial SCAR; (2) conduct initial interviews with parents, victims, suspects, or witnesses, where applicable; and (3) make a report of the findings of those interviews, which may be reviewed by a supervisor.[311]

The claimant proposes, however, that four additional investigative activities be included for the 90 percent of other agency-generated cases in which the police department did not complete a full initial investigation: (1) detective to verify if a report was already written; (2) records technician to verify if a report was already written; (3) detective to check prior history and determine jurisdiction and whether case is a duplicate; and (4) detective to contact at least one adult with information regarding the allegations to obtain more details to determine if in-person interviews are necessary.[312]

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[309] Exhibit A, IRC, filed May 13, 2021, pages 5-6, 498 (Final Audit Report).

[310] Exhibit A, IRC, filed May 13, 2021, page 9.

[311] Exhibit A, IRC, filed May 13, 2021, page 241 (Parameters and Guidelines).

[312] Exhibit A, IRC, filed May 13, 2021, pages 5-6.

The claimant asserts that contacting the reporting agency or a person with information about the case to determine whether to conduct in-person interviews, falls under the eligible investigative activity of "conduct initial interview with involved parties," as listed in the Parameters and Guidelines.[313] Furthermore, the claimant argues these additional activities are reasonably necessary to determine whether the allegations are unfounded (and thus, to close the case) or whether to proceed with the investigation by conducting in-person interviews.[314] The claimant alleges that without performing these additional activities, it would be unable to determine "whether or not the allegations were founded and a SS 8583 report was required to be sent to DOJ."[315]

The claimant cites to the California Department of Social Services' (CDSS) position, as summarized in the Decision and Parameters and Guidelines, to support its argument that prior to actual interviews, it is necessary to first determine whether an in-person investigation is required.[316] The claimant alleges that its proposed additional preliminary activities are nearly identical to the activities CDSS stated it performs before determining whether to find the SCAR unfounded and close the case or conduct an in-person investigation.[317] The claimant asserts that, similarly, the police department must perform these additional preliminary activities to determine whether a SCAR is founded, unfounded, or inconclusive.[318]

The Controller denied the claimant's request because the proposed activities are not identified as reimbursable in the Parameters and Guidelines:

> During the audit, the city proposed that it also be allowed to claim additional time for the four activities listed above. At that time, we discussed the matter, at length, with city officials and informed them that these activities are not reimbursable per the parameters and guidelines. We agree that Detectives and other staff perform many activities necessary to complete child abuse investigations. However, not all activities within the investigation process (whether for partial or full initial investigations) are reimbursable, even when they appear reasonably necessary. For example, items 1 and 2 above [detective and records technician to verify if a report was already written] can be described as overlapping internal procedures. Although the department may view these activities as necessary, they do not qualify as preliminary investigative activities and are not mandated. As explained, Section IV.B.3.1 of the program's parameters and guidelines allow reimbursement of the actual costs incurred to 1) review the initial SCARs, 2)

[313] Exhibit A, IRC, filed May 13, 2021, pages 6-7.

[314] Exhibit A, IRC, filed May 13, 2021, page 7.

[315] Exhibit A, IRC, filed May 13, 2021, pages 6-7.

[316] Exhibit A, IRC, filed May 13, 2021, page 7.

[317] Exhibit A, IRC, filed May 13, 2021, page 8.

[318] Exhibit A, IRC, filed May 13, 2021, page 8.

> conduct initial interviews with involved parties, and 3) make a report of the findings of those interviews.[319]

The Commission finds that the Controller's reduction of costs based on its finding that reimbursement is not required for these activities is correct as a matter of law.

Whether additional activities beyond those approved in the Test Claim Decision are reasonably necessary to comply with the mandate is a determination that must be made by the Commission when adopting the Decision and Parameters and Guidelines.[320] The Commission's regulations define "reasonably necessary activities" as "activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program" and specifies that "Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible."[321] It is up to the claimant or other interested parties to propose the inclusion of reasonably necessary activities, and the proposal "shall be supported by documentary evidence in accordance with section 1187.5 of these regulations."[322] The Commission's decision on whether proposed reasonably necessary activities are eligible for reimbursement must be based on substantial evidence in the record.[323] The Commission's parameters and guidelines are regulatory in nature and once adopted, are binding on the parties.[324]

In this case, the activities proposed by the claimant were *not* requested as reasonably necessary activities during the parameters and guidelines phase, and were not approved as reimbursable by the Commission. The proposed activity to contact the reporting agency or a person with information about the case to determine whether to conduct in-person interviews is *not* the same as what the Commission approved: "conduct initial interviews with parents, victims, suspects, or witnesses, where applicable." In addition, although the claimant alleges that the proposed activities are consistent with activities performed by CDSS when complying with the test claim statutes, CDSS did not request that the Commission approve reimbursement for any activity. Instead, it urged the Commission to not adopt the parameters and guidelines proposed by the test claimant, and provided comments to clarify the scope of the mandate for all child protective agencies. As summarized by the Commission, the CDSS' position was as follows:

> CDSS urges the Commission to reject claimant's proposed parameters and guidelines, including the proposed law enforcement RRM, "because the activities

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[319] Exhibit A, IRC, filed May 13, 2021, page 498 (Final Audit Report).

[320] Government Code section 17557(a); California Code of Regulations, title 2, section 1183.7(d).

[321] California Code of Regulations, title 2, section 1183.7.

[322] California Code of Regulations, title 2, sections 1183.7(d), 1183.8(a), 1183.9(a).

[323] Government Code section 17559(b).

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

> described in it are not related to or required by CANRA." CDSS argues at length that CANRA does not give rise to any affirmative duty to investigate child abuse, and that in any event the investigative activities called for in the claimant's revised proposed parameters and guidelines reach deep into the realm of criminal investigative activities. CDSS argues that local law enforcement has a responsibility to investigate suspected child abuse, but that responsibility is not grounded in the provisions of CANRA.[325]

Furthermore, CDSS made clear that many activities required in its Manual of Policies and Procedures are not required by the test claim statutes, but instead are required by the Welfare and Institutions Code.[326]

Therefore, the Controller's reduction of costs related to the additional activities proposed by the claimant, which have not been approved by the Commission as reimbursable, is correct as a matter of law.

2. The Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on of the total number of Suspected Child Abuse Reports (SCARs) for fiscal years 1999-2000 through 2011-2012 referred to the claimant's police department by other agencies, is not arbitrary, capricious, or entirely lacking in evidentiary support.

As indicated above, the Controller determined based on the documentation provided that the claimant investigated very few of the other agency generated SCARs that had been cross-reported to them, as no additional follow-up was deemed necessary"[327] and that a full initial investigation was not performed by the police department for 90 percent of other agency-generated cases.[328]

The claimant alleges that the Controller has erroneously conditioned reimbursement on whether a case file contains a detailed narrative report, a position which the claimant contends is unsupported by the Decision and Parameters and Guidelines and violates due process because the claimant was not given prior notice of such a requirement at or near the time costs were incurred.[329] As concluded in the section above, the claimant was not on notice of the contemporaneous source document rule (CSDR) when costs were incurred in fiscal years 1999-2000 through 2011-2012 because the Parameters and Guidelines were not adopted until December 2013.

The Controller, however, is *not* strictly enforcing the CSDR because the Controller is not requiring contemporaneous source documentation and did not reduce the salaries and benefits for the Complete an Investigation for Purposes of Preparing the SS 8583 Report Form cost component to $0. Instead, the Controller exercised its audit authority and found that the

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[325] Exhibit A, IRC, filed May 13, 2021, page 170 (Decision and Parameters and Guidelines).

[326] Exhibit A, IRC, filed May 13, 2021, page 190 (Decision and Parameters and Guidelines).

[327] Exhibit A, IRC, filed May 13, 2021, page 481 (Final Audit Report).

[328] Exhibit A, IRC, filed May 13, 2021, page 483 (Final Audit Report).

[329] Exhibit A, IRC, filed May 13, 2021, page 9.

documentation provided by the claimant established that some (about 10 percent) of the other agency-generated SCARs were fully investigated by the police department. Furthermore, the Controller worked with the claimant to determine that partial initial investigation activities were also reimbursable *for the remaining 90 percent of other agency-generated cases*, despite a lack of supporting documentation.[330]

The claimant argues that because the police department's procedures do not require detailed written reports for cases that are deemed unfounded or inconclusive, the fact that the claimant maintained "short form" reports rather than detailed narrative reports for those cases should not preclude reimbursement.[331]

As described below, the Commission finds that the Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on of the total number of Suspected Child Abuse Reports (SCARs) for fiscal years 1999-2000 through 2011-2012 referred to the claimant's police department by other agencies, is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller requested and reviewed a sample selection of 148 case files for fiscal years 2008-2009 through 2010-2011.[332] The Controller reviewed each case file and recorded its findings in a detailed spreadsheet, which the claimant submitted with the IRC (claimant's Exhibit C).[333] According to the Controller, the case files identified in the spreadsheet typically consisted of the following seven documents and contained the following information:

1. **South Lake Tahoe Police Department 11166 PC Referral Form.** This form was completed by the Police Department; it provided a summary of the case that was referred, using check boxes, with the following information: type of abuse, investigating agency, type of investigation, assigned social worker, case status, and comments…

   Most of the referral forms identified that CPS was the investigating agency. Those that did not identify CPS as the investigating agency, stated that an investigation was not necessary. "Type of investigation" refers to the type of investigation performed by CPS. The comments on the referral forms included: inconclusive, unfounded, or closed.

2. **Pre-Disposition Sheet.** This sheet was completed by CPS; it provided general information about a newly opened case, including date, assigned social worker, and to which agency who the case was cross-reported.…

3. **Disposition Sheet.** This sheet was completed by CPS. It provided a status of the case after CPS performed a review or investigation. Information on this sheet included date, name of social worker, which agency the social

[330] Exhibit A, IRC, filed May 13, 2021, pages 483, 497 (Final Audit Report).

[331] Exhibit A, IRC, filed May 13, 2021, page 9.

[332] Exhibit A, IRC, filed May 13, 2021, pages 481-482 (Final Audit Report).

[333] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31; Exhibit A, IRC, filed May 13, 2021, pages 60-70.

worker cross-reported to, and the final disposition of the case (no immediate risk, situation stabilized, closed, opened service case, evaluated out)…

4. **Narrative Report.** This was completed by the Police Department; it stated: "See PC 11166 in file," which is the referral form completed by [the Police Department][334] (see item 1 above)….

5. **Person Profile.** This form was completed by the Police Department; it lists the contact information of the suspected child abuser….

6. **CPS Investigative Report.** This report was completed by CPS when the SCAR case was investigated by CPS.

7. **SCAR Form SS 8572.** This form was completed by CPS….[335]

Based on these documents, the Controller found that for most case files, the South Lake Tahoe Police Department 11166 PC Referral Form either identified CPS as the investigating agency or stated that CPS determined no investigation was necessary.[336]

> The case files also showed that CPS regularly cross-reported SCARs to the Police Department. The Police Department received the CPS referrals and, made notes of the referral in the files, but did not perform an investigation on the referrals received from CPS.[337]

In contrast, the few case files where the Controller determined that claimant's police department conducted an investigation "contained detailed written narratives of the investigations performed and the interviews conducted" and "identified the officers involved, type of investigative work performed, type of crime committed, whether a follow-up investigation was needed, who was interviewed, date of interviews, and time of interviews."[338]

The claimant asserts that investigative activities occurred in the unfounded and inconclusive cases even where it was not the claimant's practice to prepare detailed written reports.[339]

> South Lake Tahoe Police Department procedures do not require detailed narrative write ups for cases that were deemed unfounded or inconclusive. The narrative in

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[334] The Controller's description of the Narrative Report states that Item 1, the South Lake Police Department 11166 PC Referral Form, was completed by CPS, which is incorrect. The description of the 11166 PC Referral Form states that it was completed by the claimant's police department.

[335] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31.

[336] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32; Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

[337] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32.

[338] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 32; Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

[339] Exhibit A, IRC, filed May 13, 2021, page 9.

> the "Comments" section of these reports might simply state, "Inconclusive. Unable to contract/locate family", or "Case closed by CPS" or "Situation stabilized". These brief descriptions and the identification of the assigned officer shown in the "Reviewed By" section of the report indicates investigative activities took place in order for the officer to make those assessments and close the case. (see South Lake Tahoe Police Department 11166 PC Referral Form in Exhibit E).

All of the documentation submitted by the claimant with the IRC was previously provided to the Controller during the course of the audit.[340] Nonetheless, the claimant points to the South Lake Tahoe Police Department 11166 PC Referral Forms in Exhibit E to the IRC to show that reimbursable investigative activities were performed in those cases referred to the police department by other agencies which the police department determined to be either unfounded or inconclusive.[341] Exhibit E to the IRC consists of redacted child abuse reports (Form SS 8583 or BCIA 8583) and supporting documents provided to the Controller during the audit.[342] While the redaction and photocopy quality of some of these documents make them difficult to decipher, the records appear to pertain to approximately 20 suspected child abuse cases, with varying degrees of supporting documentation: Some of the cases contain only one document, usually the Form SS 8583, while others contain variations on the seven documents described above (i.e., 11166 PC referral form, pre-disposition sheet, disposition sheet, narrative report, person profile, CPS investigative report, SCAR (Form SS 8572).[343] Notably, however, only six of the cases have the 11166 PC Referral Form cited by the claimant to show an investigation was performed by the claimant's police department.[344] Furthermore, each of these six cases lists CPS as the investigating agency on the referral form, meaning that CPS, *not the police department*, would have performed the investigation necessary to make the determination whether the case was unfounded, substantiated, or inconclusive, and whether to file the Form SS 8583. Exhibit C to the IRC, which consists of a spreadsheet prepared by the Controller during the audit, detailing

[340] Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn).

[341] Exhibit A, IRC, filed May 13, 2021, page 9.

[342] Exhibit A, IRC, filed May 13, 2021, pages 96-154.

[343] Exhibit A, IRC, filed May 13, 2021, pages 96-154. Excluding pages 110 and 111, for which the case numbers are unknown, there appear to 20 cases.

[344] Exhibit A, IRC, filed May 13, 2021, pages 115 (Case Number 0811-0952), 119 (Case Number 0811-0940), 129 (Case Number 0810-1398), 136 (Case Number 0810-1386), 145 (Case Number 0809-2434), 150 (Case Number 0809-2463).

the contents of each case file, includes notes for these six cases,[345] which show that all of these cases were closed by CPS, not the police department.[346]

The test claim statutes require county welfare departments to cross report to the police department any time CPS received a SCAR (Form 8572), even if CPS closed the case as unfounded.[347] Under Section IV.B.2.b.2. of the Parameters and Guidelines, county welfare departments shall:

> i. Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code [such as a child protective services department],[348] and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.
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> ***Reimbursement is not required for making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay."***

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[345] Exhibit A, IRC, filed May 13, 2021, pages 18-19 (Declaration of Annette Chinn ["Attached hereto as Exhibit C are true and correct copies of the reports from State Controller auditors provided to the City to explain how they determined Child Abuse case eligibility and to determine the percentage of allowable of cases"]), 60-70; Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 31 ("During audit fieldwork, we judgmentally selected a non-statistical sample of 148 SCAR case files (32 out of 163 in FY 2008-09; 66 out of 654 in FY 2009-10; and 50 out of 457 in FY 2010-11) to review. We thoroughly reviewed the contents of each file, and recorded our findings in detail in an Excel spreadsheet").

[346] Exhibit A, IRC, filed May 13, 2021, page 62 (Case Number 0811-0952, "evaluated out to Washoe County"; Case Number 0811-0940, "Unfounded. Closed by CPS"; Case Number 0810-1398, "Closed by CPS. Evaluated out to family court"; Case Number 0810-1386, "Inconclusive/stabilized. Closed by CPS"; Case Number 0809-2434, "Inconclusive. Closed by CPS"; Case Number 0809-2463, "Unfounded. Closed by CPS).

[347] Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, pages 24-25; Penal Code section 11166(h), now subdivision (j), as added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[348] Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, page 23.

> ii. Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under Penal Code section 11166. As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.[349]

As discussed in the Test Claim Decision, *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 258-260 provides an overview of the Child Abuse and Neglect Reporting Act and states in relevant part:

> The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff's department, and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney. (§ 11166, subd. (g).)[350]

Thus, CPS was required to cross-report cases to the police department any time CPS received a SCAR (Form 8572), even if CPS closed the case as unfounded. All six of the cases containing the 11166 PC Referral Form are cases that CPS was required under the test claim statutes to cross-report to the police department, not cases where CPS referred a SCAR to the police department for further investigation.[351] In contrast, the other agency-generated cases where the Controller found that a full investigation was completed by the police department all list the police department, not CPS, as the investigating agency.[352]

Because these cases were evaluated for inclusion in the sampling of cases for the Complete an Investigation cost component, the Controller had to assess whether the claimant's documentation showed that the police department: (1) reviewed the initial SCAR; (2) conducted initial interviews with parents, victims, suspects, or witnesses, where applicable; and (3) made a report of the findings of those interviews, which may be reviewed by a supervisor.[353]

> For this cost component, the reimbursable activity is to complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting a SS 8583 Report Form to the DOJ. Reimbursable activities are limited to reviewing the SCAR, conducting initial interviews, and writing a report about the interviews that may be reviewed by a supervisor. The documentation maintained in the SCAR case files, as well as the documentation the City references, including the 11166 PC Report Form prepared and maintained by the

[349] Exhibit A, IRC, filed May 13, 2021, pages 238-239 (Parameters and Guidelines).

[350] Exhibit F (2), Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, adopted December 6, 2007, page 9.

[351] Exhibit A, IRC, filed May 13, 2021, pages 60-70, 96-154.

[352] Exhibit A, IRC, filed May 13, 2021, pages 62-70.

[353] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

> LEA, the SCAR Form SS 8572, the City's 2015 time studies, and assertions by command staff [that short form reports] are standard LEA practice for these types of cases do not support that the City prepared a written report nor do they support that the LEA conducted initial interviews with parents, victims, suspects, or witnesses, where applicable. Therefore, although it may not be the City's procedure to write a report to document an interview, doing so is a condition for reimbursement under the mandate.[354]

While the Controller is incorrect in stating that writing a report to document an interview is a condition for reimbursement under the test claim statutes,[355] the Controller did *not* in fact condition reimbursement on whether a detailed written narrative report was completed. Rather, the Controller pointed to the presence of detailed written narrative reports to constitute "clear evidence and support" of a *full* initial investigation, meaning that the evidence established that all three reimbursable activities comprising the Conduct an Investigation cost component were completed in those cases: (1) reviewing the initial SCAR; (2) conducting initial interviews with parents, victims, suspects, or witnesses, where applicable; and (3) making a report of the findings of those interviews, which may be reviewed by a supervisor.[356]

In the Decision and Parameters and Guidelines, the Commission acknowledged that where the mandated reporter is not employed by the investigating agency, the investigating agency may need to verify the information contained in the SCAR (Form SS 8572).

> [T]he agency maintains an independent and reimbursable duty to investigate in order to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive for purposes of preparing and submitting the state "Child Abuse Investigation Report" Form SS 8583. *If necessary, the investigating agency may need to verify the information reported on the Form SS 8572.*[357]

For the 90 percent of other agency-generated SCARs where the Controller determined that the evidence did not support that the police department completed all three reimbursable activities (reviewing the SCAR, conducting initial interviews, and making a report of the findings of those interviews, which may be reviewed by a supervisor), the Controller accepted the claimant's position that "some preliminary activities might have taken place," despite the fact that they were not documented in the case files, and found that certain investigative activities were reimbursable for *all* 2,796 cases in which a full initial investigation was not completed.[358]

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[354] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

[355] Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 35.

[356] Exhibit A, IRC, filed May 13, 2021, page 482 (Final Audit Report).

[357] Exhibit A, IRC, filed May 13, 2021, pages 198-199 (Decision and Parameters and Guidelines), emphasis added.

[358] Exhibit A, IRC, filed May 13, 2021, pages 483, 498 (Final Audit Report).

> We agreed with the city that the review of the initial SCAR is a necessary and reimbursable activity. Not all cases reported by CPS had an initial SCAR documented on file, but the majority did. Therefore, we concluded that it was reasonable to expect a review of the initial SCAR as part of the necessary process to determining whether the case was unfounded. Additionally, the time it took a supervisor to approve closing a case, and the time a records technician spent documenting the case in the system, might be reimbursable as part of an initial investigation.[359]

The record shows that the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to the number of other agency-generated SCARs investigated by the police department as claimed. The Controller reviewed all available documentation provided by the claimant, and determined that the documentation established that some, but not all, of the other agency-generated SCARs were fully investigated by the police department. The Controller also determined that certain partial initial investigation activities were reimbursable, despite the lack of supporting documentation.[360] The claimant has not satisfied its initial burden of providing evidence that the Controller's reduction to the number of other agency-generated SCARs with a full investigation by the police department, is wrong, arbitrary, or capricious.

Based on this record, the Commission finds that the Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on of the total number of Suspected Child Abuse Reports (SCARs) for fiscal years 1999-2000 through 2011-2012 referred to the claimant's police department by other agencies, is not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Reduction of Indirect Costs in Finding 3 Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

In Finding 3, the Controller determined that the claimant overstated its indirect cost rates for the audit period and then applied those overstated rates to overstated salaries.[361] The claimant's challenge to Finding 3 is limited to the Controller's determination that two positions – the public safety dispatcher and evidence technician – do not perform any *indirect* job duties and the resulting exclusion of those salaries and benefits from indirect costs.[362] The claimant contends that these job classifications should be allowable as 100 percent indirect labor costs in its Indirect Cost Rate Proposal (ICRP).[363]

For the reasons below, the Commission finds that the Controller's reduction of indirect costs is correct as a matter of law and its determination that the two positions do not perform indirect duties is not arbitrary, capricious, or entirely lacking in evidentiary support.

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[359] Exhibit A, IRC, filed May 13, 2021, pages 484 (Final Audit Report).

[360] Exhibit A, IRC, filed May 13, 2021, pages 483, 497 (Final Audit Report).

[361] Exhibit A, IRC, filed May 13, 2021, page 499 (Final Audit Report).

[362] Exhibit A, IRC, filed May 13, 2021, page 11.

[363] Exhibit A, IRC, filed May 13, 2021, page 11.

When an indirect cost rate claimed exceeds 10 percent, the claimant has the option under the Parameters and Guidelines of preparing an ICRP.[364] The Parameters and Guidelines require that an ICRP be calculated using one of two methodologies: the one cited below, in which a department's total costs are classified as either direct or indirect, or one in which the department is separated into groups and each group's total costs are classified as either direct or indirect. The parties agree that that the claimant calculated the ICRP using the total departmental costs method, described in Section V.B.1. of the Parameters and Guidelines as follows:

> The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) ***classifying a department's total costs for the base period as either direct or indirect***; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.[365]

The Parameters and Guidelines define direct costs within the context of preparing an ICRP by reference to 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B),[366] which defines direct costs as "those that can be identified specifically with a particular final cost objective."[367] The Parameters and Guidelines define indirect costs as "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,"[368] which closely mirrors the definition in OMB Circular A-87 Attachments A and B: costs "incurred for a common or joint purpose benefiting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved."[369] A "cost objective" is defined in OMB Circular A-87 Attachments A and B as a "function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred."[370]

As the Controller explains:

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[364] Exhibit A, IRC, filed May 13, 2021, page 248 (Parameters and Guidelines).

[365] Exhibit A, IRC, filed May 13, 2021, pages 248-249 (Parameters and Guidelines, Section V.B.1.), emphasis added.

[366] Exhibit A, IRC, filed May 13, 2021, page 248 (Parameters and Guidelines).

[367] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 186 (Tab 7).

[368] Exhibit A, IRC, filed May 13, 2021, pages 247-248 (Parameters and Guidelines), emphasis added.

[369] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 186 (Tab 7).

[370] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 185 (Tab 7).

> The indirect cost rate is typically computed as an arithmetical calculation that allocates expenses between direct and indirect. The pool of expenses (numerator) identified as indirect is then divided by an allocation base (denominator), which in most cases is direct labor. Generally speaking, *direct costs are those which can be identified specifically with particular unit or function* ("cost objective") and accounted for separately. Indirect costs, on the other hand, are those *costs incurred in support of general business functions and which are not attributable to a specific project or unit*. Both the city's claimed rates (as shown in its ICRPs) and our audited rates were based on Police Department expenditures as a whole. Therefore, *the cost objective is the entire Police Department and not the ICAN program.* As such, *direct labor includes the overall functions of the Police Department assignable to specific units and functions*; and the calculated indirect cost rates are considered to be department-wide rates.[371]

Because the claimant chose to calculate its indirect cost rate based on police department expenditures as a whole, the cost objective is the entire police department, and not the *ICAN* program. Thus, direct costs are those that are specifically identified with a particular unit or function within the police department, and indirect costs are those that are *not* directly assignable to a particular department or program within the police department. "Telephone services, local and long distant [sic] calls, telegrams, postage, messenger, electronic or computer transmittal services and the like," are examples of indirect costs that benefit the entire police department, and are not linked to any particular unit in the department.[372]

Here, the parties dispute whether the public safety dispatcher and evidence technician positions perform duties that benefit the entire police department, allowing their salaries to be categorized as indirect; or whether they perform duties that directly benefit a particular department or program within the police department, making their salaries a direct cost.

The claimant asserts that it included the public safety dispatcher and evidence technician positions as indirect costs because "those positions provided benefit and support to the entire department" and the indirect cost rates "were not calculated based on a specific program."[373] The claimant states that the dispatchers serve "as a calling center or central reception function for the entire body of officers and are necessary support of the general business function of the department"; and the evidence technician "must collect, store, maintain and process evidence from child abuse cases, as well as from all other cases that the police department responds to."[374] The claimant also asserts that the public safety dispatcher position serves as the department's receptionists. The claimant provided a listing of common clerical duties obtained from

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[371] Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report), emphasis added.

[372] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41.

[373] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 1-2.

[374] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 2, 4.

Indeed.com's website to show that the duties performed by the public safety dispatcher positions are clerical functions.[375]

However, despite these assertions, the claimant repeatedly defines the "cost objective" as the *ICAN* program, and not the police department as a whole.[376] As the Controller noted in the audit report, the claimant's erroneous assumption that the cost objective is the *ICAN* program, and not the entire police department, leads the claimant to misapprehend the manner in which direct and indirect costs are allocated.[377]

> The city interchangeably identifies the cost objective as the "child abuse program" and "child abuse investigations." The city argues that the Public Safety Dispatcher and the Evidence Technician classifications benefit more than one cost objective (child abuse investigation, missing persons, theft, DUI, etc.). For this reason, the city concludes that these positions are indirect. We disagree.[378]

This can be seen throughout the record. The claimant's IRC argues that neither position contributes to direct costs of the *ICAN* program because they do not directly perform any of the *ICAN* program activities and their costs cannot be specifically identified as part of the *ICAN* program.[379] In support, the claimant cites to a number of sources, including:

- Declaration of Patrol Lieutenant Shannon Laney, which states: "Dispatch staff/division is the communications center for the entire police department and provide necessary support to the officers working on child abuse investigations *as well as to the entire sworn staff for all departmental matters*. Dispatch staff take all calls from the public, assign and track the case, and monitor officers in the field. The officer would not be able to *obtain the call for assistance or initiate the case* without the efforts of the dispatch staff."[380]
- Public Safety Dispatcher Job Description, which states that a dispatcher "receives and processes incoming 911 calls, non-emergency calls, and voice radio calls; secures and records information as to the exact location and circumstances, and uses radio *to dispatch necessary units, including police, fire department, and*

[375] Exhibit A, IRC, filed May 13, 2021, page 11.

[376] Exhibit A, IRC, filed May 13, 2021, pages 12 ("the overall police department as well as the cost objective/mandate program"), 13 ("neither the dispatcher nor the evidence staff positions are the direct costs of this programs or 'Cost objective'"), 505 ("The cost objective in this claim for the Child Abuse program or project is the costs of the Child Abuse Investigative program").

[377] Exhibit A, IRC, filed May 13, 2021, page 507 (Final Audit Report).

[378] Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report), emphasis added.

[379] Exhibit A, IRC, filed May 13, 2021, page 13.

[380] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 4 (citing Exhibit A, IRC, filed May 13, 2021, page 17 [Declaration of Lieutenant Shannon Laney]), emphasis added.

ambulance personnel and equipment as well as other resources that may be necessary" and "Logs all police, fire, and medical *calls for service*."[381]

- Claimant's Audit Response, which states: "Dispatch staff is a support/clerical division - functioning primarily as the receptionists for all the sworn staff of the department and they benefit more than one "cost-objective." *They answer for all types of calls for service*."[382]
- Claimant's Audit Response, which states that these two positions provide indirect support to not "only one cost objective – but a multitude of programs including Drunk Driving, Domestic Violence, Homicides, Sexual Assaults, Missing Persons, etc."[383]

However, pursuant to the Parameters and Guidelines, for job duties performed by the public safety dispatcher and evidence technician to be classified as indirect, they must benefit the general business functions of the entire police department, and not be attributable to any specific program within the department. Thus, the claimant is incorrect in concluding that because the duties performed by the public safety dispatcher and evidence technician positions serve more than one specific program within the department, they are necessarily indirect in nature. Again, under the Parameters and Guidelines, because the police department is the applicable cost objective, direct duties are those which are "specifically identified with a particular unit or function" and "benefited the direct functions of the police department," regardless of whether they provide a support function like clerical or receptionist duties.[384]

The Commission finds that the Controller correctly interpreted the Parameters and Guidelines when determining the issue. The Controller found that the public safety dispatcher and evidence technician classifications perform duties that can be specifically identified with a particular unit or function within the police department, and do not perform general business functions that benefit the entire police department.[385] As the Controller points out:

> Employees in the Public Safety Dispatcher classification may serve as receptionists; however, *they do not provide receptionist services to the entire Police Department. Employees in the Public Safety Dispatcher classification*

[381] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 2 (referencing Exhibit A, IRC, filed May 13, 2021, page 252 [Exhibit G]), emphasis added.

[382] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 3 (citing Exhibit A, IRC, filed May 13, 2021, page 505 [Final Audit Report]), emphasis added.

[383] Exhibit A, IRC, filed May 13, 2021, page 505 (Final Audit Report).

[384] Exhibit A, IRC, filed May 13, 2021, pages 507-508 (Final Audit Report).

[385] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 42; Exhibit A, IRC, filed May 13, 2021, page 508 (Final Audit Report).

> *serve as receptionists that benefit specific units within the Police Department*. Therefore, we believe that this classification should be classified as direct.[386]

The Commission further finds that the Controller's determination and audit decision to exclude these positions from the ICRP is not arbitrary, capricious, or entirely lacking in evidentiary support. Under this standard, the general inquiry is limited to whether the Controller adequately considered all relevant factors, and has demonstrated a rational connection between those factors and the decisions made. In addition, the Commission's review of the Controller's audit decisions is limited, out of deference to the agency's authority and presumed expertise: The Commission may not reweigh the evidence or substitute its judgement for that of the Controller.[387]

Here, the claimant categorized 21 positions within the police department as performing 100 percent direct duties, 13 of which the Controller accepted, six of which the Controller determined performed varying combinations of direct and indirect duties, and two of which (the public safety dispatcher and evidence technician positions) the Controller determined did not perform any indirect duties.[388] In reaching this conclusion, the Controller "analyzed the representative duties listed in the city's duty statements, held multiple discussions with city officials, and considered their input to determine a reasonable allocation."[389]

The claimant's own statements and supporting documentation support the Controller's determination. They show that the duties performed by the public safety dispatcher and evidence technician benefited the direct functions of the police department, namely sworn staff responding to calls for service, and not its general business functions. The claimant describes the dispatcher position as follows:

> The dispatcher is the integral communication link between the public and the officers. The public is not calling to obtain service from a dispatcher - they are calling to contact and obtain service from other members of its staff, typically its sworn staff. Therefore, *the dispatchers service* [sic] *as a calling center or central reception function for the entire body of officers* and are necessary support of the general business function of the department.[390]

The declaration of Lieutenant Laney describes dispatch staff as providing necessary support "to the entire sworn staff for all departmental matters" so that the police officers can "obtain the call for assistance or initiate the case."[391] According to the job description, the public safety dispatcher's duties include receiving and processing both emergency and non-emergency calls;

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[386] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41, emphasis added.

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

[388] Exhibit A, IRC, filed May 13, 2021, page 507 (Final Audit Report).

[389] Exhibit A, IRC, filed May 13, 2021, page 507 (Final Audit Report).

[390] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 2-3, emphasis added.

[391] Exhibit A, IRC, filed May 13, 2021, page 17 (Declaration of Lieutenant Shannon Laney).

using radio to dispatch police, fire department, and ambulance personnel; and logging calls for police, fire, and medical service.[392] In regard to the evidence technician, the claimant asserts that employees in the classification "must collect, store, maintain and process evidence from child abuse cases, as well as from ***all other cases*** *that the police department responds to*."[393]

The claimant nevertheless asserts that the Controller incorrectly limited indirect costs to administrative or clerical duties.[394] In reviewing eight of the police department positions that the claimant initially categorized as performing 100 percent indirect duties, the Controller concluded as follows:

> Of the eight classifications, we determined that six performed a combination of both direct and indirect duties to different extents.
>
> *The duties that we identified as indirect were either administrative or clerical in nature. The duties that we identified as direct were readily assignable to a specific function and benefited the direct functions of the police department*. The city is not contesting our assessment of these six classifications. Rather, the city is contesting the two classifications that we determined do not perform any indirect duties and are therefore 0% indirect: Public Safety Dispatcher and Evidence Technician. The respective duty statements do not identify any duties that are administrative or clerical in nature.[395]

However, the Controller is not, as the claimant argues, restricting allowable indirect costs to administrative and clerical duties. In fact, as the claimant points out, non-clerical positions, including the information services manager and the information services technicians, "were claimed and were correctly allowed for inclusion in the ICRP/Overhead rate by the SCO even though they did not provide 'administrative or clerical' functions."[396] Instead, the Controller used administrative and clerical duties as valid examples of allowable indirect costs to distinguish the six classifications where it found some percentage of the duties performed were indirect from the two at issue, where it found that none of the duties performed were indirect in nature.

Nor is the Controller stating that the public safety dispatcher and evidence technician never perform administrative or clerical duties. The Controller agrees with the claimant that the public safety dispatcher *does* work as a receptionist.[397] The important distinction, however, is that public safety dispatchers "do not provide receptionist services to the entire Police Department.

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[392] Exhibit A, IRC, filed May 13, 2021, page 252 (Exhibit G).

[393] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 4, emphasis added.

[394] Exhibit A, IRC, filed May 13, 2021, page 12.

[395] Exhibit A, IRC, filed May 13, 2021, page 507 (Final Audit Report).

[396] Exhibit A, IRC, filed May 13, 2021, page 12.

[397] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41.

Employees in the Public Safety Dispatcher classification serve as receptionists that benefit *specific units within the Police Department*."[398]

Here, the Controller based its determination that the public safety dispatcher and evidence technician positions did not perform any indirect duties on "discussions with staff as well as on actual duty statements" and by "work[ing] extensively with both Police Department and city staff" to perform an analysis.[399] The record shows that the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to indirect costs as claimed.

The claimant has not shown otherwise. By contrast, the claimant's factual assertions and supporting documentation show that the job duties performed by the public safety dispatcher and evidence technician positions benefit the direct functions of the police department by providing necessary support to the department's sworn staff "in the commission of law enforcement duties."[400] These direct duties are unlike "telephone services, local and long distant [sic] calls, telegrams, postage, messenger, electronic or computer transmittal services and the like," which are examples of indirect costs that benefit the entire police department, and are not linked to any particular unit in the department.[401]

The additional documentation submitted by the claimant with the IRC[402] does not demonstrate that the Controller erred in concluding that the public safety dispatcher and evidence technicians perform duties that are direct in nature because they are specifically identified with a particular unit or function within the police department. Nor does the additional documentation submitted with the claimant's comments on the Draft Proposed Decision demonstrate that the Controller erred in its decision.[403] These documents include audit reports issued by the Controller to other

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[398] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41, emphasis added.

[399] Exhibit A, IRC, filed May 13, 2021, page 508 (Final Audit Report).

[400] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, page 11 (Exhibit A).

[401] Exhibit B, Controller's Late Comments on the IRC, filed February 16, 2022, page 41.

[402] The claimant submitted the following documentation with Exhibit A, IRC, filed May 13, 2021: job descriptions for the Public Safety Dispatcher and Property/Evidence Technician positions (pages 251-256 [Exhibit G]); a list of "common clerical duties" from the website Indeed.com (pages 257-261 [Exhibit H]); excerpts from the Controller's claiming instructions manual (pages 262-282 [Exhibit I]); and federal OMB guidance (pages 282-428 [Exhibit J]).

[403] The claimant submitted the following documentation with Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022: emails between the parties pertaining to the audit (pages 9-57 [Exhibit A]; audit reports from other local governments, where it contends that the Controller allowed ICRPs from "other similar audits" (pages 58-263 [Exhibit B]); claimant's police department organizational chart and the public safety dispatcher job description, and job descriptions for certain dispatcher classifications for the cities of Fresno and Rialto (pages 264-274 [Exhibit C]); and claimant's other law enforcement-related state

local government entities that have no bearing on the matter at hand, reimbursement claims submitted by the claimant in other matters, and job postings from other jurisdictions.[404] Emails between the claimant and its claim representative are similarly irrelevant. The emails between the parties do not show anything different from what is already contained in the record: that the parties disagree whether positions that provide necessary support to sworn staff in the commission of law enforcement duties constitute indirect costs.[405]

The claimant has not satisfied its initial burden of providing evidence that the Controller's determination, that the public safety dispatcher and evidence technician positions do not perform indirect duties, is wrong, arbitrary, or capricious. Absent evidence from the claimant that the Controller acted arbitrarily, capriciously, or entirely without evidentiary support in making those factual determinations, the Commission is prohibited from disturbing the Controller's decision on the issue.

Accordingly, the Commission finds that the Controller's reduction of indirect costs in Finding 3 is correct as a matter of law and, based on this record, is not arbitrary, capricious, or entirely lacking in evidentiary support.

V. Conclusion

Based on the forgoing analysis, the Commission finds that the IRC was timely filed.

The Commission concludes:

- The Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the exclusion of 10 suspected child abuse reports (SCARs) received by the claimant's police department, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support;
- The Controller's reduction in Finding 2 for the costs claimed to complete an investigation for purposes of preparing Form SS 8583, based on the reduction to the number of suspected child abuse reports (SCARs) referred to the claimant's police department by other agencies, is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support;
- The Controller's reduction of indirect costs in Finding 3 is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission denies this IRC.

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mandated reimbursement claims, which it asserts shows that all of its law enforcement claims use the same departmental ICRP rate of 93.4 percent (pages 275-313 [Exhibit D]).

[404] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 58-263 (Exhibit B), 275-313 (Exhibit D).

[405] Exhibit E, Claimant's Late Comments on the Draft Proposed Decision, filed October 4, 2022, pages 9-57 [Exhibit A].