STATE of CALIFORNIA
COMMISSION ON STATE MANDATES

January 12, 2022

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

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

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

Re: Proposed Decision
Municipal Storm Water and Urban Runoff Discharges, 19-0304-I-02
Los Angeles Regional Quality Control Board Order No. 01-182,
Permit CAS004001, Part 4F5c3
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013
City of Norwalk, Claimant

Dear Ms. Chinn and Ms. Sidarous:

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

Hearing

This matter is set for hearing on **Friday, January 28, 2022**, at 10:00 a.m., via Zoom.

In response to COVID-19 and its impact on public meetings under the Bagley-Keene Open Meeting Act, Governor Newsom's Executive Order N-29-20 temporarily suspended, on an emergency basis pursuant to California Government Code section 8571, certain requirements for public meetings until September 30, 2021. Statutes 2021, chapter 165, amended the Bagley-Keene Open Meeting Act to extend the suspension of these requirements until January 31, 2022. Accordingly, requiring the physical presence of board members at meetings and providing a physical space for members of the public to observe and participate have been suspended until further notice, so long as the agency makes it possible for members of the public to observe and address the meeting remotely, for example, via web or audio conferencing such as Zoom. (Gov. Code, § 11133, as added by Stats. 2021, ch. 165.)

The Commission on State Mandates (Commission) is committed to ensuring that its public meetings are accessible to the public and that the public has the opportunity to observe the meeting and to participate by providing written and verbal comment on Commission matters.

If you want to speak during the hearing, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted. If you are participating by phone, you may dial *9 to use the "Raise Hand" feature.

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   Passcode: 767119

During this extraordinary time and as we explore new ways of doing business with new technologies, we ask that you remain patient with us. Please don't hesitate to reach out to us for help with technical problems at csminfo@csm.ca.gov or 916 323-3562.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify and please specify the names and email addresses of the people who will be speaking for inclusion on the witness list so that detailed instructions regarding how to participate as a party in this meeting on Zoom can be provided to them.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Special Accommodations

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

Sincerely,

Heather Halsey
Executive Director

Hearing Date: January 28, 2022
J:\MANDATES\IRC\2019\0304 (Municipal Storm Water and Urban Runoff Discharges)\19-0304-I-02\IRC\PD.docx

ITEM 4

INCORRECT REDUCTION CLAIM

PROPOSED DECISION

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

Municipal Storm Water and Urban Runoff Discharges

Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013

19-0304-I-02

City of Norwalk, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of reimbursement claims filed by the City of Norwalk (claimant) for fiscal years 2002-2003 to 2012-2013 for the *Municipal Storm Water and Urban Runoff Discharges* program. The Final Audit Report determined that out of the $1,441,130 in total costs claimed, $361,508 was allowable and $1,079,622 was unallowable.[1]

The claimant challenges the Controller's three audit 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).[2]

Staff finds that the IRC was timely filed, and that Controller's reductions are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. Staff recommends that the Commission deny this IRC.

Procedural History

The claimant signed the reimbursement claims for fiscal years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-2010, on September 28, 2011.[3]

[1] Exhibit A, IRC, filed May 22, 2020, page 191 (Audit Report).

[2] Exhibit A, IRC, filed May 22, 2020, pages 3-10.

[3] Exhibit A, IRC, filed May 22, 2020, pages 201-211 (Audit Report). The Controller also found in Finding 3 that the claimant used "restricted funds" from the Transit System Fund, the Equipment Maintenance Fund, the Community Development Block Grant Fund, and the Water

The claimant submitted a reimbursement claim for the fiscal year 2011-2012 on January 16, 2013,[4] and for the fiscal year 2012-2013 on February 6, 2014.[5] The Controller issued the Draft Audit Report on April 11, 2017[6], and issued the Final Audit Report on May 23, 2017.[7] The claimant filed the IRC on May 22, 2020.[8] The Controller has not filed comments on the IRC. Commission staff issued the Draft Proposed Decision on December 10, 2021.[9] No comments were filed on the Draft Proposed Decision.

Commission Responsibilities

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

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

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.[10] The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

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Utility Fund to pay for one-time costs 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.

[4] Exhibit A, IRC, filed May 22, 2020, page 466 (Claim for Payment).

[5] Exhibit A, IRC, filed May 22, 2020, page 468 (Claim for Payment).

[6] Exhibit A, IRC, filed May 22, 2020, page 196 (Audit Report).

[7] Exhibit A, IRC, filed May 22, 2020, pages 190-196 (Final Audit Report).

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

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

[10] *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."[11]

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.[12]

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.[13] In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.[14]

Claims

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

Issue	Description	Staff Recommendation
Was the IRC timely filed?	Section 1185.1 of the Commission's regulations requires IRCs to be filed no later than three years after the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which notice complies with Government Code section 17558.5(c).	*The IRC was timely filed* – The Final Audit Report of May 23, 2017, complies with the notice requirements in Government Code section 17558.5(c). The IRC was filed on May 22, 2020, less than three years from the date of the Audit Report, and is therefore timely filed.
Was the Controller's reduction of the claimant's reimbursement for the one-	The claimant initially claimed reimbursement for the installation of 359 trash	*Not arbitrary, capricious, or entirely lacking in evidentiary support* – To support its

[11] *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.

[12] *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.

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

[14] 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.

time installation of trash receptacles from 217 to 194 arbitrary, capricious, or entirely lacking in evidentiary support?	receptacles: 165 in fiscal year 2002-2003, and 194 trash receptacles in fiscal year 2006-2007. The Controller found that the claimant had actually installed 194 trash receptacles. This resulted in a reduction from $504,477 to $193,544. The claimant admits that it did not install 359 trash receptacles, but contends that the actual amount is 217.	claim for reimbursement, the claimant provided a 2008 maintenance agreement from Nationwide stating that it would maintain 217 bus stops.[15] The agreement, however, does not identify the transit receptacles actually installed by the claimant during the audit period.[16] 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.[17] 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.[18] 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

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

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

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

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

		receptacles at specified bus stop locations."[19] The Controller considered the claimant's claims and documentation, conducted a diligent inquiry into the claimant's claims, and came to its determination that the claimant was only allowed reimbursement for the installation of 194 trash receptacles. The Controller's reduction was therefore not arbitrary, capricious, or entirely lacking in evidentiary support.
Was the Controller's reduction of the claimant's reimbursement for the ongoing activities of trash collections correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support?	The Parameters and Guidelines require that local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of the 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.[20] For the relevant period, the claimant sought reimbursement for 136,526 trash collections.[21] The claimant, however, did not provide documentation aside from maintenance agreements with Nationwide	*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 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

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

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

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

	and Conservation Corps to support the annual number of trash collections claimed.[22] Through its audit, the Controller found that the claimant misstated the number of trash collections claimed and reduced the allowable amount to 116,484.[23] This resulted in a reduction from $936,653 to $795,376.[24]	Angeles Metropolitan Transit Authority'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.[25] 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.
Was the Controller's reduction of costs claimed, based on the determination that Proposition A and C sales tax Local Return funds used by the claimant to pay for the mandate are offsetting revenues, that should have been identified and deducted from the reimbursement claim, correct as a matter of law?	The claimant used Local Return funds from the Proposition A and C sales taxes rather than revenue from its general fund to partially pay for one-time costs and to maintain trash receptacles in accordance with the mandate. The claimant did not identify and deduct the Proposition A and C Local Return funds as offsetting revenues in its reimbursement claims.	*Correct as a matter of law* – The Proposition A and C local return funds used by the claimant to pay for the mandated activities are offsetting revenues that should have been identified and deducted from their reimbursement claims. Article XIII B, section 6 requires reimbursement only when the state-mandated program forces local governments to incur

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

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

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

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

	Section VIII. of the Parameters and Guidelines states: "reimbursement for this mandate received from any federal, state or *nonlocal* source shall be identified and deducted from this claim."[26] The claimant argues that the Controller improperly classified the Proposition A and C funds as "offsetting" revenues because the revenues from Proposition A and C were not specifically intended for or dedicated for the same program as the *Municipal Storm Water and Urban Runoff Discharges* mandate. The claimant also argues that the Proposition A and C funds are not a federal, state, or non-local source. And claimant argues that it has the ability to pay back Proposition A and C funds if reimbursement is received.	increased actual expenditures of their limited "proceeds of taxes," which are counted against the local governments' spending limit.[27] Proposition A and C local return program funds are not the claimant's "proceeds of taxes" because these taxes are not imposed pursuant to the claimant's authority to levy taxes, nor are the revenues distributed to the claimant subject to the claimant's appropriations limit.[28] Thus, the reference in the Parameters and Guidelines to "nonlocal" funds to pay for a state-mandated program means that the funds for the program are not the claimant's own proceeds of taxes, nor are they subject to the claimant's appropriations limit imposed by article XIII B. Nonlocal funds, when used to pay for a state-mandated program, are required to be identified and deducted from reimbursement claims as offsetting revenue.

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

[27] *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; *Redevelopment Agency of the City of San Marcos* v. *Commission on State Mandates* (1997) 55 Cal.App.4th 976, 986-987.

[28] California Constitution, article XIII B, sections 8(b) and 8(c); *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 451; 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.

		Since these Proposition A and C sales tax revenues (i.e., local return funds) do not constitute the claimant's proceeds of taxes, nor are they subject to the claimant's appropriation limit, they are "nonlocal" sources of revenue.

Staff Analysis

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

Section 1185.1 of the Commission's regulations requires IRCs to be filed no later than three years after the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim that complies with Government Code section 17558.5(c). The Final Audit Report, dated May 23, 2017, specifies the claim components and amounts adjusted, and the reasons for the adjustments,[29] and thereby complies with the notice requirements in section 17558.5(c). Because the claimant filed the IRC on May 22, 2020,[30] within three years of date of the Final Audit Report, staff finds that the IRC was timely filed.

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

Staff finds that the Controller's reduction of the claimant's one-time activities related to the purchase and installation of transit stop trash receptacles is not arbitrary, capricious, or entirely lacking in evidentiary support. To support its claim for reimbursement, the claimant provided a 2008 maintenance agreement from Nationwide Environmental Services Inc. (Nationwide) stating that it would maintain 217 bus stops. The agreement, however, does not identify the transit receptacles actually installed by the claimant during the audit period. 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. 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. 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." The Controller considered the claimant's claims and documentation, conducted a diligent inquiry into

[29] Exhibit A, IRC, filed May 22, 2020, pages 190-215 (Audit Report Cover Letter and Report).

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

the claimant's claims, and came to its determination that the claimant was only allowed reimbursement for the installation of 194 trash receptacles. This decision was deliberate and rational and has not been rebutted with any evidence by the claimant. Therefore, the Controller's reduction 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.

Staff finds that the Controller's reduction to the number of trash collections claimed 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 (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 and Nationwide to determine the allowable number of trash collections during the audit period.[31] 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.[32] The Controller's field audit was deliberate and the findings are rationally tied to the evidence it reviewed in the audit.

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.

Staff finds that the Proposition A and C Local Return funds used by the claimant are offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's reduction is correct as a matter of law. The claimant agrees that it used Proposition A and C local return funds from transportation sales taxes levied by the Los Angeles MTA to pay for the ongoing mandated trash receptacle maintenance.[33] The claimant contends

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

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

[33] Exhibit A, IRC, filed May 22, 2020, page 7. Propositions A and C include a Local Return program, under which Los Angeles County cities and the County, including the claimant, receive 25 percent and 20 percent, respectively, of the sales tax revenue collected. See Exhibit C(1), Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on February 22, 2021), 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), page 4.

that these funds are not offsetting revenues because it has the ability to pay back the funds if reimbursed and the funds are not a federal, state, or non-local source within the meaning of the Parameters and Guidelines.[34]

Staff finds that Proposition A and C local return fund revenues are not the claimant's "proceeds of taxes" within the meaning of article XIII B of the California Constitution because the taxes are not levied by the claimant nor are they subject to the claimant's appropriations limit. Therefore, staff finds that the Proposition C local return revenue used by the claimant is offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's reduction is correct as a matter of law. Section VIII. of the Parameters and Guidelines requires that "reimbursement for this mandate received from any federal, state or *nonlocal source* shall be identified and deducted from this claim" as offsetting revenue, and these funds are nonlocal sources of revenue.[35] To understand the meaning of *nonlocal* revenue, the Parameters and Guidelines must be read consistently with the constitutional legal principles underlying the reimbursement of state-mandated costs.[36]

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.*"[37] The California Supreme Court, in *County of Fresno v. State of California*,[38] 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

[34] Exhibit A, IRC, filed May 22, 2020, pages 6-10.

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

[36] See *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 974, 811 and 812, where the court states that the parameters and guidelines must be read in context, and with the fundamental legal principles underlying state-mandated costs.

[37] *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.

[38] *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*.[39]

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.[40]

Neither Proposition A nor Proposition C are the claimant's local "proceeds of taxes" for purposes of mandates reimbursement because they are neither levied by the claimant nor subject to the claimant's appropriations limit. As such, any costs incurred by the claimant in performing the mandated activities that are funded by Proposition A or Proposition C, non-local taxes, are excluded from mandate reimbursement under article XIII B, section 6.

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.[41] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[42] 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 Angeles County.[43] 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 programs funds for the cities and the county to use for public transit purposes.[44] Permissible uses include bus stop improvements and maintenance projects, which include the installation, replacement and maintenance of trash receptacles.[45] The claimant does not dispute receiving Proposition A and Proposition C tax revenues through the local return programs during

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

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

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

[42] *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"].

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

[44] Exhibit C(1), Proposition A Ordinance, http://libraryarchives.metro.net/DPGTL/legislation/1980_proposition_a_ordinance.pdf (accessed on February 22, 2021), 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), page 4; Exhibit A, IRC, filed May 22, 2020, page 96 (Local Return Guidelines 2007 Edition).

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

the audit period and using those funds for the eligible purposes of installing and maintaining trash receptacles at transit stops.

These taxes, however, are not levied "by or for" the cities and county, as that constitutional phrase is interpreted by the courts, because the claimant does not have the authority to levy Proposition A and C taxes; these taxes are not the claimant's local proceeds of taxes.[46] Nor are the proceeds subject to the city's appropriations limit.[47]

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.[48] Because the Proposition A and Proposition C 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."[49]

Thus, expenditures from these "nonlocal" (Proposition A and C Local Return) funds should have been identified and deducted as offsetting revenues. Therefore, the Controller's reduction is correct as a matter of law.

Conclusion

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

Staff Recommendation

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

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

[47] 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.

[48] *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.

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

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, 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*)

DECISION

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on January 28, 2022. [Witness list will be included in the adopted Decision.]

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

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

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

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.[50] The Controller's final audit found that $361,058 was allowable and $1,079,622 was unallowable.[51] 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).[52]

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.[53] The agreement, however, does not identify the transit receptacles actually installed by the claimant during the audit period.[54] 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.[55] 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.[56] 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."[57] The Controller considered the claimant's claims and documentation, conducted a diligent inquiry into claimant's claims, and came to its

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

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

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

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

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

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

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

[57] 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.[58] 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.[59] Nor are the proceeds subject to the city's appropriations limit.[60] 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.[61]

Accordingly, the Commission denies this IRC.

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

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

[60] 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.

[61] *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).[62]

01/16/2013 The claimant submitted its fiscal year 2011-2012 reimbursement claim.[63]

02/06/2014 The claimant submitted its fiscal year 2012-2013 reimbursement claim.[64]

04/11/2017 The Controller issued the draft audit report.[65]

05/23/2017 The Controller issued the final audit report.[66]

05/22/2020 The claimant filed the IRC. [67]

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.[68]

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.[69]

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

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

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

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

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

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

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

[69] 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.[70]

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.[71] 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.[72]

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.[73] Actual costs must be traceable and supported

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

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

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

[73] 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.[74]

The ongoing activities in Section IV. B. are reimbursed under a reasonable reimbursement methodology (RRM).[75] 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.[76]

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.[77]

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.[78]

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[79] and

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

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

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

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

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

[79] Public Utilities Code section 130050.

authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.[80]

> 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.[81]

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."[82]

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.[83] 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.[84] 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."[85] 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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[80] Public Utilities Code sections 130231(a), 130350.

[81] 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.

[82] Public Utilities Code section 130354.

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

[84] 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.

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

"special tax" within the meaning of section 4.[86] 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.[87] 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.[88] 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.[89] 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.[90]

In 1990, voters approved Proposition C, a second one-half percent transactions and use tax, also used to fund public transit projects countywide.[91] 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.[92] 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.[93] 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.[94]

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

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

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

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

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

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

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

[93] *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.

[94] *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.[95]

The Transportation Commission is statutorily authorized to levy both the Proposition A and Proposition C transaction and use taxes.[96]

> 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).[97]

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[95] 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).

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

[97] 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.[98] The Proposition C Ordinance, however, expressly includes a provision establishing an appropriations limit for the Transportation Commission for the Proposition C proceeds.[99]

> 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.[100]

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.[101] Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A and Proposition C taxes.[102]

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

[99] 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.

[100] 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.

[101] 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.

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

assessments, and fares."[103] Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses[104] 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.[105]

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."[106] 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.[107]

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

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

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

[106] 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.

[107] 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.[108]

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."[109] Metro allocates and distributes local return funds to cities and the county each month, on a "per capita" basis.[110]

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.[111]

> 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.[112]

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."[113] Eligible projects include "Congestion Management Programs, bikeways and bike lanes, street improvements supporting public transit service, and Pavement Management System projects."[114]

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[108] 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.

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

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

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

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

[113] 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.

[114] 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.[115] 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.[116]

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.[117] Proposition C funds cannot be traded.[118] 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."[119] Subsequent reimbursement funds must then be deposited into the Proposition A or Proposition C Local Return Fund.[120]

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.[121] 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.[122]

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.[123] After review,

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

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

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

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

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

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

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

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

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

however, the Controller determined that the majority of the trash receptacles claimed for fiscal year 2006-2007 were improvements to existing bus stops and were not reimbursable as one-time activities.[124] The Controller found that the 165 trash receptacles installed in 2002-2003 and 29 trash receptacles installed in 2006-2007 were reimbursable.[125] 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.[126] 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.[127] 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.[128] 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.[129] 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."[130]

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.[131] Specifically, the claimant identified 136,526 trash collections and the Controller allowed 116,484 following the audit.[132]

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

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

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

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

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

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

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

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

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

The claimant did not provide documentation to support the annual number of trash collections claimed.[133] Thus, the Controller worked with the documentation provided during audit fieldwork to determine the allowable number of annual trash collections.[134] 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.[135]

Reimbursement for fiscal year 2002-2003 was reduced by the Controller from 80 stops to 59.[136] 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.[137]

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.[138] 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.[139]

Reimbursement for fiscal years 2003-2004 and 2004-2005 was reduced from 242 stops to 178.[140] 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.[141]

Reimbursement for fiscal years 2005-2006 and 2006-2007 was reduced from 280 stops to 206.[142] 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

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

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

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

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

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

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

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

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

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

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

last included, and determined that 206 trash receptacles were allowable (280 transit receptacles per agreement × 73.68%).[143]

Reimbursement for fiscal years 2007-2008 through 2011-2012 was reduced to 194 stops.[144] 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.[145] The Controller used the GIS transit map provided during audit fieldwork and determined that only 194 of the transit stops included a trash receptacle.[146] The other stops were found to be either abandoned or did not include a trash receptacle.[147]

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).[148] 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.[149] 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:

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

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

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

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

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

[148] 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.

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

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.

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.[150]

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.[151] The claimant contends that the 217 count is supported by the April 2008 maintenance agreement between the claimant and Nationwide.[152] The maintenance agreement specifically lists 217 bus stops that require trash collection.[153]

2. Finding 2

For the relevant audit period, the claimant identified 136,526 trash collections and the Controller allowed 116,484 following the audit.[154] 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.[155] The claimant notes that the Controller excluded a number of stops because they were allegedly

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

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

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

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

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

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

maintained by Metro.[156] 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" (again – conducted decades later in 2016).[157] 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.[158]

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.[159] 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.[160] 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.[161] 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.[162]

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.[163] The claimant contends that it did not receive any reimbursement specifically intended for or dedicated to this mandate.[164] 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.[165]

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.[166] The claimant contends that it was entirely

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

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

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

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

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

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

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

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

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

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

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

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.[167] And the claimant argues that it 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.[168] 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.[169]

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.[170] 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."[171]

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

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

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

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

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

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.[172] 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.]' "[173]

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.[174] 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.[175]

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.[176] The claimant may then file an IRC with the Commission "pursuant to regulations adopted by the Commission" contending that the

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[172] *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.

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

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

[175] 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.

[176] Government Code section 17558.5(c).

Controller's reduction was incorrect and to request that the Controller reinstate the amounts reduced to the claimant.[177]

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).[178]

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.[179]

Because the claimant filed the IRC on May 22, 2020,[180] 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.[181] 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.[182] 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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[177] Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

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

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

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

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

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

listed 152 bus stop locations in 2003.[183] 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.[184] 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.[185] 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."[186]

According to the Parameters and Guidelines, the installation of trash receptacles is a one-time reimbursable activity under section IV.A.[187] To be eligible for reimbursement for any fiscal year, only actual costs may be claimed for the one-time activities in section IV.A.[188] 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."[189]

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.[190] 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.[191] Provisions that

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

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

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

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

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

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

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

[190] *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.

[191] *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.[192]

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 . . . ."[193] 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.)[194]

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.[195] The Commission finds that this

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

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

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

[195] 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.[196] 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.[197]

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.[198] 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.[199] 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.[200] 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."[201]

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.[202] 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.)

[196] *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.

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

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

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

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

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

[202] 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.[203] The Controller found that $795,376 was allowable and $141,277 was unallowable.[204] Specifically, the claimant identified 136,526 trash collections and the Controller allowed 116,484 following the audit.[205]

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).[206] 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.[207]

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."[208]

Here, the claimant, did not provide any documentation to support the annual number of trash collections claimed as required by the Parameters and Guidelines.[209] 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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[203] Exhibit A, IRC, filed May 22, 2020, pages 204-208 (Audit Report).

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

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

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

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

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

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

and Nationwide.[210] The claimant contends that its service agreements with Conservation Corps and Nationwide support their claim for reimbursement.[211] 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.[212] 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.[213] The claimant did not identify and deduct the Proposition A and C Local Return funds as offsetting revenues in its reimbursement claims.[214] 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.[215] 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.[216] The claimant also contends that it has the ability to pay back

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

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

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

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

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

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

[216] 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.[217] 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."[218]

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.[219]

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."[220] The Parameters and Guidelines do not stand alone, but must be interpreted in a manner that is consistent with the California Constitution[221] and principles of mandates law.[222] 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.[223] 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.[224]

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

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

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

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

[221] 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.

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

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

[224] 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."[225]

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…"[226] 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.[227]

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."[228] 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.'"[229]

Article XIII B established "an appropriations limit," or spending limit for each "local government" beginning in fiscal year 1980-1981.[230] 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.[231]

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

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

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

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

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

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

[231] 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.[232]

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*."[233] 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).[234]

No limitation is placed on the expenditure of those revenues that do not constitute "proceeds of taxes."[235] 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."[236]

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.*"[237] The California Supreme Court, in *County of Fresno v. State of California*,[238] 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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[232] California Constitution, article XIII B, section 2.

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

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

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

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

[237] *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.

[238] *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*.[239]

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.[240]

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."[241] 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.[242] 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.[243] "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."[244] 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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[239] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

[240] *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.

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

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

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

[244] *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.[245] 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.[246]

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.[247] As discussed above, local jurisdictions are then permitted to use those funds on public transit projects as prescribed by the Local Return Guidelines.[248] Permissible uses include bus stop improvements and maintenance projects, which include the installation, replacement and maintenance of trash receptacles.[249]

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

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

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

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

[249] 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.[250]

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.[251] 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.[252] 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.'"[253] 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."[254] Article XIII B does not limit a local government's ability to expend tax revenues that are not its

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

[251] 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].

[252] 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.

[253] *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.

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

"proceeds of taxes."[255] 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."[256]

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."[257] 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.[258] 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."[259]

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).[260] 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.[261]

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

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

[257] *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.

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

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

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

[261] 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,"[262] the purpose of article XIII B is to provide discipline in government spending "by creating appropriations limits to restrict the amount of such expenditures."[263] As discussed above, articles XIII A and XIII B work together to impose restrictions on local governments' ability to both levy and spend taxes.[264] 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.[265]

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.[266]

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

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

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

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

[266] 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.[267] 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."[268] 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.[269] 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.[270] 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."

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

[268] Government Code section 7904.

[269] *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.

[270] *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).[271] 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.[272] 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.[273]

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.[274] 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."[275]

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[276] 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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[271] Exhibit A, IRC, filed May 22, 2020, pages 9-10.

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

[273] *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.

[274] *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).

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

[276] 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.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On January 12, 2022, I served the:

- **Proposed Decision issued January 12, 2022**

  Municipal Storm Water and Urban Runoff Discharges, 19-0304-I-02
  Los Angeles Regional Quality Control Board Order No. 01-182,
  Permit CAS004001, Part 4F5c3
  Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013
  City of Norwalk, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 12, 2022 at Sacramento, California.

Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/6/21

Claim Number: 19-0304-I-02

Matter: Municipal Storm Water and Urban Runoff Discharges

Claimant: City of Norwalk

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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