



July 6, 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 Stormwater and Urban Runoff Discharges, 20-0304-I-07*

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 Lakewood, 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, July 22 2022, in person at 10:00 a.m., at Park Tower, 980 9th Street, Second Floor Conference Room, Sacramento, California, 95814.**

**COVID-19 Precautions.** The Park Tower Building Management requires that no person will enter the Second Floor Conference Room having tested positive for COVID-19 within the last 30 days or having been exposed to someone who tested positive for COVID-19 or is believed to have contracted COVID-19 within the last 30 days. In addition, the Park Tower Building Management requires that no person will enter the Second Floor Conference Room having any of the following known symptoms of COVID-19: fever, chills, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Persons attending this in-person meeting will be required to certify the above prior to entering the Second Floor Conference Room. Additionally, while the mask mandate has been lifted, some Commission staff and potentially other meeting participants are at high risk of severe COVID-19 complications or have autoimmune conditions and may not be protected by the vaccine but are required to attend this in-person meeting. Therefore, you are strongly encouraged to wear a mask to the meeting to protect yourself and your family and to provide a safe workplace for those who are more vulnerable and who will also be in attendance. Masks will be made available at the meeting for anyone who would like one.

**Testimony at the Commission Hearing.** If you plan to address the Commission on an agenda item, please notify the Commission Office not later than noon on the Wednesday prior to the hearing. Please also include the names of the people who will be speaking for inclusion on the witness list. When calling or emailing, identify the item you want to testify on and the entity you

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represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

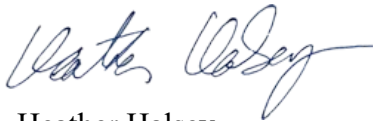
If you plan to file any written document for Commission member review, please note that Commission staff will include written comments filed at least 15 days in advance of the hearing in the Commissioners' hearing binders. Additionally, staff will transmit written comments filed between 15 and five days prior to a meeting to the Commission members, if possible. However, comments filed less than five days prior to a meeting or submitted at the meeting will not be included in the Commissioners' hearing binders and the commenter shall provide 12 paper copies of the comments to Commission staff at the meeting for such late filings. Commission staff shall provide copies of late comments submitted at the hearing to the Commission members and shall place a copy on a table for public review at the hearing (Cal. Code Regs., tit. 2, § 1181.10(b)(1)). Please also file the PDF document provided via the Commission's dropbox at <https://csm.ca.gov/dropbox.php> prior to the hearing.

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

**ITEM 4**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Los Angeles Regional Water Quality Control Board Order No. 01-182

Permit CAS004001

Part 4F5c3

*Municipal Stormwater and Urban Runoff Discharges*

Fiscal Years 2002-2003 through 2012-2013

20-0304-I-07

City of Lakewood Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) involves reductions by the State Controller's Office (Controller) to reimbursement claims filed by the City of Lakewood (claimant) for the *Municipal Stormwater and Urban Runoff Discharges* program for fiscal years 2002-2003 through 2012-2013 (audit period).

The claimant sought reimbursement for the mandated activities of installing and maintaining trash receptacles at transit stops within the claimant's jurisdiction.<sup>1</sup> The Controller's Final Audit Report found that of the \$1,661,278 in total costs claimed, \$740,995 was reimbursable and \$920,283 was not reimbursable.<sup>2</sup> The Controller's reductions to claimed costs based on the following findings are at issue:

- Finding 1. The claimant did not provide contemporaneous source documentation to support its claim under the reasonable reimbursement methodology for the number of weekly trash collections performed during the audit period and, thus, the Controller reduced the number of collections claimed from twice weekly (104 annual collections) to once weekly (52 annual collections).
- Finding 2. The claimant failed to offset from its claim forms Proposition A local return funds – non-local tax revenues – used to purchase trash receptacles in fiscal years 2005-2006 and 2008-2009.

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<sup>1</sup> Exhibit A, IRC, filed October 22, 2020, page 3.

<sup>2</sup> Exhibit A, IRC, filed October 22, 2020, page 427 (Final Audit Report).

Staff finds that the Controller's reduction, based on the conclusion in Finding 1 is incorrect as a matter of law but that the reduction based on the conclusion in Finding 2 is correct as a matter of law. Thus, staff recommends that the Commission partially approve this IRC.

### **Procedural History**

The claimant's reimbursement claims for fiscal years 2002-2003 through 2010-2011 are dated September 27, 2011.<sup>3</sup> The claimant's claim for fiscal year 2011-2012 is dated January 15, 2013.<sup>4</sup> The claimant's claim for fiscal year 2012-2013 is dated February 5, 2014.<sup>5</sup>

On August 24, 2017, the Controller issued the Draft Audit Report.<sup>6</sup> On September 6, 2017, the claimant filed comments on the Draft Audit Report.<sup>7</sup> On November 27, 2017, the Controller issued the Final Audit Report.<sup>8</sup> The claimant filed the IRC on October 22, 2020.<sup>9</sup> The Controller did not comment on the IRC. Commission staff issued the Draft Proposed Decision on May 24, 2022.<sup>10</sup> The claimant and Controller both filed comments on the Draft Proposed Decision on June 14, 2022.<sup>11</sup>

### **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.

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<sup>3</sup> Exhibit A, IRC, filed October 22, 2020, pages 460 (2002-2003 claim), 463 (2003-2004 claim), 466 (2004-2005 claim), 469 (2005-2006 claim), 477 (2006-2007 claim), 480 (2007-2008 claim), 483 (2008-2009 claim), 495 (2009-2010 claim), and 502 (2010-2011 claim). A cover sheet entitled "Claims Receipt," which lists the claims for fiscal years 2002-2003 through 2010-2011, is stamped "received" with the date September 28, 2011 (Exhibit A, IRC, filed October 22, 2020, page 459).

<sup>4</sup> Exhibit A, IRC, filed October 22, 2020, page 504 (2011-2012 reimbursement claim).

<sup>5</sup> Exhibit A, IRC, filed October 22, 2020, page 506 (2012-2013 reimbursement claim).

<sup>6</sup> Exhibit A, IRC, filed October 22, 2020, page 433 (Final Audit Report).

<sup>7</sup> Exhibit A, IRC, filed October 22, 2020, page 433 (Final Audit Report).

<sup>8</sup> Exhibit A, IRC, filed October 22, 2020, page 427 (Final Audit Report).

<sup>9</sup> Exhibit A, IRC, filed October 22, 2020, page 1.

<sup>10</sup> Exhibit B, Draft Proposed Decision, issued May 24, 2022.

<sup>11</sup> Exhibit C, Claimant's Comments on the Draft Proposed Decision, filed June 14, 2022; Exhibit D, Controller's Comments on the Draft Proposed Decision, filed June 14, 2022.

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.<sup>12</sup> 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.”<sup>13</sup>

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.<sup>14</sup>

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.<sup>15</sup> 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 be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>16</sup>

**Claims**

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

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Did the claimant timely file the IRC?	At the time the Final Audit Report was issued, section 1185.1 of the Commission’s regulations required IRCs to be filed no later than three	<i>Timely filed</i> – The Controller’s Final Audit Report of November 27, 2017 complies with Government Code

<sup>12</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>13</sup> *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.

<sup>14</sup> *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.

<sup>15</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>16</sup> 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.

Issue	Description	Staff Recommendation
	years after the date the claimant first receives a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with the notice requirements of Government Code section 17558.5(c).	section 17558.5(c). The IRC was filed October 22, 2020, less than three years from the date of the Controller’s Final Audit Report and is therefore timely.
Is the Controller’s reduction, based on its determination in Finding 1, that the claimant failed to provide contemporaneous source documentation to support its claim under the reasonable reimbursement methodology for the number of trash collections performed during the audit period, correct as a matter of law?	Two collections per trash receptacle per week were claimed, totaling 104 annual collections, for the audit period. The Controller found that one collection per trash receptacle per week, totaling 52 annual collections, was allowable. <sup>17</sup> The Controller concluded that the claimant did not provide sufficient source documentation to support twice weekly trash collections because “the documentation provided was not contemporaneous and was not created during the audit period.” <sup>18</sup>	<i>Incorrect as a matter of law</i> – The Controller’s reduction based on the contemporaneous source document rule is incorrect as a matter of law. The Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim for ongoing maintenance activities, including trash collection, under the reasonable reimbursement methodology. Rather, “[t]he RRM is in lieu of filing detailed documentation of actual costs.” <sup>19</sup> Thus, section VII. B., of the Parameters and Guidelines, which pertains to costs claimed using a reasonable reimbursement methodology, simply requires that “Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of

<sup>17</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>18</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>19</sup> Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines).

Issue	Description	Staff Recommendation
		<p>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.”<sup>20</sup></p> <p>Furthermore, even assuming the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying such a requirement to the claiming period before the Parameters and Guidelines were adopted would violate due process.<sup>21</sup> The claimant was not on notice of a contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011.</p> <p>The documents provided by the claimant, however, contain inconsistencies and do not verify that trash collection was performed twice per week during the</p>

<sup>20</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>21</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802-813; *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527; *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

Issue	Description	Staff Recommendation
		audit period. Accordingly, staff recommends that the reimbursement claims be remanded back to the State Controller’s Office to further review and verify the costs claimed under the reasonable reimbursement methodology based on the number of weekly trash collections during the audit period and reinstate those costs that are deemed eligible for reimbursement in accordance with this Decision.
Is the Controller’s reduction based on the determination in Finding 2, that the Proposition A local return funds used to maintain trash receptacles as required by Part 4F5C3 of the <i>Municipal Stormwater and Urban Runoff Discharges</i> program are offsetting revenues that should have been identified and deducted from the reimbursement claims, correct as a matter of law?	<p>Section VIII. of the Parameters and Guidelines provides that revenues or reimbursement received from any “federal, state, or non-local source” must be identified and deducted from the claim.<sup>22</sup></p> <p>The Controller found that the claimant failed to report and deduct as offsetting revenues the funds received from the Los Angeles County Metropolitan Transportation Authority under the Proposition A Local Return Program.</p> <p>The claimant contends that Proposition A is a local sales and use tax and an offset of those funds is contrary to article XIII B, section 6 of the California Constitution and</p>	<p><i>Correct as a matter of law</i> – The Proposition A local return funds used by the claimant are offsetting revenues that should have been identified and deducted from the reimbursement claims. Article XIII B, section 6 of the California Constitution requires that the state provide reimbursement only when a local government is mandated to spend its proceeds of taxes subject to the appropriations limit of article XIII B.<sup>25</sup></p> <p>Proposition A is a transactions and use tax levied by the Los Angeles County Metropolitan Transportation Authority. The funds distributed to the claimant through the Proposition A Local Return</p>

<sup>22</sup> Exhibit A, IRC, filed October 22, 2020, page 88 (Parameters and Guidelines).

<sup>25</sup> See *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.



Issue	Description	Staff Recommendation
	<p>inconsistent with the Parameters and Guidelines.<sup>23</sup> The claimant further contends that an offset constitutes an invalid retroactive application of the Parameters and Guidelines.<sup>24</sup></p>	<p>Program are not the claimant’s “proceeds of taxes” because the claimant does not have the authority to levy the tax, nor are the tax revenues distributed to claimant subject to the claimant’s appropriations limit.</p> <p>Moreover, the Controller’s reduction of those funds in accordance with the Parameters and Guidelines does not constitute a retroactive application of the law. The requirement in section VIII. of the Parameters and Guidelines that reimbursement received from any “non-local source” must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes. A rule that merely restates or clarifies existing law “does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same.”<sup>26</sup></p>

<sup>23</sup> Exhibit A, IRC, filed October 22, 2020, pages 10-16.

<sup>24</sup> Exhibit A, IRC, filed October 22, 2020, pages 16-17.

<sup>26</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

## **Staff Analysis**

### **A. The Claimant Timely Filed the IRC.**

At the time the Final Audit Report was issued, section 1185.1(c) of the Commission's regulations required an incorrect reduction claim to be filed with the Commission no later than three years after the date the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c).

Here, the Controller issued its Final Audit Report, which complies with the notice requirements of section 17558.5(c), on November 27, 2017.<sup>27</sup> The claimant filed the IRC on October 22, 2020, within three years of the date of the Final Audit Report.<sup>28</sup> Staff finds that the IRC was timely filed.

### **B. The Controller's Reduction, Based on its Determination in Finding 1, That the Claimant Failed to Provide Contemporaneous Source Documentation to Support the Number of Trash Collections Performed During the Audit Period, Is Incorrect as a Matter of Law.**

At issue in Finding 1 is the Controller's determination that the claimant overstated the annual number of trash collections performed during the audit period. The Controller determined that the claimant provided insufficient documentation in support of its claim under the reasonable reimbursement methodology of twice weekly trash collections (104 annual collections) for the duration of the audit period because "the documentation provided was not contemporaneous and was not created during the audit period."<sup>29</sup> Instead, the Controller allowed once weekly collections (52 annual collections) because the Controller "physically observed a number of the transit trash receptacles located throughout the city" during audit fieldwork and "confirmed that the city is currently performing trash collection activities."<sup>30</sup>

Staff finds that the Controller's reduction of claimed costs on the basis of the contemporaneous source document rule is incorrect as a matter of law. The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program do not require the claimant to provide contemporaneous source documentation to support a claim for ongoing maintenance activities, including trash collection, under the reasonable reimbursement methodology. Rather, "[t]he RRM is in lieu of filing detailed documentation of actual costs."<sup>31</sup> Thus, section VII. B, which pertains to costs claimed using a reasonable reimbursement methodology, simply requires that "Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the

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<sup>27</sup> Exhibit A, IRC, filed October 22, 2020, page 427 (Final Audit Report).

<sup>28</sup> Exhibit A, IRC, filed October 22, 2020, page 1.

<sup>29</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>30</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>31</sup> Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines).

period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.”<sup>32</sup>

Furthermore, even assuming the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying such a requirement to the claiming period before the Parameters and Guidelines were adopted would violate due process.<sup>33</sup> The claimant was not on notice of a contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011.

The documents provided by the claimant, however, contain inconsistencies and do not verify that trash collection was performed twice per week during the audit period. The 2011 emails by the claimant’s employees contain contradictory statements. In particular, an email sent by Kerry Musgrove on August 9, 2011 states that trash collection was *not* uniformly performed twice per week on each trash receptacle, as the claimant alleges.<sup>34</sup>

The 2017 statement by Lisa Litzinger, Director of Recreation and Community Services, contains no facts establishing Ms. Litzinger’s personal knowledge of the trash collection schedule for the duration of the audit period (several years before the statement was signed). The document simply states that the statement is made to the best of her knowledge, but does not describe what that knowledge is based on or how she knows that information.<sup>35</sup>

The 2016 data in the trash pickup route simulation was collected in response to the audit, not as part of the claimant’s official or business duties, and does not provide any information about the number of weekly trash collections during the audit period, or show how the simulation adequately represents the trash collections during the earlier audit period.<sup>36</sup>

The claimant also provided with the IRC, a statement by the Parks Superintendent, dated October 15, 2020 (after the final audit report was issued in November 2017).<sup>37</sup> Thus, the Controller did not review this statement as part of the audit. Because the Parks Superintendent first became employed in that role in 2010, it is not clear from his statement how he knows that transit trash receptacles were maintained by claimant staff at a minimum of twice weekly since fiscal year 2002-2003.

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<sup>32</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>33</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802-813; *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527; *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

<sup>34</sup> Exhibit A, IRC, filed October 22, 2020, pages 108-109.

<sup>35</sup> Exhibit A, IRC, filed October 22, 2020, page 116.

<sup>36</sup> Exhibit A, IRC, filed October 22, 2020, pages 117-127, 439 (Final Audit Report).

<sup>37</sup> Exhibit A, IRC, filed October 22, 2020, page 22.

Staff therefore recommends that the Commission remand the reimbursement claims back to the Controller to further review and verify the costs claimed under the reasonable reimbursement methodology based on the number of weekly trash collections performed during the audit period and reinstate those costs that are deemed eligible for reimbursement in accordance with this decision.

**C. The Controller’s Determination in Finding 2, That the Proposition A Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.**

At issue in Finding 2 is the Controller’s determination that the Proposition A funds used by the claimant to purchase trash receptacles in fiscal years 2005-2006 and 2008-2009 are an unreported offset that must be deducted from the reimbursement claims.<sup>38</sup>

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

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

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.<sup>39</sup>

The claimant asserts that the Proposition A local return funds at issue do not fall within section VIII because Proposition A is a local tax, the proceeds of which the claimant was free to use on other eligible transportation-related projects, not solely the mandate program.<sup>40</sup> While the Parameters and Guidelines do not expressly require that funds from a countywide tax, such as Proposition A, be identified as offsetting revenue, they do state that “reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim.”<sup>41</sup>

**2. Proposition A Local Return tax revenues are not the claimant’s “proceeds of taxes” within the meaning of article XIII B of the California Constitution because the tax is not levied by the claimant nor subject to the claimant’s appropriations limit.**

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

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<sup>38</sup> Exhibit A, IRC, filed October 22, 2020, pages 10, 445.

<sup>39</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>40</sup> Exhibit A, IRC, filed October 22, 2020, page 14.

<sup>41</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines), emphasis added.

subject to limitation. The California Supreme Court, in *County of Fresno v. State of California*,<sup>42</sup> explained:

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

The Proposition A local return funds are not the claimant’s local tax revenues because Proposition A is 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, a non-local tax, 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.<sup>44</sup> “The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.”<sup>45</sup> In other words, a local government’s taxing authority is derived from statute.

The Los Angeles County Metropolitan Transportation Authority (Metro), as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A transactions and use tax throughout Los Angeles County.<sup>46</sup> Under the Proposition A ordinance, twenty-five percent of the annual Proposition A tax revenues are allocated to local jurisdictions for local transit purposes on a per capita basis.<sup>47</sup> Permissible uses include the installation, replacement and maintenance of trash receptacles at transit stops.<sup>48</sup>

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<sup>42</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

<sup>43</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

<sup>44</sup> California Constitution, article XIII, section 24(a).

<sup>45</sup> *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”].

<sup>46</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

<sup>47</sup> Exhibit A, IRC, filed October 22, 2020, page 28 (Proposition A Ordinance).

<sup>48</sup> Exhibit A, IRC, filed October 22, 2020, page 46 (Local Return Guidelines).

The parties do not dispute that the claimant received Proposition A tax revenue through the Local Return Program during the audit period and used those funds for the eligible purpose of purchasing trash receptacles.<sup>49</sup> Nonetheless, the claimant’s receipt of revenue from a tax that is levied neither by nor for the claimant, does not alter the nature of those funds as Metro’s “proceeds of taxes” and subject to Metro’s appropriations limit.

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.”<sup>50</sup> Because the Proposition A local return funds are not the claimant’s “proceeds of taxes levied by or for that entity,” they are not the claimant’s “appropriations subject to limitation.”<sup>51</sup>

**3. The advancement of Proposition A funds to pay for the installation and maintenance of the trash receptacles does not alter the nature of those funds as non-proceeds of taxes and therefore required under the Parameters and Guidelines to be deducted from the reimbursement claims, nor does the reduction of those funds from the costs claimed constitute a retroactive application of the law.**

The claimant argues that because the Local Return Guidelines permit the claimant to advance Proposition A funds to pay for mandated activities and then, upon reimbursement from the state, use those funds on other transportation-related priorities, the Controller cannot retroactively apply the Parameters and Guidelines and find that the Proposition A funds constitute reimbursement from a non-local source.<sup>52</sup> To do so, the claimant asserts, is arbitrary and capricious.<sup>53</sup> Whether the Controller correctly interpreted the Parameters and Guidelines and the law in finding that Proposition A is a non-local source of funds that must be deducted from the reimbursement claims is purely a question of law, which is subject to the de novo standard of review, and to which the arbitrary and capricious standard does not apply.

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes, those amounts must be offset against its reimbursement claims. Because the claimant used “non-local source” funds to install and maintain trash receptacles, it was required to identify and deduct those funds from its claims. The fact that the Commission’s adoption of the Parameters and Guidelines postdates the audit period does not alter the analysis, nor does the claimant’s ability under the Local Return Guidelines to expend Proposition A funds to purchase trash receptacles prior to mandate reimbursement.<sup>54</sup> A rule that merely restates or clarifies

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<sup>49</sup> Exhibit A, IRC, filed October 22, 2020, pages 15, 445 (Final Audit Report).

<sup>50</sup> *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.

<sup>51</sup> California Constitution, article XIII B, section 8.

<sup>52</sup> Exhibit A, IRC, filed October 22, 2020, pages 16-17.

<sup>53</sup> Exhibit A, IRC, filed October 22, 2020, pages 16-17.

<sup>54</sup> Exhibit A, IRC, filed October 22, 2020, pages 391, 432.

existing law “does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same.”<sup>55</sup>

Staff finds that the Controller’s reduction, based on its determination that Proposition A local return funds constitute revenues or reimbursements that must be offset from the reimbursement claims for fiscal years 2005-2006 and 2008-2009, is correct as a matter of law.

### **Conclusion**

Based on the forgoing analysis, staff recommends the Commission partially approve this IRC based on the following conclusions:

1. The IRC was timely filed.
2. The Controller’s reduction, based on its finding that the claimant failed to provide contemporaneous source documentation to support twice weekly trash collection during the audit period, is incorrect as a matter of law.
3. The Controller’s reduction, based on its determination that Proposition A funds (a local sales and use tax levied by the Los Angeles County Metropolitan Transportation Authority) used by the claimant to fund the mandated activities should have been offset by the claimant on its reimbursement claims, is correct as a matter of law.

### **Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision partially approving the IRC, and remand the reimbursement claims back to the Controller to further review and reinstate those costs that are deemed eligible for reimbursement in accordance with the Commission’s Decision on this 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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<sup>55</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

<p>IN RE INCORRECT REDUCTION CLAIM</p> <p>Los Angeles Regional Water Quality Control Board Order No. 01-182          Permit CAS004001          Part 4F5c3</p> <p>Fiscal Years 2002-2003 through 2012-2013</p> <p>Filed on October 22, 2020</p> <p>City of Lakewood, Claimant</p>	<p>Case No.: 20-0304-I-07</p> <p><i>Municipal Stormwater and Urban Runoff Discharges</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted July 22, 2022)</i></p>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 22, 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	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Renee Nash, School Board Member	
Shawn Silva, Representative of the State Controller	
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	



## **Summary of the Findings**

This Incorrect Reduction Claim (IRC) challenges reductions by the State Controller’s Office (Controller) to reimbursement claims filed by the City of Lakewood (claimant) for fiscal years 2002-2003 through 2012-2013 (audit period) under the *Municipal Stormwater and Urban Runoff Discharges* program. At issue are the Controller’s reduction of costs claimed, based on its findings that the claimant did not provide contemporaneous source documentation to support its claim under the reasonable reimbursement methodology for the number of weekly trash collections performed during the audit period and reduced the number of collections claimed from twice weekly (104 annual collections) to once weekly (52 annual collections); and that the claimant failed to offset from its claim forms Proposition A local return funds – non-local tax revenues – used to purchase trash receptacles in fiscal years 2005-2006 and 2008-2009.

The Commission finds that this IRC was timely filed.

The Commission further finds that the Controller’s reduction of costs claimed for twice weekly trash collection based on the claimant’s failure to provide contemporaneous source documents is incorrect as a matter of law. The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program do not require the claimant to provide contemporaneous source documentation to support a claim for ongoing maintenance activities, including trash collection, under the reasonable reimbursement methodology. Rather, “[t]he RRM is in lieu of filing detailed documentation of actual costs.”<sup>56</sup> Thus, section VII. B, which pertains to costs claimed using a reasonable reimbursement methodology, simply requires that “Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.”<sup>57</sup>

Furthermore, even assuming the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying such a requirement to the claiming period before the Parameters and Guidelines were adopted (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.<sup>58</sup> The claimant was not on notice of a contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011.

The documents provided by the claimant, however, contain inconsistencies and do not verify that trash collection was performed twice per week during the audit period. Accordingly, the Commission remands the reimbursement claims back to the State Controller’s Office to further

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<sup>56</sup> Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines).

<sup>57</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>58</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802-813; *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527; *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

review and verify the costs claimed under the reasonable reimbursement methodology based on the number of weekly trash collections during the audit period and reinstate those costs that are deemed eligible for reimbursement in accordance with this decision.

The Commission also finds that the Controller’s reductions, based on its determination that Proposition A local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Proposition A is a transactions and use tax levied by the Los Angeles County Metropolitan Transportation Authority. A portion of the Proposition A tax revenues are distributed to the claimant through the Proposition A Local Return Program for use on eligible transportation projects. Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.<sup>59</sup> The Proposition A local return funds distributed to the claimant are not the claimant’s “proceeds of taxes” because the claimant does not levy the tax, nor is the tax subject to the claimant’s appropriations limit.

Accordingly, the Commission partially approves this IRC and remands the reimbursement claims to the Controller to further review and reinstate those costs that are deemed eligible for reimbursement in accordance with this Decision.

## COMMISSION FINDINGS

### I. Chronology

- |            |   |
|------------|---|
| 09/28/2011 | The claimant dated its reimbursement claims for fiscal years 2002-2003 through 2010-2011. <sup>60</sup> |
| 01/15/2013 | The claimant filed its reimbursement claim for fiscal year 2011-2012. <sup>61</sup>                     |
| 02/05/2014 | The claimant filed its reimbursement claim for fiscal year 2012-2013. <sup>62</sup>                     |
| 08/24/2017 | The Controller issued the Draft Audit Report. <sup>63</sup>   |
| 09/06/2017 | The claimant filed comments on the Draft Audit Report. <sup>64</sup>                                    |

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<sup>59</sup> *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.

<sup>60</sup> Exhibit A, IRC, filed October 22, 2020, pages 460 (2002-2003 claim), 463 (2003-2004 claim), 466 (2004-2005 claim), 469 (2005-2006 claim), 477 (2006-2007 claim), 480 (2007-2008 claim), 483 (2008-2009 claim), 495 (2009-2010 claim), and 502 (2010-2011 claim). The reimbursement claims for fiscal years 2002-2003 through 2010-2011 are dated September 27, 2011. A cover sheet entitled “Claims Receipt,” which lists the claims for fiscal years 2002-2003 through 2010-2011, is stamped “received” with the date September 28, 2011 (Exhibit A, IRC, filed October 22, 2020, page 459).

<sup>61</sup> Exhibit A, IRC, filed October 22, 2020, page 504 (2011-2012 claim).

<sup>62</sup> Exhibit A, IRC, filed October 22, 2020, page 506 (2012-2013 claim).

<sup>63</sup> Exhibit A, IRC, filed October 22, 2020, page 433 (Final Audit Report).

<sup>64</sup> Exhibit A, IRC, filed October 22, 2020, page 433 (Final Audit Report).

11/27/2017 The Controller issued the Final Audit Report.<sup>65</sup>  
10/22/2020 The claimant filed the IRC.<sup>66</sup>  
05/24/2022 Commission staff issued the Draft Proposed Decision.<sup>67</sup>  
06/14/2022 The claimant and the Controller both filed comments on the Draft Proposed Decision.<sup>68</sup>

## II. Background

This IRC challenges the Controller's reductions of costs claimed for fiscal years 2002-2003 through 2012-2013 (the audit period) under Part 4F5c3 of the *Municipal Stormwater and Urban Runoff Discharges* program to install and maintain trash receptacles at public transit stops.<sup>69</sup>

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

The *Municipal Stormwater and Urban Runoff Discharges* program arose from the consolidated Test Claim filed by the County of Los Angeles and several cities within the County alleging various sections of a 2001 stormwater permit issued by the Los Angeles Regional Water Control Board, a state agency, constituted a reimbursable state-mandate program within the meaning of article XIII B, section 6 of the California Constitution.<sup>70</sup>

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

Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.<sup>71</sup>

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.<sup>72</sup> Section IV. A, identifies the following one-time reimbursable activities:

- A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
  - 1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.

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<sup>65</sup> Exhibit A, IRC, filed October 22, 2020, page 427 (Final Audit Report).

<sup>66</sup> Exhibit A, IRC, filed October 22, 2020, page 1.

<sup>67</sup> Exhibit B, Draft Proposed Decision, issued May 24, 2022.

<sup>68</sup> Exhibit C, Claimant's Comments on the Draft Proposed Decision, filed June 14, 2022; Exhibit D, Controller's Comments on the Draft Proposed Decision, filed June 14, 2022.

<sup>69</sup> Exhibit A, IRC, filed October 22, 2020, pages 1, 438, 445 (Final Audit Report).

<sup>70</sup> Exhibit A, IRC, filed October 22, 2020, page 391 (Parameters and Guidelines).

<sup>71</sup> Exhibit A, IRC, filed October 22, 2020, page 391 (Parameters and Guidelines).

<sup>72</sup> Exhibit A, IRC, filed October 22, 2020, page 391 (Parameters and Guidelines).

2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
4. Purchase or construct receptacles and pads and install receptacles and pads.
5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.<sup>73</sup>

Section IV. B. lists the following ongoing activities as reimbursable:

- B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
  1. Collect and dispose of trash at a disposal/recycling facility. *This activity is limited to no more than three times per week.*
  2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
  3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. Graffiti removal is not reimbursable.
  4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.<sup>74</sup>

Under section IV., only “actual costs” are reimbursed for one-time activities, whereas ongoing activities are reimbursed under a “reasonable reimbursement methodology.”<sup>75</sup>

“Actual costs” are defined as “those costs actually incurred to implement the mandated activities” and which “must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.”<sup>76</sup> Under section IV., “contemporaneous source documents” are required to support actual costs: “document[s] created at or near the same time the actual costs were incurred for the event or activity in question” and “may include, but are not limited to, employee time records or

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<sup>73</sup> Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines).

<sup>74</sup> Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines), emphasis in original.

<sup>75</sup> Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

<sup>76</sup> Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

time logs, sign-in sheets, invoices, and receipts.”<sup>77</sup> Section IV. further provides as follows regarding corroborating evidence:

Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.<sup>78</sup>

Under section VII. A, a reimbursement claim for actual costs requires the claimant to retain “[a]ll documents used to support the reimbursable activities, as described in Section IV.”<sup>79</sup>

Section VI. describes the reasonable reimbursement methodology for the ongoing costs, including the costs to collect trash “no more than three times per week”:

The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) The RRM is in lieu of filing detailed documentation of actual costs. Under the RRM, the unit cost of \$6.74, during the period of July 1, 2002 to June 30, 2009, for each trash collection or “pickup” is multiplied by the annual number of trash collections (number of receptacles times pickup events for each receptacle), subject to the limitation of no more than three pickups per week. Beginning in fiscal year 2009-2010, the RRM shall be adjusted annually by the implicit price deflator as forecast by the Department of Finance.<sup>80</sup>

Section VII. B, which pertains to costs claimed using a reasonable reimbursement methodology, requires as follows:

Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.<sup>81</sup>

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<sup>77</sup> Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

<sup>78</sup> Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

<sup>79</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>80</sup> Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines).

<sup>81</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

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

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.<sup>82</sup>

**B. Proposition A Local Return Funds**

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

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency<sup>83</sup> and authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.<sup>84</sup>

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.<sup>85</sup>

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.”<sup>86</sup>

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.<sup>87</sup> Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax.

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<sup>82</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>83</sup> Public Utilities Code section 130050.

<sup>84</sup> Public Utilities Code sections 130231(a), 130350.

<sup>85</sup> 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.

<sup>86</sup> Public Utilities Code section 130354.

<sup>87</sup> Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

In *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only a majority of voters, instead of the two-thirds required under article XIII A, section 4.<sup>88</sup> 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.”<sup>89</sup> While the court noted that the terms “special districts” and “special taxes” as used in section 4 were both ambiguous, it did not address whether Proposition A constituted a “special tax” within the meaning of section 4.<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup> 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.<sup>94</sup>

The Transportation Commission is statutorily authorized to levy Proposition A transaction and use taxes.<sup>95</sup>

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<sup>88</sup> 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.

<sup>89</sup> *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

<sup>90</sup> *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

<sup>91</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

<sup>92</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

<sup>93</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

<sup>94</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

<sup>95</sup> Public Utilities Code section 130231(a).

The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the approval by the voters of the commission's Ordinance No. 16 [Proposition A] in 1980 and its Ordinance No. 49 [Proposition C] in 1990, and has the authority and power vested in the Southern California Rapid Transit District to plan, design, and construct an exclusive public mass transit guideway system in the County of Los Angeles, including, but not limited to, Article 5 (commencing with Section 30630 of Chapter 5 of Part 3 of Division 11).<sup>96</sup>

The Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to the Transportation Commission's appropriations limit.<sup>97</sup>

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.<sup>98</sup> Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A tax.<sup>99</sup>

The purpose of the Proposition A tax is to "improve and expand existing public transit Countywide, including reduction of transit fare, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit assessments, and fares."<sup>100</sup> Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses<sup>101</sup> and are allocated as follows:

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

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<sup>96</sup> Public Utilities Code section 130231(a).

<sup>97</sup> Exhibit A, IRC, filed October 22, 2020, page 25-33 (Proposition A Ordinance).

<sup>98</sup> 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.

<sup>99</sup> Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

<sup>100</sup> Exhibit A, IRC, filed October 22, 2020, page 27 (Proposition A Ordinance).

<sup>101</sup> Exhibit A, IRC, filed October 22, 2020, page 28 (Proposition A Ordinance).



- b. Thirty-five percent, calculated on an annual basis, to the commission for construction and operation of the System.
- c. The remainder shall be allocated to the Commission for public transit purposes.<sup>102</sup>

Local jurisdictions receive transportation funding from Metro through the Proposition A local return program. Twenty-five percent of Proposition A funds is allocated to the local return programs for local jurisdictions to use for “in developing and/or improving public transit, paratransit, and the related transportation infrastructure.”<sup>103</sup> Metro allocates and distributes local return funds to cities and the county each month, on a “per capita” basis.<sup>104</sup>

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.<sup>105</sup>

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.<sup>106</sup>

Amongst the eligible uses of Proposition A local return funds are bus stop improvements and maintenance projects.<sup>107</sup> 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.<sup>108</sup>

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

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<sup>102</sup> Exhibit A, IRC, filed October 22, 2020, page 28 (Proposition A Ordinance).

<sup>103</sup> Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

<sup>104</sup> Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

<sup>105</sup> Exhibit A, IRC, filed October 22, 2020, page 27 (Proposition A Ordinance).

<sup>106</sup> Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

<sup>107</sup> Exhibit A, IRC, filed October 22, 2020, page 46 (Local Return Guidelines).

<sup>108</sup> Exhibit A, IRC, filed October 22, 2020, page 46 (Local Return Guidelines), emphasis added.

public transit purposes.<sup>109</sup> 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.”<sup>110</sup> Subsequent reimbursement funds must then be deposited into the Proposition A Local Return Fund.<sup>111</sup>

### **C. The Controller’s Audit and Summary of the Issues**

The Controller determined that of the total claimed amount of \$1,661,278 for fiscal years 2002-2003 through 2012-2013 (audit period), \$740,995 was reimbursable and \$920,283 was not.<sup>112</sup> The Final Audit report contains two findings, both pertaining to reductions of costs claimed: (1) the claimant overstated ongoing maintenance costs by overstating the number of trash receptacles, failing to provide sufficient documentation to support the annual number of trash collections performed, and claiming ineligible costs; and (2) the claimant failed to offset any revenues or reimbursements despite using Proposition A and federal grant funds to purchase trash receptacles.<sup>113</sup>

The claimant does not dispute the reduction of eligible trash receptacles from 237 units to 230 units for fiscal years 2009-2010 through 2012-2013 (Finding 1); the Controller’s determination that the reimbursement claim period for fiscal year 2012-2013 ended on December 27, 2012, when the stormwater permit expired (Finding 1); nor the reduction of \$4,114 based upon the claimant’s use of federal grant funds to purchase trash receptacles in fiscal year 2008-2009 (Finding 2).

The claimant challenges only the following findings: the claimant overstated the number of trash collections (Finding 1); and the claimant should have offset Proposition A local return funds used to purchase trash receptacles from its fiscal years 2005-2006 and 2008-2000 reimbursement claims.<sup>114</sup> The Controller’s finding pertaining to the issues in dispute are described below.

#### **1. Finding 1 – Overstated Ongoing Maintenance Costs (Number of Trash Collections)**

The claimant’s ongoing maintenance reimbursement claims totaled \$1,584,852. The Controller found that \$738,509 was allowable and \$846,343 was unallowable.<sup>115</sup> At issue in Finding 1 is the Controller’s determination that the claimant overstated the number of trash collections.

For the period of July 1, 2002, through June 30, 2013, the city claimed two collections per trash receptacle per week, totaling 104 annual collections. We

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<sup>109</sup> Exhibit A, IRC, filed October 22, 2020, page 52 (Local Return Guidelines).

<sup>110</sup> Exhibit A, IRC, filed October 22, 2020, page 69 (Local Return Guidelines).

<sup>111</sup> Exhibit A, IRC, filed October 22, 2020, page 69 (Local Return Guidelines).

<sup>112</sup> Exhibit A, IRC, filed October 22, 2020, page 427 (Final Audit Report).

<sup>113</sup> Exhibit A, IRC, filed October 22, 2020, pages 439, 445 (Final Audit Report).

<sup>114</sup> Exhibit A, IRC, filed October 22, 2020, page 3.

<sup>115</sup> Exhibit A, IRC, filed October 22, 2020, page 438 (Final Audit Report).

found that one collection per trash receptacle per week, totaling 52 annual collections, is allowable.<sup>116</sup>

The claimant provided the Controller with the following documentation to support its claimed trash collection costs:

- Email excerpts from the Parks Superintendent, dated August 2011, stating that city staff collect the transit stop trash receptacles two times a week.
- A statement under penalty of perjury from the Director of Recreation and Community Services, dated May 2017, certifying that city employees maintained the transit stop trash receptacles twice weekly during the audit period.
- Names of the Park Maintenance Worker and Maintenance Training classifications who performed the trash collection activities during the audit period.
- Park Maintenance Worker and Maintenance Worker job flyers, dated Spring 2016.
- Simulated trash pickup route (July 4, 2016 and July 8, 2016) documentation.<sup>117</sup>

The Controller found that the documentation provided did not meet the criteria outlined in the Parameters and Guidelines, namely that the claimant failed to provide “contemporaneous source documents.”

We requested that the city provide us with source documents maintained during the audit period, such as policy and procedural manuals regarding trash collection activities, duty statements of the employees performing weekly trash collection activities, and/or trash collection route maps. The city stated that it does not keep these types of records. As the documentation provided was not contemporaneous and was not created during the audit period, we found that the city did not provide sufficient source documentation to support two weekly trash collection activities, totaling 104 annual collections.<sup>118</sup>

To support its position regarding the contemporaneous source document requirement, the Controller cited to the following portions of the Parameters and Guidelines:

Section VII. (Records Retention) of the parameters and guidelines states, in part:

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

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<sup>116</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>117</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>118</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

Section IV. (Reimbursable Activities) of the parameters and guidelines states, in part:

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

... Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.<sup>119</sup>

Because the Controller “physically observed a number of the transit trash receptacles located throughout the city” during audit fieldwork and “confirmed that the city is currently performing trash collection activities,” the Controller found one weekly trash collection (52 annual collections) to be allowable.<sup>120</sup>

## **2. Finding 2 – Unreported offsetting revenues and reimbursements**

The Controller determined that the claimant used Proposition A funds to purchase trash receptacles during the 2005-2006 and 2008-2009 fiscal years.<sup>121</sup> The Controller characterized Proposition A local return funds as “special supplementary sale tax” funds, which are “restricted solely for the development and or improvement of public transit services.”<sup>122</sup> The Controller further reasoned that because the claimant used “restricted” Proposition A funds to pay for the mandated activities, it did not have to rely on the use of its general funds.<sup>123</sup> The Controller determined that under the Parameters and Guidelines, the Proposition A funds were required to

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<sup>119</sup> Exhibit A, IRC, filed October 22, 2020, page 440 (Final Audit Report).

<sup>120</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>121</sup> Exhibit A, IRC, filed October 22, 2020, page 445 (Final Audit Report). The Controller also determined that the claimant used a federal grant to pay for trash receptacles during the 2008-2009 fiscal year and failed to offset those funds from its reimbursement claim, which the claimant does not dispute. See Exhibit A, IRC, filed October 22, 2020, pages 3, 446 (Final Audit Report).

<sup>122</sup> Exhibit A, IRC, filed October 22, 2020, page 448 (Final Audit Report).

<sup>123</sup> Exhibit A, IRC, filed October 22, 2020, page 448 (Final Audit Report).

be identified and deducted from the reimbursement claims because they constituted payment toward the mandated activities from a non-local source.<sup>124</sup>

The city states that Proposition A funds are "'proceeds of taxes', subject to the taxing and spending limitations." The city has not provided documentation to support that the Proposition A Local Return funds have been included in the city's appropriations subject to the limit. Further, in regards to the "proceeds of taxes," Proposition A Local Return funds are a special supplementary sales tax approved by Los Angeles County voters in 1980 and are restricted solely for the development and or improvement of public transit services. A special supplementary sales tax is not the same as unrestricted general sales tax, which can be spent for any general governmental purposes, including public employee salaries and benefits.<sup>125</sup>

### **III. Positions of the Parties**

#### **A. City of Lakewood**

##### **1. Finding 1: Ongoing maintenance costs – frequency of trash collection**

The claimant challenges the Controller's reduction in Finding 1 of the Final Audit Report of the annual number of trash collections performed by the claimant during the audit period.<sup>126</sup> The claimant asserts that the documentation provided to prove twice weekly collection frequency satisfies the requirements of the Claiming Instructions, Parameters and Guidelines, and the federal Government Accountability Office audit guidelines.<sup>127</sup> The claimant provided the Controller with multiple forms of documentation to support twice weekly trash collections, including emails from 2011 between maintenance staff and management showing that the receptacles were emptied twice weekly, signed statements from claimant staff verifying the maintenance schedule, and a field study showing the frequency of trash pickup.<sup>128</sup>

The claimant argues that under section IV. B of the Parameters and Guidelines, ongoing activities related to maintaining trash receptacles are reimbursed under a reasonable reimbursement methodology, and that "actual costs" are costs which are actually incurred to implement the mandated activities and must be traceable and supported by source documents showing the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>129</sup> The claimant also points to sections VI. and VII. of the Parameters and Guidelines, which state, respectively, that the "RRM [reasonable reimbursement methodology] is in lieu of filing detailed documentation of actual costs...each trash collection or 'pick up' is multiplied by the annual number of trash collections" and that local agencies much

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<sup>124</sup> Exhibit A, IRC, filed October 22, 2020, page 448 (Final Audit Report).

<sup>125</sup> Exhibit A, IRC, filed October 22, 2020, page 448 (Final Audit Report).

<sup>126</sup> Exhibit A, IRC, filed October 22, 2020, page 3.

<sup>127</sup> Exhibit A, IRC, filed October 22, 2020, page 6.

<sup>128</sup> Exhibit A, IRC, filed October 22, 2020, page 3.

<sup>129</sup> Exhibit A, IRC, filed October 22, 2020, page 4.

retain documentation supporting reimbursement of ongoing maintenance costs, “including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.”<sup>130</sup>

The claimant alleges that the emails from 2011 constitute an eligible form of contemporaneous documentation.<sup>131</sup> The emails consist of communications between line and supervisory staff and specify that trash receptacles were emptied on the first and last day of the week.<sup>132</sup> The claimant challenges the Controller’s determination in the Final Audit Report that the emails from 2011 were not created “at or near” the audit period and therefore not source documents.<sup>133</sup> The claimant points out that the mandate was still active in 2011, claiming instructions were not released until 2011, and claims for fiscal year 2010-2011 were due February 15, 2012. Therefore, the claimant provided documentation created “at or near the same time actual costs were incurred” showing that twice weekly pickups were being actively performed.<sup>134</sup>

In further support of its position that the emails from 2011 constitute “contemporaneous source documents,” the claimant cites to the federal Government Auditing Standards Manual for the proposition that small organizations may satisfy source documentation requirements for policies and procedures through “more informal methods” of documentation, including “manual notes, checklists, and forms.”<sup>135</sup>

The claimant asserts it provided some of the documentation requested by the Controller, such as job descriptions showing trash collection duties and time sheets for maintenance employees showing hours worked, but that the documents did not contain the level of detail required by the Controller (e.g., the exact location and frequency of each trash pickup).<sup>136</sup> The claimant argues, that the additional documents required by the Controller as a condition of receiving full reimbursement (e.g., policy and procedure manuals showing exact trash collection activities and schedules, duty statements for employees performing weekly trash collection activities and showing exactly when and how often each individual trash receptacle is serviced, and GPS trash collection route maps) are not specified in nor required by the Claiming Instructions, Parameters and Guidelines, or federal government auditing standards.<sup>137</sup> Furthermore, the claimant states, requiring such detailed and specific documentation for ongoing costs is arbitrary and capricious and directly contradicts the intent of utilizing a reasonable reimbursement methodology, which is supposed to serve “in lieu of detailed documentation of actual costs.”<sup>138</sup>

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<sup>130</sup> Exhibit A, IRC, filed October 22, 2020, page 5.

<sup>131</sup> Exhibit A, IRC, filed October 22, 2020, page 5.

<sup>132</sup> Exhibit A, IRC, filed October 22, 2020, pages 5, 106-113.

<sup>133</sup> Exhibit A, IRC, filed October 22, 2020, page 5.

<sup>134</sup> Exhibit A, IRC, filed October 22, 2020, page 5.

<sup>135</sup> Exhibit A, IRC, filed October 22, 2020, pages 6, 248.

<sup>136</sup> Exhibit A, IRC, filed October 22, 2020, pages 6-7.

<sup>137</sup> Exhibit A, IRC, filed October 22, 2020, page 6.

<sup>138</sup> Exhibit A, IRC, filed October 22, 2020, page 7.

The claimant further asserts, in contrast to the Controller's assertion that the documents requested to show trash collection frequency are commonly maintained by local agencies, the results of the claimant's own investigation show otherwise. The claimant states that it reviewed the audit outcomes of 32 other local agencies with reimbursement claims for the *Municipal Stormwater and Urban Runoff Discharges* program and determined that no other local agency performing its own trash receptacle maintenance had satisfied the Controller's documentation requirements to support trash collection exceeding once per week.<sup>139</sup> The claimant argues that it is unreasonable and unrealistic to expect local agencies to have the highly specific and uncommon types of documentation to show trash collection frequency for the approximately ten years the mandate program was operative prior to the Claiming Instructions being issued in 2011.<sup>140</sup>

Furthermore, the claimant argues, requiring such specific, non-standard types of documentation violates due process.<sup>141</sup> Neither the Parameters and Guidelines adopted in March 2011 nor the revised Claiming Instructions issued in July 2015 list the types of documentation requested by the Controller as part of the audit.<sup>142</sup> While the Parameters and Guidelines are regulatory in nature, due process requires reasonable notice to the claimant of any law affecting its substantive rights and liabilities.<sup>143</sup> A provision that imposes new, additional, or different liabilities based on past conduct is unlawfully retroactive.<sup>144</sup> As such, the claimant asserts, if a provision in the Parameters and Guidelines affects a claimant's substantive rights or liabilities and changes the legal consequences of past events, then such a provision may be deemed unlawfully retroactive under due process principles.<sup>145</sup>

In *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, the court found that the Controller's use of the Contemporaneous Source Documentation Rule (CSDR) in audits prior to the Rule being included in parameters and guidelines constituted an underground regulation and that it was "physically impossible to the comply with the CSDR's requirement of contemporaneousness."<sup>146</sup> Here, the Controller's request for specific forms of contemporaneous

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<sup>139</sup> Exhibit A, IRC, filed October 22, 2020, page 7.

<sup>140</sup> Exhibit A, IRC, filed October 22, 2020, page 8.

<sup>141</sup> Exhibit A, IRC, filed October 22, 2020, pages 8-9.

<sup>142</sup> Exhibit A, IRC, filed October 22, 2020, page 9.

<sup>143</sup> Exhibit A, IRC, filed October 22, 2020, page 8 (citing *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805).

<sup>144</sup> Exhibit A, IRC, filed October 22, 2020, page 9 (citing *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527).

<sup>145</sup> Exhibit A, IRC, filed October 22, 2020, page 9 (citing *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912).

<sup>146</sup> Exhibit A, IRC, filed October 22, 2020, page 9 (citing *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805).

documentation at a time when the claimant did not have notice of such a requirement or that the ongoing trash collection costs would be reimbursable, violates due process.

The claimant points out that under the Parameters and Guidelines reasonable reimbursement methodology, trash collection frequency is limited to three times per week; as such, the claimant's request of twice weekly was both reasonable and allowable.<sup>147</sup>

In comments on the Draft Proposed Decision, the claimant states its agreement with staff's recommendation regarding Finding 1, and reiterates its position that the claiming instructions for ongoing maintenance costs utilize a reasonable reimbursement methodology (RRM) as a simplified and uniform method for calculating trash receptacle maintenance costs, thus alleviating the need for contemporaneous source documentation.<sup>148</sup>

## **2. Finding 2: Unreported offsetting revenues and reimbursements**

The claimant challenges the reduction, based on the Controller's determination that Proposition A local return funds used by the claimant to purchase trash receptacles during fiscal years 2005-2006 and 2008-2009 are offsetting revenues or reimbursements that should have been reported as such on the claims forms.<sup>149</sup>

The claimant does not challenge the Controller's finding that the claimant used Proposition A funds to perform mandated activities. Rather, the claimant argues that because Proposition A is a local sales tax, and the claimant was not required to use the Proposition A funds to pay for the mandated activities, the Controller's determination that the Proposition A funds are an unreported offset that must be deducted from the reimbursement claims violates article XIII B, section 6 of the California Constitution, is inconsistent with the Parameters and Guidelines, and constitutes an invalid retroactive application of the Parameters and Guidelines.<sup>150</sup>

The claimant asserts that "Article XIII B, section 6 does not distinguish between general and 'restricted' taxes."<sup>151</sup> Proposition A is a local sales tax, no different from any other sales tax.<sup>152</sup> If the claimant had expended other sales tax revenue to install and maintain the trash receptacles, the Controller would not have reduced the claim.<sup>153</sup>

The claimant argues that Proposition A is a "local tax, generated from sales tax imposed on local citizens," not a non-local source within the meaning of section VIII. of the Parameters and Guidelines.<sup>154</sup> Section VIII. states as follows:

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<sup>147</sup> Exhibit A, IRC, filed October 22, 2020, page 10.

<sup>148</sup> Exhibit C, Claimant's Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

<sup>149</sup> Exhibit A, IRC, filed October 22, 2020, page 95 (Final Audit Report).

<sup>150</sup> Exhibit A, IRC, filed October 22, 2020, pages 10-17.

<sup>151</sup> Exhibit A, IRC, filed October 22, 2020, page 12.

<sup>152</sup> Exhibit A, IRC, filed October 22, 2020, page 16.

<sup>153</sup> Exhibit A, IRC, filed October 22, 2020, page 16.

<sup>154</sup> Exhibit A, IRC, filed October 22, 2020, page 14.



Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.<sup>155</sup>

The claimant reasons that it was not required to use Proposition A funds to pay for the mandated activities.<sup>156</sup> Proposition A is a general-use tax, the claimant argues, and not a restricted-use tax as determined by the Controller.<sup>157</sup> The claimant cites to Government Code sections 17556(e) and 17570.3(d)(1)(D) for the proposition that “funding sources” are defined as “additional revenues *specifically intended* to fund the costs of the state mandate” and “*dedicated*...for the program.”<sup>158</sup> The claimant argues that the Proposition A local return funds are not “revenue in the same program as a result of the same statutes or executive orders found to contain the mandate,” nor “reimbursement specifically intended for or dedicated for” the *Municipal Stormwater and Urban Runoff Discharges* program.<sup>159</sup> Under the Proposition A Local Return Guidelines, the claimant was permitted to expend the Proposition A funds on any number of transportation-related priorities and was not required to use the money for any specific purpose, including the mandated program.<sup>160</sup>

According to the claimant, the Local Return Guidelines permit the claimant to advance Proposition A funds on a project and then return the funds upon reimbursement from another source.<sup>161</sup> The claimant asserts that it was therefore proper to use the Proposition A funds as an advance, with the expectation of returning the funds after receiving reimbursement from the state.<sup>162</sup> Because the claimant used the Proposition A funds in way that was lawful at the time, the Controller’s finding that those funds are non-local funds that must be offset against the claims is contrary to article XIII, section 6 of the California Constitution.<sup>163</sup>

The claimant argues that it would be arbitrary and capricious to retroactively apply the Parameters and Guidelines, which were not adopted until after the claimant advanced the Proposition A funds to pay for the mandated activities, to now find that the claimant was prohibited from advancing the funds when it was permitted to do so at the time.<sup>164</sup> Because regulations are not given retroactive effect except for the limited purpose of clarifying existing

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<sup>155</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>156</sup> Exhibit A, IRC, filed October 22, 2020, page 13.

<sup>157</sup> Exhibit A, IRC, filed October 22, 2020, page 13.

<sup>158</sup> Exhibit A, IRC, filed October 22, 2020, page 12, emphasis in IRC.

<sup>159</sup> Exhibit A, IRC, filed October 22, 2020, page 13.

<sup>160</sup> Exhibit A, IRC, filed October 22, 2020, pages 13-14.

<sup>161</sup> Exhibit A, IRC, filed October 22, 2020, page 15.

<sup>162</sup> Exhibit A, IRC, filed October 22, 2020, page 15.

<sup>163</sup> Exhibit A, IRC, filed October 22, 2020, page 16.

<sup>164</sup> Exhibit A, IRC, filed October 22, 2020, pages 16-17.

law, the claimant asserts that Controller’s finding substantially changes the legal effect of past events and is therefore improper.<sup>165</sup>

In comments on the Draft Proposed Decision, the claimant states its disagreement with staff’s conclusion that Proposition A funds should have been deducted from the reimbursement claims.<sup>166</sup> The claimant maintains that it should be reimbursed for costs to implement a state-mandated program, particularly because those costs were incurred in good faith and with the expectation that they would be reimbursed so that the claimant could direct them to “true city priorities.”<sup>167</sup> The claimant notes that “[p]aying for expensive State Mandated programs from General Funds is often not possible and local agencies are forced to seek other funding sources to comply with State laws.”<sup>168</sup>

### **B. State Controller’s Office**

The Controller did not file comments on the IRC and the Controller’s comments on the Draft Proposed Decision state that the Controller agrees with staff’s recommendations in regard to both findings 1 and 2.<sup>169</sup>

### **IV. Discussion**

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

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

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>170</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

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<sup>165</sup> Exhibit A, IRC, filed October 22, 2020, pages 16-17.

<sup>166</sup> Exhibit C, Claimant’s Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

<sup>167</sup> Exhibit C, Claimant’s Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

<sup>168</sup> Exhibit C, Claimant’s Comments on the Draft Proposed Decision, filed, June 14, 2022, page 1.

<sup>169</sup> Exhibit D, Controller’s Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

<sup>170</sup> *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.”<sup>171</sup>

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.<sup>172</sup> 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.’ ”<sup>173</sup>

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.<sup>174</sup> 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.<sup>175</sup>

**A. The Claimant Timely Filed the IRC.**

Section 1185.1(c) of the Commission’s regulations requires an incorrect reduction claim to be filed with the Commission no later than three years after the date the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c).<sup>176</sup> Under Government Code section 17558.5(c), the Controller must notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that

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<sup>171</sup> *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.

<sup>172</sup> *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.

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

<sup>174</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>175</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of Code of Civil Procedure section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

<sup>176</sup> California Code of Regulations, title 2, section 1185.1.

results from an audit or review.<sup>177</sup> The notice must specify which claim components were adjusted and in what amount, as well as interest charges on claims adjusted, and the reason for the adjustment.<sup>178</sup>

The Controller issued its Final Audit Report on November 27, 2017.<sup>179</sup> The Final Audit Report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments.<sup>180</sup> The Final Audit Report complies with the notice requirements of section 17558.5(c). The claimant filed the IRC on October 22, 2020.<sup>181</sup> The IRC was filed less than three years from the date of the Final Audit Report and therefore the Commission finds that the IRC was timely filed.

**B. The Controller's Reduction of Costs Claimed, Based on its Determination in Finding 1 That the Claimant Failed to Provide Contemporaneous Source Documentation to Support the Number of Trash Collections Performed During the Audit Period, Is Incorrect as a Matter of Law.**

At issue in Finding 1 is the Controller's reduction of costs claimed, based on its determination that the claimant overstated the annual number of trash collections performed during the audit period.

For the period of July 1, 2002, through June 30, 2013, the city claimed two collections per trash receptacle per week, totaling 104 annual collections. We found that one collection per trash receptacle per week, totaling 52 annual collections, is allowable.<sup>182</sup>

In finding that the claimant provided insufficient documentation in support of its claim of twice weekly trash collection for the duration of the audit period, the Controller explained that the claimant failed to provide contemporaneous source documentation.

We requested that the city provide us with source documents maintained during the audit period, such as policy and procedural manuals regarding trash collection activities, duty statements of the employees performing weekly trash collection activities, and/or trash collection route maps. The city stated that it does not keep these types of records. As the documentation provided was not contemporaneous and was not created during the audit period, we found that the city did not provide sufficient source documentation to support two weekly trash collection activities, totaling 104 annual collections.<sup>183</sup>

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<sup>177</sup> Government Code section 17558.5(c).

<sup>178</sup> Government Code section 17558.5(c).

<sup>179</sup> Exhibit A, IRC, filed October 22, 2020, page 428 (Final Audit Report).

<sup>180</sup> Exhibit A, IRC, filed October 22, 2020, pages 428-456 (Final Audit Report).

<sup>181</sup> Exhibit A, IRC, filed October 22, 2020, page 1.

<sup>182</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>183</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

The Controller allowed once weekly collections (52 annual collections) because the Controller “physically observed a number of the transit trash receptacles located throughout the city” during audit fieldwork and “confirmed that the city is currently performing trash collection activities.”<sup>184</sup>

The claimant challenges the Controller’s request for highly specific and detailed contemporaneous source documentation as beyond the scope of the Parameters and Guidelines and asserts that the documentation provided was sufficient. Furthermore, the claimant argues, the emails from 2011, containing communications between claimant’s employees and supervisory and which specify that trash collection was performed twice each week, constitute an ineligible form of contemporaneous source documentation.<sup>185</sup>

At the crux of these arguments is the claimant’s assertion that the Controller’s finding of insufficient evidence and reduction of the claimed trash collection activities on that basis was arbitrary and capricious.<sup>186</sup> Whether the Controller correctly interpreted the documentation requirements of Parameters and Guidelines applicable to trash collection activities is purely a legal question, and does not require the Commission to examine whether the Controller acted in an arbitrary and capricious manner.<sup>187</sup>

**1. The Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim based on the reasonable reimbursement methodology for ongoing maintenance activities, including trash collection.**

The Controller asserts in the Final Audit Report that the documentation provided by the claimant to support twice weekly trash collection activities was insufficient because it did not include “source documents maintained during the audit period” and “was not contemporaneous and was not created during the audit period.”<sup>188</sup> The Parameters and Guidelines impose no such requirement. The contemporaneous source document requirement is not applicable to the ongoing costs reimbursed under the reasonable reimbursement methodology (RRM).

The Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program allow for two categories of reimbursable activities: installing and maintaining transit stop trash receptacles.<sup>189</sup> Installation activities are categorized as “one-time” activities and are

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<sup>184</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>185</sup> Exhibit A, IRC, filed October 22, 2020, page 5.

<sup>186</sup> Exhibit A, IRC, filed October 22, 2020, page 7.

<sup>187</sup> The Parameters and Guidelines are regulatory in nature, and are binding on the parties. (*California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.)

<sup>188</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>189</sup> Exhibit A, IRC, filed October 22, 2020, page 391 (Parameters and Guidelines).

reimbursed using the actual cost method.<sup>190</sup> Maintenance activities are categorized as “ongoing” activities, and are reimbursed using a RRM.<sup>191</sup> Section IV. states as follows:

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed for the one-time activities in section IV. A below. The ongoing activities in section IV. B below are reimbursed under a reasonable reimbursement methodology.<sup>192</sup>

Section IV. B lists trash collection as an ongoing maintenance activity and states that the activity “is limited to no more than three times per week.”<sup>193</sup>

Section VI., which addresses claim preparation for the reimbursable ongoing activities identified in section IV. B, reiterates the limited and exclusive use of a RRM for ongoing activities “in lieu of filing detailed documentation of actual costs.”<sup>194</sup>

The Commission is adopting a reasonable reimbursement methodology to reimburse eligible local agencies for all direct and indirect costs for the on-going activities identified in section IV.B of these parameters and guidelines to maintain trash receptacles. (Gov. Code, §§ 17557, subd. (b) & 17518.) *The RRM is in lieu of filing detailed documentation of actual costs.*<sup>195</sup>

The records retention requirements set forth in section VII. of the Parameters and Guidelines separately address which records must be retained for a claim for actual costs, versus using the RRM.<sup>196</sup> Section VII. B, which pertains solely to the ongoing costs using the RRM, states that local agencies are required to retain “documentation which supports the reimbursement of maintenance costs” including documentation showing the number of trash collections, as follows:

Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups.<sup>197</sup>

Section VII. B. does not require that the documentation supporting the number of trash collections under the RRM be contemporaneous. Nor does section VII. B. refer back to the

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<sup>190</sup> Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines).

<sup>191</sup> Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines).

<sup>192</sup> Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

<sup>193</sup> Exhibit A, IRC, filed October 22, 2020, page 394 (Parameters and Guidelines).

<sup>194</sup> Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines).

<sup>195</sup> Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines), emphasis added.

<sup>196</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>197</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

contemporaneous source document requirement in section IV. of the Parameters and Guidelines for “actual costs” claimed. The Parameters and Guidelines instead state that reimbursement for trash collection using the “RRM is in lieu of filing detailed documentation of actual costs.”<sup>198</sup> This language is consistent with Government Code sections 17518.5 and 17557(f), which provide that a RRM “shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual local costs,” and that the reimbursement methodology balances “accuracy with simplicity.”

In contrast, section VII. A., which describes the record retention requirements for the reimbursement of one-time activities using the actual cost method, expressly refers to the documentation requirements in section IV. of the Parameters and Guidelines, which in turn requires that the supporting documentation be contemporaneous. Section VII. A. states in relevant part: “All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit.”<sup>199</sup>

And section IV. summarizes the contemporaneous source documents required for “actual costs;” namely, documents created at or near the same time the actual costs were incurred, as follows:

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

Evidence corroborating the source documents may include, but is not limited to, timesheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.<sup>200</sup>

Therefore, based on the plain language of the Parameters and Guidelines, the contemporaneous source document requirements applicable to claims using the actual cost method do not apply to costs claimed under the RRM.

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<sup>198</sup> Exhibit A, IRC, filed October 22, 2020, page 396 (Parameters and Guidelines), emphasis added.

<sup>199</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines).

<sup>200</sup> Exhibit A, IRC, filed October 22, 2020, page 393 (Parameters and Guidelines).

This conclusion is further supported by the analysis adopted by the Commission on the Parameters and Guidelines. On March 24, 2011, the Commission adopted the Parameters and Guidelines and the Final Staff Analysis as its decision on the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program.<sup>201</sup> As part of the parameters and guidelines drafting process, the claimants initially requested the adoption of a RRM for the ongoing trash receptacle maintenance activities listed in section IV. B of the Parameters and Guidelines.<sup>202</sup> The Controller opposed adoption of a RRM and instead sought “actual costs incurred, supported by documentation of the costs.”<sup>203</sup>

Finance and the State Controller’s Office oppose the adoption of an RRM and, instead, request that the parameters and guidelines require eligible claimants to claim actual costs incurred, supported by documentation of the costs.<sup>204</sup>

In discussing how to calculate trash collection frequency under the Parameters and Guidelines, the analysis adopted by the Commission states as follows:

Claimants did not propose how frequently the trash receptacles would be emptied. Survey data submitted with the revised parameters and guidelines indicates that frequency of collection varies from weekly for some local agencies (e.g., Bellflower, Covina, Signal Hill), to 2.57 times per week for Carson. (The pickup frequency data is unclear for Los Angeles County, as the survey appears to state 156 pickups per year, or three times per week, but an August 2010 declaration from William Yan states that pickup frequency is 48-52 times per year). Trash will accumulate at different rates at different transit stops. However, based on the survey data and accompanying declaration, staff finds that the most reasonable method of complying with the mandate is to reimburse collection frequency no more than three times per week.”<sup>205</sup>

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<sup>201</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 1.

<sup>202</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 31.

<sup>203</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11.

<sup>204</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 11.

<sup>205</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 27.



In comments on the Draft Staff Analysis, the claimants proposed adding language to section IV. B that would allow reimbursement for repetitive trash collection activities under either the actual cost method or the RRM.

In its February 25, 2011 comments on the draft staff analysis, city claimants propose adding the following: “Claimants may elect to use either actual costs, including costs based on time studies (as set forth below) or RRM [reasonable reimbursement methodology] rates for repetitive trash collection tasks.” Claimants further include the option to use time studies for repetitive tasks.<sup>206</sup>

In rejecting the language proposed by the claimants, the Commission determined that allowing the claimants to choose how to claim costs would frustrate the purpose of using a RRM, which is to balance “accuracy with simplicity.”<sup>207</sup>

The RRM is intended to balance “accuracy with simplicity.” (Gov. Code, § 17557, subd. (f).) Allowing claimants to elect to claim costs by using either an RRM, a time study, or actual costs does not conform to this standard. Instead, it would allow claimants to maximize their reimbursement depending on whether or not their costs are higher than the RRM. This is not the purpose of an RRM. For this reason, staff finds that the language allowing claimants to claim costs by electing either the RRM, time studies, or actual costs should not be included under section IV.B.<sup>208</sup>

The Commission instead added the following record retention language “for any audits conducted by the State Controller’s Office of the costs claimed using the RRM” to section VII. B of the Parameters and Guidelines.

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. Pursuant to Government Code section 17561,

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<sup>206</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 28.

<sup>207</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, pages 28-29.

<sup>208</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, pages 28-29.

subdivision (d)(2), the Controller has the authority to audit the application of a reasonable reimbursement methodology.

*Local agencies must retain documentation which supports the reimbursement of the maintenance costs identified in Section IV.B of these parameters and guidelines during the period subject to audit, including documentation showing the number of trash receptacles in the jurisdiction and the number of trash collections or pickups. If an audit has been initiated by the Controller during the period subject to audit, the record retention period is extended until the ultimate resolution of any audit findings.*<sup>209</sup>

There is no discussion in the Draft Staff Analysis for the Parameters and Guidelines, the comments filed by the parties thereon, or the Final Staff Analysis adopted by the Commission regarding any objection to or request to change the record retention requirements for costs claimed using the RRM, as stated in section VII. B of the Parameters and Guidelines.

Accordingly, the Parameters and Guidelines do not require the claimant to provide contemporaneous source documentation to support a claim based on the RRM for ongoing maintenance activities, including trash collection. Therefore, the Controller's reduction of costs claimed, based on its determination in Finding 1 that the claimant failed to provide contemporaneous source documentation to support the number of trash collections performed during the audit period, is incorrect as a matter of law.

**2. Even assuming the Parameters and Guidelines could be interpreted to require contemporaneous source documentation to support the ongoing trash collection activities, applying such a requirement to the claiming period before the Parameters and Guidelines were adopted (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.**

The claimant argues that requiring it to maintain the highly specific and uncommon types of documentation requested by the Controller as part of the audit, when such documentation is included in neither the Parameters and Guidelines adopted in March 2011 nor the revised Claiming Instructions issued in July 2015, violates due process.<sup>210</sup> The claimant asserts that any provision in the Parameters and Guidelines that affects the claimant's substantive rights or liabilities and changes the legal consequences of past events is unlawfully retroactive and therefore in violation of the claimant's due process rights.<sup>211</sup>

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<sup>209</sup> Exhibit E (1), Final Staff Analysis, Proposed Parameters and Guidelines and Statement of Decision, *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-20, 03-TC-21, adopted March 24, 2011, page 7, emphasis added.

<sup>210</sup> Exhibit A, IRC, filed October 22, 2020, pages 8-9.

<sup>211</sup> Exhibit A, IRC, filed October 22, 2020, page 9 (citing *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912).

Parameters and guidelines are regulatory in nature and are interpreted the same as regulations and statutes.<sup>212</sup> As such, they cannot be applied retroactively where due process considerations prevent it.<sup>213</sup> Due process requires reasonable notice of any substantive change affecting the substantive rights and liabilities of the parties.<sup>214</sup> A change is substantive if it imposes new, additional, or different liabilities on past conduct.<sup>215</sup> “The retroactive application of a statute is one that affects rights, obligations or conditions that existed before the time of the statute's enactment, giving them an effect different from that which they had under the previously existing law.”<sup>216</sup> Therefore, if a provision in the parameters and guidelines affects the substantive rights or liabilities of the parties such that it changes the legal effects of past events, it may be considered unlawfully retroactive under principles of due process.<sup>217</sup>

In *Clovis Unified School Dist. v. Chiang*, the Controller used the contemporaneous source document rule (CSDR) to reduce reimbursement claims for state-mandated school district programs.<sup>218</sup> The Controller had revised its claiming instructions to include the CSDR, whereas the operative parameters and guidelines did not include such a requirement.<sup>219</sup> The CSDR read as follows:

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, ‘I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct based upon personal knowledge.’ Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local,

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<sup>212</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

<sup>213</sup> *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

<sup>214</sup> *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784

<sup>215</sup> *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

<sup>216</sup> *In re Cindy B.* (1987) 192 Cal.App.3d 771, 779.

<sup>217</sup> *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.

<sup>218</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 797.

<sup>219</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 801–802.

state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.<sup>220</sup>

The court held that the rule was an invalid underground regulation under the Administrative Procedure Act for the audit period at issue and overturned the Controller's audits. Notably, and of relevance here, the court found substantial evidence showing that prior to the Controller's use of the CSDR in performing audits, the Controller had approved reimbursement based on (1) declarations and certifications from employees that set forth, after the fact, the time they spent on mandated tasks; or (2) an annual accounting of time based upon the number of mandated activities and the average duration of each activity.<sup>221</sup> The court recognized that "it is now physically impossible to comply with the CSDR's requirement of contemporaneousness . . . ."<sup>222</sup>

The Controller, however, requested that the court take judicial notice that the Commission adopted the contemporaneous source document rule by later amending the parameters and guidelines. The court denied the request and did not apply the CSDR, since the issue concerned the use of the rule in earlier years, when no notice was provided to the claimant. The court stated:

We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller's policy of using the CSDR during the 1998 to 2003 fiscal years, when the CSDR was an underground regulation. This issue is not resolved by the Commission's subsequent incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs' P & G's. (Emphasis in original.)<sup>223</sup>

The court determined that the parameters and guidelines in effect at the time the mandated costs were incurred were the parameters and guidelines that governed the audit.<sup>224</sup>

Here, the claimant was not on notice of a contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2010-2011 because the Parameters and Guidelines were not adopted until March 2011. Thus, requiring the claimant to provide contemporaneous source documentation for costs incurred during the fiscal years preceding adoption of the Parameters and Guidelines (fiscal years 2002-2003 through 2010-2011) would violate due process and be incorrect as a matter of law.

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<sup>220</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

<sup>221</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

<sup>222</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

<sup>223</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.

<sup>224</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812-813.

**3. Because the Controller did not apply the correct standard in determining whether the documentation provided was sufficient to show twice weekly trash collection, this matter must be remanded to the Controller for further review.**

The Controller is authorized by Government Code section 17561(d) to conduct an audit in order to verify the application of a reasonable reimbursement methodology and to reduce any claims that are excessive or unreasonable. Government Code section 12410 also provides that

The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.

The courts have also held that the Controller's duty to audit includes the duty to ensure that expenditures are authorized by law.<sup>225</sup> Thus, even without the Parameters and Guidelines, the Controller is authorized by law to audit a claim for reimbursement and require the claimant to provide documentation supporting the claim for twice weekly trash collection per receptacle in order to verify the costs claimed under the reasonable reimbursement methodology. As indicated above, prior to the Controller's use of the contemporaneous source document rule, the Controller approved reimbursement based on (1) declarations and certifications from employees that set forth, after the fact, the time they spent on mandated tasks; or (2) annual accountings of time.<sup>226</sup>

According to the Final Audit Report, the claimant provided the Controller with the following documentation to support costs incurred for two trash collections per receptacle per week (104 annual collections) for the period of July 1, 2002 through June 30, 2013:

- Email excerpts from the Parks Superintendent, dated August 2011, stating that city staff collect the transit stop trash receptacles two times a week.<sup>227</sup>
- The names of the Park Maintenance Worker and Maintenance Trainee classifications who performed the trash collection activities during the audit period.<sup>228</sup>
- Job flyers for the Park Maintenance Worker and Maintenance Trainee classifications, dated Spring 2016.<sup>229</sup>
- Simulated trash pickup route (July 4, 2016 and July 8, 2016) documentation with a statement under penalty of perjury from the Parks Superintendent certifying the information contained therein.<sup>230</sup> The simulation took place over a two day period and

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<sup>225</sup> *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.

<sup>226</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 802.

<sup>227</sup> Exhibit A, IRC, filed October 22, 2020, pages 106-113, 439 (Final Audit Report).

<sup>228</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>229</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>230</sup> Exhibit A, IRC, filed October 22, 2020, pages 117-127, 439 (Final Audit Report).

was intended to demonstrate that the claimant was able to perform trash receptacle inspection and collection at all transit stops in a single day.<sup>231</sup>

- A statement under penalty of perjury from the Director of Recreation and Community Services, dated May 2017, certifying that city employees maintained the transit stop trash receptacles twice weekly during the audit period.<sup>232</sup>

Of these documents, the claimant provided the Commission with only the August 2011 emails, 2016 trash simulation document, and 2017 statement as part of the Incorrect Reduction Claim.<sup>233</sup> These documents, alone, do not verify that trash collection was performed twice per week during the audit period, however.

The emails from 2011 were written during the audit period, but contain contradictory statements. An email sent by Kerry Musgrove on August 9, 2011 states that trash collection was not uniformly performed twice per week on each trash receptacle, as the claimant alleges.

We send staff out on the first day of the week and the last day of the week to empty half to full cans. *Some areas the cans in busy locations are emptied twice a week others only once a week.* Depends on the location. This summer staff is spending more time to empty half to full cans after the weekend. It's now taking a day and half at the first of the week.<sup>234</sup>

The 2017 statement by Lisa Litzinger, Director of Recreation and Community Services, is dated May 24, 2017 and states as follows:

I certify and declare under penalty of perjury under the laws of the State of California, to the best of my knowledge, that the waste pick up schedule at transit locations in the City of Lakewood was twice weekly for the entire period between FY 02-03 through present.<sup>235</sup>

The statement, however, contains no facts establishing Ms. Litzinger's personal knowledge of the trash collection schedule for the duration of the audit period (several years before the statement was signed). The document simply states that the statement is made to the best of her knowledge, but does not describe what that knowledge is based on or how she knows that information.

The 2016 data in the trash pickup route simulation was collected in response to the audit, and not as part of the claimant's official or business duties, and does not provide any information about

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<sup>231</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>232</sup> Exhibit A, IRC, filed October 22, 2020, page 439 (Final Audit Report).

<sup>233</sup> Exhibit A, IRC, filed October 22, 2020, pages 106-127. The Commission cannot evaluate the other documentation referenced in Final Audit Report as those documents were not included with the Incorrect Reduction Claim.

<sup>234</sup> Exhibit A, IRC filed October 22, 2020, pages 108-109, emphasis added.

<sup>235</sup> Exhibit A, IRC, filed October 22, 2020, page 116.

the number of weekly trash collections during the earlier audit period, or show how the simulation adequately represents the trash collections during the earlier audit period.

The claimant also filed a statement under penalty of perjury by Philip Lopez, Parks Superintendent, dated October 15, 2020 (after the final audit report was issued in November 2017). Thus, the Controller did not review this statement as part of the audit, but it states the following:

I, Phillip Lopez, do hereby declare as follows:

- 1) I am the Parks Superintendent for the City of Lakewood and I have been employed by the City in this capacity since October 4, 2010.
- 2) I have personal knowledge of the matters set forth herein, and if called as a witness to testify, could and would testify competently thereto.
- 3) As the Parks Superintendent, I am the direct supervisor of staff who clean and maintain city trash receptacles, including bus stop receptacles. Transit trash receptacles were maintained by city staff at a minimum of twice weekly since FY 2002-03.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed October 15, 2020, in Lakewood, California.<sup>236</sup>

Since Mr. Lopez first became employed as the Superintendent in 2010, it is not clear from his statement how he knows that transit trash receptacles were maintained by city staff at a minimum of twice weekly since fiscal year 2002-2003.

Accordingly, the Commission remands the reimbursement claims back to the State Controller's Office to further review and verify the costs claimed under the reasonable reimbursement methodology based on the number of weekly trash collections during the audit period and reinstate those costs that are deemed eligible for reimbursement in accordance with this Decision. In comments filed on the Draft Proposed Decision, the Controller stated that it agrees with the reimbursement claims being remanded and will work with the claimant to reinstate the costs deemed eligible.<sup>237</sup>

**C. The Controller's Reduction, Based on Its Determination in Finding 2 That the Proposition A Local Return Funds Are Offsetting Revenue that Should Have Been Identified and Deducted from the Reimbursement Claims, Is Correct as a Matter of Law.**

The Controller found that the claimant failed to report offsetting reimbursements for the audit period in the amount of \$73,940.<sup>238</sup> The Controller determined that the claimant had received tax revenues from the Los Angeles County Metropolitan Transportation Authority's Proposition

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<sup>236</sup> Exhibit A, IRC, filed October 22, 2020, page 22.

<sup>237</sup> Exhibit D, Controller's Comments on the Draft Proposed Decision, filed June 14, 2022, page 1.

<sup>238</sup> Exhibit A, IRC, filed October 22, 2020, page 445 (Final Audit Report).

A Local Return Program and used those funds to perform the mandated activities of purchasing trash receptacles in fiscal years 2005-2006 and 2008-2009.<sup>239</sup> The claimant does not contest receiving and using Proposition A local return funds in the manner alleged by the Controller. Rather, the claimant argues that the Controller’s determination that the Proposition A funds are an unreported offset that must be deducted from the reimbursement claims violates article XIII B, section 6 of the California Constitution, is inconsistent with the Parameters and Guidelines, and constitutes an invalid retroactive application of the Parameters and Guidelines.<sup>240</sup>

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

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

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.<sup>241</sup>

The claimant asserts that the Proposition A local return funds at issue do not constitute “revenue...in the same program as a result of the same statutes of [sic] executive orders found to contain the mandate”.<sup>242</sup> Citing to Government Code sections 17556(e) and 17570.3(d)(1)(D), the claimant argues that “funding sources” are defined as “additional revenues *specifically intended* to fund the costs of the state mandate” and “*dedicated...for the program.*”<sup>243</sup> The claimant reasons that because the Proposition A funds are general funds and could be used by the claimant for any transportation-related purpose, they do not constitute revenues “specifically intended” to fund the mandated activities or “dedicated” to the *Municipal Stormwater and Urban Runoff Discharges* program.<sup>244</sup>

As an initial matter, the Government Code does not contain a section 17570.3. Based on the content referenced, it appears the claimant intended to cite to section 17570(d)(1)(D). Regardless, neither Government Code section 17570(d)(1)(D) or section 17556(e) applies here.

Section 17570(d)(1)(D) addresses requests to adopt a new test claim decision, and requires the requester to identify dedicated state and federal funds appropriated for the program.<sup>245</sup> However, the phrase “dedicated...funds appropriated for the program” as used in section 17570 has no

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<sup>239</sup> Exhibit A, IRC, filed October 22, 2020, page 445 (Final Audit Report).

<sup>240</sup> Exhibit A, IRC, filed October 22, 2020, pages 10-17.

<sup>241</sup> Exhibit A, IRC, filed October 22, 2020, page 416 (Parameters and Guidelines).

<sup>242</sup> Exhibit A, IRC, filed October 22, 2020, page 13.

<sup>243</sup> Exhibit A, IRC, filed October 22, 2020, page 12, emphasis in IRC.

<sup>244</sup> Exhibit A, IRC, filed October 22, 2020, page 13.

<sup>245</sup> Government Code section 17570(d)(1)(D), emphasis added.



bearing on the meaning of offsetting revenues and reimbursements within the Parameters and Guidelines.

The claimant also cites to Government Code section 17556(e) for its use of the language “specifically intended” to support the claimant’s position that because Proposition A local return funds are general funds and the claimant was not required to use them for the specific purpose of funding the mandated activities, they do not constitute offsetting revenue or reimbursement under the Parameters and Guidelines.<sup>246</sup> Section 17556 states that the Commission shall not find costs mandated by the state when the statute, executive order, or an appropriation includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the costs of the mandate.<sup>247</sup> However, Government Code section 17556 applies only to the test claim phase for a legal determination whether there are costs mandated by the state. The *Municipal Stormwater and Urban Runoff Discharges* program was approved and, therefore, section 17556 has no relevance to this incorrect reduction claim.

The claimant next argues that because Proposition A is a local tax, it does not constitute a federal, state, or non-local source within the meaning of section VIII. of the Parameters and Guidelines.<sup>248</sup> While the Parameters and Guidelines do not expressly require that funds from a countywide tax, such as Proposition A, be identified as offsetting revenue, they do state that “reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim.”<sup>249</sup>

The Parameters and Guidelines must be interpreted in a manner that is consistent with the California Constitution<sup>250</sup> and principles of mandates law.<sup>251</sup> Proposition A is not the claimant’s “local tax” because it is neither levied by the claimant nor subject to the claimant’s appropriations limit. Furthermore, because Proposition A is a non-local source of revenue, whether Proposition A funds were “specifically intended to fund the costs of the state mandate” or whether the claimant was free to apply the funds to other transportation projects is immaterial. Any costs incurred by the claimant in performing the mandated activities that are funded by non-local tax revenue, such as Proposition A, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

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<sup>246</sup> Exhibit A, IRC, filed October 22, 2020, pages 12-13.

<sup>247</sup> Government Code section 17556(e), emphasis added.

<sup>248</sup> Exhibit A, IRC, filed October 22, 2020, pages 13-14.

<sup>249</sup> Exhibit A, IRC, filed October 22, 2020, page 397 (Parameters and Guidelines), emphasis added.

<sup>250</sup> 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.

<sup>251</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 811-812.

**2. Proposition A Local Return tax revenues are not the claimant’s “proceeds of taxes” within the meaning of article XIII B of the California Constitution because the tax is not levied by the claimant nor subject to the claimant’s appropriations limit.**

Interpreting the reimbursement requirement in article XIII B, section 6 of the California Constitution requires an understanding of articles XIII A and XIII B, which “work in tandem, together restricting California governments’ power both to levy and to spend taxes for public purposes.”<sup>252</sup>

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...”<sup>253</sup> 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.<sup>254</sup>

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.”<sup>255</sup> 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.’”<sup>256</sup>

Article XIII B established “an appropriations limit,” or spending limit for each “local government” beginning in fiscal year 1980-1981.<sup>257</sup> 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.<sup>258</sup>

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<sup>252</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

<sup>253</sup> California Constitution, article XIII A, section 1.

<sup>254</sup> California Constitution, article XIII A, section 1.

<sup>255</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

<sup>256</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

<sup>257</sup> California Constitution, article XIII B, section 8(h).

<sup>258</sup> 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.<sup>259</sup>

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.”<sup>260</sup> 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).<sup>261</sup>

No limitation is placed on the expenditure of those revenues that do not constitute “proceeds of taxes.”<sup>262</sup> 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.”<sup>263</sup>

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. The California Supreme Court, in *County of Fresno v. State of California*,<sup>264</sup> 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

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<sup>259</sup> California Constitution, article XIII B, section 2.

<sup>260</sup> California Constitution, article XIII B, section 8.

<sup>261</sup> California Constitution, article XIII B, section 8; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448.

<sup>262</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>263</sup> California Constitution, article XIII B, section 8(i).

<sup>264</sup> *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*.<sup>265</sup>

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.”<sup>266</sup> Article XIII B, section 6 must therefore be read in light of the tax and spend limitations imposed by articles XIII A and XIII B; it requires the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.<sup>267</sup>

a. The Proposition A sales tax is not levied by or for the claimant.

The claimant argues that Proposition A is a local tax because it is a “sales tax imposed on local citizens” and therefore does not fall into any of the offsetting revenue categories enumerated in section VIII. the Parameters and Guidelines, which include “federal, state, or non-local source” revenue.<sup>268</sup> The claimant disagrees with the Controller’s characterization of Proposition A as a restricted use tax, as opposed to a general tax, and argues that the claimant was not required to use the Proposition A local return funds for any specific purpose, including paying for the mandate program.<sup>269</sup> In support of this position, the claimant cites to the fact that under the Local Return Guidelines, the claimant was permitted to use the Proposition A funds on any number of transportation projects, not only the mandate program.<sup>270</sup>

The power of a local government to tax is derived from the Constitution, upon the Legislature’s authorization.<sup>271</sup> “The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.”<sup>272</sup> In other words, a local government’s taxing authority is derived from statute.

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<sup>265</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

<sup>266</sup> *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).

<sup>267</sup> *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.

<sup>268</sup> Exhibit A, IRC, filed October 22, 2020, page 14.

<sup>269</sup> Exhibit A, IRC, filed October 22, 2020, pages 12-13.

<sup>270</sup> Exhibit A, IRC, filed October 22, 2020, pages 13-14.

<sup>271</sup> California Constitution, article XIII, section 24(a).

<sup>272</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 [“Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government”].

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A transactions and use tax throughout Los Angeles County.<sup>273</sup> 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.<sup>274</sup>

Under the Proposition A ordinance, twenty-five percent of the annual Proposition A tax revenues are allocated to local jurisdictions for local transit purposes on a per capita basis.<sup>275</sup> As discussed above, local jurisdictions are then permitted to use those funds on public transit projects as prescribed by the Local Return Guidelines.<sup>276</sup> Permissible uses include Bus Stop Improvements and Maintenance projects, which include the installation, replacement and maintenance of trash receptacles.<sup>277</sup>

The parties do not dispute that the claimant received Proposition A tax revenue through the Local Return Program during the audit period, at least a portion of which was used for the eligible purpose of purchasing trash receptacles.<sup>278</sup> Nonetheless, the claimant misunderstands what constitutes claimant's "local sales tax revenues" for purposes of determining eligibility for reimbursement under article XIII B, section 6. Contrary to the claimant's assertions, the Proposition A transactions and use tax is *not* the claimant's "local tax" because it is neither levied by nor for the claimant.

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

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<sup>273</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

<sup>274</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

<sup>275</sup> Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

<sup>276</sup> See Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

<sup>277</sup> Exhibit A, IRC, filed October 22, 2020, page 46 (Local Return Guidelines).

<sup>278</sup> Exhibit A, IRC, filed October 22, 2020, pages 15, 445 (Final Audit Report).

taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P. 340.) In levying taxes for the city the county was levying “municipal taxes” through the ordinary county machinery. (*Griggs, supra*, 13 Cal.App. at p. 432, 109 P. 1104.)

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.<sup>279</sup>

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimant here does not have the power to levy the Proposition A tax.<sup>280</sup> Therefore, Metro is not levying the Proposition A tax “for” the claimant. The claimant’s receipt and use of Proposition A tax revenue through the Local Return Program does not change the nature of the local return funds as Metro’s “proceeds of taxes” and subject to Metro’s appropriations limit.

b. Proposition A local return funds allocated to the claimant are not subject to the claimant’s appropriations limit.

Article XIII B does not limit a local government’s ability to expend tax revenues that are not the claimant’s “proceeds of taxes.”<sup>281</sup> Where a tax is not levied by or for the local government claiming reimbursement, the revenue of such a tax is not the local government’s “proceeds of taxes” and is therefore not the local government’s “appropriations subject to limitation.”<sup>282</sup> 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.”<sup>283</sup> Because the Proposition A local return funds are not the claimant’s “proceeds of taxes levied by or for that entity,” they are not the claimant’s “appropriations subject to limitation.”<sup>284</sup>

While the Proposition A ordinance does not state whether Proposition A tax proceeds are subject to Metro’s appropriations limit,<sup>285</sup> Metro receives the revenues of any transactions and use tax it

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<sup>279</sup> *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

<sup>280</sup> 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].

<sup>281</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>282</sup> California Constitution, article XIII B, section 8.

<sup>283</sup> *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.

<sup>284</sup> California Constitution, article XIII B, section 8.

<sup>285</sup> Exhibit A, IRC, filed October 22, 2020, pages 25-33 (Proposition A Ordinance).

levies and then allocates and distributes them to local jurisdictions in accordance with the applicable tax ordinances.<sup>286</sup> 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).<sup>287</sup> With the exception of Proposition A, the remaining three tax ordinances expressly state that their respective transportation sales tax revenues are subject to either Transportation Commission (as predecessor to Metro) or Metro's appropriations limit. The claimant has submitted no evidence, and the Commission is aware of none, to show that the Proposition A local return funds it received during the audit period were subject to the claimant's appropriations limit.

The claimant is incorrect in asserting that using Proposition A funds to pay for the mandated activities is no different than if the claimant had used "other local tax funds."<sup>288</sup> While, as claimant asserts, Proposition A is indeed imposed on the "local citizens" of claimant's jurisdiction, the tax is levied throughout Los Angeles County by Metro, who then distributes a portion of the revenues to cities and the County of Los Angeles. Because the Proposition A tax is neither levied by nor for the claimant, nor subject to the claimant's appropriations limit, the Proposition A Local Return revenues do not constitute the claimant's "local proceeds of taxes" for which claimant is entitled to reimbursement under article XIII B, section 6. Local government cannot accept the benefits of non-local tax revenue that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>289</sup> To the extent that the claimant funded the mandated activities using Proposition A tax revenues, reimbursement is not required under article XIII B, section 6 of the California Constitution.

**3. The advancement of Proposition A funds to purchase trash receptacles does not alter the nature of those funds as not the claimant's proceeds of taxes and therefore required under the Parameters and Guidelines to be deducted from the reimbursement claims, nor does the reduction of those funds from the costs claimed constitute a retroactive application of the law.**

The claimant argues that because the Local Return Guidelines permit the claimant to advance Proposition A funds to pay for mandated activities and then, upon reimbursement from the state, use those funds on other transportation-related priorities, the Controller cannot retroactively apply the Parameters and Guidelines "to preclude a subvention."<sup>290</sup> The claimant argues that retroactively applying the Parameters and Guidelines to prohibit an advancement of Proposition

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<sup>286</sup> Public Utilities Code section 130354, which states: "The revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes;" Exhibit A, IRC, filed October 22, 2020, page 40 (Local Return Guidelines).

<sup>287</sup> Exhibit E (2), Metro, Local Return Program, [https://www.metro.net/projects/local\\_return\\_pgm/](https://www.metro.net/projects/local_return_pgm/) (accessed on February 25, 2021), page 1.

<sup>288</sup> Exhibit A, IRC, filed on October 22, 2020, page 15.

<sup>289</sup> See *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

<sup>290</sup> Exhibit A, IRC, filed October 22, 2020, pages 16-17.

A funds in a way that was legal at the time the funds were advanced is arbitrary and capricious.<sup>291</sup> Whether the Controller correctly interpreted the Parameters and Guidelines and the law in finding that Proposition A is a non-local source of funds that must be deducted from the reimbursement claims is purely a question of law subject to the de novo standard of review and to which the arbitrary and capricious standard does not apply.

Because the claimant used “non-local source” funds to install and maintain trash receptacles, it was required to identify and deduct those funds from its claim for reimbursement. As discussed above, the Proposition A funds received by the claimant are not the claimant’s “proceeds of taxes” within the meaning of article XIII B, section 8. The requirement in section VIII. of the Parameters and Guidelines that reimbursement received from any “non-local source” must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes. A rule that merely restates or clarifies existing law “does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same.”<sup>292</sup>

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes (e.g., revenue from a tax levied by a separate local government entity), it is required to deduct those revenues from its reimbursement claim. The fact that the Commission’s adoption of the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program postdates the audit period does not alter the analysis,<sup>293</sup> nor does the claimant’s ability under the Local Return Guidelines to expend Proposition A funds on the installation and maintenance of transit stop trash receptacles prior to mandate reimbursement.

Accordingly, the Controller’s reduction of costs claimed, based on its determination in Finding 2, that the Proposition A local return funds are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law.

## V. Conclusion

For the foregoing reasons, the Commission partially approves this IRC and concludes as follows:

1. The incorrect reduction claim was timely filed;
2. The Controller incorrectly reduced the costs claimed under the reasonable reimbursement methodology pertaining to the weekly number of trash collections during fiscal years 2002-2003 through 2012-2013;
3. The Controller correctly reduced the costs claimed by the claimant pertaining to the claimant’s purchase of trash receptacles in fiscal years 2005-2006 and 2008-2009 using Proposition A local return funds and failure to offset its reimbursement claims to account for those funds.

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<sup>291</sup> Exhibit A, IRC, filed October 22, 2020, page 16.

<sup>292</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

<sup>293</sup> Exhibit A, IRC, filed October 22, 2020, pages 6, 95.



The reimbursement claims are hereby remanded back to the Controller to further review and verify the costs claimed under the reasonable reimbursement methodology based on the number of weekly trash collections during the audit period and reinstate those costs that are deemed eligible for reimbursement in accordance with this Decision.

**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 July 6, 2022, I served the:

- **Proposed Decision issued July 6, 2022**

*Municipal Stormwater and Urban Runoff Discharges, 20-0304-I-07*

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 Lakewood, 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 July 6, 2022 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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# COMMISSION ON STATE MANDATES

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**Last Updated:** 5/20/22

**Claim Number:** 20-0304-I-07

**Matter:** Municipal Storm Water and Urban Runoff Discharges

**Claimant:** City of Lakewood

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