



July 11, 2018

Mr. Christian Keiner  
Dannis Woliver Kelly  
555 Capitol Mall, Suite 645  
Sacramento, CA 95814

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

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

**Re: Proposed Decision**

*Integrated Waste Management, 15-0007-I-12*  
Public Resources Code Sections 40148, 40196.3, 42920-42928;  
Public Contract Code Sections 12167 and 12167.1  
Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75)  
State Agency Model Integrated Waste Management Plan (February 2000)  
Fiscal Years: 2003-2004, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010,  
and 2010-2011  
San Mateo County Community College District, Claimant

Dear Mr. Keiner and Ms. Kanemasu:

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

**Hearing**

This matter is set for hearing on **Friday, July 27, 2018**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

**Special Accommodations**

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

Sincerely,

  
Heather Halsey  
Executive Director

**ITEM 3**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

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

*Integrated Waste Management*

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

15-0007-I-12

San Mateo County Community College District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) addresses reductions by the State Controller’s Office (Controller) to reimbursement claims of the San Mateo County Community College District (claimant) for fiscal years 2003-2004 and 2005-2006 through 2010-2011 (the audit period) under the *Integrated Waste Management* program, 00-TC-07. The Controller made the audit reductions because the claimant did not identify and deduct from its reimbursement claims any offsetting savings from its solid waste diversion that results in reduced or avoided landfill disposal fees.

Staff finds, based on the evidence in the record, that the Controller’s calculation of offsetting cost savings for all years in the audit period except for the first half of fiscal year 2003-2004 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

However, the Controller’s reduction of costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law. For Cañada and Skyline Colleges, the Controller allocated the diversion rate for the first half of fiscal year 2003-2004, as it did for the other fiscal years, because the claimant exceeded the mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion, although the test claim statutes required only 25 percent diversion until January 1, 2004,<sup>1</sup> so the calculation of cost savings for the first half of fiscal year 2003-2004 is incorrect as a matter of law.

For the College of San Mateo, the Controller found that the claimant did not meet the minimum “50 percent” diversion rate, although the minimum diversion rate in 2003 was 25 percent (and

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<sup>1</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

the college achieved 44.1 percent).<sup>2</sup> The requirement to divert 50 percent did not become effective until January 1, 2004,<sup>3</sup> so the Controller's finding was incorrect as a matter of law. In addition, the Controller did not allocate the diversion rate for the College of San Mateo, as it had for the other fiscal years when the claimant exceeded the mandate. Instead, the Controller used 100 percent of the claimant's diversion to calculate the offsetting savings for the College of San Mateo for the first half of fiscal year 2002-2003,<sup>4</sup> so the Controller's savings calculation for the first half of fiscal year 2003-2004 is arbitrary, capricious, or entirely lacking in evidentiary support.

Applying the Controller's cost savings formula (using the mandated 25 percent rate to calculate the allocated diversion) to the first half of fiscal year 2003-2004, results in offsetting savings of:

- \$1,705 for Cañada College (25 percent divided by 51.13 percent multiplied by 94.7 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$3,411;
- \$1,805 for Skyline College (25 percent divided by 74.41 percent multiplied by 145.85 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$3,610; and
- \$6,124 for the College of San Mateo (25 percent divided by 44.13 percent multiplied by 293.5 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$10,810.

Thus, the reduction of \$8,197 (the difference between the Controller's reduction of \$17,831 and \$9,634, which is the amount that should have been reduced) is incorrect as a matter of law and should be reinstated to the claimant.

#### The Integrated Waste Management Program

The test claim statutes require community college districts<sup>5</sup> to adopt and implement, in consultation with the California Integrated Waste Management Board (CIWMB, now known as CalRecycle), an integrated waste management (IWM) plan to govern the district's efforts to reduce solid waste, reuse materials, recycle recyclable materials and procure products with recycled content in all agency offices and facilities. To implement their plans, community college districts must divert from landfill disposal at least 25 percent of solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. Public Resources Code section 42925, as added by the test claim statutes, further provides that "[a]ny cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract

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<sup>2</sup> Exhibit B, Controller's Comments on the IRC, page 153.

<sup>3</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

<sup>4</sup> Exhibit B, Controller's Comments on the IRC, page 153.

<sup>5</sup> The test claim statutes apply to "state agencies" but defines them to include "the California Community Colleges" (Pub. Res. Code, § 40196.3). Community college districts are the only local government to which the test claim statutes apply.

Code.”

On March 24, 2004, the Commission adopted the Test Claim Statement of Decision and found that the test claim statutes impose a reimbursable state mandate on community colleges, and that cost savings under Public Resources Code section 42925 did not result in a denial of the Test Claim because there was no evidence of offsetting savings that would result in no net costs to a community college district. The Parameters and Guidelines were adopted on March 30, 2005, to authorize reimbursement for the activities approved in the Statement of Decision, and did not require claimants to identify and deduct from their reimbursement claims any cost savings. After the Commission adopted the Parameters and Guidelines, the Department of Finance (Finance) and CIWMB challenged the Statement of Decision and Parameters and Guidelines, arguing that the Commission did not properly account for all the offsetting cost savings from avoided disposal costs, or offsetting revenues from the sale of recyclable materials in the Statement of Decision or Parameters and Guidelines. On May 29, 2008, the Sacramento County Superior Court partially agreed with the petitioners and directed the Commission to amend the Parameters and Guidelines to:

1. [R]equire community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and
2. [R]equire community college districts claiming reimbursable costs of an integrated waste management plan under Public Resources Code section 42920, et seq. to identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.<sup>6</sup>

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

This program was made optional by Statutes 2010, chapter 724 (AB 1610), section 34, effective October 19, 2010, and has remained so since that time.<sup>7</sup>

### **Procedural History**

The claimant filed its fiscal year 2003-2004 reimbursement claim on October 6, 2005,<sup>8</sup> its fiscal year 2005-2006 reimbursement claim on December 10, 2007,<sup>9</sup> its fiscal years 2006-2007 and

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<sup>6</sup> Exhibit B, Controller’s Comments on the IRC, page 30 (Judgment Granting Petition for Writ of Administrative Mandamus).

<sup>7</sup> See Government Code section 17581.5(c)(9).

<sup>8</sup> Exhibit A, IRC, page 285 (2003-2004 Claim). Exhibit B, Controller’s Comments on the IRC, page 19.

<sup>9</sup> Exhibit A, IRC, page 292 (2005-2006 Claim). Exhibit B, Controller’s Comments on the IRC, page 19.

2007-2008 reimbursement claims on February 17, 2009,<sup>10</sup> and its fiscal year 2008-2009 reimbursement claim on February 12, 2010.<sup>11</sup> The claimant signed its fiscal year 2010-2011 reimbursement claim on January 26, 2012,<sup>12</sup> and filed its fiscal year 2009-2010 reimbursement claim on February 6, 2012.<sup>13</sup> The Controller notified the claimant of the pending audit adjustment on September 28, 2015.<sup>14</sup> The Controller issued the Final Audit Report on October 20, 2015.<sup>15</sup> The claimant filed the IRC on March 15, 2016.<sup>16</sup> The Controller filed comments on the IRC on June 6, 2016.<sup>17</sup> The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on April 9, 2018.<sup>18</sup> The Controller filed comments on the Draft Proposed Decision on April 23, 2018.<sup>19</sup> The claimant did not file comments on the Draft Proposed Decision.

### **Commission Responsibilities**

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

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

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>20</sup> The Commission must also interpret the Government Code and

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<sup>10</sup> Exhibit A, IRC, page 299 (2006-2007 Claim). Exhibit B, Controller's Comments on the IRC, page 19. Exhibit A, IRC, page 303 (2007-2008 Claim).

<sup>11</sup> Exhibit A, IRC, page 307 (2008-2009 Claim).

<sup>12</sup> Exhibit A, IRC, page 317 (2010-2011 Claim). This claim was only for July 1, 2010 to October 7, 2010.

<sup>13</sup> Exhibit A, IRC, page 312 (2009-2010 Claim).

<sup>14</sup> Exhibit B, Controller's Comments on the IRC, pages 155-156.

<sup>15</sup> Exhibit A, IRC, page 25 (Final Audit Report).

<sup>16</sup> Exhibit A, IRC, page 1.

<sup>17</sup> Exhibit B, Controller's Comments on the IRC, page 1.

<sup>18</sup> Exhibit C, Draft Proposed Decision.

<sup>19</sup> Exhibit D, Controller's Comments on the Draft Proposed Decision.

<sup>20</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

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>21</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>22</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>23</sup> In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>24</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>
Whether the Controller’s reductions of costs claimed based on unreported cost savings resulting from implementation of the IWM plan are correct.	Pursuant to the ruling and writ issued in <i>State of California v. Commission on State Mandates</i> , (Super. Ct., Sacramento County, 2008, No. 07CS00355), the amended Parameters and Guidelines require the claimants to identify and offset from their claims cost savings realized as a result of implementing their IWM plans, and apply the cost savings to fund plan	<i>Partially Incorrect</i> – The Controller correctly presumed, absent any evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill fee per ton of waste required to be diverted. The avoided landfill disposal fee was based on the statewide average disposal fee provided by CIWMB for each year in the audit period. The claimant has not filed any evidence to rebut

<sup>21</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>22</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>23</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>24</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.

	<p>implementation and administration costs.</p> <p>The test claim statutes presume that by complying with the mandate to divert solid waste through the IWM program, claimants can reduce or avoid landfill fees and realize cost savings. As the court ruled, cost savings may be calculated from the solid waste disposal reduction that community colleges are required to annually report to CIWMB. There is a rebuttable statutory presumption of cost savings. To rebut the presumption, the claimant has the burden to show that cost savings were not realized.</p> <p>During all years of the audit period, the claimant diverted more solid waste than required by law. For years the Controller found the claimant diverted more waste than required, the Controller “allocated” the diversion by dividing the percentage of waste required to be diverted, either 25% or 50%, by the actual percentage of waste diverted as reported by the claimant to CIWMB. The resulting quotient was then multiplied by the tons of solid waste diverted multiplied by the avoided landfill disposal fee (based on the statewide average fee). This formula avoids penalizing the claimant for</p>	<p>the statutory presumption of cost savings. Thus, the Controller’s reduction of costs claimed for all years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law.</p> <p>However, the Controller’s reduction for the first half of fiscal year 2003-2004 is incorrect as a matter of law. The Controller used a 50% diversion rate to calculate offsetting savings for this period at Cañada and Skyline Colleges, although the mandate was 25% diversion until January 1, 2004.<sup>29</sup></p> <p>And although the College of San Mateo achieved 44.13% diversion (exceeding the required 25%) in 2003, the Controller did not allocate the College’s cost savings in 2003-2004, which is arbitrary, capricious, or entirely lacking in evidentiary support.</p> <p>Applying the Controller’s formula to calculate cost savings (using 25% to calculate the allocated diversion) to the first half of fiscal year 2003-2004 results in offsetting cost savings of:</p> <ul style="list-style-type: none"> <li>• \$1,705 for Cañada College (25% divided by 51.13% multiplied by 94.7 tons diverted multiplied by the statewide average landfill</li> </ul>
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<sup>29</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

	<p>diverting more solid waste than the state-mandated amount.</p> <p>For the first half of fiscal year 2003-2004, the Controller used a 50% rate to allocate cost savings, although 25% was mandated during this period.<sup>25</sup></p> <p>The Controller admits that the mandated diversion rate was 25% during 2003.<sup>26</sup></p> <p>For the College of San Mateo, the Controller found that the claimant did not meet the minimum “50%” diversion rate during the first half of fiscal year 2002-2003, although the mandate was 25% diversion until January 1, 2004.<sup>27</sup> Thus, the Controller did not allocate the 2002-2003 diversion rate for the College of San Mateo, as it had for the other fiscal years when the claimant exceeded the mandate, instead using 100 percent of the claimant’s diversion to calculate the College’s offsetting savings for 2002-2003.<sup>28</sup></p>	<p>fee of \$36.83) rather than \$3,411;</p> <ul style="list-style-type: none"> <li>• \$1,805 for Skyline College (25% divided by 74.41% multiplied by 145.85 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$3,610;</li> <li>• \$6,124 for the College of San Mateo (25% divided by 44.13% multiplied by 293.5 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$10,810.</li> </ul> <p>Thus, the reduction of \$8,197 (\$17,831 - \$9,634) is incorrect as a matter of law and should be reinstated to claimant.</p>
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**Staff Analysis**

**A. The Controller’s Reduction of Costs Claimed Is Generally Correct as a Matter of Law; However, the Reduction for the First Half of Fiscal Year 2003-2004, Based on the Incorrect Diversion Rate, Is Incorrect as a Matter of Law and Is Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

<sup>25</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

<sup>26</sup> Exhibit B, Controller’s Comments on the IRC, page 20.

<sup>27</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

<sup>28</sup> Exhibit B, Controller’s Comments on the IRC, page 153.



The test claim statutes require community college districts to divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004.<sup>30</sup> The test claim statutes also provide that “Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency’s integrated waste management plan to fund plan implementation and administration costs . . .”<sup>31</sup>

The statutes, therefore, presume that by complying with the mandate to divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. And the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to CIWMB.<sup>32</sup>

Staff finds that the Controller correctly presumed, consistent with the test claim statutes and the court’s interpretation of those statutes, and without evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill disposal fee per ton of waste required to be diverted.

Staff also finds, based on the evidence in the record, that the Controller’s calculation of offsetting cost savings for all fiscal years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant exceeded the mandated diversion rate in all years of the audit period at all three colleges in the district.<sup>33</sup>

For the years the claimant exceeded the mandate, the Controller calculated offsetting savings by allocating the diversion to reflect the mandate. To allocate the diversion, the Controller divided the percentage of diverted solid waste that the test claim statute requires (either 25 percent or 50 percent) by the actual percentage of solid waste diverted (as annually reported by the claimant to CIWMB). The allocated tonnage of diverted waste was then multiplied by the avoided landfill disposal fee (based on the statewide average fee) to calculate the offsetting savings realized.<sup>34</sup> The formula allocates or reduces cost savings based on the mandated rates of diversion, and is intended to avoid penalizing the claimant for diverting more solid waste than the amount mandated by law.<sup>35</sup>

However, the Controller’s reduction of costs claimed for the first half of fiscal year 2003-2004, based on an incorrect diversion rate, is incorrect as a matter of law. For Cañada and Skyline Colleges, the Controller allocated the diversion rate for the first half of fiscal year 2003-2004, as

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<sup>30</sup> Public Resources Code section 42921(b).

<sup>31</sup> Public Resources Code section 42925(a).

<sup>32</sup> Exhibit B, Controller’s Comments on the IRC, pages 142-143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>33</sup> Exhibit B, Controller’s Comments on the IRC, pages 151-153.

<sup>34</sup> Exhibit A, IRC, page 38; Exhibit B, Controller’s Comments on the IRC, page 20.

<sup>35</sup> Exhibit B, Controller’s Comments on the IRC, page 20.

it did for the other fiscal years, because the claimant exceeded the mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion, although the test claim statutes required only 25 percent diversion until January 1, 2004,<sup>36</sup> so the Controller's calculation of cost savings at Cañada and Skyline Colleges for the first half of fiscal year 2003-2004 is incorrect as a matter of law.

For the College of San Mateo, the Controller found that the claimant did not meet the minimum "50 percent" diversion rate during the first half of fiscal year 2003-2004, although the mandated diversion rate in 2003 was 25 percent diversion (and the College achieved 44 percent).<sup>37</sup> The requirement to divert 50 percent did not become effective until January 1, 2004,<sup>38</sup> so the Controller's finding was incorrect as a matter of law. In addition, the Controller did not allocate the diversion rate for the College of San Mateo, as it had for the other fiscal years when the claimant exceeded the mandate. Instead, the Controller used 100 percent of the claimant's diversion to calculate the offsetting savings for the College of San Mateo for the first half of fiscal year 2002-2003,<sup>39</sup> so the Controller's savings calculation for this period is arbitrary, capricious, or entirely lacking in evidentiary support.

Applying the Controller's cost savings formula (using the mandated 25 percent diversion rate to calculate the allocated diversion) to the first half of fiscal year 2003-2004, results in offsetting savings of:

- \$1,705 for Cañada College (25 percent divided by 51.13 percent multiplied by 94.7 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$3,411;
- \$1,805 for Skyline College (25 percent divided by 74.41 percent multiplied by 145.85 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$3,610; and
- \$6,124 for the College of San Mateo (25 percent divided by 44.13 percent multiplied by 293.5 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$10,810.

Thus, the difference of \$8,197 (the reduction of \$17,831 minus \$9,634 that should have been reduced) has been incorrectly reduced.

### **Conclusion**

Staff finds, based on the evidence in the record, that the Controller's calculation of offsetting cost savings for all calendar years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

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<sup>36</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

<sup>37</sup> Exhibit B, Controller's Comments on the IRC, page 153.

<sup>38</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

<sup>39</sup> Exhibit B, Controller's Comments on the IRC, page 153.

Staff also finds that the reduction of costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law based on an incorrect mandated diversion rate, and in the case of the College of San Mateo, is arbitrary, capricious, or entirely lacking in evidentiary support. The law and the evidence in the record support offsetting cost savings for the first half of fiscal year 2003-2004 of \$9,634, rather than \$17,831. Therefore, \$8,197 of the reduction taken is incorrect as a matter of law and should be reinstated to the claimant.

**Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to partially approve the IRC and request, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate \$8,197 to the claimant. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM  
 ON:**

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

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

San Mateo County Community College District, Claimant

Case No.: 15-0007-I-12

*Integrated Waste Management*

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

*(Adopted July 27, 2018)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on July 27, 2018. [Witness list will be included in the adopted Decision.]

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

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

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller,	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez,, Representative of the Director of the Department of Finance, Chairperson	

## **Summary of the Findings**

This IRC addresses reductions made by the State Controller's Office (Controller) to reimbursement claims of the San Mateo County Community College District (claimant) for fiscal years 2003-2004 and 2005-2006 through 2010-2011 (the audit period), under the *Integrated Waste Management* program, 00-TC-07. The Controller made the audit reductions because the claimant did not identify and deduct from its reimbursement claims any offsetting savings from its solid waste diversion that results in reduced or avoided landfill disposal fees.

The test claim statutes require community college districts to adopt and implement, in consultation with California Integrated Waste Management Board (CIWMB, which is now the California Department of Resources Recycling and Recovery, or CalRecycle), integrated waste management (IWM) plans to reduce solid waste<sup>40</sup> To implement their plans, districts must divert from landfill disposal at least 25 percent of solid waste by January 1, 2002, and at least 50 percent by January 1, 2004.<sup>41</sup> The test claim statutes also provide that "Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency's integrated waste management plan to fund plan implementation and administration costs . . ."<sup>42</sup>

The statutes, therefore, presume that by complying with the mandate to divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. The amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to CIWMB.<sup>43</sup>

The Commission finds that the audit reductions are partially incorrect.

During the audit period, the claimant diverted solid waste, as required by the test claim statutes, at all three colleges in the district: Cañada College, Skyline College, and College of San Mateo. The Controller correctly presumed, consistent with the test claim statutes and the court's interpretation of those statutes, and without any evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill disposal fee per ton of waste required to be diverted.

Based on the evidence in the record, the Commission finds that the Controller's calculation of offsetting cost savings for all years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support. For those years the claimant exceeded the mandated diversion rate, the Controller calculated offsetting savings by allocating the diversion to reflect the mandate by dividing the percentage of solid waste required to be diverted by the test claim statute (either 25 percent or 50 percent) by the actual percentage of solid waste diverted (as annually reported by the claimant to

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<sup>40</sup> Public Resources Code section 42920(b).

<sup>41</sup> Public Resources Code section 40124.

<sup>42</sup> Public Resources Code section 42925(a).

<sup>43</sup> Exhibit B, Controller's Comments on the IRC, pages 142-143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

the California Integrated Waste Management Board (CIWMB). The allocated tonnage of solid waste diverted was then multiplied by the avoided landfill disposal fee (based on the statewide average fee) to calculate the offsetting savings realized.<sup>44</sup> The formula allocates cost savings based on the mandated rate of diversion, and is intended to avoid penalizing the claimant for diverting more solid waste than the amount mandated by law.<sup>45</sup> The claimant has not filed any evidence to rebut the statutory presumption of cost savings or to show that the statewide average disposal fee is incorrect or arbitrary. Thus, the Controller's reduction of costs claimed for these fiscal years is correct.

However, the Controller's reduction of costs claimed for the first half of fiscal year 2003-2004 is incorrect as a matter of law. For Cañada and Skyline Colleges, the Controller allocated the diversion rate for the first half of fiscal year 2003-2004, as it did for the other fiscal years, because the claimant exceeded the mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion for calendar year 2003, although the test claim statutes required only 25 percent diversion until January 1, 2004,<sup>46</sup> so the Controller's calculation of cost savings at Cañada and Skyline Colleges for the first half of fiscal year 2003-2004 is incorrect as a matter of law.

For the College of San Mateo, the Controller found that the claimant did not meet the minimum "50 percent" diversion rate during the first half of fiscal year 2003-2004, although the mandated diversion rate during calendar year 2003 was 25 percent diversion (and the College achieved 44 percent).<sup>47</sup> The requirement to divert 50 percent did not become effective until January 1, 2004,<sup>48</sup> so the Controller's finding was incorrect as a matter of law. In addition, the Controller did not allocate the diversion rate for the College of San Mateo, as it had for the other fiscal years when the claimant exceeded the mandate. Instead, the Controller used 100 percent of the claimant's diversion to calculate the offsetting savings for the College of San Mateo for the first half of fiscal year 2003-2004,<sup>49</sup> so the Controller's savings calculation for this period is arbitrary, capricious, or entirely lacking in evidentiary support.

Applying the Controller's cost savings formula (using the mandated 25 percent diversion rate to calculate the allocated diversion) to the first half of fiscal year 2003-2004, results in offsetting savings of:

- \$1,705 for Cañada College (25 percent divided by 51.13 percent multiplied by 94.7 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$3,411;

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<sup>44</sup> Exhibit A, IRC, pages 38; Exhibit B, Controller's Comments on the IRC, page 20.

<sup>45</sup> Exhibit B, Controller's Comments on the IRC, page 20.

<sup>46</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

<sup>47</sup> Exhibit B, Controller's Comments on the IRC, page 153.

<sup>48</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

<sup>49</sup> Exhibit B, Controller's Comments on the IRC, page 153.

- \$1,805 for Skyline College (25 percent divided by 74.41 percent multiplied by 145.85 tons diverted multiplied by the statewide average landfill fee of \$36,83) rather than \$3,610; and
- \$6,124 for the College of San Mateo (25 percent divided by 44.13 percent multiplied by 293.5 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$10,810.

Thus, the reduction of \$8,197 (the difference between the Controller’s reduction of \$17,831 and \$9,634, which is the amount that should have been reduced) is incorrect as a matter of law and should be reinstated to the claimant.

Therefore, the Commission partially approves this IRC, and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission’s regulations, that the Controller reinstate \$8,197 to the claimant.

## **COMMISSION FINDINGS**

### **I. Chronology**

- 10/06/2005 The claimant filed its fiscal year 2003-2004 reimbursement claim.<sup>50</sup>
- 12/10/2007 The claimant filed its 2005-2006 reimbursement claim.<sup>51</sup>
- 02/17/2009 The claimant filed its 2006-2007 and 2007-2008 reimbursement claims.<sup>52</sup>
- 02/12/2010 The claimant filed its 2008-2009 reimbursement claim.<sup>53</sup>
- 01/26/2012 The claimant signed its 2010-2011 reimbursement claim.<sup>54</sup>
- 02/06/2012 The claimant filed its 2009-2010 reimbursement claim.<sup>55</sup>
- 09/28/2015 The Controller notified the claimant of the audit.<sup>56</sup>
- 10/20/2015 The Controller issued the Final Audit Report.<sup>57</sup>

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<sup>50</sup> Exhibit A, IRC, page 285 (2003-2004 Claim). Exhibit B, Controller’s Comments on the IRC, page 19.

<sup>51</sup> Exhibit A, IRC, page 292 (2005-2006 Claim). Exhibit B, Controller’s Comments on the IRC, page 19.

<sup>52</sup> Exhibit A, IRC, page 299 (2006-2007 Claim). Exhibit B, Controller’s Comments on the IRC, page 19. Exhibit A, IRC, page 303 (2007-2008 Claim).

<sup>53</sup> Exhibit A, IRC, page 307 (2008-2009 Claim).

<sup>54</sup> Exhibit A, IRC, page 317 (2010-2011 Claim). This claim was only for July 1, 2010 to October 7, 2010, and does not show the date the Controller received it.

<sup>55</sup> Exhibit A, IRC, page 312 (2009-2010 Claim).

<sup>56</sup> Exhibit B, Controller’s Comments on the IRC, pages 155-156.

<sup>57</sup> Exhibit A, IRC, page 25 (Final Audit Report).

- 03/15/2016 The claimant filed this IRC.<sup>58</sup>
- 06/06/2016 The Controller filed comments on the IRC.<sup>59</sup>
- 04/09/2018 Commission staff issued the Draft Proposed Decision.<sup>60</sup>
- 04/23/2018 The Controller filed comments on the Draft Proposed Decision.<sup>61</sup>

## II. Background

### A. The *Integrated Waste Management Program*

The test claim statutes require community college districts<sup>62</sup> to adopt and implement, in consultation with CIWMB (which is now the California Department of Resources Recycling and Recovery, or CalRecycle), integrated waste management (IWM) plans to reduce solid waste, reuse materials whenever possible, recycle recyclable materials, and procure products with recycled content in all agency offices and facilities.<sup>63</sup> To implement their plans, districts must divert from landfill disposal at least 25 percent of generated solid waste by January 1, 2002, and at least 50 percent by January 1, 2004. To divert means to “reduce or eliminate the amount of solid waste from solid waste disposal...”<sup>64</sup>

CIWMB developed and adopted a model IWM plan on February 15, 2000, and the test claim statutes provide that if a district does not adopt an IWM plan, the CIWMB model plan governs the community college.<sup>65</sup> Each district is also required to report annually to CIWMB on its progress in reducing solid waste; and the reports’ minimum contents are specified in statute.<sup>66</sup> The test claim statutes also require a community college, when entering into or renewing a lease, to ensure that adequate areas are provided for and adequate personnel are available to oversee collection, storage, and loading of recyclable materials in compliance with CIWMB’s requirements.<sup>67</sup> Additionally, the test claim statutes added Public Resources Code section 42925(a), which addressed cost savings from IWM plan implementation:

Any cost savings realized as a result of the state agency integrated waste management plan shall, to the extent feasible, be redirected to the agency’s integrated waste management plan to fund plan implementation and

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<sup>58</sup> Exhibit A, IRC, page 1.

<sup>59</sup> Exhibit B, Controller’s Comments on the IRC, page 1.

<sup>60</sup> Exhibit C, Draft Proposed Decision.

<sup>61</sup> Exhibit D, Controller’s Comments on the Draft Proposed Decision.

<sup>62</sup> The test claim statutes apply to “state agencies” and define them to include “the California Community Colleges” (Pub. Res. Code, § 40196.3).

<sup>63</sup> Public Resources Code section 42920(b).

<sup>64</sup> Public Resources Code section 40124.

<sup>65</sup> Public Resources Code section 42920(b)(3).

<sup>66</sup> Public Resources Code section 42926.

<sup>67</sup> Public Resources Code section 42924(b).



administration costs, in accordance with Sections 12167 and 12167.1 of the Public Contract Code.

The Public Contract Code sections referenced in section 42925(a) require that revenue received as a result of the community college's IWM plan be deposited in CIWMB's Integrated Waste Management Account. After July 1, 1994, CIWMB is authorized to spend the revenue upon appropriation by the Legislature to offset recycling program costs. Annual revenue under \$2,000 is to be continuously appropriated for expenditure by the community colleges, whereas annual revenue over \$2,000 is available for expenditures upon appropriation by the Legislature.<sup>68</sup>

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

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

A. One-Time Activities (*Reimbursable starting January 1, 2000*)

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

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

1. Complete and submit to the [Integrated Waste Management] Board the following as part of the State Agency Model Integrated Waste Management Plan (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.):

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<sup>68</sup> Public Contract Code sections 12167 and 12167.1 are part of the State Assistance for Recycling Markets Act, which was originally enacted in 1989 to foster the procurement and use of recycled paper products and other recycled resources in daily state operations (See Pub. Contract Code, §§ 12153, 12160; Stats. 1989, ch. 1094). The Act, including sections 12167 and 12167.1, applies to California community colleges only to the limited extent that these sections are referenced in Public Resources Code section 42925. Community colleges are not defined as state agencies or otherwise subject to the Act's provisions for the procurement and use of recycled products in daily state operations. See Exhibit B, Controller's Comments on the IRC, pages 144-145 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355)).

- a. state agency or large state facility information form;
- b. state agency list of facilities;
- c. state agency waste reduction and recycling program worksheets that describe program activities, promotional programs, and procurement activities, and other questionnaires; and
- d. state agency integrated waste management plan questions.

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

- 2. Respond to any Board reporting requirements during the approval process. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
  - 3. Consult with the Board to revise the model plan, if necessary. (Pub. Resources Code, § 42920, subd. (b)(3) & State Agency Model Integrated Waste Management Plan, February 2000.)
  - 4. Designate one solid waste reduction and recycling coordinator for each college in the district to perform new duties imposed by chapter 18.5 (Pub. Resources Code, §§ 42920 – 42928). The coordinator shall implement the integrated waste management plan. The coordinator shall act as a liaison to other state agencies (as defined by section 40196.3) and coordinators. (Pub. Resources Code, § 42920, subd. (c).)
  - 5. Divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities. Maintain the required level of reduction, as approved by the Board. (Pub. Resources Code, §§ 42921 & 42922, subd. (i).)
- C. Alternative Compliance (*Reimbursable from January 1, 2000 – December 31, 2005*)
- 1. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2002 deadline to divert 25 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42923 subds. (a) & (c).)
    - a. Notify the Board in writing, detailing the reasons for its inability to comply.
    - b. Request of the Board an alternative to the January 1, 2002 deadline.
    - c. Provide evidence to the Board that the college is making a good faith effort to implement the source reduction, recycling, and composting programs identified in its integrated waste management plan.

- d. Provide information that describes the relevant circumstances that contributed to the request for extension, such as lack of markets for recycled materials, local efforts to implement source reduction, recycling and composting programs, facilities built or planned, waste disposal patterns, and the type of waste disposed of by the community college.
  - e. Submit a plan of correction that demonstrates that the college will meet the requirements of Section 42921 [the 25 and 50 percent diversion requirements] before the time extension expires, including the source reduction, recycling, or composting steps the community college will implement, a date prior to the expiration of the time extension when the requirements of Section 42921 will be met, the existing programs that it will modify, any new programs that will be implemented to meet those requirements, and the means by which these programs will be funded.
2. Seek either an alternative requirement or time extension if a community college is unable to comply with the January 1, 2004 deadline to divert 50 percent of its solid waste, by doing the following: (Pub. Resources Code, §§ 42927 & 42922, subs. (a) & (b).)
- a. Notify the Board in writing, detailing the reasons for its inability to comply.
  - b. Request of the Board an alternative to the 50-percent requirement.
  - c. Participate in a public hearing on its alternative requirement.
  - d. Provide the Board with information as to:
    - (i) the community college's good faith efforts to implement the source reduction, recycling, and composting measures described in its integrated waste management plan, and demonstration of its progress toward meeting the alternative requirement as described in its annual reports to the Board;
    - (ii) the community college's inability to meet the 50 percent diversion requirement despite implementing the measures in its plan;
    - (iii) how the alternative source reduction, recycling, and composting requirement represents the greatest diversion amount that the community college may reasonably and feasibly achieve; and,
    - (iv) the circumstances that support the request for an alternative requirement, such as waste disposal patterns and the types of waste disposed of by the community college.<sup>69</sup>

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<sup>69</sup> These alternative compliance and time extension provisions in part C were sunset on January 1, 2006, but were included in the adopted Parameters and Guidelines.

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

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

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

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

1. calculations of annual disposal reduction;
2. information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors;
3. a summary of progress made in implementing the integrated waste management plan;
4. the extent to which the community college intends to use programs or facilities established by the local agency for handling, diversion, and disposal of solid waste (If the college does not intend to use those established programs or facilities, it must identify sufficient disposal capacity for solid waste that is not source reduced, recycled or composted.);
5. for a community college that has been granted a time extension by the Board, it shall include a summary of progress made in meeting the integrated waste management plan implementation schedule pursuant to section 42921, subdivision (b), and complying with the college's plan of correction, before the expiration of the time extension;
6. for a community college that has been granted an alternative source reduction, recycling, and composting requirement by the Board pursuant to section 42922, it shall include a summary of progress made towards meeting the alternative requirement as well as an explanation of current circumstances that support the continuation of the alternative requirement.

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

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

offsetting revenues from recyclable materials.)<sup>70</sup>

The Parameters and Guidelines further require that each claimed reimbursable cost be supported by contemporaneous source documentation.<sup>71</sup>

And as originally adopted, the Parameters and Guidelines required community college districts to identify and deduct from their reimbursement claims all of the offsetting revenues received from the sale of recyclable materials, limited by the provisions of Public Resources Code section 42925 and Public Contract Code section 12167.1. The original Parameters and Guidelines did not require community colleges to identify and deduct from their claims any offsetting cost savings resulting from the solid waste diversion activities required by the test claim statutes.<sup>72</sup>

### **B. Superior Court Decision on Cost Savings and Offsets Under the Program**

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

On May 29, 2008, the Sacramento County Superior Court granted the petition for writ of mandate, finding that the Commission's treatment of cost savings and revenues in the Parameters and Guidelines was erroneous and required that the Parameters and Guidelines be amended. The court said:

There is no indication in the administrative record or in the legal authorities provided to the court that, as respondent [Commission] argues, a California Community College might not receive the full reimbursement of its actual increased costs required by section 6 if its claims for reimbursement of IWM plan costs were offset by realized cost savings and all revenues received from the plan activities.<sup>73</sup>

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<sup>70</sup> Exhibit A, IRC, page 45-48 (Parameters and Guidelines, adopted March 30, 2005).

<sup>71</sup> Exhibit A, IRC, page 45 (Parameters and Guidelines, adopted March 30, 2005).

<sup>72</sup> Exhibit A, IRC, pages 42-51 (Parameters and Guidelines, adopted March 30, 2005).

<sup>73</sup> Exhibit B, Controller's Comments on the IRC, page 142, footnote 1 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter, Footnote 1).

Instead, the court recognized that community colleges are “likely to experience costs savings in the form of reduced or avoided costs of landfill disposal” as a result of the mandated activities in Public Resources Code section 42921 because reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided.”<sup>74</sup> The court noted that “diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates” and cited the statutory definition of diversion: “activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division [i.e., division 30, including § 42920 et seq.]” as well as the statutory definition of disposal: “the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.”<sup>75</sup> The court explained:

[R]eduction or avoidance of landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs of the IWM plan implementation . . . The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926.<sup>76</sup>

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

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

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<sup>74</sup> Exhibit B, Controller’s Comments on the IRC, page 142 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter). Emphasis added.

<sup>75</sup> Exhibit B, Controller’s Comments on the IRC, pages 142-143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>76</sup> Exhibit B, Controller’s Comments on the IRC, page 143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter). Emphasis added.

Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.<sup>77</sup>

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

1. Identify and offset from their claims, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1, cost savings realized as a result of implementing their plans; and
2. Identify and offset from their claims all of the revenue generated as a result of implementing their plans, without regard to the limitations or conditions described in sections 12167 and 12167.1 of the Public Contract Code.<sup>78</sup>

### **C. Parameters and Guidelines Amendment Pursuant to the Writ**

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

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

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<sup>77</sup> Exhibit B, Controller's Comments on the IRC, pages 144-145 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>78</sup> Exhibit B, Controller's Comments on the IRC, page 30 (Judgment Granting Petition for Writ of Administrative Mandamus).

expenditure by the community college only when appropriated by the Legislature. To the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan.<sup>79</sup>

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

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

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

In addition, revenue from a building-operating fee imposed pursuant to Education Code section 76375, subdivision (a) if received by a claimant and the revenue is applied to this program, shall be deducted from the costs claimed.<sup>80</sup>

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

CIWMB requested additional amendments to the Parameters and Guidelines at this September 2008 hearing, including a request to alter the offsetting savings provision to require community college districts to provide offsetting savings information *whether or not* the offsetting savings generated in a fiscal year exceeded the \$2,000 continuous appropriation required by Public Contract Code sections 12167 and 12167.1. The Commission denied the request because the proposed language went beyond the scope of the court's judgment and writ.<sup>81</sup>

CIWMB also requested adding a requirement for community college districts to analyze specified categories of potential cost savings when filing their reimbursement claims. The Commission found that the court determined that the amount or value of cost savings is already available from the annual reports the community college districts provide to CIWMB pursuant to

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<sup>79</sup> Exhibit A, IRC page 63 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

<sup>80</sup> Exhibit A, IRC, pages 50, 62-63 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

<sup>81</sup> Exhibit E, Commission on State Mandates, Excerpt from the Minutes for the September 26, 2008 Meeting.



Public Resources Code section 42926(b). This report is required to include the district's "calculations of annual disposal reduction" and "information on the changes in waste generated or disposed of due to increases or decreases in employees, economics, or other factors." Thus, the Commission denied CIWMB's request and adopted the staff analysis finding that the request was beyond the scope of the court's writ and judgment. The Commission also noted that the request was the subject of separate pending request filed by CIWMB to amend the Parameters and Guidelines and would therefore be further analyzed for that matter.

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

CIWMB filed a request to amend the Parameters and Guidelines to require community college districts to submit with their reimbursement claims a separate worksheet and report analyzing the costs incurred and avoided and any fees received relating to staffing, overhead, materials, storage, transportation, equipment, the sale of commodities, avoided disposal fees, and any other revenue received relating to the mandated program as specified by CIWMB. At its January 30, 2009 meeting, the Commission denied the request for the following reasons: there is no requirement in statute or regulation that community college districts perform the analysis specified by CIWMB; the Commission has no authority to impose additional requirements on community college districts regarding this program; the offsetting cost savings paragraph in the Parameters and Guidelines already identifies the offsetting savings consistent with the language of Public Resources Code section 42925(a), Public Contract Code sections 12167 and 12167.1, and the court's judgment and writ; and information on cost savings is already available in the community colleges' annual reports submitted to CIWMB, as required by Public Resources Code section 42926(b)(1).<sup>82</sup>

**E. The *Integrated Waste Management* Program Made Optional**

This program was made optional by Statutes 2010, chapter 724 (AB 1610), section 34, effective October 19, 2010 and has remained so since that time.<sup>83</sup>

**F. The Controller's Audit**

The Controller audited the reimbursement claims for fiscal years 2003-2004 and 2005-2006 through 2010-2011 (the audit period). Fiscal year 2004-2005 was not audited because the Controller stated that the statute of limitations to initiate the review had expired for that year.<sup>84</sup>

Of the \$843,392 claimed during the audit period, the Controller found that \$608,751 is allowable (\$618,751 less a \$10,000 penalty for filing a late claim) and \$234,641 is unallowable because the claimant did not report offsetting savings from implementation of its IWM plan.<sup>85</sup> The

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<sup>82</sup> Exhibit E, Commission on State Mandates, Item 9, Final Staff Analysis of Proposed Amendments to the Parameters and Guidelines for *Integrated Waste Management*, 05-PGA-16, January 30, 2009, pages 2-3.

<sup>83</sup> See Government Code section 17581.5.

<sup>84</sup> Exhibit A, IRC, page 25 (Final Audit Report).

<sup>85</sup> Exhibit A, IRC, page 25 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, page 27.

Controller found that the claimant realized total offsetting savings of \$661,373 from implementation of its IWM plan, but because offsetting savings for fiscal years 2003-2004 and 2005-2006 through 2007-2008 resulted in a negative balance due the claimant, and because of the 2009-2010 late filing penalty, the Controller adjusted the claims by a net of \$234,641.<sup>86</sup>

The Controller’s audit finding is based on the court’s ruling, which states, “the amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California community colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926,”<sup>87</sup> the resulting amendment to the Parameters and Guidelines, and the claimant’s annual reports to CIWMB.

The claimant operates three colleges in the district: Cañada College, Skyline College, and the College of San Mateo. The Controller determined that the claimant diverted more solid waste than the amount mandated by the test claim statute each year of the audit period (except at the College of San Mateo in the first half of fiscal year 2003-2004).<sup>88</sup> Thus, the Controller found that the claimant realized cost savings in each year of the audit period.

For the years the claimant exceeded the diversion mandate, the Controller calculated offsetting cost savings by allocating the diversion to reflect the mandate. To allocate the diversion, the Controller divided the percentage of solid waste required to be diverted (either 25 or 50 percent) by the actual percentage of solid waste diverted (as reported by the claimant to CIWMB). The allocated diversion was then multiplied by the avoided landfill disposal fee (based on the statewide average fee) to calculate the offsetting savings realized in those years.<sup>89</sup>

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

The Controller provided an example of how the formula works. For calendar year 2007 at Cañada College, the claimant reported diversion of 272.6 tons of solid waste and disposal of 190.8 tons generated. Diverting 272.6 tons out of the 463.4 tons of waste generated results in a

<sup>86</sup> Exhibit A, IRC, pages 16-17 and 37 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, page 27.

<sup>87</sup> Exhibit B, Controller’s Comments on the IRC, page 143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>88</sup> Exhibit B, Controller’s Comments on the IRC, pages 151-153. As explained below, this finding on the College of San Mateo for the first half of fiscal year 2003-2004 is incorrect.

<sup>89</sup> Exhibit A, IRC, page 38 (Final Audit Report).

diversion rate of 58.83 percent (exceeding the 50 percent required).<sup>90</sup> To avoid penalizing the claimant for diverting more solid waste than the amount mandated,<sup>91</sup> the Controller allocated the diversion by dividing the diversion rate mandated by the test claim statute (50 percent) by the actual diversion rate (58.83 percent), which equals 84.99 percent. The 84.99 percent allocated diversion is then multiplied by the 272.6 tons diverted that year, which equals 231.7 tons of diverted solid waste, instead of the 272.6 tons actually diverted. The allocated 231.7 tons of diverted waste is then multiplied by the statewide average disposal fee per ton, which in calendar year 2007 was \$46, resulting in “offsetting cost savings” for calendar year 2007 of \$10,657 at Cañada College.<sup>92</sup>

In 2008, CIWMB stopped requiring community college districts to report the actual tonnage diverted, instead requiring a report based on "per-capita disposal." Consequently, the Controller used the claimant’s reported 2007 diversion rate to calculate the offsetting savings for fiscal years 2007-2008 through 2010-2011.<sup>93</sup>

The Controller pointed out in the audit report that the claimant did not provide documentation supporting a different diversion rate or disposal fees to calculate offsetting cost savings.<sup>94</sup>

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

#### **A. San Mateo County Community College District**

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<sup>90</sup> Exhibit B, Controller’s Comments on the IRC, pages 20, 151 (Controller’s calculation of offsetting savings).

<sup>91</sup> Exhibit B, Controller’s Comments on the IRC, page 20.

<sup>92</sup> Exhibit B, Controller’s Comments on the IRC, pages 20, 151 (Controller’s calculations of offsetting savings). Page 20 of the Controller’s Late Comments on the IRC describe the calculation differently than the formula identified in the audit report, but the result is the same. The Controller states that cost savings can be calculated by multiplying the total tonnage generated (solid waste diverted + disposed) by the mandated diversion percentage (25 or 50 percent), times the avoided landfill disposal fee:

For example, in calendar year 2007, Cañada College reported to CalRecycle that it diverted 272.6 tons of solid waste and disposed of 190.8 tons, which results in an overall diversion percentage of 58.8% [Tab 5, page 13]. Because the district was required to divert 50% for that year to meet the mandated requirements and comply with the Public Resources Code, it needed to divert only 231.7 tons (463.4 total tonnage generated x 50%) in order to satisfy the 50% requirement. Therefore, we adjusted our calculation to compute offsetting savings based on 231.7 tons of diverted solid waste rather than a total of 272.6 tons diverted.

Using this formula results in cost savings at Cañada College for calendar year 2007 of \$10,658 (463.4 tons generated x 50 percent = 231.7 tons x \$46 = \$10,658).

<sup>93</sup> Exhibit A, IRC, page 38 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 20-21.

<sup>94</sup> Exhibit A, IRC, pages 38-39 (Final Audit Report).

The claimant maintains that the audit reductions are incorrect and requests the reinstatement of the full amount reduced.

The claimant alleges that it did not realize any cost savings as a result of the mandate and quotes the Superior Court decision (discussed above) that cost savings will “most likely” occur as a result of reduced or avoided costs of landfill disposal, arguing:

The court presupposes a previous legal requirement for districts to incur landfill disposal fees to divert solid waste. Thus, potentially relieved of the need to incur new or additional landfill fees for increased waste diversion, a cost savings would occur. There is no finding of fact or law in the court decision or from the Commission Statement of Decision for the test claim for this assumed duty to use landfills.<sup>95</sup>

The claimant further argues that the offsetting savings provision in the Parameters and Guidelines does not assume that the cost savings occurred, but instead requires that the cost savings be *realized*, which according to the claimant, necessitates the following chain of events:

[T]he cost savings must exist (avoided landfill costs); be converted to cash; amounts in excess of \$2,000 per year deposited in the state fund; and, these deposits by the districts appropriated by the Legislature to districts for purposes of mitigating the cost of implementing the plan. None of those prerequisite events occurred so no cost savings were "realized" by the District. Regardless, the adjustment cannot be applied to the District since no state appropriation of the cost savings was made to the District.<sup>96</sup>

The claimant also argues that the Parameters and Guidelines are silent as to how to calculate the avoided costs, but that the court provided two alternative methods, either disposal reduction or diversion reported by districts. The Controller used the diversion percentage, which assumes, without findings of fact, that all diversion tonnage is landfill disposal tonnage reduction. The claimant contends that the Controller’s calculation of cost savings is wrong because: (1) the formula is a standard of general application that was not adopted pursuant to the Administrative Procedure Act and is therefore an unenforceable underground regulation; (2) the Controller’s formula assumes facts not in evidence, such as applying the diversion percentage reported by the claimant, and assumes that all tonnage diverted would have been disposed in a landfill, although some waste may have been composted or may not apply to the mandate (e.g. paint), and that tonnage diverted in 2007 applies to subsequent years of the audit period; and (3) the landfill disposal fee, a statewide average calculated by CIWMB, does not include the data used to generate the average fee amounts, so the average is unknown and unsupported by the audit findings.<sup>97</sup>

The claimant further alleges that application of the cost savings formula is incorrect, stating:

The District did not claim landfill costs, so there are none to be offset. The adjustment method does not match or limit the landfill costs avoided to landfill

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<sup>95</sup> Exhibit A, IRC, pages 9-11.

<sup>96</sup> Exhibit A, IRC, pages 12-13. Emphasis in original.

<sup>97</sup> Exhibit A, IRC, pages 13-16.

costs, if any, actually claimed. Instead, the total adjustment amount for avoided landfill costs is applied to the total annual claim amounts and thus reduces unrelated salary and benefit costs...<sup>98</sup>

Moreover, the Controller's calculation method prevents the claimant from receiving full reimbursement for its actual increased program costs. The claimant contends, using audit results for 29 other claimants under the *Integrated Waste Management* program, that the application of the Controller's formula has arbitrary results because the percentages of allowed costs for those claimants ranges from zero to 83.4 percent.<sup>99</sup>

Finally, the claimant argues: (1) the Controller used the wrong standard of review in that the claimed costs were not found to be excessive or unreasonable, as required by Government Code section 17561(d)(2); and (2) the Controller has the burden of proof as to the propriety of its audit findings "because it bears the burden of going forward and because it is the party with the power to create, maintain, and provide evidence regarding its auditing methods and procedures, as well as the specific facts relied upon for its audit findings."<sup>100</sup>

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

### **B. State Controller's Office**

The Controller maintains that the audit findings are correct and that the claimant understated offsetting cost savings of \$661,373 from implementation of its IWM plan, but because the offsetting savings adjustment for fiscal years 2003-2004 and 2005-2006 through 2007-2008 resulted in a negative balance due the district, and because of a 2009-2010 late filing penalty, the Controller adjusted the district's claims by a net \$234,641.<sup>101</sup>

Regarding the claimant's statement that there is only a presumption to incur landfill disposal fees to dispose of solid waste, the Controller notes:

[T]he district does not provide an alternative for how non-diverted solid waste would be disposed of, if not at a landfill. In addition, the district does not state that it disposed of its solid waste at any location other than a landfill or used any other methodology to dispose of its waste other than to contract with a commercial waste hauler. Therefore, comments relating to legal requirements regarding alternatives for the disposal of solid waste are irrelevant.<sup>102</sup>

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<sup>98</sup> Exhibit A, IRC, page 17.

<sup>99</sup> Exhibit A, IRC, pages 17-18.

<sup>100</sup> Exhibit A, IRC, pages 20-21.

<sup>101</sup> Exhibit B, Controller's Comments on the IRC, page 15.

<sup>102</sup> Exhibit B, Controller's Comments on the IRC, page 16.

The Controller cites some of the claimant’s annual reports to indicate that it disposed of solid waste and contracted with a waste hauler during the audit period.<sup>103</sup> The Controller also found that the claimant’s website referred to diversion from a landfill.<sup>104</sup> As the Controller points out:

Unless the district had an arrangement with its waste hauler that it did not disclose to us or CalRecycle, the district did not dispose of its solid waste at a landfill for no cost. San Mateo County Community College District is located in San Mateo, California. An internet search for landfill fees revealed that the Blue Line Transfer Station in South San Francisco, California (11 miles from the district office), currently charges \$90 per ton to dispose of solid waste [Tab 6, page 1]. Therefore, the higher rate of diversion results in less trash that is disposed of at a landfill, which creates cost savings for the district.<sup>105</sup>

The Controller also referred to a statement in Skyline College’s 2014 report in which the claimant acknowledged cost savings from its diversion activities, stating: “ ‘the composting pilot program will determine how much waste from the dining hall and adjacent restrooms can be diverted from local landfills and *identify potential cost savings for the college.*’ ”<sup>106</sup>

As to the claimant not remitting cost savings from the implementation of its IWM plan into the Integrated Waste Management Account in compliance with the Public Contract Code, the Controller asserts that the claimant is not precluded from the requirement to do so, as indicated in the Parameters and Guidelines and the court ruling. The Controller says the claimant’s statements support that the claimant realized cost savings from implementing its IWM plan.<sup>107</sup>

The Controller also disagrees with the claimant’s argument that the formula is a standard of general application that is an underground regulation. The Controller used a “court approved methodology” to determine the “required offset” and notes that the claimant did not amend any of its reimbursement claims after the Parameters and Guidelines were amended in September 2008. According to the Controller: “We believe that this “court- identified” approach provides a reasonable methodology to identify the applicable offsets.”<sup>108</sup> The claimant did not provide an alternative methodology to calculate the required offset.<sup>109</sup>

The Controller also states that it “allocated” the offsetting savings to avoid penalizing the claimant for diverting more than the minimum rate of diversion required during the audit period.<sup>110</sup> According to the Controller:

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<sup>103</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>104</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>105</sup> Exhibit B, Controller’s Comments on the IRC, page 17.

<sup>106</sup> Exhibit B, Controller’s Comments on the IRC, page 17. Emphasis in Controller’s quotation.

<sup>107</sup> Exhibit B, Controller’s Comments on the IRC, page 18.

<sup>108</sup> Exhibit B, Controller’s Comments on the IRC, page 19.

<sup>109</sup> Exhibit B, Controller’s Comments on the IRC, page 19.

<sup>110</sup> Exhibit B, Controller’s Comments on the IRC, page 20.

As there is no State mandate to exceed solid waste diversion greater than 25% for calendar years 2000 through 2003 or greater than 50% for calendar year 2004 and beyond, there is no basis for calculating offsetting savings realized for actual diversion percentages that exceeded the levels set by statute.<sup>111</sup>

The Controller defended its application of the claimant's 2007 diversion rates to subsequent years of the audit period because "beginning in calendar year 2008, CalRecycle stopped requiring districts to report the actual amount of tonnage diverted."<sup>112</sup> The Controller states that the claimant is still required to divert 50 percent of its waste, and that its annual reports from 2008 onward indicate that claimant reached its target rates and was therefore diverting 50 percent of its waste. The Controller called 2007 a "fair representation of the 2008 through 2010 diversion information because the district's has already established and committed to its recycling processes."<sup>113</sup>

The Controller also responded to the claimant's argument against the assumption that all tonnage diverted would have been disposed in a landfill, even though some waste may have been composted or may not apply to the mandate. The Controller states,

[T]he district is claiming nearly \$100,000 in salaries and benefits for its groundskeepers for "Diverting solid waste from landfill disposal or transformation facilities - composting" [Tab 13]. Therefore, it is reasonable that the correlated landfill fees that the district did not incur for the composted materials translate into savings realized by the district.<sup>114</sup>

The Controller also states that the claimant's reference to paint disposal is irrelevant because hazardous waste is not included in the diversion amounts that the claimant reported, and therefore, are not included in the Controller's offsetting savings calculation.<sup>115</sup>

Regarding the data for the statewide disposal fee, the Controller states the information was provided by CIWMB, is included in the record, and is based on a private survey of a large percentage of landfills across California. The Controller cites its internet search for landfill fees that revealed:

[T]he Blue Line Transfer Station in South San Francisco, California, currently charges \$90 per ton to dispose of solid waste [Tab 6]. Therefore, we believe that the \$36 to \$56 statewide average disposal fee used to calculate the offsetting savings realized by the district is reasonable. The district did not provide any information, such as its contract with or invoices received from its commercial waste hauler, to support either the landfill fees actually incurred by the district or

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<sup>111</sup> Exhibit B, Controller's Comments on the IRC, page 20.

<sup>112</sup> Exhibit B, Controller's Comments on the IRC, page 20.

<sup>113</sup> Exhibit B, Controller's Comments on the IRC, page 21.

<sup>114</sup> Exhibit B, Controller's Comments on the IRC, page 21.

<sup>115</sup> Exhibit B, Controller's Comments on the IRC, page 21.

to confirm that the statewide average landfill fee was greater than the actual landfill fees incurred by the district.<sup>116</sup>

In response to the claimant's argument that it did not claim landfill costs, so there are none to offset, the Controller answers that the mandated program does not reimburse claimants for landfill costs incurred to dispose of solid waste, so none would be claimable. Rather, the program reimburses claimants' costs to divert solid waste from disposal, which according to the Controller, results in both a reduction of solid waste going to a landfill and the associated costs of having the waste hauled there, which creates offsetting savings that the claimant is required to identify in its mandated cost claims.<sup>117</sup>

In response to the claimant's argument that "the adjustment method does not match or limit the landfill costs avoided to landfill costs, if any, actually claimed," the Controller quotes Public Resources Code section 42925, which provides that "cost savings realized as a result of the IWM plan are to "fund plan *implementation and administration costs*."<sup>118</sup> The Controller argues that offsetting savings applies to the whole program and is not limited to solid waste diversion activities. The Controller also cites the reimbursable activities in the Parameters and Guidelines that refer to "implementation of the IWM plan," concluding that it is reasonable that offsetting savings from implementing the plan be offset against direct costs to implement the plan.<sup>119</sup>

As to the claimant's reference to other community college district audits under the IWM program, the Controller states that the "adjustments made at other community college districts are not relevant to the current issue at hand."<sup>120</sup>

The Controller disagrees with claimant's argument that the Controller used the wrong standard of review. The Controller cites the statute that authorizes it to audit the claimant's records to verify actual mandate-related costs *and* reduce any claim that is excessive or unreasonable. In this case, the claims were excessive because the "claims exceeded the proper amount based on the reimbursable costs allowable per statutory language and the program's parameters and guidelines."<sup>121</sup> As to the burden of proof, the Controller states that it used data from the claimant's annual reports to CIWMB from implementing its IWM program.<sup>122</sup>

The Controller filed comments on the Draft Proposed Decision on April 23, 2018, agreeing with the conclusion that supports its reductions of costs claimed for all years in the audit period except the first half of fiscal year 2003-2004. The Controller also agreed to reinstate \$8,197 for the first

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<sup>116</sup> Exhibit B, Controller's Comments on the IRC, page 22.

<sup>117</sup> Exhibit B, Controller's Comments on the IRC, page 22.

<sup>118</sup> Public Resources Code section 42925. Emphasis added.

<sup>119</sup> Exhibit B, Controller's Comments on the IRC, page 23.

<sup>120</sup> Exhibit B, Controller's Comments on the IRC, page 24.

<sup>121</sup> Exhibit B, Controller's Comments on the IRC, page 26.

<sup>122</sup> Exhibit B, Controller's Comments on the IRC, page 26.



half of fiscal year 2003-2004 “as the Commission concluded this reduction was incorrect as a matter of law.”<sup>123</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>124</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>125</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>126</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 judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational

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<sup>123</sup> Exhibit D, Controller’s Comments on the Draft Proposed Decision, page 1.

<sup>124</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>125</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>126</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

connection between those factors, the choice made, and the purposes of the enabling statute.” [Citation.]’ ”<sup>127</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>128</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>129</sup>

**A. The Controller’s Reduction of Costs Claimed Is Generally Correct as a Matter of Law; However, the Reduction for the First Half of Fiscal Year 2003-2004, Based on the Incorrect Diversion Rate, Is Incorrect as a Matter of Law and Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

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

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

The court’s Ruling on Submitted Matter states that community colleges are “likely to experience costs savings in the form of reduced or avoided costs of landfill disposal” as a result of the mandated activities in Public Resources Code section 42921 because reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill disposal costs are reduced or avoided.” The court noted that “diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates.” The statutory definition of diversion provides that “activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division.” And the statutory definition of disposal is “the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.”<sup>130</sup> The court explained:

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<sup>127</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>128</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>129</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.

<sup>130</sup> Public Resources Code sections 40124 and 40192(b). Exhibit B, Controller’s Comments on the IRC, pages 142-143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

[R]eduction or avoidance of landfill fees resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs of the IWM plan implementation . . . The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(l) of Public Resources Code section 42926.<sup>131</sup>

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

By requiring the redirection of cost savings from state agency IWM plans to fund plan implementation and administration costs “in accordance with Sections 12167 and 12167.1 of the Public Contract Code,” section 42925 assures that cost savings realized from state agencies’ IWM plans are handled in a manner consistent with the handling of revenues received from state agencies’ recycling plans under the State Assistance for Recycling Markets Act. Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purposes of IWM plan requirements in Public Resources Code section 42920 et seq. [citations omitted], must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed \$2000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of \$2000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.<sup>132</sup>

Thus, the court found that offsetting savings are, by statutory definition, likely to occur as a result of implementing the mandated activities. Reduced or avoided costs “are a direct result and an integral part of the IWM plan mandated under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, landfill disposal of the solid waste and associated landfill

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<sup>131</sup> Exhibit B, Controller’s Late Comments on the IRC, page 143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter). Emphasis added.

<sup>132</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 144-145 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

disposal costs are reduced or avoided.”<sup>133</sup> As the court held, “landfill fees and costs resulting from solid waste diversion activities under § 42920 et seq. represent savings *which must be offset* against the costs of the diversion activities to determine the reimbursable costs. . . .”<sup>134</sup>

The statutes, therefore, presume that by complying with the mandate to divert solid waste through the IWM program, landfill fees are reduced or avoided and cost savings are realized. As indicated in the court’s ruling, the amount or value of the cost savings may be determined from the calculations of annual solid waste disposal reduction or diversion, which community colleges are required to annually report to CIWMB. The amount of cost savings realized must be identified by the claimant and used to offset the costs incurred to comply with IWM plan implementation and administration activities approved for reimbursement in the Parameters and Guidelines. Accordingly, the court’s ruling requires claimants to report in their reimbursement claims the costs incurred to comply with the reimbursable activities (which includes the activities and costs to divert at least 25 or 50 percent of all solid waste from landfill disposal) and the cost savings from the avoided landfill disposal fees, for a reimbursement claim of the net increased costs.

The Parameters and Guidelines are consistent with the court’s ruling and require in Section IV. that “[t]he claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.”<sup>135</sup> Section VIII. requires that “[r]educed or avoided costs realized from implementation of the community college districts’ Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1.”<sup>136</sup> The court’s decision and the amended Parameters and Guidelines are binding.<sup>137</sup>

2. During the audit period, the claimant exceeded the mandated solid waste diversion rate, but has filed no evidence to rebut the presumption that cost savings were realized. Thus, the Controller’s finding that the claimant realized cost savings is correct as a matter of law.

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<sup>133</sup> Exhibit B, Controller’s Late Comments on the IRC, page 142 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>134</sup> Exhibit B, Controller’s Late Comments on the IRC, page 143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter). Emphasis added.

<sup>135</sup> Exhibit A, IRC, page 58 (Parameters and Guidelines).

<sup>136</sup> Exhibit A, IRC, page 63 (Parameters and Guidelines).

<sup>137</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

In this case, the claimant asserts that no cost savings were realized, but does not explain why.<sup>138</sup>

The mandate requires community colleges to divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, through source reduction, recycling, and composting activities, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004.<sup>139</sup> The record shows that in calendar years 2003, 2004, 2005, 2006, and 2007, the claimant exceeded the mandated diversion rate at all three campuses. The claimant's annual reports to CIWMB for the audit period report diversion rates that range from 51 percent to 99 percent of the waste generated at Cañada College,<sup>140</sup> 65.8 to 81 percent diversion at Skyline College,<sup>141</sup> and 44 to 75.4 percent diversion at the College of San Mateo.<sup>142</sup>

In 2008, CIWMB stopped requiring community college districts to report the amount and percentage of tonnage diverted, and instead required them to report the "per-capita disposal" of waste.<sup>143</sup> As amended, each community college now has a disposal target that is the equivalent to a 50 percent diversion, and is expressed on a per capita basis. If the district's per-capita disposal rate is less than the target, it means that the district is meeting the requirement to divert 50 percent of its solid waste.<sup>144</sup>

The claimant, in its report for 2008, 2009, and 2010, reported annual per capita disposal rates for both the employee and student populations to be at or below the target rates in most circumstances, thereby satisfying the requirement to divert 50 percent of its solid waste.<sup>145</sup> In

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<sup>138</sup> Exhibit A, IRC, page 9.

<sup>139</sup> Public Resources Code sections 42921. Exhibit A, IRC, pages 55 and 59 (Parameters and Guidelines, section IV.(B)(5)).

<sup>140</sup> Exhibit B, Controller's Comments on the IRC, pages 37-62 and 151.

<sup>141</sup> Exhibit B, Controller's Comments on the IRC, pages 63-95 and 152.

<sup>142</sup> Exhibit B, Controller's Comments on the IRC, pages 96-123 and 153.

<sup>143</sup> The new requirement was a result of Statutes 2008, chapter 343 (SB 1016).

<sup>144</sup> Exhibit B, Controller's Comments on the IRC, pages 162-170 ["Understanding SB 1016 Solid Waste Per Capita Disposal Measurement Act", <http://www.calrecycle.ca.gov/lgcentral/goalmeasure/Tools/SimplePresen.pdf>.]

<sup>145</sup> Exhibit B, Controller's Comments on the IRC, pages 83 (Skyline College 2008 Report, showing an employee target of 11.8 and 1.9 achieved, and a population target of 0.3 and .05 achieved); 87 (Skyline College 2009 Report, showing an employee target of 11.8 and 1.4 achieved, and a student target of 0.3 and .03 achieved); 92 (Skyline College 2010 Report, showing an employee target of 11.8 and 1.4 achieved, and a student target of 0.3 and .02 achieved), pages 112 (College of San Mateo 2008 Report, showing an employee target of 5.3 and 2.3 achieved, and a student target of 0.1 and 0.07 achieved); 116 (College of San Mateo 2009 Report, showing an employee target of 5.3 and 5.7 achieved, and a student target of 0.1 and 0.14 achieved); 121 (College of San Mateo 2010 Report, showing an employee target of 5.3 and 3.4 achieved, and a student target of 0.1 and 0.22 achieved), pages 53 (Cañada College 2008 Report, showing an employee target of 7.2, and 13.9 was achieved; and a student target of 0.2, and 0.43 was achieved); 56 (Cañada College 2009 Report, showing an employee target of 7.2 and 12.9

addition, the claimant's annual reports indicate ongoing diversion and waste reduction programs after 2007. For example, in 2008 Cañada College reported: "No programs implemented or discontinued this year."<sup>146</sup> Also, the Cañada College 2009 report compared the amount of its waste to the previous year, stating: "Disposal is less."<sup>147</sup> The Skyline College 2008 report states: "All waste diversion programs previously in place at Skyline College were continued and, in many cases, improved upon slightly in 2008..."<sup>148</sup> The Skyline College 2009 report states: "After monitoring two calendar years (2008 & 2009) of [the One Stream recycling program's] effects, indications are that it has helped increase our recycling efforts by making it easier for end users to dispose of recyclable items. Skyline College procured and deployed over 50 new waste/recycle station containers for five major campus buildings."<sup>149</sup> In 2010, Skyline again reported that its One Stream recycling program "helped increase our recycling efforts"<sup>150</sup> and stated: "The Annual Per Capita Disposal value for this reporting year (2010) is lower than the previous year (2009)."<sup>151</sup> The College of San Mateo's 2008 report states: "The campus recycling program has not changed" and "[n]o changes were made to programs this year."<sup>152</sup> In its 2009 report, the College of San Mateo left blank the question regarding changes to its programs,<sup>153</sup> but did say "Recycling increased due to construction program and the disposal of metal and construction spoils."<sup>154</sup> The College of San Mateo again left blank the question regarding changes to its IWM programs in its 2010 report.<sup>155</sup>

The record also shows that the solid waste that was not diverted by the claimant was disposed of at a landfill by a waste hauler. The claimant's annual reports filed with CIWMB during the audit period identify the total tonnage of waste disposed<sup>156</sup> and the use of a waste hauler. For example, in the Cañada College reports for 2003-2007 state: "The local waste company transported and disposed of all of the college non-recyclable materials."<sup>157</sup> The annual reports

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was achieved; and a student target of 0.2 and .27 was achieved); 60 (Cañada College 2010 Report, showing an employee target of 7.2 and 7.8 was achieved, and a student target of 0.2 and 0.17 was achieved).

<sup>146</sup> Exhibit B, Controller's Comments on the IRC, page 53 (Cañada College 2008 Report).

<sup>147</sup> Exhibit B, Controller's Comments on the IRC, page 58 (Cañada College 2009 Report).

<sup>148</sup> Exhibit B, Controller's Comments on the IRC, page 83 (Skyline College 2008 Report).

<sup>149</sup> Exhibit B, Controller's Comments on the IRC, page 87 (Skyline College 2009 Report).

<sup>150</sup> Exhibit B, Controller's Comments on the IRC, page 92 (Skyline College 2010 Report).

<sup>151</sup> Exhibit B, Controller's Comments on the IRC, page 93 (Skyline College 2010 Report).

<sup>152</sup> Exhibit B, Controller's Comments on the IRC, page 112 (College of San Mateo 2008 Report).

<sup>153</sup> Exhibit B, Controller's Comments on the IRC, page 117 (College of San Mateo 2009 Report).

<sup>154</sup> Exhibit B, Controller's Comments on the IRC, page 118 (College of San Mateo 2009 Report).

<sup>155</sup> Exhibit B, Controller's Comments on the IRC, page 121 (College of San Mateo 2010 Report).

<sup>156</sup> Exhibit B, Controller's Comments on the IRC, pages 16, 37-123.

<sup>157</sup> Exhibit B, Controller's Comments on the IRC, pages 38, 41, 44, 47, and 50.

by Skyline College<sup>158</sup> and the College of San Mateo<sup>159</sup> also indicate the use of a waste hauler. In addition, the claimant expressly refers to the landfill in its reports. For example, Cañada College reports for 2003-2007 state: “Weight tags were supplied for each trip to the land fill.”<sup>160</sup> Cañada College’s 2005 report states: “The majority of soil is being recycled and not disposed into land fill.”<sup>161</sup> Skyline College’s 2009 report states: “Close to 50,000 tons of earth and yard debris was excavated and taken to a landfill on campus versus off-hauled to a disposal site.”<sup>162</sup> And the College of San Mateo’s 2008 report states: “Special Waste Materials includes: concrete/asphalt demolition debris have been used to fill in a below grade parking lot instead of going off site to landfill.”<sup>163</sup> Additionally, statements from the claimant’s website indicate the claimant’s use of (and diversion from) a landfill, such as: “For years, most of this waste [generated by the claimant] was trucked to landfills and buried.”<sup>164</sup> The website also includes a chart of the diversion at each campus and states: “The chart below shows the percentage of our waste that is no longer sent to landfills, benchmarked against our mandated goals.”<sup>165</sup>

The avoided landfill disposal fee was based on the statewide average disposal fee provided by CIWMB for each fiscal year in the audit period, since the claimant did not provide any information to the Controller regarding the landfill fees it was charged.<sup>166</sup>

Based on this documentation, the Controller correctly presumed, consistent with the presumption in the test claim statutes and the court’s interpretation of those statutes and with no evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill fee per ton of waste required to be diverted.

The statutory presumption of cost savings controls unless the claimant files evidence to rebut the presumption and shows that cost savings were not realized.<sup>167</sup> The claimant has the burden of

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<sup>158</sup> Exhibit B, Controller’s Comments on the IRC, pages 64, 68, 72, 76, 80, 84, 88, and 93.

<sup>159</sup> Exhibit B, Controller’s Comments on the IRC, pages 97, 100, 103, 106 and 109.

<sup>160</sup> Exhibit B, Controller’s Comments on the IRC, pages 38, 41, 44, 47, and 50.

<sup>161</sup> Exhibit B, Controller’s Comments on the IRC, page 44.

<sup>162</sup> Exhibit B, Controller’s Comments on the IRC, page 87.

<sup>163</sup> Exhibit B, Controller’s Comments on the IRC, page 112.

<sup>164</sup> Exhibit B, Controller’s Comments on the IRC, page 34.

<sup>165</sup> Exhibit B, Controller’s Comments on the IRC, page 34.

<sup>166</sup> Exhibit B, Controller’s Comments on the IRC, pages 17, 22, 179-206.

<sup>167</sup> Government Code section 17559, which requires that the Commission’s decisions be supported by substantial evidence in the record. See also, *Coffy v. Shiimoto* (2015) 60 Cal.4th 1198, 1209, a case interpreting the rebuttable presumption in Vehicle Code section 23152 that if a person had 0.08 percent or more, by weight, of alcohol in the blood at the time of testing, then it is presumed by law that he or she had 0.08 percent or more, by weight, of alcohol in the blood at the time of driving, unless he or she files evidence to rebut the presumption. The court states that unless and until evidence is introduced that would support a finding that the presumption

proof on this issue. Under the mandates statutes and regulations, the claimant is required to show that it has incurred increased costs mandated by the state when submitting a reimbursement claim to the Controller's Office, and the burden to show that any reduction made by the Controller is incorrect.<sup>168</sup> The Parameters and Guidelines, as amended pursuant to the court's writ, also require claimants to show the costs incurred to divert solid waste and to perform the administrative activities, and *to report and identify* the costs saved or avoided by diverting solid waste: "Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans *shall be* identified and offset from this claim as cost savings."<sup>169</sup> Thus, the claimant has the burden to rebut the statutory presumption and to show, with substantial evidence in the record, that the costs of complying with the mandate exceed any cost savings realized by diverting solid waste.

The Commission finds that since the claimant has not filed any evidence to rebut the statutory presumption of cost savings, the Controller's finding that cost savings have been realized is correct as a matter of law.

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does not exist, the statutory presumption that the person was driving over the legal limit remains the finding of fact.

<sup>168</sup> Evidence Code section 500, which states: "Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting." See also, *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 24, where the court recognized that "the general principle of Evidence Code 500 is that a party who seeks a court's action in his favor bears the burden of persuasion thereon." This burden of proof is recognized throughout the architecture of the mandates statutes and regulations. Government Code section 17551(a) requires the Commission to hear and decide a claim filed by a local agency or school district that it is entitled to reimbursement under article XIII B, section 6. Section 17551(d) requires the Commission to hear and decide a claim by a local agency or school district that the Controller has incorrectly reduced payments to the local agency or school district. In these claims, the claimant must show that it has incurred increased costs mandated by the state. (Gov. Code, §§ 17514 [defining "costs mandated by the state"], 17560(a) ["A local agency or school district may . . . file an annual reimbursement claim that details the costs actually incurred for that fiscal year."]; 17561 [providing that the issuance of the Controller's claiming instructions constitutes a notice of the right of local agencies and school districts to file reimbursement claims based upon the parameters and guidelines, and authorizing the Controller to audit the records of any local agency or school district to "verify the actual amount of the mandated costs."]; 17558.7(a) ["If the Controller reduces a claim approved by the commission, the claimant may file with the commission an incorrect reduction claim pursuant to regulations adopted by the commission."]). By statute, only the local agency or school district may bring these claims, and the local entity must present and prove its claim that it is entitled to reimbursement. (See also, Cal. Code Regs., tit. 2, §§ 1185.1, et seq., which requires that the IRC contain a narrative that describes the alleged incorrect reductions, and be signed under penalty of perjury.)

<sup>169</sup> Exhibit A, IRC, page 63 (Amended Parameters and Guidelines). Emphasis added.



3. For all years of the audit period except the first half of fiscal year 2003-2004, the Controller’s calculation of cost savings is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller correctly determined that during the audit period, the claimant diverted solid waste, as mandated by the test claim statute. The Controller also found that the claimant exceeded the minimum required diversion rate every year of the audit period except for the first half of fiscal year 2003-2004 at the College of San Mateo.<sup>170</sup> For years the claimant exceeded the mandate, the Controller calculated offsetting savings by allocating the diversion to reflect the mandate. The allocated diversion was calculated by dividing the percentage of solid waste required to be diverted by the test claim statute (either 25 percent or 50 percent) by the actual percentage of solid waste diverted (as annually reported by the claimant to CIWMB). The allocated diversion was then multiplied by the avoided landfill disposal fee (based on the statewide average fee) to calculate the offsetting savings realized.<sup>171</sup>

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

The formula allocates or reduces cost savings based on the mandated rate, and is intended to avoid penalizing the claimant for diverting more solid waste than the amount mandated by law.<sup>172</sup>

This formula is consistent with the statutory presumption of cost savings, as interpreted by the court for this program, and the requirements in the Parameters and Guidelines. The court found that the test claim statutes require that reduced or avoided landfill fees represent savings that must be offset against the cost of diversion. The court stated: “The amount or value of the [offsetting cost] savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report” to CIWMB.<sup>173</sup> The Parameters and Guidelines state: “Reduced or avoided costs realized from implementation of the community college districts’ Integrated Waste Management plans shall be identified and offset from this claim as cost savings . . . .”<sup>174</sup> Thus, the Controller’s formula

<sup>170</sup> Exhibit B, Controller’s Comments on the IRC, pages 151-153. As discussed below, the Controller’s finding that the College of San Mateo did not meet the minimum required diversion in the first half of 2003-2004 is in error.

<sup>171</sup> Exhibit A, IRC, pages 38; Exhibit B, Controller’s Comments on the IRC, page 20.

<sup>172</sup> Exhibit B, Controller’s Comments on the IRC, page 20.

<sup>173</sup> Exhibit B, Controller’s Comments on the IRC, page 143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>174</sup> Exhibit A, IRC page 63 (Amended Parameters and Guidelines, adopted Sept. 26, 2008).

correctly presumes, based on the record and without any evidence to the contrary, that the claimant realized cost savings during the audit period equal to the avoided landfill fee per ton of waste required to be diverted. And when the claimant exceeded the mandated diversion rates, the Controller's formula limits the offset to reflect the mandated rate.

The claimant raises several arguments that the Controller's calculation of cost savings is incorrect. None of these arguments are supported by the law or evidence in the record.

The claimant first alleges that cost savings cannot be realized because the chain of events required by Public Contract Code sections 12167 and 12167.1 did not occur: that savings have to be converted to cash, and amounts in excess of \$2,000 per year must be deposited in the state fund and appropriated back by the Legislature to mitigate the costs.<sup>175</sup> It is undisputed that the claimant did not remit to the state any savings realized from the implementation of the IWM plan.<sup>176</sup> However, as indicated above, cost savings are presumed by the statutes and the claimant has not filed evidence to rebut that presumption. Thus, the claimant should have deposited the cost savings into the state's account as required by the test claim statutes, and the claimant's failure to comply with the law does not make the Controller's calculations of cost savings incorrect as a matter of law, or arbitrary or capricious. Since cost savings are presumed by the statutes, the claimant has the burden to show increased costs mandated by the state. As the court stated: "[r]eimbursement is not available under section 6 and section 17514 to the extent that a local government or school district is able to provide the mandated program or increased level of service without actually incurring increased costs."<sup>177</sup>

The claimant next asserts that the Controller's formula is an underground regulation.<sup>178</sup> The Commission disagrees. Government Code section 11340.5 provides that no state agency shall enforce or attempt to enforce a rule or criterion which is a regulation, as defined in section 11342.600, unless it has been adopted pursuant to the Administrative Procedures Act. As discussed above, however, the formula is consistent with the statutory presumption of cost savings, as interpreted by the court for this program. Interpretations that arise in the course of case-specific adjudications are not regulations.<sup>179</sup>

The claimant also argues that using landfill fees in the calculation of offsetting savings is not relevant because "[t]he District did not claim landfill costs, so there are none to be offset."<sup>180</sup> The claimant's interpretation of the cost savings requirement is not correct. The cost of disposing waste at a landfill is not eligible for reimbursement. Reimbursement is authorized to

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<sup>175</sup> Exhibit A, IRC, pages 12-13.

<sup>176</sup> Exhibit B, Controller's Comments on the IRC, page 11.

<sup>177</sup> Exhibit B, Controller's Comments on the IRC, page 142 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>178</sup> Exhibit A, IRC, pages 13-14.

<sup>179</sup> *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

<sup>180</sup> Exhibit A, IRC, page 17.

*divert* solid waste from the landfill through source reduction, recycling, and composting activities.<sup>181</sup> As explained by the court:

In complying with the mandated solid waste diversion requirements of Public Resources Code section 42921, California Community Colleges are likely to experience cost savings in the form of reduced or avoided costs of landfill disposal. The reduced or avoided costs are a direct result and an integral part of the mandated IWM plan ....

Such reduction or avoidance of landfill fees and costs resulting from solid waste diversion activities under § 42920 et seq. represent savings which must be offset against the costs of the diversion activities to determine the reimbursable costs of IWM plan implementation -- i.e., the actual increased costs of diversion -- under section 6 and section 17514.<sup>182</sup>

The court also noted that diversion is defined as “activities which reduce or eliminate the amount of solid waste from solid waste disposal.”<sup>183</sup>

In addition, the claimant argues that the formula assumes facts without evidence in the record. For example, the claimant questions the Controller’s assumption that the claimant’s 2007 diversion rate applies to subsequent years in the audit period, that all diverted waste would have been disposed in a landfill, and that the statewide average cost to dispose of waste at a landfill actually applies to the claimant.<sup>184</sup>

The Controller’s assumptions, however, are supported by evidence in the record and the claimant has filed no evidence to rebut them.

The Controller applied the diversion rate achieved in 2007 to subsequent years because CIWMB stopped requiring community college districts to report the actual amount and percent of tonnage diverted in 2008. As the Controller notes, the 2007 rate is “a fair representation of the 2008 through 2010 diversion information because the district’s [sic] has already established and committed to its recycling processes.”<sup>185</sup> As discussed above, the data and the narrative in the claimant’s reports for 2008, 2009, and 2010 reveal that the claimant’s annual per capita disposal rate for both the employee and student populations were near or below the target rate in most years. For example, Skyline College exceeded its target diversion rates in 2008, 2009, and

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<sup>181</sup> Exhibit A, IRC, page 54 (Parameters and Guidelines).

<sup>182</sup> Exhibit B, Controller’s Comments on the IRC, pages 142-143 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>183</sup> Public Resources Code section 40124. Exhibit B, Controller’s Comments on the IRC, page 142 (*State of California, Department of Finance, California Integrated Waste Management Board v. Commission on State Mandates, et al.* (Sacramento County Superior Court, Case No. 07CS00355, Ruling on Submitted Matter).

<sup>184</sup> Exhibit A, IRC, pages 14-16.

<sup>185</sup> Exhibit B, Controller’s Comments on the IRC, page 21.

2010.<sup>186</sup> The College of San Mateo exceeded its target diversion rates in 2008 and 2010, but not in 2009.<sup>187</sup> Cañada College did not exceed its target rates in 2008 or 2009, or its employee target for 2010, but did exceed its student target in 2010.<sup>188</sup> Even though the claimant did not exceed its diversion goals in 2008-2010 at Cañada College, or in 2009 at College of San Mateo, the Controller still allocated and reduced cost savings for those years based on the mandated rate, as it did for the earlier years when the claimant exceeded the mandate.<sup>189</sup> Thus, the Controller's application of the 2007 diversion rates to subsequent years did not penalize the claimant. Moreover, the record indicates the claimant diverted waste during 2008, 2009, and 2010, and the claimant has provided no evidence to show that it did not realize cost savings from its diversion.

The Controller obtained the statewide average cost for landfill disposal fees from CIWMB. The fees were based on a private survey of a large percentage of landfills across California.<sup>190</sup> The Controller's audit report indicates that the claimant did not provide documentation to support a different disposal fee.<sup>191</sup> In addition, the Controller states:

[A]n internet search for landfill fees revealed that the Blue Line Transfer Station in South San Francisco, California, currently charges \$90 per ton to dispose of solid waste [Tab 6]. Therefore, we believe that the \$36 to \$56 statewide average disposal fee used to calculate the offsetting savings realized by the district is reasonable. The district did not provide any information, such as its contract with or invoices received from its commercial waste hauler, to support either the landfill fees actually incurred by the district or to confirm that the statewide

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<sup>186</sup> Exhibit B, Controller's Comments on the IRC, pages 83 (Skyline College 2008 Report, showing an employee target of 11.8 and 1.9 achieved, and a population target of 0.3 and .05 achieved); 87 (Skyline College 2009 Report, showing an employee target of 11.8 and 1.4 achieved, and a student target of 0.3 and .03 achieved); 92 (Skyline College 2010 Report, showing an employee target of 11.8 and 1.4 achieved, and a student target of 0.3 and .02 achieved).

<sup>187</sup> Exhibit B, Controller's Comments on the IRC, pages 112 (College of San Mateo 2008 Report, showing an employee target of 5.3 and 2.3 achieved, and a student target of 0.1 and 0.07 achieved); 116 (College of San Mateo 2009 Report, showing an employee target of 5.3 and 5.7 achieved, and a student target of 0.1 and 0.14 achieved); 121 (College of San Mateo 2010 Report, showing an employee target of 5.3 and 3.4 achieved, and a student target of 0.1 and 0.22 achieved).

<sup>188</sup> Exhibit B, Controller's Comments on the IRC, pages 53 (Cañada College 2008 Report, showing an employee target of 7.2, and 13.9 was achieved; and a student target of 0.2, and 0.43 was achieved); 56 (Cañada College 2009 Report, showing an employee target of 7.2 and 12.9 was achieved; and a student target of 0.2 and .27 was achieved); 60 (Cañada College 2010 Report, showing an employee target of 7.2 and 7.8 was achieved, and a student target of 0.2 and 0.17 was achieved).

<sup>189</sup> Exhibit B, Controller's Comments on the IRC, pages 151-153.

<sup>190</sup> Exhibit B, Controller's Comments on the IRC, pages 22, 179-206.

<sup>191</sup> Exhibit A, IRC, page 39.

average landfill fee was greater than the actual landfill fees incurred by the district.<sup>192</sup>

On these audit issues, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. The Commission must only ensure that the Controller's decision is not arbitrary, capricious, or entirely lacking in evidentiary support, and adequately considered all relevant factors.<sup>193</sup> There is no evidence that the Controller's assumptions are wrong or arbitrary or capricious with regard to the statewide average landfill fee.

The claimant also points to the Controller's audits of other community college districts, arguing that the Controller's audit results in those cases vary and are arbitrary.<sup>194</sup> The Controller's audits of other community college district reimbursement claims are not relevant to the Controller's audit here. Each audit depends on the documentation and evidence provided by the claimant to show increased costs mandated by the state.

Accordingly, the Controller's calculation of cost savings for all years of the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law, and is not arbitrary, capricious, or entirely lacking in evidentiary support.

4. The Controller's calculation of cost savings for the first half of fiscal year 2003-2004, based on an incorrect mandated diversion rate, is incorrect as a matter of law, and for the College of San Mateo, is arbitrary, capricious, or entirely lacking in evidentiary support.

In the first half of fiscal year 2003-2004, the claimant achieved an actual diversion rate of 51.1 percent at Cañada College,<sup>195</sup> 74.4 percent at Skyline College,<sup>196</sup> and 44.1 percent at the College of San Mateo.<sup>197</sup> The Controller allocated the diversion rate at Cañada and Skyline Colleges, as it did for all the other years in the audit period, because they exceeded the diversion mandate. However, the Controller used a 50 percent rate to calculate the allocated diversion, although the test claim statutes required only 25 percent until January 1, 2004,<sup>198</sup> so the calculation of cost savings at Cañada and Skyline Colleges for the first half of fiscal year 2003-2004 is incorrect as a matter of law.

For the College of San Mateo, the Controller found that the claimant did not meet the minimum "50 percent" diversion rate in the first half of 2003-2004, although the minimum rate in 2003

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<sup>192</sup> Exhibit B, Controller's Comments on the IRC, pages 17-18.

<sup>193</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>194</sup> Exhibit A, IRC, pages 17-18.

<sup>195</sup> Exhibit B, Controller's Comments on the IRC, page 37 (Cañada College 2003 Report).

<sup>196</sup> Exhibit B, Controller's Comments on the IRC, page 63 (Skyline College 2003 Report).

<sup>197</sup> Exhibit B, Controller's Comments on the IRC, page 96 (College of San Mateo 2003 Report).

<sup>198</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

was 25 percent diversion (and the College achieved 44.1 percent).<sup>199</sup> Because the requirement to divert 50 percent did not become effective until January 1, 2004,<sup>200</sup> the Controller's finding was incorrect as a matter of law. In addition, the Controller did not allocate the diversion rate for the College of San Mateo, as it had for the other fiscal years when the claimant exceeded the mandate. Instead, the Controller used 100 percent of the claimant's diversion to calculate the offsetting savings for the College of San Mateo for the first half of fiscal year 2003-2004,<sup>201</sup> so the Controller's savings calculation for this period is arbitrary, capricious, or entirely lacking in evidentiary support.

As indicated in the Parameters and Guidelines, the mandate is to divert at least 25 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2002, and at least 50 percent of all solid waste from landfill disposal or transformation facilities by January 1, 2004, through source reduction, recycling, and composting activities.<sup>202</sup> Thus, from July 1, 2003, through December 31, 2003, community college districts were mandated to achieve diversion rates of only 25 percent. The Controller admits that, "As there is no State mandate to exceed solid waste diversion greater than 25% for calendar years 2000 through 2003 or greater than 50% for calendar year 2004 and beyond, there is no basis for calculating offsetting savings realized for actual diversion percentages that exceed the levels set by statute."<sup>203</sup>

Applying the Controller's cost savings formula (using the mandated 25 percent rate to calculate the allocated diversion) to the first half of fiscal year 2003-2004, results in offsetting savings of:

- \$1,705 for Cañada College (25 percent divided by 51.13 percent multiplied by 94.7 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$3,411;
- \$1,805 for Skyline College (25 percent divided by 74.41 percent multiplied by 145.85 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$3,610; and
- \$6,124 for the College of San Mateo (25 percent divided by 44.13 percent multiplied by 293.5 tons diverted multiplied by the statewide average landfill fee of \$36.83) rather than \$10,810.

Accordingly, the Commission finds that for fiscal year 2003-2004, the reduction of \$8,197 (the difference between \$9,634, the amount that should have been reduced and \$17,831, the Controller's reduction) is incorrect as a matter of law, and in the case of the College of San Mateo, arbitrary, capricious, or entirely lacking in evidentiary support.

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<sup>199</sup> Exhibit B, Controller's Comments on the IRC, page 153.

<sup>200</sup> Public Resources Code sections 42921(b); Exhibit A, IRC, page 74 (Parameters and Guidelines).

<sup>201</sup> Exhibit B, Controller's Comments on the IRC, page 153.

<sup>202</sup> Exhibit A, IRC, page 59 (Parameters and Guidelines). This is based on Public Resources Code sections 42921.

<sup>203</sup> Exhibit B, Controller's Late Comments on the IRC, page 20.

## **V. Conclusion**

Based on the foregoing, the Commission concludes that the Controller's reduction of costs claimed for all years in the audit period except the first half of fiscal year 2003-2004 is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission further concludes that the Controller's reduction of costs claimed for the first half of fiscal year 2003-2004, based on an incorrect mandated diversion rate, is incorrect as a matter of law, and in the case of the College of San Mateo, is arbitrary, capricious, or entirely lacking in evidentiary support. The law and the record support offsetting cost savings for this period of \$9,634 rather than \$17,831. Therefore, the reduction of \$8,197 (\$17,831 - \$9,634) is incorrect as a matter of law and should be reinstated to claimant.

Accordingly, the Commission partially approves this IRC and requests, pursuant to Government Code section 17551(d) and section 1185.9 of the Commission's regulations, that the Controller reinstate \$8,197 to the claimant.

**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 11, 2018, I served the:

- **Proposed Decision issued July 11, 2018**

*Integrated Waste Management*, 15-0007-I-12

Public Resources Code Sections 40418, 40196.3, 42920-42928;

Public Contract Code Sections 12167 and 12167.1;

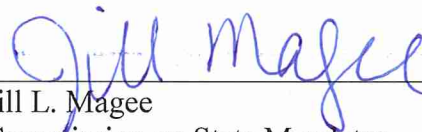
Statutes 1992, Chapter 1116 (AB 3521); Statutes 1999, Chapter 764 (AB 75)

Fiscal Years: 2003-2004, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011

San Mateo County Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 11, 2018 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 7/2/18

**Claim Number:** 15-0007-I-12

**Matter:** Integrated Waste Management

**Claimant:** San Mateo County Community College District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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