



March 16, 2022

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

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

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

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**  
*Municipal Storm Water and Urban Runoff Discharges*, 19-0304-I-05  
Los Angeles Regional Water Quality Control Board Order No. 01-182,  
Permit CAS004001, Part 4F5c3  
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, 2009-2010, 2010-2011, 2011-2012  
City of La Puente, Claimant

Dear Ms. Chinn and Ms. Sidarous:

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

### **Written Comments**

Written comments may be filed on the Draft Proposed Decision not later than **5:00 p.m. on April 6, 2022**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

The Commission's regulations require that written materials filed with the Commission be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.php> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, 1181.3(c)(2).)

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<sup>1</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.

Ms. Chinn and Ms. Sidarous

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If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

### **Hearing**

This matter is set for hearing on **Friday, May 27, 2022**, at 10:00 a.m. Due to current uncertainties regarding authority to conduct Commission meetings remotely after March 31, 2022, details regarding the hearing location and whether it will be remote or in person, will be announced on or about April 29, 2022 when the May 27, 2022 hearing agenda is issued. The Proposed Decision will be issued on or about May 13, 2022.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey  
Executive Director

**ITEM \_\_\_\_**  
**INCORRECT REDUCTION CLAIM**  
**DRAFT PROPOSED DECISION**

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

*Municipal Stormwater and Urban Runoff Discharges*

Fiscal Years 2002-2003 through 2011-2012

19-0304-I-05

City of La Puente, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction of reimbursement claims filed by the City of La Puente (claimant) for the *Municipal Stormwater and Urban Runoff Discharges* program for fiscal years 2002-2003 through 2011-2012 (audit period).

The claimant sought reimbursement for the mandated ongoing activities of maintaining trash receptacles at transit stops within the claimant's jurisdiction.<sup>1</sup> The Controller found that the total amount of \$202,214 as claimed for the audit period was not reimbursable because the claimant did not offset \$202,214 in Proposition A local return funds (a local sales and use tax levied by the Los Angeles County Metropolitan Transportation Authority) that it used to pay for the mandated activities.<sup>2</sup>

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<sup>1</sup> Exhibit A, IRC, filed June 10, 2020, pages 4-6, 95 (Final Audit Report). The Incorrect Reduction Claim refers to the mandated activities as including both the one-time activities of installing trash receptacles at transit stops and the ongoing activities of maintaining the trash receptacles. The Schedule – Summary of Program Costs in the Final Audit Report does not include any costs claimed by the City of La Puente for one-time activities, nor do the reimbursement claim summary forms. See Exhibit A, IRC, filed June 10, 2020, pages 126, 129, 132, 135, 138, 141, 144, 147, 149, 151. Therefore, reference herein to the mandated activities for which the claimant has sought reimbursement refers to the ongoing activities of maintaining trash receptacles only.

<sup>2</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

Staff finds that the Controller’s reductions are correct as a matter of law and recommends that the Commission on State Mandates (Commission) deny this IRC.

### **Procedural History**

The reimbursement claims for fiscal years 2002-2003 through 2010-2011 are dated September 27, 2011.<sup>3</sup> The claim for fiscal year 2011-2012 is dated January 22, 2013.<sup>4</sup> The Controller issued the Final Audit Report on December 15, 2017.<sup>5</sup> The claimant filed the IRC on June 10, 2020.<sup>6</sup> The Controller filed late comments on the IRC on February 24, 2021.<sup>7</sup> The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on March 16, 2022.<sup>8</sup>

### **Commission Responsibilities**

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

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

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>9</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>10</sup>

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<sup>3</sup> Exhibit A, IRC, filed June 10, 2020, pages 124, 127, 130, 133, 136, 139, 142, 145, 148.

<sup>4</sup> Exhibit A, IRC, filed June 10, 2020, page 150.

<sup>5</sup> Exhibit A, IRC, filed June 10, 2020, page 3.

<sup>6</sup> Exhibit A, IRC, filed June 10, 2020, page 1.

<sup>7</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 1.

<sup>8</sup> Exhibit C, Draft Proposed Decision, issued March 16, 2022.

<sup>9</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>10</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.

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>11</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>12</sup> In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>13</sup>

**Claims**

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

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Did the claimant timely file the IRC?	Section 1185.1(c) of the Commission’s regulations states: “All incorrect reduction claims and amendments thereto shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest	<i>Timely filed</i> – The Controller’s Final Audit Report of December 15, 2017 complies with Government Code section 17558.5(c). The IRC was filed June 10, 2020, less than three years from the date of the Controller’s Final Audit Report and is therefore timely.

<sup>11</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>12</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>13</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

Issue	Description	Staff Recommendation
	charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment.” <sup>14</sup>	
Was the Controller’s reduction of costs claimed, based on the determination that Proposition A sales tax Local Return funds used by the claimant to pay for the mandate are offsetting revenues, which should have been identified and deducted from the reimbursement claim, correct as a matter of law?	<p>Section VIII. of the Parameters and Guidelines provides that revenues or reimbursement received from any “federal, state, or non-local source” must be identified and deducted from the claim.<sup>15</sup></p> <p>The Controller found that the claimant failed to identify and deduct as offsetting revenues the funds received from the Los Angeles County Metropolitan Transportation Authority under the Proposition A Local Return Program.</p> <p>The claimant contends that Proposition A is a local sales and use tax and an offset of those funds is unconstitutional and inconsistent with the Parameters and Guidelines.<sup>16</sup> The claimant further contends that an offset constitutes an invalid retroactive application</p>	<p><i>Correct as a matter of law –</i></p> <p>The Proposition A local return funds used by the claimant to pay for the mandated activities are offsetting revenues that should have been identified and deducted from the reimbursement claims. Article XIII B, section 6 of the California Constitution requires that the state provide reimbursement only when a local government is mandated to spend its proceeds of taxes subject to the appropriations limit of article XIII B.<sup>18</sup></p> <p>Proposition A is a transactions and use tax levied by the Los Angeles County Metropolitan Transportation Authority. The funds distributed to the claimant through the Proposition A Local Return Program are not the claimant’s “proceeds of taxes” because the claimant does not have the authority to levy the tax, nor are the tax</p>

<sup>14</sup> California Code of Regulations, title 2, section 1185.1(c), Register 2020, No. 4 (eff. April 1, 2020).

<sup>15</sup> Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines).

<sup>16</sup> Exhibit A, IRC, filed June 10, 2020, pages 4-5.

<sup>18</sup> See *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486–487.

Issue	Description	Staff Recommendation
	of the Parameters and Guidelines. <sup>17</sup>	<p>revenues distributed to claimant subject to the claimant's appropriations limit.</p> <p>Moreover, the Controller's deduction of those funds in accordance with the Parameters and Guidelines does not constitute a retroactive application of the law. The requirement in Section VIII. of the Parameters and Guidelines that reimbursement received from any "non-local source" must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes. A rule that merely restates or clarifies existing law "does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same."<sup>19</sup></p>

<sup>17</sup> Exhibit A, IRC, filed June 10, 2020, page 6.

<sup>19</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

## Staff Analysis

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

Section 1185.1(c) of the Commission's regulations provides that an IRC must be filed no later than three years following the claimant's receipt of the Controller's final audit report or other written notice of adjustment to a reimbursement claim that complies with Government Code section 17558.5(c).<sup>20</sup> The Controller issued its Final Audit Report on December 15, 2017.<sup>21</sup> The Final Audit Report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments.<sup>22</sup> The Final Audit Report complies with the notice requirements of section 17558.5(c). The claimant filed the IRC on June 10, 2020.<sup>23</sup> The IRC was filed within three years of the date of the Final Audit Report. Staff finds that the IRC was timely filed.

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

The Controller reduced the claim to \$0 because the claimant failed to report offsetting revenues of \$202,214, the full amount claimed.<sup>24</sup> Specifically, the Controller determined that the claimant received revenues from the Los Angeles County Metropolitan Transportation Authority's Proposition A Local Return Program and used those funds to perform the mandated ongoing activities of maintaining trash receptacles at transit stops throughout the claimant's jurisdiction.<sup>25</sup> The Controller reasoned that under Section VIII. of the Parameters and Guidelines, Proposition A local return funds are unreported offsets that must be deducted from the reimbursement claims.<sup>26</sup>

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<sup>20</sup> California Code of Regulations, title 2, section 1185.1(c), Register 2020, No. 4 (eff. April 1, 2020).

<sup>21</sup> Exhibit A, IRC, filed June 10, 2020, page 90 (Final Audit Report).

<sup>22</sup> Exhibit A, IRC, filed June 10, 2020, pages 90-98 (Final Audit Report).

<sup>23</sup> Exhibit A, IRC, filed June 10, 2020, page 1.

<sup>24</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

<sup>25</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

<sup>26</sup> Exhibit A, IRC, filed June 10, 2020, page 97 (Final Audit Report).



**1. Proposition A local return funds constitute reimbursement from a non-local source within the meaning of the Parameters and Guidelines because Proposition A Local Return tax revenues are not the claimant’s “proceeds of taxes” within the meaning of article XIII B of the California Constitution since the tax is not levied by or for the claimant nor is it subject to the claimant’s appropriations limit.**

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

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.<sup>27</sup>

The claimant asserts that the Proposition A local return funds do not fall within Section VIII. because Proposition A is a local tax, the proceeds of which the claimant was free to use on any eligible transportation-related project, not solely the mandate program.<sup>28</sup> While the Parameters and Guidelines do not expressly require that funds from a countywide tax, such as Proposition A, be identified as offsetting revenue, they do state that “reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim.”<sup>29</sup> The Parameters and Guidelines are regulatory in nature and are binding on the parties.<sup>30</sup>

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. The California Supreme Court, in *County of Fresno v. State of California*,<sup>31</sup> explained:

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

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<sup>27</sup> Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines).

<sup>28</sup> Exhibit A, IRC, filed June 10, 2020, pages 3-4.

<sup>29</sup> Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines), emphasis added.

<sup>30</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

<sup>31</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>32</sup>

Thus, case law has long supported the conclusion that only state mandates that require the expenditure of a claimant's "proceeds of taxes" limited by the tax and spend provisions in articles XIII A and XIII B are reimbursable, and that local governments authorized to recoup costs through other than their own tax revenues are not eligible for reimbursement under article XIII B, section 6.<sup>33</sup>

Proposition A local return funds are not the claimant's local tax revenues because Proposition A is neither levied by or for the claimant nor subject to the claimant's appropriations limit. As such, any costs incurred by the claimant in performing the mandated activities that are funded by Proposition A, a non-local tax, are excluded from mandate reimbursement under article XIII B, section 6.

The power of a local government to tax is derived from the Constitution, upon the Legislature's authorization.<sup>34</sup> "The Legislature may not impose taxes for local purposes but may authorize local governments to impose them."<sup>35</sup> In other words, a local government's taxing authority is derived from statute.

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A transactions and use tax throughout Los Angeles County.<sup>36</sup> Under the Proposition A Ordinance, twenty-five percent of the annual Proposition A tax revenues are allocated to local jurisdictions for local transit purposes on a per capita basis.<sup>37</sup> Permissible uses include the installation, replacement and maintenance of trash receptacles at transit stops.<sup>38</sup> The parties do not dispute that the claimant received Proposition A tax revenue through the Local Return Program during the audit period, at least a portion of which was used for the eligible purpose of maintaining trash receptacles at transit stops.<sup>39</sup>

These taxes, however, are not levied "by or for" the claimant, as that constitutional phrase is interpreted by the courts, because the claimant does not have the authority to levy Proposition A

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<sup>32</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

<sup>33</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 (Article XIII B "was not intended to reach beyond taxation").

<sup>34</sup> California Constitution, article XIII, section 24(a).

<sup>35</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 ("Taxes are levied by the Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government").

<sup>36</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

<sup>37</sup> Exhibit X, Proposition A Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_a\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf) (accessed on August 19, 2020), page 4.

<sup>38</sup> Exhibit A, IRC, filed June 10, 2020, page 22 (Local Return Guidelines).

<sup>39</sup> Exhibit A, IRC, filed June 10, 2020, pages 3, 95-96 (Final Audit Report).

taxes; these taxes are not the claimant's local proceeds of taxes.<sup>40</sup> Nor are the proceeds subject to the city's appropriations limit.<sup>41</sup>

Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit."<sup>42</sup> Because the Proposition A local return funds are not the claimant's "proceeds of taxes levied by or for that entity," they are not the claimant's "appropriations subject to limitation."<sup>43</sup>

Staff finds that Proposition A local return fund revenues are not the claimant's "proceeds of taxes" within the meaning of article XIII B of the California Constitution because the taxes are not levied by or for the claimant nor are they subject to the claimant's appropriations limit. Therefore, staff finds that the Proposition A local return revenue used by the claimant is offsetting revenue that should have been identified and deducted from the reimbursement claims and thus, the Controller's reduction is correct as a matter of law.

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

The claimant argues that because the Local Return Guidelines permit the claimant to advance Proposition A local return funds to pay for mandated activities and then, upon reimbursement from the state, use those funds on other transportation-related priorities, the Controller cannot retroactively apply the Parameters and Guidelines and find that the Proposition A local return funds constitute reimbursement from a non-local source.<sup>44</sup> The claimant argues that retroactively applying the Parameters and Guidelines to prohibit an advancement of Proposition A local return funds in a way that was legal at the time the funds were advanced is both unconstitutional and arbitrary and capricious.<sup>45</sup> Whether the Controller correctly interpreted the Parameters and Guidelines in finding that Proposition A is a non-local source of funds that must be deducted from the reimbursement claims is purely a question of law subject to the *de novo* standard of review and to which the arbitrary and capricious standard does not apply.

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes (e.g., revenue from a tax levied by a separate local government entity), those amounts must be offset against its reimbursement claims. Because the claimant used "non-local source" funds to install and maintain trash receptacles, it was required to identify and deduct those funds

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<sup>40</sup> *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32; Article XIII B, section 8(b) of the California Constitution.

<sup>41</sup> Government Code section 7904; Public Utilities Code sections 130350, 130354.

<sup>42</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

<sup>43</sup> California Constitution, article XIII B, section 8.

<sup>44</sup> Exhibit A, IRC, filed June 10, 2020, pages 4-5.

<sup>45</sup> Exhibit A, IRC, filed June 10, 2020, page 6.

from its claims. The fact that the Commission did not adopt the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program until well into the audit period<sup>46</sup> does not alter the analysis, nor does the claimant's ability under the Local Return Guidelines to expend Proposition A local return funds on the maintenance of transit stop trash receptacles prior to mandate reimbursement.<sup>47</sup> A rule that merely restates or clarifies existing law "does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same."<sup>48</sup>

### **Conclusion**

Based on the forgoing analysis, staff finds that the IRC was timely filed and the Controller's reduction of costs, based on its finding that Proposition A local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law.

### **Staff Recommendation**

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

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<sup>46</sup> The Parameters and Guidelines were adopted March 24, 2011. The claimant's reimbursement claims are for fiscal years 2002-2003 through 2011-2012.

<sup>47</sup> Exhibit A, IRC, filed June 10, 2020, pages 6, 95.

<sup>48</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

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

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on May 27, 2022. [Witness list will be included in the adopted Decision.]

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

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

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

## **Summary of the Findings**

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

The Commission finds that this IRC was timely filed.

The Commission finds that the Controller’s reduction, based on its determination that the Proposition A local return funds are offsetting revenues that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Proposition A is a transactions and use tax levied by the Los Angeles County Metropolitan Transportation Authority. A portion of the Proposition A tax revenues are distributed to the City of La Puente, and other cities within the county, through the Proposition A Local Return Program for use on eligible transportation projects. Under article XIII B, section 6 of the California Constitution, the state is required to provide reimbursement only when a local government is mandated to spend its own proceeds of taxes subject to the appropriations limit of article XIII B.<sup>49</sup> The Proposition A local return funds distributed to the claimant are not the claimant’s “proceeds of taxes” because the tax is not levied by or for the claimant, nor is the tax subject to the claimant’s appropriations limit.

Accordingly, the Commission denies this IRC.

## **COMMISSION FINDINGS**

### **I. Chronology**

- |            |   |
|------------|---|
| 09/27/2011 | The claimant filed its reimbursement claims for fiscal years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, and 2010-2011. <sup>50</sup> |
| 01/22/2013 | The claimant filed its reimbursement claim for fiscal year 2011-2012. <sup>51</sup>   |
| 12/15/2017 | The Controller issued the Final Audit Report. <sup>52</sup>   |
| 06/10/2020 | The claimant filed the IRC. <sup>53</sup>   |

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<sup>49</sup> *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

<sup>50</sup> Exhibit A, IRC, filed June 10, 2020, pages 124, 127, 130, 133, 136, 139, 142, 145, 148.

<sup>51</sup> Exhibit A, IRC, filed June 10, 2020, page 150.

<sup>52</sup> Exhibit A, IRC, filed June 10, 2020, page 90.

<sup>53</sup> Exhibit A, IRC, filed June 10, 2020, page 1.

02/24/2021 The Controller filed late comments on the IRC.<sup>54</sup>  
03/16/2022 Commission staff issued the Draft Proposed Decision.<sup>55</sup>

## II. Background

This IRC challenges the Controller’s reductions of reimbursement claims filed by the City of La Puente for the *Municipal Stormwater and Urban Runoff Discharges* program for fiscal years 2002-03 through 2011-2012 (the audit period).<sup>56</sup>

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

The *Municipal Stormwater and Urban Runoff Discharges* program arose from a consolidated test claim filed by the County of Los Angeles and cities within the County alleging various activities related to, amongst other things, placement and maintenance of trash receptacles at transit stops to reduce stormwater pollution in compliance with a permit issued by the Los Angeles Regional Water Quality Control Board, a state agency.<sup>57</sup> The purpose of the permit was “to protect the beneficial uses of receiving waters in Los Angeles County.”<sup>58</sup>

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

Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.<sup>59</sup>

The Commission adopted the Parameters and Guidelines for this program on March 24, 2011.<sup>60</sup> The Parameters and Guidelines provide for reimbursement as follows:

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<sup>54</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 1.

<sup>55</sup> Exhibit C, Draft Proposed Decision, issued March 16, 2022.

<sup>56</sup> Exhibit A, IRC, filed June 10, 2020, page 1. The Incorrect Reduction Claim refers to the reimbursement claim as seeking reimbursement for both the one-time activities of installing trash receptacles at transit stops and the ongoing activities of maintaining the trash receptacles. See Exhibit A, IRC, filed June 10, 2020, pages 4-6. Neither the Schedule – Summary of Program Costs in the Final Audit Report nor the reimbursement claim summary forms include any costs claimed by the City of La Puente for one-time activities. See Exhibit A, IRC, filed June 10, 2020, pages 92-94, 126, 129, 132, 135, 138, 141, 144, 147, 149, 151. Accordingly, reference herein to the mandated activities for which the claimant is seeking reimbursement refers solely to the ongoing activities of maintaining trash receptacles.

<sup>57</sup> Exhibit B, Controller’s Late Comments on the IRC, pages 23-24 (Test Claim Decision, pages 1-2).

<sup>58</sup> Exhibit B, Controller’s Late Comments on the IRC, page 30 (Test Claim Decision, page 8).

<sup>59</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, pages 23-24.

<sup>60</sup> Exhibit A, IRC, filed June 10, 2020, page 82 (Parameters and Guidelines).

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

- A. Install Trash Receptacles (one-time per transit stop, reimbursed using actual costs):
  - 1. Identify locations of all transit stops within the jurisdiction required to have a trash receptacle pursuant to the Permit.
  - 2. Select receptacle and pad type, evaluate proper placement of receptacles and prepare specifications and drawings.
  - 3. Prepare contracts, conduct specification review process, advertise bids, and review and award bids.
  - 4. Purchase or construct receptacles and pads and install receptacles and pads.
  - 5. Move (including replacement if required) receptacles and pads to reflect changes in transit stops, including costs of removal and restoration of property at former receptacle location and installation at new location.
- B. Maintain Trash Receptacles and Pads (on-going, reimbursed using the reasonable reimbursement methodology):
  - 1. Collect and dispose of trash at a disposal/recycling facility. This activity is limited to no more than three times per week.
  - 2. Inspect receptacles and pads for wear, cleaning, emptying, and other maintenance needs.
  - 3. Maintain receptacles and pads. This activity includes painting, cleaning, and repairing receptacles; and replacing liners. The cost of paint, cleaning supplies and liners is reimbursable. Graffiti removal is not reimbursable.
  - 4. Replace individual damaged or missing receptacles and pads. The costs to purchase and install replacement receptacles and pads and dispose of or recycle replaced receptacles and pads are reimbursable.<sup>61</sup>

The ongoing activities in Section IV.B. are reimbursed under a reasonable reimbursement methodology (RRM).<sup>62</sup>

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

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

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<sup>61</sup> Exhibit A, IRC, filed June 10, 2020, page 85 (Parameters and Guidelines).

<sup>62</sup> Exhibit A, IRC, filed June 10, 2020, pages 84-85 (Parameters and Guidelines).



received from any federal, state or non-local source shall be identified and deducted from this claim.<sup>63</sup>

## **B. Proposition A Local Return Funds**

In 1976, the Legislature created the Los Angeles County Transportation Commission (Transportation Commission) as a countywide transportation improvement agency<sup>64</sup> and authorized the Transportation Commission to levy a transactions and use tax throughout Los Angeles County.<sup>65</sup>

A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.<sup>66</sup>

Public Utilities Code section 130354 states that “revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes.”<sup>67</sup>

In 1980, Los Angeles County voters approved Proposition A, a one-half percent transactions and use tax to fund public transit projects throughout the County.<sup>68</sup> Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax.

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<sup>63</sup> Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines).

<sup>64</sup> Public Utilities Code section 130050.

<sup>65</sup> Public Utilities Code sections 130231(a), 130350.

<sup>66</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333). Proposition A was passed by a majority of voters as required by the original language of Public Utilities Code section 130350, but not the two-thirds vote required by article XIII A, section 4 (Proposition 13). Thereafter, the executive director of the Transportation Commission refused to levy the tax. The Transportation Commission filed a petition for writ of mandate to compel the executive director to implement the tax. The case went before the California Supreme Court, which held in *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 19 that that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only the majority of voters, as opposed to two-thirds. Section 130350 was amended in 2007 to reflect the two-thirds vote requirement.

<sup>67</sup> Public Utilities Code section 130354.

<sup>68</sup> Exhibit A, IRC, filed June 10, 2020, page 16 (Local Return Guidelines).

In *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, the California Supreme Court held that the Transportation Commission could, consistent with Proposition 13, impose the tax with the consent of only a majority of voters, instead of the two-thirds required under article XIII A, section 4.<sup>69</sup> The court reasoned that “special district” within the meaning of article XIII A, section 4 included only those districts with the authority to levy a tax on real property, and because the Transportation Commission had no such authority, it did not constitute a “special district.”<sup>70</sup> While the court noted that the terms “special districts” and “special taxes” as used in section 4 were both ambiguous, it did not address whether Proposition A constituted a “special tax” within the meaning of section 4.<sup>71</sup> Nor did the court address whether the Transportation Commission or the Proposition A tax were subject to the government spending limitations imposed by article XIII B.

In *Rider v. County of San Diego* (1991) 1 Cal.4th 1, the California Supreme Court addressed “a question previously left open” in *Richmond*, regarding the validity of a supplemental sales tax “enacted for the apparent purpose of avoiding the supermajority voter approval requirement” under article XIII A, section 4.<sup>72</sup> The court ruled that a “special district” within the meaning of article XIII A, section 4 includes “any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13,” regardless of whether the district has the authority to levy real property taxes.<sup>73</sup> However, the court declined to overrule *Richmond* with respect to local agencies created prior to Proposition 13 and which lacked the authority to levy property taxes, such as the Transportation Commission.<sup>74</sup> The court further held that a “special tax” within the meaning of article XIII A, section 4, “is one levied to fund a specific government project or program,” even when that project or program is the agency’s sole reason for being.<sup>75</sup>

The Los Angeles Transportation Commission is statutorily authorized to levy the Proposition A tax.<sup>76</sup>

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<sup>69</sup> In 1978, California voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A, section 4 provides:

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

<sup>70</sup> *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 208.

<sup>71</sup> *Los Angeles County Transp. Commission v. Richmond* (1982) 31 Cal.3d 197, 201-202.

<sup>72</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 5.

<sup>73</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 11.

<sup>74</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 7-9.

<sup>75</sup> *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 15.

<sup>76</sup> Public Utilities Code section 130231(a).

The Los Angeles County Transportation Commission is authorized to impose a transactions and use tax within the County of Los Angeles pursuant to the approval by the voters of the commission's Ordinance No. 16 [Proposition A] in 1980...<sup>77</sup>

The purpose of the Proposition A tax is to “improve and expand existing public transit Countywide, including reduction of transit fare, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit assessments, and fares.”<sup>78</sup> Under the Proposition A Ordinance, tax revenues can be used for capital or operating expenses<sup>79</sup> and are allocated as follows:

- a. Twenty-five percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.
- b. Thirty-five percent, calculated on an annual basis, to the commission for construction and operation of the System.
- c. The remainder shall be allocated to the Commission for public transit purposes.<sup>80</sup>

In 1993, the Transportation Commission merged with the Southern California Rapid Transit District to form the Los Angeles County Metropolitan Transportation Authority (Metro).<sup>81</sup> Metro succeeded to the Transportation Commission’s and the Southern California Rapid Transit District’s powers, duties, rights, obligations, liabilities, indebtedness, bonded and otherwise, immunities, and exemptions of the district and its board of directors and the commission and its

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<sup>77</sup> Public Utilities Code section 130231(a).

<sup>78</sup> Exhibit X, Proposition A Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_a\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf) (accessed on August 19, 2020), page 3.

<sup>79</sup> Exhibit X, Proposition A Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_a\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf) (accessed on August 19, 2020), page 4.

<sup>80</sup> Exhibit X, Proposition A Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_a\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf) (accessed on August 19, 2020), page 4.

<sup>81</sup> Public Utilities Code sections 130050.2, 130051.13. Section 130050.2 states as follows: “There is hereby created the Los Angeles County Metropolitan Transportation Authority. The authority shall be the single successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission as provided by the act that enacted this section.”

governing body.<sup>82</sup> Since becoming the successor agency to the Transportation Commission, Metro has continued to levy the Proposition A tax.<sup>83</sup>

Local jurisdictions receive transportation funding from Metro through the Local Return Program. Twenty-five percent of Proposition A local return funds are allocated to the Local Return Program for cities to use “in developing and/or improving public transit, paratransit, and the related transportation infrastructure.”<sup>84</sup> Metro distributes local return funds to cities and the County on a monthly “per capita” basis.<sup>85</sup>

Use of Proposition A tax revenues by local jurisdictions is restricted to “eligible transit, paratransit, and Transportation Systems Management improvements.”<sup>86</sup> Local jurisdictions are encouraged to use the funds to improve transit services.<sup>87</sup>

The Proposition A Ordinance requires that LR [Local Return] funds be used exclusively to benefit public transit. Expenditures related to fixed route and paratransit services, Transportation Demand Management, Transportation Systems Management and fare subsidy programs that exclusively benefit transit are all eligible uses of Proposition A LR funds.<sup>88</sup>

Amongst the eligible uses of Proposition A local return funds are Bus Stop Improvements and Maintenance projects.<sup>89</sup> The Local Return Guidelines provide as follows:

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

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<sup>82</sup> Public Utilities Code sections 130050.2, 130051.13. Section 130051.13 states as follows:

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

<sup>83</sup> See Exhibit A, IRC, filed June 10, 2020, page 16 (Local Return Guidelines).

<sup>84</sup> Exhibit A, IRC, filed June 10, 2020, page 16 (Local Return Guidelines).

<sup>85</sup> Exhibit A, IRC, filed June 10, 2020, page 43 (Local Return Guidelines).

<sup>86</sup> Exhibit X, Proposition A Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_a\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf) (accessed on August 19, 2020), page 3.

<sup>87</sup> Exhibit X, Proposition A Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_a\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf) (accessed on August 19, 2020), page 5.

<sup>88</sup> Exhibit A, IRC, filed June 10, 2020, page 16 (Local Return Guidelines).

<sup>89</sup> Exhibit A, IRC, filed June 10, 2020, page 22 (Local Return Guidelines).

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- *Trash receptacles*
- Curb cut
- Concrete or electrical work directly associated with the above items.<sup>90</sup>

Proposition A local return funds may also “be given, loaned or exchanged” between local jurisdictions, provided that certain conditions are met, including that traded funds be used for public transit purposes.<sup>91</sup> Jurisdictions are permitted to use local return funds to advance eligible projects that will be reimbursed by “federal, state, or local grant funding, or private funds.”<sup>92</sup> Subsequent reimbursement funds must then be deposited into the Proposition A Local Return Fund.<sup>93</sup>

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

The Controller determined in its Final Audit Report that the entire claimed amount of \$202,214 was unallowable.<sup>94</sup> The Final Audit report contains one finding: the claimant “did not offset any revenues or reimbursements on its claim forms for the period of July 1, 2002, through June 30, 2012” and “should have offset \$202,214 in Proposition A local return funds that were used to pay for the ongoing maintenance of transit stop trash receptacles.”<sup>95</sup> The Controller characterized Proposition A local return funds as “restricted” funds because the claimant was required to expend them on the “development and/or improvement of public transit services.”<sup>96</sup> The Controller further reasoned that because the claimant was authorized to use and did use “restricted” Proposition A local return funds to pay for the mandated activities, “it did not have to rely on the use of discretionary general funds.”<sup>97</sup> The Controller determined that under the Parameters and Guidelines, the Proposition A local return funds were required to be identified and deducted from the reimbursement claims because they constituted payment toward the mandated activities from a non-local source.<sup>98</sup>

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

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<sup>90</sup> Exhibit A, IRC, filed June 10, 2020, page 22 (Local Return Guidelines), emphasis added.

<sup>91</sup> Exhibit A, IRC, filed June 10, 2020, page 28 (Local Return Guidelines).

<sup>92</sup> Exhibit A, IRC, filed June 10, 2020, page 45 (Local Return Guidelines).

<sup>93</sup> Exhibit A, IRC, filed June 10, 2020, page 45 (Local Return Guidelines).

<sup>94</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

<sup>95</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

<sup>96</sup> Exhibit A, IRC, filed June 10, 2020, page 98 (Final Audit Report).

<sup>97</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

<sup>98</sup> Exhibit A, IRC, filed June 10, 2020, pages 97-98 (Final Audit Report).

In addition, the city has not provided documentation to support that the Proposition A Local Returns funds are subject to the city's appropriation limit and thus considered proceeds of taxes.<sup>99</sup>

### III. Positions of the Parties

#### A. City of La Puente

The claimant challenges the Controller's finding that the claimant should have offset the entire claim amount of \$202,214 in revenues or reimbursements on its claim forms for the audit period.<sup>100</sup> The claimant does not dispute using Proposition A local return funds to perform mandated activities, but rather argues that the Controller's finding is erroneous because: (1) Proposition A is a local tax, not a federal, state, or non-local source within the meaning of the Parameters and Guidelines; and (2) because the claimant was permitted under the Proposition A Local Return Guidelines to advance the Proposition A local return funds and then repay them after reimbursement from the state, it is unconstitutional and arbitrary and capricious to apply the Parameters and Guidelines retroactively to prohibit advancement of the Proposition A local return funds in a way that was lawful at the time.<sup>101</sup>

According to the claimant, Proposition A is a "local tax, generated from sales tax imposed on local citizens," not a non-local source within the meaning of Section VIII. of the Parameters and Guidelines.<sup>102</sup> Section VIII. states as follows:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.<sup>103</sup>

The claimant contends that it was not required to use Proposition A local funds to fund the mandated activities.<sup>104</sup> Proposition A is a general-use tax, the claimant argues, and not a restricted-use tax as determined by the Controller.<sup>105</sup> The claimant cites to Government Code sections 17556(e) and 17570.3(d)(1)(D) for the proposition that "funding sources" are defined as "additional revenues *specifically intended* to fund the costs of the state mandate" and "*dedicated...for the program.*"<sup>106</sup> The claimant argues that the Proposition A local return funds are not revenue "in the same program as a result of the same statutes or executive orders found to

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<sup>99</sup> Exhibit A, IRC, filed June 10, 2020, page 98 (Final Audit Report).

<sup>100</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

<sup>101</sup> Exhibit A, IRC, filed June 10, 2020, pages 4-6.

<sup>102</sup> Exhibit A, IRC, filed June 10, 2020, page 4.

<sup>103</sup> Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines).

<sup>104</sup> Exhibit A, IRC, filed June 10, 2020, page 4.

<sup>105</sup> Exhibit A, IRC, filed June 10, 2020, pages 3-4.

<sup>106</sup> Exhibit A, IRC, filed June 10, 2020, page 3, emphasis in IRC.

contain the mandate,” nor reimbursement “specifically intended” or “dedicated” for the *Municipal Stormwater and Urban Runoff Discharges* program.<sup>107</sup> Under the Proposition A Local Return Guidelines, the claimant was permitted to expend the Proposition A local return funds on any number of transportation-related priorities and was not required to use the money for any specific purpose, including the mandated program.<sup>108</sup>

Finding that Proposition A must be offset against the claims for reimbursement violates article XIII B, section 6, which was adopted to protect local government tax revenues.<sup>109</sup> Proposition A is a local sales tax, no different from any other sales tax.<sup>110</sup> If the claimant had expended other sales tax revenue to install and maintain the trash receptacles, the Controller would not have reduced the claim.<sup>111</sup>

According to the claimant, the Local Return Guidelines permit the claimant to advance Proposition A local return funds on an eligible transit project and then return the funds upon reimbursement from another source.<sup>112</sup> Furthermore, the Parameters and Guidelines were not adopted until after the claimant advanced the Proposition A local return funds to pay for the mandated activities.<sup>113</sup> Because the claimant’s use of the Proposition A local return funds was lawful at the time, the claimant asserts that it is both unconstitutional and arbitrary and capricious to retroactively prohibit such an advancement.<sup>114</sup>

#### **B. State Controller’s Office**

The Controller maintains that all costs claimed are unallowable because the claimant did not offset Proposition A local return revenues from its reimbursement claims and that the Controller correctly reduced the claimant’s claims for fiscal years 2002-2003 through 2011-2012.<sup>115</sup>

The Controller asserts that the claimant’s costs for ongoing transit stop maintenance are recorded in Fund 210 – Proposition A, which is a special revenue fund type.<sup>116</sup> Contrary to the claimant’s assertion, Proposition A local return funds are not “general in nature” because they are generated by a “special supplementary sales tax” and are restricted to use on public transit projects, as

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<sup>107</sup> Exhibit A, IRC, filed June 10, 2020, page 3.

<sup>108</sup> Exhibit A, IRC, filed June 10, 2020, page 4.

<sup>109</sup> Exhibit A, IRC, filed June 10, 2020, page 5.

<sup>110</sup> Exhibit A, IRC, filed June 10, 2020, page 5.

<sup>111</sup> Exhibit A, IRC, filed June 10, 2020, page 5.

<sup>112</sup> Exhibit A, IRC, filed June 10, 2020, pages 4-5.

<sup>113</sup> Exhibit A, IRC, filed June 10, 2020, page 6.

<sup>114</sup> Exhibit A, IRC, filed June 10, 2020, pages 5-6.

<sup>115</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 11.

<sup>116</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 11.

opposed to an unrestricted general sales tax, which can be used for any general governmental purpose.<sup>117</sup>

The Controller asserts that to be reimbursable, “costs” incurred in performing mandated activities must be “paid from the proceeds of taxes.”<sup>118</sup> The Controller posits that “[w]hen a local agency has raised revenues outside its appropriation limit to cover the cost of mandated activities, funds thus expended are not reimbursable.” Because the claimant has not provided any records showing that the Proposition A local return funds are its “proceeds of taxes” and therefore subject to its appropriations limit, the funds do not “fall directly within the protection of Article XIII B, section 6” and are therefore ineligible for reimbursement.<sup>119</sup>

The Controller takes issue with the claimant’s argument that the claimant was not required to offset Proposition A local return funds because it did not receive reimbursement “specifically intended for or dedicated for this mandate.”<sup>120</sup> Under the Local Return Guidelines, trash receptacle maintenance is an eligible use of Proposition A local return funds.<sup>121</sup> The Controller cites to the Commission’s test claim Decision in the *Two-Way Traffic Control Signal Communication*, CSM 4504 for the proposition that just as the Commission found that reimbursement was not required to the extent local agencies chose to use their gas tax proceeds to pay for mandated activities, here, the claimant similarly chose to use Proposition A local return funds to maintain transit stop trash receptacles.<sup>122</sup> To the extent that the claimant paid for the mandated activities using Proposition A local return funds, reimbursement is not required.<sup>123</sup>

The Controller challenges the claimant’s assertion that it would be arbitrary and capricious to apply the Parameters and Guidelines to retroactively prohibit advancement of Proposition A local return funds.<sup>124</sup> The Controller argues that the claimant’s use of Proposition A local return funds during the audit period was not an advance pending reimbursement from the State; the claimant began contracting for transit stop maintenance almost nine years prior to the Commission’s adoption of the *Municipal Stormwater and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21 test claim Decision and therefore could not have known that it would obtain mandate reimbursement.<sup>125</sup> Furthermore, the claimant provided no records showing that the Proposition A local return funds are an advancement.<sup>126</sup>

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<sup>117</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 15.

<sup>118</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 15.

<sup>119</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 15.

<sup>120</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 15.

<sup>121</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 16.

<sup>122</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 16.

<sup>123</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 16.

<sup>124</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, pages 16-17.

<sup>125</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 17.

<sup>126</sup> Exhibit B, Controller’s Late Comments on the IRC, filed February 24, 2021, page 17.



#### 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>127</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>128</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>129</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support..." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "<sup>130</sup>

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<sup>127</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>128</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>129</sup> *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>130</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

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>131</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>132</sup>

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

Section 1185.1(c) of the Commission's regulations requires an incorrect reduction claim to be filed with the Commission no later than three years after the date the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c).<sup>133</sup> Under Government Code section 17558.5(c), the Controller must notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review.<sup>134</sup> The notice must specify which claim components were adjusted and in what amount, as well as interest charges on claims adjusted, and the reason for the adjustment.<sup>135</sup>

The Controller issued its Final Audit Report on December 15, 2017.<sup>136</sup> The Final Audit Report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments.<sup>137</sup> The Final Audit Report complies with the notice requirements of section 17558.5(c). The claimant filed the IRC on June 10, 2020.<sup>138</sup> The IRC was filed less than three years from the date of the Final Audit Report and was therefore timely filed.

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<sup>131</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>132</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>133</sup> California Code of Regulations, title 2, section 1185.1.

<sup>134</sup> Government Code section 17558.5(c).

<sup>135</sup> Government Code section 17558.5(c).

<sup>136</sup> Exhibit A, IRC, filed June 10, 2020, page 90 (Final Audit Report).

<sup>137</sup> Exhibit A, IRC, filed June 10, 2020, pages 90-98 (Final Audit Report).

<sup>138</sup> Exhibit A, IRC, filed June 10, 2020, page 1.

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

The Controller found that the claimant failed to report offsetting reimbursements for the audit period in the amount of \$202,214.<sup>139</sup> Specifically, the Controller determined that the claimant had received tax revenues from the Los Angeles County Metropolitan Transportation Authority’s Proposition A Local Return Program and used those funds to perform the ongoing mandated activities of maintaining trash receptacles at transit stops throughout the claimant’s jurisdiction.<sup>140</sup>

The claimant does not contest receiving and using Proposition A local return funds in the manner alleged. Rather, the claimant argues that the Controller’s determination, that the Proposition A local return funds are an unreported offset that must be deducted from the reimbursement claims, violates article XIII B, section 6 of the California Constitution, is inconsistent with the Parameters and Guidelines, and constitutes an invalid retroactive application of the Parameters and Guidelines.<sup>141</sup>

**1. Proposition A local return funds constitute reimbursement from a non-local source within the meaning of the Parameters and Guidelines because Proposition A Local Return tax revenues are not the claimant’s “proceeds of taxes” within the meaning of article XIII B of the California Constitution since the tax is not levied by or for the claimant nor is it subject to the claimant’s appropriations limit.**

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

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.<sup>142</sup>

The claimant asserts that the Proposition A local return funds at issue do not constitute “revenue...in the same program as a result of the same statutes or executive orders found to contain the mandate.”<sup>143</sup> Citing to Government Code sections 17556(e) and 17570.3(d)(1)(D), the claimant argues that “funding sources” are defined as “additional revenues *specifically intended* to fund the costs of the state mandate” and “*dedicated*...for the program.”<sup>144</sup> The claimant reasons that because the Proposition A local return funds are general funds and can be

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<sup>139</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

<sup>140</sup> Exhibit A, IRC, filed June 10, 2020, page 95 (Final Audit Report).

<sup>141</sup> Exhibit A, IRC, filed June 10, 2020, pages 3-6.

<sup>142</sup> Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines).

<sup>143</sup> Exhibit A, IRC, filed June 10, 2020, page 3.

<sup>144</sup> Exhibit A, IRC, filed June 10, 2020, page 3, emphasis in IRC.

used by the claimant for any transportation-related purpose, they do not constitute revenues “specifically intended” to fund the mandated activities or “dedicated” to the *Municipal Stormwater and Urban Runoff Discharges* program.<sup>145</sup>

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

Section 17570(d)(1)(D) addresses requests to adopt a new test claim decision, and requires the requester to identify dedicated state and federal funds appropriated for the program.<sup>146</sup> However, the phrase “dedicated...funds appropriated for the program” as used in section 17570 has no bearing on the meaning of offsetting revenues and reimbursements within the Parameters and Guidelines.

The claimant also cites to Government Code section 17556(e) for its use of the language “specifically intended” to support the claimant’s position that because Proposition A local return funds are general funds and the claimant was not required to use them for the specific purpose of funding the mandated activities, they do not constitute offsetting revenue or reimbursement under the Parameters and Guidelines.<sup>147</sup> Section 17556(e) states that the Commission shall not find costs mandated by the state when the statute, executive order, or an appropriation includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the costs of the mandate.<sup>148</sup> However, Government Code section 17556 applies only at the test claim phase to determine whether one of several exemptions from the subvention requirement applies, which would result in a finding of no costs mandated by the state and a denial of the test claim. The *Municipal Stormwater and Urban Runoff Discharges* program was approved and, therefore, section 17556 has no relevance to this IRC.

The claimant next argues that because Proposition A is a local tax, it does not constitute a federal, state, or non-local source within the meaning of Section VIII. of the Parameters and Guidelines.<sup>149</sup> While the Parameters and Guidelines do not expressly require that funds from a countywide tax, such as Proposition A, be identified as offsetting revenue, they do state that “reimbursement for this mandate received from any federal, state or *non-local source* shall be identified and deducted from this claim.”<sup>150</sup>

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<sup>145</sup> Exhibit A, IRC, filed June 10, 2020, page 3.

<sup>146</sup> Government Code section 17570(d)(1)(D), emphasis added.

<sup>147</sup> Exhibit A, IRC, filed June 10, 2020, pages 3-4.

<sup>148</sup> Government Code section 17556(e), emphasis added.

<sup>149</sup> Exhibit A, IRC, filed June 10, 2020, page 4.

<sup>150</sup> Exhibit A, IRC, filed June 10, 2020, page 88 (Parameters and Guidelines), emphasis added.

The Parameters and Guidelines must be interpreted in a manner that is consistent with the California Constitution<sup>151</sup> and principles of mandates law.<sup>152</sup> Proposition A local return funds are not the claimant’s local “proceeds of taxes” because they are neither levied by nor for the claimant, nor subject to the claimant’s appropriations limit. “Appropriations subject to limitation” means “any authorization to expend during a fiscal year *the proceeds of taxes levied by or for that entity.*”<sup>153</sup> Proposition A taxes are levied by and for the Transportation Commission for its transportation project funding purposes. Furthermore, because Proposition A is a non-local source of revenue, whether Proposition A local return funds were “specifically intended to fund the costs of the state mandate” or whether the claimant was free to apply the funds to other transportation projects is immaterial. Any costs incurred by the claimant in performing the mandated activities that are funded by non-local tax revenue, such as Proposition A, are excluded from mandate reimbursement under article XIII B, section 6 of the California Constitution.

a. Not all revenues are subject to the appropriations limit.

Interpreting the reimbursement requirement in article XIII B, section 6 of the California Constitution requires an understanding of articles XIII A and XIII B, which “work in tandem, together restricting California governments’ power both to levy and to spend taxes for public purposes.”<sup>154</sup>

In 1978, the voters adopted Proposition 13, which added article XIII A to the California Constitution. Article XIII A drastically reduced property tax revenue previously enjoyed by local governments by providing that “the maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value” and that the one percent (1%) tax was to be collected by counties and “apportioned according to law to the districts within the counties...”<sup>155</sup> In addition to limiting property tax revenue, section 4 also restricts a local government’s ability to impose special taxes by requiring a two-thirds approval by voters.<sup>156</sup>

Article XIII B was adopted by the voters less than 18 months after the addition of article XIII A, and was billed as “the next logical step to Proposition 13.”<sup>157</sup> While article XIII A is aimed at controlling ad valorem property taxes and the imposition of new special taxes, “the thrust of article XIII B is toward placing certain limitations on the growth of appropriations at both the

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<sup>151</sup> See *State Board of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 823, holding that a Board tax rule was null and void, as applied, because it violated the Constitution.

<sup>152</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 811-812.

<sup>153</sup> California Constitution, article XIII B, section 8, emphasis added.

<sup>154</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486.

<sup>155</sup> California Constitution, article XIII A, section 1.

<sup>156</sup> California Constitution, article XIII A, section 1.

<sup>157</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

state and local government level; in particular, Article XIII B places limits on the authorization to expend the ‘proceeds of taxes.’”<sup>158</sup>

Article XIII B established “an appropriations limit,” or spending limit for each “local government” beginning in fiscal year 1980-1981.<sup>159</sup> Section 1 of article XIII B defines the appropriations limit as follows:

The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided by this article.<sup>160</sup>

No “appropriations subject to limitation” may be made in excess of the appropriations limit, and revenues received in excess of authorized appropriations must be returned to the taxpayers within the following two fiscal years.<sup>161</sup>

Article XIII B does not limit the ability to expend government funds collected from all sources; the appropriations limit is based on “appropriations subject to limitation,” meaning “any authorization to expend during a fiscal year the proceeds of taxes levied by or for that entity.”<sup>162</sup> For local agencies, “proceeds of taxes” subject to the appropriations limit include all tax revenues; proceeds from regulatory charges and fees to the extent such proceeds exceed the costs reasonably borne by government in providing the product or service; the investment of tax revenue; and subventions received from the state (other than pursuant to section 6).<sup>163</sup>

No limitation is placed on the expenditure of those revenues that do not constitute “proceeds of taxes.”<sup>164</sup> For example, appropriations subject to limitation do not include “local agency loan funds or indebtedness funds, investment (or authorizations to invest) funds of the state, or of an entity of local government in accounts at banks or savings and loan associations or in liquid securities.”<sup>165</sup>

Article XIII B, section 6 was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of tax revenues which are subject to limitation. The California Supreme Court, in *County of Fresno v. State of California*,<sup>166</sup> explained:

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<sup>158</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 446.

<sup>159</sup> California Constitution, article XIII B, section 8(h).

<sup>160</sup> California Constitution, article XIII B, section 1.

<sup>161</sup> California Constitution, article XIII B, section 2.

<sup>162</sup> California Constitution, article XIII B, section 8.

<sup>163</sup> California Constitution, article XIII B, section 8; *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 448.

<sup>164</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>165</sup> California Constitution, article XIII B, section 8(i).

<sup>166</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482.

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. (See *County of Los Angeles I, supra*, 43 Cal.3d at p. 61.) The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. (*Ibid.*; see *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6.) Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse ... local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.<sup>167</sup>

The purpose of section 6 is to preclude “the state from shifting financial responsibility for carrying out governmental functions to local governmental entities, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”<sup>168</sup> Article XIII B, section 6 must therefore be read in light of the tax and spend limitations imposed by articles XIII A and XIII B; it requires the state to provide reimbursement only when a local government is mandated to expend its own proceeds of taxes subject to the appropriations limit of article XIII B.<sup>169</sup>

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

The claimant argues that Proposition A is a local tax because it is a “sales tax imposed on local citizens” and therefore does not fall into any of the offsetting revenue categories enumerated in Section VIII. of the Parameters and Guidelines, which include “federal, state, or non-local source” revenue.<sup>170</sup> In support of this position, the claimant cites to the fact that under the Local Return Guidelines, the claimant was permitted to use the Proposition A local return funds on any number of transportation projects, not only the mandated program.<sup>171</sup>

The power of a local government to tax is derived from the Constitution, upon the Legislature’s authorization.<sup>172</sup> “The Legislature may not impose taxes for local purposes but may authorize local governments to impose them.”<sup>173</sup> In other words, a local government’s taxing authority is derived from statute.

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<sup>167</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487, emphasis in original.

<sup>168</sup> *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 (quoting *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81).

<sup>169</sup> *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762-763; *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

<sup>170</sup> Exhibit A, IRC, filed June 10, 2020, page 4.

<sup>171</sup> Exhibit A, IRC, filed June 10, 2020, page 4.

<sup>172</sup> California Constitution, article XIII, section 24(a).

<sup>173</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450 [“Taxes are levied by the

Metro, as the successor to the Los Angeles County Transportation Commission, is authorized by statute to levy the Proposition A transactions and use tax throughout Los Angeles County.<sup>174</sup> Public Utilities Code section 130350, as originally enacted, states as follows:

A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of the County of Los Angeles may be adopted by the Los Angeles County Transportation Commission in accordance with Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, provided that a majority of the electors voting on the measure vote to authorize its enactment at a special election called for that purpose by the commission.<sup>175</sup>

Under the Proposition A Ordinance, twenty-five percent of the annual Proposition A tax revenues are allocated to local jurisdictions for local transit purposes on a per capita basis.<sup>176</sup> As discussed above, local jurisdictions are then permitted to use those funds on public transit projects as prescribed by the Local Return Guidelines.<sup>177</sup> Permissible uses include Bus Stop Improvements and Maintenance projects, which include the installation, replacement and maintenance of trash receptacles.<sup>178</sup>

The parties do not dispute that the claimant received Proposition A tax revenue through the Local Return Program during the audit period, at least a portion of which was used for the eligible purpose of maintaining trash receptacles at transit stops.<sup>179</sup> Nonetheless, the claimant misunderstands what constitutes claimant’s “local sales tax revenues” for purposes of determining reimbursement eligibility under article XIII B, section 6. Contrary to the claimant’s assertions, the Proposition A transactions and use tax is *not* the claimant’s “local tax” because it is neither levied by nor for the claimant.

The phrase “to levy taxes by or for an entity” has a special meaning of long-standing. The concept of one entity levying taxes for another dates back to at least 1895 (stats. 1895, p. 219) and the adoption of an act providing for the levy of taxes “by or for” municipal corporations. This act allowed general law and charter cities to continue to exercise their taxing power directly or, if they so desired, to have the county levy and collect their taxes for them. (*Griggs v. Hartzoke* (1910) 13 Cal.App. 429, 430–432, 109 P. 1104; *County of Los Angeles*

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Legislature, or by counties and municipalities under their delegated power, for the support of the state, county, or municipal government”].

<sup>174</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

<sup>175</sup> Public Utilities Code section 130350 (Stats. 1976, ch. 1333).

<sup>176</sup> Exhibit X, Proposition A Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_a\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf) (accessed on August 19, 2020), page 4.

<sup>177</sup> See Exhibit A, IRC, filed June 10, 2020, pages 11-80 (Local Return Guidelines).

<sup>178</sup> Exhibit A, IRC, filed June 10, 2020, page 22 (Local Return Guidelines).

<sup>179</sup> Exhibit A, IRC, filed June 10, 2020, pages 4, 98 (Final Audit Report).



*v. Superior Court* (1941) 17 Cal.2d 707, 710–711, 112 P.2d 10.) The legal effect of this arrangement, as explained by case law, was that the taxing power exercised was that of the city, and it remained in the city. The county officers in levying taxes for the city became ex-officio officers of the city and exercised the city's taxing power. (*Madary v. City of Fresno* (1912) 20 Cal.App. 91, 93–94, 128 P. 340.) In levying taxes for the city the county was levying “municipal taxes” through the ordinary county machinery. (*Griggs, supra*, 13 Cal.App. at p. 432, 109 P. 1104.)

Thus, the salient characteristics of one entity levying taxes “for” another entity are: (1) the entity for whom the taxes are levied has the taxing power; (2) the levying officers of the county exercise the taxing power of the entity for whom they are levying; (3) they exercise such power as ex-officio officers of that entity, and (4) the taxes collected are those of the “levied for” entity.<sup>180</sup>

Similar to the redevelopment agency in *Bell Community Redevelopment Agency v. Woosley*, the claimant here does not have the power to levy the Proposition A tax.<sup>181</sup> Therefore, Metro is not levying the Proposition A tax “for” the claimant. The claimant’s receipt and use of Proposition A tax revenue through the Local Return Program does not change the nature of the local return funds as Metro’s “proceeds of taxes” and subject to Metro’s appropriations limit.

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

Article XIII B does not limit a local government’s ability to expend tax revenues that are not the claimant’s “proceeds of taxes.”<sup>182</sup> Where a tax is not levied by or for the local government claiming reimbursement, the revenue of such a tax is not the local government’s “proceeds of taxes” and is therefore not the local government’s “appropriations subject to limitation.”<sup>183</sup> Reimbursement under article XIII B, section 6 is only required to the extent that a local government must incur “increased actual expenditures of limited tax proceeds that are counted against the local government’s spending limit.”<sup>184</sup> Because the Proposition A local return funds are not the claimant’s “proceeds of taxes levied by or for that entity,” they are not the claimant’s “appropriations subject to limitation.”<sup>185</sup>

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<sup>180</sup> *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 32.

<sup>181</sup> See *Bell Community Redevelopment Agency v. Woosley* (1985) 169 Cal.App.3d 24, 27 (Because redevelopment agency did not have the authority to levy a tax to fund its efforts, allocation and payment of tax increment funds to redevelopment agency by county, a government taxing agency, were not “proceeds of taxes levied by or for” the redevelopment agency and therefore were not subject to the appropriations limit of Article XIII B).

<sup>182</sup> *County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 447.

<sup>183</sup> California Constitution, article XIII B, section 8.

<sup>184</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.

<sup>185</sup> California Constitution, article XIII B, section 8.

While the Proposition A Ordinance does not state whether Proposition A tax proceeds are subject to Metro’s appropriations limit,<sup>186</sup> Metro receives the revenues of any transactions and use tax it levies and then allocates and distributes them to local jurisdictions in accordance with the applicable tax ordinances.<sup>187</sup> Los Angeles County has passed four separate half-cent transportation sales taxes over the past 40 years: Proposition A (1980), Proposition C (1990), Measure R (2008), and Measure M (2016).<sup>188</sup> With the exception of Proposition A, the remaining three tax ordinances expressly state that their respective transportation sales tax revenues are subject to either Transportation Commission (as predecessor to Metro) or Metro’s appropriations limit. The claimant has submitted no evidence, and the Commission is aware of none, to show that the Proposition A local return funds it received during the audit period were subject to the claimant’s appropriations limit.

The claimant is incorrect in asserting that using Proposition A local return funds to pay for the maintenance of trash receptacles is no different than if the claimant had used the proceeds of “any other sales tax.”<sup>189</sup> While, as the claimant asserts, Proposition A is indeed imposed on the “local citizens” of the claimant’s jurisdiction, the tax is levied throughout Los Angeles County by Metro, who then distributes a portion of the revenues to the County of Los Angeles and cities within the County. Because the Proposition A tax is neither levied by nor for the claimant, nor subject to the claimant’s appropriations limit, the Proposition A Local Return revenues do not constitute the claimant’s “local proceeds of taxes” for which the claimant is entitled to reimbursement under article XIII B, section 6. Local government cannot accept the benefits of non-local tax revenue that is exempt from the appropriations limit, while asserting an entitlement to reimbursement under article XIII B, section 6.<sup>190</sup> To the extent that the claimant funded the mandated activities using Proposition A tax revenues, reimbursement is not required under article XIII B, section 6 of the California Constitution.

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

The claimant argues that because the Local Return Guidelines permit the claimant to advance Proposition A local return funds to pay for mandated activities and then, upon reimbursement

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<sup>186</sup> Exhibit X, Proposition A Ordinance, [http://media.metro.net/projects\\_studies/taxpayer\\_oversight\\_comm/proposition\\_a\\_ordinance.pdf](http://media.metro.net/projects_studies/taxpayer_oversight_comm/proposition_a_ordinance.pdf) (accessed on August 19, 2020), pages 1-9.

<sup>187</sup> Public Utilities Code section 130354, which states: “The revenues received by the Los Angeles County Transportation Commission from the imposition of the transactions and use taxes shall be used for public transit purposes”; Exhibit A, IRC, filed June 10, 2020, page 63 (Local Return Guidelines).

<sup>188</sup> Exhibit X, Metro, Local Return Program, [https://www.metro.net/projects/local\\_return\\_pgm/](https://www.metro.net/projects/local_return_pgm/) (accessed on August 20, 2020), page 1.

<sup>189</sup> Exhibit A, IRC, filed June 10, 2020, page 5.

<sup>190</sup> See *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

from the state, use those funds on other transportation-related priorities, the Controller cannot retroactively apply the Parameters and Guidelines and find that the Proposition A local return funds constitute reimbursement from a non-local source.<sup>191</sup> The claimant argues that retroactively applying the Parameters and Guidelines to prohibit an advancement of Proposition A local return funds in a way that was legal at the time the funds were advanced is both unconstitutional and arbitrary and capricious.<sup>192</sup> Whether the Controller correctly interpreted the Parameters and Guidelines in finding that Proposition A is a non-local source of funds that must be deducted from the reimbursement claims is purely a legal question, to which the arbitrary and capricious standard does not apply.

Because the claimant used “non-local source” funds to install and maintain trash receptacles, it was required to identify and deduct those funds from its claim for reimbursement. As discussed above, the Proposition A local return funds received by the claimant are not the claimant’s “proceeds of taxes” within the meaning of article XIII B, section 8. The requirement in Section VIII. of the Parameters and Guidelines that reimbursement received from any “non-local source” must be identified and deducted from the claim simply restates the requirement under article XIII B, section 6 that mandate reimbursement is only required to the extent that the local government expends its own proceeds of taxes. A rule that merely restates or clarifies existing law “does not operate retrospectively even if applied to transactions predating its enactment because the true meaning of the [rule] remains the same.”<sup>193</sup>

Where, as here, a local government funds mandated activities with *other than* its own proceeds of taxes (e.g., revenue from a tax levied by a separate local government entity), it is required to deduct those revenues from its reimbursement claim. The fact that the Commission’s adoption of the Parameters and Guidelines for the *Municipal Stormwater and Urban Runoff Discharges* program postdates the audit period does not alter the analysis,<sup>194</sup> nor does the claimant’s ability under the Local Return Guidelines to expend Proposition A local return funds on the installation and maintenance of transit stop trash receptacles prior to mandate reimbursement.

The Commission finds that the Controller’s Finding is correct as a matter of law.

## **V. Conclusion**

Based on the forgoing analysis, the Commission finds that the IRC was timely filed and the Controller’s reduction of costs, based on the determination that Proposition A local return funds are offsetting revenue that should have been identified and deducted from the reimbursement claims, is correct as a matter of law. Accordingly, the Commission denies this IRC.

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<sup>191</sup> Exhibit A, IRC, filed June 10, 2020, pages 4-5.

<sup>192</sup> Exhibit A, IRC, filed June 10, 2020, page 6.

<sup>193</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

<sup>194</sup> Exhibit A, IRC, filed June 10, 2020, pages 6, 95.

**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 March 16, 2022, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued March 16, 2022**

*Municipal Storm Water and Urban Runoff Discharges*, 19-0304-I-05  
Los Angeles Regional Water Quality Control Board Order No. 01-182,  
Permit CAS004001, Part 4F5c3  
Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008,  
2008-2009, 2009-2010, 2010-2011, 2011-2012  
City of La Puente, 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 March 16, 2022 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/24/22

**Claim Number:** 19-0304-I-05

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

**Claimant:** City of La Puente

### 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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