

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM  
ON:

Elections Code Section 3003  
Statutes 1978, Chapter 77

Fiscal Years 1996-1997, 1997-1998, and  
1998-1999

Filed on June 11, 2003

County of Riverside, Claimant.

Case No.: 02-3713-I-01

*Absentee Ballots*

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

*(Adopted: January 27, 2012)*

**STATEMENT OF DECISION**

On January 27, 2012, the Commission on State Mandates (Commission) partially approved the above-named incorrect reduction claim.



Nancy Patton, Acting Executive Director

Dated: January 30, 2012

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STATE OF CALIFORNIA

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*(Adopted: January 27, 2012)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim during a regularly scheduled hearing on January 27, 2012. Allan Burdick represented the claimant, County of Riverside. Jim Spano and Jay Lal appeared for the State Controller's Office.

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

The Commission adopted the staff analysis to approve the incorrect reduction claim with respect to the reimbursement claim filed for fiscal year 1996-1997, and deny the incorrect reduction claim with respect to the reimbursement claims filed for fiscal years 1997-1998 and 1998-1999 by a vote of 5 to 0.

**COMMISSION FINDINGS**

**Chronology**

- 06/17/1981 Board of Control finds that the *Absentee Ballots* test claim legislation imposes reimbursable state mandate
- 08/12/1982 Board of Control adopts amended parameters and guidelines
- 12/18/1997 Commission amends parameters and guidelines
- 05/29/2001 State Controller issues final audit for fiscal years 1997-1998 through 1998-1999
- 02/27/2003 Commission adopts amended parameters and guidelines
- 06/11/2003 County of Riverside files two incorrect reduction claims, one for fiscal year 1996-1997 and one for fiscal years 1997-1998 through 1998-1999 (Exhibits A and B)
- 06/19/2003 Commission consolidates the two incorrect reduction claims

- 10/15/2003 State Controller files responses to the incorrect reduction claims for fiscal years 1996-1997, 1997-1998 and 1998-1999 (Exhibits C and D)
- 11/18/2011 Staff requests additional information from the State Controller's Office (Exhibit E)
- 12/08/2011 Draft staff analysis issued (Exhibit F)
- 12/08/2011 State Controller's Office files response to request for additional information (Exhibit E)
- 01/09/2012 State Controller's Office files comments on the draft staff analysis (Exhibit G)

**I. Background**

This is an incorrect reduction claim filed by the County of Riverside for the *Absentee Ballots* program. The County challenges the reductions made by the State Controller's Office to the County's reimbursement claims for costs incurred in fiscal years 1996-1997, 1997-1998, and 1998-1999. Under the *Absentee Ballots* program, local agencies are authorized to claim reimbursement for the costs associated with the increase in absentee ballot filings as determined by using one of the formulas outlined in the parameters and guidelines. The test claim statutes expanded the program to require local governments to make an absentee ballot available to any registered voter who requests one prior to an election. Under prior law, absentee ballots were provided only in the following limited circumstances; illness, absence from the precinct on the day of the election, physical handicap, conflicting religious commitments, or the voter's residence is more than ten miles from the polling place.

For all years claimed, the County sought reimbursement for the salaries and benefits of its employees to perform the mandate based on a time study conducted in 1988 and allegedly approved by the Controller's Office in 1991. The County does not have time sheets, payroll records or detailed contemporaneous documents to support the time it took to perform the mandate in fiscal years 1996-1997, 1997-1998, or 1998-1999. In addition, the County claimed reimbursement for overtime salaries and benefits during these fiscal years.

For fiscal year 1996-1997, the Controller's Office reduced the entire claim for salaries and benefits and overtime costs in the amount \$914,002 following a desk audit. The reduction was made on the ground that the costs claimed were not supported by documentation. The reduction of overtime costs was based on an "informal policy" of the Controller's Office that overtime is not reimbursable since the costs are incurred at the discretion of the agency.

Field audits were conducted on the County's 1997-1998 and 1998-1999 reimbursement claims. The Controller's Office continued to reject the use of the 1988 time study to support the claims for salaries and benefits. The County then kept time sheets for a six-month period in the year 2000 in an attempt to use those actual hours for the years in question. The Controller accepted the County's hours of 12,114 for use in calculating salaries and benefits for fiscal years 1997-1998 and 1998-1999 and partially approved reimbursement. For fiscal year 1997-1998, the Controller reduced the claim for salaries and benefits by \$981,270. For fiscal year 1998-1999,

the Controller reduced the claim for salaries and benefits by \$537,039.<sup>1</sup> To the extent that overtime costs were supported by documentation, reimbursement was allowed for those costs for fiscal years 1997-1998 and 1998-1999.

The County seeks a determination from the Commission pursuant to Government Code section 17551(d), that the State Controller's Office incorrectly reduced the claim and requests that the Controller reinstate the full amounts reduced (\$2,432,311) for salaries and benefits based on the initial estimate of time from the 1988 time study, and for the overtime costs claimed in 1996-1997.

The documents in the record for these incorrect reduction claims and the Controller's audits are described in more detail below.

A. Desk Audit on Reimbursement Claim for 1996-1997

On November 30, 1997, the County filed a reimbursement claim for costs incurred in fiscal year 1996-1997. The County claimed \$865,108 for the salaries and benefits of its employees, and \$48,894 for the overtime costs of its employees, for a total of \$914,002 in employee salaries and benefits. Costs were determined by multiplying an estimate of the hours worked on the program times the average productive hourly rates of the employees working on the program. The County claimed it took 48,524.70 regular hours and 1,885.90 overtime hours in fiscal year 1996-1997 to comply with the mandate. The time claimed by the County is based on a schedule of activities that shows a total of 14.25 minutes spent to process a single absentee ballot. The productive hourly rate claimed for regular work time was \$13.61 and for overtime, \$19.29.<sup>2</sup>

On February 10, 1999, the State Controller's Office asked the county for additional information to support its reimbursement claim for fiscal year 1996-1997, and requested "[a] representative sample of timesheets and payroll summaries which evidence that employees actually worked 48,525 hours on the processing of absentee ballots."<sup>3</sup>

The County responded on March 8, 1999. In its letter, the County supported its claim for overtime and clarified that it used a 1988 time study audited by the Controller's Office in 1991 to support the number of regular hours claimed for the program. The County's letter states the following:

During our conversation, you brought up an issue of overtime related to this program, specifically stating that overtime was not eligible. There is no way the County could process absentee ballots using regular staff and regular pay. Generally speaking, overtime should not be admissible, but this should exclude *election day* costs. It would be next to impossible to complete ballot processing without the use of overtime.

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<sup>1</sup> For fiscal year 1997-1998, the Controller's Office allowed reimbursement in the amount of \$566,850. For fiscal year 1998-1999, the Controller's Office allowed reimbursement in the amount of \$436,737.

<sup>2</sup> Exhibit A, page 43.

<sup>3</sup> Exhibit A, page 39.

We also discussed Schedule B, the steps involved in absentee ballot processing. These steps have been followed for years, with occasional updates due to new legislation requirements. When your office performed a field audit of this program back in May of 1991, the methodology used by the County to process absentee ballots clearly passed their audit. *The County was able to locate their copy of this field audit, and I have provided you a copy for your records.* (Emphasis in original.)<sup>4</sup>

The County also submitted the following documentation in support of its claim:

- A document that identifies the elections held in the county in fiscal year 1996-1997. The document identifies the date of each election, the election held, the number of ballots cast (469,038), the number of absentee ballots cast (146,555), and the number of absentee ballots mailed (242,370) for each election.<sup>5</sup>
- Schedule B, “The Steps Involved in Processing Absentee Ballots.” This document identifies fifteen steps to comply with the mandate and the time taken for each step. A total of 14.25 minutes is identified as the total time taken to process each absentee ballot (for an average of 4.4 ballots processed per hour per employee).<sup>6</sup>
- A document that identifies the names of the employees that worked overtime on the mandate, the dates and hours of overtime worked, and the pay rate for each employee that worked overtime on the program in fiscal year 1996-1997.<sup>7</sup>

On January 27, 2000, the State Controller’s Office sent a letter to the County to confirm that an audit on the County’s *Absentee Ballot* program “for the period July 1, 1996 through June 30, 1998” would commence on February 1, 2000. According to the County, the Controller’s Office subsequently provided notification that it was too late to do a field audit on the 1996-1997 fiscal year costs, and that the field audit would be performed on the 1997-1998 and 1998-1999 fiscal year costs.<sup>8</sup>

On August 7, 2000, the State Controller’s Office issued an adjustment letter to the County, seeking the repayment of \$914,002<sup>9</sup>

On August 31, 2000, the County sent a letter to the State Controller’s Office seeking a breakdown of the adjustment, and stating that “[w]e believe these adjustments may be related to the same issues pending in the SCO field audit of our 1997-1998 and 1998-1999 *Absentee Ballot* claims, and therefore we are requesting a further review of this claim in conjunction with the outcome of this field audit.”<sup>10</sup>

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<sup>4</sup> Exhibit A, pages 100-101.

<sup>5</sup> Exhibit A, page 93.

<sup>6</sup> Exhibit A, page, 88.

<sup>7</sup> Exhibit A, pages 154-172.

<sup>8</sup> Exhibit A, County’s Incorrect Reduction Claim, page 9.

<sup>9</sup> Exhibit A, page 36.

<sup>10</sup> Exhibit A, page 36.

On September 27, 2000, the County sent a letter to the State Controller's Office contending that the audit period expired pursuant to Government Code section 17558.5 when the adjustment was made, and requesting that the Controller restore the amounts adjusted.<sup>11</sup>

On November 27, 2000, the State Controller's Office responded to the County explaining that:

The total labor costs claimed in the amount of \$914,002 were determined to be non-reimbursable since a non-documented time study was used to claim actual labor costs. A letter dated February 10, 1999, was sent to Carole Hazeltine, consultant for DMG Maximus. This letter requested a list of employees and the time spent by each employee with a detailed description of each employee's responsibilities in the processing of absentee ballots. On May 24, 1999, Carol Hazeltine, provided the steps involved in processing absentee ballots with minutes assigned to each activity but with no supporting documentation showing how the time was derived.

Our office performed the audit review of the claim within the audit period allowed by Government Code section 17558.5, which you cited in your letter of September 27, 2000. While our claim adjustment letter of August 7, 2000, was computer generated due to final payment of this program, the audit review was completed prior to the end of calendar year 1999. Government Code section 17558.5 did not require the adjustment notification letter be issued by the end of 1999 in this matter.<sup>12</sup>

There are two additional undated documents that are contained in the Controller's file regarding the Controller's analysis of the County's fiscal year 1996-1997 claim. The first describes the Controller's reduction of the costs for regular salaries and the use of the County's prior time study as follows:

The report, dated 5/10/91, pertains to the fiscal years 1986-87, 1987-88, and 1988-89; this report is approximately ten years old. This report pertains to an audit of the Legislative Mandated Absentee Ballots program and involved the following procedures:

1. reconciliation of the County's claims to its accounting records,
2. tracking claimed costs to the County's source documents,
3. Evaluation of the claimed costs to determine compliance with regulations and instructions.

The report provides a summary of program costs, audit adjustments and cost per absentee ballots. For the last fiscal year (1988-89), the most detailed information is provided. Therefore, I conclude that the auditors focused primarily on that year to the exclusion of the other two years. The report shows a significant variance between claimed and audited unit costs (\$5.76 vs. \$4.68). Nowhere in the report did I find a reference to work hours or salaries.

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<sup>11</sup> Exhibit A, page 35.

<sup>12</sup> Exhibit A, page 131.

In general, the report indicates compliance. However, there are two exceptions:

1. The County overstated its material and postage costs.
2. The County overstated the number of reimbursable absentee ballots.

In conclusion, this report contains outdated information which, if used, would cause us to conclude [sic] that the County's subsequent claims may overstate its true reimbursable costs.<sup>13</sup>

The second document is an "Analysis of Overtime and Temporary Help," stating that

It is an informal policy (i.e., it is not noted in any regulations or statutes) of the Controller's that overtime costs are not reimbursable. The use of overtime is at the discretion of the agency and is not mandated. (Emphasis in original.)<sup>14</sup>

On June 18, 2001, the State Controller's Office "re-reviewed" the desk audit of the County's 1996-1997 fiscal year claim, and found as follows:

1. Labor Cost Not Reimbursable - **\$48,894.00**

County of Riverside claimed the cost of overtime – Salaries of \$36,794.00 and Benefits of \$13,100.00 are not reimbursable. See attached Analysis of Overtime and Temporary Help.

2. Excessive Time - **\$866,108.00**

Per Ray's review – 46,525 hours worked does not appear to be substantiated by backup material submitted. Ray's review indicates that the 46,525 hours is based on estimate [sic] and not the actual return-

Total Salaries of \$633,315.00 and Benefits of \$231,793.00 related to estimated hours is not reimbursable. Time log sheets or other time worked backup material not available in folder.

3. Total Adjustments of **\$914,002.00** and prior payments totaling \$1,219,727.00 resulted in an overpayment of \$914,002.00 due to the State. (Emphasis in original.)<sup>15</sup>

On June 27, 2001, a note from an employee at the Controller's Office was prepared and recommended that the Controller's Office negotiate with the County based on the audit of costs claimed by the County for 1997-1998 and 1998-1999 and to partially restore the overtime costs. The note states the following:

- 1) Ray reduced the claim by all labor costs of \$868,108 since they were based on an old time study and were not supported. SCO Audits of fiscal years 97/98 and 98/99 also reduced the labor costs for this same reason.
- 2) SCO Audits adjusted their disallowance based on a current analysis by the county. (Letter dated 2/28/01.) The analysis allowed 20% of the total labor costs to be allocated to the Absentee Ballot program.

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<sup>13</sup> Exhibit A, page 45.

<sup>14</sup> Exhibit A, page 44.

<sup>15</sup> Exhibit A, page 42.

- 3) Ray reduced all overtime costs of \$48,894 as not authorized. SCO Audits allowed overtime if it was supported. It appears the overtime disallowed could be reinstated to the amount of \$42,312. (A list of names and hours was supplied, but not time sheets).
- 4) Recommendation: I believe we should try to negotiate with the county based on the 20% ratio that the SCO Audits accepted and also restore the overtime.<sup>16</sup>

B. Field Audit on Reimbursement Claims for Fiscal Years 1997-1998 and 1998-1999

On January 11, 1999, the County filed a reimbursement claim on the *Absentee Ballot* program for the 1997-1998 costs. The County claimed \$820,000 for salaries and benefits of its employees to perform the mandate. This figure was based on the productive hourly rate of pay for four employees at \$14.07 multiplied by 43,328.44 regular hours worked on the program. The 43,328.44 hours were determined by using the same time study as the previous year (reflected on the County's Schedule B),<sup>17</sup> except that the County reduced the estimated time to process a single ballot to 13.75 minutes per ballot (a reduction of ½ minute from fiscal year 1996-1997), which came to 43,328 hours claimed on the program in that fiscal year. The County also claimed \$17,459 in overtime salaries and benefits (\$21.42 per hour in overtime salaries multiplied by 815.50 hours of overtime).<sup>18</sup>

To support the claim, the County filed documentation similar to the documentation filed to support the 1996-1997 costs. The County submitted a document that identifies the elections held in the county in fiscal year 1997-1998.<sup>19</sup> The County also submitted a document reflecting the overtime hours worked that identifies the names of the employees, the dates and hours of overtime worked, and the pay rate for each employee that worked overtime on the program in fiscal year 1997-1998.<sup>20</sup>

On January 18, 2000, the County filed a reimbursement claim on the program for the 1998-1999 costs. The County used the same method, with similar supporting documentation,<sup>21</sup> to claim the costs for regular and overtime salaries and benefits as it did for the 1997-1998 fiscal year. For 1998-1999, the County used the time study estimate of 13.75 minutes to process a single absentee ballot, which came to 33,717.90 hours claimed on the program in that fiscal year. The County also claimed \$20,765 in overtime salaries and benefits (\$23.15 per hour in overtime salaries multiplied by 896.80 hours of overtime).

The Controller's Office conducted field audits on the 1997-1998 and 1998-1999 reimbursement claims. According to the final audit report for the period July 1, 1997, through June 30, 1999, the Controller's Office partially allowed reimbursement for overtime salary costs. For fiscal years 1997-1998 and 1998-1999, the County's reimbursement claims identify overtime salary costs in the amount of \$17,459 and \$20,765 respectively. The State Controller's Office allowed

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<sup>16</sup> Exhibit A, page 103.

<sup>17</sup> Exhibit B, page 240.

<sup>18</sup> Exhibit B, page 233.

<sup>19</sup> Exhibit B, page 237.

<sup>20</sup> Exhibit B, starting at page 241.

<sup>21</sup> Exhibit B, pages 289, 291, 297.

reimbursement for overtime in fiscal year 1997-1998 in the amount of \$11,727, and \$10,320 in fiscal year 1998-1999. The audit report states that “[t]he overtime hours were adequately documented and supported by timesheets.”<sup>22</sup>

The final audit report further describes the Controller’s view that the County’s claims for regular salaries and benefits were excessive as follows:

[Claimant] allocated costs during both fiscal years using a time-and-motion study that has no correlation to actual costs incurred during the audit period. The allocation methodology resulted in 104% of FY 1997-98 and 73% of FY 1998-99 departmental direct salaries being charged to the mandated cost claims. The department’s allocation methodology is excessive when considering that a large percentage of the department’s activities relates to activities other than the increased costs of the absentee voting process; e.g., voter registration, finding polling locations, and counting regular votes.

The actual costs claimed for direct salaries by the county in FY 1997-98 were \$627,177; however, actual departmental direct salaries for this period were only \$602,206. Of the \$627,177 claimed, \$615,450 was unsupported. The allowable costs, totaling \$11,727, represent overtime salary costs incurred by the county. The overtime hours were adequately documented and supported by timesheets.

The actual costs claimed for direct salaries by the county in FY 1998-99 were \$453,365, yet the actual departmental direct salaries for this period were \$618,413. Of the \$453,365 claimed, \$443,045 was unsupported. The allowable costs, totaling \$10,320, represent overtime salary costs incurred by the county. The overtime hours were adequately documented and supported by timesheets.

On February 28, 2001, after the Controller’s Draft Audit Report was issued denying all regular salaries and benefits, the County sent a letter to the Controller proposing to determine the costs during the years in question by using actual numbers recorded on time sheets for the *Absentee Ballot* program during a six-month time period from July 2000 to December 2000. The County’s letter states:

The Riverside County Office of the Registrar of Voters began detailing time sheet hours associated with processing absentee ballot program costs in July 2000; therefore, six months of actual time charges were available to estimate direct time costs for the two years in dispute by extrapolating the percent of time expendable on the program. Approval was obtained for the extrapolated method from a January 29, 2001 extension request submitted to your office. As a result of the approved method, we calculated the absentee ballot labor cost based on a 20% ratio of total labor cost applied to the program (5,097 hours charged to the program from July – December 2000 compared to 24,960 total office hours worked). This ratio was then multiplied by regular time and benefits paid for both FY 1997-1998 and 1998-99, to arrive at the amount applicable only to the absentee ballot program. Adjustments were made to the claims for offsetting revenue received by the County and the number of ballots as presented in

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<sup>22</sup> Exhibit B, Final Audit Report, page 321.

Findings 2 and 3, respectively, below. All other absentee ballot costs were specifically designated for the program and are supported by documentation.<sup>23</sup>

According to the Controller, the County then recommended that \$551,723 (rather than the filed claimed amount of \$1,548,120) be accepted for fiscal year 1997-1998 and \$525,036 (rather than the filed claimed amount of \$973,776) be accepted for fiscal year 1998-1999.<sup>24</sup>

On April 25, 2001 representatives of the County and the State Controller met. According to the State Controller, the County proposed that the first six months of fiscal year 2000-2001 was representative of the level of effort for fiscal year 2000-2001 and the audit period (FY 1997-98 and FY 1998-99), and proposed the following calculation using the extrapolation method that was accepted by the Controller's Office.

... [T]he county estimated that approximately 12,114 hours were spent in FY 1997-98 and FY 1998-99. Time records maintained for the 12 biweekly payroll periods from July through December 2000 documented that 5,591 hours were spent on absentee ballots. That period represented only 12 of the 26 biweekly payroll periods. The county projected the hours to the entire fiscal year to arrive at 12,144 hours. The county stated that the number of permanent employees assigned to the duties of absentee ballot processing would not change significantly from period to period, regardless of the number of absentee ballots processed. Based on representation from the county, the SCO staff accepted the estimated hours of 12,114 for use in calculating salaries and wages for FY 1997-98 and FY 1998-99. (Inadvertently, the figure of 12,144 hours was used in the calculation.)<sup>25</sup>

The State Controller issued its final audit report on May 29, 2001, and adjusted its findings, reducing the amounts originally determined to be excessive or unreasonable. According to the final audit report, the Controller's Office allowed the County to use the extrapolated cost method for determining regular salary and benefit costs for this program for fiscal years 1997-1998 and 1998-1999. The audit report further states that the "SCO reviewed and offered changes to the county's extrapolation, which reduced the disallowed costs and were agreed to by the county." The allowed salary and benefit costs for fiscal year 1997-1998 were \$566,850, and for 1998-1999, \$436,737.

After the final audit report was issued, the Controller's Office met on multiple occasions with county representatives to discuss the County's response to the final report. Based on these meetings and additional review by the State Controller, it found that the representations made by the county during the meeting on April 25, 2001, were not accurate, but support the reasonableness of the Controller's audit findings:

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<sup>23</sup> Exhibit B, page 333.

<sup>24</sup> Exhibit D, State Controller's response to incorrect reduction claim for fiscal years 1997-1998 and 1998-1999, dated October 15, 2003, page 649.

<sup>25</sup> *Id.*, pages 649-650.

The county represented that hours spent on actual absentee ballots cast for the 12 biweekly payroll periods from July through December 2000 would be representative of the period of January through June 2001, which resulted in the 12,144 hours used in the final calculations. In fact, the absentee ballot hours accumulated during the 12 biweekly payroll periods included the July 25, 2000, Special Vacancy Election and the November 7, 2000, Consolidated General Election (Presidential Election). These elections accounted for 1,954 and 114,669 absentee ballots, respectively, totaling 116,623 of the total 135,885 absentee ballots cast during FY 2000-01.

The county's extrapolated annual hours should have been the total absentee ballot hours for the 12 biweekly payroll periods, divided by the total absentee ballots cast during the 12 biweekly payroll periods, multiplied by the total absentee ballots cast during FY 2000-01. Extrapolated hours for FY 2000-01 should have been 6,514 hours ( $5,591 \div 116,623 \times 135,885 = 6,514$  hours). This figure is based on 135,885 absentee ballots cast. Based on 163,244 absentee ballots cast in FY 1997-98 and 98,689 in FY 1998-99, the projected hours should have been 7,836 for FY 1997-98 and 4,737 for FY 1998-99.

Furthermore, based on information made available subsequent to the issuance of the final audit report, the number of minutes per absentee ballot is approximately 2.88 rather than the 13.75 claimed by the county using the 1988 time and motion study. This number was calculated by dividing the 6,514 hours by the 135,885 absentee ballots cast in FY 2000-01, and converting that number to minutes (multiply by 60).

The information made available by the county on November 21, 2002, and March 10, 2003, supports the reasonableness of the amount presented in the audit report. For FY 1997-98, the SCO allowed \$566,850 in costs, yet the information made available by the county after the issuance of the final report supported only \$506,551. For FY 1998-99, the SCO allowed \$436,737 in costs, yet the information made available by the county after the issuance of the final report supported only \$328,585.<sup>26</sup>

## **II. Positions of the Parties**

### **A. The County**

The County of Riverside contends that the State Controller's Office incorrectly reduced its claims for reimbursement. For fiscal year 1996-1997, the County is seeking reimbursement for \$914,002 claimed in salaries and benefits and argues that this amount was incorrectly reduced for the following reasons:

- The adjustment for overtime costs based on the Controller's "underground regulatory policy" of not allowing reimbursement for overtime, is arbitrary and capricious since overtime was allowed by the Controller's Office for fiscal years 1997-1998 and 1998-1999.

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<sup>26</sup> Exhibit D, page 650.

- The Controller’s Office cannot require documentation of a time study it previously approved in a field audit when the time study was approved and more than five years have elapsed since the time study was conducted.
- The audit was not completed within the statutory time frame required pursuant to Government Code section 17558.5.

The County also argues that the reductions made to the 1997-1998 and 1998-1999 reimbursement claims are not legally correct. Although the extrapolated methodology eventually used by the County to support its claim for salaries and benefits for regular hours worked in fiscal years 1997-1998 and 1998-1999 was offered in an effort to retain reimbursement on some labor costs, the County is seeking full reimbursement for the amounts claimed in the reimbursement claims (\$981,270 and \$537,039).

The County argues that the use of the prior time study of 1988 should be allowed to support the claims for fiscal years 1997-1998 and 1998-1999. The County continued to file claims using the prior time study following 1988, and their claims were approved and paid by the Controller until the time of the field audit for this claim. At no time was the County made aware that documentation for the original time study was necessary to support the claims. The time study had been previously approved by the Controller in a prior audit, and the fact that the original time documentation was not available should not operate to the detriment of the County. The Controller’s Office is only required to keep documentation for five years. The claimant should not be under any greater burden for record retention.

The County further contends that the Controller’s Office cannot unilaterally alter the calculations of the County’s extrapolation method used in fiscal year 2000-2001 for estimating time and determining absentee ballot costs for the fiscal years in question without explanation or rationale in its final audit and work papers.

### **B. State Controller’s Office**

The State Controller’s Office argues that it properly reduced the salaries and benefits claimed by the County for fiscal year 1996-1997. The Controller’s Office argues that the County did not provide supporting documentation, such as time sheets, payroll summaries, or detailed documentation to support the time it takes to perform the mandate. In addition, the Controller’s Office will accept a time study for costs when analyzed and evaluated with the activities for the fiscal year claimed. Additionally, the Controller’s Office did not allow overtime costs since overtime was authorized at the discretion of the County. Finally, the State Controller’s Office argues that its audit of the 1996-1997 reimbursement claim was timely.<sup>27</sup>

The State Controller’s Office further contends that the County’s reimbursement claims for 1997-1998 and 1998-1999 were excessive and unreasonable, and not supported by documentation. The Controller’s Office argues that the 1988 time and motion study, which is based on an estimate of 13.75 minutes per ballot, is not supported by any documentation of the minutes claimed. In addition, the County was unable to reconcile the application of the time study to the amounts claimed during the audit period. The Controller’s Office used the County’s study of actual time later conducted in 2000 to partially allow reimbursement for salaries and benefits.

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<sup>27</sup> Exhibit C, response from the State Controller’s Office, page 619.

The Controller's Office states that its audit reductions are further supported by information received from the County after the final audit report was issued that showed that it took approximately 2.88 minutes, rather than 13.75 minutes, to process each absentee ballot. Finally, overtime costs that were supported by documentation were allowed.

On January 9, 2012, the State Controller's Office filed comments on the draft staff analysis with respect to the conclusions in the draft that the fiscal year 1996-1997 reimbursement claim for regular salaries and benefits, and overtime salaries were incorrectly reduced to \$0. The State Controller's Office now states that overtime salaries should be reimbursable and that it has recalculated the claim for overtime salaries. It has also recalculated the claim for regular salaries and benefits to allow reimbursement based on the same methodology used to audit the fiscal year 1997-1998 and 1998-1999 claims. The Controller's letter states the following:

In response to the draft staff analysis, the SCO has recalculated reimbursable costs using a methodology discussed in the SCO's response to the county's IRC filed for FY 1997-98 and FY 1998-99 ... As a result, the SCO recommends that an allowance of \$517,555 rather than \$305,725 be reinstated, an increase of \$211,830. We recalculated the allowable costs based on the actual time documented by the county for a 12-biweekly payroll period in FY 2000-01. This information was provided to the SCO after the issuance of the SCO's May 29, 2001 final audit report for FY 1997-98 and FY 1998-99.

Based on the recalculation, we recommend allowance of \$631,291 in total costs of absentee ballots cast, consisting of \$95,746 in salaries, \$35,043 in benefits, \$32,794 in overtime, \$354,835 in services and supplies, and \$112,873 in indirect costs. We recalculated salaries based on 7,035 annual hours from the county's FY 2000-01 data. We used the county's productive hourly rate of \$13.61, benefit rate of 36.6%, indirect costs rate of 69%, and supported overtime salaries.

We believe that supported overtime salaries should be reimbursable. Therefore, we allowed actual overtime salaries at the overtime rate of 150% of actual straight hourly rate of \$11.78, totaling \$17.67 an hour, rather than \$19.29 used by the county. We excluded benefits as such costs are not applicable to overtime salaries.

We then divided the total costs of absentee ballots cast of \$631,291 by the total ballots cast of 146,555 for FY 1996-97 and applied that number to reimbursable absentee ballots for FY 1996-97 of 120,151, resulting in \$517,555 in reimbursable costs.

### **III. Discussion**

Government Code section 17561(b) authorizes the State Controller's Office to audit reimbursement claims and to reduce any claim for reimbursement of state-mandated costs that the State Controller's Office determines is excessive or unreasonable. Government Code section 12410 further requires the Controller to:

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

Although the Controller's Office is required to follow the parameters and guidelines when auditing a claim for mandate reimbursement, the Controller has broad discretion in its audit and determination of what is properly reimbursable. Government Code section 12410 provides in relevant part:

Whenever, in [the Controller's] opinion, the audit provided for by [Government Code section 925 et seq.] is not adequate, the Controller *may make such field or other audit* of any claim or disbursement of state money *as may be appropriate to such determination.* (Italics added.)

The Controller's Office exercised discretion in the audits of the County's claims in this case. The County contends in its incorrect reduction claims, however, that the Controller's actions are arbitrary and amount to an abuse of discretion. The County is correct that the Commission must determine in this case whether the Controller's audit decisions 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>28</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "<sup>29</sup>

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the County.<sup>30</sup> As more fully discussed in the analysis below, two sets of parameters and guidelines govern these reimbursement claims, both of which require that costs claimed be supported by documentation maintained by the claimant. The documentation described in the parameters and guidelines to support salary costs include employee time records, worksheets, calendars, and declarations.

In addition, this claim presents issues of law, requiring the interpretation of the Commission's parameters and guidelines and whether the Controller's audit of the County's 1996-1997 reimbursement claim was timely pursuant to Government Code section 17558(a). The Controller's legal conclusions with respect to these issues are reviewed de novo, or independent of the Controller's legal conclusions.<sup>31</sup>

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<sup>28</sup> *Johnston v. Sonoma County Agricultural* (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>29</sup> *American Bd. of Cosmetic Surgery, Inc, supra*, 162 Cal.App.4th at pgs. 547-548.

<sup>30</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>31</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1810.

If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.7 of the Commission's regulations requires the Commission to send the statement of decision to the State Controller's Office and request that the costs in the claim be reinstated.

For the reasons below, the Commission finds that the reductions made by the Controller's Office to the County's fiscal year 1997-1998 and 1998-1999 reimbursement claims following the field audit were reasonable, supported by the documents in the record, and do not amount to an abuse of discretion. Thus, the Commission denies the incorrect reduction claim for those fiscal years.

However, the reduction made to the County's 1996-1997 reimbursement claim for all costs claimed for salaries and benefits of County employees is arbitrary and capricious. The Commission partially approves the incorrect reduction claim for fiscal year 1996-1997 as specified below.

**A. Reductions made by the Controller's Office to the 1997-1998 and 1998-1999 reimbursement claims were reasonable, supported by evidence in the record and, thus, the incorrect reduction claim should be denied for those fiscal years.**

The County contends that the State Controller's Office incorrectly reduced its claims for regular salaries and benefits and is seeking reimbursement for all costs claimed based on the 1988 time study that the County states was previously approved by the Controller in 1991 and is representative of the costs incurred in fiscal years 1997-1998 and 1998-1999. The Controller's Office argues that the 1988 time study, which was based on an estimate of 13.75 minutes per ballot, is not supported by any documentation of the actual time spent by County employees on the program in fiscal years 1997-1998 and 1998-1999, is excessive and unreasonable given the County's overall budget, and thus cannot be used to support the hours claimed by the County.

For the reasons below, the Commission finds that the Controller's audit of the County's claims was reasonable and does not amount to an abuse of discretion.

There are two sets of parameters and guidelines that govern the claims in this dispute. The County's reimbursement claims for fiscal years 1997-1998 and 1998-1999 are governed by the parameters and guidelines for *Absentee Ballots* that were amended by the Commission on December 18, 1997, which require claimants to maintain source documentation supporting the claim for salary costs. The source documentation "may include, but are not limited to," employee time cards and/or cost allocation reports and declarations. Section V of the parameters and guidelines on "claim preparation" states the following:

Each claim for reimbursement pursuant to this mandate must be timely filed and provide documentation in support of the reimbursement claimed for this mandate. Claim detail should include the following:

**C. Salaries and Benefits**

Claimed reimbursement for employee costs should be supported by name, position, productive hourly rate, hours worked, fringe benefits amount, and a brief description of assigned unit and function relative to the mandate.

The source documents required to be maintained by the claimant may include, but are not limited to, employee time cards and/or cost allocation reports.

Section VI, Supporting Data, describes the source documents that support a claim for salary costs to include employee time records, worksheets, calendars, declarations, etc. That section states the following:

For auditing purposes, all costs claimed shall be traceable to source documents (e.g. employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs. All documentation in support of claimed costs shall be made available to the State Controller or his/her agent, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).<sup>32</sup>

While the parameters and guidelines do not require “contemporaneous” source documentation to support the costs claimed for salaries, such as time sheets prepared at or near the time the actual work was performed, they do require some form of documentation that represents the time spent on the program for the fiscal years in question.

The County admits that it does not have time sheets or payroll records for fiscal years 1997-1998 and 1998-1999 to support the actual time spent on the program in those years. Instead, the County suggests that the 1988 time study is representative of the years in question.

The Commission finds, however, that the evidence in the record strongly supports the Controller’s conclusion that the costs claimed by the County during the audit period, based on the 1988 time study, are excessive and unreasonable.

For fiscal year 1997-1998, the County claimed 43,328 hours for processing 163,244 absentee ballots by five county employees, exclusive of temporary help hired to work on the mandated program.<sup>33</sup> For fiscal year 1998-1999, the County claimed 33,718 hours for processing 98,689 absentee ballots by six county employees, exclusive of temporary help. Based on the County’s calculation, each employee worked an average of 8,666 hours during fiscal year 1997-1998 and 5,620 hours during fiscal year 1998-1999.<sup>34</sup>

The Controller’s audit report shows that these hours, which were based on the County’s 1988 time study, are overstated and have no correlation to the actual costs incurred during the audit period. The hours claimed result in 104% of the County’s fiscal year 1997-1998 direct salaries for the department and 73% of the fiscal year 1998-1999 direct salaries for the department being charged to this one mandate. The hours are excessive when considering that a large percentage of the County’s activities relate to other election activities. The Controller’s finding is as follows:

[The County] allocated costs during both fiscal years using a time-and-motion study that has no correlation to actual costs incurred during the audit period. The allocation methodology resulted in 104% of FY 1997-98 and 73% of FY 1998-99 departmental direct salaries being charged to the mandated cost claims. The

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<sup>32</sup> Exhibit H.

<sup>33</sup> Exhibit B, page 233.

<sup>34</sup> Exhibit B, page 285.

department's allocation methodology is excessive when considering that a large percentage of the department's activities relates to activities other than the increased costs of the absentee voting process; e.g., voter registration, finding polling locations, and counting regular votes.

The actual costs claimed for direct salaries by the county in FY 1997-98 were \$627,177; however, actual departmental direct salaries for this period were only \$602,206. Of the \$627,177 claimed, \$615,450 was unsupported. The allowable costs, totaling \$11,727, represent overtime salary costs incurred by the county. The overtime hours were adequately documented and supported by timesheets.

The actual costs claimed for direct salaries by the county in FY 1998-99 were \$453,365, yet the actual departmental direct salaries for this period were \$618,413. Of the \$453,365 claimed, \$443,045 was unsupported. The allowable costs, totaling \$10,320, represent overtime salary costs incurred by the county. The overtime hours were adequately documented and supported by timesheets.<sup>35</sup>

The County has not disputed the Controller's findings. In fact, the County states in its incorrect reduction claim that it agreed that a current time and motion study should be performed.<sup>36</sup> After the draft audit report was released, the County performed an analysis of the *Absentee Ballot* costs for 12 payroll periods from July through December 2000 and extrapolated those actual hours to the fiscal years in question. The County's February 28, 2001 letter states the following:

The Riverside County Office of the Registrar of Voters began detailing time sheet hours associated with processing absentee ballot program costs in July 2000; therefore, six months of actual time charges were available to estimate direct time costs for the two years in dispute by extrapolating the percent of time expendable on the program. Approval was obtained for the extrapolated method from a January 29, 2001 extension requested submitted to your office. As a result of the approved method, we calculated the absentee ballot labor cost based on a 20% ratio of total labor cost applied to the program (5,097 hours charged to the program from July – December 2000 compared to 24,960 total office hours worked). This ratio was then multiplied by regular time and benefits paid for both FY 1997-1998 and 1998-99, to arrive at the amount applicable only to the absentee ballot program. Adjustments were made to the claims for offsetting revenue received by the County and the number of ballots as presented in Findings 2 and 3, respectively, below. All other absentee ballot costs were specifically designated for the program and are supported by documentation.<sup>37</sup>

According to the Controller, the County then recommended that \$551,723 (rather than the filed claimed amount of \$1,548,120) be accepted for fiscal year 1997-1998 and \$525,036

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<sup>35</sup> Exhibit B, pages 321-325; see also, Exhibit G, Tab 3 to the State Controller's Office response to the request for additional information.

<sup>36</sup> Exhibit B, Incorrect reduction claim for fiscal years 1997-1998 and 1998-1999, page 219, 233.

<sup>37</sup> Exhibit B, pages 321-325.

(rather than the filed claimed amount of \$973,776) be accepted for fiscal year 1998-1999.<sup>38</sup>

On April 25, 2001 representatives of the County and the State Controller met. According to the State Controller:

The County proposed that the first six months of FY 2000-01 were representative of the level of effort for FY 2000-01 and the audit period (FY 1997-98 and FY 1998-99). The County proposed two calculations:

- In the response to the draft report, dated February 28, 2001, the county recommended that 20.86% – the percentage of hours relating to the absentee ballots from the 12 biweekly payroll periods from July through December 2000 to total departmental hours during the same time period – be applied to the audit period. However, the county used 20.4% in FY 1997-98 and 23.7% in FY 1998-99, based on a calculation it made of positions. When calculating the total cost of additional absentee ballots, the county did not deduct overtime paid during the period, included fringe benefit rates in excess of what was claimed and supported, and did not adjust for the change in number of additional absentee ballots or the change in indirect costs. The county concurred that it made errors in calculating the rate.
- Subsequently, the county recommended an alternative calculation. The county estimated that approximately 12,114 hours were spent in FY 1997-98 and FY 1998-99. Time records maintained for the 12 biweekly payroll periods from July through December 2000 documented that 5,591 hours were spent on absentee ballots. That period represented only 12 of the 26 biweekly payroll periods. The county projected the hours to the entire fiscal year to arrive at 12,144 hours. The county stated that the number of permanent employees assigned to the duties of absentee ballot processing would not change significantly from period to period, regardless of the number of absentee ballots processed. Based on representation from the county, the SCO staff accepted the estimated hours of 12,114 for use in calculating salaries and wages for FY 1997-98 and FY 1998-99. (Inadvertently, the figure of 12,144 hours was used in the calculation.)<sup>39</sup>

The State Controller issued its final audit report on May 29, 2001, and adjusted its findings, reducing the amounts originally determined to be excessive or unreasonable. The final audit report reflects the Controller's calculation of the County's salaries and wages based on the County's second proposal that 12,114 hours spent on the program is representative of the time spent on the *Absentee Ballots* program for fiscal years 1997-1998 and 1998-1999. The Controller's Office then used a weighted average productive

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<sup>38</sup> Exhibit D, State Controller's Response to incorrect reduction claim for fiscal years 1997-1998 and 1998-1999, dated October 15, 2003, page 649.

<sup>39</sup> *Ibid.*

hourly rate calculated by the County on its claim to determine the reimbursable costs for the program.

Moreover, the amounts allowed by the Controller are reasonable, given the subsequent information provided by the County after the final audit report was released. The Controller's Office explains that representations made by the County during the meeting on April 25, 2001, which provided the basis of the Controller's final audit findings, were actually inaccurate. The Controller's Office states the following:

The county represented that hours spent on actual absentee ballots cast for the 12 biweekly payroll periods from July through December 2000 would be representative of the period of January through June 2001, which resulted in the 12,144 hours used in the final calculations. In fact, the absentee ballot hours accumulated during the 12 biweekly payroll periods included the July 25, 2000, Special Vacancy Election and the November 7, 2000, Consolidated General Election (Presidential Election). These elections accounted for 1,954 and 114,669 absentee ballots, respectively, totaling 116,623 of the total 135,885 absentee ballots cast during FY 2000-01.

The county's extrapolated annual hours should have been the total absentee ballot hours for the 12 biweekly payroll periods, divided by the total absentee ballots cast during the 12 biweekly payroll periods, multiplied by the total absentee ballots cast during FY 2000-01. Extrapolated hours for FY 2000-01 should have been 6,514 hours ( $5,591 \div 116,623 \times 135,885 = 6,514$  hours). This figure is based on 135,885 absentee ballots cast. Based on 163,244 absentee ballots cast in FY 1997-98 and 98,689 in FY 1998-99, the projected hours should have been 7,836 for FY 1997-98 and 4,737 for FY 1998-99.

Furthermore, based on information made available subsequent to the issuance of the final audit report, the number of minutes per absentee ballot is approximately 2.88 rather than the 13.75 claimed by the county using the 1988 time and motion study. This number was calculated by dividing the 6,514 hours by the 135,885 absentee ballots cast in FY 2000-01, and converting that number to minutes (multiply by 60).

The information made available by the county on November 21, 2002, and March 10, 2003, supports the reasonableness of the amount presented in the audit report. For FY 1997-98, the SCO allowed \$566,850 in costs, yet the information made available by the county after the issuance of the final report supported only \$506,551. For FY 1998-99, the SCO allowed \$436,737 in costs, yet the information made available by the county after the issuance of the final report supported only \$328,585.

The final audit report was not adjusted even though the information received by the Controller's Office supports a lower reimbursable amount than what was allowed. The claimant has filed no argument or evidence disputing these numbers.

Therefore, the Commission finds that the Controller's reduction of the County's claims for reimbursement for salary and benefit costs incurred in fiscal years 1997-1998 and 1998-1999 for

this program is reasonable and supported by evidence in the record. There is no evidence that the Controller's Office abused its discretion in performing the audit for these fiscal years.

Accordingly, the Commission denies the County's incorrect reduction claim for fiscal years 1997-1998 and 1998-1999.

**B. The Controller's audit of the County's fiscal year 1996-1997 reimbursement claim was timely.**

The County argues that the State Controller's Office failed to complete its audit of the County's 1996-1997 reimbursement claim in a timely fashion pursuant to Government Code section 17558.5. The County states that:

The audit was not completed within the statutory time frame required, and is supported by documentation from the field audit of fiscal years 1997-1998 and 1998-1999 which was not commenced until February of 2000, beyond the statutory time to review fiscal year 1996-97."<sup>40</sup>

The County explains its argument in a letter dated September 27, 2000 to the State Controller's Office:

Upon further review of our 1996-1997 Absentee Ballot reimbursement claim, it appears the audit period for this claim expired prior to the issuance of your adjustment letter, dated August 7, 2000.

As you know, Senate Bill 11 of 1995 amended Government Code section 17558.5 related to the State's audit of reimbursement claims. That section went into effect on July 1, 1996. Specifically, Section 17558.5(a) states, "A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim."

Since our County filed this claim on November 30, 1997, the audit period should have expired at the end of calendar year 1999. We are therefore requesting that you restore the \$914,002 adjustment you previously made to this claim.<sup>41</sup>

Thus, the County takes the position that the audit must be completed and the claimant notified of the results no later than two years after the end of the calendar year in which the reimbursement claim was filed. In this case, the County's reimbursement claim was filed on November 30, 1997 and, thus, the County argues that the Controller's audit had to be completed by December 31, 1999. However, the adjustment letter was issued on August 7, 2000 (eight months after the alleged expiration of the audit period), and a re-review of the desk audit was conducted on June 18, 2001 (a year and a half after the alleged expiration of the audit period) –

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<sup>40</sup> Exhibit A, incorrect reduction claim for fiscal year 1996-1997, page 5.

<sup>41</sup> Exhibit A, page 35.

dates beyond the time allowed by Government Code section 17558.5(a). On this basis, the County seeks full reimbursement of the costs claimed for salaries and benefits.

The Controller's Office contends that Government Code section 17558.5(a) requires only that the audit be initiated within the two year time limit and that there is no requirement to complete the review within the two-year period. The Controller's Office explains the timing issues in this case as follows:

On February 10, 1999, SCO staff contacted Carol Hazeltine of DMG-Maximus informing the claim preparer and the County of Riverside that the Division of Accounting and Reporting was in the process of reviewing the 1996-97 claim and requested information be submitted to the SCO within three weeks. The SCO did not receive any of the requested documentation until March 8, 1999 and May 24, 1999. The SCO clearly began the review within the two-year audit period. The SCO audit for the 1997-98 and 1998-99 fiscal years was conducted independently from the desk review performed by the Division of Accounting and Reporting. The SCO did not issue a remittance advice since the desk review resulted in a finding that the County was overpaid \$914,002 and no further payments were to be made. However, the adjustment notification letter was issued at the time of the next payment for the program for the 1996-97 fiscal year.<sup>42</sup>

The version of Government Code section 17558.5(a), in effect at the relevant time states:

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter *is subject to audit* by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller *to initiate an audit* shall commence to run from the date of the initial payment of the claim. (Stats. 1995, c. 945 (SB 11), emphasis added.)

The County filed its reimbursement claim on November 30, 1997. Pursuant to section 17558.5, the County was "subject to audit by the Controller" until December 31, 1999, two years after the end of the calendar year in which the reimbursement claim was filed. The County argues that the "subject to audit" language in section 17558.5 means that the State Controller's Office must *complete* its audit within the two-year timeframe.

The Commission disagrees with the County's interpretation of section 17558.5(a) and finds that the statute requires only that the Controller begin the audit within the two-year time period after the calendar year in which the reimbursement claim was filed in cases where funds have been appropriated for the program for the fiscal year. There was no requirement in statute at that time to complete the audit within the two-year time period.

Section 17558.5(a) is not a model of clarity. However, a careful reading of the language of the first and second sentences reveals that the primary difference between the two sentences is the

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<sup>42</sup> Exhibit C, response from the State Controller's Office to the incorrect reduction claim for 1996-1997, page 620.

appropriation of funds for the program for the fiscal year. The second sentence clearly refers to situations where funds *are not* appropriated for the fiscal year. It can reasonably be inferred from the context that the first sentence, in contrast, refers to situations where funds *are* appropriated. The use of the word “however” to begin the second sentence signals the contrast between these two situations -when funds are appropriated versus when they are not.

There is nothing about the structure or language of the two sentences to suggest that the Legislature intended any other substantive differences between these two parallel sentences. In each situation, when there is an appropriation (first sentence) and when there is not (second sentence), the State Controller’s Office must perform some activity within a two-year period. The use in the second sentence of the phrase “the time for the Controller to initiate an audit” refers back to “the time” defined in the first sentence, namely two years. Similarly, the use of the word “initiate” in the second sentence refers to what the Controller is required to do within the two-year period. Read in this way, the two sentences are parallel. In the first sentence, when there is an appropriation, the time to initiate an audit is two years. In the second sentence, when there is no appropriation, the time to initiate an audit is also two years. But that date is triggered from the date of the initial payment of the claim and not on the filing of the claim.

In 2002, the relevant language of section 17558.5 (a), was amended to read as follows (added text is underlined):

A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than . . . . (Stats. 2002, ch. 1128 (AB 2834).)<sup>43</sup>

There is nothing in the legislation or the legislative history of AB 2834 to suggest that the underlined language was intended to do anything other than to clarify the language. Pursuant to the rules of statutory construction, a clarification of existing law may be applied to transactions predating its enactment without being considered a retroactive application of the law. The clarified law is merely a statement of what the law has always been.<sup>44</sup> This interpretation is also consistent with how the California Supreme Court has interpreted statutes of limitation; “[l]imitations statutes ordinarily establish the period in which an action must be initiated.”<sup>45</sup>

The record shows that the audit began by February 10, 1999, before the end of the two-year period, when the Controller’s Office requested additional documentation from the County. The County does not dispute this date.

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<sup>43</sup> Today, the statute requires that the audit be initiated within three years after the reimbursement claim is filed or last amended, and must be completed no later than two years after the date the audit is commenced. (Amended by Stats. 2004, ch. 313 (AB 2224).)

<sup>44</sup> *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 471.

<sup>45</sup> *Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 323.

Accordingly, the Commission finds that the audit was timely because it was initiated within two years after December 31, 1997, the end of the calendar year in which the reimbursement claim was filed.<sup>46</sup>

**C. However, the reduction of all costs claimed for salaries and benefits of County employees in fiscal year 1996-1997 is arbitrary and capricious, and not supported by evidence in the record.**

For fiscal year 1996-1997, the Controller's Office reduced the salaries and benefits and overtime costs claimed in the amount \$914,002 to \$0 following a desk audit. For the reasons below, the Commission finds that the Controller's reduction of the 1996-1997 reimbursement claim to \$0 is arbitrary and capricious.

Claim for Regular Salaries and Benefits

The County claimed \$866,108 in salaries and benefits of its employees working regular hours on the mandated program for fiscal year 1996-1997. To arrive at this number, the County estimated that it took 46,525 hours to comply with the program. This estimate was based on the 1988 time study that estimated 14.25 minutes to process one absentee ballot.

The Controller's Office reduced these costs to \$0 on the ground that the claim was not supported by appropriate documentation. The Controller's response to the County's incorrect reduction claim explains the reduction was made because the County did not provide timesheets or payroll summaries to support the hours worked as follows:

The county claimed 46,525 hours ... for the processing of absentee ballots, exclusive of overtime. In accordance with this obsolete undocumented time study the County charged time based upon estimated hourly time allowance that was established in 1991. The County did not provide timesheets or payroll summaries as requested to support that these hours were actually worked and at what rate of pay. While the County did provide some documentation it failed to show how the time per ballot was derived.<sup>47</sup>

The Controller's re-review of the desk audit on June 18, 2001 further explains that the claim was not supported by "time log sheets or other time worked backup material not available in folder."

The County admits it does not have time sheets or records reflecting actual time and costs incurred for fiscal year 1996-1997. However, the parameters and guidelines do not require those types of contemporaneous supporting documents.

The parameters and guidelines adopted by the Board of Control on August 12, 1982 apply to the County's reimbursement claim for fiscal year 1996-1997. Although the parameters and guidelines require that costs claimed be traceable to source documents or worksheets and that timesheets "should be retained" for audit purposes, there is no requirement in the parameters and guidelines that the claimant maintain contemporaneous documentation, such as timesheets or

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<sup>46</sup> This finding is consistent with the Commission's recent decision adopted on July 28, 2011, in the *Emergency Procedures, Earthquakes, and Disaster* incorrect reduction claim (01-4232-I-03).

<sup>47</sup> Exhibit C, pages 618-619.

payroll records created at or near the time the mandate was performed.<sup>48, 49</sup> The Commission did amend the parameters and guidelines for the *Absentee Ballot* program on February 27, 2003 to require eligible claimants to retain contemporaneous source documents to support their reimbursement claims, but that amendment does not apply to the County's reimbursement claim for fiscal year 1996-1997.<sup>50</sup> Thus, the Controller's Office cannot require the County to have time sheets or other contemporaneous documents.

The Controller's Office rejected the use of the County's 1988 time study to support the estimate of the time taken nine years later on the program, and that may be reasonable since there is no evidence that the time identified in that study accurately represents the program in fiscal year 1996-1997. In addition, the field audit conducted one year later showed that the 1988 estimate of time resulted in the County claiming 104% of the total department costs for a fiscal year. The

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<sup>48</sup> Exhibit A, parameters and guidelines adopted August 12, 1982, page 18. Section 5 of the parameters and guidelines describe "supportive data" as "source documents or worksheets" as follows:

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that indicate evidence of and the validity of such costs. The documents must be kept on file and made available on the request of the State Controller.

The parameters and guidelines further state (at p. 19) that time records and other documents necessary to support the costs included in the claim "should be retained" by the claimant for audit purposes:

Description of Activity

Copies of invoices, time records, and other documents necessary to support the costs included in this claim should be retained by the claimant for audit purposes. If costs cannot be supported, the costs reported will be disallowed by the Controller's Office. The selection of appropriate data is the responsibility of the claimant

<sup>49</sup> In *Clovis Unified School Dist. v. John Chiang, as State Controller* (2010) 188 Cal.App.4th 794, 803-804, the court rejected the Controller's argument that the requirement to retain source documents is the same requirement as the contemporaneous source document rule. In its analysis, the court noted that before the requirement was included in parameters and guidelines to retain contemporaneous source document, claimants used employee declarations, certifications, and average time accountings to document the time spent on a mandated program. Under the contemporaneous source document requirement, those approaches are no longer valid source documents.

<sup>50</sup> Exhibit H, parameters and guidelines amendment adopted February 27, 2003. The language now states the following: Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. *A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question.* Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts. (Emphasis added.)

County also admitted in the incorrect reduction claim for fiscal years 1997-1998 that it agreed a current time and motion study should be performed.<sup>51</sup> Thus, the Commission finds that the rejection of the County's use of 1988 time study to estimate the time spent on the mandate in fiscal year 1996-1997 is reasonable.

However, for the reasons below, the Commission finds that the decision to reduce the County's claim to \$0 is arbitrary and unreasonable. The County did submit documentation to the Controller's Office identifying the elections held and the number of absentee ballots cast (146,555) in the County in fiscal year 1996-1997. This document is evidence that the County spent some time and incurred some costs to comply with the mandate in fiscal year 1996-1997. Similar documentation was submitted by the County to support its reimbursement claims for fiscal years 1997-1998 and 1998-1999 and, for those claims, the Controller's Office allowed partial reimbursement by determining the time spent on the mandate in those years based on a six-month time study conducted in the year 2000. The Controller's Office did not use the same approach for fiscal year 1996-1997 and, instead, reduced the claim to \$0.

The Controller's Office has not explained the different approaches taken on the County's reimbursement claims and there is no evidence in the record to suggest that the reimbursement claim for fiscal year 1996-1997 should be treated differently.

Thus, the Commission finds that the Controller's reduction of the County's reimbursement claim for regular salaries and benefits to \$0 is arbitrary and capricious and, therefore incorrect.<sup>52</sup> This conclusion is further supported by the note in the record from an employee of the Controller's Office which states that:

1. Ray reduced the claim by all labor costs of \$868,108 since they were based on an old time study and were not supported. SCO Audits of fiscal years 97/98 and 98/99 also reduced the labor costs for this same reason.
2. SCO Audits adjusted their disallowance based on a current analysis by the county. (Letter dated 2/28/01.) The analysis allowed 20% of the total labor costs to be allocated to the Absentee Ballot program.
3. Ray reduced all overtime costs of \$48,894 as not authorized. SCO Audits allowed overtime if it was supported. It appears the overtime disallowed could be reinstated to the amount of \$42,312. (A list of names and hours was supplied, but not time sheets).
4. Recommendation: I believe we should try to negotiate with the county based on the 20% ratio that the SCO Audits accepted and also restore the overtime.<sup>53</sup>

Although the reduction to \$0 is incorrect, there is not enough evidence in the record to calculate the time spent by the County on the program in fiscal year 1996-1997. As indicated above, the

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<sup>51</sup> Exhibit B, Incorrect reduction claim for fiscal years 1997-1998 and 1998-1999, page 224.

<sup>52</sup> *Madonna v. County of San Luis Obispo* (1974) 39 Cal.App.3d 57, 62. This case defines arbitrary and capricious as follows: "However, conduct not supported by a fair or substantial reason may be categorized as arbitrary and capricious. The courts often characterize unsubstantiated determinations as arbitrary."

<sup>53</sup> Exhibit A, page 103.

approach taken by the Controller's Office when auditing the County's reimbursement claims for 1997-1998 and 1998-1999 was a reasonable approach for those fiscal years. The Controller's Office accepted a calculation of actual time for a six-month period in the year 2000 as a reasonable estimate of time it would have taken the County in fiscal years 1997-1998 and 1998-1999 to perform the mandate. A similar approach may provide a reasonable representation of the time spent on the program for fiscal year 1996-1997. The Controller's Office has the authority and discretion to audit the records and documents of the County and determine that issue.

Therefore, pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, the Commission hereby remands the 1996-1997 reimbursement claim back to the State Controller's Office for further review to determine the reasonable costs incurred in regular salaries and benefits on the mandated program for fiscal year 1996-1997.

In response to the draft staff analysis, the Controller's Office filed comments on January 9, 2012, indicating that it has recalculated the County's claim for regular salaries and benefits in fiscal year 1996-1997 based on the methodology used in the audit of the County's fiscal year 1997-1998 and 1998-1999 claims. There is no evidence in the record, however, that payment has been made to the County as a result of this recalculation, and the County has not withdrawn its incorrect reduction claim. Nor has the County challenged the Controller's recalculation and audit methodology outlined in the Controller's letter of January 9, 2012, for the fiscal year 1996-1997 costs. Thus, the Commission does not have jurisdiction at this stage pursuant to Government Code section 17551 to determine if the recalculation is reasonable and, therefore, correct. Any further challenge by the County to the 1996-1997 reimbursement claim following remand to the State Controller's Office and its subsequent review and recalculation of the claim may be resolved with the filing a new incorrect reduction claim.

#### Overtime Costs

In fiscal year 1996-1997, the County claimed \$48,894.00 in overtime costs to perform the mandate. The Controller's Office reduced overtime costs based on an "informal policy" that overtime is not reimbursable since the costs are incurred at the discretion of the agency.

The Commission finds that the reduction of overtime costs is incorrect. Article XIII B, section 6 of the California Constitution requires reimbursement for any increased cost incurred as a result of a state-mandated program. Neither the statement of decision, nor the parameters and guidelines prohibit the reimbursement of overtime costs. Thus, the Controller's policy is not supported by the mandate decisions in this case.

Moreover, the County contends that it would be impossible to comply with this elections mandate without the use of overtime. The County states the following:

During our conversation, you brought up an issue of overtime related to this program, specifically stating that overtime was not eligible. There is no way the County could process absentee ballots using regular staff and regular pay. Generally speaking, overtime should not be admissible, but this should exclude *election day* costs. It would be next to impossible to complete ballot processing without the use of overtime. (Emphasis in original.)<sup>54</sup>

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<sup>54</sup> Exhibit A, page 100.

To support its claim the County submitted a document that identifies the names of the employees that worked overtime on the mandate, the dates and hours of overtime worked, and the pay rate for each employee that worked overtime on the program in fiscal year 1996-1997.<sup>55</sup>

This documentation is the same type of documentation the County provided to support its reimbursement claims for fiscal years 1997-1998 and 1998-1999. In those years, the Controller's Office allowed reimbursement to the extent the costs were supported by the documentation. There is no evidence in the record to suggest that the County's claim for fiscal year 1996-1997 should be treated differently.

Thus, the Commission finds that the Controller's reduction of overtime costs to \$0 is arbitrary and capricious, not supported by the parameters and guidelines or documentation in the record and, is therefore incorrect.

Pursuant to Government Code section 17551(d) and section 1185.7 of the Commission's regulations, the Commission hereby remands the reimbursement claim back to the State Controller's Office for further review of the County's overtime costs and documentation showing the costs claimed, and allow reimbursement to the extent the claim for overtime costs is supported by the documentation in the record for fiscal year 1996-1997.

In response to the draft staff analysis, the Controller's Office filed comments on January 9, 2012, agreeing that "supported overtime salaries should be reimbursable." The Controller's Office recalculated the County's claim for overtime costs for fiscal year 1996-1997. There is no evidence in the record, however, that payment has been made to the County as a result of this recalculation, and the County has not withdrawn its incorrect reduction claim for the overtime costs claimed. Nor has the County challenged the Controller's recalculation and audit methodology outlined in the Controller's letter of January 9, 2012, for the fiscal year 1996-1997 overtime costs. Thus, the Commission does not have jurisdiction at this stage pursuant to Government Code section 17551 to determine if the recalculation is reasonable and, therefore, correct. Any further challenge by the County to the 1996-1997 reimbursement claim following remand to the State Controller's Office and its subsequent review and recalculation of the claim may be resolved with the filing a new incorrect reduction claim.

#### **IV. Conclusion**

The Commission concludes that the State Controller's Office properly reduced the County's fiscal year 1997-1998 and 1998-1999 reimbursement claims in the amounts of \$981,270 and \$537,039, respectively.

However, the Controller's reduction of the County's reimbursement claim for the costs of regular and overtime salaries in fiscal year 1996-1997 to \$0 was arbitrary and capricious and, therefore, incorrect. The Commission hereby remands the 1996-1997 reimbursement claim to the State Controller's Office for further review to determine and allow reimbursement as follows:

- For the reasonable costs incurred in regular salaries and benefits on the mandated program for fiscal year 1996-1997; and
- For the costs of overtime salaries and benefits to the extent the costs are properly documented.

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<sup>55</sup> Exhibit A, pages 154-172.