



BETTY T. YEE
California State Controller

December 15, 2017

David Carmany, City Manager
City of La Puente
15900 E. Main Street
La Puente, CA 91744

Dear Mr. Carmany:

The State Controller's Office (SCO) performed a desk review of costs claimed by the City of La Puente for the legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program (Los Angeles Regional Water Quality Control Board, Order No. 01-182, Permit CAS004001, Part 4F5c3) for the period of July 1, 2002, through June 30, 2012. We conducted our review under the authority of Government Code (GC) sections 12410, 17558.5, and 17561. Our review was limited to verifying the funding sources used to pay for the mandated activities.

The city claimed \$202,214 for the mandated program. Our review found that all costs claimed are unallowable because the city did not offset the restricted revenues that were used to fund the mandated activities, as described in the attached Summary of Program Costs and Review Results. The State made no payments to the city. The SCO's Local Government Programs and Services Division will send the city a separate notification letter to reduce claimed costs to zero within 30 days from the issuance date of this report.

We issued a draft letter report on November 14, 2017. You responded by letter dated November 20, 2017 (Attachment 3), disagreeing with the review results. This final report includes the city's response.

This final letter report contains an adjustment to costs claimed by the city. If you disagree with the review finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (Commission). Pursuant to Section 1185, subdivision (c), of the Commission's regulations (*California Code of Regulations*, Title 3), an IRC challenging this adjustment must be filed with the Commission no later than three years following the date of this report, regardless of whether this report is subsequently supplemented, superseded, or otherwise amended. You may obtain IRC information on the Commission's website at www.csm.ca.gov/forms/IRCFORM.pdf.

If you have any questions, please contact Jim L. Spano, CPA, Assistant Division Chief, by telephone at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/rg

Attachments

RE: S18-MCC-9001

cc: Robbeyn Bird, CPA, Director of Administrative Services
City of La Puente
John DiMario, Director of Development Services
City of La Puente
Joann Gitmed, Finance Manager
City of La Puente
Chris Hill, Principal Program Budget Analyst
Local Government Unit, California Department of Finance
Steven Pavlov, Finance Budget Analyst
Local Government Unit, California Department of Finance
Anita Dagan, Manager
Local Government Programs and Services Division
California State Controller's Office

Attachment 1— Summary of Program Costs July 1, 2002, through June 30, 2012

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2002, through June 30, 2003</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,029	21,029	-
Less offsetting revenues and reimbursements	-	(21,029)	(21,029)
Total program costs	<u>\$ 21,029</u>	-	<u>\$ (21,029)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2003, through June 30, 2004</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,029	21,029	-
Less offsetting revenues and reimbursements	-	(21,029)	(21,029)
Total program costs	<u>\$ 21,029</u>	-	<u>\$ (21,029)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2004, through June 30, 2005</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,029	21,029	-
Less offsetting revenues and reimbursements	-	(21,029)	(21,029)
Total program costs	<u>\$ 21,029</u>	-	<u>\$ (21,029)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2005, through June 30, 2006</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,029	21,029	-
Less offsetting revenues and reimbursements	-	(21,029)	(21,029)
Total program costs	<u>\$ 21,029</u>	-	<u>\$ (21,029)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2006, through June 30, 2007</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,029	21,029	-
Less offsetting revenues and reimbursements	-	(21,029)	(21,029)
Total program costs	<u>\$ 21,029</u>	-	<u>\$ (21,029)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2007, through June 30, 2008</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,029	21,029	-
Less offsetting revenues and reimbursements	-	(21,029)	(21,029)
Total program costs	<u>\$ 21,029</u>	-	<u>\$ (21,029)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2008, through June 30, 2009</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.74	\$ 6.74	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,029	21,029	-
Less offsetting revenues and reimbursements	-	(21,029)	(21,029)
Total program costs	<u>\$ 21,029</u>	-	<u>\$ (21,029)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2009, through June 30, 2010</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.78	\$ 6.78	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,154	21,154	-
Less offsetting revenues and reimbursements	-	(21,154)	(21,154)
Total program costs	<u>\$ 21,154</u>	-	<u>\$ (21,154)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2010, through June 30, 2011</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 6.80	\$ 6.80	\$ -
Number of transit receptacles	× 60	× 60	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	21,216	21,216	-
Less offsetting revenues and reimbursements	-	(21,216)	(21,216)
Total program costs	<u>\$ 21,216</u>	-	<u>\$ (21,216)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>July 1, 2011, through June 30, 2012</u>			
Ongoing activities:			
Reasonable reimbursement methodology factor	\$ 7.15	\$ 7.15	\$ -
Number of transit receptacles	× 34	× 34	× -
Annual number of trash collections	× 52	× 52	× -
Total ongoing costs	12,641	12,641	-
Less offsetting revenues and reimbursements	-	(12,641)	(12,641)
Total program costs	<u>\$ 12,641</u>	-	<u>\$ (12,641)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	
<u>Summary: July 1, 2002, through June 30, 2012</u>			
Total ongoing costs	\$ 202,214	\$ 202,214	\$ -
Less offsetting revenues and reimbursements	-	(202,214)	(202,214)
Total program costs	<u>\$ 202,214</u>	-	<u>\$ (202,214)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ -</u>	

¹ See Attachment 2, Review Results.

Attachment 2— Review Results July 1, 2002, through June 30, 2012

BACKGROUND—

The California Regional Water Quality Control Board, Los Angeles Region (Board), adopted a 2001 storm water permit (Permit CAS004001) that requires local jurisdictions to:

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

On July 31, 2009, the Commission determined that Part 4F5c3 of the permit imposes a state mandate reimbursable under GC section 17561 and adopted the Statement of Decision. The Commission further clarified that each local agency subject to the permit and not subject to a trash total maximum daily load is entitled to reimbursement.

The Commission also determined that the period of reimbursement for the mandated activities begins July 1, 2002, and continues until a new National Pollutant Discharge Elimination System (NPDES) permit issued by the Board is adopted. On November 8, 2012, the Board adopted a new NPDES permit, Order No. R4-2012-0175, which became effective on December 28, 2012.

The program's parameters and guidelines establish the state mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on March 24, 2011. In compliance with GC section 17558, the SCO issues claiming instructions to assist local agencies, school districts, and community college districts in claiming mandated program reimbursable costs.

**FINDING—
Unreported offsetting
revenues and
reimbursements**

The city did not offset any revenues or reimbursements on its claim forms for the period of July 1, 2002, through June 30, 2012. We found that the city 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.

The city claimed reimbursement for ongoing transit stop maintenance costs that were posted to the Proposition A Fund, Fund No. 210, a Special Revenue fund type. Special Revenue funds are used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes. As the city used 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.

Proposition A is a half-cent sales tax measure approved by Los Angeles County voters in 1980 to finance transit programs. Twenty-five percent of the sales tax revenue is dedicated to the Local Return Program to be used

by cities for the development and/or improvement of public transit and related transportation infrastructure.

The Proposition A and Proposition C Local Return Guidelines, section II. Project Eligibility, identify reimbursement for ongoing trash receptacle maintenance as follows:

2. BUS STOP IMPROVEMENTS AND MAINTENANCE (Codes 150, 160, & 170)

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

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- Trash receptacles
- Curb cuts
- Concrete of electrical work directly associated with the above items

Section VIII. (Offsetting Revenues and Reimbursements) of the parameters and guidelines states:

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

Recommendation

No recommendation is applicable for this finding, as the period of reimbursement expired on December 27, 2012.

City's Response

FINDING 1) Unreported offsetting revenues and reimbursements

The SCO states that because the City used Proposition A Local Return Funds (Prop A) to pay for the ongoing maintenance of the transit stop trash receptacles as mandated, that we are therefore not entitled to the reimbursement.

The City disagrees. First, the claiming instruction state that “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 of the claim.” First, the City did not generate any revenues from maintaining trash receptacles at transit stops are required by the mandate. Moreover, the City cannot impose a tax or fee to the users’ of public transit to cover the cost of maintenance of the trash receptacles.

Second, instructions state that “reimbursement for this mandate received from any federal, State, or non-local sources shall be identified and deducted from this claim.” The City did not receive any monies for this specific program. The funds used to pay for the mandated (Prop A funds) were general in nature and the City did not have to use them for this specific purpose.

The funding source used (Prop A funds) was not specifically “for this mandate” but could have been used for other city projects had the State not mandated our immediate compliance. Other projects could have been funded in lieu of the maintenance of trash receptacles at the mandated locations.

Prop A transportation funds are essentially local funds generated from County sales tax which could have been used for various transportation priorities we had such as filling pot holes, fixing curbs, and supplementing our transit program. Trash receptacle maintenance would not have been required had the State not mandated it. The reimbursement the City is seeking will repay the Prop A funds that were used to cover the mandated costs the City incurred.

We believe that prior discussions regarding the use of specific versus general funding from other sources was addressed in a prior State Mandated Program (e.g. Two-Way Traffic Control Signal Communications [CSM-4504]). Although the City could have purchased the required new signal controllers with a variety of funding sources, such as gas tax, federal grants, etc., the Commission on State Mandates (“Commission”) in its March 27, 1998 Statement of Decision made a distinction between dedicated versus discretionary funds received. Specifically, on page 17 of the Statement of Decision, it states, “there is no mandate requiring local agencies to use the gas tax funds specifically for the two-way communications program. Rather, local agencies have the discretion to prioritize the projects to be funded.”

Because the City would not have used the funds for this State Mandated program for installing and maintaining trash receptacles, we disagree with the SCO’s assertion that the City should have deducted Prop A funds received for this program claim because those funds could have been used for other city purposes and priorities.

Therefore, we request that the reductions to our claim be restored and the City should be reimbursed for costs incurred to comply with this mandate.

SCO’s Comments

The finding and recommendation remain unchanged.

Both the Commission’s parameters and guidelines and the SCO’s claiming instructions require the identification and reporting of offsetting revenues and reimbursements. Section VIII. of the parameters and guidelines states that reimbursement from federal, state, and non-local sources shall be identified and deducted from the claim. We believe that the Proposition A Local Return funds used to pay for the purchase of the transit stop trash receptacles are restricted funds that should be reported and offset against claimed costs.

The Commission's Statement of Decision for the Municipal Storm Water and Urban Runoff Discharges Program (03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21) references the *County of Fresno v. State of California* decision where the court stated:

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. Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require the 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*.

As such, we 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. 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.

We disagree with the city's comment that the Proposition A Local Return funds "were general in nature and the City did not have to use them for this specific purpose." The Proposition A Local Return funds are restricted solely to the development and/or improvement of public transit services, which is not "general in nature."

We also disagree with the city's comment that it will "repay the Prop A funds that were used to cover the mandated costs the City incurred." Proposition A Local Return guidelines state that Local Return funds may be advanced only for "federal, state, or local grant funding." A mandate payment is a subvention of funds to reimburse local governments for the costs of the mandated program, which is entirely different from a grant.

The city states that there is a difference between dedicated and discretionary funding, as determined by the Commission in the Two-Way Traffic Control Signal Communications mandated program. The city references the Commission's statement, which says "there is no mandate requiring local agencies to use gas tax funds specifically for the two-way communications program. Rather, local agencies have the discretion to prioritize the projects to be funded." However, the city fails to reference the following paragraph, where the Commission concludes that "the funds received by local agencies from the gas tax *may* be used to fund the cost of obtaining the standard two-way traffic signal communications software. *Accordingly, reimbursement is not required to the extent local agencies use their gas tax proceeds to fund the test claim legislation*" [emphasis added]. The same principle applies to the Municipal Storm Water and Urban Runoff Discharges Program. The city chose, at its discretion, to use the Proposition A Local Return funds to pay for the purchase of the transit stop trash receptacles. As such, reimbursement for mandated costs is not required to the extent that the city used its Proposition A Local Return funds to fund mandated activities.

**Attachment 3—
City's Response to Draft Letter Report**



City of La Puente

15900 E. Main Street La Puente, CA 91744-4719 Telephone (626) 855-1500 Fax (626) 961-4626 www.lapuentecity.org

November 20, 2017

Mr. Jim L. Spano, CPA
Assistant Division Chief at Division of Audits
State Controller's Office
P.O. Box 942850
Sacramento, CA 94250-5874

Dear Mr. Spano,

Thank you for the opportunity to provide comments on the State Controller's Office (SCO) November 14, 2017 Draft Audit Report of the Municipal Stormwater and Urban Runoff Discharges Program for the period of July 1, 2002 through June 30, 2012. I have attached our detailed responses to the SCO's findings.

The Municipal Stormwater and Urban Runoff Discharges Program is a legislatively mandated program established by the California Environmental Protection Agency and the State Water Resources Control Board (SWRCB) to comply with the Federal Clean Water Act (as amended). The City firmly believes that the costs associated with the maintenance of the trash receptacles at transit shelters were a State Mandated cost and that the advance of Proposition A Local Return Funds pending reimbursement by the State was not only appropriate, but consistent with the claiming instructions, Statement of Decision, and the Parameters and Guidelines adopted by the Commission on State Mandates.

In light of this, the City respectfully requests that the SCO reconsider Finding #1 in its Draft Audit Report and, as deemed appropriate, reimburse the City for its mandated costs. Should you have any questions or require additional clarification, please contact me at (626) 855-1500 or our consultant Annette Chinn at (916) 939-7901.

Sincerely,

Mr. David N. Carmany
City Manager

FINDING 1) Unreported offsetting revenues and reimbursements

- A. The SCO states that because the City used Proposition A Local Return Funds (Prop A) to pay for the ongoing maintenance of transit stop trash receptacles as mandated, that we are therefore not entitled to the reimbursement.

The City disagrees. First, the claiming instructions state that "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 of the claim."

First, the City did not generate any revenues from maintaining trash receptacles at transit stops as required by the mandate. Moreover, the City cannot impose a tax or fee to the users' of public transit to cover the cost of maintenance of the trash receptacles.

Second, instructions state that "reimbursement for this mandate received from any federal, State, or non-local sources shall be identified and deducted from this claim."

The City did not receive any monies for this specific program. The funds used to pay for the mandate (Prop A funds) were general in nature and the City did not have to use them for this specific purpose.

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We believe that prior decisions regarding the use of specific versus general funding from other sources was addressed in a prior State Mandated program (e.g. Two-Way Traffic Control Signal Communications [CSM-4504]). Although the City could have purchased the required new signal controllers with a variety of funding sources, such as gas tax, federal grants, etc., the Commission on State Mandates ("Commission") in its March 27, 1998 Statement of Decision made a distinction between dedicated versus discretionary funds received. Specifically, on page 17 of the Statement of Decision, it states, "there is no mandate requiring local agencies to use the gas tax funds specifically for the two-way

communications program. Rather, local agencies have the discretion to prioritize the projects to be funded.”

Because the City would not have used the funds for this State Mandated program for installing and maintaining trash receptacles, we disagree with the SCO’s assertion that the City should have deducted Prop A funds received for this program claim because those funds could have and could be used for other city purposes and priorities.

Therefore, we request that the reductions to our claim be restored and the City should be reimbursed for costs incurred to comply with this mandate.