

CITY OF WILDOMAR

Audit Report

SPECIAL GAS TAX STREET IMPROVEMENT FUND

July 1, 2008, through June 30, 2012

TRAFFIC CONGESTION RELIEF FUND ALLOCATIONS

July 1, 2008, through June 30, 2011



JOHN CHIANG
California State Controller

July 2014



JOHN CHIANG
California State Controller

July 15, 2014

The Honorable Marsha Swanson
Mayor of the City of Wildomar
23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595

Dear Mayor Swanson:

The State Controller's Office audited the City of Wildomar's Special Gas Tax Street Improvement Fund for the period of July 1, 2008, through June 30, 2012. We also audited the Traffic Congestion Relief Fund allocations recorded in the Special Gas Tax Street Improvement Fund for the period of July 1, 2008, through June 30, 2011.

Our audit found that the city accounted for and expended its Special Gas Tax Street Improvement Fund in compliance with requirements, except that it understated the fund balance by \$139,305 as of June 30, 2012. The city understated the fund balance primarily because it charged the fund with an ineligible payment for its share of the National Pollutant Discharge Elimination System stormwater discharge permit requirements costs.

If you have any questions, please contact Steven Mar, Chief, Local Government Audits Bureau, at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/mh

cc: Rochelle Johnson, Acting Accounting Manager
City of Wildomar
Gary Norquist, City Manager
City of Wildomar

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Audit Report

Summary

The State Controller's Office audited the City of Wildomar's Special Gas Tax Street Improvement Fund for the period of July 1, 2008, through June 30, 2012. We also audited the Traffic Congestion Relief Fund (TCRF) allocations recorded in the Special Gas Tax Street Improvement Fund for the period of July 1, 2008, through June 30, 2011.

Our audit found that the city accounted for and expended its Special Gas Tax Street Improvement Fund in compliance with requirements, except that the city understated the fund balance by \$139,305 as of June 30, 2012. The city understated the fund balance primarily because it charged the fund with an ineligible payment for its share of the National Pollutant Discharge Elimination System stormwater discharge permit requirement costs.

Background

The City of Wildomar was incorporated on July 1, 2008. The State apportions funds monthly from the highway users tax account in the transportation tax fund to cities and counties for the construction, maintenance, and operation of local streets and roads. The highway users taxes derive from state taxes on the sale of motor vehicle fuels. In accordance with Article XIX of the California Constitution and Streets and Highways Code section 2101, a city must deposit all apportionments of highway users taxes in its Special Gas Tax Street Improvement Fund. A city must expend gas tax funds only for street-related purposes. We conducted our audit of the city's Special Gas Tax Street Improvement Fund under the authority of Government Code section 12410.

Government Code section 14556.5 created a Traffic Congestion Relief Fund in the State Treasury for allocating funds quarterly to cities and counties for street or road maintenance, reconstruction, and storm damage repair. Cities must deposit funds received into the city account designated for the receipt of state funds allocated for transportation purposes. The city recorded its TCRF allocations in the Special Gas Tax Street Improvement Fund. We conducted our audit of the city's TCRF allocations under the authority of Revenue and Taxation Code section 7104.

Objective, Scope, and Methodology

Our audit objective was to determine whether the city accounted for and expended the Special Gas Tax Street Improvement Fund in compliance with Article XIX of the California Constitution, the Streets and Highways Code, and Revenue and Taxation Code section 7104. To meet the audit objective, we determined whether the city:

- Properly deposited highway users tax apportionments and other appropriate revenues in the Special Gas Tax Street Improvement Fund;
- Expended funds exclusively for authorized street-related purposes; and
- Made available unexpended funds for future expenditures.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We did not audit the city's financial statements. We limited our audit scope to planning and performing the audit procedures necessary to obtain reasonable assurance that the city accounted for and expended the Special Gas Tax Street Improvement Fund in accordance with the requirements of the Streets and Highways Code and Revenue and Taxation Code section 7104. Accordingly, we examined transactions, on a test basis, to determine whether the city expended funds for street purposes. We considered the city's internal controls only to the extent necessary to plan the audit.

Conclusion

Our audit found that the City of Wildomar accounted for and expended its Special Gas Tax Street Improvement Fund and TCRF allocations in compliance with Article XIX of the California Constitution and the Streets and Highways Code for the period of July 1, 2008, through June 30, 2012, except as noted in Schedule 1 and described in the Finding and Recommendation section of this report. The finding required an adjustment of \$139,305 to the city's accounting records.

Our audit also found that the city accounted for and expended its TCRF allocations recorded in the Special Gas Tax Street Improvement Fund in compliance with Article XIX of the California Constitution, the Streets and Highways Code, and Revenue and Taxation Code section 7104 for the period of July 1, 2008, through June 30, 2011.

Views of Responsible Official

We issued a draft audit report on February 20, 2014. Matt Bennett, P.E., Deputy City Engineer, responded by letter dated March 6, 2014, disagreeing with the audit results. The city's response is included in this final audit report as an attachment.

Restricted Use

This report is intended for the information and use of the City of Wildomar's management and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

July 15, 2014

**Schedule 1—
Reconciliation of Fund Balance
July 1, 2011, through June 30, 2012**

	Special Gas Tax Street Improvement Fund <u>Highway Users Tax Allocation</u> ^{1,2}
Beginning fund balance per city	\$ 1,007,198
Revenues	<u>1,115,405</u>
Total funds available	2,122,603
Expenditures	<u>(1,162,252)</u>
Ending fund balance per city	<u>960,351</u>
SCO adjustment: ³	
Finding 1—ineligible expenditure	<u>139,305</u>
Ending fund balance per audit	<u>\$ 1,099,656</u>

¹ The city receives apportionments from the State highway users tax account, pursuant to Streets and Highways Code sections 2103, 2105, 2106, 2107, and 2107.5. The basis of the apportionments varies, but the money may be used for any street purpose. Streets and Highways Code section 2107.5 restricts apportionments to administration and engineering expenditures, except for cities with populations of fewer than 10,000 inhabitants. Those cities may use the funds for rights-of-way and for the construction of street systems. The audit period was July 1, 2008, through June 30, 2012; however, this schedule includes only the period of July 1, 2011, through June 30, 2012.

² Government Code section 14556.5 created a Traffic Congestion Relief Fund (TCRF) in the State Treasury for allocating funds quarterly to cities and counties for street and road maintenance, reconstruction, and storm damage repair. The TCRF allocations were recorded in the Special Gas Tax Street Improvement Fund. The audit period was July 1, 2008, through June 30, 2011.

³ See the Finding and Recommendation section.

Finding and Recommendation

FINDING— Ineligible expenditures

During fiscal year (FY) 2011-12, the city charged an ineligible payment for its share of the National Pollutant Discharge Elimination System stormwater discharge permit requirements costs of \$139,305 to the Special Gas Tax Improvement Fund.

Street and Highways Code section 2101 restricts the use of highway users tax apportionments to street-related engineering, administration, construction, maintenance and fixed asset acquisition.

Recommendation

The city should reimburse the Special Gas Tax Street Improvement Fund \$139,305. In addition, we recommend that the city establish policies and procedures to ensure that gas tax monies be used for costs specified in the Streets and Highway Code.

City's Response

The City of Wildomar received the Special Gas Tax Street Improvement Fund draft audit report, dated February 20, 2014. As directed by this draft audit report, the City of Wildomar is providing our comments and further justification for our use of the Special Gas Tax Street Improvement Fund. We wish to have our Oct. 24th, 2013 letter and this letter reviewed and included in the final report.

The City of Wildomar National Pollutant Discharge Elimination System (NPDES) permit lies with the State of California, the NPDES program summary can be found in our Oct. 24th, 2012. The disputed charge to the fund has been noted as a flood control permit expenditure. The expenditure was not a permit fee; rather it is associated with the implementation agreement between the City and the County as the Principal Permittee. The City of Wildomar is one of several Cities, Co-Permittees, that enter into this agreement with the County so that County can provide various professional services and support to the Co-Permittees. The core activities that the County provides are development and transportation project guidance training, preparation and maintenance of the approved Drainage Area Management Plan, monitoring and reporting, technical support, and coordination for regional program elements. As is the case with the City of Wildomar and the other Co-permitted Cities, to provide all of these core activities with City staff is not cost effective or likely to provide compliance with our NPDES permit.

The monitoring and reporting program run by the County on behalf of the Co-Permittees produces the discharge data captured at various points in City streets, catch basins, culverts, and storm drain system (also known as the Municipal Separate Storm Sewer – MS4) for the required reporting. The data captured shared with the State is used in various ways to determine permit compliance as well as establish numeric action levels, determine pollutants of concern and loading, identify impaired waters, and to set total maximum daily loads (TMDL's). These various components are evaluated and reported to the State and the Co-permittees are obligated to maintain the existing MS4,

react, plan, train, develop and construct the City's MS4 in a compliant manner. The City must also review and approve private development to ensure it meets their NPDES permit requirements, since the primary discharge point for these developments is onto City streets and into the catch basins and culverts (MS4).

The County's training program training is provided to address the current permit requirements and to instruct the Co-Permittees on future NPDES mitigation measure requirements that must accompany all significant private and public improvements and the MS4 retrofit opportunities and requirements.

The City's entire drainage is comprised of streets, storm drain, culverts, and basins. The City of Wildomar's drainage system (MS4) is primarily comprised of public streets, which means our future capital improvement projects associated with these roads are subject to various mitigation measures, retrofit requirements, reporting and monitoring, will require additional right of way for water quality treatment areas and hydromodification. All this has its cost as noted in our original justification letter, the balance between costs and benefits is a difficult storm water program implementation issue, but there needs to be a recognition of the trade-offs associated with resource allocation decisions given limited resources. While there is no doubt that there are definite benefits to improving our State's waters, there is also a certain implementation cost relationship in Wildomar's maintenance and expansion of the City's transportation system driven by the NPDES program requirements.

SCO's Comment

Streets and Highways Code section 2101 restricts the use of highway users tax apportionments to street-related engineering, administration, construction, maintenance and fixed asset acquisition.

Generally accepted government auditing standards require us to base our conclusions on sufficient, competent, and relevant evidence. We requested the city to provide supporting documentation for a \$139,305 payment made to the Riverside County Flood Control and Water Conservation District (District) that was charged to the Special Gas Tax Fund.

We were provided a payment package that included demand for payment; and a letter for the District with an invoice and a co-permittee cost sharing table chart. The total billing was \$146,637 (\$139,305 was charged to the State Gas Tax Fund and \$7,332 was charged to the city's General Fund).

The District's letter states:

In compliance with the Santa Margarita NPDES Permit adopted by the San Diego Regional Water Quality Control Board on November 10, 2011 as Order No. R9-2010-0016 (NPDES No. CAS 0108766) and in accordance with the Implementation Agreement (IA) adopted by the County, District, and Cities of Murrieta, Temecula and Wildomar (Permittees) on January 19,2012, a cost sharing provision between the

Permittees was established. Per the IA, item 3 “Shared Costs” provides for annual cost sharing of estimated regional program costs...

IA, item 3 “Shared Costs” states “Costs for services to be performed in accordance with Sections 2.c., 2.d.,2.e.,and 2.f. of this Agreement shall be shared by the Parties...

IA, item 2.c. “Public Education” states “On behalf of COPERMITTEES, DISTRICT shall conduct public education activities on a regional basis that focus on reducing pollution of urban runoff within the Santa Margarita Region...

IA, item 2.d. “COPERMITTEE Training Program” states” On behalf of COPERMITTEES, and as requested by the COPERMITTEES, DISTRICT shall develop and conduct regional training sessions for COPERMITTEE personnel..

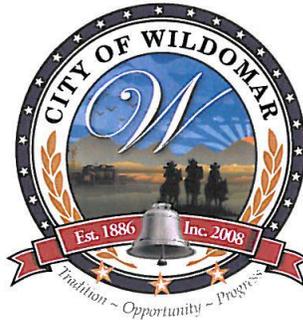
IA,item 2.e. “Monitoring Program: states “On behalf of COPERMITTEES, DISTRICT shall perform sampling of surface water and urban runoff in accordance with the provisions of the NPDES Permit Monitoring and Reporting Program...

IA item 2.f “Consulting Services” states “ In the event District requires the services of a consultant(s) to assist in performing duties conducted on behalf of the COPERMITTES pursuant to section 2 of this Agreement, the cost of said consultant(s) services shall be shared by COPERMITTEES...

We reviewed all of the documents provided by the city and determined that the expenditures of \$139,305 charged to the Special Gas Tax Street Improvement Fund were not street-related expenditures. Therefore, the finding remains as stated because the city failed to comply with Streets and Highways Code section 2101.

**Attachment—
City's Response to
Draft Audit Report**

Marsha Swanson, Mayor
Ben Benoit, Mayor Pro Tem
Bob Cashman, Council Member
Bridgette Moore, Council Member
Timothy Walker, Council Member



March 6, 2014

Steven Mar, Chief
Local Government Audits Bureau
State controller's Office, Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874

RE: City of Wildomar's Special Gas Tax Street Improvement Fund Audit

Dear Mr. Mar,

The City of Wildomar received the Special Gas Tax Street Improvement Fund draft audit report, dated February 20, 2014. As directed by this draft audit report, the City of Wildomar is providing our comments and further justification for our use of the Special Gas Tax Street Improvement Fund. We wish to have our Oct. 24th, 2013 letter and this letter reviewed and included in the final report.

The City of Wildomar National Pollutant Discharge Elimination System (NPDES) permit lies with the State of California, the NPDES program summary can be found in our Oct. 24th, 2013. The disputed charge to the fund has been noted as a flood control permit expenditure. The expenditure was not a permit fee; rather it is associated with the implementation agreement between the City and the County as the Principal Permittee. The City of Wildomar is one of several Cities, Co-Permittees, that enter into this agreement with the County so that County can provide various professional services and support to the Co-Permittees. The core activities that the County provides are development and transportation project guidance training, preparation and maintenance of the approved Drainage Area Management Plan, monitoring and reporting, technical support, and coordination for regional program elements. As is the case with the City of Wildomar and the other Co-permitted Cities, to provide all of these core activities with City staff is not cost effective or likely to provide compliance with our NPDES permit.

The monitoring and reporting program run by the County on behalf of the Co-Permittees produces the discharge data captured at various points in City streets, catch basins, culverts, and storm drain system (also known as the Municipal Separate Storm Sewer – MS4) for the required reporting. The data captured shared with the State is used in various ways to determine permit compliance as well as establish numeric action levels, determine pollutants of concern and loading, identify impaired waters, and to set total maximum daily loads (TMDL's). These various components are evaluated and reported to the State and the Co-Permittees are obligated to maintain the existing MS4, react, plan, train, develop and construct the City's MS4 in a compliant manner. The City must also review and approve private development to ensure it meets their NPDES permit requirements, since the primary discharge point for these developments is onto City streets and into the catch basins and culverts (MS4).

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Please feel free to contact me if you have any questions or need further backup. I can be reached at 951-677-7751 ext. 208 or by e-mail mbennett@cityofwildomar.org.

Sincerely,

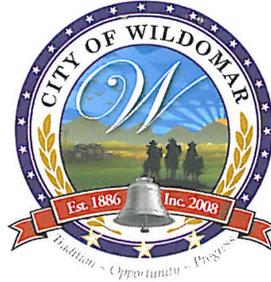


Matt Bennett, P.E.
Deputy City Engineer
City of Wildomar

Enclosures:

City of Wildomar October 24, 2013 Audit Response Letter

Timothy Walker, Mayor
Marsha Swanson, Mayor Pro Tem
Ben Benoit, Council Member
Bob Cashman, Council Member
Bridgette Moore, Council Member



23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595
951.677.7751 Phone
951.698.1463 Fax
www.CityofWildomar.org

Dear Sir,

In response to your request for clarification of the City of Wildomar's Santa Margarita NPDES cost share expenditure, I am providing the following summary of the NPDES program and the justification of this expenditure under the guidelines relating to Gas Tax Expenditures for Cities and Counties.

The federal Clean Water Act establishes the basic structure for regulating discharges of pollutants into the water of the United States. A National Pollutant Discharge Elimination System (NPDES) is required for the discharge of any pollutant or combination of pollutants from the City's Municipal Separate Storm Sewer (MS4) permit specified conditions. The City's "municipal separate storm sewer" is a system of conveyances including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels and storm drains. The federal act allows state governments to administer the NPDES Permit Program instead of the United States Environmental Protection Agency. California's Porter-Cologne Water Quality Control Act administered by the State Water Resources Control Board provides a legal and regulatory framework for water quality control that is more comprehensive than the federal act. Rather than operate separate State and federal programs in California, the State Water Resources Control Board received approval to implement portions of the Clean Water Act that include water quality permitting.

Storm water discharges became subject to the Clean Water Act in 1987, with clear application to state road systems beginning in the early 1990s. Later phases of federal regulation have extended permitting requirements to smaller projects, including smaller transportation projects.

The City of Wildomar maintains, constructs, and permits construction of the roads with drainage systems, its municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains under the permit and guidelines of the City's Municipal Separate Storm Sewer (MS4) permit as required by law.

Activities performed as part of NPDES program

- Illicit discharge and illegal drainage connection monitoring and remediation to protect and safely and effectively manage the capacity of the City's streets, catch basins, and drainage conveyance system (MS4) and to reduce the pollutant loading while maintaining safe travel ways.

- Weekly street sweeping, periodic catch basin cleaning, preventive maintenance of City's inlet/outlet structures and the City's culverts to extend the life of our roadways and drainage conveyance system (MS4).
- Administration and engineering necessary for the program implementation, construction management, and planning for the NPDES program mandated retrofit projects and to address the pollutant discharge restrictions.
- Mitigation measures, retrofitting and rehabilitation of areas of existing development, including landscaping, catch basins, and roadways to convey and manage water quality design flows onsite.
- Reconstruction and realignment of roadways and drainage systems to accommodate NPDES program requirements, such as EPA Green Streets and Low Impact Development (LID) design. EPA Green Streets/ LID opportunities tend to be slanted towards higher rainfall areas. This drives outlet and drainage facilities constructed for roadway safety, stormwater and regulated water quality volumes to be located as close to the road right of way as possible.

The balance between costs and benefits is a difficult storm water program implementation issue, but there needs to be a recognition of the trade-offs associated with resource allocation decisions given limited resources. While there is no doubt that there are definite benefits to improving our State's waters, there is also a certain implementation cost relationship in Wildomar's maintenance and expansion of the City's transportation system driven by the NPDES program requirements.

Please feel free to contact me at 951-677-7751 ext. 208, if you have any questions.

Sincerely,



Matt Bennett, P.E.

Deputy City Engineer

City of Wildomar

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>