PASADENA AREA COMMUNITY COLLEGE DISTRICT

Audit Report

INTEGRATED WASTE MANAGEMENT PROGRAM

Chapter 1116, Statutes of 1992;
and Chapter 764, Statutes of 1999

July 1, 2008, through June 30, 2010

BETTY T. YEE
California State Controller

March 2015

BETTY T. YEE
California State Controller

March 11, 2015

Berlinda Brown, President
Board of Trustees
Pasadena Area Community College District
1570 E. Colorado Blvd. – Room C235
Pasadena, CA 91106-2003

Dear Ms. Brown:

The State Controller's Office audited the costs claimed by the Pasadena Area Community College District for the legislatively mandated Integrated Waste Management Program (Chapter 1116, Statutes of 1992; and Chapter 764, Statutes of 1999) for the period of July 1, 2008, through June 30, 2010.

The district claimed $498,755 for the mandated program. Our audit found that $249,985 is allowable and $248,770 is unallowable. The costs are unallowable because the district claimed unsupported and ineligible costs, misstated indirect costs, and understated offsetting savings. The State made no payments to the district. The State will pay $249,985, contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (Commission). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at the Commission's website at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, by phone at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: Robert Miller, Ph.D., Interim Superintendent-President
Pasadena Area Community College District
Joe Simoneschi, Acting Assistant Superintendent of Business Services
Pasadena Area Community College District
Rueben Smith, Executive Director of Facilities
Pasadena Area Community College District
Diane Mandrafina, Director of Fiscal Services
Pasadena Area Community College District
Chedva Weingart, Controller
Pasadena Area Community College District
Sarah Flores, Facility Services Supervisor
Pasadena Area Community College District
Brigitte Norsworthy, Principal Accountant
Pasadena Area Community College District
Christine Atalig, Specialist
College Finance and Facilities Planning
California Community Colleges Chancellor's Office
Mollie Quasebarth, Principal Program Budget Analyst
Education Systems Unit
California Department of Finance
Mario Rodriguez, Assistant Vice Chancellor
College Finance and Facilities Planning
California Community Colleges Chancellor's Office
Keith Nezaam, Staff Finance Budget Analyst
Education Systems Unit
California Department of Finance
Christian Osmena, Principal Program Budget Analyst
Education Systems Unit
California Department of Finance
Jay Lal, Manager
Division of Accounting and Reporting
State Controller's Office

Contents

Audit Report

Summary 1

Background 1

Objectives, Scope, and Methodology 2

Conclusion 2

Views of Responsible Officials 2

Restricted Use 3

Schedule 1—Summary of Program Costs 4

Schedule 2—Summary of Offsetting Savings Calculations 5

Findings and Recommendations 6

Attachment—District's Response to Draft Audit Report

Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the Pasadena Area Community College District for the legislatively mandated Integrated Waste Management Program (Chapter 1116, Statutes of 1992; and Chapter 764, Statutes of 1999) for the period of July 1, 2008, through June 30, 2010.

The district claimed $498,755 for the mandated program. Our audit found that $249,985 is allowable and $248,770 is unallowable. The costs are unallowable because the district claimed unsupported and ineligible costs, misstated indirect costs, and understated offsetting savings. The State made no payments to the district. The State will pay $249,985, contingent upon available appropriations.

Background

On March 25, 2004, the Commission on State Mandates (Commission) adopted its statement of decision, finding that Public Resources Code sections 40148, 40196.3, 42920-42928; Public Contract Code sections 12167 and 12167.1; and the State Agency Model Integrated Waste Management Plan (February 2000), require new activities which constitute new programs or higher levels of service for community college districts within the meaning of Article XIII B, section 6, of the California Constitution, and impose costs mandated by the State pursuant to Government Code section 17514.

Specifically, the Commission approved the test claim for the increased costs of performing the following specific activities:

- Comply with the model plan (Public Resources Code section 42920(b)(3) and State Agency Model Integrated Waste Management Plan, February, 2000)
- Designate a solid waste reduction and recycling coordinator (Public Resources Code section 42920(c))
- Divert solid waste (Public Resources Code sections 42921 and 42922(i))
- Report to the Board (Public Resources Code sections 42926(a) and 42922(i))
- Submit recycled material reports (Public Contract Code section 12167.1)

The program's parameters and guidelines establish the State mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on March 30, 2005, and last amended them on September 26, 2008. In compliance with Government Code section 17558, the SCO issues claiming instructions to assist local agencies, school districts, and community college districts in claiming mandated-program reimbursable costs.

Objectives, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Integrated Waste Management Program for the period of July 1, 2008, through June 30, 2010.

The objectives of our audit were to determine whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

The legal authority to conduct this audit is provided by Government Code sections 12410, 17558.5, and 17561. We did not audit the district's financial statements. 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 limited our review of the district's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures. Our audit scope did not assess the efficiency or effectiveness of program operations.

To achieve our audit objectives, we performed the following audit procedures:

- Interviewed employees, completed the internal control questionnaire, and performed a walk-through of the cost components of each claim.
- Traced costs claimed to supporting documentation that showed when the costs were incurred, the validity of such costs, and their relationship to mandated activities.

Conclusion

Our audit found instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1), Summary of Offsetting Savings Calculations (Schedule 2), and in the Findings and Recommendations section of this report.

For the audit period, the Pasadena Area Community College District claimed $498,755 for costs of the Integrated Waste Management Program. Our audit found that $249,985 is allowable and $248,770 is unallowable. The State made no payments to the district. The State will pay $249,985, contingent upon available appropriations.

Views of Responsible Officials

We issued a draft audit report on December 23, 2014. Joe W. Simoneschi, Executive Director of Business Services, responded by letter dated January 14, 2015 (Attachment), disagreeing with the audit results. This final audit report includes the district's response.

Restricted Use

This report is solely for the information and use of the Pasadena Area Community College District, the California Community Colleges Chancellor's Office, the California Department of Finance, 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

March 11, 2015

Schedule 1—
Summary of Program Costs
July 1, 2008, through June 30, 2010

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference [1]
July 1, 2008, through June 30, 2009				
Direct costs:				
Salaries and benefits	$ 225,509	$ 127,701	$ (97,808)	Finding 1
Contract services	17,391	—	(17,391)	Finding 2
Total direct costs	242,900	127,701	(115,199)	
Indirect costs	71,487	40,482	(31,005)	Finding 3
Total direct and indirect costs	314,387	168,183	(146,204)	
Less offsetting revenues	(1,508)	(1,508)	—	
Less offsetting savings [2]	—	(23,875)	(23,875)	Finding 4
Total program costs	$ 312,879	142,800	$ (170,079)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 142,800		
July 1, 2009, through June 30, 2010				
Direct costs:				
Salaries and benefits	$ 119,505	$ 104,770	$ (14,735)	Finding 1
Contract services	20,796	—	(20,796)	Finding 2
Total direct costs	140,301	104,770	(35,531)	
Indirect costs	57,888	39,729	(18,159)	Finding 3
Total direct and indirect costs	198,189	144,499	(53,690)	
Less offsetting revenues	(12,313)	(12,313)	—	
Less offsetting savings [2]	—	(25,001)	(25,001)	Finding 4
Total program costs	$ 185,876	107,185	$ (78,691)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 107,185		
Summary: July 1, 2008, through June 30, 2010				
Direct costs:				
Salaries and benefits	$ 345,014	$ 232,471	$ (112,543)	
Contract services	38,187	—	(38,187)	
Total direct costs	383,201	232,471	(150,730)	
Indirect costs	129,375	80,211	(49,164)	
Total direct and indirect costs	512,576	312,682	(199,894)	
Less offsetting revenues	(13,821)	(13,821)	—	
Less offsetting savings	—	(48,876)	(48,876)	
Total program costs	$ 498,755	249,985	$ (248,770)	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		$ 249,985		

[1] See the Findings and Recommendations section.

[2] See Schedule 2, Summary of Offsetting Savings Calculations.

Schedule 2—
Summary of Offsetting Savings Calculations
July 1, 2008, through June 30, 2010

Cost Elements	Offsetting Savings Reported	Offsetting Savings Realized						Audit Adjustment [1]
			July - December		January - June		Total	
July 1, 2008, through June 30, 2009								
Maximum required diversion percentage			50.00%		50.00%			
Actual diversion percentage		÷	54.20%	÷	54.20%			
Allocated diversion percentage			92.25%		92.25%			
Tonnage diverted		×	(244.15)	×	(244.15)			
Statewide average landfill fee per ton		×	$51.00	×	$55.00			
Offsetting savings, FY 2008-09	$ —	$	(11,487)	$	(12,388)	$	(23,875)	$ (23,875)
July 1, 2009, through June 30, 2010								
Maximum required diversion percentage			50.00%		50.00%			
Actual diversion percentage		÷	54.20%	÷	54.20%			
Allocated diversion percentage			92.25%		92.25%			
Tonnage diverted		×	(244.15)	×	(244.15)			
Statewide average landfill fee per ton		×	$55.00	×	$56.00			
Offsetting savings, FY 2009-10	$ —	$	(12,388)	$	(12,613)	$	(25,001)	$ (25,001)
Summary: July 1, 2008, through June 30, 2010	$ —	$	(23,875)	$	(25,001)	$	(48,876)	$ (48,876)

[1] See Finding 4, Findings and Recommendations.

Findings and Recommendations

FINDING 1—Unallowable salaries and benefits

The district claimed $345,014 in salaries and benefits during the audit period. We found that $232,471 is allowable and $112,543 is unallowable. The costs are unallowable because the district claimed costs that were estimated and not supported by sufficient source documentation.

The following table summarizes the salary and benefit audit adjustment for each fiscal year in the audit period:

Fiscal Year	Amount Claimed	Amount Allowable	Audit Adjustment
2008-09	$ 225,509	$ 127,701	$ (97,808)
2009-10	119,505	104,770	(14,735)
Total	$ 345,014	$ 232,471	$ (112,543)

The following table summarizes the salary and benefit audit adjustment by reimbursable component:

Reimbursable Component	Amount Claimed	Amount Allowable	Audit Adjustment
Diversion and Maintenance of Approved Level	$ 339,020	$ 226,477	$ (112,543)
Develop Policies and Procedures	749	749	—
Staff Training	749	749	—
Develop, Implement, and Maintain System	749	749	—
Designation of a Recycling Coordinator	749	749	—
Annual Report	2,998	2,998	—
Total	$ 345,014	$ 232,471	$ (112,543)

Diversion and Maintenance of Approved Level

The district claimed $339,020 in salaries and benefits for the Diversion and Maintenance of Approved Level cost component.

For FY 2008-09, we found that the costs were estimated and not supported by sufficient source documentation. The district provided "Employee Time Record Sheet for Mandated Programs" that were prepared several months after the fiscal year end and not maintained on a contemporaneous basis.

The parameters and guidelines (section IV. Reimbursable Activities) state:

> . . . to be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that shows 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, receipts, and the community college plan approved by the Board.
>
> Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocations reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

For FY 2009-10, the district claimed reimbursement based on the May 2010 time study results. However, the district claimed 4.62 hours spent on non-mandated activities and did not allocate the time spent on diversion activities as required by the mandate.

May 2010 Time Study

In May 2010, the district performed a two-week time study. The time study consisted of time spent by ten custodians, six gardeners, and one power sweep operator. The employees kept a log of all the activities performed throughout the day, including but not limited to stocking supplies, recycling, and picking up litter around the campus. The time study covered twelve working days, because district employees performing the mandated activities do not work on Sundays.

The district determined that the total time devoted to recycling and composting activities was 172.9 cumulative hours over the 12 days. We reviewed the daily logs and determined that only 168.28 hours were spent on mandated activities. We found that 4.62 hours claimed were spent on non-mandated activities, such as mowing the lawn and discussing the time study record-keeping process with the Facilities Supervisor.

FY 2008-09 Allowable Salaries and Benefits

For FY 2008-09, we calculated a daily average of time spent performing mandated activities by employee classification. For example, the time study revealed that custodians spent 109.03 cumulative hours devoted to mandated activities, which is approximately 9.086 hours per day (109.03 total hours ÷ 12 time-studied days), or 0.91 hours per day per custodian (9.086 hours per day ÷ 10 custodians).

The following table summarizes the time study results by employee classification:

Position	(A) Cumulative Hours	(B) Average Hours per Day [(B) = (A) ÷ 12]	(C) Average Hours per Day per Employee [(C) = (B) ÷ number of employees]
10 Custodians	109.03	9.086	0.91
6 Gardeners	46.67	3.889	0.65
1 Power Sweep Operator	12.58	1.048	1.05
			2.61

Next, we determined an allocation of the time study results based on the requirements of the mandated program. Public Resources Code section 42921 requires that 50% of all solid waste be diverted by January 1, 2004. The parameters and guidelines allow districts to be reimbursed for all mandated costs incurred to achieve these levels, without reduction for when they fall short of stated goals but not for amounts that exceed these State-mandated levels.

In 2008, CalRecycle began focusing on "per capita" disposal instead of a "diversion percentage." As a result, CalRecycle stopped requiring community college districts to report the actual amount of tonnage diverted, and the annual reports no longer identify a "diversion percentage." Consequently, the diversion percentage is not available for the period during which the time study was performed (2010). In addition, the district did not provide documentation to support the diversion percentage for 2010. Therefore, we used the 2007 diversion percentage to calculate allowable salaries and benefits.

We applied the allocated time study hours by the number of employees claimed. Using the average productive hourly rates for each employee classifications, we found that $121,707 is allowable for FY 2008-09.

FY 2009-10 Allowable Salaries and Benefits

For FY 2009-10 we used a similar methodology claimed by the district. To determine allowable salaries and benefits, we used the time reported by each employee in the two-week time study, less the hours spent on non-mandated activities. Next, we divided the mandated hours by 80 hours to determine the percentage of time spent on recycling activities. Next, we projected the percentage of time spent on recycling activities to the entire fiscal year using 1,800 annual productive hours. Then, we applied the allocation formula to the projected hours to determine the allocated time study hours. Finally, we applied the allocated time study hours by the claimed productive hourly rate for each employee and found that $104,770 is allowable.

Recommendation

The IWM Program was suspended in the FY 2011-12 through FY 2014-15 Budget Acts. Further, commencing in FY 2012-13, the district elected to participate in a block grant program, pursuant to Government Code section 17581.7, in lieu of filing annual mandated cost claims. If the program becomes active and if the district chooses to opt out of the block grant program, we recommend that the district ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

District's Response

> The FY 2008-09 staff time spent on the mandate was claimed based on employee time record sheets that were prepared after the fiscal year end. From these, the auditor calculated for each category of employee a daily average of time per day spent performing mandated activities by employee classification. This is a logical process, except that the auditor then reduced the average time to the statutory diversion target of 50%. For example, the average hours computed by the auditor for custodians was .91 hours which the auditor reduced to .84 hours based on the 2007 actual diversion of 54.20%. This calculation for the reduction to the statutory target was not presented in the draft audit report, but is located in the "entrance conference findings" document received November 10, 2014.
>
> The FY 2009-10 staff time was claimed based on the May 2010 District time study results. The audit used the results of the time study after excluding a few hours spent on non-mandated activities. The adjustment was principally the result of the reducing the average times to the statutory target amount of 50% from the actual of 54.20%, as was done for the prior year.
>
> The averages per day should not be reduced by the statutory target amount. The staff cannot modify their activities to the target percentage. All recycling trash receptacles have to be emptied regardless of the amount diverted and the same amount of work and time is required for any amount of waste diversion. The allocated reduction to the target amount should be withdrawn.

SCO's Comments

The finding and recommendation remain unchanged.

The district reports to CalRecycle annually the amount of tonnage diverted and disposed. To determine the tonnage amounts to report, the district uses actual disposal weights and hauling slips provided by its trash hauler, salvage totals provided by its salvage company, and the weight-to-volume conversion factors provided by CalRecycle. These annual reports are used to document the district's compliance with the statutory requirement to divert solid waste from landfill disposal or transformation facilities. Based on these reports, the district diverted solid waste beyond what was required by law.

While we recognize the extra effort spent by the district to divert solid waste beyond the statutory requirement, the mandated program is limited to reimbursement for increased costs to perform the reimbursable activities. The parameters and guidelines state "Increased cost is limited to the cost of an activity the claimant is *required to incur* [emphasis added] as a result of the mandate." To the extent that the district incurred costs beyond what is required by the mandated program, there is no legal basis for reimbursement from the State. Reimbursement for this program is associated with diverting at least 50% of all solid waste by January 1, 2004. Our analysis and allocation of allowable costs for the audit period recognized these limitations. In addition, providing reimbursement beyond what is mandated by the State could be considered a gift of public funds, which would be a violation of Article XVI, section 6, of the California State Constitution.

FINDING 2—Unallowable contract services

The district claimed $38,187 in contract services for the audit period. We found that none of the costs claimed are allowable. The costs are unallowable because the district claimed reimbursement for ineligible costs.

The following table summarizes the contract services audit adjustment for each fiscal year in the audit period:

Fiscal Year	Amount Claimed	Amount Allowable	Audit Adjustment
2008-09	$ 17,391	$ —	$ (17,391)
2009-10	20,796	—	(20,796)
Total	$ 38,187	$ —	$ (38,187)

Commercial Waste Services, Inc.

The district claimed $32,815 for Assembly Bill (AB) 939 fees that are associated with the disposal of solid waste.

AB 939 mandated local jurisdictions to meet solid waste diversion goals of 25% by 1995 and 50% by 2000. Public Resources Code 41901 authorizes local agencies to impose fees in amounts sufficient to pay the cost of preparing, adopting, and implementing an integrated waste management (IWM) plan. Public Resources Code 41902 adds that a local agency may directly collect the fees authorized or arrange for the fees to be collected by a solid waste hauler that provides solid waste collection for the city or county.

The City of Los Angeles opted to impose the AB 939 fee on its solid waste hauler, Commercial Waste Services, Inc. Commercial Waste Services, in turn, passed this fee on to the district. For each fiscal year in the audit period, Commercial Waste Services imposed upon the district a 16% fee for each solid waste charge. The more solid waste generated by the district, the higher the AB 939 fee. Once collected, Commercial Waste Services is required to remit the AB 939 fee to the City of Los Angeles. Once received, the City of Los Angeles is required to use the AB 939 fee for recycling within the city jurisdiction.

The AB 939 fee is not a State-mandated cost imposed upon the district. Public Resources Code sections 41901 and 41902 were not pled in the test claim. Further, reimbursement for the IWM program is limited to diversion of solid waste and does not include the cost to dispose of solid waste.

Lighting Resources, LLC

The district claimed $5,372 to recycle lamps with Lighting Resources LLC. Lamps must be properly disposed of because they contain hazardous materials, such as mercury. Hazardous waste cannot be disposed of as ordinary trash. Reimbursement for the mandated program is limited to activities involving the diversion of solid waste, as stated in Public Resources Code section 42921 (b). Further, Public Resources Code section 40191 (b)(1) states that solid waste does not include hazardous waste.

Recommendation

The IWM Program was suspended in the FY 2011-12 through FY 2014-15 Budget Acts. Further, commencing in FY 2012-13, the district elected to participate in a block grant program, pursuant to Government Code section 17581.7, in lieu of filing annual mandated cost claims. If the program becomes active and if the district chooses to opt out of the block grant program, we recommend that the district ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

District's Response

Commercial Waste Services, Inc.

The District claimed $32,815 paid to Commercial Waste Services, Inc., for landfill disposal. These costs were allowed in the previous Integrated Waste Management audit for FY 1999-00 through 2007-08. However, now the Controller has decided that "AB 939" fees are not reimbursable, because Public Resource Code section 41902 authorizes a local agency (city or county) to collect the fees authorized to fund its own IWM state mandate. According to the audit report, the City of Los Angeles imposes a 16% AB 939 fee on the District's solid waste hauler, Commercial Waste Services, Inc., which then charges the District and remits the collected fee to the City of Los Angeles. Note that community colleges have no subordinate agency or customers they can tax in a similar manner to implement their IWM state mandate.

The Controller concludes that the AB 939 fee is not a state mandated cost imposed upon college districts because Public Resource Code sections 41901 and 41902 were not pled in the community college test claim. Since community colleges do not own or operate landfills, this is not relevant. The second stated reason is the IWM community college mandate program does not include the cost to dispose of solid waste. To the contrary, it is solid waste disposal costs that are subject to the court decision discussed in Finding 4 below. Beginning 2008, CalRecycle began requiring per capita disposal amounts to be reported

and not diversion amounts. The state IWM mandate on the colleges is to dispose of that which cannot be diverted and the imposition of the AB 939 fees was at the choice of the City and not the choice of the District. The costs should be allowed.

Lighting Resources, LLC

The District claimed unallowable costs in the amount of $5,372 that related to the disposal of hazardous wastes (lamps and batteries). The District learned from the previous audit that these hazardous waste disposal costs are not within the scope of Public Resource Code section 40191 definition of solid waste, and thus not a reimbursable mandate activity. The District agrees with the adjustment.

SCO's Comments

The finding and recommendation remain unchanged.

Commercial Waste Services, Inc.

The district states, "These costs [landfill disposal fees] were allowed in the previous Integrated Waste Management audit for FY 1999-00 through FY 2007-08. However, now the Controller has decided that 'AB 939' fees are not reimbursable…" This comment is not entirely correct. In the previous Integrated Waste Management audit of FY 1999-2000 through FY 2007-08, the district only claimed costs for Commercial Waste Services, Inc. for FY 2007-08. Because the amount claimed was insignificant, it was not selected for testing.

The district states that that Public Resources Code sections 41901 and 41902 are not relevant "since community colleges do not own or operate landfills." This comment is not valid. Public Resources Code sections 41901 and 41902 have nothing to do with owning or operating a landfill. As stated in the finding, Public Resources Code section 41902 allows for a *local agency* to arrange for the AB 939 fee to be collected by a solid waste hauler. If the district wishes to claim reimbursement for costs associated with Public Resources Code sections 41901 and 41902, it may file an amendment to the Integrated Waste Management parameters and guidelines.

The district goes on to state that because the solid waste disposal costs are used to calculate the offsetting savings in Finding 4, then landfill costs also should be allowable as a direct cost. We disagree. The mandate program does not reimburse claimants for the costs to *dispose* of solid waste at the landfill. Instead, the mandate program reimburses claimants to *divert* solid waste from landfill disposal. By diverting solid waste, the district realizes both a reduction of solid waste going to a landfill and the associated costs of having the waste hauled there (as discussed in Finding 4).

In addition, the district states that because the per capita disposal amounts are reported instead of the diversion amounts, "The state IWM mandate on colleges is to dispose of that which cannot be diverted…" We disagree. This statement is contrary to Public Resources Code section 42921(b), which requires district to "*divert* at least 50% of all

solid waste through source reduction, recycling, and composting activities" [emphasis added]. Even though community college districts no longer report diversion information, they still are required to divert 50% of their solid waste.

To conclude, the district states that the "AB 939 fee was at the choice of the City and not the choice of the District." We agree, and as such, concur that this is not a State-mandated cost because the fee was not imposed on the district by the State. The AB 939 fee is a discretionary fee imposed on the hauler at the request of the city.

Lighting Resources, Inc.

The district agrees with the adjustment.

FINDING 3—Misstated indirect costs

The district claimed $129,375 in indirect costs for the audit period. We found that $80,211 is allowable and $49,164 is unallowable. The costs are unallowable because the district applied the indirect cost rate to unallowable salaries and benefits (see Finding 1), incorrectly calculated the FAM-29C indirect cost rate for FY 2009-10, and did not apply the FAM-29C indirect cost rate to the proper direct cost base for FY 2009-10.

For FY 2009-10, the district claimed indirect costs using the FAM-29C methodology outlined in the SCO's claiming instructions, and calculated a FAM-29C rate of 41.26%. The FAM-29C is calculated using information contained in the California Community College Annual Financial and Budget Report (CCFS-311). We adjusted the FAM-29C to 37.92% because the district calculated the FAM-29C rate based on costs reported in its CCFS-311 for FY 2008-09.

In addition, the district misclassified $20,796 in contract service costs as salary and benefit costs, which resulted in the district incorrectly applying the FAM-29C rate to contract services.

The following table summarizes the indirect cost audit adjustment for each fiscal year in the audit period:

Fiscal Year	Allowable Salaries and Benefits [1, 2]	Allowable Indirect Cost Rate	Allowable Indirect Costs	Claimed Indirect Costs	Audit Adjustment
2008-09	$ 127,701	31.70%	$ 40,482	$ 71,487	$ (31,005)
2009-10	104,770	37.92%	39,729	57,888	(18,159)
Total	$ 232,471		$ 80,211	$ 129,375	$ (49,164)

[1] The federally approved rate for FY 2008-09 is applied to allowable salaries and wages, including benefits.

[2] The FAM-29C rate for FY 2009-10 is applied to allowable salaries and benefits.

The parameters and guidelines (section V. Claim Preparation and Submission, section (B)) state:

> Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21 "Cost Principles of Education Institutions"; (2) the rate calculated on the State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

Recommendation

The IWM Program was suspended in the FY 2011-12 through FY 2014-15 Budget Acts. Further, commencing in FY 2012-13, the district elected to participate in a block grant program, pursuant to Government Code section 17581.7, in lieu of filing annual mandated cost claims. If the program becomes active and if the district chooses to opt out of the block grant program, we recommend that the district calculate indirect costs in the manner prescribed in the claiming instructions, and apply the indirect cost rates to allowable direct costs.

District's Response

> For FY 2009-10, the District claimed indirect cost rates using the SCO's FAM-29C methodology, as did the auditor. The minor differences in the rate result from different choices in how direct costs are applied, a difference in the classification of $20,796 in contract service costs, and that the District rate was based on the prior year CCFS-311. The Controller uses the audit year CCFS-311 and CPA-audited financial statement depreciation expense, both of which may not be available to claimants at the time of claim preparation. The claimants' practical need to use the prior year CFS-311 and prior year depreciation costs was a statewide incorrect reduction claim issue that was overruled by the Commission on State Mandates, but after these annual claims were filed.

SCO's Comments

The finding and recommendation remain unchanged.

While the district accepts this finding due to a "statewide incorrect reduction claim issue that was overruled by the Commission on State Mandates," the district believes its use of the prior year CCFS-311 and depreciation expense was a "practical need" because both documents "may not be available to claimants at the time of claim preparation." We disagree.

Government code section 17560 states that the district's claim is due by February 15 following the fiscal year in which the costs are incurred. However, Title 2, *California Code of Regulations*, section 58305, subdivision (d), requires the district to submit its CCFS-311 report to the California Community Colleges Chancellor's Office by October 10 following the fiscal year in which the costs are incurred. Therefore, the district's CCFS-311 report is available well before the district is required to submit its mandated cost claims.

The district's FY 2009-10 annual financial statements were dated December 16, 2010. Therefore, the district's current year depreciation expense data also was available well before the mandated cost claim due date.

FINDING 4—Unreported offsetting savings

The district did not report any offsetting savings on its mandated cost claims for the audit period. We found that the district realized savings of $48,876 from implementation of its IWM plan.

The following table summarizes the offsetting savings audit adjustment for each fiscal year in the audit period:

Fiscal Year	Offsetting Savings Reported	Offsetting Savings Realized	Audit Adjustment
2008-09	$ —	$ (23,875)	$ (23,875)
2009-10	—	(25,001)	(25,001)
Total	$ —	$ (48,876)	$ (48,876)

The parameters and guidelines (section VIII. Offsetting Cost Savings) state:

> Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings, consistent with the directions for revenue in Public Contract Code sections 12167 and 12167.1.

Public Contract Code sections 12167 and 12167.1 require agencies in state-owned and state-leased buildings to deposit all revenues from the sale of recyclables into the IWM Account in the IWM Fund. The revenues are to be continuously appropriated to the Board for the purposes of offsetting recycling program costs. For the audit period, the district did not remit to the State the savings realized from implementation of its IWM plan.

Offsetting Savings Calculation

The Commission on State Mandates' (CSM) Final Staff Analysis of the proposed amendments to the parameters and guidelines (Item #8–CSM hearing of September 26, 2008) state:

> . . . cost savings may be calculated from the annual solid waste disposal reduction or diversion rates that community colleges must annually report to the Board pursuant to Public Resources Code section 42926, subdivision (b)(1).

To compute the savings amount, we multiplied the allocated diversion percentage by the tonnage diverted, and then multiplied the total by the avoided landfill disposal fee, as follows:

$$\text{Offsetting Savings Realized} = \overbrace{\frac{\text{Maximum Required Diversion \%}}{\text{Actual Diversion \%}}}^{\text{Allocated Diversion \%}} \times \text{Tonnage Diverted} \times \text{Avoided Landfill Disposal Fee (per ton)}$$

This calculation determines the costs that the district did not incur for solid waste disposal as a result of implementing its IWM plan.

Allocated Diversion Percentage

Public Resources Code section 42921 requires districts to achieve a solid waste diversion percentage of 50% diversion percentage by January 1, 2004. The parameters and guidelines allow districts to be reimbursed for all mandated costs incurred to achieve these levels, without reduction for when they fall short of stated goals, but not for amounts that exceed these State-mandated levels. Therefore, we allocated the offsetting savings to be consistent with the requirements of the mandated program.

In 2008, CalRecycle began focusing on "per-capita disposal" instead of a "diversion percentage." As a result, CalRecycle stopped requiring community college districts to report the actual amount of tonnage diverted, and the annual reports no longer identify a diversion percentage. Therefore, we used the 2007 diversion percentage to calculate the offsetting savings for FY 2008-09 and FY 2009-10. The district did not provide any documentation to support a different diversion percentage.

Tonnage Diverted

The tonnage diverted is solid waste that the district recycled, composted, and kept out of a landfill.

In 2008, CalRecycle stopped requiring community college districts to report the actual amount of tonnage diverted. Therefore, we used the tonnage diverted in 2007 to calculate the offsetting savings for FY 2008-09 and FY 2009-10. The district did not provide any documentation to support a different amount of tonnage diverted.

Avoided Landfill Disposal Fee (per ton)

The avoided landfill disposal fee is used to calculate realized savings because the district no longer incurs a cost to dispose of the diverted tonnage at a landfill. For each fiscal year in the audit period, we used the statewide average disposal fee provided by CalRecycle. The district did not provide any documentation to support a different disposal fee.

Recommendation

The IWM Program was suspended in the FY 2011-12 through FY 2014-15 Budget Acts. Further, commencing in FY 2012-13, the district elected to participate in a block grant program, pursuant to Government Code section 17581.7, in lieu of filing annual mandated cost claims. If the program becomes active and if the district chooses to opt out of the block grant program, we recommend that the district offset all savings realized from implementation of its IWM plan.

District's Response:

A. OFFSETTING COST SAVINGS

2. Assumed Cost Savings

The court presupposes a previous legal requirement for districts to incur landfill disposal fees to divert solid waste. Thus, potentially relieved of the need to incur new or additional landfill fees for increased waste diversion, a cost savings would occur. There is no finding of fact or law in the court decision or from the Commission Statement of Decision for the test claim for this assumed duty to use landfills. However, since the court stated that the cost savings from avoided landfill costs are only "likely," potential costs savings would be a finding of fact not law. There is no evidence in the court decision that these reduced or avoided landfill costs occurred at all or to any one district other than the bare assertion that such savings may have occurred. Thus, potential landfill cost savings would be a question of fact for each claiming district. However, the Controller's audit adjustment erroneously and simply assumes these cost savings occurred in the form of avoided landfill fees for the mandated tonnage diverted.

3. Realized Cost Savings

The parameters and guidelines language does not assume that the cost savings occurred, but instead requires that the cost savings be *realized*. The amended parameters and guidelines, relying upon the court decision, state that "(r)educed or avoided costs *realized* from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings…." To be realized, the court states that the following string of events must occur:

> Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purpose of IWM plan requirements in Public Resources Code section 42920 et seq. (Pub. Resources Code §§ 40196, 40148), must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of

offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed $2,000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of $2,000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.

For the cost savings to be realized, the parameters and guidelines further require that "(t)o the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan." Thus, a certain chain of events must occur: the cost savings must exist (avoided landfill costs); be converted to cash; amounts in excess of $2,000 per year deposited in the state fund: and these deposits by the districts appropriated by the Legislature to districts for the purposes of mitigating the cost of implementing the plan. None of these prerequisite events occurred so no costs savings were "realized" by the District. Regardless, the adjustment cannot be applied to the District since no state appropriation of the cost savings was made to the District.

4. Calculation of Cost Savings

The court suggest that "(t)he amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926." The parameters and guidelines are silent as to how to calculate the avoided costs. The court provided two alternative methods, either disposal reduction or diversion reported by districts, and the Controller utilized the diversion percentage, which assumes, without findings of fact, that all diversion tonnage is landfill disposal tonnage reduction.

a. The Controller's formula is a standard of general application

The audit adjustment for the assumed landfill cost savings is based on a formula created by the Controller and has been consistently used for all audits of this mandate published by the Controller. The Controller's use of this formula for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code Section 11340.5). The formula is not an exempt audit guideline (Government Code Section 11340.9(e)). State agencies are prohibited from enforcing underground regulations. If a state agency issues, enforces, or attempts to enforce a rule without following the Administrative Procedures Act, when it is required to, the rule is called an "underground regulation." Further, the audit adjustment is a financial penalty against the District, and since the adjustment is

based on an underground regulation, the formula cannot be used for the audit adjustment (Government Code Section 11425.50).

b. The Controller's formula assumes facts not in evidence

The audited offsetting cost savings is the sum of three components: the "allocated" diversion percentage, multiplied by the tonnage diverted, multiplied by a landfill disposal cost per ton. The Controller's calculation method includes several factual errors that make it useless as a basis of determining potential cost savings.

1. Allocated diversion percentage: The audit report uses the diversion percentage reported by the District to the state (CalRecycle) for 2007 because the statistic was no longer available by CalRecycle beginning 2008. Therefore, the diversion rates used for the audit adjustments for FY 2008-09 and FY 2009-10 are fiction.

2. Tonnage diverted: The Controller formula uses the total tonnage reported by the District to CalRecycle. The audit report states that this total amount includes "solid waste that the District recycled, composted, and kept out of the landfill." The audit report assumes without findings that all diverted tonnage would have been disposed in a landfill and thus additional landfill fees incurred for all additional tonnage diverted. Composted material, which can be a significant amount of the diverted tonnage, may not have gone to the landfill. The audit report also assumes without findings that all diverted tonnage is within the scope of the mandate. The total tons diverted may include materials that are outside the scope of the mandate (e.g., paint). Deducting the compost amount and tonnage unrelated to the mandate would reduce both the total tonnage and the diversion percentage. The audit report uses the total tonnage diverted percentage reported by the District to the state (CalRecycle) for 2007 because the statistic was no longer available from CalRecycle beginning 2008. Therefore, the diversion rates used for the audit adjustments for FY 2008-09 and FY 2009-10 are fiction.

3. Landfill disposal fee: Having no District information in the annual claims for landfill disposal fees, since it was not required for the annual claims or the CalRecycle report, the Controller's method uses a statewide average cost to dispose of waste, ranging from $51 to $56 per ton, based on data said to be obtained from CalRecycle. The audit report does not include the CalRecycle statewide data used to generate these average fee amounts. Thus, the source of the average or actual costs that comprise the average is unknown and unsupported by audit findings.

5. Application of the Formula

There are several factual errors in the application of the audited offset. The District claimed $32,815 in landfill disposal costs, paid to Commercial Waste Services, Inc., which is the maximum amount that could potentially be offset, if it was realized. Instead, the total adjustment amount of $48,876 for avoided landfill costs is applied to the total annual claim amounts and thus reduces unrelated salary and benefit costs for: preparing district policies and procedures; training staff who work on the integrated waste management plan; designating a plan coordinator; operating the plan accounting system; and, preparing annual recycling material reports.

The Controller's calculation method thus prevents this District from receiving full reimbursement of its actual increased program costs, contrary to an unfounded expectation by the court. Footnote 1 of the court decision states:

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

Indeed, it appears from the statewide audit results to date that the application of the formula has only arbitrary results. The following table indicates the percentage of the total claimed cost allowed by the "desk audits" conducted by the Controller on the single issue of the cost savings offset:

Controller's Audits-cost savings Issue only District	Percentage Allowed	Audit Date
Butte-Glen Community College District	0%	9/11/2014
MiraCosta Community College District	0%	10/08/2013
Citrus Community College District	2.0%	09/11/2013
Yuba Community College District	3.4%	05/07/2014
Allan Hancock Joint Community College District	14.8%	6/23/2014
San Bernardino Community College District	20.3%	6/23/2014
Grossmont-Cuyamaca Community College District	28.7%	04/30/2013
State Center Community College District	32.1%	08/30/2013
Merced Community College District	33.2%	07/09/2013
North Orange County Community College District	33.6%	08/15/2013
Solano Community College District	34.4%	06/17/2013
Long Beach Community College District	35.4%	05/22/2014
Sierra Joint Community College District	41.4%	07/22/2013
Yosemite Community College District	41.7%	07/10/2013
El Camino Community College District	43.0%	03/19/2014
Mt. San Antonio Community College District	43.7%	08/15/2013
Hartnell Community College District	45.0%	04/09/2014
Shasta-Tehama-Trinity Jt Community College District	53.3%	6/17/2014

Controller's Audits-cost savings Issue only District	Percentage Allowed	Audit Date
Contra Costa Community College District	58.7%	05/29/2013
Monterey Peninsula Community College District	59.8%	06/05/2014
Siskiyou Joint Community College District	62.2%	06/03/2014
San Joaquin Delta Community College District	69.5%	05/07/2014
Gavilan Joint Community College District	69.6%	04/11/2014
West Kern Community College District	69.9%	06/03/2014
Marin Community College District	72.4%	06/03/2014
Victor Valley Community College District	73.4%	04/09/2014
Cabrillo Community College District	80.8%	6/18/2014
Redwood Community College District	83.4%	04/11/2014

> The District agrees that any relevant realized cost savings should be reported, but the offset must also by properly matched to relevant costs. There is not such matching here and no requirement for the District to offset spurious revenues not realized. The adjustment should be withdrawn.

SCO's Comments

The finding and recommendation remain unchanged. We will address the district's response in the same order that it was presented.

2. Assumed Cost Savings

The district states "The court presupposes a previous legal requirement for districts to incur landfill disposal fees to *divert* solid waste" [emphasis added]. We disagree. Landfill fees are incurred when you "dispose" of solid waste. "Diversion" is the antithesis of disposal. Public Resources Code section 40192, subsection (b), states:

> …solid waste disposal…means the management of solid waste through landfill disposal…at a permitted solid waste facility.

The district asserts that there is only a presumption for districts to incur landfill disposal fees to dispose of solid waste, yet the district does not provide an alternative for how un-diverted solid waste would be disposed of if not at a landfill. In addition, the district does not state that it disposed of solid waste at any location other than a landfill or used any other methodology to dispose of its waste, rather than to contract with a commercial waste hauler. Therefore, comments relating to the legal requirements regarding alternatives for the disposal of solid waste are irrelevant.

The district states "…the Controller's audit adjustment erroneously and simply assumes these cost savings occurred in the form of avoided landfill fees for the mandated tonnage diverted." We disagree. The district's invoices support that the district incurred costs to dispose of its solid waste at a landfill.

3. Realized Cost Savings

We recognize that the district did not remit to the State any savings realized from implementation of its IWM plan. However, the failure of the district to remit to the State the savings realized from implementation of its IWM plan in compliance with the Public Contract Code or its failure to perform what it calls "prerequisite events" does not preclude the district from the requirement to do so.

4. Calculation of Cost Savings

a. The Controller's formula is a standard of general application

The district states, "The Controller's use of this formula for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable." We disagree.

We used a "court approved" methodology to determine the *required* offset, which we believe to be both fair and reasonable. In the Superior Court ruling dated May 29, 2008, the court stated that "Such reduction or avoidance of landfill fees and costs resulting from solid waste diversion activities under [Public Resources Code] §42920 et seq. represent savings which *must* be offset against the costs of diversion activities to determine the reimbursable costs of the IWM plan implementation – i.e., the actual increased costs of diversion – under [Government Code] section 6 and section 17514."

The ruling goes on to state, "The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926."

b. The Controller's formula assumes facts not in evidence

1. Allocated diversion percentage

With the passage of Senate Bill (SB) 1016 (Chapter 343, Statutes of 2008), CalRecycle began focusing on "per capita disposal" instead of a "diversion percentage." The shift from diversion to disposal provides more accurate measurements, takes less time to calculate, and allows for jurisdictional growth. With the original system of a 25% or 50% diversion requirement, if the district diverted above its requirement, it was fully implementing its IWM plan. Now, under SB 1016, each jurisdiction has a disposal target that is the equivalent of 50% diversion, and that target is expressed on a "per capita basis." Therefore, if the district's per-capita disposal rate is less than the target, it means that the district is meeting its requirement.

As a result of SB 1016, beginning in calendar year 2008, CalRecycle stopped requiring the districts to report the actual amount of tonnage diverted. Consequently, the annual reports no longer identify either the tonnage diverted or a diversion percentage. However, even though community college districts no longer report diversion information, they still are required to divert 50% of their solid waste.

In reviewing the 2008, 2009, and 2010 annual reports, we found the district's annual per-capita disposal rate to be well below the target rate. Therefore, the district far surpassed its requirement to divert more than 50% of its solid waste. As we did not have either the tonnage diverted or diversion percentage for calendar years 2008, 2009, and 2010, we used the 2007 diversion information to calculate the required offsetting savings for FY 2007-08 through FY 2010-11.

The district did not provide us with any documentation to support its actual diversion rates for calendar years 2008, 2009, or 2010. We believe that the 2007 diversion information is a fair representation of the 2008, 2009, and 2010 diversion information because the district's recycling processes have already been established and committed to.

We "allocated" the offsetting savings so as to not penalize the district by recognizing offsetting savings resulting from additional non-mandated savings realized by the district from diverting solid waste above and beyond the statutory requirements.

2. Tonnage diverted

Composted Materials

The district states that "Composted material, which can be a significant amount of the diverted tonnage, may not have gone to the landfill." The district does not identify where this composted material (e.g., grass, weeds, and branches) will go to be disposed of if it were not composted. Therefore, we presume that the district is stating that they have always composted green waste and would not incur a cost to dispose of this waste at the landfill; therefore, to include the composted tonnage in the offsetting savings calculation is incorrect. We disagree.

As a result of this mandated program, we have found that $60,247 in salaries and benefits ($35,426 for FY 2008-09 and $24,821 for FY 2009-10) is allowable for the gardeners to perform mandated activities, most of which include composting. Therefore, it seems reasonable that the

correlated landfill fees that the district did not incur for the composted materials resulted in savings to the district. And, such savings should be recognized and appropriately offset against allowable direct composting costs incurred as a result of implementing the IWM plan.

Hazardous Waste

The district states that "The audit report also assumes without findings that all diverted tonnage is within the scope of the mandate. The total tons diverted may include materials that are outside the scope of the mandate (e.g., paint)." We agree that hazardous waste is not a part of the mandate. However, CalRecycle has specified that hazardous waste is not to be included in the diversion information reported annually by the district to CalRecycle.

In compliance with these instructions, the district's Waste Management Annual Reports sent to CalRecycle did not include information regarding the diversion of hazardous waste. As a result, none of the offsetting savings calculations included hazardous waste materials. Therefore, comments about diversion of hazardous waste being included in the offsetting savings calculations are irrelevant.

Tonnage Diverted for 2008, 2009, and 2010

Our comments regarding the use of 2007 tonnage information to calculate the required offsetting savings for FY 2008-09 and FY 2009-10 are the same as previously discussed with regard to the passage of SB 1016.

3. Landfill disposal fee

The district did not provide us with its actual landfill disposal fee. Therefore, we calculated the offsetting savings using the statewide average landfill fee provided by CalRecycle. We confirmed with CalRecycle that they obtained the statewide average disposal fees from a private company, which polled a large percentage of the landfills across California to establish the statewide averages.

5. <u>Application of the Formula</u>

The district states, "The District claimed $32,815 in landfill disposal costs, paid to Commercial Waste Services, Inc., which is the maximum amount that could potentially be offset, if it was realized." We disagree. To clarify, the district claimed $32,815 in AB 939 fees only; however, the cost for the district to dispose of its solid waste is far greater. In fact, review of the warrants provided during audit fieldwork show that the district paid Commercial Waste Services, Inc. in excess of $300,000 for the audit period (approximately $97,000 in FY 2008-09 and $207,000 in FY 2009-10).

> Further, the district states, "Instead, the total adjustment amount of $48,876 for avoided landfill costs is applied to the total annual claim amounts and thus reduces unrelated salary and benefit costs for: preparing district policies and procedures; training staff who work on the integrated waste management plan; designating a plan coordinator; operating the plan accounting system; and, preparing the annual recycling material reports." We disagree. Public Resources Code section 42925 states that cost savings realized as a result of the IWM plan be redirected to "fund plan *implementation and administration costs*" [emphasis added]. Also, the district did not identify, and we did not find, any statute or provision limiting offsetting savings solely to solid waste diversion activities included in the district's IWM claims.

To conclude, the district provides a table of other engagements conducted by the State Controller's Office limited to the singular issue of offsetting cost savings. The adjustments made at other community college districts are not relevant to the current issue.

OTHER ISSUES—

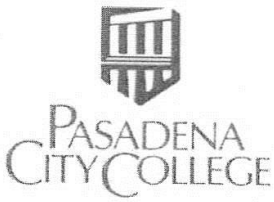
District's Response

> The District requests that the Controller provide the District with any and all written instructions, memoranda, or other writings in effect applicable to all of the findings for both fiscal years.
>
> Government Code Section 6253, subdivision (c), requires the state agency that is the subject of the request, within ten days from the receipt of a request for a copy of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in possession of the agency and to promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, the agency must state the estimated date and time when the records will be made available.

SCO's Comments

The SCO responded to the public records request in a separate letter dated January 15, 2014.

Attachment—
District's Response to
Draft Audit Report



January 14, 2015

Fiscal Services

Mr. Jim L. Spano, Chief
Mandated Costs Audits Bureau
Division of Audits
California State Controller
P.O. Box 942850
Sacramento, CA 94250-5874

Re: Integrated Waste Management Audit
FY 2008-09 and 2009-10
Pasadena Area Community College District

Dear Mr. Spano:

This letter is the District response of the Pasadena Area Community College District to the draft audit report dated December 23, 2014, received by mail on January 5, 2015, for the above referenced program and fiscal years, transmitted by the letter from Jeffrey V. Brownfield, Chief, Division of Audits, State Controller's Office.

Finding 1 Unallowable salaries and benefits

The District claimed $345,014 in salaries and benefits. The draft audit report states that $112,543 in salaries and benefits are unallowable for purposes of solid waste diversion, because the District claimed costs that were estimated and not supported by sufficient source documentation. None of the time was disallowed as unreasonable.

Fiscal Year	Amount Claimed	Amount Allowable	Audit Adjustment
2008-09	$ 225,509	$127,701	$ (97,808)
2009-10	$ 119,505	$104,770	$ (14,735)
Totals	$ 345,014	$ 232,471	$(112,543)

The FY 2008-09 staff time spent on the mandate was claimed based on employee time record sheets that were prepared after the fiscal year end. From these, the auditor calculated for each category of employee a daily average of time per day spent performing mandated activities by employee classification. This is a logical process, except that the auditor then reduced the average time

1570 East Colorado Boulevard • Pasadena, California 91106-2003 • (626) 585-7451 • FAX (626) 585-7968

to the statutory diversion target of 50%. For example, the average hours computed by the auditor for custodians was .91 hours which the auditor reduced to .84 hours based on the 2007 actual diversion of 54.20%. This calculation for the reduction to the statutory target was not presented in the draft audit report, but is located in the "entrance conference findings" document received November 10, 2014.

The FY 2009-10 staff time was claimed based on the May 2010 District time study results. The audit used the results of the time study after excluding a few hours spent on non-mandated activities. The adjustment was principally the result of reducing the average times to the statutory target amount of 50% from the actual 54.20 %, as was done for the prior year.

The averages per day should not be reduced to the statutory target amount. The staff cannot modify their activities to the target percentage. All recycling trash receptacles have to be emptied regardless of the amount diverted and the same amount of work and time is required for any amount of waste diversion. The allocated reduction to the target amount should be withdrawn.

Finding 2 Unallowable contract service costs

The District claimed $38,187 in contract service costs for the audit period. The audit report determined that these costs are not related to the mandate.

Commercial Waste Services, Inc. $32,815

The District claimed $32,815 paid to Commercial Waste Services, Inc., for landfill disposal. These costs were allowed in the previous Integrated Waste Management audit for FY 1999-00 through 2007-08. However, now the Controller has decided that "AB 939" fees are not reimbursable, because Public Resource Code section 41902 authorizes a local agency (city or county) to collect the fees authorized to fund its own IWM state mandate. According to the audit report, the City of Los Angeles imposes a 16% AB 939 fee on the District's solid waste hauler, Commercial Waste Services, Inc., which then charges the District and remits the collected fee to the City of Los Angeles. Note that community colleges have no subordinate agency or customers that they can tax in a similar manner to implement their IWM state mandate.

The Controller concludes that the AB 939 fee is not a state mandated cost imposed upon college districts because Public Resource Code sections 41901 and 41902 were not pled in the community college test claim. Since community colleges do not operate landfills, this is not relevant. The second stated reason is the IWM community college mandate program does not include the cost to dispose of solid waste. To the contrary, it is the solid waste disposal costs that are the subject of the court decision discussed in Finding 4 below. Beginning 2008, CalRecycle began requiring per capita disposal amounts to be reported

and not diversion amounts. The state IWM mandate on the colleges is to dispose of that which cannot be diverted and the imposition of the AB 939 fees was at the choice of the City and not the choice of the District. The costs should be allowed.

Lighting Resources, LLC $5,372

The District claimed unallowable costs in the amount of $5,372 that relate to the disposal of hazardous wastes (lamps and batteries). The District learned from the previous audit that these hazardous waste disposal costs are not within the scope of the Public Resources Code Section 40191 definition of solid waste, and thus not a reimbursable mandate activity. The District agrees with the adjustment.

Finding 3 Misstated indirect costs

The audit report states that the District overstated indirect costs by $49,164, most of which is attributable to the reduction in direct costs from Findings 1 and 2.

Fiscal Year	Claimed Indirect Rate	Claimed Method	Costs Applied to	Audited Rate	Difference
2008-09	31.70%	Federal	Salaries and benefits	31.70%	0.00%
2009-10	41.26%	FAM 29C	Salaries and benefits	37.92%	<3.34>%

For FY 2009-10, the District claimed indirect cost rates using the SCO's FAM-29C methodology, as did the auditor. The minor differences in the rate result from different choices in how direct costs are applied, a difference in the classification of $20,796 in contract service costs, and that the District rate was based on the prior year CCFS-311. The Controller uses the audit year CCFS-311 and CPA-audited financial statement depreciation expense, both of which may not be available to claimants at the time of claim preparation. The claimants' practical need to use the prior year CCFS-311 and prior year depreciation costs was a statewide incorrect reduction claim issue that was overruled by the Commission on State Mandates, but after these annual claims were filed.

Finding 4 Unreported offsetting savings

A. OFFSETTING COST SAVINGS

The draft audit report calculated $48,876 of unreported offsetting cost savings. The parameters and guidelines require claimants to identify and offset "reduced or avoided costs realized" from implementation of the integrated waste management plan. The District did not report or remit any cost savings to the State because none of these alleged savings were *realized* by the District as required by the parameters and guidelines.

1. The Legal Requirement

The notion of avoided cost for this mandate is a result of litigation by the Department of Finance and the Integrated Waste Management Board. The retroactive court decision requires a community college district to "identify and deduct offsetting costs savings from its claimed reimbursable costs." The court asserted, without evidence in the record, that these reductions will "most likely" occur:

> In complying with the mandated solid waste diversion requirements of Public Resources Code section 42921, California Community *Colleges are likely to experience cost savings in the form of reduced or avoided costs of landfill disposal*. The reduced or avoided costs are a direct result and an integral part of the IWM plan mandates under Public Resources Code section 42920 et seq.: as solid waste diversion occurs, *landfill disposal of the solid waste and associated landfill disposal costs* are reduced or avoided. Indeed, diversion is defined in terms of landfill disposal for purposes of the IWM plan mandates. (See Pub. Resources Code §§ 40124 ("'diversion' means activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division [i.e., division 30, including § 42920 et seq.]"), 40192, subd. (b) (for purposes of Part 2 (commencing with Section 40900), 'disposal' means the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.").) *Emphasis added*.
>
> Such reduction or avoidance of landfill fees and costs resulting from solid waste diversion activities under § 42920 et seq. represent savings which must be offset against the costs of the diversion activities to determine the reimbursable costs of IWM plan implementation -- i.e., the actual increased costs of diversion -- under section 6 and section 17514. Similarly, under Public Resources Code section 42925, such offsetting savings must be redirected to fund IWM plan implementation and administration costs in accordance with Public Contract Code section 12167. *The amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926. Emphasis added.*

The amended and retroactive parameters and guidelines adopted September 26, 2008, applied the court language as follows:

> **VIII. OFFSETTING COST SAVINGS**
>
> Reduced or avoided costs realized from implementation of the community college districts' Integrated Waste Management plans shall be identified

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

2. Assumed Cost Savings

The court presupposes a previous legal requirement for districts to incur landfill disposal fees to divert solid waste. Thus, potentially relieved of the need to incur new or additional landfill fees for increased waste diversion, a cost savings would occur. There is no finding of fact or law in the court decision or from the Commission Statement of Decision for the test claim for this assumed duty to use landfills. However, since the court stated that the cost savings from avoided landfill costs are only "likely," potential cost savings would be a finding of fact not law. There is no evidence in the court decision that these reduced or avoided landfill costs occurred at all or to any one district other than the bare assertion that such savings may have occurred. Thus, potential landfill cost savings would be a question of fact for each claiming district. However, the Controller's audit adjustment erroneously and simply assumes these cost savings occurred in the form of avoided landfill fees for the mandated tonnage diverted.

3. Realized Cost Savings

The parameters and guidelines language does not assume that the cost savings occurred, but instead requires that the cost savings be *realized*. The amended parameters and guidelines, relying upon the court decision, state that "(r)educed or avoided costs *realized* from implementation of the community college districts' Integrated Waste Management plans shall be identified and offset from this claim as cost savings . . . ." To be realized, the court states that the following string of events must occur:

> Thus, in accordance with section 12167, state agencies, along with California Community Colleges which are defined as state agencies for purposes of IWM plan requirements in Public Resources Code section 42920 et seq. (Pub. Resources Code §§ 40196, 40148), must deposit cost savings resulting from IWM plans in the Integrated Waste Management Account in the Integrated Waste Management Fund; the funds deposited in the Integrated Waste Management Account, upon appropriation by the Legislature, may be expended by the Integrated Waste Management Board for the purpose of offsetting IWM plan costs. In accordance with section 12167.1 and notwithstanding section 12167, cost savings from the IWM plans of the agencies and colleges that do not exceed $2,000 annually are continuously appropriated for expenditure by the agencies and colleges for the purpose of offsetting IWM plan implementation and administration costs; cost savings resulting from IWM plans in excess of $2,000 annually are available for such expenditure by the agencies and colleges when appropriated by the Legislature.

For the cost savings to be realized, the parameters and guidelines further require that "(t)o the extent so approved or appropriated and applied to the college, these amounts shall be identified and offset from the costs claimed for implementing the Integrated Waste Management Plan." Thus, a certain chain of events must occur: the cost savings must exist (avoided landfill costs); be converted to cash; amounts in excess of $2,000 per year deposited in the state fund: and, these deposits by the districts appropriated by the Legislature to districts for purposes of mitigating the cost of implementing the plan. None of those prerequisite events occurred so no cost savings were "realized" by the District. Regardless, the adjustment cannot be applied to the District since no state appropriation of the cost savings was made to the District.

4. Calculation of the Cost Savings

The court suggests that "(t)he amount or value of the savings may be determined from the calculations of annual solid waste disposal reduction or diversion which California Community Colleges must annually report to petitioner Integrated Waste Management Board pursuant to subdivision (b)(1) of Public Resources Code section 42926." The parameters and guidelines are silent as to how to calculate the avoided costs. The court provided two alternative methods, either disposal reduction or diversion reported by districts, and the Controller utilized the diversion percentage, which assumes, without findings of fact, that all diversion tonnage is landfill disposal tonnage reduction.

a. The Controller's formula is a standard of general application

The audit adjustment for the assumed landfill cost savings is based on a formula created by the Controller and has been consistently used for all

audits of this mandate published by the Controller. The Controller's use of this formula for audit purposes is a standard of general application without appropriate state agency rulemaking and is therefore unenforceable (Government Code Section 11340.5). The formula is not an exempt audit guideline (Government Code Section 11340.9(e)). State agencies are prohibited from enforcing underground regulations. If a state agency issues, enforces, or attempts to enforce a rule without following the Administrative Procedure Act, when it is required to, the rule is called an "underground regulation." Further, the audit adjustment is a financial penalty against the District, and since the adjustment is based on an underground regulation, the formula cannot be used for the audit adjustment (Government Code Section 11425.50)

b. The Controller's formula assumes facts not in evidence

The audited offsetting cost savings is the sum of three components: the "allocated" diversion percentage, multiplied by the tonnage diverted, multiplied by a landfill disposal cost per ton. The Controller's calculation method includes several factual errors that make it useless as a basis of determining potential cost savings.

1. Allocated diversion percentage: The audit report uses the diversion percentage reported by the District to the state (CalRecycle) for 2007 because the statistic was no longer available from CalRecycle beginning 2008. Therefore, the diversion rates used for the audit adjustments for FY 2008-09 and FY 2009-10 are fiction.

2. Tonnage diverted: The Controller formula uses the total tonnage reported by the District to CalRecycle. The audit report states that this total amount includes "solid waste that the District recycled, composted, and kept out of the landfill." The audit report assumes without findings that all diverted tonnage would have been disposed in a landfill and thus additional landfill fees incurred for all additional tonnage diverted. Composted material, which can be a significant amount of the diverted tonnage, may not have gone to the landfill. The audit report also assumes without findings that all diverted tonnage is within the scope of the mandate. The total tons diverted may include materials that are outside the scope of the mandate (e.g., paint). Deducting the compost amount and tonnage unrelated to the mandate would reduce both the total tonnage and the diversion percentage. The audit report uses the total tonnage diverted percentage reported by the District to the state (CalRecycle) for 2007 because the statistic was no longer available from CalRecycle beginning 2008. Therefore, the diversion rates

used for the audit adjustments for FY 2008-09 and FY 2009-10 are fiction.

3. Landfill disposal fee: Having no District information in the annual claims for landfill disposal fees, since it was not required for the annual claims or the CalRecycle report, the Controller's method uses a statewide average cost to dispose of a ton of waste, ranging from $51 to $56 per ton, based on data said to be obtained from CalRecycle. The audit report does not include the CalRecycle statewide data used to generate these average fee amounts. Thus, the source of the average or actual costs that comprise the average is unknown and unsupported by audit findings.

5. Application of the Formula

There are several factual errors in the application of the audited offset. The District claimed $32,815 in landfill disposal costs, paid to Commercial Waste Services, Inc., which is the maximum amount that could potentially be offset, if it was realized. Instead, the total adjustment amount of $48,876 for avoided landfill costs is applied to the total annual claim amounts and thus reduces unrelated salary and benefit costs for: preparing district policies and procedures; training staff who work on the integrated waste management plan; designating a plan coordinator; operating the plan accounting system; and, preparing annual recycling material reports.

The Controller's calculation method thus prevents this District from receiving full reimbursement of its actual increased program costs, contrary to an unfounded expectation by the court. Footnote 1 of the court decisions states that:

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

Indeed, it appears from the statewide audit results to date that the application of the formula has only arbitrary results. The following table indicates the percentage of the total claimed cost allowed by the "desk audits" conducted by the Controller on the single issue of the costs savings offset:

Controller's Audits-cost savings Issue only District	Percentage Allowed	Audit Date

Butte-Glenn Community College District	0%	09/11/2014
MiraCosta Community College District	0%	10/08/2013
Citrus Community College District	2.0%	09/11/2013
Yuba Community College District	3.4%	05/07/2014
Allan Hancock Joint Community College District	14.8%	06/23/2014
San Bernardino Community College District	20.3%	06/23/2014
Grossmont-Cuyamaca Community College District	28.7%	04/30/2013
State Center Community College District	32.1%	08/30/2013
Merced Community College District	33.2%	07/09/2013
North Orange County Community College District	33.6%	08/15/2013
Solano Community College District	34.4%	06/17/2013
Long Beach Community College District	35.4%	05/22/2014
Sierra Joint Community College District	41.4%	07/22/2013
Yosemite Community College District	41.7%	07/10/2013
El Camino Community College District	43.0%	03/19/2014
Mt. San Antonio Community College District	43.7%	08/15/2013
Hartnell Community College District	45.0%	04/09/2014
Shasta-Tehama-Trinity Jt Community College District	53.3%	06/17/2014
Contra Costa Community College District	58.7%	05/29/2013
Monterey Peninsula Community College District	59.8%	06/05/2014
Siskiyou Joint Community College District	62.2%	06/03/2014
San Joaquin Delta Community College District	69.5%	05/07/2014
Gavilan Joint Community College District	69.6%	04/11/2014
West Kern Community College District	69.9%	06/03/2014
Marin Community College District	72.4%	06/03/2014
Victor Valley Community College District	73.4%	04/09/2014
Cabrillo Community College District	80.8%	06/18/2014
Redwoods Community College District	83.4%	04/11/2014

The District agrees that any relevant *realized* cost savings should be reported, but the offset must also be properly matched to relevant costs. There is no such matching here and no requirement for the District to offset spurious revenues not realized. The adjustment should be withdrawn.

B. OFFSETTING REVENUES AND REIMBURSEMENTS

This revenue was not adjusted by the audit. The District reported recycling income as an offset to total reimbursable costs in the amount of $13,821 for the two fiscal years.

Controller Form Form IWM-1A Fiscal Year	Line 10 Other Reimbursements
2008-09	$ 1,508.10
2009-10	$ 12,313.18

Total $ 13,821.28

The District did not deposit this revenue into the State IWM Account, but there is no such requirement to do so for community colleges. Recycling revenues are not offsetting cost savings, but are offsetting revenues generated from implementing the IWM plan. Regarding recycling revenues, the court stated:

> The provisions of Public Resources Code section 42920 et seq. do not address the use of revenues generated by recycling activities of California Community Colleges under IWM plans to offset reimbursable plan costs. *Thus, use of the revenues to offset reimbursable IWM plan costs is governed by the general principles of state mandates, that only the actual increased costs of a state-mandated program are reimbursable and, to that end, revenues provided for by the state-mandated program must be deducted from program costs.* (See Cal. Const., art. XIII B, § 6; Gov.Code §§ 17514, 17556, subd. (e); *County of Fresno v. State of California* (1991) 51 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates,* (2000) 84 Cal.App.4th 1264, 1284.) These principles are reflected in respondent's regulation which requires, without limitation or exception, the identification of offsetting revenues in the parameters and guidelines for reimbursable cost claims. (Cal. Code Regs., tit. 2, § 1183.1(a)(7).) *Emphasis added.*

The amended and retroactive parameters and guidelines adopted September 26, 2008, state:

> **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**
>
> Reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds allocated to any service provided under this program, shall be identified and offset from this claim. Offsetting revenue shall include all revenues generated from implementing the Integrated Waste Management Plan.

Therefore, the District properly reported the recycling or other income as a reduction of total claimed cost and not subject to state appropriation in the form of cost savings.

Public Records Request

The District requests that the Controller provide the District any and all written instructions, memoranda, or other writings in effect and applicable to all of the findings for both fiscal years.

Government Code Section 6253, subdivision (c), requires the state agency that is the subject of the request, within ten days from the receipt of a request for a copy

of records, to determine whether the request, in whole or in part, seeks copies of disclosable public records in possession of the agency and to promptly notify the requesting party of that determination and the reasons therefore. Also, as required, when so notifying the District, the agency must state the estimated date and time when the records will be made available.

Sincerely,

Joe W. Simoneschi, Executive Director-Business Services
Pasadena Area Community College District

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

http://www.sco.ca.gov

S13-MCC-026