

Metropolitan Transportation Commission Programming and Allocations Committee

September 4, 2019

Agenda Item 2f

Proposed Agreement with Kern Council of Governments for Exchange of Federal Apportionment

Subject: A request to authorize the Executive Director to enter into an agreement with the Kern Council of Governments (Kern COG) to exchange roughly \$4.5 million in Congestion Mitigation Air Quality Improvement (CMAQ) funds.

Background: In response to an upcoming federal rescission of unobligated funds, MTC staff received a second request from the Kern Council of Governments (Kern COG) to exchange an additional \$4.5 million in CMAQ apportionment. The two agencies executed a similar exchange in April of this year for \$10 million.

The Fixing America's Surface Transportation (FAST) Act includes a provision that rescinds a portion of unobligated CMAQ funds as of September 30, 2019. Some regions are unable to use all of their CMAQ apportionment by this date. MTC has already secured (or obligated) all of the regional CMAQ funds subject to this rescission, and therefore is not at risk of losing funds due to the rescission. There are currently several CMAQ-funded projects ready to be delivered within the region, but are currently on hold due to lack of CMAQ funds in the region.

The Kern COG has a CMAQ balance subject to the September 30, 2019 FHWA rescission. In order to avoid losing this apportionment balance, the Kern COG requests to exchange up to \$4.5 million in current and prior year CMAQ apportionment with MTC, for an equal amount of MTC's CMAQ apportionment to be repaid in FFY 2019-20.

Exchanges such as this benefit the smaller rural counties (and even larger sub-urban and urban counties) by avoiding the rescission of their CMAQ balances, while allowing CMAQ projects currently on hold in the MTC region due to a lack of CMAQ funds to be delivered.

It is often difficult for smaller regions to fully utilize their federal funds and deliver projects through the federal-aid process. This exchange allows Kern COG to avoid the rescission of CMAQ funds. MTC entered into similar agreements with Kern, Tehama, Tuolumne and Mariposa counties earlier this year.

Caltrans staff has confirmed this exchange of earlier-year apportionment for later-year apportionment is allowed under Caltrans' Apportionment/Obligation Authority Management Policy, and has provided the form of letter for such exchanges.

The effective date of the transfer of CMAQ apportionment from Kern COG to MTC is September 4, 2019. The effective date of the transfer of CMAQ apportionment from MTC to Kern COG is October 1, 2019.

Issues:

Provision to Eliminate Risk

The CMAQ funds are subject to rescission by the Federal Highways Administration (FHWA) on September 30, 2019 unless an agreement can be executed between MTC and Kern COG, and the funds secured in sufficient time. This exchange will not take place unless the agreement can be executed in time, and the funds secured by the deadline.

Recommendation:

Approval of authorization for the Executive Director or designee to make final minor adjustments and sign a Letter of Understanding with the Kern Council of Governments (Kern COG) for exchange of up to a total of \$4.5 million in CMAQ funds.

Attachment:

Draft Letter of Understanding with Kern COG for Executive Director's signature.



Therese W. McMillan



September 4, 2019

Mr. Rihui Zhang, Chief
Division of Local Assistance
Caltrans
P.O. Box 942873
Sacramento, CA 94273-0001

- DRAFT -

RE: Letter of Understanding between the Kern Council of Governments and the Metropolitan Transportation Commission for federal apportionment exchange.

Dear Mr. Zhang,

This letter constitutes our understanding of an exchange of federal Congestion Mitigation and Air Quality Improvement (CMAQ) apportionment between the Kern Council of Governments (Kern COG) and the Metropolitan Transportation Commission (MTC).

The Kern COG currently has a balance of CMAQ apportionment subject to federal rescission on September 30, 2019 under the Fixing America's Surface Transportation (FAST) Act. To avoid the loss of this apportionment balance, the Kern COG requests to exchange up to \$4,500,000 of its CMAQ fund balance subject to rescission on September 30, 2019, for an equal amount of CMAQ funds from MTC, to be transferred on October 1, 2019.

This letter is to formalize the exchange of up to \$4,500,000 in current and/or prior year CMAQ apportionment from Kern COG effective September 4, 2019, with an equivalent amount of FFY 2019-20 CMAQ apportionment from MTC effective October 1, 2019.

This exchange is contingent upon execution of this Letter of Understanding in time for the MTC to secure the funds prior to the September 30, 2019 federal rescission. Should the Letter of Understanding not be executed in time for the MTC to secure the funds prior to the rescission, or should project obligations and/or advance construction conversions be delayed, or if any other timely use of funds deadlines are not met, that would result in the loss of apportionment balance, MTC shall retain its full CMAQ apportionment and the Letter of Understanding is null and void.

This Letter of Understanding sets forth the MTC and Kern COG intent for the use of the identified CMAQ apportionment, and requests Caltrans to adjust each region's apportionment balance as appropriate. This exchange benefits Kern COG by preventing the region's loss of federal fund apportionments, while providing MTC with additional capacity to deliver CMAQ projects sooner. We are relying on our understanding that this exchange is allowed per Caltrans' Obligation Authority Management Policy.

Mr. Ray Zhang
September 4, 2019
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This Letter of Understanding will be in effect for a one-time exchange of CMAQ funds through October 1, 2019.

We appreciate this opportunity to exchange federal fund apportionment and support our transportation partners. If you have questions, please contact Ahron Hakimi, Executive Director Kern COG at (661) 635-2901 or Ross McKeown, MTC's Assistant Programming Director, at (415) 778-5242.

Sincerely,

Sincerely,

Ahron Hakimi
Executive Director, Kern Cog

Therese W. McMillan
Executive Director, MTC