

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: TLMA - Transportation Department


SUBMITTAL DATE:
June 23, 2008


SUBJECT: Approval of Resolution No. 2009-241 A Resolution authorizing the Office of County Counsel to cooperate with the California State Association of Counties, other Counties and Cities in litigation challenging the constitutionality of any seizure by the State Government of Highway Users Tax Account (HUTA) Funds.

RECOMMENDED MOTION: That the Board of Supervisors adopt Resolution No. 2009-241 and authorize County Counsel and the Director of Transportation to take the appropriate and necessary steps to vigorously advocate against the State's proposed raids of our Gas Tax Funds.

BACKGROUND: The State Department of Finance has proposed to take two year's worth of the

Departmental Concurrence


George A. Johnson
Agency Director - TLMA


Pamela J. Walls
County Counsel

JCP: dlp



Juan C. Perez
Director of Transportation

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 36,846,000	In Current Year Budget:	YES
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	2009/2010

SOURCE OF FUNDS: HUTA (Gas Tax) -80% / Prop. 42 -20%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: 
Tina Grande

County Executive Office Signature

Policy Policy

Consent Consent

Dep't Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref. | **District:** ALL | **Agenda Number:**

3.84

The Honorable Board of Supervisors

RE: Approval of Resolution No. 2009-241 A Resolution authorizing the Office of County Counsel to cooperate with the California State Associations of Counties, other Counties and Cities in litigation challenging the constitutionality of any seizure by the State of Government of Highway Users Tax Account (HUTA) Funds.

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Cities and Counties share of Highway Users Tax Account ("HUTA" Funds, also known as the "Gas Tax") and suspend 6-months of our annual FY 09/10 allocation of Prop. 42 Funds. This approach was endorsed by the Legislature's Budget Conference Committee on June 11, 2009 and is being considered by the full Legislature as of the writing of this Form 11. This is an anti-stimulus measure completely contrary to the efforts of the County and the Federal Government to create jobs through infrastructure investment.

The State Gas Tax is the lifeblood of road funding for Cities and Counties. Of the 18¢ State Gas Tax, 11.5¢ (64%) goes to the State and only 6.5¢ (36%) returns to local governments. This take translates to an estimated loss of \$53,737,837 in the Unincorporated County alone; with similar losses to the Cities within Riverside County. However, local governments maintain roughly 138,600 (90%) miles of highways statewide versus 15,300 (10%) miles for the State.

The State's proposal is to keep their 11.5¢ share whole, and take the entire share from Cities and Counties in FY 09/10 and 75% of it in FY 10/11. The State is proposing to take this money from Cities and Counties to pay for debt service on Transportation Bonds that the State has sold, even though most of the funds have been spent on the State Highway System.

Proposition 42 was passed by the State's voters in 2002 with nearly 70% of the vote. The will of the voters was to designate that the sales tax collected on gasoline would be spent for transportation purposes. Since its approval, Prop. 42 has been suspended by the State on several occasions and the promise to the voters of steady, additional transportation funding has yet to materialize.

The loss of Gas Tax is expected to lead to the loss of nearly 4,000 jobs in County Public Works state-wide. Although the State's current proposal is to take the funds for a 2 year period, our belief is that once the funds are taken away there is a great likelihood that they won't be restored in future years, particularly since the State's financial outlook for the foreseeable future can't be expected to improve given the structural imbalances in the State Budget. The Transportation Department has already had to weather a 6 month suspension of Gas Tax in FY 08/09 and a 3 month suspension between February and May of this year. Although the State paid those funds back, this constant uncertainty affects our operations and makes it next to impossible to make long-term plans for how funds can best be used to improve safety and maintain our road system.

This Gas Tax take will put our Transportation Department in a very precarious position to be able to adequately maintain our 2500 mile County Road System. In the short term we will need to substantially reduce the major work that we contract-out (pavement re-habilitations, traffic signals, widening projects, new bridge projects, etc.), which will result in a major job loss to our already suffering local economy, and also reduce certain daily services that we provide. Ultimately, we will be faced with a major loss of County personnel that provide critical services like pot hole patching, grading shoulders, installing and replacing traffic signs, maintaining traffic signals, repainting markings and crosswalks, tree trimming, storm response, and many other activities. This will be in combination with a continued loss of contract work that also employs hundreds of private engineers, surveyors, planners, and inspectors in addition to construction workers. Even a short-term permanent take substantially reduces the amount of repair and preventive maintenance that we can do on our roads, leading to ever-more costly repairs down the line.

The Honorable Board of Supervisors

RE: Approval of Resolution No. 2009-241 A Resolution authorizing the Office of County Counsel to cooperate with the California State Associations of Counties, other Counties and Cities in litigation challenging the constitutionality of any seizure by the State of Government of Highway Users Tax Account (HUTA) Funds.

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This affects not only mobility but public safety. All of our emergency service providers depend on a usable road system to respond to emergencies and do life-saving work. Traffic accidents and fatalities can also be expected to increase without an on-going and reliable investment in infrastructure that is used by millions of County residents and visitors daily. Other alternatives that will have to be considered, like stopping maintenance on certain roads and leaving that up to individual property owners and/or homeowner's associations, are also devastating. The cost for the State's inability to balance its budget would be directly passed on to the residents that pay for those roads through their Gas Tax.

It is our belief and that of other Cities and Counties that the proposed Gas Tax take violates the State Constitution. Too much is at stake for the residents of our County and their public health and safety to not pursue this to the fullest extent of the legal process. The Transportation Department strongly recommends that the Board adopt this resolution.

2 RESOLUTION NO. 2009-241

3 RESOLUTION OF THE BOARD OF SUPERVISORS OF THE
4 COUNTY OF RIVERSIDE AUTHORIZING THE OFFICE OF COUNTY COUNSEL
5 TO COOPERATE WITH THE CALIFORNIA STATE ASSOCIATION OF
6 COUNTIES, OTHER COUNTIES AND CITIES IN LITIGATION CHALLENGING
7 THE CONSTITUTIONALITY OF ANY SEIZURE BY STATE GOVERNMENT
8 OF THE HIGHWAY USERS TAX ACCOUNT (HUTA) FUNDS

9 WHEREAS, the current economic crisis has placed counties under incredible financial pressure
10 and caused them to make painful budget cuts, including layoffs and furloughs of county workers,
11 decreasing maintenance and operations of public facilities, and reductions in direct services to keep
12 spending in line with declining revenues; and

13 WHEREAS, since the early 1990s the state government of California has seized billions of county
14 property tax revenues statewide to fund the state budget even after deducting public safety program
15 payments to counties by the state; and

16 WHEREAS, in his proposed FY 2009-10 budget the Governor has proposed transferring \$1
17 billion of local gas taxes and weight fees (HUTA Funds) to the state general fund to balance the state
18 budget, and over \$700 million in local gas taxes permanently in future years, immediately jeopardizing
19 the ability of the County to maintain the County's streets and roads, bridges, traffic signals, streetlights,
20 sidewalks and related traffic safety facilities for the use of the motoring public; and

21 WHEREAS, the loss of almost all of the County's gas tax funds will seriously compromise the
22 County's ability to perform critical traffic safety related street and road maintenance, including, but not
23 limited to, clearing from mudslides and flooding, snowplowing, drastically curtailing patching,
24 resurfacing, traffic signal maintenance, bridge maintenance and repair, repainting crosswalks and
25 markings, installing and repairing signs, grading shoulders, sidewalk and curb ramp maintenance and
26 repair, and much more; and

27 WHEREAS, these revenues are the lifeline for the Riverside County Transportation Department
28 and represents a significant portion of our County's personnel costs for critical operations. We will be
forced to eliminate a part of our transportation staff, which will affect their ability to respond to
emergencies and meet basic needs of the public, and/or eliminate construction contract activity that

1 creates private jobs in our local economy. Furthermore, counties expect that liability damage awards will
2 mount as basic maintenance is ignored and traffic accidents, injuries and deaths increase; and

3 WHEREAS, in both Proposition 5 in 1974 and Proposition 2 in 1998 the voters of our state
4 overwhelmingly imposed restriction on the state's ability to do what the Governor has proposed, and any
5 effort to permanently divert the local share of the gas tax would violate the state constitution and the will
6 of the voters; and

7 WHEREAS, counties and cities maintain 90% of the state road network while the state directly
8 maintains just 10%; and

9 WHEREAS, ongoing road maintenance is a significant public safety concern where fatality rates
10 on county roads already exceed those of the State's freeway system. A county's failure to maintain its
11 paved road network (potholes filling, sealing, overlays, etc.), traffic signals, signs, and street lights has a
12 direct correlation to traffic accidents, injuries and deaths; and

13 WHEREAS, according to a recent statewide needs assessment¹ on a scale of zero (failed) to 100
14 (excellent), the statewide average pavement condition index (PCI) is 68, or "at risk." Local streets and
15 roads will fall to "poor" condition (Score of 48) by 2033 based on existing funding levels available to
16 counties and cities. The 10-year revenue shortfall to address this problem is already \$71 billion without
17 this additional loss; now, therefore,

18 BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of Riverside, in
19 regular session assembled on June 30, 2009, that:

20 1. The Board of Supervisors hereby directs the County Counsel to take all necessary steps to
21 cooperate with the California State Association of Counties, other counties and cities in supporting
22 litigation against the State of California if the legislature enacts and the governor signs into law legislation
23 that unconstitutionally diverts the County's share of funding from the Highway Users Tax Account
24 (HUTA), also known as the "gas tax," to fund the state general fund.

25 2. The Transportation Department shall send this resolution with an accompanying letter
26 from the Chairman of the Board of Supervisors to the Governor and each legislator, informing them in the

27 _____
28 ¹ *California Statewide Local Streets and Roads Needs Assessment*, Nichols Consulting Engineers, Chtd. (2008), sponsored by
the League of California Counties, California State Association of Counties and County Engineers Association of California.

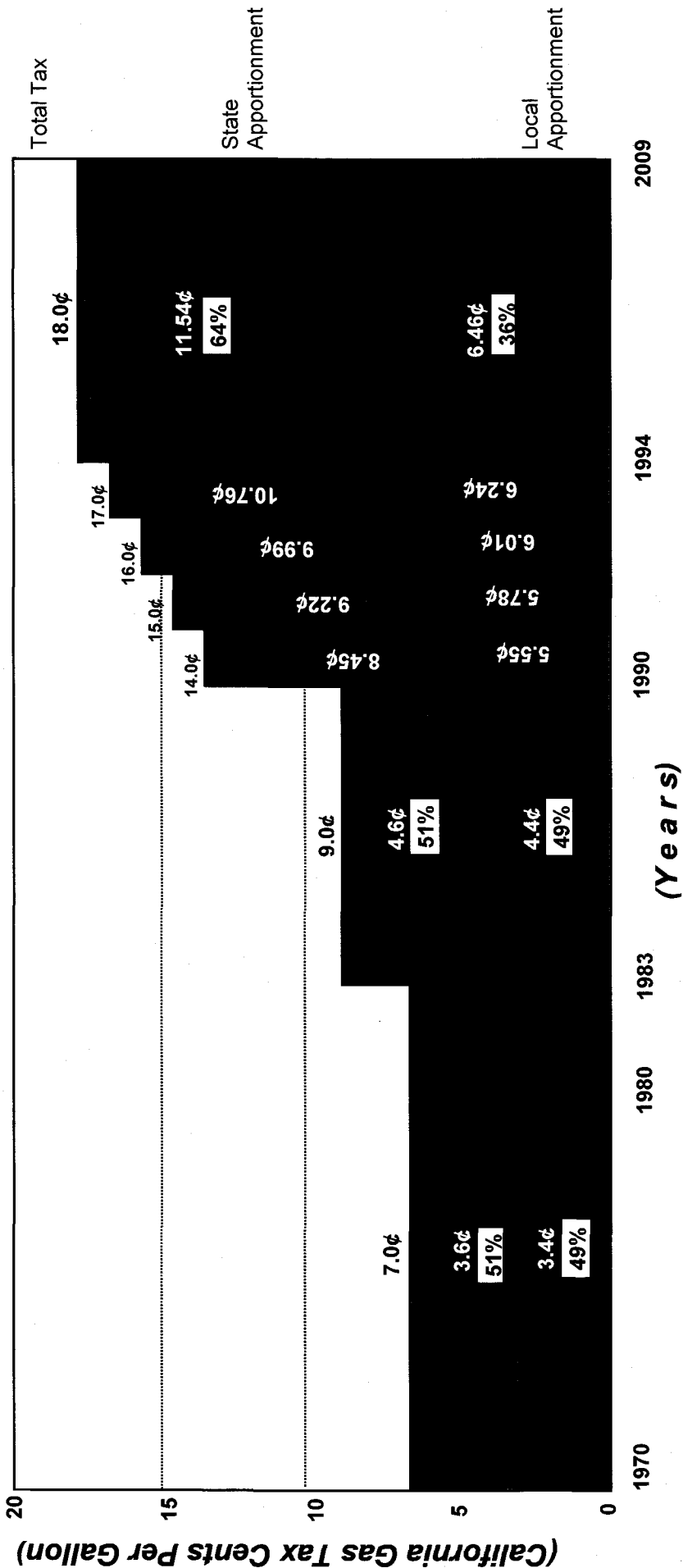
1 clearest of terms of the County's adamant resolve to oppose any effort to frustrate the will of the
2 electorate as expressed in Proposition 5 (1974) and Proposition 2 (1998) concerning the proper use and
3 allocation of the gas tax.

4 3. A copy of this Resolution shall be sent by the Transportation Department to the California
5 State Association of Counties, the local chamber of commerce, and other community groups whose
6 members are affected by this proposal to create unsafe conditions on the roads of our County for
7 pedestrians, bicyclists and motorists.

FORM APPROVED COUNTY COUNSEL
BY: *Pamela J. Walls* 6/25/07
DATE

CHART 1

Restore Equity in Distribution of the State Gas Tax



History of California Gas Tax Apportionments:

Mileage Inventory (2007)	
State Highways:	15,300
Local Highways:	138,600
County:	65,000
City:	73,600

County	HIGHWAY USERS TAX ACCOUNT			
	ACTUAL FY 07-08 HUTA	Percent of Total HUTA	Estimated FY 09-10 HUTA Loss	Estimated FY 10-11 HUTA Loss
Alameda	\$19,898,240.03	3.61%	\$17,814,577.41	\$13,460,304.43
Alpine	\$498,489.03	0.09%	\$446,289.29	\$337,206.41
Amador	\$1,353,919.92	0.25%	\$1,212,142.94	\$915,868.65
Butte	\$4,804,985.46	0.87%	\$4,301,826.96	\$3,250,366.21
Calaveras	\$1,982,699.04	0.36%	\$1,775,078.88	\$1,341,210.71
Colusa	\$1,287,461.26	0.23%	\$1,152,643.56	\$870,912.23
Contra Costa	\$15,650,625.04	2.84%	\$14,011,755.36	\$10,586,975.40
Del Norte	\$750,491.25	0.14%	\$671,902.86	\$507,675.09
El Dorado	\$6,152,023.37	1.12%	\$5,507,808.55	\$4,161,579.48
Fresno	\$14,134,653.86	2.57%	\$12,654,530.50	\$9,561,486.03
Glenn	\$1,573,956.07	0.29%	\$1,409,137.80	\$1,064,713.65
Humboldt	\$3,464,509.06	0.63%	\$3,101,719.79	\$2,343,591.52
Imperial	\$4,798,709.58	0.87%	\$4,296,208.27	\$3,246,120.85
Inyo	\$1,947,607.54	0.35%	\$1,743,662.01	\$1,317,472.82
Kern	\$14,349,014.76	2.61%	\$12,846,444.40	\$9,706,491.97
Kings	\$2,405,305.29	0.44%	\$2,153,431.52	\$1,627,085.68
Lake	\$2,032,222.08	0.37%	\$1,819,416.06	\$1,374,710.92
Lassen	\$1,848,500.62	0.34%	\$1,654,933.17	\$1,250,431.25
Los Angeles	\$123,050,953.91	22.35%	\$110,165,559.40	\$83,238,683.32
Madera	\$3,453,234.30	0.63%	\$3,091,625.67	\$2,335,964.63
Marin	\$4,310,620.50	0.78%	\$3,859,229.89	\$2,915,949.56
Mariposa	\$1,177,631.37	0.21%	\$1,054,314.61	\$796,617.02
Mendocino	\$2,792,799.18	0.51%	\$2,500,348.63	\$1,889,208.65
Merced	\$4,632,347.01	0.84%	\$4,147,266.51	\$3,133,583.72
Modoc	\$1,656,171.65	0.30%	\$1,482,744.10	\$1,120,328.96
Mono	\$1,416,115.56	0.26%	\$1,267,825.71	\$957,941.33
Monterey	\$6,826,134.63	1.24%	\$6,111,329.63	\$4,617,586.79
Napa	\$2,694,985.31	0.49%	\$2,412,777.43	\$1,823,041.77
Nevada	\$2,893,492.41	0.53%	\$2,590,497.67	\$1,957,323.29
Orange	\$23,000,004.00	4.18%	\$20,591,537.30	\$15,558,514.49
Placer	\$8,427,022.27	1.53%	\$7,544,578.83	\$5,700,518.49
Plumas	\$2,073,760.40	0.38%	\$1,856,604.66	\$1,402,809.81
Riverside	\$29,544,199.06	5.37%	\$26,450,450.91	\$19,985,381.27
Sacramento	\$22,380,701.07	4.06%	\$20,037,085.25	\$15,139,582.67
San Benito	\$1,234,222.60	0.22%	\$1,104,979.84	\$834,898.56
				\$400,101.00
				\$2,339,979.40
				\$35,805,869.84
				\$80,948.00
				\$864,443.70
				\$412,674.00
				\$2,540,685.60
				\$9,072,129.17
				\$1,519,936.00
				\$624,366.00
				\$3,740,655.59
				\$485,903.00
				\$2,509,458.79
				\$3,515,049.00
				\$28,113,779.75
				\$259,758.00
				\$1,439,335.95
				\$1,362,637.00
				\$11,032,025.03
				\$4,423,880.00
				\$26,639,896.53
				\$593,127.00
				\$3,066,978.46
				\$1,163,228.00
				\$6,608,539.31
				\$1,911,842.00
				\$9,454,171.12
				\$713,019.00
				\$3,774,153.83
				\$4,147,659.00
				\$26,700,595.37
				\$880,515.00
				\$4,661,032.20
				\$627,436.00
				\$3,821,562.98
				\$610,248.00
				\$3,515,612.41
				\$27,763,543.00
				\$221,167,785.72
				\$1,279,942.00
				\$6,707,532.31
				\$1,068,431.00
				\$7,843,610.44
				\$403,366.00
				\$2,254,297.64
				\$940,411.00
				\$5,329,968.28
				\$1,645,285.00
				\$8,926,135.23
				\$585,855.00
				\$3,188,928.07
				\$433,190.00
				\$2,658,957.04
				\$1,884,468.00
				\$12,613,384.41
				\$720,869.00
				\$4,956,688.20
				\$752,560.00
				\$5,300,380.97
				\$8,893,531.00
				\$45,043,582.79
				\$1,858,436.00
				\$15,103,533.33
				\$498,204.00
				\$3,757,618.47
				\$7,302,005.00
				\$53,737,837.18
				\$5,420,185.00
				\$40,596,852.91
				\$400,101.00
				\$2,339,979.40

San Bernardino	\$29,149,803.09	5.29%	\$26,097,354.48	\$19,718,589.34	5.05%	\$7,273,967.00	\$53,089,910.82
San Diego	\$43,993,745.34	7.99%	\$39,386,899.58	\$29,759,878.49	7.04%	\$10,132,344.00	\$79,279,122.07
San Francisco	\$7,785,584.94	1.41%	\$6,970,310.21	\$5,266,613.70	1.51%	\$2,166,956.00	\$14,403,879.90
San Joaquin	\$10,356,136.54	1.88%	\$9,271,684.12	\$7,005,481.41	2.00%	\$2,875,084.00	\$19,152,249.53
San Luis Obispo	\$5,809,367.78	1.05%	\$5,201,034.46	\$3,929,787.70	1.19%	\$1,709,178.00	\$10,840,000.15
San Mateo	\$11,539,671.57	2.10%	\$10,331,284.18	\$7,806,092.00	1.79%	\$2,582,345.00	\$20,719,721.19
Santa Barbara	\$7,028,340.62	1.28%	\$6,292,361.43	\$4,754,370.45	1.23%	\$1,766,201.00	\$12,812,932.88
Santa Clara	\$23,942,584.27	4.35%	\$21,435,414.40	\$16,196,129.54	3.86%	\$5,561,956.00	\$43,193,499.94
Santa Cruz	\$4,842,797.70	0.88%	\$4,335,679.66	\$3,275,944.57	0.81%	\$1,162,132.00	\$8,773,756.23
Shasta	\$4,766,460.27	0.87%	\$4,267,335.97	\$3,224,305.58	0.98%	\$1,411,562.00	\$8,903,203.55
Sierra	\$824,380.29	0.15%	\$738,054.55	\$557,657.85	0.16%	\$231,834.00	\$1,527,546.39
Siskiyou	\$2,990,004.59	0.54%	\$2,676,903.49	\$2,022,609.64	0.68%	\$971,971.00	\$5,671,484.13
Solano	\$6,146,377.98	1.12%	\$5,502,754.32	\$4,157,760.62	1.12%	\$1,609,329.00	\$11,269,843.94
Sonoma	\$9,040,041.47	1.64%	\$8,093,405.16	\$6,115,199.64	1.68%	\$2,423,833.00	\$16,632,437.80
Stanislaus	\$8,369,396.70	1.52%	\$7,492,987.58	\$5,661,537.27	1.67%	\$2,398,918.00	\$15,553,442.85
Sutter	\$2,106,151.11	0.38%	\$1,885,603.55	\$1,424,720.73	0.52%	\$751,044.00	\$4,061,368.28
Tehama	\$2,231,529.75	0.41%	\$1,997,853.05	\$1,509,534.00	0.58%	\$830,175.00	\$4,337,562.04
Trinity	\$1,439,884.68	0.26%	\$1,289,105.82	\$974,020.12	0.31%	\$451,458.00	\$2,714,583.94
Tulare	\$7,835,167.87	1.42%	\$7,014,701.02	\$5,300,154.42	1.98%	\$2,853,405.00	\$15,168,260.43
Tuolumne	\$2,136,798.04	0.39%	\$1,913,041.26	\$1,445,452.06	0.41%	\$596,434.00	\$3,954,927.32
Ventura	\$12,737,662.86	2.31%	\$11,403,826.71	\$8,616,481.64	2.01%	\$2,888,509.00	\$22,908,817.34
Yolo	\$3,346,008.06	0.61%	\$2,995,627.73	\$2,263,430.69	0.73%	\$1,052,054.00	\$6,311,112.42
Yuba	\$1,747,503.34	0.32%	\$1,564,511.91	\$1,182,110.93	0.41%	\$585,717.00	\$3,332,339.84
TOTAL	\$550,663,207.35	100%	\$493,000,000.00	\$372,500,000.00	100%		

Highway Users Tax⁽¹⁾ - Projected FY2009-10 Revenues

	Streets & Highways Code Sec.				TOTAL FY2009-10
	Sec2105 ⁽³⁾	Sec2106 ⁽³⁾	Sec2107 ⁽³⁾	Sec2107.5 ⁽⁴⁾	
RANCHO SANTA MARGARITA	271,020	172,752	361,170	6,000	810,942
SAN CLEMENTE	369,747	233,883	492,737	7,500	1,103,867
SAN JUAN CAPISTRANO	200,319	128,975	266,951	6,000	602,245
SANTA ANA	1,924,808	1,196,758	2,565,058	10,000	5,696,624
SEAL BEACH	141,523	92,569	188,597	6,000	428,689
STANTON	213,901	137,385	285,052	6,000	642,338
TUSTIN	404,199	255,215	538,649	7,500	1,205,563
VILLA PARK	34,087	26,046	45,426	2,000	107,559
WESTMINSTER	506,635	318,642	675,158	7,500	1,507,935
YORBA LINDA	372,035	235,299	495,785	7,500	1,110,619
PLACER COUNTY					
AUBURN	72,286	60,456	96,331	3,000	232,073
COLFAX	10,103	12,698	13,463	1,000	37,264
LINCOLN	216,526	171,232	288,550	6,000	682,309
LOOMIS	36,075	32,645	48,075	2,000	118,795
ROCKLIN	293,235	230,145	390,774	7,500	921,653
ROSEVILLE	594,465	461,490	792,202	10,000	1,858,157
PLUMAS COUNTY					
PORTOLA	12,243	10,921	111,576	1,000	135,740
RIVERSIDE COUNTY					
BANNING	154,386	95,234	205,740	6,000	461,361
BEAUMONT	171,427	105,201	228,449	6,000	511,077
BLYTHE	123,218	77,005	164,204	5,000	369,428
CALIMESA	41,042	28,943	54,694	2,000	126,679
CANYON LAKE	60,185	40,139	80,204	3,000	183,529
CATHEDRAL CITY	285,730	172,053	380,773	7,500	846,056
COACHELLA	220,660	133,996	294,058	6,000	654,714
CORONA	802,909	474,532	1,069,982	10,000	2,357,422
DESERT HOT SPRINGS	141,969	87,972	189,193	6,000	425,134
HEMET	404,020	241,236	538,409	7,500	1,191,165
INDIAN WELLS	27,367	20,945	36,470	2,000	86,782
INDIO	443,923	264,574	591,586	7,500	1,307,583
LAKE ELSINORE	271,254	163,586	361,482	6,000	802,323
LA QUINTA	233,954	141,771	311,774	6,000	693,499
MORENO VALLEY	1,001,322	590,576	1,334,392	10,000	2,936,290
MURRIETA	545,553	324,014	727,021	10,000	1,606,588
NORCO	149,011	92,091	198,577	6,000	445,678
PALM DESERT	277,245	167,090	369,465	7,500	821,301
PALM SPRINGS	257,334	155,445	342,931	6,000	761,710
PERRIS	291,939	175,684	389,047	7,500	864,169
RANCHO MIRAGE	92,894	59,270	123,794	4,000	279,958
RIVERSIDE	1,616,634	950,450	2,154,377	10,000	4,731,461
SAN JACINTO	194,274	118,563	258,895	6,000	577,732
TEMECULA	550,368	326,829	733,437	10,000	1,620,634
WILDOMAR	250,614	151,514	333,976	6,000	742,103
MENIFEE	560,791	332,926	747,328	10,000	1,651,045

TOTAL CITIES 27,055,421
 TOTAL COUNTY 29,544,199
 TOTAL FY09/10 56,599,620
 HUTA TAKE