



January 25, 2018

APWA – NorCal Luncheon



# OPPORTUNITIES FOR FUNDING STORMWATER PROGRAMS WITHOUT A BALLOT MEASURE:

## SB 231 CHANGES EVERYTHING?

January 25, 2018

APWA – NorCal Luncheon

# Welcome



Jerry Bradshaw  
Senior Engineer  
SCI Consulting Group  
(707) 430-4300  
[Jerry.bradshaw@sci-cg.com](mailto:Jerry.bradshaw@sci-cg.com)

# Legal and Political Challenges



# Several Important Realities

- I. Stormwater management is under-funded
- II. Stormwater costs are rapidly increasing
- III. Financial need is greater than political support



# Review: Stormwater Revenue Mechanisms

## Current Common Funding Mechanisms

- General Fund
- Federal and State Grants, etc.
- Gas Tax
- Fees (plan checks, inspections, etc.)

## Dedicated Local Revenue Mechanisms

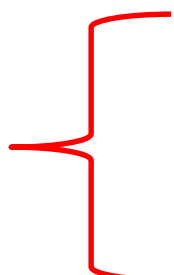
- Balloted Approaches
  - Property Related Fee (Property Owner – 50%)
  - Special Tax (Registered Voter – 66.7%)
  - *CCC v. Upland Tax (Registered Voter – 50.0%)*
- Non-Balloted Approaches – Full Cost Recovery
  - Activities supporting sewer, water, refuse
  - *Including SB 231 Fees*



# California Stormwater Funding

## Efforts

Municipality	Status	Annual Rate	Year	Mechanism
San Clemente	Successful	\$ 60.15	2002	Balloted Property Related Fee
Carmel	Unsuccessful	\$ 38.00	2003	Balloted Property Related Fee
Palo Alto	Unsuccessful	\$ 57.00	2003	Balloted Property Related Fee
Los Angeles	Successful	\$ 28.00	2004	Special Tax - G. O. Bond
Palo Alto	Successful	\$ 120.00	2005	Balloted Property Related Fee
Rancho Palos Verde	Successful , then recalled and reduced	\$ 200.00	2005, 2007	Balloted Property Related Fee
Encinitas	Unsuccessful	\$ 60.00	2006	Non-Balloted Property Related Fee adopted in 2004, challenged, ballot and failed in 2006
Ross Valley	Successful, Overturned by Court of Appeals, Decertified by Supreme Court	\$ 125.00	2006	Balloted Property Related Fee
Santa Monica	Successful	\$ 87.00	2006	Special Tax
San Clemente	Successfully renewed	\$ 60.15	2007	Balloted Property Related Fee
Solana Beach	Non-Balloted, Threatened by lawsuit, Balloted, Successful	\$ 21.84	2007	Non-Balloted & Balloted Property Related Fee
Woodland	Unsuccessful	\$ 60.00	2007	Balloted Property Related Fee
Del Mar	Successful	\$ 163.38	2008	Balloted Property Related Fee
Hawthorne	Unsuccessful	\$ 30.00	2008	Balloted Property Related Fee
Santa Cruz	Successful	\$ 28.00	2008	Special Tax
Burlingame	Successful	\$ 150.00	2009	Balloted Property Related Fee
Santa Clarita	Successful	\$ 21.00	2009	Balloted Property Related Fee
Stockton	Unsuccessful	\$ 34.56	2009	Balloted Property Related Fee
County of Contra Costa	Unsuccessful	\$ 22.00	2012	Balloted Property Related Fee
Santa Clara Valley Water District	Successful	\$ 56.00	2012	Special Tax
City of Berkeley	Successful	varies	2012	Measure M - GO Bond
County of LA	Deferred	\$ 54.00	2012	NA
Vallejo San & Flood	Successful	\$ 23.00	2015	Balloted Property Related Fee
Culver City	Successful	\$ 99.00	2016	Special Tax
County of El Dorado	Studying	NA	NA	NA
County of Orange	Studying	NA	NA	NA
County of San Mateo	In Process	NA	NA	NA
City of Sacramento	In Process	NA	NA	Balloted Property Related Fee
Town of Moraga	In Process	NA	NA	Balloted Property Related Fee
City of Santa Clara	In Process	NA	NA	Balloted Property Related Fee
Town of Los Altos	In Process	NA	NA	Balloted Property Related Fee
County of San Joaquin	In Process	NA	NA	Balloted Property Related Fee
County of Ventura	Studying	NA	NA	Balloted Property Related Fee



# Legal Context for SB 231

- Stormwater Conundrum –
  - ▣ Municipalities are required by law to manage pollution in stormwater,
  - ▣ But face voter resistance to paying for cleanup.





# Quick Prop 218 Brush-Up

- California voters adopt Prop 218 in 1996:
  - ▣ Amends the California Constitution, and
  - ▣ Restricts local government's ability to impose taxes, assessments, and fees.
- Omnibus Implementation Act adopted immediately after Prop 218:
  - ▣ Amends the Government Code, and
  - ▣ Helps local agencies comply with the new law.



# More Quick Prop 218 Brush-Up

- Prop 218's procedure for adopting Property Related Fees:
  1. Fee analysis and report
  2. Mail Notices
  3. Conduct Public Hearing
  4. Conduct Balloting

But balloting is exempted for:

*“...fees or charges for sewer, water, and refuse collection services...”*



# The Problem

- Where does stormwater service fit in?
  - ▣ Prop 218 doesn't define sewer, water or refuse collection services.
  - ▣ The Prop 218 Omnibus Implementation Act only defines water.



# Unfavorable Ruling

- A Court of Appeal held that stormwater does not qualify for the exemptions.
  - *Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) found the term “sewer” is ambiguous and refused to use the statutory definition of sewer system.



# Silver Linings

- Recent cases more liberally interpreted the exemptions.
  - *Griffith v. Pajaro Valley Water Management Agency* (2013) found a groundwater augmentation charge is a fee for water service.
  - *Crawley v. Alameda County Waste Management* (2015) found a household hazardous waste fee is a charge for refuse collection service.



# The Solution - SB 231

- Signed by Governor Brown 10/6/17
- Modifies the Proposition 218 Omnibus Implementation Act (53750)
- Defines the term “sewer”...it should be interpreted to include services necessary to collect, treat, or dispose of sewage, industrial waste, or surface or storm waters.



# SB 231 Intent

- A legislative fix to the *Salinas* ruling.
- Adds 13 recitals to clarify intent:
  - ▣ Describes need for water funding,
  - ▣ Disagrees with the *Salinas* holding,
  - ▣ Cites pre-Prop 218 definitions of sewer that refer to both sanitary sewers and storm drains.
  - ▣ Agrees with cases that broadly interpret “water” and “refuse services.”



# SB 231's Limitations

- Effect of SB 231
  - ▣ Does not amend Prop 218 itself.
  - ▣ Adds a definition to the Omnibus Act twenty years after it was adopted.
  - ▣ Further clarifying the meaning through definitions.





# The Key Question

- Very likely to end up in the courts.
- Will courts agree to follow this legislative interpretation?

???



# Conservative Ruling

- A conservative court might:
  - ▣ Follow *Salinas*.
  - ▣ Find Prop 218 is unchanged/still unclear.
  - ▣ Rule the legislature cannot override the voters' original intent.
  - ▣ Strike down SB 231 as unconstitutional.



# Liberal Ruling

- A liberal court may:
  - ▣ Use SB 231 as a reason to decline to follow *Salinas*.
  - ▣ Choose to follow the *Griffith/Crawley* precedent.



# Predicting the Future

- Will an SB 231 stormwater fee be upheld?
  - ▣ Not likely in Sixth District Court of Appeals (where *Salinas* was decided)
    - This includes Santa Clara, San Benito, Santa Cruz and Monterey counties.
  - ▣ Elsewhere the courts may go either way.
- If SB 231 upheld at Court of Appeal, then on to the CA Supreme Court.



# The Aftermath

- What happens if an SB 231 stormwater fee is struck down?
  - ▣ Refund up to one year of the fee collected.
  - ▣ Other agencies that adopted such fees should stop collecting and issue refunds to avoid suit.



# Now What?

- Most agencies should wait and see.
  - ▣ Continue to rely on other funding.
  - ▣ Let courts establish precedent or wait for constitutional amendment.
- If your agency is risk tolerant, be a test case:
  - ▣ Proceed with extreme caution,
  - ▣ Coordinate with industry groups, and
  - ▣ Follow the VERY best practices.



# The Big Picture

- Takeway
  - ▣ SB 231 is promising legislation that may expand the funding options for stormwater fees.
  - ▣ But only time will tell if the courts will accept this new definition.
  - ▣ Expect litigation and plan accordingly.



# SB 231 Political Considerations

- Directly engage Elected Officials
  - ▣ No ballot measure may not be good news
- Execute robust community outreach
  - ▣ Community support still crucial – political cover
- Conduct a survey to confirm support





# The Public Asks 2 Questions

1. Do I want the proposed service and is it REALLY needed?
2. Will this Agency spend my money responsibly?



# Outreach Tone

1. Straightforward messaging, but with lots of supporting detail and analysis
2. Authenticity is the new buzz word...and it should be
3. Direct public engagement is a must



# SB 231 Implementation Strategies

- Legal:
  - ▣ Yellow light for most of you
  - ▣ Detailed, well-engineered rate study
- Political:
  - ▣ Robust outreach and survey
  - ▣ Consider escalating rate strategies
- Work together and share information
  - ▣ Contact us (or \_\_\_\_ ) if you would like to lead on this



# CCC v Upland Decision

- Background
- Process
  - ▣ Survey, Signatures, Documents, Outreach
- Advantages:
  - ▣ 50% is better than 66.7%
  - ▣ Political cover
- Challenges
  - ▣ Voter group resources, sophistication
  - ▣ Legal clarity



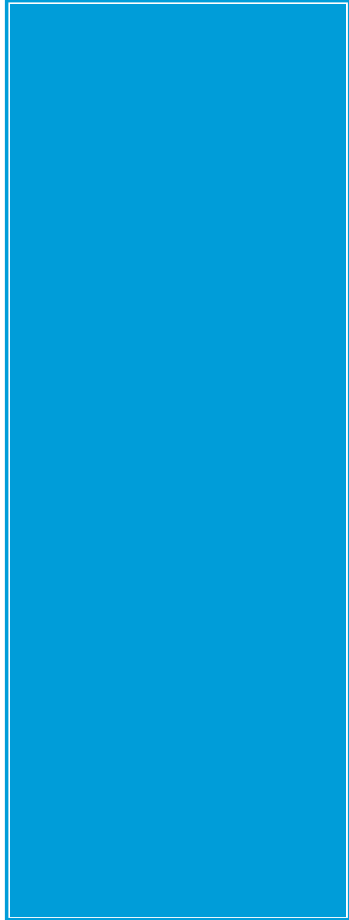
# Final Thoughts



- ❑ Conduct community outreach
- ❑ Confirm Fee Schedule
- ❑ Consider re-alignment of services to sewer, water and/or refuse collection
- ❑ Consider a balloted property-related fee
- ❑ Consider a traditional Special Tax (66.7%)
- ❑ Consider a “Upland” Special Tax (50%)
- ❑ Yellow light: SB 231 fee



# Q & A and Contact Info



**John Bliss**

President

[john.bliss@sci-cg.com](mailto:john.bliss@sci-cg.com)

**Jerry Bradshaw**

Senior Engineer

[jerry.bradshaw@sci-cg.com](mailto:jerry.bradshaw@sci-cg.com)

SCI Consulting Group

(707) 430-4300

