

# STORMWATER FUNDING BARRIERS AND OPPORTUNITIES

Part of a State of California  
Proposition 84 Grant

To Provide Low Impact  
Development Implementation  
Support to Municipalities  
Throughout California

June 2017

Project Team:



## Task 1 of the Financial Barriers to LID and Stormwater Programs Project



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# 1 INTRODUCTION

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The implementation of effective stormwater quality programs in California, including Low Impact Development (LID)<sup>1</sup> projects, is significantly limited by access to adequate funding. Various environmental, social, and economic factors have resulted in the need to more effectively and efficiently manage stormwater to meet public and natural resource objectives. Stormwater quality programs in California have been historically underfunded at the municipal level, where a range of services associated with stormwater management must be provided, including flood control, local drainage, pollution control for receiving waters, and asset management. With emerging stormwater quality regulations, aging infrastructure and other program needs that equate to increased costs, municipalities must evaluate current funding options and ways to leverage existing revenue streams to create more cost-effective programs that meet a broad range of service needs, including environmental protection and regulatory compliance.

This White Paper (“Paper”) provides a discussion of the current stormwater management funding constraints facing California agencies, including local municipalities and flood control agencies, and potential options for addressing these constraints. In particular, legislative items that significantly hinder the ability to generate stormwater program revenue (i.e., Proposition 218) as well as new legislation that may improve the ability to fund stormwater services (i.e., AB 2403) are discussed. Lastly, the Paper will provide some examples of ways in which stormwater program services can be met through integration with other water resource management services (e.g., wastewater and water supply) thereby meeting service demands in more cost-optimized fashions as well as supporting multi-benefit projects and programs. This Paper will provide a foundation for municipalities and other stormwater stakeholders to understand the elements of sustainable funding for stormwater programs, and it is intended to be a catalyst for the dialogue that must occur to successfully navigate this complex and changing landscape.

Funding is often divided into two types: ongoing, dedicated and sustainable funding (such as user fees or taxes), and one-time, or short-term funding (such as grants for specific projects). This Paper is focused on the former, since it provides for the basic operations and maintenance required of any physical infrastructure, although it can also provide leverage for many types of grants and loans in the form of local matching funds, downstream operating costs, and debt repayment. A discussion of one-time or short-term funding through grants and other programs are beyond the scope of this Paper. Appendices are included to provide a more in-depth look at some of the relevant issues.

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<sup>1</sup> LID refers to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. (*US EPA*)

## 1.1 BACKGROUND

The California Stormwater Quality Association (CASQA) was awarded a Proposition 84 Stormwater grant to provide improved Low Impact Development implementation support to municipalities throughout California. The emphasis of the grant project is to remove municipal and state barriers to LID and integrate LID requirements within the regulatory structure of local government. Among the barriers to LID, and stormwater management in general, are the challenges municipalities and agencies face in securing dedicated and sustainable revenue sources. At the same time, emerging stormwater quality control requirements, aging infrastructure, drought conditions and public expectations are changing how we implement and fund stormwater management programs.

Legal barriers, most notably California's 1996 Proposition 218, impose strict requirements for public agencies desiring to implement new or increased stormwater fees, including the requirement to gain approval of property owners or voters through a ballot measure. Such ballot measures have been met with limited success. Proposition 218, in effect, froze the few existing local stormwater fees at their existing rates, and effectively impeded municipalities, most of which had no dedicated Stormwater fees, from instituting them.

As municipalities evaluate limited options for stormwater program funding, there have been some efforts to integrate stormwater management within the broader realm of water resource management, thereby creating potential funding options, and the opportunity to create multi-benefit water resource projects and programs. Below are some examples:

AB 2403, signed by Governor Brown in 2014, amended Section 53750 of the Government Code to clarify the definition of water. The law clarifies that stormwater management activities that benefit or enhance local water supplies can be included in water service fees (which are not required to gain voter approval). AB 2403 appears to broaden the definition of water under Proposition 218 and may help to facilitate programs and projects that use stormwater for water supply. The changes in Section 53750, however, do not define the types of stormwater measures that would enhance local water supplies and can therefore be included in water service fees, so it creates some ambiguity regarding the direct application of AB 2403 for stormwater management.

The California Water Action Plan 2016 Update calls for multi-benefit projects to address a variety of issues. By bringing various elements of the State's water management portfolio onto a single action plan, it creates a blueprint for full integration of those various elements, and lays the groundwork for developing multi-benefit projects and programs. This Action Plan also encourages planning across water sector managerial "silos" such as flood control, local drainage, groundwater

management, water resources and watershed management -- silos that often prevent opportunities for integrated water-related activity to achieve common goals.

SB 985, signed by Governor Brown on September 22, 2014, amended the Stormwater Resource Planning Act. This law further encourages agencies, or groups of agencies, to develop multi-benefit projects that capture stormwater for underground storage, thereby increasing local groundwater supplies and reducing pollution that is carried by stormwater to receiving waterbodies. Another important feature of this law is that compliance is mandatory to receive grants specifically for stormwater and dry weather runoff capture projects from many types of grant funding, such as the 2014 Proposition 1 water bond.

While these directives and laws are certainly helping to improve how agencies in the State leverage water resource management investments to achieve stormwater management objectives, the existing legal constraints surrounding stormwater program funding remain significant, and require municipalities and agencies to evaluate additional funding strategies, including the following:

- Reassignment of stormwater program services to other, more readily-funded services such as water, sewer and refuse collection as a means of leveraging existing resources within the constraints of Proposition 218
- Using non-balloted funding mechanisms such as regulatory fees
- Integrating stormwater projects into other projects or programs such as transportation
- Improving the perceived value, and associated voter support, of stormwater management

## 2 HISTORICAL CONTEXT OF STORMWATER MANAGEMENT

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### 2.1 EVOLUTION OF WATER, WASTEWATER, AND STORMWATER MANAGEMENT SERVICES

Sophisticated water supply and wastewater collection systems began to appear throughout the United States during the industrial revolution of the 1800s, first as a matter of convenience as population centers grew much larger, and, later, to address public health concerns. By the early 1900s, water and wastewater systems had evolved into sophisticated community utilities, and were generally self-supporting through user fees. During this time, corresponding public health regulations were established.

Stormwater, on the other hand, evolved differently. Local drainage concerns were managed as a function of land ownership and development rather than as a municipal function. While urbanization forced cities to build and maintain public drainage systems, this was typically done in the public road right-of-way and managed as a subset of road maintenance.

Water and wastewater, and to a lesser extent solid waste collection, have historically been viewed as essential public health services, and have been subject to public health laws and regulations for well over a century. For stormwater management, the public health aspect was not codified until the 1990s when updates were made to the Clean Water Act. Unfortunately, as a result, stormwater management has been burdened with a lower status among primary municipal services, leading to a profoundly negative effect on the funding mechanism requirements as well as the general public's perception of its value and the public's willingness to financially support it.

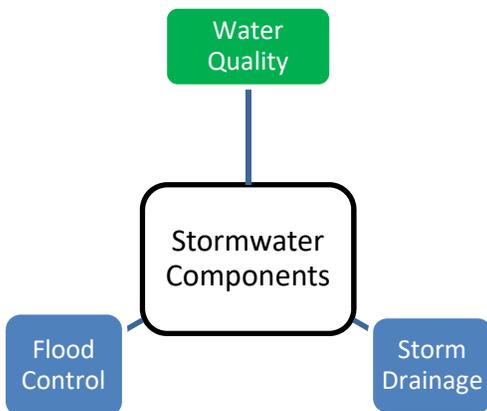
### 2.2 PRIMARY COMPONENTS OF STORMWATER MANAGEMENT: FLOOD CONTROL, STORM DRAINAGE SYSTEM, & WATER QUALITY AND WATERSHED HYDROLOGIC CYCLE PROCESSES

While stormwater remains less valued than its more mature, sister services of water and wastewater, there are significant management and funding disconnects within the three primary areas of stormwater management: flood control, storm drainage system, and water quality.

Even within Stormwater management, water quality arguably is the least valued, and most inadequately funded.

**FLOOD CONTROL** has long been a priority for regional agencies and the federal government, and tends to be the most structured in its approach, with county-wide agencies often taking the lead.

**STORM DRAINAGE**, also called internal drainage or local drainage, which prevents local flooding, has evolved and matured as population centers have developed, and generally is managed by the local municipality.



Funding for flood control and local storm drainage has been varied. In California, large scale flood control is typically managed by a dedicated local or county-wide flood control agency and is often funded through basic ad valorem property tax, combined with an assessment or tax on affected properties, and with considerable state and federal grant funding. On the other hand, a municipality's general fund is often the only source of funding for local drainage, but some agencies have relied on other sources such as gas taxes for roadway-related

drainage. A few agencies have instituted local fees or other charges to help fund storm drainage responsibilities.

**WATER QUALITY** – With the implementation of the Clean Water Act, water quality began to emerge as a critically important element. The National Pollutant Discharge Elimination System (NPDES) was created in response to the Clean Water Act, and is the term used to refer to the stormwater permits under which municipalities and other regulated agencies operate, as well as the various regulations that are a part of those permits. When NPDES permitting was applied to municipalities in the late 1980s, it established water quality as the newest facet of municipal stormwater management, and forced a re-thinking in how stormwater programs should be managed and funded to protect receiving waters. By the early 1990s, cities and counties across the country were attempting to understand the magnitude of their new responsibilities under these new permits. Since drainage has historically been (and continues to be) a function of land use and development, early approaches to NPDES was through land development regulations. This early work focused on best management practices (BMPs) that would be applied to new land development - primarily during the construction phase. Within a decade, NPDES permits had evolved to include stormwater measures that extended well beyond land development construction and post-construction stormwater quality control requirements, eventually including over a dozen categories of programmatic regulations aimed at addressing municipal stormwater quality management.

In the past decade, the predominant stormwater management paradigm has shifted from one focused on building ever more capacity and maintaining existing infrastructure, to one focused on a watershed approach to reversing 150 years of urbanization. This includes requirements for new development to preserve pre-project hydrology as well as efforts by municipalities and other stormwater agencies

to build public improvements aimed at returning parcels of land back to greenfield hydrology utilizing LID and other approaches. Simply, the core mission of stormwater managers is now evolving to follow the “One Water” ethos<sup>2</sup>.

### 2.3 CALIFORNIA STORMWATER PROGRAM FUNDING: THE LEGISLATIVE LANDSCAPE.

The historical and current California legal landscape provides a framework that informs and influences stormwater policies and actions. The following is a summary of key legal milestones as they apply to stormwater.

#### 1978 – PROPOSITION 13

In the context of stormwater funding, the story begins with the passage of Proposition 13, the first manifestation of California’s famous taxpayer revolt. Written and championed by Paul Gann and Howard Jarvis, Proposition 13 was written to rein in elected officials who had a free hand in raising taxes simply by a majority vote of the elected body, rather than by a popular election. It lowered existing property taxes and required that all new taxes need to be approved by voters. Although stormwater funding issues were not yet on the horizon, this seminal initiative set the stage for future laws and policies.

#### 1996 – PROPOSITION 218

As a result of the funding limitations imposed by Proposition 13, public agencies began exploring other means to raise revenues, mostly in the form of assessments and fees which did not require voter approval at the time. Some local agencies adopted NPDES-related fees in the early 1990s. By the mid-1990s, the Howard Jarvis Taxpayers Association (HJTA) sponsored Proposition 218 which, among other things, created a new category of revenue mechanism called a “property-related fee,” and required that any new or increased fee be approved by voters or property owners.

One extremely important aspect of Proposition 218 is that it specifies that sewer, water, and refuse collection are exempted from the challenging voter approval requirement, presumably because these services are so critical to public health. However, and likely as a result of the lack of understanding and perceived value of water quality, this exemption for voter approval did not apply to stormwater fees, as confirmed by the Court of Appeal in *HJTA v. City of Salinas (2002)*, which determined that a stormwater fee was a property-related fee subject to the voter approval requirement.

The timing of Prop 218 is important. In 1996 only a few public agencies had fees or charges for storm drainage in place, and these were typically quite low amounts.

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<sup>2</sup> The “One Water” movement is an approach to water stewardship that is innovative, inclusive, and integrated. It considers water in all phases of the natural water cycle, and endeavors to span all existing areas of water management such as watersheds, stormwater, groundwater, potable water and water treatment.

Proposition 218 and the Salinas case have effectively codified stormwater management into a lower status than that of water and sewer utilities, by requiring a costly and risky ballot measure any time fees need to be established or raised.

#### PROPOSITION 26

Passed in 2010 by California voters, Proposition 26 tightened the definition of regulatory fees and effectively prevented their impending use to comprehensively fund stormwater management activities. (It effectively eliminated the opportunity to use the recently created SB 310 which had been designed to facilitate stormwater services to be funded by non-balloted regulatory fees.)

#### ASSEMBLY BILL 2403

In *Griffith v. Pajaro Valley Water Management Agency*, the 6<sup>th</sup> District Court of Appeal ruled that fees to divert stormwater to coastal wells to prevent salt water intrusion into the groundwater destined for water users was fundamentally water production and as such was exempt from the voter approval process of Proposition 218. This ruling was codified into statute in AB 2403 (Rendon), which, in 2015, added three words to the Proposition 218 Omnibus Implementation Act: “...from any source.” The impact of AB 2403 is discussed in Section 4 of this Paper.

### **2.3.1 TIMING OF NPDES AND PROPOSITION 218**

Although NPDES preceded Proposition 218 by a few years, its fiscal effects were only beginning to be understood by 1996. The expansion of NPDES to municipal stormwater and the passage of Proposition 218 had nothing to do with each other, but their convergence in the 1990s had an enormous impact for managers of stormwater systems in terms of ability to identify funding sources for stormwater management needs.

### 3 STORMWATER PROGRAM FUNDING LOCAL STRATEGIES

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Most local agencies with stormwater management responsibilities face increasing costs with static, and sometimes decreasing, funding sources. Due to many of the legislative constraints that exist at the statewide level, most stormwater management activities are currently funded through the general fund or from grants, while a small number of local public agencies have dedicated funding sources such as fees. Developing a comprehensive stormwater funding portfolio with different sources of funding will help to establish a sustainable stormwater program.

New funding mechanisms for stormwater management can be categorized into two primary approaches: those that require a balloted process and those that do not. Generally speaking, approaches that do not require balloting are highly preferred, but state law severely limits their use. In most cases, stormwater agencies will need a portfolio of approaches to fully fund their programs. In addition, there are several other strategies that may be considered when developing a suite of funding options for any stormwater program.

#### 3.1 LOCAL FUNDING STRATEGIES THAT REQUIRE A BALLOTTED PROCESS

There are two basic types of balloted measures appropriate for stormwater funding, namely, special taxes and property-related fees. Successfully implemented balloted approaches have the greatest capacity to significantly and reliably fund stormwater management, but they are often very challenging. Generally speaking, the most important key to a successful ballot measure is to propose a project or program that is seen by the voting community to have a value commensurate with the tax or fee. The two greatest challenges are to craft a measure that meets this threshold, and then to effectively communicate the information to the community.

##### SPECIAL TAXES

Special taxes are decided by registered voters and require a two-thirds majority for approval. Traditionally, special taxes have been decided at polling places corresponding with primary and special elections. More recently, however, local governments have had success with single issue special taxes by conducting them entirely by mail and not during primary or general elections. Special taxes are well known to Californians but are not as common as property-related fees for funding stormwater activities. Special taxes to fund stormwater services have been successfully implemented in the cities of Los Angeles, Santa Cruz, and Santa Monica.

##### PROPERTY-RELATED FEES

A Proposition 218-compliant, property owner balloted, property-related fee is a very viable revenue mechanism to fund stormwater programs. Property-related fees are

decided by a mailed vote of the property owners with a majority (just over 50%) threshold required for approval, with each parcel getting one vote. The property-related fee process is generally not as well known, it is more time consuming and is more expensive than the special tax process, but it is much more common for funding stormwater management, and in many communities, more suitable to meet the voter approval threshold.

#### CHALLENGES WITH BALLOTTED APPROACHES

Ballot measures are inherently political, and are often outside of the areas of experience and expertise of most stormwater managers. In order for any measure to have a fair chance, the community must be well informed, and their preferences and expectations must be woven into the measure. This requires significant outreach and research, which is something best handled by specialized consultants, and can take considerable time and resources.

Over the past 15 years, there have been fewer than two dozen community-wide measures attempted for stormwater throughout California, and the success rate is just over 50%. Very few attempts have been made to pass a stormwater ballot measure even though there may be over 500 agencies with stormwater needs, because success is not assured. Clearly this is a high bar to clear, and any agency considering a balloted approach must carefully weigh the pros and cons before proceeding.

Funding strategies are discussed in greater detail in Appendix A. Appendix B includes a summary of the successful efforts of the City of San Clemente in implementing a property-related fee for stormwater.

#### **3.1.1 KEYS TO A SUCCESSFUL BALLOTTED APPROACH**

Know your needs and how to fix them: This often will come from a needs analysis or a strategic planning effort. The more popular fixes usually include capital projects that the community sees as fixing a problem they know about. For example, a new storm drain pump station that will alleviate chronic local flooding, or a spreading basin that will replenish the aquifer and create environmental habitat with some recreational opportunities.

Know your community's priorities: If the agency's needs are not seen as priorities by the community, a ballot measure will likely fail. This is usually measured by a public opinion survey, which would identify priorities as well as willingness to pay for the proposed program. Top priorities identified in the survey should be folded back into the proposed measure to demonstrate that the agency is responsive to the community.

Communicate with the voters: Community engagement must be tailored to fit the measure and the community it is designed to serve. It can range from a brief set of

outreach materials (website and flyer) to a comprehensive branding and information effort that can take several months or longer, complete with town hall meetings and media coverage. Knowing your stakeholders and opinion leaders is a must, and special efforts with those groups are always recommended. Note that advocacy by a public agency is strictly forbidden by law, so legal counsel should be involved at some point to help distinguish between educational outreach and advocacy.

Know where you stand with the voters: For instance, do voters trust the agency? Do they believe that you will deliver on your promises? How have past ballot measures worked out? Know the answers to questions like these; and if you do not like the answers, figure out how to correct for that.

Plan for the needed resources: Many public agencies hire professional consultants for critical elements of this process from needs analysis to surveys and community engagement. While these consultants can be costly, it is usually well worth the expense if they can deliver a successful measure. Considerable agency staff time may also be required, since this is a very iterative process that must be presented to the public by agency representatives, not consultants.

### 3.2 LOCAL FUNDING STRATEGIES THAT DO NOT REQUIRE A BALLOTTED PROCESS

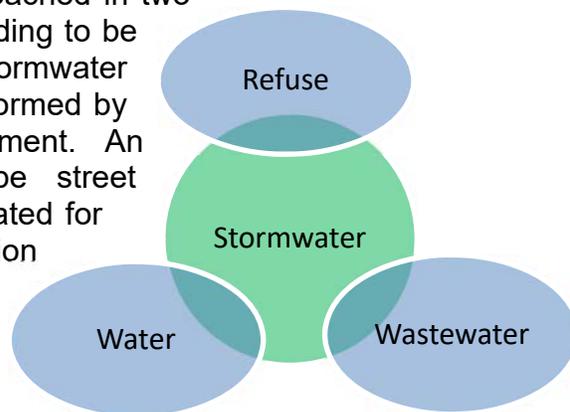
Non-balloted approaches are those which can be implemented without voter approval. They can be as simple as charging a plan check fee, or as complex as realigning functional units or financial budget structures within an agency. The table below illustrates some examples of non-balloted approaches.

Type of Approach	Examples	Comments
Regulatory Fees	Plan Check Fees Inspection Fees	Proposition 26 (2010) has significantly limited the applicability.
Realignment of Services	Water Supply Sewer Refuse Collection	Leverage and integrate stormwater elements that qualify under water, sewer and/or refuse collection categories.
Business License Fees	Business License Fee	Applies to commercial operations with clear impacts on stormwater such as restaurants, vehicle repairs.
AB 1600 Fees	Developer Impact Fees	Similar to impact fees aimed at improving water and sewer systems, or parks and schools.
Integration into Projects with Existing Funding	Transportation or Utility Projects	Takes advantage of multi-benefit projects that also further stormwater goals.

While not subject to local voters’ or property owners’ "willingness to pay" limitations, these non-balloted approaches may encounter a certain amount of public resistance, particularly from specific groups which will be impacted by these approaches (e.g., businesses will resist additional business license fees). In addition, each one of these approaches will require a nexus to be drawn between the fee and the impact on the payer of the fee in order to not be considered a tax. Therefore, a nexus study or cost of service analysis should be developed in each case.

### 3.3 DELIVERY OF STORMWATER SERVICES: RE-ALIGNMENT OF MUNICIPAL SERVICES AS A FISCAL STRATEGY

One approach for stormwater delivering services that has a significant appeal is realignment. Realignment can be approached in two different ways. One approach is for funding to be leveraged from other departments for stormwater activities, but the activities are still performed by the stormwater management department. An example of this approach would be street sweeping being paid for by funds allocated for refuse collection to the sanitation department. The other approach is to reassign the stormwater management activity responsibility to another department. An example of this



approach would be reassigning the responsibility of street sweeping from the stormwater management department to the sanitation department which is responsible for refuse collection. The Proposition 218 exemption from the voter approval requirement for water, sewer and refuse collection, as well as the clarification provided by AB 2403, have caused many stormwater managers to examine how certain stormwater activities can qualify for these categories. Therefore, realignment is examined in detail in this section. Please note that “realignment” is the term used here to describe the reorganization of management, staffing, service units and/or budgets from “traditional” stormwater management services to the more easily funded water, sewer and/or refuse collection services. Please refer to Appendix A.2 for discussion of the other elements of non-balloted approaches.

A number of public agencies in California have identified stormwater program elements that may legally qualify for inclusion in the water, wastewater or refuse collection categories and user fees can be implemented more flexibly. This obvious advantage, however, is accompanied by several challenges:

One question is how to do the same work and pay for it from a different fund. Do you reassign the work to the new division and have them include it in their rate structure, or do you leave the work to be done in stormwater, and simply transfer funding from the other enterprises? For the former, it tends to decentralize the span of control, and performance can suffer. For the latter, it is important to create an administrative record to justify any transfer of funding to satisfy strict Proposition 218 requirements.

Second, depending on how the governance and operational units are structured in any particular case, the water, wastewater and refuse collection may all be parts of completely different public agencies. In that case, reassigning the work or funding may prove to be difficult or even impossible.

Finally, just because the water, wastewater or refuse collection functions do not need to pursue a ballot measure to increase rates, the public’s willingness to pay is still at issue, and a potentially politically charged mailed notice to each customer, as well as a public hearing, are required. Many rate payers pay close attention to any rate increase, and elected officials are under constant pressure to keep increases to a minimum. Moreover, any new or increased fees for sewer, water, or refuse collection may require educational, political, and stakeholder outreach, even though a balloting is not required. It does little good to simply re-align stormwater activities or funding to other agencies and departments, if the rates cannot be increased correspondingly. A more detailed discussion of realignment opportunities as well as other opportunities are included in Appendix A.2.

### 3.4 EXAMPLES OF MUNICIPAL REALIGNMENT OF SERVICES TO SUPPORT STORMWATER ACTIVITIES

#### STREET SWEEPING AND TRASH COLLECTION SERVICES AND STORMWATER

One of the most common and significant realignment opportunities is in the area of solid waste or refuse collection in the form of street sweeping or trash load reduction efforts. In the 1990s many municipalities stepped up their street sweeping efforts to comply with early NPDES permits, and included these costs in their stormwater budget. In the past decade, the permits have increased the trash load reduction



requirements through a permit trash amendment and with a 100% “full trash capture” target in the coming decade. All of these efforts are, in effect, refuse collection. The result is collection of debris or trash similar to that picked up by the refuse collection crews.

Some municipalities have already shifted street sweeping costs over to the local refuse collection enterprise, while others are more cautious due to concerns about the decentralized nature of the collection efforts and Proposition 218 requirements. However, a recent court case has helped clarify the situation. In *Crawley v Alameda County Waste Management Authority*, the San Francisco Court of Appeal ruled that a separate fee for household hazardous waste collection is a property-related fee even though the waste is collected at centralized locations, and is exempt from the voter approval process under the refuse collection exemption. *Crawley* also supports inclusion of trash load reduction efforts into a refuse collection fee structure.

Therefore, all costs of stormwater-related trash collection services and facilities should be funded through the solid waste rate fee, not the through the stormwater budget.

#### WATER PRODUCTION & WASTEWATER TREATMENT AND STORMWATER

In the spirit of the Griffith Court ruling and AB 2403, some stormwater agencies have begun to put stormwater runoff to beneficial use by capturing it, and after some treatment, either directly using it for a non-potable use such as irrigation or diverting it to groundwater recharge systems and/or saltwater intrusion barriers, which helps current or future water supplies. This is being done in many places around the State such as in the Pajaro Valley (stormwater is captured, treated and injected into seawater intrusion barrier wells), many municipalities in Southern California (by way of spreading basins that promote enhanced infiltration to the aquifers), and in at least one case in Orange County, where stormwater is diverted to a sanitary sewer

treatment facility where it supplements flows for the County's Groundwater Replenishment System (GWRS)<sup>3</sup>.

The GWRS case above points out another possible opportunity. In this case, the Orange County Sanitation District needs an influx of raw water to optimize bacteria growth in its treatment process. While the district could purchase raw water from a water resource agency, it chose to work with local municipalities to capture stormwater flows and put them to use in the treatment process.

These are examples of "monetizing" stormwater – a concept supported by AB 2403. While not all agencies are in situations amenable for putting stormwater to beneficial use, those that are should carefully evaluate the potential. In these cases, the stormwater agency could charge the water and sewer agencies for the stormwater, which would then be reflected in the water and sewer agencies' customer rates.

#### MULTI-BENEFIT PROJECTS – TRANSPORTATION AND STORMWATER

For more than ten years, community facilities projects have been required to incorporate some sort of LID and hydrograph modification features. More recently, transportation projects have come under NPDES requirements to include similar elements. The complete streets and green streets movements have brought more attention to incorporating environmental mitigation elements, such as LID, into traditional transportation projects – even where NPDES permits do not require it. The resulting multi-benefit projects have begun to demonstrate how transportation funding can be leveraged to satisfy stormwater goals economically.

In San Mateo County, where the governing body for transportation funding (C/CAG) is the same as for NPDES compliance, there have been many examples of transportation funds being leveraged to include stormwater quality elements. The City of San Diego has a combined Transportation and Storm Water Department that is responsible for the operation and maintenance of streets, sidewalks, and storm drains; leads efforts to protect and improve the water quality of rivers, creeks, bays, and the ocean; performs traffic and transportation system engineering; manages the Utilities Undergrounding program; and plans and coordinates work in the right-of-way. These functions work together in an effort "to plan, coordinate, and perform right-of-way maintenance and improvements and to protect and improve water quality through model storm water programs."

Even for Federally funded projects, Caltrans is becoming more flexible in these applications. One example is the Active Transportation funding. In addition, Caltrans was issued a Statewide NPDES permit that included strict pollutant limits

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<sup>3</sup> The GWRS is a joint project between the Orange County Water District and the Orange County Sanitation District that produces highly treated water that is pumped to recharge basins to naturally percolate into the Orange County Groundwater Basin and to injection wells that form a seawater intrusion barrier.

and compliance guidelines. To accomplish these goals, Caltrans has been working with local agencies under Cooperative Implementation Agreements to fund and build stormwater quality projects.

In the San Francisco Bay Area, a grant from the U.S. Environmental Protection Agency's (EPA) Water Quality Improvement Fund to the Bay Area Stormwater Management Agencies Association through the San Francisco Estuary Partnership is being used to conduct the Urban Greening Bay Area project. The project is focused on developing policy solutions to integrate transportation, climate, and water quality investments. Through a series of regional roundtable meetings, the project is building collaboration among local, state, and federal agencies, elected officials, private sector and non-profit partners to identify examples of integrated solutions to shared problems.

## 4 EMERGING OPPORTUNITIES FOR STORMWATER PROGRAM FUNDING

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As discussed above, current stormwater funding options are limited and include many challenges. In this section, various actions to help meet those challenges are outlined that could be considered by individual agencies or by the stormwater community as a whole.

### 4.1 LEGISLATIVE CHANGES

#### MODIFICATION OF PROPOSITION 218

Proposition 218 was passed without conscious mention of stormwater as an exempt (or non-exempt) enterprise of equal status with water, sewer and refuse collection. It was left to the courts to make that determination, and the Salinas decision, arguably incorrectly, ruled that stormwater fees must be submitted for voter approval. Any change to Proposition 218 to better clarify this would require a statewide vote to modify the Constitution.

To-date, there have been six legislative attempts to clarify the intent of Proposition 218 regarding stormwater:

2003 – ACA 10 Harman

2005 – ACA 13 Harman

2007 – SCA 12 Torlakson

2009 – SCA 18 Liu

2016 – SB 1298 Hertzberg (see section 4.1.1)

2017 – SB 231 Hertzberg (see section 4.1.1)

The five previous attempts to this year's bill (SB 231) each died in the Legislature.

#### CHANGES TO THE SALINAS RULING

Another approach to “fixing” Proposition 218 that may be worth pursuing is to make efforts to diminish the effect of the Salinas ruling. Essentially, a similar case, with strong facts, could be shepherded through the court system to the California Supreme Court, which would benefit from the contemporary understating of stormwater, and would then supersede the Salinas decision. A more favorable opinion from the state Attorney General impeaching the Salinas decision would be helpful to start this effort.

#### NEW CONSTITUTIONAL AMENDMENT INITIATIVE

In 2015-2016, there was a concerted effort by stormwater proponents to put a ballot measure before California voters that would have offered an optional alternative to Proposition 218. This approach would have left Proposition 218 (which modified Article XIII of the Constitution) in place, and would have modified Article X of the Constitution by offering an optional method of adopting fees. The measure would have addressed three recent criticisms of Proposition 218:

1. Tiered water rates to promote conservation
2. Low-income discounts (life-line rates)
3. The balloting requirement for stormwater funding

Unfortunately, polls showed that there was not adequate support for such a measure to obtain voter approval, and this effort was abandoned.

#### **4.1.1 NEW LEGISLATION**

In February 2016, SB 1298 was introduced by Senator Hertzberg, which would have revised the Proposition 218 Omnibus Bill (Government Code Section 53750) to define “Sewer” as including services and facilities for surface or storm waters. This would have allowed stormwater fees to be established or increased without going to a ballot (similar to water and sewer rates). This bill took advantage of the ambiguity of Proposition 218 regarding stormwater systems (as acknowledged by the Salinas Court), and sought to make clear its status under the law. The Howard Jarvis Taxpayers Association (the authors of Proposition 218) strongly opposed the bill and threatened litigation against the first agency that attempted to take advantage of the it. Ultimately, the bill’s sponsor withdrew the bill.

In February 2017, Senator Hertzberg introduced SB 231, a bill very similar to SB 1298 in letter and intent. The main difference is SB 231 includes a proposed new Government Code section of findings and declarations regarding the importance of funding for water projects, including stormwater projects and codifying definitions of “sewer” that include storm sewers from court cases, code sections, and dictionaries. As of the date of this Paper, SB 231 had passed the California Senate and was awaiting referral to committee in the State Assembly.

#### **4.1.2 NON-PROPOSITION 218-RELATED CHANGES**

All four of the examples listed above relate to the impacts of Proposition 218, particularly as they relate to ongoing, sustainable funding for stormwater programs. However, in the area of grant funding and low-interest loans such as the State Revolving Fund program, the Legislature has much more leeway in crafting new laws that make those one-time or short-term funding opportunities more attractive or accessible to stormwater agencies. Recent examples include the following:

- SB 1328 which allows Greenhouse Gas Reduction funds to be available for certain water and stormwater projects
- AB 1989 which would help fund water projects that reduce greenhouse gas emissions
- AB 2594 which allows public entities to utilize captured stormwater to augment water supplies
- AJR 44 which urges the Federal Government to provide greater financial support for local agencies implementing a federal mandate to improve stormwater quality

## 4.2 OPPORTUNITIES FOR IMPLEMENTATION OF AB 2403

As noted earlier, AB 2403 grew from a Court ruling (Griffith), and supports the notion that when stormwater is used in the production of potable water, it is exempt from the voter requirement in Proposition 218. In other words, using water from a stormwater system for the benefit of water users allows the agency to charge fees for that activity under the water exemption with no voter approval required. Also, in this case, the stormwater becomes a valuable asset, like chlorine, in the production of the water, and should be paid for accordingly.

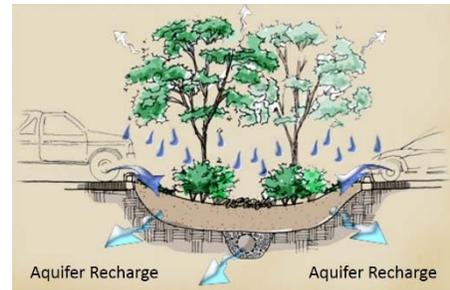
Water providers have always utilized water from rivers, creeks and reservoirs, and the act of diverting those waters for beneficial use has always been part of the water exemption under Proposition 218. Extending that privilege to water flowing in a stormwater system is not a big leap, and that is what Griffith and AB 2403 confirm.

As agencies evaluate additional ways to implement LID or any other sustainable methods of managing stormwater, there are sure to be additional nexus points to water, wastewater or refuse collection systems. There is much room for creativity, and an industry-wide dialogue will be invaluable in discovering additional ways to implement AB 2403, by identifying those stormwater practices that are “used in the production of potable water.” Some approaches include the following:

Bio-retention, the most common form of LID, is a system of modifying urbanized land to replicate the native drainage conditions. The benefits of this include:

- Filtering out pollutants
- Reducing stormwater flows and downstream erosion
- Recharging the local groundwater system

This benefit can bring significant value to the nearby water supply system. Traditional bio-retention is not the only approach that can find a nexus with AB 2403. Any improvement that promotes infiltration would qualify for this, including settling basins, infiltration basins (surface or buried) and pervious paving systems, etc. Costs of bio-retention services and facilities, and other similar approaches, should be funded through the water rate fee, not the through the stormwater budget.



Rainwater/Stormwater Capture and Use is another stormwater activity that benefits water users and provides a nexus to AB 2403. While this does not add stormwater directly to a municipality’s potable water system, it does add a new source of water that relieves the demand on the municipal water supply. The simplest example is a rain barrel catching the water from a residence’s rain gutters for later use in a garden, effectively supplanting potable water from the local water system and hence, “producing” new water. Developers and agencies are hard at work to develop larger-scale versions of this approach.

Opportunities exist for collaboration between municipalities and water districts for joint projects involving stormwater capture and use. One potential opportunity is to convey stormwater to water district spreading basins for infiltration and recharge aquifers and serve as a future source of water. Another opportunity is for municipalities and water districts could jointly develop a water master plan where capture and use of stormwater could be an additional source of water other than potable and recycled, and identify optimal locations where stormwater capture and supply projects could be implemented.

Opportunities also exist for collaboration between municipalities and wastewater agencies for joint projects involving stormwater capture and use. One of the challenges with diversion of stormwater to sanitary sewer is that in most cases sewer plants do not have the capacity or desire to accept stormwater discharges during storm events. One potential opportunity is to evaluate the opportunities to detain stormwater during storm events in existing or new regional basins and then convey the captured storm events to waste water treatment plants after the storm events when capacity is available at the waste water treatment plants to accept the captured stormwater. Many wastewater plants are now producing recycled water, and with the conveyance of captured stormwater to the plants it would then be converted to recycled water, and distributed via an already established recycled water supply network.

Trash is collected in rain gardens and green streets as evidenced in some of the early rain gardens built by the City of El Cerrito along their main commercial arterial. Once built, it became clear that the biggest maintenance demand was to remove the urban trash that accumulated in the vegetated areas. This element of the ongoing operations and maintenance is on par with emptying the nearby trash receptacles and would qualify as refuse collection, and should be funded accordingly, under Proposition 218.

Water conservation activities performed by a stormwater agency that helps to preserve water resources and environmental testing for pollutants can aid the efforts of water and wastewater agencies in their goals. Water conservation activities benefit water users and also provide a nexus to AB 2403.

Potable water production operations that use stormwater, as previously discussed, should be funded through the water rate such as where stormwater is used for groundwater recharge, treatment plant optimization, saltwater intrusion curtains, etc. These activities benefit water users and also provide a nexus to AB 2403.

Wastewater treatment operations that use stormwater, as previously discussed, should be funded through the sewer rate, such as where stormwater is used for treatment plant optimization. Also, any contamination of the stormwater from the

sewer system, along with any testing and monitoring for sewage-related pollutants, should be fully paid for by the sewer rate.

Other trash collection efforts could also qualify for a Proposition 218 exemption, including the new trash amendment to many permits. In addition to street sweeping mentioned earlier, other examples include deployment and operation of full trash capture devices within the stormwater system, and trash hot spot cleanup activities.

#### 4.3 EDUCATION AND DISCUSSION OF STORMWATER FUNDING CHALLENGES

The two primary regulatory agencies, the Environmental Protection Agency and the State Water Boards, are often seen by local stormwater managers as creating huge hurdles for local agencies without regard for the funding challenges. However, both agencies are bound by the Federal Clean Water Act, and are simply doing their jobs. Further, they are fully aware of the funding challenges faced by local stormwater agencies and are committed to helping those agencies to the extent they can.

The EPA has been developing workshop forums around the Country to learn more about local challenges and successes and to help local agencies learn about funding opportunities. The forums for California (which has the extra hurdle of Proposition 218), are being planned for the Spring of 2017, with one to be held in the southern area and one in the northern area.

The State Water Boards have launched a program entitled, “Strategy to Optimize Resource Management of Storm Water” (STORMS, or Storm Water Strategy). One key element of this program is “Project 4b, Eliminate Barriers to Funding Storm Water Programs,” which will utilize focused stakeholder workshops to identify barriers to stormwater projects and strategies for local agencies to meet those challenges.

## 5 SUMMARY

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This paper has illustrated the reasons stormwater, as a primary municipal service, is largely less valued and more difficult to fund than similar services including water, sewer and refuse collection. While stormwater began to emerge as a fully regulated public works enterprise a few years before Proposition 218 was enacted in 1996, that new status was not widely known. Further, Proposition 218 was not sufficiently explicit on the key question of whether stormwater qualifies for the water, sewer and refuse collection exemption from the voter approval requirement. The Salinas decision provided that clarification, and requires any new or increased stormwater fee to obtain voter approval. The net result is that most stormwater management agencies have insufficient funding to provide their services and to meet permit requirements.

The 1990s was also a time for the NPDES permit structure to mature into a full set of regulations aimed at improving water quality. This caused operating costs to increase substantially, while Proposition 218 effectively dampened any efforts to set or increase stormwater user fees.

Throughout the recent evolution of stormwater enterprises, Proposition 218 and NPDES, several funding options have emerged. For a ballot measure approach, the property-related fee process has been found to be successful for some agencies, but must be accompanied by effective and sophisticated outreach and politicking. Among non-balloted approaches, realigning agency functional units and budget structures to match the legal landscape (i.e., Proposition 218 exemptions for water, sewer and refuse collection) show substantial promise as a way to relieve funding pressure from stormwater agencies. AB 2403 (2015) provides additional legal support for the realignment approach. Regulatory fees and impact fees have a limited but important role to offset certain costs. However, each of these options come with considerable challenges, and none promise to solve the dilemma of developing dedicated and sustainable funding for stormwater programs. The table below summarizes the promising actions to be considered by local stormwater agencies.

**Realignment** Stormwater-related activities that can be funded through ballot-exempt process such as water, wastewater and refuse collection fee structures

Refuse Collection	Trash Capture Program as required by NPDES permits
	Street Sweeping
	Routine Rain Garden maintenance that is driven by trash removal
Water Source and Supply	Low Impact Development (bio-retention and permeable pavements)
	Stormwater capture and reuse (rain barrels, spreading basins)
	Stormwater diversion for groundwater enhancement

**Multi-Benefit Projects - Transportation** Embed stormwater quality features into transportation projects

#### Legislative Changes

Modify Prop 218	Would require Statewide vote
Change Salinas Ruling	Similar case with strong facts leading to different outcome
	New legislation to modify definition of "sewer" to include stormwater
Change Constitution	Would require Statewide vote. Recent effort was withdrawn due to weak support.

#### Education and Discussion of Stormwater Funding Challenges

S.T.O.R.M.S.	Focused stakeholders workshops to identify funding barriers and develop strategies to help local agencies
E.P.A	Financing forums to present existing and promising funding strategies

It is worth noting that there are other types of funding, particularly one-time or short-term funding for capital projects and pilot programs that also face similar funding challenges. Grant and low-interest loan programs exist that can help stormwater programs immensely. However, those typically require some sort of outside funding to either provide local matching funds for grants or repayment capabilities for loans. In other words, these valuable funding programs must be leveraged against a baseline, sustainable and dedicated funding stream such as user fees or taxes. Neither type of funding can stand alone. Grants and loans usually require other

funding, and user fees are typically insufficient to fund capital improvements and other environmental pilot programs such as LID. Therefore, a multi-pronged approach is highly recommended.

The way forward is not entirely mapped out for stormwater funding challenges. However, the tools already being used, in addition to the maneuvering room created by AB 2403, can be put to good use by a multitude of stormwater agencies as they traverse and overcome barriers to stormwater program implementation. Developing multi-benefit projects and multi-agency partnerships will further help open funding doors as well.

Stormwater professionals, including municipal staff, elected representatives, consultants, academics and others must redouble their efforts to effectively convey to decision-makers and the general public the importance of water quality and the funding of water quality. No longer can stormwater professionals be satisfied with a lower status, but instead, must be creative, progressive, political, forward-thinking and demanding.

It is hoped that this Paper has provided a foundation for moving toward a future in which opportunities are created and capitalized upon to sustainably fund ongoing stormwater programs and services, and paid for by the people who benefit. The catalyst for this transformation is dialogue. It is only when stormwater leaders and other stakeholders work together that the best outcomes can be realized.

## **APPENDIX A: DISCUSSION OF EXISTING FUNDING STRATEGIES**

### **INTRODUCTION TO POTENTIAL FUNDING SOURCES**

Dedicated local revenue mechanisms available to stormwater quality programs can be divided into three primary groups, namely, balloted, non-balloted, and development-driven. (Legislative approaches and grants are also briefly discussed in this Appendix.)

Balloted revenue mechanisms are legally established, and rarely have legal challenges been successful. However, the balloting requirement significantly limits the total revenue that may be generated, since it is limited by the political "willingness to pay" by the local registered voters or property owners. Amendments to the California Constitution derived from Proposition 13 and Proposition 218 dictate the required processes for balloted revenue mechanisms.

There are two basic types of balloted measures, namely, special taxes (primarily defined and regulated through Proposition 13-driven language) and property-related fees (primarily defined and regulated through Proposition 218 language). Special tax elections are typically conducted at polling places and require two-thirds support of voters, with one vote per registered voter. Property-related fee elections are typically conducted by mail, with a threshold of 50% support of voting property owners, and one vote per parcel. (A third mechanism, the Proposition 218-compliant benefit assessment, is discussed briefly in this report, but is not legally or politically appropriate.)

Non-balloted approaches, while not subject to local voters'/property owners' "willingness to pay" limitations, include increased legal risk. Non-balloted approaches include regulatory fees and financial re-alignment of stormwater program activities combined with non-balloted fees.

The outline below includes an overview of potential funding sources to address unmet funding requirements for implementation of the NPDES requirements:

#### **I. BALLOTTED APPROACHES**

1. Parcel-Based Special Taxes
2. Other Special Taxes
  - a. General Obligation Bonds
  - b. User Taxes
  - c. Transient Occupancy Taxes and/or Sales Taxes
  - d. Vehicle License Fees
3. Property Related Fees
4. Benefit Assessments

**II. NON-BALLOTTED APPROACHES**

1. Re-Alignment of Stormwater Services
2. Dedicated Property-Related Fees
3. Regulatory Fees - SB 310
4. Regulatory Fees – Inspections
5. Business License Fees
6. Use of Existing Funding for Complementary Improvements
7. Infrastructure Financing Districts

**III. DEVELOPMENT-DRIVEN APPROACHES**

1. Impact Fees
2. Community Facilities Districts

**IV. LEGISLATIVE APPROACHES**

**V. OTHER APPROACHES**

1. Grants

**VI. OTHER ISSUES AFFECTING ALL APPROACHES**

## APPENDIX A.1 BALLOTTED APPROACHES

### PARCEL-BASED SPECIAL TAX

Special taxes are decided by registered voters and require a two-thirds majority for approval. Traditionally, special taxes have been decided at polling places corresponding with primary and special elections. More recently, however, local governments have had significant success with single issue special taxes by conducting them entirely by mail and not during primary or general elections. In any case, special taxes are well known to Californians but are not as common as property-related fees for funding of stormwater activities. Special taxes to fund stormwater services have been successfully implemented in the cities of Los Angeles, Santa Cruz, and Santa Monica.

Most special taxes are conducted on a parcel basis with rates potentially based upon property use and/or size, geographic zone, and other property-based attributes. Parcel taxes based upon the assessed value of a property are constitutionally prohibited. Parcel taxes are the most common and most viable type of special tax for funding the NPDES requirements. As such, most of the discussion of special taxes in this report will focus on parcel taxes.

#### REQUIRED DOCUMENTS FOR A PARCEL-BASED SPECIAL TAX

- Ordinance or Resolution stating:
  - Tax type, tax rates, collection method, election date and services provided
- Notice to the Registrar of Voters of Measure Submitted to Voters
- Measure Text including:
  - Ballot Question (75 words or less)
  - Full Ballot Text (300 words or less)
  - Arguments in Favor or Against (Pro and Con Arguments)

#### ADVANTAGES

Legally rigorous: Special taxes, if approved by two-thirds of the registered voters within a community, are very reliable and very rarely successfully legally challenged. Special tax revenue has not been subject to state-level "take-aways" like the Educational Revenue Augmentation Funds (ERAF).

Common mechanism: Most property owners are aware and comfortable with (but not necessarily supportive of) the special taxes and the special tax process.

#### CHALLENGES

Higher political threshold: Generally speaking, the two-thirds majority threshold for approval is very politically challenging, particularly within the current political climate in California. Special taxes are subject to significant outside influence from media and opposition groups during voting, and are vulnerable to competition from other measures and candidates on the shared ballot.

When special taxes have been used for stormwater revenue, the rate and total revenue have been significantly less than they have been when using a property-related fee. Two exceptions were in Santa Cruz and Santa Monica, which have active and significant renter populations that tend to be more supportive of new taxes than are property owners. In other areas, however, it is anticipated that the community is much more likely to satisfy the 50% property owner threshold of a property-related fee than the 66.7% registered voter threshold of a special tax for the same stormwater quality measure.

**Borikas Decision and the Issue of Uniformity:** In June of 2013, the State Supreme Court declined to overrule a lower court's decision to overturn a parcel tax for the Alameda Unified School District. The District had imposed a tax in 2008 for which larger commercial properties were taxed at a higher rate than for residential or smaller commercial properties. The tax was overturned because it failed to satisfy a "uniformity" requirement for taxes for school districts. As a result, it is anticipated that legislation will be introduced in Sacramento to apply this uniformity requirement to all parcel-based taxes. This action needs to be monitored because if a stricter uniformity requirement is implemented, it could weaken a municipality's ability to generate sufficient revenue via a parcel-based tax.

#### **REVENUE PROJECTIONS AND TIMING**

Special tax elections held at polling places are conducted on the statutorily designated dates (typically in November for the general election and either March or June for the primary). If the municipality ultimately decides to pursue a special tax, it is highly recommended that a special all-mail election be considered, which likely could be scheduled any time. Special all-mail ballot elections are often less expensive and allow for more optimization of the election data, as well as having the advantage of presenting a single issue to the voters.

Tables 1 and 2 detail some of the required tasks and typical timeline to implement a special parcel-based tax. Local regulations may change some elements of this timeline.

**TABLE 1 – BALLOTTED – PARCEL-BASED TAX**

Typical Duration	Task
6 months prior	Community Outreach
2 months prior	Ordinance or Resolutions for Governing Body approval
	Notice to Registrar of Voter of Measure Submitted to Voters
	Submittal of Measure Text, Ballot Question and Pro/Con Argument
1 Day	Conduct Election, consolidated with Statewide primary or general election, or local election; Tabulate Ballots; 2/3 of registered voters required for approval

**TABLE 2 – MAIL BALLOTTED – PARCEL-BASED TAX**

Typical Duration	Task
6 months prior	Community Outreach
2 months prior	Ordinance or Resolutions for Governing Body approval
	Notice to Registrar of Voter of Mailed Measure Submitted to Voters
	Submittal of Measure Text, Ballot Question and Pro/Con Argument
1 month prior	Mail Ballots
1 Day	Conduct Election; Tabulate ballots; 2/3 of registered voters required for approval

**OTHER CONSIDERATIONS & FUTURE LEGISLATION**

The California Constitution currently requires a two-thirds majority voter approval for cities, counties, and special districts to impose a special tax. An exception to this requirement is incurring indebtedness for school districts. General obligation bonds for school districts' capital projects only require 55% of voter approval to be repaid through a special tax. There have been previous unsuccessful attempts to lower the required voter approval for all or some special taxes down to 55%, matching the requirements for school districts.

**OTHER SPECIAL TAXES**

As mentioned above, parcel-based special taxes are a well-known taxing mechanism decided by registered voters and require a two-thirds majority for approval. Other special taxes are described below.

#### **GENERAL OBLIGATION BONDS (SERVICED BY A SPECIAL TAX)**

In California, special taxes can service directly the sale of general obligation bonds to finance the construction of infrastructure. In 2004, the City of Los Angeles successfully passed "Measure O" which provided funding for a variety of capital improvements related to water quality. Arguably, voters are more likely to support general obligation bond special taxes than parcel-based taxes at equivalent rates. However, since special taxes for general obligations bonds can only be used for the financing of capital improvements, this mechanism is not appropriate for funding operational activities such as infrastructure maintenance and NPDES requirements.

#### **USER TAXES**

User taxes are typically designed to associate "use" with "taxation." Stormwater management does not lend itself well to this model, since it is difficult to measure and assign stormwater services and improvements to specific users, particularly NPDES elements. However, one example of a user tax that is currently being evaluated is in El Dorado County. El Dorado County is considering the concept of a "Tahoe Basin User Fee" with a portion of the revenue supporting stormwater quality services. Tourists travelling into the Tahoe Basin would be charged an entry toll at a finite number of designated entry points, including Highway 50 into South Lake Tahoe. However, it is unlikely that this plan will be implemented in the Tahoe Basin, and even less likely such a user tax could work for municipalities elsewhere in the State.

#### **TRANSIENT OCCUPANCY TAXES AND/OR SALES TAXES**

A transient occupancy tax ("TOT") is charged for occupation of a room or rooms or other living space in a hotel, inn, tourist home or house, motel or other lodging for a period of 30 days or fewer. A sales tax is a consumption tax charged at the point of purchase for certain goods and services. The sales tax amount is usually calculated by applying a percentage rate to the taxable price of a sale. Both of these mechanisms are particularly popular in areas with considerable tourist activity because it is perceived that a disproportionate amount of the tax load will be carried by "out of town" people and entities. Areas with little or no tourist base would not particularly be well-suited for a sales tax or TOT.

Sales tax and hotel occupancy taxes have considerable internal political challenges and difficulty establishing at least a portion as dedicated to stormwater program requirements. A sales tax for a specified or dedicated purpose would require the difficult two-thirds of registered voter support, as would a transient occupancy tax. These mechanisms are considered less viable than a parcel tax.

In addition, sales taxes are limited to 2% for local agencies, and many areas may already be at the limit.

### **VEHICLE LICENSE FEES**

One novel funding approach that has worked well for San Mateo County is Vehicle License Fees. Initially established in 2003, AB 1546 authorized the City and County Association of Governments of San Mateo County (C/CAG) to assess up to \$4 in vehicle license fees. The purpose of the fee was to establish a pilot program that would fund congestion management and stormwater pollution prevention activities. Although the \$4 fee was set to expire in December 2012, San Mateo voters approved Measure M in 2010 with 54.9% support, authorizing C/CAG to impose a \$10 Vehicle License Fee for traffic congestion and stormwater pollution prevention. Measure M generates \$7.6 million per year for 25 years. Half of the revenue goes directly to C/CAG's member agencies for congestion management or stormwater pollution prevention activities, and of the remaining half, approximately 12% goes toward stormwater pollution prevention activities at a countywide level.

Subsequent similar political efforts in Alameda, Contra Costa, Marin, Napa, and Sacramento Counties were held to the higher two-thirds threshold as a result of the passage of Proposition 26, and have failed. While the vehicle licensing fee has been effective for San Mateo County, implementing this type of fee to meet the stormwater program needs would now require two-thirds registered voter approval as a result of Proposition 26.

### **PROPERTY-RELATED FEES - BALLOTTED**

A Proposition 218-compliant, property owner balloted, property-related fee is a very viable revenue mechanism to fund stormwater programs. Accordingly, considerable detail is provided below regarding this approach. Although a municipality has the option to submit it to registered voters requiring a two-thirds majority, it is typically submitted as a property owner balloting requiring a simple majority for approval.

### **BALLOTTED PROPERTY-RELATED FEE PROCESS**

The property-related fee process requires public approval in two distinct steps, both of which must be completed successfully for the fee to be approved. The first step is a public notice mailed to each property owner followed by a public hearing 45 days later. If a majority of property owners protest the proposed fee at this initial protest hearing, the proposed fee cannot be sent to ballot. Such a protest is highly unlikely in large urbanized areas. If a majority protest is not received, the local agency may, at its discretion, choose to submit the fee to a balloting of either all property owners subject to the proposed fee, or all registered voters.

The second step of the process is the balloting. If a mailed ballot procedure by property owners is used (and this option, not the registered voter option, is usually

selected), the mailed ballot must contain the amount of the proposed fee to be imposed on the owner's property or properties, the basis for calculating the proposed fee, the reason for the fee, and a place upon which an owner can indicate his/her support or opposition for the proposed fee. A simple majority of ballots cast by property owners is required to approve the fee. The balloting must be held at least 45 days after the public hearing.

#### **REQUIRED DOCUMENTS FOR A PROPERTY-RELATED FEE**

- Fee Report
- Resolution Calling for Mailing of Notices
- Notice
- Resolution Calling for Mailing of Ballots (assumes less than 50% protest)
- Ballot
- Resolution Directing Fees to be Charged (assumes more than 50% support)

#### **FEE REPORT**

Integral to the property-related fee process is the development of a "Fee Report" including the fee methodology, which is a collection of formulas used to determine individual fees for specific parcels, based upon specific attributes. (The "Fee Report" is sometimes erroneously referred to as the "Engineer's Report," which is a document associated with a benefit assessment.) Although there have been fewer than two dozen property-related fees for stormwater in California history, a uniformity of methodology is beginning to emerge. Most methodologies incorporate either individual impervious areas for individual parcels, or more commonly, average impervious area percentages corresponding to property use. For example, all single family homes on 5,000 sq. ft. or less may receive exactly the same fee. Conversely, some agencies field measure every parcel and determine individual impervious amounts for individual parcels, and individual fees are calculated accordingly. Generally speaking, stormwater fee methodologies use "groupings" in which parcels of similar use and size receive the same fee. This is an advantage from an administration and community acceptance standpoint, while still being legally defensible. The fee methodology could also incorporate a base "off-site" component plus a property-specific "on-site" component. An off-site component assigns a property's share of costs for water quality improvements from shared public improvements, such as roads. The other portion of a property's fee will be for its onsite impacts.

#### **ADVANTAGES**

Most Common Mechanism for Stormwater: Property-related fees are the most commonly used mechanism for funding stormwater programs. Although special taxes have been used, they have been used less often, and in communities with large and very supportive renter populations such as Los Angeles, Santa Cruz and Santa Monica.

Legally Rigorous: Probably because the HJTA v. Salinas case explicitly called out a balloted property-related fee, and since the plaintiff in this case was the primary taxpayers' association in the state, there have not been any substantive legal challenges of this mechanism's use for stormwater services.

Politically Viable: The approval threshold for a property-related fee is 50%, with one vote per fee-eligible parcel. This mechanism is likely more politically viable than a special tax.

## **CHALLENGES**

Unfamiliar Process: One potential criticism of the property-related fee process is that property owners are generally unfamiliar with the process and opponents can exploit this. With the recent dramatic increase in voting by mail in California, this would not likely be a major issue, however, political opponents can exploit this unfamiliarity and focus the public's attention on the Proposition 218 process and away from the proposed water quality improvement. This tactic effectively derailed recent efforts in Contra Costa County and Los Angeles County.

In the case of Contra Costa County, the anti-tax editorial board of the Contra Costa Times characterized the balloting process as flawed because it was not handled by the County Registrar of voters, did not utilize secret ballots, required a signature on the ballot, did not include pro and con arguments on the ballot materials, and the tabulation was performed by a private accounting firm, even though all of these items were legally implemented as required by Proposition 218 and as sponsored by the Howard Jarvis Taxpayers Association.

Large Public Properties Including School Sites: A fundamental challenge with the property-related fee is the legal requirement to charge all properties using a standardized methodology and that, arguably, publicly owned properties are subject to the fee. As a result, school sites, due to their high levels of impervious area, tend to have elevated fee amounts. Sensitivity will need to be applied when evaluating fees and in particular fee reduction measures available to properties to mitigate both pollution runoff and fee rates.

Legal Scrutiny: Property-related fees for stormwater management are well established and legally stout. However, special attention must be paid to ensure the Proposition 218 process is carefully followed. Proposition 218-driven mechanisms are typically subjected to greater legal scrutiny than special taxes.

## **REVENUE PROJECTIONS AND TIMING**

The basic fee rate should be determined by balancing the budgetary requirements of stormwater program and the political realities of support levels within the municipality. It is highly recommended that various fee rates and program elements be tested via public opinion research prior to the balloting. Within the

State, fees and taxes for stormwater programs have typically ranged from \$25 per year to over \$200 per year.

Table 3 lists the required tasks and timeline to implement a property-related fee.

**TABLE 3 – BALLOTTED PROPERTY-RELATED FEE TASKS**

Typical Duration	Task
6 months prior	Community Outreach
3 months prior	Develop Fee Report, Supporting Resolutions, Notice and Ballot
	Governing Body considers approval of Fee Report and calls for mailing of notices
+/- 10 days	Mail Notice of Proposed Fee and Date of Public Hearing to all property owners (45 day notice period)
45 Days	Public Hearing and call to mail ballots (assumes < 50% protest)
+/- 10 days	Mail Ballots to all property owners (45 day ballot period)
45 Days	Balloting period ends; Ballot tabulation begins; 50% +1 required for approval with 1 vote per fee-eligible parcel

### LESSONS LEARNED WITH THE CONTRA COSTA COUNTY AND LOS ANGELES COUNTY EFFORTS

Both Contra Costa County and Los Angeles County, via their County Flood Control Districts, have attempted to impose a property-related fee for water quality improvement in the last few years. Although there were clear differences between these situations and most other municipalities, there are still important lessons to be learned. In both cases, the proposed fee failed to receive unanimous support from the governing Board of Supervisors, setting up a fundamental weakness in the effort. In the case of Contra Costa County, the local newspaper, the Contra Costa Times, heavily criticized the effort with nine major editorial articles against it over the 45-day balloting period. The Contra Costa Times editorial board is consistently and actively critical of local government and associated revenue measures. The Times focused on the property-related fee process, emphasizing the lack of pro and con arguments, the fact that balloting and tabulation were not performed by the County Registrar of Voters, and the 50% approval threshold. The Contra Costa County Clean Water Program staff worked closely with the Times' staff to correct and add context to their criticisms, but newspaper editorials continued to include factual inaccuracies when describing the process. This

negative media caused a 9% drop in support from survey to actual balloting, and the fee was ultimately not approved by Contra Costa County property owners. Although other local media may handle similar efforts differently, this effort exposed a real weakness of the property-related fee process.

Similarly, the recent effort in Los Angeles County lacked broad based support from the Los Angeles County Board of Supervisors with only a simple majority of the Board voting to go ahead with the fee. Although the media coverage was accurate and balanced, there was considerable coverage of relatively high fees proposed upon school sites due to their large amount of impervious area. In this case, the fundamental lack of governing body support, outcry from the local school district, and several other missteps resulted in the Los Angeles County Board of Supervisors not voting to proceed with the balloting second step of the process after the notices of public hearing had been mailed out.

### **SOME QUESTIONS CONCERNING PROPERTY-RELATED FEES**

#### Secret Ballot - Forde Greene v. Main County Flood Control and Water Conservation District (a.k.a. "Ross Valley Flood Fee")

In March of 2009, the California Court of Appeals (First Appellate District) issued a decision overturning a property owner-approved, property-related fee for stormwater management services in Ross, California. Essentially, the Court concluded that "the voters who adopted Proposition 218 intended the voting to be secret in these fee elections." However, this decision was completely contrary to the opinion of most Proposition 218 attorneys in California, as well as tradition and practice. Not surprisingly, the California Supreme Court overruled the appellate court's decision, and the approved fee has been validated.

### **BENEFIT ASSESSMENTS**

As discussed in the preceding section on property-related fees, the HJTA v. Salinas decision effectively determined that the benefit assessment is not the legally applicable mechanism for stormwater services. To our knowledge, there have not been any significant, agency-wide benefit assessment districts created to manage stormwater in California since this decision was made.

## APPENDIX A.2 NON-BALLOTTED APPROACHES

### RE-ALIGNMENT OF SOME STORMWATER SERVICES (SUCH AS SEWER, WATER, AND REFUSE COLLECTION)

Over the last two decades, many public agencies in California have consolidated the services related to stormwater infrastructure and NPDES permit compliance into one "stormwater department." This consolidation has allowed for improved management of these efforts; however, it may also have resulted in some unintended consequences in terms of optimizing funding of these services.

More recently, a number of public agencies in California have re-aligned services that were in their stormwater program to water, sewer, and refuse collection and have established new or increased fees, and/or re-negotiated existing franchise agreements for such services. This opportunity may be available to other stormwater agencies as well.

Of course, it does little good to simply re-align stormwater activities to other agencies and departments, along with the corresponding financial burden, if these other agencies or departments have little access to corresponding increased revenue. Accordingly, these re-alignments have been for, and should be focused on, entities that have reasonable ability to raise the corresponding revenue needed to support these additional services, such as sewer, water, and refuse collection.

Sewer, water and refuse collection services are provided throughout the State by a combination of private companies as franchisees, special districts, and the municipalities themselves. Special districts and local governments are required to satisfy Proposition 218 processes when imposing new or increasing sewer, water and refuse collection services rates. The Proposition 218 process requirements are far less onerous for sewer, water, and/or refuse collection rates than for other services, because they are only subject to the noticed public hearing requirement and are exempted from the balloting requirement. Known as the "sewer, water, refuse exception," it is described in Proposition 218 as follows:

*"...Except for fees or charges for sewer, water, and refuse collection services, no property-related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge."*

For franchisees, the requirement is less clear, and may only need a re-negotiation of the contract and rates with the governing local agency. The legal need for a franchisee to conduct a Proposition 218 noticed public hearing for sewer, water, and refuse collection is debated in California and is outside the scope of this report. The more conservative approach is to conduct a Proposition 218-noticed public hearing even when a franchisee is providing the services.

Most importantly, whether a Proposition 218-noticed public hearing is required or only a franchisee re-negotiation, these processes do not require the expense, political risk and financial "willingness to pay" constraints of a special tax or balloted property-related fee.

This approach requires the agency to conservatively review current stormwater program activities, and where reasonably and rationally appropriate, consider re-aligning some of these activities to sewer, water or refuse collection, and then increase the fees for these services accordingly. Any such re-alignments of activities and/or improvements should be bona fide, well-supported, and well-reviewed. Moreover, any new or increased fees for sewer, water, or refuse collection may require educational, political, and stakeholder outreach, even though a balloting is not required.

New or increased fees or charges for sewer, water or refuse collection are established by the following steps (note that the second, ballot step has been struck out in accordance with Proposition 218):

**TABLE 4 – NON-BALLOTTED - PROPERTY-RELATED FEE TASKS FOR SEWER, WATER AND REFUSE COLLECTION ONLY**

Typical Duration	Task
6 months prior	Community Outreach
3 months prior	Develop Fee Report, Supporting Resolutions, Notice and Ballot
	Governing Body considers approval of Fee Report and calls for mailing of notices
+/- 10 days	Mail Notice of Proposed Fee and Date of Public Hearing to all property owners (45 day notice period)
45 Days	Public Hearing and <del>call to mail ballots (assumes &lt; 50% protest)</del>
<del>+/- 10 days</del>	<del>Mail Ballots to all property owners (45 day ballot period)</del>
45 Days	<del>Balloting period ends; Ballot tabulation begins; 50% +1 required for approval with 1 vote per fee-eligible parcel</del>

#### THE STREET SWEEPING OPPORTUNITY

Many stormwater programs throughout California fully or partially fund street sweeping activities, and in many cases, it is the largest single element of the budget. Street sweeping can be reasonably and rationally assigned to the solid

waste department of a public agency. Since most street sweeping is done along residential streets, a clear link can be established between this service and a specific property, perhaps based quantitatively on street frontage. In some cases, public agencies may conservatively determine that less than 100% of the costs of street sweeping can be assigned to individual properties. Even so, any reduction will still have a positive effect on the stormwater budget. Note that Waste Management Inc., the largest refuse collection company in the United States, provides street sweeping service as a core service to many municipalities throughout the nation. Accordingly, this would require an increase to the contractual scope of the refuse collection provider and likely a corresponding rate increase. Be advised that the legal question as to whether "street sweeping" is indeed "refuse collection" and satisfies the "sewer, water, refuse exception" of Proposition 218 has not been definitively answered.

#### **THE TRASH LOAD REDUCTION REQUIREMENTS OPPORTUNITY**

Like the street sweeping example above, much of the NPDES permit's Trash Load Reduction requirements are essentially "refuse collection" and should be considered for re-alignment, accordingly. This includes maintaining and collecting refuse from trash capture devices, hot spots and other BMPs, as well as activities associated with overall trash reduction plans. Re-aligning these trash-related activities to the refuse collection provider would also likely require an increase to the contractual scope of the refuse collection provider and likely a corresponding rate increase.

One weakness of this approach was thought to be developing a nexus between overall trash accumulation and individual properties. However, a recent appellate court case, *Crawley v. Alameda Co. Waste Management Authority*, found that the household hazardous waste program was a legitimate property-related service, and qualified for the refuse exemption even though the services were performed at centralized locations (landfills). This seems to support other types of centralized collection of trash and debris that originates on properties of various types, as long as an effort is made to allocate the trash load factors to various land uses and geographic zones as appropriate.

#### **OTHER OPPORTUNITIES**

- Re-align catch basin trash removal as well as removal and replacement of filters to refuse collection/solid waste provider.
- Re-align other services that remove trash from water runoff to refuse collection/solid waste provider.
- Re-align services that proactively prevent trash pollution and pollution inspections to refuse collection/solid waste provider.
- Re-align community education efforts regarding overwatering to the water service provider as a water conservation service. (The benefit of preventing pollutants from being washed into streams, reservoirs and the ocean is ancillary.)

- Re-align water recycling, clean up and reuse to water service provider.
- Potentially re-align a portion of the cost of handling urban runoff to water service provider on the basis that such runoff is a direct byproduct of water usage. Ideally, the fees for such services will be largely borne by properties that overuse water, creating urban runoff.
- Potentially re-align improvements to stormwater piping, including re-lining of leaking pipes, to the sewer provider to reduce or eliminate wet weather inflow from stormwater pipes to sewer pipes.

In each case, these additional services would also require an increase to the contractual scope of the refuse collection provider and likely a corresponding rate increase. Also, a link would need to be established between these activities and individual properties. For example, street sweeping would be linked with property street frontage; catch basin cleaning would be linked with drainage area properties, etc.

#### **ADVANTAGES**

No Balloting Requirement: These strategies would reduce the financial burdens of the permittee's stormwater programs while not requiring the risk, cost, and rate limitations of a balloting.

#### **CHALLENGES**

Burden of Reorganization: The reorganization of activities and operations from the stormwater program to sewer, water, and/or solid waste providers will result in organizational and budgetary changes and potentially increased initial costs due to the reorganization.

Local Political Fallout: There may be political restrictions to significant increases in sewer, water, or refuse collection fees. One option is to plan the transfer of services and fee increases over several years. For example, a public agency can coordinate the transfer of sewer, water, and refuse collection operations from stormwater programs to sewer, water or refuse providers through more "regularly scheduled" rate increases. Although it may not be easy to make these changes, it is indeed procedurally easier to increase funding for sewer, water, or refuse collection (no balloting required) than to increase funding for stormwater (balloting required). Moreover, any fee increases should be enveloped with extensive educational, political, and stakeholder outreach before, during, and after the fee increase.

Reduction of Centralized Management of Stormwater Program: The reorganization of stormwater related activities to sewer, water, or refuse collection, even if only for funding purposes, may result in some loss of managerial quality control for the overall scope of activities and improvements needed for NPDES permit compliance and stormwater quality programs.

Insufficient Program Cost Coverage: These strategies will not cover the costs associated with inspections, monitoring, program management, etc. They should be implemented in combination with other funding sources.

Legal Restrictions: Several years ago, the City of Encinitas added a fee onto their garbage collection fee to pay for stormwater management, and the City was legally challenged. The lawsuit was settled out of court when Encinitas agreed to conduct a balloting, which subsequently lost, and Encinitas was forced to refund the already collected fees. In this case, rather than redistributing specific and appropriate activities from stormwater to refuse collection, Encinitas incorrectly only used the solid waste collection fee as a mechanism to collect a fee for stormwater services. There have been legal challenges to other non-balloted efforts (e.g., Salinas, and Solana Beach), so the agency is advised to proceed cautiously with this approach and to fully justify and support any services allocated to sewer, water, or refuse collection. The agency should only realign services where there is a clear, bona fide component that is driven by sewer, water, and/or refuse collection services. At this point, the outside limitations of the definitions of the "sewer, water, and refuse exception" have not been legally established.

#### **EVANGELISM EFFORTS FOR RE-ALIGNMENT**

The re-alignment approach is potentially highly effective and a critical part of the overall approach to funding for stormwater programs. However, there may be considerable challenges because it requires changes to long standing bureaucratic and administrative organizations within the local government.

Prior to expending efforts to impose a fee or tax, a municipality should consider aggressively exploring and implementing re-alignment strategies amongst its various enterprises. In fact, all re-alignment strategies should be exhausted, thereby minimizing the required tax or fee rate for each agency. This is essential as this effort is inherently tied to the tax or fee's likelihood of success, which is closely tied to the proposed rate.

#### **THE STORM DRAIN MAINTENANCE ISSUE**

Storm drain maintenance is a critical municipal service that closely affects both flood control and water quality. If at some point there is a well-funded budget for flood control, there may be an opportunity to fund a larger portion of storm drain maintenance from flood control monies. At this point, however, there is no readily available mechanism for increasing flood control funding without the same limitations on generating funding as for stormwater activities.

#### **DEDICATED "TRASH LOAD REMOVAL" PROPERTY-RELATED FEE - NON BALLOTTED**

The municipality could implement a dedicated, non-balloted, property-related fee, most likely under the "refuse collection" balloting exception of Proposition 218.

Essentially, a local government could identify, organize, and establish a dedicated budget for all NPDES activities which could reasonably be described as "refuse collection," including much of the Trash Load Reduction requirements. A rate structure could then be developed, along with the required Fee Report. Next, the agency could follow the prescribed Proposition 218 property-related fee process, with the "refuse collection" balloting exception and establish a dedicated fee. This fee could be entirely independent of the existing refuse collection provider.

The advantages and challenges associated with this strategy are similar to the "re-alignment" strategies described above. However, the decentralization challenge would not apply. This strategy has not been utilized in California to date, would likely attract considerable attention from opponents and should be subjected to considerable legal review prior to implementation.

### REGULATORY FEES - SB 310

Public agencies can impose certain "regulatory fees" without a balloting requirement. The fees are not taxes, assessments, nor property-related fees, and do not contradict Proposition 13 nor Proposition 218 if the fees satisfy certain requirements. Regulatory fees are derived from the "police powers" inherent to the local jurisdiction. These fees are commonly called "Sinclair Fees," after the 1997 California Supreme Court decision in *Sinclair Paint Company versus the State Board of Equalization* ("Sinclair v. State"), which legally established their use.

In practice, Sinclair Fees are largely imposed by public agencies upon commercial and industrial polluters to defray costs of cleanup. Public agencies have also imposed regulatory fees for liquor stores, billboards, amount of solid waste, and rental housing properties, with the resulting revenue going towards related programs such as police protection, community beautification, recycling programs, and affordable housing. In fact, public agencies have imposed fees to offset the costs of stormwater program inspections on restaurants and other commercial and industrial entities.

However, regulatory fees have not been assigned to individual residential parcels, to defray the costs of individual residential stormwater "polluters." Although it has yet to be done, there is no clear legal evidence that it could not be accomplished.

In *Sinclair v. State*, the California Supreme Court determined that "bona fide regulatory fees" are not taxes if the fee is used "to mitigate the actual or anticipated adverse effects of the fee payers' operations," and the "fees must bear a reasonable relationship to those adverse effects."

Ultimately, the court has said, "The fee imposed...is not a tax imposed to pay general revenue to the local governmental entity, but is a regulatory fee intended to defray the cost of providing and administering the mitigating services."

## PROPOSITION 26 UPDATE

Proposition 26, approved by California voters on November 2, 2010, has likely effectively eliminated the ability to use a regulatory fee for stormwater management costs, without a balloted two-thirds majority approval. This proposition re-classified many regulatory fees as taxes, with the corresponding election requirements. Additional clarity on the impacts of Proposition 26 will continue to emerge from California's legal community.

## ADVANTAGES

No Balloting Requirement, So Greater Revenue Is Possible. Since there is no balloting requirement, a municipality could charge a fee rate that would generate enough revenue to cover all stormwater program costs. In any case, a higher fee rate, and more revenue, may be generated than with a balloted mechanism.

## CHALLENGES

Extreme Legal Risk and Imminent Legal Challenge. A municipality should proceed with this approach only after conducting an exhaustive cost-benefit, risk-reward legal review. In all likelihood, this approach would be challenged because there is no precedent for applying regulatory fees to individual residential property owners. The approval of Proposition 26 increased this legal risk. However, if a municipality were challenged and prevailed legally, it would have a reliable fee in place, and would have established a critical precedent for funding stormwater in California.

Considerable Administrative Overhead. This approach requires a municipality to review, inspect, and quantifiably evaluate each parcel on a regular basis to ensure that the fee corresponds to the pollution level. In some cases, the property may not be required to pay the fee (e.g., a property in full compliance with NPDES-mandated on-site stormwater capture and treatment).

The structure, implementation, billing, and collection of the fee are extremely important factors to consider for legal defensibility. Likely, each individual parcel would have to be inspected, evaluated, and graded, and the fees individually calculated with separate fee bills sent rather than "riding" on the property tax bill.

The premise of using regulatory fees to fund some or all aspects of stormwater quality management is legally unproven, and a municipality should probably not consider a SB 310-compliant regulatory fee, particularly in light of the passage of Proposition 26.

## REGULATORY FEES - INSPECTIONS

Public agencies throughout California often reimburse themselves for the costs of inspections and permits using regulatory fees approved and published as part of a "Master Fee Schedule." The costs of certain stormwater inspection activities can be defrayed by charging inspection fees on individual properties. This approach can minimally assist in reducing a municipality's financial burden. However, the

passage of Proposition 26 has added some question about the long term legal viability of even these types of regulatory fees.

Each municipality applies differing fee rates, if fees are even utilized, for inspections and permits. These fees may be underutilized by a municipality, missing funding opportunities.

Regulatory fees to pay for costs should be considered for the following tasks:

- Industrial and Commercial Site Controls
- Construction Site Control
- New Development and Redevelopment

There are numerous examples of these types of fees to be used as a template.

### BUSINESS LICENSING FEES

A Business License is an annual tax for doing business within a City or County. For example, many municipalities require business licenses for the following type of businesses: peddlers and solicitors, traveling shows, circuses, rodeos, and exhibitions, pawn brokers, secondhand dealers and junk dealers, public dance, massage establishment and technician, bingo games, mobile food preparation unit, auction and close-out sales, fortune telling. Some cities place a business tax on all business. In theory, a business license could be established for and placed upon all business that have the potential to negatively impact stormwater runoff (e.g., restaurants, facilities with outdoor equipment or storage, vehicle repair or salvage facilities, etc.). Business license fees could also be established to address the negative impacts on water quality from vehicle trips to and from the business, similar to traffic impact fees on developments for congestion impacts from vehicle trips generated.

Business licensing fees are passed by ordinance. Considerable opposition from the business community is likely.

### USE OF EXISTING FUNDING FOR COMPLEMENTARY IMPROVEMENTS

A municipality should observe, evaluate and take advantage of all similar infrastructure improvements to capitalize on mutually beneficial funding, especially in regard to an increasing regulatory focus on street and parking lot retrofits to treat stormwater runoff (i.e., green streets and parking lots). Many agencies invest considerable resources into transportation and utility improvements, and should consider opportunities to better integrate these efforts and water quality efforts and funding sources. An agency may also want to consider opportunities to capitalize on its various existing funding streams in conjunction with potential funding streams identified in this report to be used for such integrated projects.

For example, in San Mateo County, the City/County Association of Governments (C/CAG, the local congestion management agency) has agreed to provide construction funding for a Complete Street demonstration project on El Camino Real in coordination with the Grand Boulevard Initiative, on the condition that the project incorporate stormwater management features. This is an example of using a particular source of transportation funding (State Transportation Improvement Program – Transportation Enhancement, or STIP-TE) that is eligible to be used for both streetscape or bike/pedestrian improvements and stormwater pollution prevention activities. There may be similar opportunities available to other municipalities to more effectively integrate transportation and stormwater management issues through complementary use of transportation and water quality funding sources.

### INFRASTRUCTURE FINANCING DISTRICTS

Some aspects of the NPDES permits require capital-intensive spending in a relatively small area, such as contaminated “hot spot” clean-up and/or “green street” development. Community Facilities Districts may be appropriate for this, as discussed in the next section on development driven approaches. Also, a newer funding mechanism, called Infrastructure Financing District (IFD), may mature into a viable mechanism. IFDs have emerged as a potential replacement for Redevelopment Agencies which were eliminated early in Governors Brown’s tenure.

Cities and Counties may create IFDs to capture ad valorem tax increments, like Redevelopment Agencies, to invest within the specific IFD boundaries. IFDs are not limited to blighted areas and can directly, or through 30-year bonds, fund local infrastructure including highways, transit, water systems, sewer projects, flood control, child care facilities, libraries, parks, and solid waste facilities. IFDs cannot pay for maintenance, repairs, operating costs, and services, and IFDs do not have access to the school’s portion of the property tax increment.

However, the formation of an IFD requires consent from all of the affected local agencies (school districts are exempt from IFDs), as well as two-thirds support from eligible voters within the IFD boundaries. Both of these are high hurdles which may explain why so few IFDs have been formed.

However, the Legislature approved the Enhanced Infrastructure Financing District (EIFD) structure in 2014, in part to offer an alternative to the recently banned redevelopment structure. Unlike the IFD, it does not require voter approval unless bonds are to be issued. Like the IFD, the schools’ portion of property tax increment is not available. This financing structure may be a good fit for localized areas where stormwater infrastructure and quality, and particularly environmental clean-up on private properties, are major concerns. An EIFD can be created with multiple municipalities, so it can span political boundaries.

## DEVELOPMENT-DRIVEN APPROACHES

### IMPACT FEES

Impact fees are one time only capital infusions which primarily affect new development and will only have a marginal effect on the overall funding of stormwater permit requirements. However, their significance can increase over time. While fees for improving sewer and water systems, as well as for parks and schools, to accommodate new development are common examples of development impact fees, public agencies in California have not rigorously incorporated all stormwater costs into local developer impact fees.

The implementation of impact fees dedicated to stormwater is primarily administrative and relatively inexpensive. The main challenges may be addressing any opposition from local developers and garnering support from city councils and/or boards of supervisors.

A municipality could consider generating an impact fee study with quantification of impacts that may increase stormwater management costs. For example, the study could evaluate vehicle trips generated and related water quality impacts, similar to congestion impact fees.

### FINANCING DISTRICTS - COMMUNITY FACILITIES DISTRICTS AND BENEFIT ASSESSMENTS

Many municipalities currently have many localized special tax and assessment districts that fund the maintenance and operations of various types of local infrastructure. These appear as “direct charges” on property tax bills. The special taxes are primarily Community Facilities Districts, more commonly known as “CFDs” or “Mello-Roos Districts”, and the assessments are primarily Landscaping and Lighting Assessment Districts (“LLADs”). Both CFDs and LLADs are very effective and manageable, and are commonly used for larger residential developments throughout the State. Most importantly, they are routinely established during the residential development phase, while the developer owns all of the property, because they are politically challenging (requiring a balloting of all affected property owners) after the homes have been sold.

The viability of these funding mechanisms will depend on the level of remaining potential development in the municipality. However, parcels in CFDs and Benefit Assessment Districts need not be contiguous. In other words, the municipality can create revenue districts and require new development to be annexed into the districts as a condition of development.

Although most of the funding from developer-driven revenue will pay for services specific to development, a portion can augment the overall stormwater activities. For example, the impact fee may be justified to pay for the incremental cost of some stormwater related infrastructure (e.g., a diversion structure), and the collected fee may be used for the rehabilitation of this infrastructure. CFDs and

Benefit Assessment Districts are typically used to pay for the annual operations and maintenance of something that benefits the paying property, like a local “BMP” installation. Care should be taken to clearly differentiate between what activities are funded by the CFD levy and a property-related fee/tax, so that both can be collected from the affected property. Although sometimes incorrectly and unfairly described as “double taxation,” this situation is extremely common in California, and is a well know side-effect of Proposition 13. In any case, CFDs are generally preferred over benefit assessments because they provide slightly broader flexibility in use and are slightly less expensive to annually administer, as well as less subject to legal challenge.

Balloted CFDs are also viable in fully developed areas, and essentially are a type of “pre-packaged” special parcel tax. CFDs are arguably easier to form and more well accepted than the IFDs previously described.

#### **LEGISLATIVE APPROACHES**

Over the last ten years, at least three bills have been introduced to add "stormwater" to the "sewer, water, and refuse collection exception" listed in Proposition 218. All have failed to garner the needed political support. Even if the state legislature approved such a bill, it would still require statewide approval from registered voters. While obtaining a constitutional amendment may be possible, it would be highly challenging. Both Proposition 13- and Proposition 218-related constitutional code is well-defended by politicians, taxpayer groups, and motivated individuals. Any and all proposed exceptions are viewed as an attack on the existing legislation and would likely entice a strong negative reaction.

One recent effort, AB 2403, Rendon, did not require a constitutional amendment, but revised the Proposition 218 Omnibus Implementation Act by modifying the definition of “water” to specifically include “water from any source,” such as recycled water and stormwater intended for water service. Unfortunately, this would only apply to a limited portion of stormwater.

## **APPENDIX A.3 OTHER APPROACHES**

### **1. GRANTS**

#### **GRANTS AND PROGRAMS**

California has a limited mix of State grants and programs which provide funding opportunities for local stormwater programs. Proposition 84, Proposition 1B, and Proposition 1E allocate funding to support stormwater management activities and projects. Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, authorized the sale of \$5.4 billion in general obligation bonds, to be used to fund water-related projects. One element of Proposition 84 establishes that a portion of the revenue be dedicated specifically to the reduction and prevention of polluted stormwater to lakes, rivers, and the ocean. Proposition 1B, approved by voters in November of 2006, is titled the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. This Act includes some limited opportunities for stormwater. Proposition 1E, also approved by voters in November of 2006, is the Disaster Preparedness and Flood Prevention Bond Fund of 2006 and provides some focused opportunities for funding of stormwater projects. Most of the funding associated with these propositions is delivered through competitive or targeted grants and programs.

State grants are typically awarded through a highly competitive process, often require matching local funds, tend to be focused on capital expenses, are often narrowly focused in terms of scope and services, and can have significant administrative overhead. In addition, most grants are seldom designed to fund the management and operations of a stormwater program or the maintenance of stormwater infrastructure. Nonetheless, the revenue opportunities provided by grants are significant enough that they should be considered part of any municipality's efforts.

If State grants are pursued, applications should be written to maximize flexibility in use of the funds so the grant award can contribute towards annual stormwater program expenses. An agency should also consider coordinating with other affected local agencies to put forth larger and potentially more competitive grant applications.

A municipality may also consider supporting any effort to create new Statewide Bond measures with stormwater components. However, there is currently very little political momentum for such a proposition at this time. The municipality should work to identify applicable Federal grants, such as the U.S. Environmental Protection Agency's ongoing Water Quality Improvement Fund for San Francisco Bay, and compete, in coordination with other affected local agencies, for funding. Also, agencies should consider working with local elected officials to pursue provisions that direct approved funds to be spent on specific projects, often called earmarks.

## 2. LOANS OR FINANCING

A municipality may also wish to consider its capacity for utilizing existing ongoing revenue streams to secure loan financing through the State, either through the Infrastructure Bank (i-Bank) or the Clean Water State Revolving Fund (CWSRF). This would enable an agency to potentially construct stormwater management facilities, such as green streets or parking lots, in a focused, expedited fashion, as opposed to a pay-as-you-go strategy. This option is likely not feasible or appealing unless stormwater regulatory requirements are aligned with such an approach and existing ongoing compliance activities that are funded using ongoing revenue streams are reduced, eliminated, or deferred to allow repayment of loan funds. This may, however, be a more meaningful approach to achieving larger scale improvement in water quality in a shorter timeframe.

## **APPENDIX A.4 OTHER ISSUES**

### **TIMING AND SCHEDULE**

Most County Auditors require levies to be submitted by early August in order to be placed on tax bills. Accordingly, if a municipality chooses a balloted option, it will need to begin work on this effort by around December of the year prior to the first year of taxation.

### **POTENTIALLY COMPETING MEASURES**

Any potential ballot measure should be aware of other competing measures. Typically, a competing measure is one that is being proposed by a regional entity, county or a neighboring, large city, and would be along similar lines such as water, environment or other related topic. For example, in the San Francisco Bay Area, local agencies should have been aware of the recent effort put forward by the San Francisco Bay Restoration Authority (“BayRA”) to generate tax revenue for Bay Restoration. The similarity of purpose (i.e., protection of the Bay waters) and similarity of messaging could have caused the BayRA’s political efforts to “compete” with that of a local agency’s water quality messaging.

Another example is in the Sacramento area, were a regional flood control agency may be proposing increasing its fees through a balloted effort. Any such effort would be in competition with similar storm drainage efforts by local agencies in the same area such as the City of Sacramento.

In any case, there would need to be a coordination of efforts. And it is possible that a local agency could actually benefit from outreach activities of a larger measure such as those related to pollution prevention, flood control or other common features.

### **A CONSUMER PRICE INDEX ESCALATOR**

The incorporation of a consumer price index (CPI) escalator is legally defensible with property-related fees, regulatory fees, and special taxes, and is highly recommended. One approach is to link CPI increases to the U.S Department of Labor CPI and cap it at a 3% maximum per year. The majority of survey data support the fact that a CPI escalator introduces minimal decay in overall support.

### **A SUNSET PROVISION SHOULD BE CONSIDERED**

A “sunset provision” is a mechanism used to increase political support by setting an expiration date for a measure, and can be used with a property-related fee, regulatory fee, or tax. Sunset provisions typically range from five years (like the property-related fee for the City of San Clemente) to 20 years. However, the political advantage is typically marginal and does not outweigh the negative aspect of the increased costs and political risk of having to re-ballot at the termination of the

sunset period. Nonetheless, sunset provisions are popular and can increase support, particularly if the provision duration is less than ten years. The recent Contra Costa County stormwater property-related fee included a nine-year sunset.

### STORMWATER UTILITY STATUS

In many states, the establishment of a “Stormwater Utility” legally facilitates the imposition of a fee on affected properties, simply by a vote by the governing agency. In other words, a stormwater utility is established as an independent government agency and then the City Council or County Board of Supervisors can impose a fee by simple majority vote. These stormwater utilities often have centralized management, outreach and coordination, and much of the same “look and feel” of a traditional water or sewer agency. However, in California, there is no legal advantage to the formation of a “stormwater utility.”

### FINANCED CAPITAL EXPENDITURES VERSUS ANNUAL OPERATING EXPENDITURES

Some agencies are interested in evaluating whether its goals are more easily achieved by using limited resources to bond the construction of capital facilities or continuing to focus primarily on operating expenses. Although the NPDES requirements do not dictate how the funding is spent, a relatively small portion of the NPDES requirements would benefit from capital improvements. The exceptions may include large trash capture systems, green infrastructure projects, or other large systems.

### DISCOUNT MECHANISM

Consistent with the efforts of obtaining higher quality stormwater, a discount or “fee reduction” program should be considered which rewards property owners with a lower fee for implementing stormwater management measures on their properties. The advantages of such a program include improved water quality, improved engagement by the community, as well as increased legal defensibility. Also, discount programs tend to be well received by the electorate, although most people do not participate. The down side of such a feature is that the cost of administering this feature may exceed the benefit, because the inspection of property-specific improvements is expensive and time consuming. Nonetheless, a couple of public agencies including the cities of Portland, Oregon and Palo Alto have successfully implemented discount programs.

The significant elements of discount program case studies are described below:

## PORTLAND, OREGON

- In Portland, property owners are charged a fee including both on-site and off-site components and the discount program only applies to on-site costs.
- Single family residences are charged a fixed monthly rate of \$8.78 based on 2400 square feet of impervious area.
- Residential properties only get credit for roof runoff space, while commercial properties get roof and paved area credit (can receive up to 100% off stormwater utility fee).
- Partial credits for tree coverage, having <1,000 sqft of impervious area, installing drywells and soakage trenches, redirecting stormwater into gardens, etc.
- Funded through Clean River Rewards – Portland’s stormwater utility discount program.
- The maximum discount is 100% of the on-site stormwater charge.
- The main emphasis is the “Downspout Disconnection Program.”
- Property owners fill out a checklist of improvements and sign it as true. They are subject to announced inspections. Essentially, based upon the property owner’s input in the standard form, they get a calculated discount.

<http://www.portlandoregon.gov/bes/article/390568>

## PALO ALTO, CALIFORNIA

- Credit is available to residential and commercial properties for installing approved items by certified specialists (rain barrels, permeable pavement, cisterns and green roofs).
- Program is funded with revenue from monthly Storm Drainage Fees

*“As part of the Storm Drainage Fee Increase ballot measure approved by a majority of Palo Alto property owners in April 2005, a special program to encourage innovative storm water measures was created. The program is funded with revenue from monthly Storm Drainage Fees, at a rate of \$125,000 per year. The goal of this program is to help Palo Alto residents, businesses, and City departments to implement measures that will reduce the amount of runoff that flows into the storm drain system or improve the water quality of that runoff.”*

Example measures include the following:

- Capturing rainwater in rain barrels or cisterns for use on landscaping and gardens.

- Constructing or reconstructing driveways, patios, walkways, and parking lots with permeable paving materials, so that rainwater soaks into the ground.
- Constructing a green (vegetated) roof to absorb and filter rainfall.

To achieve this goal, starting August 1, 2008, the City of Palo Alto Storm Drain Utility is offering stormwater rebates to residents, businesses, and City departments for the qualifying measures listed above, with the following steps:

- Submit an application
- Get approval to go ahead
- Submit supporting documentation, including receipts, etc.

<http://www.cityofpaloalto.org/gov/depts/pwd/stormwater/rebates/default.asp>  
<http://www.cityofpaloalto.org/civicax/filebank/documents/13099>

### **SOUTH LAKE TAHOE**

- Due to the unique and environmentally sensitive nature of the Lake Tahoe Basin, a number of special government agencies exist to protect the environment. To protect Lake Tahoe for future generations, the Tahoe Regional Planning Agency requires all developed parcels to install and maintain significant BMPs. The BMPs are tracked by TARPA including inspections and fines. There has been considerable public opposition to these requirements.
- Rebate of \$500 ONLY available to those with income at the median and under level, and complete BMP certification process.
- Funded through Prop 13 and Tahoe Regional Conservation District.
- BMPs can be as simple as putting gravel under drain spouts, planting native grasses, etc.

[http://www.trpa.org/documents/press\\_room/2007/BMP\\_Rebate\\_7-19-07.pdf](http://www.trpa.org/documents/press_room/2007/BMP_Rebate_7-19-07.pdf)  
<http://www.tahoebmp.org/>

### **SCHOOL SITE REBATE PROGRAM**

As previously described, one potential vulnerability of the property-related fee approach is that large public agency parcels, in particular school sites, are often subject to significant fees. School districts are not accustomed to paying any taxes or fees, are typically financially stressed, and have strong support from the public. In order to diminish the political reality that a property-related fee for water quality improvements may be perceived as detrimental to schools, a “School Site Rebate Program” should be developed and included within the effort.

A “School Site Rebate Program” could rebate all or a portion the property-related fee if the school helped satisfy NPDES requirements such as by providing school-

age education and outreach. For example, the school could implement an approved educational program for its students and receive a significant fee reduction. Similarly, if school sites took steps to manage their stormwater runoff through retrofit or new/reconstruction of facilities, fees could be rebated or reduced. A municipality could consider utilizing relevant funding sources to help incentivize school site retrofits given the large amounts of impervious surface, priority focus as a trash generating land use, and educational benefits of providing stormwater capture and treatment.

## COMMUNICATIONS AND MESSAGING

All of the approaches described in this report will require significant and thorough community communications and messaging. This is a two-fold task: Public Opinion Surveys and Community Outreach and Education.

## ROLE OF PUBLIC OPINION SURVEY

The primary purpose of any public opinion survey is to produce an unbiased, statistically reliable evaluation of voters' and property owners' interest in supporting a local revenue measure. Additionally, should an agency decide to move forward with a revenue measure, survey data would provide guidance as to how to structure the measure so that it is consistent with the community's priorities and expressed needs. Specifically, the survey should do the following:

- Gauge current, baseline support for a local revenue measure associated with specific dollar amounts. (How much are property owners willing to pay?)
- Identify the types of services and projects that voters and property owners are most interested in funding, should the measure pass.
- Expose respondents to arguments in favor of, and against, the proposed revenue measure to gauge how information affects support for the measure.
- Identify whether local residents prefer the measure as a property-related fee or a special tax.
- Estimate support for the measure once voters and property owners are presented with the types of information they will likely be exposed to during the election cycle.

## ROLE OF COMMUNITY EDUCATION

If an agency decides to pursue a balloted funding mechanism, a corresponding community outreach and education effort would be recommended. The community outreach plan should be based upon the results of the opinion survey and any existing outreach and education activities related to the stormwater program. A summary of important elements of community outreach is provided below.

### **DEVELOP AN OUTREACH PLAN AND SUPPORT DOCUMENTS**

The agency should develop and execute a specific outreach effort for the initiative. The traditional, and still most effective local political approach is using volunteers to walk, ring doorbells, and speak with property owners directly, and/or volunteer at phone banks. Unfortunately, it is difficult to obtain large numbers of supportive volunteers, so this approach may not be feasible. Nonetheless, the team should develop: Handouts, Q&As, talking points, press releases, feature articles, newsletter articles, descriptive e-mails (suitable for use by local groups), web site information, etc. Generally speaking, the information provided should “tell the story” in the following way:

1. There are significant stormwater quality issues in the community.
2. Our program continues to do important work to protect our beaches, local waterways, and neighborhoods from pollution and harmful chemicals, making a significant difference over the years.
3. More work (and more funding) is needed.

### **ENGAGE ELECTED OFFICIALS**

City Council members, County Board of Supervisors, and even state and Federal level elected officials should be aware of the effort, although it is unlikely they will actively advocate for it.

### **ENGAGE LOCAL MEDIA**

Local newspapers, and most importantly, small local neighborhood newspapers and newsletters, should be fully engaged to distribute information.

### **ENGAGE LOCAL STAKEHOLDERS**

The most effective outreach and education approach for a balloted storm drainage funding mechanism is to engage and work with environmental groups and other existing local groups like homeowner associations, taking advantage of their existing e-mail distributions and newsletters. Perhaps even more effective than setting up community meetings is to attend regularly-scheduled neighborhood group meetings.

### **MANAGE POTENTIAL POLITICAL OPPOSITION**

Part of the community outreach planning should be the identification of any organized opposition. An unfortunate aspect of the way we fund local measures in California is that a well-motivated opponent, even one with limited financial and/or political resources, can do tremendous harm to a political effort. There is no one-size-fits-all approach to confronting political opposition, so the agency will have to remain flexible and poised to react to a potentially dynamic situation.

## APPENDIX A.5 RECENT STORMWATER FUNDING EFFORTS IN CALIFORNIA

Despite the fact that NPDES permits require a significant local investment of resources, since the passage of Proposition 218 there have been relatively few local revenue mechanisms established to support stormwater programs in California. Table 5, below, lists these efforts. Although a local agency may differ significantly in demographics, geography, and culture from many of the areas in Table 5, the analysis of these stormwater measures provides useful information. (Note that the highly successful effort in Burlingame focused primarily on funding for localized flood control.)

TABLE 5 – RECENT STORMWATER MEASURES

Jurisdiction	Status	Rate	Year	Mechanism
San Clemente	Successful and Renewed once	60.15	2002, 2007	Balloted Property Related Fee
Carmel	Unsuccessful	38	2003	Balloted Property Related Fee
Palo Alto	Unsuccessful	57	2003	Balloted Property Related Fee
Los Angeles	Successful	+ \$28.00	2004	Special Tax - G. O. Bond
Encinitas	Non-Balloted, Threatened by Lawsuit, Balloted, Failed	60	2005	Non-Balloted Property Related Fee
Palo Alto	Successful	120	2005	Balloted Property Related Fee
Rancho Palos Verde	Successful , Then Recalled and Reduced	200	2005, 2007	Balloted Property Related Fee
Ross Valley	Successful, Overturned by Court of Appeals, Decertified by Supreme Court	125	2006	Balloted Property Related Fee
Santa Monica	Successful	84	2006	Special Tax
Solana Beach	Non-Balloted, Threatened by lawsuit, Balloted, Successful	21.84	2007	Non-Balloted & Balloted Property Related Fee
Woodland	Unsuccessful	60	2007	Balloted Property Related Fee
Del Mar	Successful	163.38	2008	Balloted Property Related Fee
Hawthorne	Unsuccessful	30	2008	Balloted Property Related Fee
Santa Cruz	Successful	25	2008	Special Tax
Burlingame	Successful	150	2009	Balloted Property Related Fee
Santa Clarita	Successful	21	2009	Balloted Property Related Fee
Stockton	Unsuccessful	34.56	2009	Balloted Property Related Fee
County of Contra Costa	Unsuccessful	22	2012	Balloted Property Related Fee
County of LA	Unsuccessful	54	2012	Balloted Property Related Fee
Santa Clara Valley Water District	Successful	56	2012	Special Tax
Vallejo Sanitation & Flood Control District	Successful	23	2015	Balloted Property Related Fee
Culver City	Successful	99	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
County of Ventura	Studying	+-\$25.00	NA	Balloted Property Related Fee

## DISCUSSION - WHY DID IT SUCCEED OR FAIL

### **BURLINGAME, PALO ALTO, AND ROSS VALLEY - SUCCESSES**

These three efforts were all successful at a relatively high rate, and provide helpful direction for any municipality considering a funding measure. All three primarily address local flooding with some stormwater quality elements. However, all three of these are relatively small, affluent, Bay Area and generally pro-tax communities that may not reflect the demography of other areas. In the case of Burlingame, a significant amount of door-to-door public outreach was required to gain property owner approval. It is important to note, however, that Burlingame and Palo Alto were both unsuccessful on their first attempts.

### **CULVER CITY, SANTA CRUZ AND SANTA MONICA**

Culver City, Santa Cruz and Santa Monica have relatively high numbers of renters living in apartment buildings which make a special tax more attractive than a property-related fee. All three cities conducted successful special tax elections, at varying rates, emphasizing prevention of beach closures.

Culver City passed Measure CW with 74% approval in November 2016; a \$99/single-family residence (“SFR”) parcel tax for water quality improvements. The measure was branded as “Clean Water, Clean Beaches,” like the slogan used by the City of Los Angeles in their Measure O campaign. More specifically, the measure was “to protect public health/groundwater supplies and prevent toxins and pollutants from contaminating local waterways, creeks and beaches, by improving storm drains/infrastructure to capture/clean urban runoff; preserving open space; and complying with clean water laws.” Other rates were \$69 for multi-family residential dwelling unit and \$1,096 per acre for non-residential properties.

Santa Cruz passed Measure E with 76% approval in 2008; a \$28/SFR parcel tax for beaches. The question on the ballot was, "To protect public health and the environment by reducing pollution, trash, toxics and dangerous bacteria in our river, bay and ocean; helping to keep beaches clean; protecting fish and wildlife habitat; shall the City of Santa Cruz adopt a Clean River, Beaches and Ocean Tax, with revenues spent locally under independent citizen oversight? The annual rates will be \$28 for single-family parcels, \$94 for other developed parcels, and \$10 for undeveloped parcels." In the ballot text, it said the tax is to “be used exclusively for the purpose of reducing and preventing water pollution and managing stormwater runoff.”

Santa Monica passed Measure V with 67% approval in 2006; a parcel tax for clean water/groundwater recharge/beaches that was \$87/SFR in 2009. Taken from the Santa Monica website is a description of the Measure: “Measure V raises property tax revenue to be used solely for the purpose of implementing urban runoff water quality improvements in the City in accordance with the City’s Watershed Management Plan adopted in 2006. It is the most equitable source of

funding to pay for new urban runoff treatment projects that will prevent our unhealthy water pollution, from reaching Santa Monica beaches and the Santa Monica Bay.”

#### **STOCKTON – UNSUCCESSFUL**

Stockton is a Central Valley city that has been plagued with well-publicized financial challenges, which ultimately eroded any chance of a successful new tax or fee for any service. In this case, Stockton attempted a property-related fee, with strong messaging for storm drainage infrastructure, at a relatively low rate, and it was soundly rejected. Stockton’s valid messaging and approach were victimized by the City’s very poor political climate.

#### **WOODLAND – UNSUCCESSFUL**

The City of Woodland established a Storm Drain Advisory Committee in 2007 to review current funding and maintenance issues and establish a plan to increase rates to solve these issues. Woodland currently has a storm drainage fee of \$0.49 per month, which has not increased since 1994. Focusing heavily on critical infrastructure needs and lack of funding, the City Council approved going out for ballot at a rate of \$5 per month, which would help pay back a loan from the General Fund for storm drain maintenance and fund what are seen as critical infrastructure projects. There was 59% majority disapproval of the increase by participating voters, which left the storm drain fee at the original \$0.49 per month.

#### **SANTA CLARA VALLEY WATER DISTRICT - SUCCESSFUL**

Santa Clara Valley Water District passed a parcel tax for “safe, clean water and natural flood protection” (Measure B) in November of 2012. Using a messaging platform of ensuring a safe, reliable water supply and immediate need of funding for critical infrastructure projects, they were able to garner support of 73.7% of participating registered voters. Another important aspect in the messaging of this Measure was that its purpose is to replace an existing tax that was due to expire in 2016.

Part of their effort went towards producing an “Action Plan” that provided detail on what the funding from the Measure would be used for. They listed priorities and their corresponding projects, estimated costs of these projects, detail on fee structure, and frequently asked questions. The Plan also included acknowledgements to their many endorsers and sponsors throughout the effort, which included several popular newspapers that produce both print and electronic articles.

Many articles were produced in favor of Measure B. They highlighted how safe, clean water is critical to the economy of the Silicon Valley as well as the new, streamlined staffing and spending within the District. Previously known for high salaries, excessive spending and extreme benefit packages, the District brought

in a new CEO who cut staff and needless expenditures. An issue that could have ruined their outreach efforts was successfully spun in a positive light.

By working with local communities, the District was able to message towards real priorities that were present within their borders. Emphasizing safe, clean, healthy water and the inherent need for funding for critical infrastructure that would otherwise be postponed were their keys to success. Putting forward an established plan made the public more comfortable with supporting this Measure because they could see where their money was going. Keeping the environment healthy by ensuring a clean, vital resource allowed voters to connect with this effort and feel like they were voting for a good cause.

#### **SAN CLEMENTE - SUCCESSFUL**

San Clemente has been very successful with its stormwater measure, and has had it renewed by property owners after its five-year sunset. This measure was primarily focused on preventing beach closures, which may not be applicable to other areas.

#### **COUNTIES OF LOS ANGELES AND CONTRA COSTA – UNSUCCESSFUL OR STALLED**

Both of these efforts were ultimately unsuccessful and suffered from criticism of the elements of the property-related fee process. Los Angeles also suffered from a lack of support from some of the co-permittee cities involved.

#### **COUNTIES OF ORANGE AND VENTURA**

These efforts are currently under way and have stalled due to disagreements amongst co-permittee cities.

#### **ENCINITAS, RANCHO PALOS VERDE, CARMEL AND SANTA CLARITA**

These efforts were for small cities and may not be particularly relevant to other areas.

#### **HAWTHORNE - UNSUCCESSFUL**

The City of Hawthorne used a mailed ballot process in 2008 for a “clean water fee.” It would have funded storm drain and pipeline improvements to reduce the risk of flooding and reduce contamination in water runoff. Hawthorne heavily focused on stormwater infrastructure and State-mandated clean water programs. The fee structure for the measure was composed of tiered rates, with a standard home on a 6,000 square foot lot being charged \$2.50 per month and larger properties from \$2.50 to \$10 per month. The measure failed with a majority, 55.3%, voting against it.

#### **DEL MAR - SUCCESSFUL**

The City of Del Mar used a mail ballot process in 2008 for two separate issues. The first pertained to their then-current clean water fee, assessed at a rate of \$20.90 bi-monthly, and the other to a proposed increase to \$27.23 bi-monthly with

language allowing for CPI increases. They decided to ballot their then-current fee because they increased the rate without balloting in 2003, and questions had been raised about its legality in regards to Proposition 218 after a 2006 Supreme Court case that ruled stormwater fees could not be increased without voter approval.

Both ballot questions gained high support; voters approved then-current fees with 68.8% approval and approved the fee increase with 62.4% approval. Del Mar utilized a successful public outreach effort with messaging towards preventing pollution, ensuring clean drinking water, and NPDES permit requirements and threat of expensive fines.

#### **VALLEJO - SUCCESSFUL**

The Vallejo Sanitation and Flood Control District is responsible for the backbone storm drainage system for the City of Vallejo. They had a stormwater fee in place since the 1990s that was a uniform charge of \$1.97 per month per parcel. This applied to all parcels regardless of land use (residential, commercial or industrial). Their recent engineering study, however, recommended different fees for non-residential uses.

They put out a mail ballot measure in early 2015 proposing the same \$1.97 rate for residential (most of the properties in town) and higher rates for non-residential. They conducted a telephone survey in late 2013 and implemented a community outreach program in 2014 that included some mailers and community meetings. The District ended up winning their measure with 57% support. By keeping the majority of the properties at the same \$1.97/month rate, they were able to keep support high enough to prevail.

## **APPENDIX B CITY OF SAN CLEMENTE – SUCCESS STORY**

The story of the City of San Clemente illustrates how a local municipality has successfully implemented a property-related fee for stormwater activities.

San Clemente was one of the first municipalities to pursue a Proposition 218-compliant balloted property-related fee for stormwater in 2002. San Clemente is a community of 64,000 population in southern Orange County, and strongly identifies with the beaches along the coast. Stormwater pollution had grown to such proportions that beaches had to be closed during certain storm events due to public health concerns. This led the City to establish the “Clean Ocean Program” aimed at preventing stormwater and urban runoff pollution from entering the storm drain system and being discharged at the beach. In particular, the program would protect the environment, public health and safety, contribute to the local quality of life as well as meet State and Federal clean water requirements.

Using the property-owner option under Proposition 218, the City pursued a mail ballot proceeding in 2002 and won a 57% majority of support. The property owners have since voted to support two extensions to that fee program (in 2007 and 2013), which is currently authorized until 2020.

The key elements of success included the following:

- City staff, in response to local NPDES permit requirements, developed an urban runoff management plan. This plan outlined approaches to reducing the pollution levels that affected the environment – particularly the beaches. With a firm plan, which included capital projects and programs, the City was able to demonstrate how they would be able to address the problems of beach pollution.
- As with most successful measures, the City was fortunate to be able to demonstrate that core issues of the stormwater program aligned with quality-of-life issues that resonated with local property owners. In this case, it was the health of the City’s beaches.
- A local environmental group, Surfrider Foundation, supported the measure and helped raise public awareness.
- Prior to the first ballot in 2002, the City conducted public opinion surveys that indicated adequate support for the measure. It also helped identify priority issues for the community, which the City was able to demonstrate in the stormwater program.
- A “Frequently Asked Questions” document from San Clemente’s 2013 effort is included in Appendix B.

On the following pages is a Frequently Asked Questions sheet provided by the City of San Clemente in association with their 2013 Clean Beaches Program ballot measure.



## *City of San Clemente Clean Ocean Program & Fee* Frequently Asked Questions

### **What is the Clean Ocean Program?**

It is the City's effort to prevent stormwater and urban runoff pollution from entering the storm drain system and being discharged at the beach.

### **Why does the City need a Clean Ocean Program?**

- To protect the environment (water quality in local channels and coastal waters);
- To protect public health and safety (from bacteria and other pollution that could reach the beach);
- To protect local quality of life (local business/tourism, "beach town" reputation, etc.); and
- To meet State Water Code and Federal Clean Water Act permit requirements issued to South Orange County cities by the State.

### **Who developed the Clean Ocean Program?**

The City prepared an Urban Runoff Management Plan (URMP), which included participation and feedback from the community as well as the City's Coastal Advisory Committee (local citizens appointed by the City Council to consider and provide advice on coastal and water quality issues). The URMP guides the Clean Ocean Program, and outlines activities and projects to meet the State and Federal water quality requirements and protect local water quality.

### **What does the Clean Ocean Program include?**

- *Runoff treatment projects*
  - Poche Beach: A treatment system was constructed and is maintained to filter and kill bacteria in the runoff before it reaches the beach. Construction was completed in March of 2009. The system treats up to 1.1 million gallons per day. Weekly water quality tests indicate that the UV treatment removes between 95% - 99% of the bacteria in the storm drain runoff before it discharges to the beach. The current water quality grade at Poche Beach is an A+.
  - North Beach: A system was constructed to divert dry weather runoff away from North Beach and send it to the City's Water Reclamation Plant for treatment. The system started operating on June 1, 2009. It diverts and filters about 350,000 gallons per day. The current water quality grade at North Beach is an A+.
  - Underground storm drain units were installed to remove trash, oil & grease and sediment from runoff before it gets to the beach. Six units have been installed. They are located near Calafia Beach, in the Pier Bowl area, at the west ends of El Portal, at the end of Linda Lane and at Mariposa. In 2013, 35 cubic yards of material was captured and removed by these units. This is material that would have otherwise have ended up in the ocean.
- *Pollution prevention activities*
  - Street Sweeping: the City sweeps public residential streets twice per month and major streets and business areas about 3 times per week. Over 22,000 tons of material has been collected over the last ten several years, enough to fill 550 large (40 cubic yard) trash bins.
  - Catch Basin Inspection and Cleaning: the City inspects at least 2,205 catch basins annually, cleaning them as needed. In 2013, 2,432 catch basins were cleaned and a total of 914 cubic feet of material was removed.
  - Water Quality Testing: water samples from over 20 locations throughout town are sampled each year to help identify potential problem areas and monitor quality progress over time. Flow measurements are also taken to help measure progress in reducing urban runoff flows.
  - Special Studies: the City consulted with scientists to conduct an in depth investigation to find sources of bacteria in the Poche Beach watershed. A year long study which included molecular

## *City of San Clemente Clean Ocean Program & Fee* Frequently Asked Questions

marker testing culminated in focused recommendations and a strategic plan for reducing bacteria at Poche Beach. The final report of the study is located on the Clean Ocean Program website at [www.sccleanocean.org](http://www.sccleanocean.org).

- Commercial, Industrial and Construction Site Inspections: Inspections of businesses, industrial facilities and construction sites are conducted to make sure these sites are using proper Best Management Practices (BMPs) to prevent pollution from entering the storm drain system and reaching the beach. Over 9,000 inspections have been completed in the last 10 years.
- Spill Cleanups and Storm Drain Maintenance: A 24/7 hotline number (**366-1553**) is in place to respond to and cleanup spills or investigate reported illegal discharges. In addition, the City performs ongoing maintenance to ensure proper function of the storm drain system and inspects all public catch basins annually and removes materials that might be discharge into the system.
- Enforcement of Anti-pollution Ordinances: Dedicated officials enforce water quality laws to identify and correct violations. Depending on the severity of the violation, enforcement may include verbal warnings, written correction orders, and/or fines of \$100, \$200, or \$500 per violation.
- Public Outreach and Education: Efforts promote awareness of stormwater and urban runoff pollution impacts, and ways the public can help prevent this pollution from happening in the first place.

### **What is the cost of implementing the Clean Ocean Program?**

The cost to implement the program is about \$2.2 million per year.

### **What is the cost of not implementing the Clean Ocean Program?**

The City could be liable for large fines if the State finds that the City is not meeting the requirements of the stormwater permit regulations. Also, there are potential economic impacts (tourism, real estate values, etc.) if the City does not work to protect its healthy beach town reputation.

### **How is the Clean Ocean Program funded?**

By a Clean Ocean utility fee charged to property owners. The fee is collected as a line item on the monthly utility bill for owners that get water service from the City. The fee is charged monthly but collected via a separate twice-yearly bill to San Clemente property owners that get water service from other providers (e.g. South Coast Water District or Santa Margarita Water District).

### **Why do property owners get charged the Clean Ocean Fee?**

Developed and graded properties contribute runoff to the storm drain system (which includes pipes, channels, drain inlets and street gutters). This runoff contains or picks up pollution before it enters the storm drain, which the City must then address. Since providing storm drain and water quality services is like other utility services provided by the City (e.g. drinking water and sewer service), it is appropriate that property owners pay for the cost of this service.

### **How long will the continued fee be in effect? When will it end?**

If approved by San Clemente property owners, the existing Clean Ocean Fee would be continued for an additional six and one-half (6.5) years, and would expire on June 30, 2020.

### **How much will the fee increase over the next 6.5 years?**

The continued Clean Ocean Fee would be fixed and would not increase over the entire period.

### **Why are property owners voting on this fee?**

**City of San Clemente Clean Ocean Program & Fee  
Frequently Asked Questions**

Under the provisions of California Proposition 218, property owners must approve new property fees adopted by cities.

**What is the change from the existing to the proposed Clean Ocean Fee?**

<b>Single Family Residential Monthly Fee</b>		
	<b>Current Fee</b>	<b>Proposed New Fee</b>
Private street	\$ 4.39	<b>\$ 5.10</b>
Public street	\$ 5.02	<b>\$ 6.23</b>

<b>Multi-Family Residential Monthly Fee</b>		
	<b>Current Fee (per residential unit)</b>	<b>Proposed New Fee (per residential unit)</b>
Private street	\$3.51	<b>\$4.08</b>
Public street	\$4.01	<b>\$4.98</b>

<b>Non-Residential (Commercial, Industrial, Business Park) Monthly Fee</b>		
	<b>Current Fee (per acre or fraction thereof)</b>	<b>Proposed New Fee (per acre or fraction thereof)</b>
Private street	\$43.90	<b>\$51.00</b>
Public street	\$50.20	<b>\$62.30</b>

Note: Almost all non-residential streets within the City are public streets.

<b>Undeveloped, Graded Property Monthly Fee</b>				
	<b>Current Fee</b>		<b>Proposed New Fee</b>	
	<i>2 acres or less</i>	<i>Each acre over 2 add:</i>	<i>2 acres or less</i>	<i>Each acre over 2 add:</i>
Private street	\$2.20	\$0.44	<b>\$2.55</b>	<b>\$0.51</b>
Public street	\$2.51	\$0.50	<b>\$3.12</b>	<b>\$0.62</b>

Note: There is no clean ocean fee charge for undeveloped, ungraded parcels.

**Note:** Properties on private streets are charged a lower rate since the City doesn't provide street sweeping service on private streets.

**How is the fee calculated?**

The fee is based on a parcel's expected contribution of runoff, which is determined by an estimate of the impervious area on that parcel. Impervious areas include such things as buildings and pavement, which prevent or restrict storm water from getting into the soil and increase runoff from a parcel.

**Why is the existing Clean Ocean Fee being proposed to be continued?**

The fee funds a stormwater quality program that the State requires the City to implement. Since the fee was last approved, the State revised and adopted a new stormwater permit for the south Orange County area that contains more rigorous requirements. Also, the State recently adopted new requirements for bacteria pollution for which the City must comply.

**What happens if continuation of the existing Clean Ocean Fee is not approved?**

If the Clean Ocean Fee is not continued, the City will need to support the Clean Ocean Program with some other funding source. The most likely source would be the General Fund, which would result in about \$2 million each year that would not be available for other needed projects and programs within the City.

**City of San Clemente Clean Ocean Program & Fee  
Frequently Asked Questions**

**How and when will the vote occur?**

All record owners of property within the City that are directly subject to the proposed fee will receive an official mail-in ballot with a postage paid addressed return envelope. The ballots will be mailed to property owners on October 25, 2013. Return ballots are due on December 10, 2013.

**How do I cast my vote?**

Simply fill out the ballot and mail or deliver it to the San Clemente City Clerk by the due date noted on the ballot.

**How do I get more information?**

More information about the proposed fee continuation is available on the City's website at [www.sccleanocean.org](http://www.sccleanocean.org). You may also call the Environmental Programs Section at (949) 361-8204 or send an email to [cleanwater@san-clemente.org](mailto:cleanwater@san-clemente.org).

**What's the difference between storm drains and sewers – doesn't it all get treated?**

Like most other cities, the City of San Clemente owns and operates a storm drain system, which is the network of channels and pipes that collect stormwater and urban runoff and discharges it into the ocean. Unlike sewer systems that send sewage to a treatment plant before being discharged, most storm drain systems, including the City's, were built to collect and convey runoff to prevent flooding but not to treat urban water runoff. Therefore, any pollutants that runoff carries into the storm drain system are discharged untreated along the City's shoreline.

**Do other cities have a Clean Ocean Program?**

They may call it something else, but all cities in the urbanized areas of Southern California are required by the State to implement stormwater and urban runoff programs to prevent discharges of pollution to creeks, rivers and the ocean.

**How do we know that the Clean Ocean Program is working?**

- The City records amounts of trash picked up by street sweepers and removed from underground treatment devices.
- Larger treatment projects include monitoring to compare water quality before and after treatment.
- The City tracks the number of enforcement actions and inspections to document these efforts.

**Why should San Clemente property owners pay to clean up pollution from upstream cities?**

Unlike most cities in Southern California, San Clemente's city boundary is very similar to the local watershed boundary. This means that San Clemente is a self-contained watershed, and that there are no upstream cities that contribute pollution through our local watershed. So the pollution in our storm drains comes from San Clemente properties, and not from out-of-town areas.

**How can I help?**

To learn about simple tips to help prevent urban runoff pollution, please visit [www.sccleanocean.org](http://www.sccleanocean.org) or [www.ocwatersheds.com](http://www.ocwatersheds.com).

To learn about potential volunteer opportunities (e.g. beach cleanups), please visit [www.scwatersheds.com](http://www.scwatersheds.com).