

Potential
Funding
Sources
Analysis

Task # 3

Contra Costa Clean Water Program
Stormwater Quality Funding Initiative
March 11, 2011



SCI
Consulting
Group



TRAMUTOLA
THE DISCIPLINE OF WINNING



DAN CLOAK
ENVIRONMENTAL
CONSULTING

TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
1.0 EXECUTIVE SUMMARY	4
BACKGROUND	4
PROJECT COORDINATION, GOALS AND CONSTRAINTS	4
RECENT STORMWATER FUNDING EFFORTS IN CALIFORNIA	6
A STORMWATER UTILITY?	7
OVERVIEW OF FUNDING NEEDS BY MUNICIPALITY (FROM TASK#2 REPORT)	7
THE STREET SWEEPING CONUNDRUM	8
INTRODUCTION TO POTENTIAL FUNDING SOURCES	8
2.0 STORMWATER FUNDING APPROACHES	10
I. BALLOTTED APPROACHES	10
1. Special Tax	10
2. Property Related Fees - Balloted	13
3. Benefit Assessments	17
II. NON BALLOTTED APPROACHES	18
1. Re-Alignment of Some Stormwater Services (such as Sewer, Water, and Refuse Collection)	18
2. Dedicated "Trash Load Removal" Property Related Fee - Non Balloted	24
3. Regulatory Fees - SB 310	25
4. Regulatory Fees - Inspections	27
III. DEVELOPMENT-DRIVEN APPROACHES	28
1. Impact Fees	28
2. Community Facilities Districts	28
IV. LEGISLATIVE APPROACHES	29
V. OTHER APPROACHES	30
1. Grants	30
VI. OTHER ISSUES:	31

EXECUTIVE SUMMARY

The Contra Costa Clean Water Program has engaged a consulting team led by SCI Consulting Group to study, make recommendations, and assist in the implementation of strategies to fund water quality improvements required by the 2009 Municipal Regional Permit. This report analyzes and evaluates various funding mechanism alternatives, and in conjunction with public opinion polling, will serve as the basis for the recommendations to be presented to the Program in August of 2011.

This report closely evaluates special taxes and property related fees, as well as several other approaches that do not require a balloting, and are limited by legal restrictions and not voter or property owner politically driven rate limitations. Development-driven and legislative approaches are also presented. It is anticipated that a variety of funding mechanisms will be required to fully fund the permit requirements.

1.0 EXECUTIVE SUMMARY

BACKGROUND

The Contra Costa Clean Water Program ("CCCWP" or "Program") is composed of twenty-one public agencies including Contra Costa County, all nineteen of its incorporated cities and towns and the Contra Costa County Flood Control & Water Conservation District. The Program's primary purpose is to implement federal and state mandated stormwater regulations specifically targeting pollutants in urban runoff from municipal separate storm sewer systems. This organization includes all of the incorporated and unincorporated areas of Contra Costa County.

On August 30, 1992, Governor Pete Wilson signed Assembly Bill No. 2768 (Campbell), which amended the Contra Costa County Flood Control & Water Conservation District Act to permit the formation of stormwater utility areas based in the incorporated boundary of a city or the unincorporated area of Contra Costa County. Stormwater utility areas were created for each existing community with the exception of Brentwood and Richmond. (Brentwood and Richmond rely on other revenue sources to fund their implementation of the federal and state stormwater mandates.) The Stormwater Utility Assessments ("SUA"s) and calculation methodology used by the municipalities were based upon the impervious surfaces associated with a parcel's land use. The stormwater utility assessments generate approximately \$14 million annually which is used to fund Program and individual municipal stormwater permit compliance programs and activities. However, all municipalities are now at the maximum rate they can charge. Existing dedicated financial resources are simply insufficient to pay for present and future requirements. Thus, the need to increase resources for the Program's twenty one municipalities to remain in compliance is critical.

The purpose of this project, the Contra Costa Clean Water Program's Stormwater Quality Funding Initiative, is to develop public financing mechanisms to pay for the mandatory requirements of the 2009 Municipal Regional Permit ("MRP").

PROJECT COORDINATION, GOALS AND CONSTRAINTS

In 2010, the CCCWP retained a consultant team led by SCI Consulting Group to investigate additional public financing mechanisms that the municipalities could use to fulfill permit mandates. The elements of the Stormwater Quality Funding Initiative are:

Phase I

Task 1: Background Analysis and Research

Task 2: Future Program Cost Analysis

Task 3: Potential Funding Source Analysis

Task 4: Opinion Research and Survey

Task 5: Stormwater Funding Needs and Options Report

Phase II

Fee Report and Revenue Enhancement Action Plan

Phase III
Implementation and Educational Outreach

This Task #3 Report provides analysis of various potential funding mechanisms and is based, in part, on the results of Tasks 1 and 2. Ultimately, this report will be combined with the results of the public opinion research in Task #4, to make specific recommendations to the Program within the Task #5 Funding Needs and Options Report.

The goal of this project is to provide comprehensive, long term, protected and dedicated revenue for stormwater management. Most likely, the recommendations included with the Task #5 Funding Needs and Options Report will include a combination of funding approaches, rather than a single, all-encompassing approach. It is anticipated that this "funding portfolio" approach will include a balloted tax or fee. Unfortunately, it is also anticipated that the tax or fee will not be politically viable at a rate that would, combined with the existing SUA revenue, fully fund the permit requirements. Therefore, it is likely that significant "non-balloted approaches" will also be recommended..

The formula below has been developed to express the funding challenge:

$$\begin{aligned} \text{REVENUE REQUIRED FOR 2009 MRP IMPLEMENTATION} = & \\ & \text{REVENUE FROM EXISTING 1993 STORMWATER UTILITY ASSESSMENT}^1 + \\ & \text{REVENUE FROM PROPOSED BALLOTTED REVENUE MECHANISMS}^2 + \\ & \text{REVENUE FROM PROPOSED NON-BALLOTTED APPROACHES}^3 + \\ & \text{OTHER REVENUE}^4 \end{aligned}$$

with

- ¹ As tabulated in Table 2 of this report. Each participating municipality is currently generating the maximum amount allowable under this mechanism.
- ² Most likely a balloted special tax or property related fee.
- ³ Various proposed strategies are described in Section 2.0, II. of this report.
- ⁴ Other Revenue includes some general fund revenue (as well as existing other sources in Brentwood and Richmond). Ultimately, the goal is to minimize and/or eliminate this component of revenue.

Several aspects are considered as part of this analysis:

- Currently, most co-permittees fund at least a portion of 2009 MRP activities using general fund revenue along with existing SUA revenue (except for Richmond and Brentwood). The general fund of each co-permittee is not considered a viable option for this long term stormwater management funding.
- This Stormwater Quality Funding Initiative project is designed to address the funding needs of the 2009 MRP only, but will be sensitive to the fact that funding needs will likely increase, perhaps significantly, in subsequent permits.

- The Program intends to coordinate a Program-wide solution to funding the 2009 MRP. However, ultimately, through a designated process, the co-permittees will decide whether this effort should be implemented on a Program-wide wide, regional or even individual co-permittee basis. This Task #3 Report is written to allow for considerable latitude in this final strategic decision.
- The final Task# 5 recommendations must be evaluated along a number of key attributes including political viability and legal rigor. Further, the existing SUA funding source must not be jeopardized by this effort. An analysis of legal and political aspects, confirming that a new "overlying" fee or tax is preferable to an increase to the existing SUA, should be included.

RECENT STORMWATER FUNDING EFFORTS IN CALIFORNIA

Despite the fact that NPDES permits require a significant local investment of resources, there have been relatively few local revenue mechanisms established to support stormwater programs in California. Table 1, below, lists these efforts. Although Contra Costa County differs significantly in demographics, geography, and culture from many of the areas in Table 1, the analysis of these stormwater measure efforts provides useful information for the Program.

Table 1 - Recent Stormwater Measures

Jurisdiction	Status	Annual Rate	Year	Funding Mechanism
Burlingame	Successful	\$150.00	2009	Balloted Property Related Fee
Carmel	Unsuccessful	\$38.00	2003	Balloted Property Related Fee
County of Contra Costa	Studying	NA	NA	NA
County of Los Angeles	Studying	NA	NA	NA
County of Orange	Studying	NA	NA	NA
County of Ventura	Studying	+/- \$25.00	NA	Balloted Property Related Fee
Encinitas	Non-Balloted, Overturned by Court, Balloted, Failed	\$60.00	2005	Non-Balloted
Los Angeles	Successful	+/- \$28.00	2004	Special Tax - G. O. Bond
Los Angeles	Surveying	\$54.00	2009	Balloted Property Related Fee
Palo Alto	Successful	\$120.00	2005	Balloted Property Related Fee
Palo Alto	Unsuccessful	\$57.00	2003	Balloted Property Related Fee
Rancho Palos Verde	Successful, then Recalled and Reduced Successful, Overturned by Court of Appeals, Decertified by Supreme Court	\$200.00	2005, 2007	Balloted Property Related Fee
Ross	Successful and Renewed Once	\$125.00	2006	Balloted Property Related Fee
San Clemente	Successful and Renewed Once	\$60.15	2002, 2007	Balloted Property Related Fee
Santa Clarita	Successful	\$21.00	2009	Balloted Property Related Fee
Santa Cruz	Successful	\$25.00	2008	Special Tax
Santa Monica	Successful	\$84.00	2006	Special Tax
Stockton	Unsuccessful	\$34.56	2010	Balloted Property Related Fee
Woodland	Unsuccessful	\$60.00	2007	Balloted Property Related Fee

A STORMWATER UTILITY?

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.”

OVERVIEW OF FUNDING NEEDS BY MUNICIPALITY (FROM TASK#2 REPORT)

Table 2, below, summarizes the approximate funding needs for each municipality based upon the analysis performed in Task #2. This analysis indicates that an additional \$14 million to \$18 million in annual revenue is needed collectively by the Program to fund the permit requirements .

Table 2 - Funding Needs by Municipality

Municipality	Total Parcels	Maximum Existing Stormwater Utility Assessment Rate	SUA Revenue Generated	Estimated Additional Revenue Needed 2011-12 (From Task#2 Analysis) without Street Sweeping	Estimated Additional Revenue Needed 2011-12 (From Task#2 Analysis) with Street Sweeping
ANTIOCH	32,851	\$25	\$1,160,793	\$1,215,509	\$1,215,509
BRENTWOOD	19,462	NA	NA	\$252,975	\$776,112
CLAYTON	4,305	\$35	\$125,641	\$150,479	\$150,479
UNINC. COUNTY	62,544	\$30	\$2,842,506	\$3,326,700	\$3,481,200
FLOOD CONTROL DIST	NA	NA	NA	\$1,931,541	\$1,931,541
CONCORD	38,123	\$38	\$2,056,558	\$249,972	\$800,436
DANVILLE	16,371	\$35	\$557,363	\$699,664	\$840,664
EL CERRITO	8,799	\$35	\$400,019	\$107,971	\$257,321
HERCULES	8,728	\$35	\$324,484	\$273,206	\$278,356
LAFAYETTE	8,900	\$35	\$452,093	\$124,290	\$191,657
MARTINEZ	13,333	\$30	\$626,150	\$119,011	\$236,549
MORAGA	5,889	\$35	\$285,693	\$133,975	\$139,125
OAKLEY	11,921	\$30	\$521,529	\$332,731	\$404,831
ORINDA	7,402	\$35	\$382,990	\$109,222	\$133,660
PINOLE	6,632	\$35	\$321,785	\$270,850	\$295,850
PITTSBURG	18,462	\$30	\$841,208	\$421,508	\$521,508
PLEASANT HILL	11,810	\$30	\$488,011	\$248,743	\$332,791
RICHMOND w CIP	32,676	NA	NA	\$3,669,215	\$4,788,405
SAN PABLO	6,941	\$45	\$422,662	\$31,784	\$106,459
SAN RAMON	23,626	\$35	\$1,147,985	\$137,589	\$284,353
WALNUT CREEK	28,468	\$35	\$1,234,412	\$749,510	\$939,385
				\$14,556,445	\$18,106,191

THE STREET SWEEPING CONUNDRUM

Prior to the implementation of the SUA in 1993, all municipalities and the County paid for street sweeping services out of their general fund. In general, street sweeping was historically considered to be a form of trash and debris collection/removal. Over time, local agencies in the County began using the SUA as a funding source for street sweeping. Today, seventeen of the local governments pay for at least some portion of street sweeping through the SUA. Historically, street sweeping has been an explicitly prescribed element of stormwater management as documented in previous permits. However, although street sweeping is still a well-recognized activity that can significantly improve water quality, it is not explicitly prescribed in the 2009 MRP. Moreover, street sweeping can alternatively be defined as a solid waste and trash collection service.

INTRODUCTION TO POTENTIAL FUNDING SOURCES

Dedicated local revenue mechanisms that are available to the Program can be divided into three primary groups – balloted, non-balloted, and development-driven. (Legislative approaches and grants are also briefly discussed in this report.)

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, as it is limited by the political "willingness to pay" of the local voters/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: special taxes (primarily defined and regulated through Proposition 13-driven language) and property-related-fees taxes (primarily defined and regulated through Proposition 218 language). Special taxes are typically conducted at polling places and require two-thirds of registered voters' support, with one vote per registered voter. Property related fees are typically conducted by mail, with a threshold of 50% support of 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 un-met funding requirements for implementation of the Program's 2009 MRP:

I. Balloted Approaches

- 1. Special Taxes including**
 - a. Parcel-Based Taxes**
 - b. General Obligation Bonds**
 - c. User Taxes**
 - d. Transient Occupancy Taxes and/or Sales Taxes**
 - e. Vehicle License Fees**
 - f. Other Special Tax Issues**
- 2. Property Related Fees - Non Balloted**
- 3. Benefit Assessments**

II. Non Balloted Approaches

- 1. Re-Alignment of Stormwater Services**
- 2. Dedicated Property Related Fee - Non Balloted**
- 3. Regulatory Fees - SB 310**
- 4. Regulatory Fees - Inspections**

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

2.0 STORMWATER FUNDING APPROACHES

I. BALLOTTED APPROACHES

1. 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 special purpose, 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 Los Angeles, Santa Cruz and Santa Monica.

Parcel Based Taxes

Most special taxes are conducted on a parcel basis with rates potentially based upon property use and/or size and zone. Parcel taxes based upon the assessed value of a property are not allowed. Parcel taxes are the most common and most viable type of special tax for funding MRP requirements. As such, most discussion of special taxes in this report and the subsequent Task #5 report will focus on parcel taxes.

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 ERAF.
- Very little administrative overhead. Once approved, a tax does not require an extensive Fee Report or other administrative overhead.
- Well known. Most property owners are aware and comfortable with (but not necessarily supportive of) the special taxes and the special tax process.

Challenges

- Questionable political support at required rate and revenue. Generally speaking, the two-thirds majority threshold for approval is very politically challenging, particularly within the current political climate in Contra Costa County. Special taxes are subject to significant outside influence from media and opposition groups during voting, and are more vulnerable to 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 with a property related fee. Both Santa Cruz and Santa Monica have very large, very high voting propensity renter populations, and renters tend to be more supportive than property owners in support of new taxes. In Contra Costa County, 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. The Task # 4 Opinion Research should confirm this assertion.

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 Program or any of the co-permittees ultimately decide to pursue a special tax, it is highly recommended that a special all-mail election be considered. 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.

Upon the completion of the Task #4 polling, revenue projections for special taxes will be made, and will be included in Task #5 Report.

General Obligation Bonds

In California, special taxes can be linked directly to 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 the funding of the 2009 MRP requirements.

User Taxes

User taxes are typically designed to associate "use" with "taxation." Stormwater management does not lend itself well to this model, as it is difficult to measure and assign stormwater quality services and improvements to specific users. 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. In other words, 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. It is unlikely that this plan will be implemented in the Tahoe Basin, and even less likely such a user tax could work in Contra Costa County.

Transient Occupancy Taxes and/or Sales Taxes

A transient occupancy tax ("TOT") is charged when occupying 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 less. 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. Contra Costa County does not have a large tourist base and is not particularly 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 of it as dedicated to stormwater program requirements. A sales tax 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.

Vehicle License Fees

One novel approach that worked for San Mateo County, albeit for a relatively short period of time, was the Vehicle Registration Fee. Established in 2003, AB 1546 authorized the City/County Association of Governments of San Mateo County to assess up to \$4 in motor vehicle fees. The purpose of the fee was to establish a pilot program that would fund congestion management activities to reduce traffic congestion, and to provide funding for the State-mandated Countywide Stormwater Pollution Prevention Program (STOPPP) in San Mateo County. The law expired in January of 2009 and efforts to have it renewed have failed.

Subsequent similar efforts in Alameda, Contra Costa, Marin, Napa, Sacramento, and Santa Clara Counties have also failed, either in the State assembly or senate, or by governor veto. Essentially, the Jarvis Taxpayers Association has been able to politically message that a two-thirds majority vote should be required for an increase to vehicle registration fees.

2. Property Related Fees - Balloted

A Proposition 218-compliant, property owner balloted, property related fee is a very viable revenue mechanism to fund the 2009 MRP requirements within the County. Accordingly, considerable detail is provided below regarding this approach. Typically, it is a property owner balloting requiring a simple majority for approval.

Historical Context of the Property Related Fees

Proposition 218, approved by California voters in 1996, is well known for establishing clear administrative and legal requirements to implement a common funding mechanism called a "Benefit Assessment." What is less well-known is that Proposition 218 also created a new mechanism called a "Property Related Fee." A property related fee is a fee or charge imposed upon a parcel "as an incident of property ownership."

Since Proposition 218's approval, property related fees have been widely implemented and used for water, sewer and refuse collection services. In the 2002 Proposition 218 case, *Howard Jarvis Taxpayers Association v. City of Salinas* (98 Cal.App.4th 1351), the Court of Appeal for the Sixth Appellate District held that a "storm water drainage fee" was illegally imposed by the City of Salinas. The plaintiff, Howard Jarvis Taxpayers Association ("HJTA") contended that the storm drainage fee imposed by the City of Salinas was a "property-related" fee requiring voter approval. In its decision, the Appellate Court sided with the HJTA, further explaining "we must conclude, therefore, that the storm drainage fee 'burdens landowners as landowners,' and is therefore subject to the voter-approval requirements of Article XIII D [section 6(c)]." This decision clarified the position that a property related fee is the appropriate vehicle for stormwater services, not a benefit assessment, and that the fee is subject to the balloting requirement.

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. (This is highly unlikely in a large urbanized area such as Contra Costa County.) 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
- Resolution Calling for Mailing of Ballots (assumes < 50% protest)
- Notice

- Ballot
- Resolution Directing Fees to be Charged (assumes >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 referred to as the "Engineer's Report," which is technically the required supporting document for a benefit assessment.) Although there have been fewer than 10 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.

Advantages

- 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.
- Political 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. Task #4 and Task #5 analysis work will evaluate and likely confirm this.

Challenges

- Community may be unfamiliar with the process. One potential criticism of the property related fee process is that property owners are generally unfamiliar with the process. However, with the recent dramatic increase in voting by mail in California, this would not likely be a major issue.
- 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 are special taxes.

Revenue Projections and Timing

The basic fee rate should be determined by balancing the budgetary requirements of the proposed Stormwater Program and the political realities of support levels within the County. A viable fee rate will be identified using the survey prior to the balloting. Within the State, fees and taxes for stormwater management have ranged from \$25 per year to over \$200 per year.

Upon the completion of the Task #4 polling, revenue projections for property a related fee will be made, and included in the Task #5 Report.

See Table 3, which lists the required tasks and timeline, to implement a property related fee.

Table 3 - Balloted - Property Related Fee Tasks

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

Some Outstanding 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 has recently overruled the appellate court's decision, and the approved fee has been validated.

Property related fees to be collected monthly or on annual tax bills

Although not a major issue, there is some discussion amongst California's Proposition 218 attorneys regarding whether property related fees may be collected annually, on property tax bills, or must be collected monthly. Most agencies place property related fees on monthly bills. However, the recent City of Burlingame stormwater fee is collected on the annual property tax bill.

3. 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.

II. NON BALLOTTED APPROACHES

1. 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 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 of the funding of these services.

More recently, a number of public agencies in California have realigned 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 the Program as well. Ironically, one example is street sweeping, which in many cases was moved into municipal stormwater programs after the establishment of the SUA, because of the ample funding at the time, and to better manage this primary water quality improvement activity. It may be time for many of these municipalities to reconsider whether street sweeping should remain within the stormwater programs.

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, and should be focused on, entities that have a solid opportunity 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 County by a combination of private companies as franchisees, special districts, and the municipalities themselves. Special districts and the local governments are required to satisfy Proposition 218 processes when making increases to 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:

"...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 Program and/or individual co-permittees 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.

Table 4 - Sewer, Water and Refuse Collection Service Providers by Local Government Agency

Municipality	Primary Refuse Collection Service Provider	Primary Water Service Provider	Primary Sewer Service Provider
ANTIOCH	Allied Waste	City of Antioch	City of Antioch
BRENTWOOD	City of Brentwood	City of Brentwood	City of Brentwood
CLAYTON	Allied Waste	Contra Costa Water District	Central Contra Costa Sanitary District
COUNTY	Various	Various	Various
CONCORD	Concord Disposal Service	Contra Costa Water District	Central Contra Costa Sanitary District
DANVILLE	Allied Waste	EBMUD	Central Contra Costa Sanitary District
EL CERRITO	East Bay Sanitary Company	EBMUD	Stege Sanitary District
HERCULES	Richmond Sanitary Services	EBMUD	City of Hercules
LAFAYETTE	Allied Waste	EBMUD	Central Contra Costa Sanitary District
MARTINEZ	Allied Waste	Contra Costa Water District	Central San & Mt. View Sanitary District
MORAGA	Allied Waste	EBMUD	Central Contra Costa Sanitary District
OAKLEY	Oakley Disposal Service	Diablo Water District	Ironhouse Sanitary District
ORINDA	Allied Waste	EBMUD	Central Contra Costa Sanitary District
PINOLE	Richmond Sanitary Services	EBMUD	City of Pinole
PITTSBURG	Pittsburg Disposal Services	City of Pittsburg	Delta Diablo Sanitation District
PLEASANT HILL	Allied Waste	CCWD & Diablo Vista Water	Central Contra Costa Sanitary District
RICHMOND w/o CIP	Richmond Sanitary Services	EBMUD	City of Richmond
SAN PABLO	Richmond Sanitary Service	EBMUD	West County Wastewater District
SAN RAMON	Valley Waste Management	EBMUD & Dublin San Ramon	Central San & Dublin San Ramon
WALNUT CREEK	Allied Waste	EBMUD	Central Contra Costa Sanitary District

New or increased fees or charges for sewer, water or refuse collection are established by the following steps:

Table 5 - Non-Balloted - 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
+/- 10 days	Governing Body (City Council or Board of Supervisors) considers approval of Fee Report and calls for mailing of
45 Days	Mail Notice of Proposed Fee and Date of Public Hearing to all property owners (45 day notice period)
+/- 10 days	Public Hearing and call to mail ballots (assumes < 50% protest)
45 Days	Mail Ballots to all property owners (45 day ballot period)
	Balloting period ends. Ballot tabulation begins. 50% +1 required for approval with 1 vote per fee eligible parcel

Opportunities for re-alignment of stormwater services to sewer, water and refuse/collection service providers

Listed below are examples of sewer, water and refuse collection services that potentially could be included in new or increased sewer, water or refuse collection fees - and do not need to receive ballot approval.

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. In fact, street sweeping is managed by the Delta Diablo Sanitation District for the incorporated community of Bay Point. Allied Waste provides street sweeping services to various areas within the County. 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 C.10 Trash Load Reduction Requirements Opportunity

Like the street sweeping example above, much of the 2009 MRP's C.10 Trash Load Reduction requirements are essentially "refuse collection" and may be re-aligned accordingly. This includes operating and collecting refuse from trash capture devices, hot spots and other BMPs, as well as activities associated with overall trash reduction plans. (It is likely that these activities would have to be linked to individual properties.) Re-aligning these trash-related activities to the refuse collection provider would also require an increase to the contractual scope of the refuse collection provider and likely a corresponding rate increase.

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 co-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.
- Does not cover all stormwater program costs. 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 Program is advised to proceed cautiously with this approach and to fully justify and support any services allocated to sewer, water or refuse collection. The Program 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, refuse exception" have not been legally established.

The Storm Drain Maintenance Issue

Storm drain maintenance is a critical municipal service that closely affects both flood control and water quality. The 1993 SUA provides for funding of storm drain maintenance from this assessment. 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.

2. Dedicated "Trash Load Removal" Property Related Fee - Non Balloted

This approach is closely related to the "re-alignment" strategies described in the previous section. The co-permittees 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 2009 MRP activities which could reasonably be described as "refuse collection," including much of the C.10 Trash Load Reduction permit 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.

3. 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.

In any case, the advantages and disadvantages of using the regulatory fee mechanisms for stormwater quality activities are listed below:

Advantages

- No balloting requirement, so greater revenue is possible. Since there is no balloting requirement, the Program 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. The Progra 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. (If the Progra 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.) The approval of Proposition 26 increased this legal risk.
- Considerable administrative overhead. This approach requires the Progra 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 (i.e., a property in full compliance with the BMP retrofit ordinance).

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 stormwater is legally unproven, and the Program should probably not consider a SB 310 compliant regulatory fee, particularly in light of the passage of Proposition 26.

4. 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 the Program'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.

III. DEVELOPMENT-DRIVEN APPROACHES

1. 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. (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. Historically, however, 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 the City Councils and/or Boards of Supervisors.

2. Community Facilities Districts

Contra Costa County currently has many localized special tax and assessment “districts” that fund the maintenance and operations of various local infrastructure. (These appear as “direct charges” on Contra Costa County 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.

Much of the remaining potential development in the County (other than East County) is single family “infill” development on individual lots amongst developed properties. However, parcels in CFDs and Benefit Assessment Districts need not be contiguous. In other words, the Program and/or co-permittees can create revenue districts and require new development to be annexed into the districts as a condition of development. Even though there remains a reasonable number of infill vacant lots within the County, topographic, economic and policy factors will continue to limit development such that CFD’s should not be viewed a significant source of future revenue.

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 slightly preferred over benefit assessments because they provide slightly broader flexibility in use and are slightly less expensive to annually administer.

IV. LEGISLATIVE APPROACHES

Over the last 10 years, at least three bills have been introduced to add "stormwater" to the "sewer, water, trash exception" within 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, taxpayers groups and well-motivated individuals. Any and all proposed exceptions are viewed as an attack on the existing legislation and would likely entice a strong negative reaction. Nonetheless, the Program could invest resources to attempt such a legislative approach.

V. 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 is significant enough that they should be considered part of the Program'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. The Program should also consider coordinating with other affected local agencies to put forth larger and potentially more competitive grant applications.

The Program 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 Program should work to identify applicable Federal grants and compete, in coordination with other affected local agencies, for funding. Also, the Program should consider working with local elected officials to pursue provisions that direct approved funds to be spent on specific projects, often called earmarks.

VI. OTHER ISSUES:

Timing and Schedule

The Contra Costa County Auditor requires levies to be submitted by early August 10th of that fiscal year in order to be placed on tax bills. Accordingly, if the Program 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. At this time, the August 2012 levy deadline is being pursued.

A Consumer Price Index Escalator Is Recommended

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 supports the fact that a CPI escalator introduces minimal decay in overall support.

A Sunset Provision Is Not Recommended

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 5 years (like the property related fee for the City of San Clemente) to 20 years. However, the political advantage is typically very slight 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.