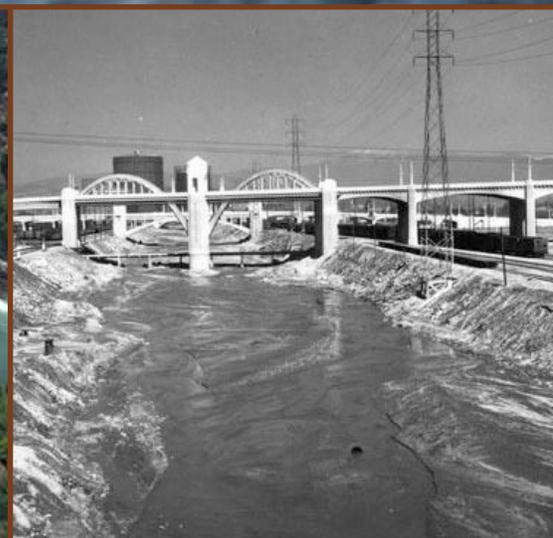
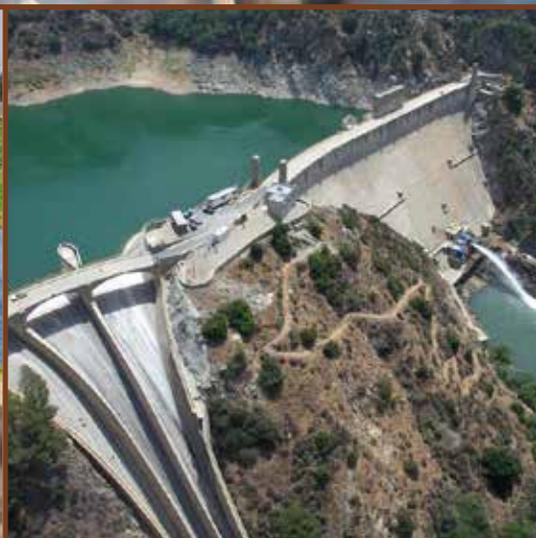


# STORMWATER FUNDING OPTIONS



PROVIDING SUSTAINABLE WATER QUALITY FUNDING IN LOS ANGELES COUNTY

MAY 21, 2014

Prepared by

Ken Farfsing, *City of Signal Hill*

Richard Watson, *Richard Watson & Associates, Inc.*



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IN LOS ANGELES COUNTY

May 21, 2014

PREPARED FOR CALIFORNIA CONTRACT CITIES ASSOCIATION

and

THE LEAGUE OF CALIFORNIA CITIES, LOS ANGELES COUNTY DIVISION

CITY MANAGERS COMMITTEES

PREPARED BY

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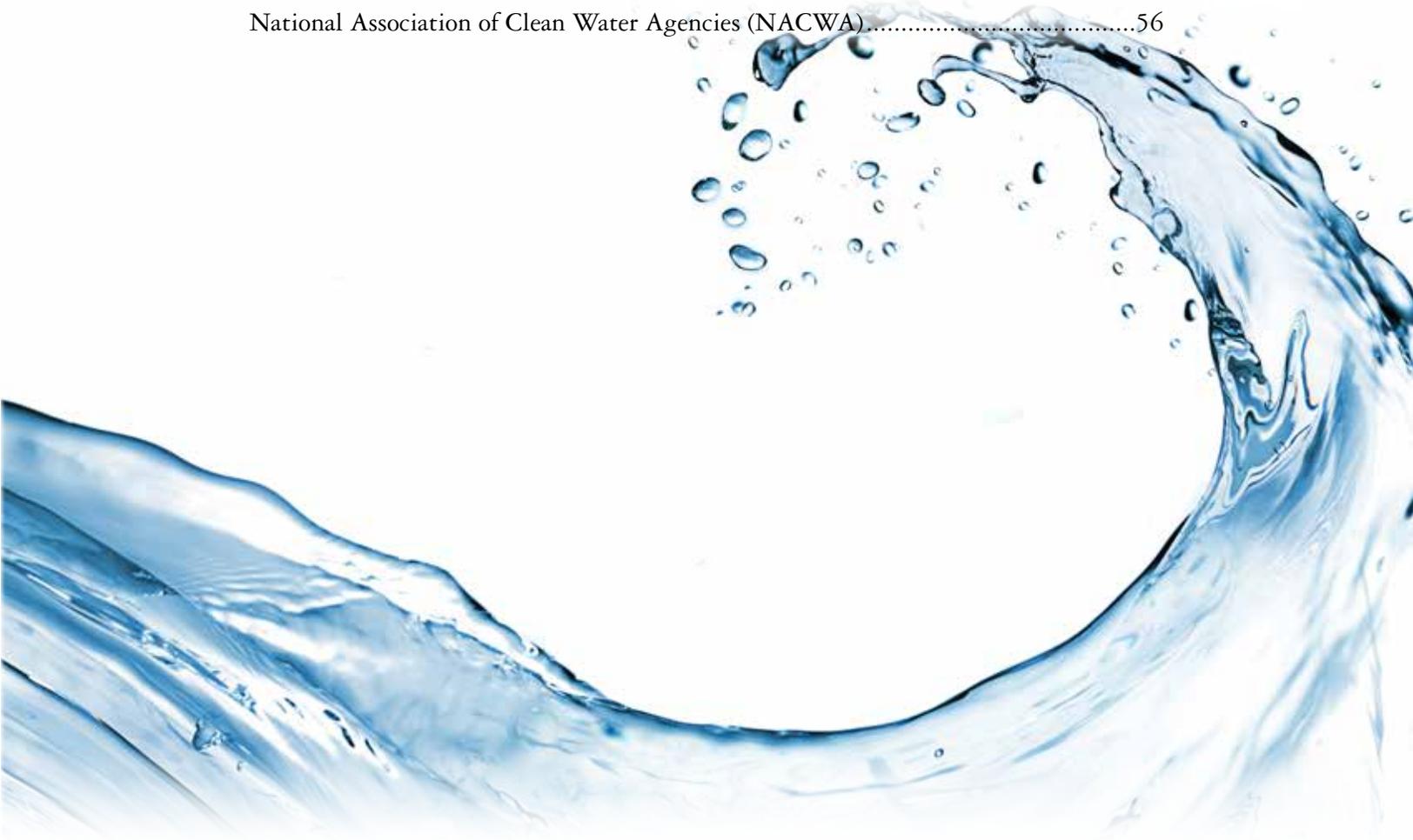
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# I. EXECUTIVE SUMMARY AND RECOMMENDATIONS

## STORMWATER FUNDING OPTIONS

### *Providing Sustainable Water Quality Funding in Los Angeles County*

City Managers, California Contract Cities and  
The League of California Cities, Los Angeles County Division

May 2014

The Los Angeles region faces critical, very costly, and seriously underfunded stormwater and urban runoff water quality challenges. The Los Angeles County Flood Control District (LACFCD) led a multi-year effort to develop a sustainable revenue source for municipalities to manage stormwater programs and implement water quality improvement projects. This effort included special legislation and development of a proposed parcel fee, the “Clean Water, Clean Beaches Measure,” to fund clean water programs. At extended protest hearings on a proposed parcel fee in January and March of 2013, the Board of Supervisors heard concerns about the fee and the fee program from public schools, the business community, other stakeholders and the public. The Board moved to close the public hearing and determined to “not proceed at this time with the Clean Water, Clean Beaches measure as proposed.” In June 2013, the Board adopted a motion requesting collaborative participation with the County Sanitation Districts of Los Angeles County (LACSD) and other wastewater management agencies to evaluate methods, assess the a potential model governance structure, and to help identify and secure other sources of funding.

In response to the Board’s actions, the City Managers Committees of the California Contract Cities Association (CCCA) and the League of California Cities, Los Angeles County Division (League) convened a City Managers meeting with representatives from public schools, environmental organizations, and the business community on June 27, 2013 to hear stakeholders’ concerns and suggestions directly. The City Managers attending the meeting authorized a Work Group to review stormwater funding options after the County’s proposed Clean Water, Clean Beaches funding initiative failed to move forward. The City Managers Work Group actively sought the input of key stakeholders from the environmental, public education, and business communities, and prepared this report to assist the Board, local decision makers, stakeholders, and the public in reaching a common understanding of the issues at hand and the potential solutions. The Managers found that to fully understand the issues, improved communication and education is necessary.

This report describes the stormwater regulatory requirements specific to the greater Los Angeles area, the complexities of funding stormwater programs, and the LACFCD’s funding initiative. It examines the regulatory framework for stormwater management, including the requirements of the National Pollution Discharge Elimination System (NPDES) MS4 permit (stormwater permit) and the total maximum daily load (TMDL) programs. The report also summarizes the impacts of the federal TMDL Consent Decree for the Los Angeles Region signed in 1999, which has indirectly regulated the LACFCD, 85 cities, and the unincorporated County since that time. Further, it reviews estimated stormwater program compliance costs, the “pros and cons” of various funding options, and evolving opportunities. The report concludes with a series of recommendations agreed upon by the City Managers. Suggestions from an Elected Officials Committee and individual City Attorneys are also included in this report.

*“... funding urban runoff programs is so complex and dynamic, and the solutions so costly, that the County and the Cities cannot follow a single funding strategy at this time.”*

The Work Group found that funding urban runoff programs is so complex and dynamic, and the solutions so costly, that the County and the Cities cannot follow a single funding strategy at this time. One option, for example, is to examine institutional roles to determine whether other agencies, such as the County Sanitation Districts, either provide a useful governance model or could play a new or different role in managing stormwater in the future. During the report development process, the Sixth Appellate

Court clarified the application of Proposition 218 regarding the imposition of fees for the capture and use of stormwater for groundwater recharge (Griffith v. Pajaro Water Management Agency). This ruling could have major implications on funding options. These are only two examples of the changing nature and complexities in charting a path forward.

The City Managers Work Group recommends a “multi-pronged” approach to address urban runoff funding issues, since our communities may encounter several dead-ends. A number of the recommendations require active management and a higher degree of organization by local government.

The recommended actions are voluntary. The report is not advocating that any city, group of cities, or the County adopt stormwater fees. The managers are committed to local control; if a regional fee moves forward, each community should make its own decision whether or not to participate in the regional effort. However, there are steps that local governments can take that will assist in funding the new stormwater mandates. For example, cities should organize and be active in the water bond discussions.

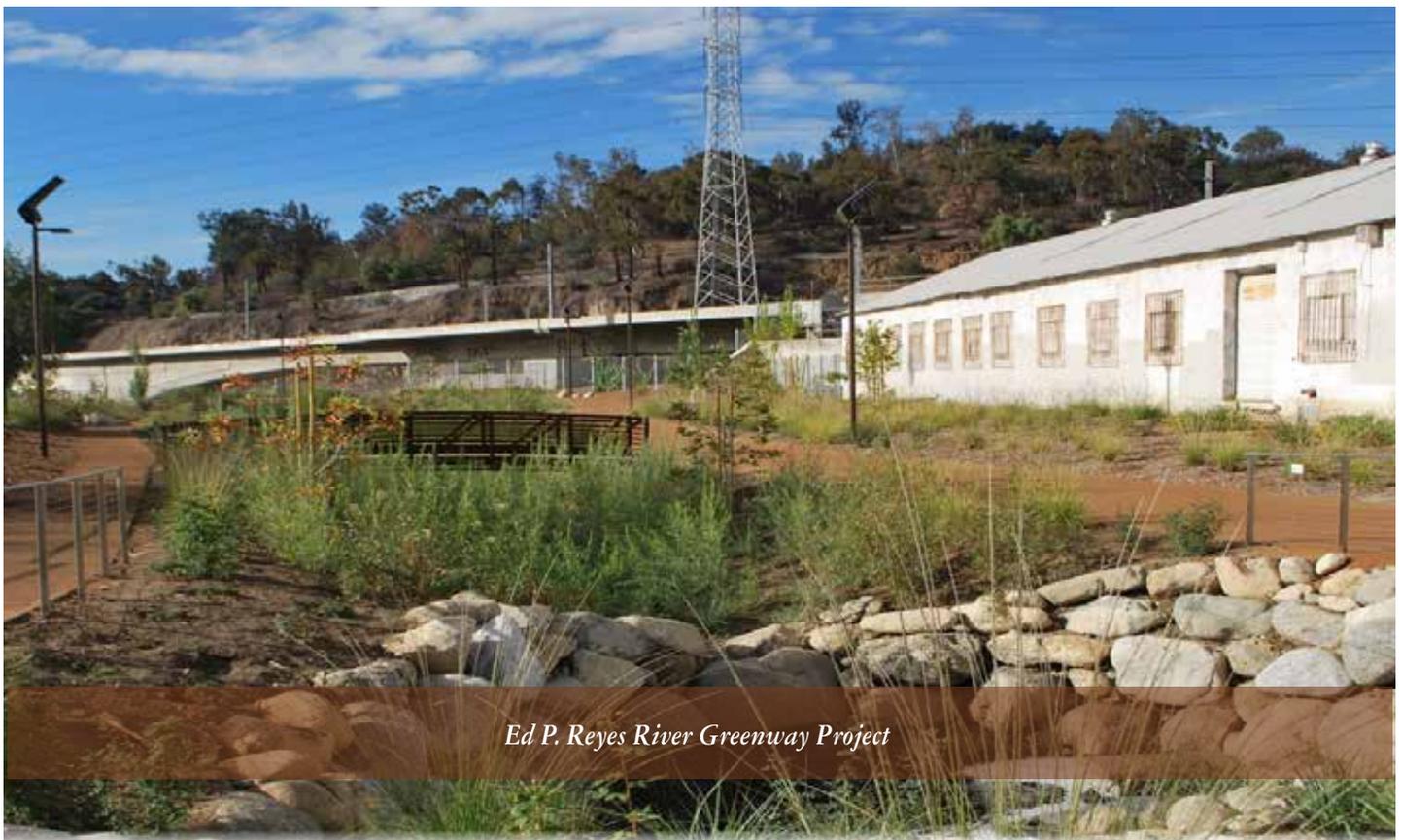
*“The recommended actions are voluntary. The report is not advocating that any city, group of cities, or the County adopt stormwater fees.”*

This report suggests a voluntary framework through Contract Cities and the League to organize those communities that desire to engage in implementing the recommendations found in this report.

It should be noted that the recommendations involving California Contract Cities, the Los Angeles County Division of the League of California Cities, and the State League of Cities have not been officially endorsed by these organizations at this stage of the process. The City Managers Work Group and the Elected Officials Committee held detailed discussions with staff from both organizations in order to reflect their input and concerns. Recommendations involving these organizations, such as changes in State legislation, would need to be reviewed and approved by each organization.

*“This report suggests a voluntary framework through Contract Cities and the League to organize those communities that desire to engage in implementing the recommendations found in this report*

with staff from both organizations in order to reflect their input and concerns. Recommendations involving these organizations, such as changes in State legislation, would need to be reviewed and approved by each organization.



*Ed P. Reyes River Greenway Project*

## ORGANIZATIONAL RECOMMENDATIONS

- 1) A core group of elected officials should be formed as a “Steering Committee” under the guidance of Contract Cities and the League to develop and implement a plan to explore and secure funding; to work on legislation; to conduct public outreach; and to provide overall direction. The Steering Committee should initially prepare a detailed action plan with timelines. The Cities need to devote sufficient staff and resources to support the Steering Committee and provide a project manager since Contract Cities and the League do not have this level of expertise. It is also unrealistic to believe that any one city can manage a project of this size. This effort may require a special assessment.
- 2) The Steering Committee should organize a Joint Stakeholder Committee, with members from the environmental and business communities, the Councils of Governments, the Los Angeles Regional Water Quality Control Board (Regional Water Board or Regional Board), and other stakeholders to foster communications. Under State law this committee could not advocate for any ballot measures. The Stakeholder Committee should include local interest groups such as the Coalition for Our Water Future and the Los Angeles County Business Federation (Biz Fed). Collaboration with these groups is essential because their support will be necessary to establish a successful fee program.
- 3) The Los Angeles County Sanitation Districts have indicated a willingness to work with the Cities and the County in exploring options to expand the number of dry-weather diversion programs in their service area (including 76 of the 85 cities that would have been subject to the County’s proposed stormwater fee) and to engage their Board of Directors in a broad discussion of a role for the Districts in managing stormwater programs. Similar discussions might be necessary for Cities that are not within the Districts’ service area, including most of the City of Los Angeles and the Cities in the Las Virgenes MWD. The Steering Committee will need to engage with LACSD to explore this option. These discussions would inform further recommended actions on the Clean Water, Clean Beaches Initiative.

## EDUCATION AND OUTREACH PROGRAM RECOMMENDATIONS

- 1) The County and the Cities should improve their public education and outreach programs to make a direct connection with residents, the business community, and others regarding stormwater program requirements and funding issues.
- 2) The Steering Committee should reach out to the public and school districts, as well as to state and federal officials.
- 3) The Stakeholder Committee should communicate with the Governor and the legislature on the need for additional funding opportunities to deal with stormwater issues.
- 4) The Stakeholder Committee should initiate a program to conduct outreach to the area’s Congressional delegation to provide education on stormwater and urban runoff issues and to take consistent and coordinated action in requesting federal funding assistance.
- 5) The Stakeholder Committee should encourage the incorporation of best science into the basin plan.
- 6) The Stakeholder Committee should be actively involved in the design of future bond programs, including water and transportation bond measures, to ensure additional funding is provided for stormwater and runoff programs.

## RECOMMENDATIONS FOR LEGISLATION

There is a series of legislative actions that should be explored by the Steering Committee as part of the development of the work plan. Input and support from the Stakeholder Committee will be necessary as part of the legislative process.

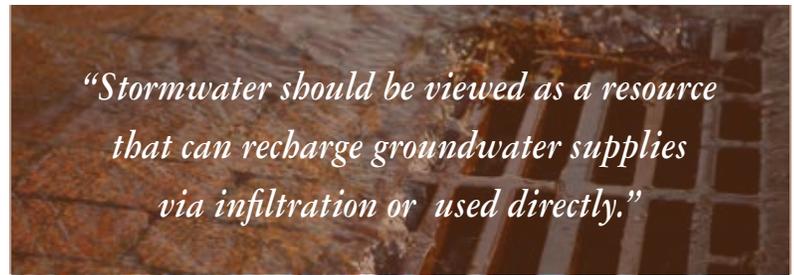


## STATE FACILITIES

- 1) There have been several very successful neighborhood-level stormwater infiltration projects. Public schools and State facilities may be able to provide space for future projects. Public school administrators have expressed concerns about environmental liability in working with the County and the Cities on such projects. Contract Cities and the League should explore legislation that would resolve the liability issues raised by school administrators in order to allow these projects to move forward on State-owned properties and public school sites. In addition, the State should be encouraged to provide funding for these projects.
- 2) Contract Cities and the League should explore legislation to require that State projects, including public school construction, community college improvements, and parks projects constructed with State funds and local bond funds comply with water quality requirements, and that the State Architect be required to ensure that future public school projects are consistent with the requirements of regional MS4 permits.

## STORMWATER CAPTURE AND USE

- 1) Stormwater should be viewed as a resource that can recharge groundwater supplies via infiltration or be used directly. Stakeholders have suggested that the value of stormwater recharge could be “monetized” and a fee structure could be established to allow local water agencies to purchase recharged groundwater. The City Managers agree that incentives need to be created for pumping rights holders to invest in the capital facilities to capture and conserve stormwater since the water could then be owned by the capturing and storing entity. We believe that this concept is assisted by the recent ruling of the Court of Appeals, Sixth Appellate District in the Griffith case. The Steering Committee will need to explore the technical hurdles and regulatory compliance issues that need to be overcome in order for the “capture and use” concept to become a viable funding option for communities.



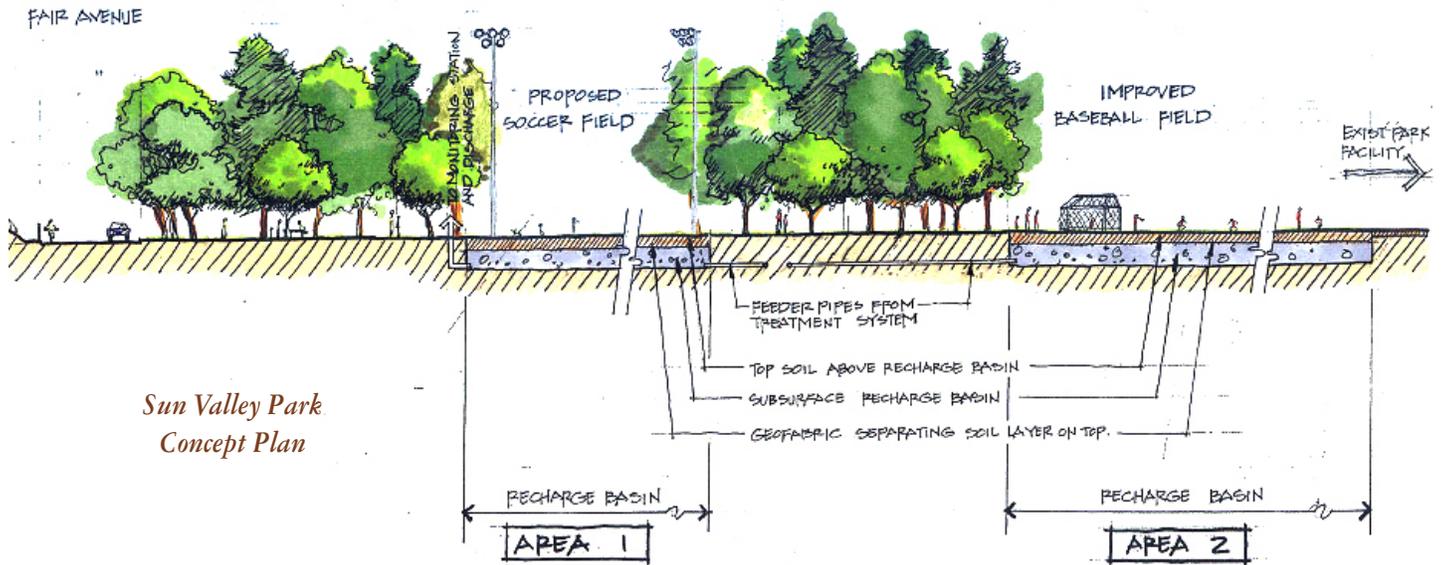
## SOURCE CONTROL OR FEE LEGISLATION

- 1) Contract Cities and the League should consider sponsoring source control legislation similar to SB 346 (Kehoe), which was passed in 2010. SB 346 recognized that controlling the major source of copper in the State's waters meant reducing and eventually removing added copper in vehicle brake pads and replacing it with benign materials. For example, studies have demonstrated that almost half of the zinc found in metropolitan areas' waters can be traced back to vehicular tire wear. If tires cannot be reformulated, then legislation should be considered to require a “per tire” zinc control fee, with monies made available to local government for costs of mitigating zinc pollution. Source control legislation should also be considered for toxic chemicals, such as pesticide products. Further, support should be provided to advance the California Green Chemistry Initiative program, whose goal it is to create environmentally safer consumer products. This program grew out of Green Chemistry legislation passed in 2008 that required the creation of a new, science-based framework for the management of chemicals to determine appropriate regulatory actions to control chemicals of concern in consumer products. The current manifestation of this initiative is the Safer Consumer Product Regulations.

## SPECIAL ASSESSMENT DISTRICTS

Special assessment districts may serve as a model for a regional or local stormwater fee. The model could be applied to Watershed Management Program (WMP) and Enhanced Watershed Management Program (EWMP) areas. The advantages of the model include the ability to follow these natural watersheds and to list specific projects to be completed. The assessment district and the fee could be better tailored to a community, its needs, and prior accomplishments. Cities that have made greater investments in water quality could have a lower fee. The Steering Committee should explore the special assessment district concept, including whether legislation and/or a Constitutional Amendment is necessary in order to classify stormwater in the utility section of the law, in order to allow a Special Assessments District to be formed.





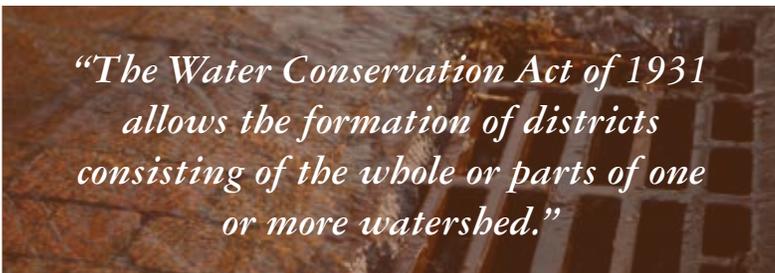
Sun Valley Park  
Concept Plan

### CLEAN WATER, CLEAN BEACHES RECOMMENDATIONS

The funding needed for necessary water quality improvements may require a suite of measures, of which the Clean Water, Clean Beaches Measure may be a key component. Funding solutions may require cooperative efforts between water, wastewater, and stormwater entities, and one option that the Board may consider is a district-wide sales tax measure to fund a portion of the stormwater compliance programs.

The Los Angeles County Flood Control Act requires further amendments, which are detailed in the following recommendations.

- 1) Based on the Griffith v. Pajaro Valley Water Management Agency ruling, the Board should consider a multi-pronged approach to stormwater fees:
  - a. The Board should conduct a property owner/voter sentiment poll toward the fee and tax approaches, based on new factors and changed circumstances. This would involve polling on specific projects, optional fee amounts, and revisions to the Flood Control Act and the Clean Water, Clean Beaches initiative, including “opt out” and “opt in” amendments.
  - b. A protest hearing and Board vote for a stormwater capture and infiltration or use fee necessary to fund a stormwater utility, with the purpose of including increasing supplies of drinking water, irrigation water, and water for sea barriers;
  - c. A protest hearing and either a property owner vote or vote of the electorate for a stormwater fee/ tax to fund other aspects of the stormwater quality program not covered under the fee program (a) above;
  - d. Formation of a Water Conservation District pursuant to the Water Conservation District Act of 1931 (California Water Code Division 21) which allows the formation of districts consisting of the whole or parts of one or more watershed. These districts need not be contiguous, and have the authority to vote bonds and cause assessments to be made; and



- 2) The protest hearing and/or election for a regional stormwater fee should be held as soon as possible after June 2015, but only after a proposed ordinance is provided for public review. Information from the completed WMPs and EWMPs will then be available and the fee amount could be calculated based on planned projects and preliminary estimated cost information included in these programs.

- 3) The Flood Control Act should be amended to allow more flexibility in how watershed groups are defined and established pursuant to Article 1 (commencing with Section 6500 of Chapter 5 of Division 7 of Title 1 of the Government Code). For instance, WMP or EWMP groups or combinations of WMP and EWMP groups should be able to function as Watershed Authority Groups (WAGs). Alternatively, the WAGs could be replaced by WMP and EWMP groups, or clusters of EWMP/WMP groups, with provisions to accommodate the 12 cities not currently participating in either a WMP or EWMP Group. This would provide a consistent functional watershed-based regional funding structure.
- 4) The Flood Control Act should be amended to allow cities to either “opt in” or “opt out” of a fee election, if this could be done without creating an issue with the proportionality of the fee program. Those cities that “opt in” could participate in watershed groups, however defined, for regional projects benefiting their watersheds. These cities would also receive a local revenue return for their own city projects. Those cities that chose to “opt out” would have the choice to join watershed groups or fund their own WMPs, and to fund watershed projects from other local revenues. There would be no LACFCD stormwater fee charged in these communities. The legislative amendments would need to be drafted carefully to comply with Proposition 218 and other state requirements.
- 5) The ordinance, implementation guidelines, and project evaluation criteria should be completed prior to requesting support from stakeholder groups so that these groups know what they are supporting. The Board needs to adopt an ordinance that is presented to the voters rather than waiting until after fee approval.
- 6) Project materials should be written in sufficient detail to enable voters to make informed decisions. The election should be held after completion of the Enhanced Watershed Management Programs, which are due to the Regional Water Board in June of 2015.



*Sun Valley Park Stormwater Capture Project*

- 7) The measure should contain an automatic reduction after 25 years (“dusk clause”). The reduced fee must be sufficient to cover ongoing operation and maintenance costs, as well as replacement costs. The County and the Cities should co-fund a study to determine these ongoing O&M costs. The results of this study should be included as a recommendation to the Board of Supervisors.
- 8) The measure should include a substantial fee credit/waiver program that fully implements stormwater permit requirements for capture, retention, infiltration, and treatment of stormwater and urban runoff. As a condition of receiving a credit, a property owner would be required to enter into a binding covenant for long-term maintenance of BMPs. A study should be conducted to determine an appropriate credit that recognizes land use traffic generation on public streets that will contribute off-site pollutants and additional credit that could be given for acceptance of off-site stormwater and urban runoff discharges.
- 9) A representative from the business community should be added to the Oversight Board.
- 10) The measure should contain a fee credit/waiver program for public and private educational institutions that agree to implement water quality improvement programs and educational curricula on stormwater, urban runoff, water conservation, source control, and related water quality issues. The credit program could include a combination of infrastructure improvements and educational programs. These programs could be coordinated with and complement existing County and local government urban runoff education programs.
- 11) The program should recognize the difficulties that disadvantaged communities have in funding stormwater quality programs and projects. This could be done by providing additional ranking points for disadvantaged communities as part of the scoring process used by watershed groups to prioritize projects for funding.

- 12) Program administrative fees should be limited to 5% of the total revenues received by local governments and watershed groups.
- 13) There should be a Level of Effort (LOE) established above which cities could apply the funding to existing city services. Many cities have already expended considerable funds towards stormwater compliance, while others have invested few local resources.
- 14) A portion of the fee should be dedicated to scientific study to prioritize water quality issues. The results of this work could be used to update the basin plan. The update should specifically address the challenges of stormwater and urban runoff.
- 15) The fee program should have the ability to fund regional and multi-watershed group programs and projects. One regional project example would be funding dam repairs, which would allow for the retention and management of significant amounts of stormwater and would benefit multiple cities and watershed groups.
- 16) The fee could be phased in and increased gradually over time, since initial implementation will concentrate on developing the programs and capital improvements necessary to implement the WMPs and the EWMPs.
- 17) Cities with rent control ordinances may consider ordinance amendments that would allow the “pass through” of any regional fee to renters.

## LOCAL FUNDING OPTIONS

The City Managers expressed concerns that State solutions (i.e. legislation and water bonds) may never develop. They also expressed concern that consensus for a regional fee may never develop. These outcomes remain unknown; however, in the interim, while statewide and regional funding solutions are being explored, Cities may consider the following recommendations to address stormwater funding. The Steering Committee should consider assisting the cities by taking the lead in the development of model programs.

## LOCAL FEE PROGRAMS

- 1) Local communities may consider pursuing their own local stormwater fees, or an increase in their existing fees, until a new regional fee is in place.
- 2) Cities may consider amendments to refuse contracts and street sweeping contracts to provide funds for the trash total maximum daily loads (TMDLs) and trash control programs.
- 3) Cities may consider adopting water conservation fees that would provide funding for reducing irrigated runoff in order to both conserve groundwater and reduce dry weather pollution.
- 4) Cities with Low Impact Development (LID) ordinances may consider adopting a Stormwater Impact Fee, in which developers are subject to a fee if they replace permeable with non-permeable surfaces. These fees could be waived if the developers were able to capture the resultant stormwater and offset the impact. Cities would be required to use the fees to support stormwater programs.
- 5) Since some of the pollution in our waterways is from cars driven on local streets, to minimize the impact on residents, assessments on car rentals could help contribute to the costs of cleanup. Local, regional, or statewide fees on car rentals may be considered to provide a funding source for cleanup and help to reduce local governments’ financial burdens.
- 6) Cities without such polices may consider adopting green streets policies to incorporate stormwater features into new street projects funded by bond issues or any other eligible street funding available to cities.

## FUTURE TRANSPORTATION BONDS AND PROJECTS

- 1) The Los Angeles County Metropolitan Transportation Authority (METRO) should consider a stormwater funding allocation as part of any future transportation bonds similar to the Measure M bond issued by the Orange County Transportation Authority. Surface transportation projects, such as highways and intersections, generate significant pollutants. METRO should work with local governments in identifying and securing funding to implement Green Street Policies as required by the Regional Water Board.

- 2) The local Councils of Governments should be encouraged to develop Strategic Transportation Plans that include consideration of mitigating the impacts on stormwater runoff for all transportation projects. Special emphasis needs to be given in these plans to encourage Caltrans and other regional agencies to work collaboratively with local communities on joint projects designed to address water quality issues.

## RECOMMENDATIONS FOR THE REGIONAL WATER BOARD

- 1) Regional Water Board Members and key staff should be available to provide continual education to the cities regarding the Board's regulatory programs, the Board's responsibilities, and the consequences of non-compliance to the Cities.
- 2) The Regional Water Board should ask the State Water Board to fund a staff position that would be responsible to identify and distribute information on the available grant funding from federal, state, non-profit, corporate, and other sources. This staff position should also be available to assist local governments in the funding application process, including serving as a liaison to outside funding entities.
- 3) The Regional Water Board should establish an on-line resource center addressing the measures available for municipalities to comply with the stormwater permit requirements. The database could include links to relevant agencies with their policies and practices, lists of water quality mitigation measures for the WMPs and EWMPs, and links to various regional agencies related to stormwater (i.e. LACDPW and LACSD). The resource center could also contain a library of scientific studies relevant to stormwater issues confronting our communities.



*Los Angeles River 20th Street Bridge Construction*

## INTRODUCTION

The Los Angeles region faces critical, very costly, and greatly underfunded stormwater and urban runoff water quality challenges. Wet- and dry-weather runoff containing trash, bacteria, metals, and other pollutants drains into channels and waterways and ultimately to the ocean. As a result of this and other pollutant discharges, many water bodies in the Los Angeles region fail to meet State and federal water quality standards and are listed as impaired pursuant to Section 303(d) of the federal Clean Water Act; nearly 100 pollutants are listed in the State's 2010 list of impaired waters for the region as affecting over 500 miles of the region's rivers, streams, lakes, and coastal waters and beaches. Further, our communities also face an uncertain future regarding supply, reliability and affordability of drinking water, and stormwater should be regarded as an important resource. Implementing stormwater capture and use projects should be an important part of an integrated, regional water supply strategy.

While effectively managing stormwater and dry-weather runoff is a critical need for the region, these types of discharges are far harder and more costly to regulate and control than traditional point sources. Many municipalities feel that the adoption of the new municipal separate stormwater sewer system (MS4) permit and the requirements therein have made the need for addressing stormwater funding questions more urgent than ever. The complex problem of funding the cleanup of urban runoff and stormwater has posed a challenge to the region's local government officials, regulators, educational and environmental communities, businesses and other stakeholders since 1990. Many people believe that this issue does not directly affect them, and one of the major challenges has consistently been how best to build consensus to solve urban runoff pollution problems. Others believe that investing in managing stormwater utilizing green solutions can provide communities added benefits to water quality enhancements, including greening communities, replenishing ground water, and mitigating flooding. Also, these investments can revitalize local communities and create needed jobs.

The City Managers Work Group commends the Los Angeles County Flood Control District (LACFCD) for attempting to address the funding issue through its multi-year effort to develop a proposed parcel fee, the Clean Water, Clean Beaches Measure, as a sustainable revenue source for municipalities to manage stormwater programs and implement water quality improvement projects. On January 15, 2013 the County Board of Supervisors (sitting as the Board of the Los Angeles County Flood Control District) held a public hearing on the proposed funding measure. At the conclusion of the hearing, the Board continued the issue to its March 12, 2013 meeting.

During the continued public hearing, public school districts, the business community, municipalities, and others raised substantial issues that remain unresolved, including consideration of a sunset, or "dusk," date for the proposed fee; requiring that LACFCD, the County, and city governments better define their proposed water quality improvement projects; the request by some cities to be excluded from the fee; and the development of a more substantial credit for property owners who have already invested in on-site stormwater capture, infiltration, and treatment systems. A full list of concerns is discussed further in this report.

The City Managers Committees of the California Contract Cities Association (CCCA) and the League of California Cities, Los Angeles County Division (League) convened a meeting with stakeholders on June 27, 2013 to hear their concerns and suggestions directly. These stakeholders included public schools, environmental organizations, and the business community. The City Managers Work Group subsequently prepared this report to assist the Board of Supervisors, local decision makers, stakeholders, and the public in reaching a common understanding of the extraordinarily complex issues at hand and the potential solutions. The Managers found that to fully understand the issues, improved communication and education is necessary.

This report is intended to provide readers with the basic knowledge necessary to understand the issues facing Southern California communities as they work to implement stormwater permits, other clean water requirements, and water supply management. It describes the stormwater regulatory requirements specific to the greater Los Angeles area, the complexities of funding stormwater programs, the concerns of cities who want to be able to opt out, and the LACFCD's funding initiative. The report examines the regulatory framework for stormwater management, including the requirements of the National Pollution Discharge Elimination System (NPDES) MS4 permit (stormwater permit) and the total maximum daily load (TMDL) programs. It also summarizes the impacts of the federal TMDL Consent Decree signed in 1999 for the Los Angeles Region, which has indirectly regulated the LACFCD, 85 cities, and the unincorporated County since then. Finally, the report reviews estimated stormwater program compliance costs, the "pros and cons" of various funding options, and City Manager recommendations.

The City Managers found that the region's unique topography, climate, and highly urbanized nature must be considered in the design and implementation of effective stormwater and urban runoff programs. The current stormwater permits establish water quality requirements both for runoff from storms and for dry-weather periods where local city streets carry irrigation runoff. Thus, the "stormwater problem" is better characterized as an "urban runoff problem," i.e., as requiring control of water from both storms and daily urban activity during dry weather. A further complication is that most of the region's flood control and wastewater infrastructure was neither designed nor constructed to treat stormwater or urban runoff pollution. Ultimately, the complicated nature of the permit and the unique characteristics of urban runoff make it difficult to define the implementation measures that may be required and to estimate the cost of compliance.

Although systems of storm drains, municipal streets, and other conveyances ("municipal separate storm sewer systems," or MS4 systems) are public utilities, they differ from water and wastewater utilities in one key way: many water and wastewater utilities existed prior to the passage of Proposition 218 and are financially supported by service fees, but, with a few exceptions, local municipal stormwater utilities are not supported by service fees. Currently, most stormwater programs are funded by the general funds of cities and counties (primarily through property and local sales taxes). This presents major challenges to elected officials and City Managers, as stormwater program funding must be balanced with other programs supported by general funds, including law enforcement, fire, paramedics, park maintenance, street lighting, and libraries, and other services. In addition, it is difficult to ask the public to pay additional fees during difficult economic times. Also, some cities have programs in place that they believe meet the mandated requirements.

Since the Salinas decision, cities have relied on a majority vote of property owners or 2/3 vote of the electorate in order to approve stormwater fees. The Salinas election process has been used in lieu of the property owner protest hearing process outlined in Proposition 218 for traditional utilities like drinking water and sanitary sewer service. The Work Group is concerned about the costs of conducting an election of registered voters within the LACFCD on the Clean Water, Clean Beaches Measure (estimated by County staff to be between \$7 and \$10 million), and Proposition 218 requires a two-thirds vote threshold for passage. During the development of this report, the Sixth District Court of Appeal clarified a portion of its Salinas decision in *Griffith v. Pajaro Valley Water Management Agency*. The Court's decision may provide additional opportunities to fund elements of stormwater programs that can be tied to water supply.

The complexity of the permit and difficulty in determining achievable water quality solutions was evident at the January and March 2013 public hearings held by the County Board of Supervisors on the proposed Clean Water, Clean Beaches funding initiative. Almost all stakeholders testified that they support clean water, but there was no consensus on how to fund stormwater programs. However, not discussed that day was the fact that rain mobilizes pollutants that have been deposited on the ground or emitted into the air from various sources and carries them into local gutters, storm drains, flood control channels, rivers, streams, lakes, bays, and the ocean. Pollutant sources include vehicle brake pads and wear from tires, paints and other construction materials, cosmetics and pharmaceutical products, pesticides and insecticide chemicals, and fertilizers, as well as the persistence of historical, or legacy, pollutants, that are beyond the jurisdiction and reach of local stormwater agencies.



The report is sensitive to the issue that there remains uncertainty about how best to implement stormwater quality programs, and therefore the costs of stormwater compliance are not well understood. It is vital to determine how the programs will be implemented prior to asking citizens to pay additional fees. The current MS4 permit, which was adopted in late 2012 by the Regional Water Quality Control Board (Regional Water Board), requires that permittees either prepare individual plans or participate in the preparation of Watershed Management Programs (WMPs) or Enhanced Watershed Management Programs (EWMPs) developed by groups of permittees with common interests. These plans must propose solutions to urban runoff pollution to be implemented over time. These WMPs and EWMPs must be reviewed and approved by the Regional Water Board, and require substantial analysis and documentation. WMPs are due by June 28, 2014 and EWMPs are due by June 28, 2015.

After reviewing several economic studies conducted for the region, including the Regional Water Board's studies, we are confident in our conclusion that the costs for compliance with these clean water programs will be in the billions – if not tens of billions – of dollars over the next 20 years. The Natural Resources Defense Council (NRDC) recently reported that California communities are spending \$428 million annually to keep trash from washing into waterways. In Los Angeles County, the City of Los Angeles invests \$36 million annually, and the City of Long Beach invests \$13 million annually, to manage trash in urban runoff. These figures do not include the expenditures necessary to manage other pollutants. Other pollutants, such as bacteria, metals, pesticides, and toxicity associated with sediments, will be far more difficult and costly to control. Refinements to the estimated cost of compliance will be available in the summers of 2014 and 2015, when the WMPs and EWMPs are completed.



Some stakeholders have commented that the costs of compliance are so large in comparison to the County's proposed fee that the fee should not move forward. However, if the costs of the entire program were funded from the property fee, the fee would be so great that it would not survive either voter or property owner ballot measures. The Work Group also heard comments that the permit program is a "paper tiger" and that local government should not be concerned about legal actions. However, lawsuits and enforcement actions taken against the business community, local governments, school districts, and the County of Los Angeles – detailed in this report – show that inaction is a certain recipe for more citizen litigation and enforcement actions. The Work Group conducted a review of litigation and fines over the last ten years in order to determine the costs to local government and the business community of non-compliance. Our Regional Water Board has initiated 195 enforcement actions against private parties since 2003, resulting in \$8.2 million in fines.

Over \$23 million in settlement costs have been the result of 21 citizen lawsuits statewide during the same period. Not included in this total is a recent settlement by the City of Malibu for \$6.6 million. The Regional Water Board has pursued 23 Notices of Violation. However, they were all eventually rescinded after the Board received the information requested. The Regional Board has brought 155 enforcement actions against local agencies for violations of NPDES permits, resulting in fines of over \$8.7 million. Most of these enforcement actions were related to sanitary sewer overflows, but some were related to stormwater.

Finally, most stakeholders interviewed did not know that the region has been regulated under a federal Clean Water Act consent decree agreed to in 1999. Under this court order, 33 new TMDLs have been developed and subsequently added to the 2012 stormwater permit. These TMDLs contain numeric targets, monitoring and implementation requirements, and compliance deadlines, and thus have real and serious legal consequences for local government and the business community. (See Appendix A.)

Numerous stakeholders asked that we review other funding sources, such as sales tax overrides, monetizing captured stormwater added to the groundwater supply, source control fees, and other revenues. Business stakeholders recognized that if there is not one countywide fee, cities would be forced to adopt their own fees. If that were the case, the business community might have to contend with 85 different sets of fees, and would have to devote significant time to participating in the fee adoption process. Public education administrators expressed concerns that fees would adversely impact their budgets. Certain environmental stakeholders requested "carve outs" in the fee for disadvantaged communities. Labor advocates are very likely to request project labor agreements. Various stakeholders suggested alternative governance models, including building upon the existing County Sanitation Districts structure. Changes were recommended to the Flood Control Act, the legislation that enables the vote on the County fee and establishes the general framework of the program, such as allowing cities to opt out. Several valuable suggestions were made to improve the Clean Water, Clean Beaches fee, ordinance, and program guidelines. Municipal stakeholders also noted that they need help from the Regional Water Board.



The Managers have concluded that water quality problems are so complex and the solutions so costly that the County and the cities cannot afford to follow a single strategy. The City Managers Work Group developed recommendations that present a multi-pronged approach to address urban runoff funding issues. Several of these recommendations will require active management and a high degree of flexibility so each city has the ability to decide on the issue, and a high degree of organization by local governments in order to assure their implementation.

## II. Environmental Setting

### The Los Angeles Basin – The Challenges of Climate and Topography

The Los Angeles Basin is unique among urbanized areas worldwide. The area is ringed by mountains that trap intense storms, where water runs off rapidly in a relatively compact space. The Basin consists of two major river basins, the Los Angeles River and San Gabriel River basins, and several smaller watershed areas.

The Los Angeles River drains an 890-square mile area inhabited by approximately 4.5 million residents. The river travels 51 miles from its source to the ocean. The basin is bordered on the north by the San Gabriel Mountains, which were formed over one million years ago. The region has dozens of hills that stretch forty miles along the Newport-Inglewood fault zone, including the Baldwin Hills, Cheviot Hills, Dominquez Hills, and Signal Hill, and the Basin's drainage is also influenced by the Santa Monica Mountains, the Palos Verdes Peninsula, the Raymond Hills, and Verdugo Hills.

Blake Gumprecht, in his book, Los Angeles River, Its Life, Death, and Possible Rebirth, summarized the challenges that the region's unique topography and climate have created and will continue to create for the Basin's inhabitants:

“Nearly all of the precipitation occurs in the four winter months, and most falls as rain, concentrated in brief but often violent storms. Drainage lines are short, and their fall to the ocean relatively rapid. The watershed of the Los Angeles River drops more than 7,000 feet in little over forty miles, from its highest point at 7,214-foot Mount Pacifico to the river's mouth in Long Beach. The river itself falls 795 feet on its fifty-one mile course, a seemingly insignificant slope but comparatively abrupt for a major lowland waterway passing through a heavily urbanized area. The Mississippi River, in contrast, falls just 605 feet in more than two thousand miles.” (Gumprecht, p. 132).



The second major urbanized watershed in the Los Angeles Basin is the San Gabriel River Watershed, which covers approximately 682 square miles in eastern Los Angeles County and is home to more than two million people. The main channel of the river extends approximately 58 miles from its headwaters in the San Gabriel Mountains to the Pacific Ocean. The upper watershed contains a series of reservoirs with flood control dams. Two major flood control projects and spreading grounds below this point recharge a major groundwater basin. Farther downstream, the river flows through a heavily developed commercial and industrial area before discharging to the Pacific Ocean just south of Long Beach.

The topography and torrential rainstorms have changed the course of the region's rivers through the centuries. The Los Angeles River, for instance, has experienced wholesale course changes four times in the last two hundred years. Prior to 1825, for example, the river followed the Ballona Creek Channel and emptied into Santa Monica Bay. At one time the San Gabriel River flowed into the Los Angeles River via the Rio Hondo.

The mountains are widely recognized for trapping air pollution, which is most visible during the summer months. The mountains influence rainfall patterns via orographic effects, and a periodic, recurring condition known as “El Niño,” which is caused by ocean current and temperature conditions, can result in intense rainstorms. This combination of factors can result in torrential rains with precipitation rates of two inches per hour, among the most concentrated rainfall ever recorded in the United States. As a result of El Niño cycles, it is rare to have a year with “average” rainfall; instead, the local climate cycles between dry periods with far less than average rainfall and wet periods with far greater than average rainfall.



## FLOOD CONTROL IN THE LOS ANGELES BASIN

Intense rain during winter storm events historically caused extensive flooding, even before the region became highly populated and built-out. As noted above, rivers changed course and “wandered” throughout the floodplain during storm events. Historians have noted that “before a comprehensive program of flood control was developed, ... more than 336 square miles were subject to inundation” (Gumprecht, p. 134), and development within the region only exacerbated flood conditions. The region has experienced more than sixty significant floods since settlement by the Spanish, and more people have been killed in Los Angeles County by flooding than by earthquakes (Gumprecht, p. 131-135).

The response to extensive flooding was the design and construction of a large and expensive flood control system. The LACFCD was established by a special State law immediately after major floods that caused extensive damage in 1914. The Los Angeles County Board of Supervisors functions as the governing board for LACFCD, which is funded by a fee that is assessed to property owners and collected on property tax bills.

The Army Corps of Engineers took over the flood control program during the 1930s, and the most significant progress was made after the devastating flood of 1938, when intense rains caused the inundation of 108,000 acres (168 square miles), claimed the lives of 87 persons, and caused \$78 million in property damage in the County of Los Angeles (\$888.8 million in 1999 dollars) (Gumprecht, p. 215-216). By 1960, a fifty-one-mile reach of the Los Angeles River had been lined with concrete. Storms in late January 1969 produced the highest nine-day rainfall total (13.3 inches of rain) ever recorded in Los Angeles by the U.S. Weather Bureau. Although the rain caused \$31 million in damage and led to seventy-three deaths in places with no flood control, the newly created Los Angeles River flood control system prevented an estimated \$1 billion or more in damage to Los Angeles County (Gumprecht, p. 232).

The current system of flood control infrastructure includes a series of dams, retention basins, concrete-lined rivers and flood control channels, underground storm drains and catch basins. This system functions to move water rapidly to the ocean during storms to protect life and property in the Basin’s several flood plains. However, the flood control system was not designed or intended to control and treat pollutants, which routinely run off from both urban areas and open spaces in the Basin. In fact, the high velocities that are necessary to remove water from the Basin act to suspend and transport pollutants. From both a technical and financial standpoint, improving water quality in stormwater and urban runoff remains a critical issue.

## POTENTIAL FOR STORMWATER CAPTURE TO ENHANCE LOCAL WATER SUPPLY

The U.S. Bureau of Reclamation Southern California Area Office is currently in the process of completing a \$2.4 million study of long-term flood control and water conservation impacts from projected population and climate conditions. The study was initiated in February 2013, and is targeted for completion in May 2015.

The Los Angeles Basin Stormwater Conservation Study<sup>1</sup> will recommend potential changes to the operation of stormwater capture systems, modifications to existing facilities, and development of new facilities that could help resolve future flood control and water supply issues. The recommendations will be developed through identifying alternatives and conducting trade-off analyses.

THE BASIN STORMWATER CONSERVATION STUDY HAS TWO OBJECTIVES:

1. To evaluate the response of existing LACFCD flood control dams, reservoirs, spreading grounds, and other interrelated facilities to projected future conditions.
2. To develop and recommend a suite of alternatives, including new or modified facilities and operational changes, to address the projected future conditions.

The Basin Stormwater Conservation Study will offer the opportunity for multiple water management agencies to participate in a collaborative process to plan for future local water supply scenarios. The Basin Study will examine opportunities to enhance existing LACFCD and Basin Study partner facilities and operations and develop new facilities to increase local water supply.

1 See work plan and preliminary information available at <http://www.usbr.gov/lc/socal/basinstudies/LABasin.html>.

Stormwater itself can be used to augment local supplies directly, and, because of blending requirements, stormwater will be critical to increasing recycled water use within the region. Because stormwater is available only intermittently, and because regional water demand is greatest during dry periods, storage will be needed to utilize this resource, and the region's groundwater basins provide the greatest opportunity for increasing storage. According to the Stormwater Conservation Study, in addition to serving 85 cities, the LACFCD serves approximately 140 unincorporated communities. The LACFCD owns and operates 27 spreading grounds and is the primary agency for conducting groundwater replenishment operations. On average, more than 270,000 acre-feet (AF) of captured stormwater, imported water, and recycled water is stored in groundwater basins in Los Angeles County; in wet years that number can exceed 700,000 AF, and in drier years it may be little more than 150,000 AF. (For reference, an acre-foot of water is approximately 326,000 gallons, or about the amount of water consumed by two families in a year.)

The best estimate of the average amount of stormwater captured is about 210,000 AF per year<sup>2</sup>, but natural runoff from streams and rivers in the region is estimated to average about 1.2 million acre-feet (MAF)/year.<sup>3</sup> Storm flow volumes from individual storm events can also be very large; a storm dropping half-an-inch of rain in the Los Angeles River basin will produce approximately 924 million gallons of water (or more than 2800 AF, enough to fill the Rose Bowl eleven times) in a single day. Thus, the region has enormous potential to increase the local water supply; this potential will become increasingly important as the cost of imported water and water demands increase. The Metropolitan Water District (MWD) forecasts water rates (Tier 1 rates for fully treated water) to increase from \$794/acre-foot (\$/AF) in 2012 to \$910/AF in 2015 and \$1,115 in 2020<sup>4,5</sup>.

## BENEFITS OF STORMWATER CAPTURE AND USE

A series of studies has been conducted focusing on the environmental and public health benefits of improving water quality. These studies cite the positive economic impacts on tourism in Southern California and the avoidance of medical costs associated with waterborne illnesses. Recent studies have focused on job creation and water conservation as tangible benefits of the regulatory programs. A December 2011 study entitled "Water Use Efficiency and Jobs" by the Economic Roundtable studied over \$1.2 billion in investments in water efficiency projects in the Los Angeles area. The study reviewed 53 local stormwater, water conservation, grey water, recycled water, and groundwater management and remediation projects for their effects on the local economy. The study found that job stimulus for every \$1 million invested in water efficiency projects was greater than traditional industries such as motion picture production and new home construction. It further found that 12.6 to 16.6 annualized jobs were created for every \$1 million invested. New housing construction creates 11.3 jobs per \$1 million invested, while the motion picture industry creates 8.3 jobs annually per \$1 million invested.



## HISTORICAL POLLUTION IN THE LOS ANGELES BASIN

Many of the sources of current water pollution are closely related to the historic development of Southern California and the unintended consequences of that development on the environment. For example, lead was originally added to gasoline in the 1920s by the Ethyl Corporation to increase engine performance. As development and roads spread throughout the region, and as automobile use increased, more lead was deposited in the basin. Although lead was removed from most fuels in the 1970s when studies revealed it was harmful to human health, lead is persistent in our soils and still washes into surface waters.

Other sources of pollution in the region's surface waters can be traced back to land use development and urban activities. Los Angeles County experienced explosive population growth from 15,309 residents in 1870 to 7,032,075 residents by 1970. The U.S. Census reported 9,818,605 residents in Los Angeles County in 2010. Growth was fueled by many sources, including the completion of the Southern Pacific Railroad route from San Francisco to Los Angeles in 1876. The rail tracks ran parallel to the Los Angeles River, through the Glendale Narrows to the Taylor Yard.

2 State of California 2009. State of California Natural Resources Agency and Department of Water Resources. California Water Plan Update 2009, Integrated Water Management. Public Review Draft, January 2009. Bulletin 160-09.Ibid

3 Ibid.

4 The Metropolitan Water District of Southern California. Adopted Water Rates & Charges. Available at [http://www.mwdh2o.com/mwdh2o/pages/finance/finance\\_03.html#Anchor-Tier-6863](http://www.mwdh2o.com/mwdh2o/pages/finance/finance_03.html#Anchor-Tier-6863), accessed 10/31/13.

5 West Basin Municipal Water District. Urban Water Management Plan, Section 8: Water Rates & Charges. Available at <http://www.westbasin.org/files/uwmp/section-8-water-rates-charges.pdf>. Accessed 10/31/13.

Urban development along the course of the Los Angeles River included slaughterhouses and freight yards, and development along the river intensified when the Santa Fe Railroad built its tracks near the river. Warehouses, lumberyards, blacksmiths, and foundries replaced agricultural land uses along the river. Development along the river changed the landscape, as surface flows dried up due to over pumping of groundwater. The river became a depository for sewage, tar, oil, refuse, and dead animals. Trash and debris in the river had become such a large problem that in August 1910 the Los Angeles City Council adopted the first ordinance to prohibit the dumping of market refuse and rubbish into the river.

“Even city officials ignored the law prohibiting the dumping of trash in the river. An official of the Los Angeles Flood Control District complained in 1920 that a city-operated dump near the Macy Street Bridge projected into the river channel, thus reducing the flood-carrying capacity of the river. City officials responded that it would be too expensive to relocate the dump. City council records indicate that the Board of Public Works continued dumping refuse into the riverside dump until at least 1925.” (Gumprecht, p. 116)

“With railroads, factories and stockyards occupying much of the river front from San Fernando Valley to Long Beach, industrial discharges into the river became more prevalent and, by the 1940s, what little water occasionally flowed in its channel was often toxic. Chromium wastes from the San Fernando

Valley aircraft plants, for example, were discovered in the river in 1941. They had been discharged illegally into storm drains that emptied into the river. The Long Beach Department of Health, meanwhile, was forced to quarantine a section of beach just east of the river’s mouth in 1941 and again in 1947 because of contamination from the river. The contaminants were later traced to two paper mills in the city of Vernon...Such problems were widespread. Excessive oil and grease were reaching the river from the railroad yards in Los Angeles. Urine, manure, and other animal refuse were draining into the river from feedlots, livestock holding pens, and slaughterhouses in Vernon. Compton Creek...was so overloaded with wastes that government officials were besieged with complaints about offensive odors coming from its channel. Oil field brines were found in the river near Wardlow Road in Long Beach...” (Gumprecht, p. 123)



Federal, state, and local agencies formed the Los Angeles River Pollution Committee in 1948 in an attempt to deal with the pollution problems. The Committee made some headway, but new concerns emerged just as other problems were being solved. Chromium wastes were found in the river’s San Fernando Valley tributaries in 1961. Gasoline leaking from underground pipelines was found in 1968. Pollution eventually forced the Department of Water and Power to eliminate its last surface diversion and to discontinue pumping along the entire length of the river in 1971. Nearly all of the water that now flows in the river is reclaimed water, authorized industrial discharges and street runoff. (Gumprecht, p. 123-128)

The pattern of urban development and the associated pollution intensified during the years leading up to and after World War II. The Los Angeles region became part of the great arsenal of democracy, with heavy manufacturing factories producing aircraft, steel, tires, munitions, vehicles, glass, plastics, and other materials. Plants were spread over the entire region. During the Cold War period, the region became the epicenter of aerospace and space technologies, rocket engine testing, the construction of the Apollo space capsule, and the Space Shuttle. These heavy industries left a legacy of soil, groundwater and surface water pollution that persists to this day.

## EFFORTS TO IMPROVE WATER QUALITY

The deterioration of water quality called for serious action, and several laws were passed to address this problem. The Federal Water Pollution Control Act of 1948 was one of the first U.S. laws to address water pollution, and this act resulted in extensive implementation of controls for point sources (primarily for wastewater treatment) throughout the nation. The Federal Water Pollution Control Act Amendments of 1972, the Clean Water Act (CWA) of 1977, and the Water Quality Act of 1987 were all intended to address water quality at a national level. Together, these laws aim to provide “fishable” and “swimmable” waters wherever attainable and to help maintain and restore the “chemical, physical, and biological integrity of the Nation’s waters.” Together with California’s Porter-Cologne Water Quality Act, and as described in greater detail below, these regulations have provided the legal and regulatory framework for water quality control programs, which began by focusing on traditional point sources, such as wastewater and industrial discharges.

Significant progress has been made in treating wastewater and other point source discharges in Los Angeles County. LACSD and the City of Los Angeles have regional wastewater collection and treatment systems serving most of the County's population with thirteen water reclamation plants and two large ocean-discharging plants. The City of Burbank and Las Virgenes Municipal Water District also each own a water reclamation plant that serves their local areas, and the County Consolidated Sewer Maintenance District owns two small package wastewater treatment plants in Malibu and Lake Elizabeth.

Improvements to wastewater treatment continue to be made. For example, over the last 50 years, the County Sanitation Districts have greatly improved the efficiency of their Joint Water Pollution Control Plant (JWPCP), which discharges treated secondary effluent to the ocean off the Palos Verdes Peninsula. Even more important from a surface water quality perspective, the Districts have constructed ten upstream water reclamation plants (WRPs), nine of which produce disinfected tertiary quality recycled water. Of these, two are located in the Antelope Valley and do not discharge to surface waters, two are located in the Santa Clarita Valley and discharge to the Santa Clara River, and six are part of the Joint Outfall System that is connected to the JWPCP in Carson. Five facilities discharge to the San Gabriel River or its tributaries or to the Rio Hondo, and the remaining WRP supplies all of its recycled water for use on a golf course. Thus, high quality wastewater flows have been diverted away from direct ocean disposal to the upstream WRPs in order to provide recycled water supplies for eventual reuse. Discharge to the ocean has steadily decreased since the WRPs in the Los Angeles Basin were built in the 1970s, while additional needed treatment capacity has been added to the WRPs.

Of the total amount of recycled water produced in FY 2011-12, 43% was actively reused at over 700 sites for a variety of applications, including urban landscape irrigation, agricultural irrigation, industrial process water, recreational impoundments, and wildlife habitat maintenance. Approximately 57% of recycled water usage was used for ground water recharge<sup>6</sup>. The amount of recycled water used for replenishment of groundwater basins can vary greatly from year to year, depending on the amount and timing of rainfall runoff, maintenance activities in the spreading grounds, and other factors.

As flooding and traditional point source discharges have been substantially and successfully controlled, regulatory focus has shifted to stormwater and urban runoff pollution and nonpoint sources. In response to the amendments to the CWA in 1987, water quality regulations were modified to classify stormwater in major metropolitan areas as a point source discharge. Surface runoff generated from stormwater and non-stormwater discharge is conveyed via the municipal separate storm sewer system (MS4) to surface waters; this runoff contains many pollutants of concern, including bacteria, copper, lead, zinc, pesticides, and trash, among others. Pollutants present in stormwater and dry-weather MS4 flows have the potential to harm both human health and the aquatic ecosystem.

The reclassification of stormwater and dry-weather runoff as point sources presents a major challenge. Although stormwater and dry-weather runoff are very different in nature from traditional point sources, many of the water quality standards developed for traditional point source discharges are now being applied to stormwater discharges. Although NPDES permits for stormwater discharges have generally required implementation of best management practices (BMPs) rather than centralized treatment of flows prior to discharge, more recent permitting efforts have shifted to require implementation of more stringent controls as needed to meet water quality standards.

A number of multi-purpose, multi-benefit "green infrastructure" projects have been constructed recently in the Los Angeles Region and exemplify the principles of effective stormwater management. Two prime examples include the Sun Valley Park Drain and Infiltration System, which converted an existing municipal park into a stormwater capture and treatment site. The Sun Valley project captures and recharges a significant volume of the local watershed's stormwater runoff, thereby increasing recharge and local water supply, but it also improves water quality and provides recreational opportunities and wildlife habitat. Elsewhere in Los Angeles County, Malibu Legacy Park project has transformed 15 acres in the heart of Malibu into a central park; in addition to aesthetic, recreational, and educational uses, the park is capable of capturing up to 2.6 million gallons per day of stormwater and urban runoff, which is then used for irrigation within the park. Due to the multi-benefit nature of these projects, both received community support and were able to leverage funding from several different sources.

## CURRENT THREATS TO WATER QUALITY

In the Los Angeles Region, a wide range of pollutants exceeds water quality objectives (WQOs) in several water bodies. EPA's 303(d) list of water quality impairments for the region includes 823 listings (i.e., 823 pollutant-water body pairs), but this list alone is not necessarily reflective of the highest regional priorities. Additional information,

6 Sanitation Districts of Los Angeles County, Twenty-third Annual Status Report on Recycled Water: Fiscal Year 2011-2012, pp. x & 9.

including regional TMDLs and special studies to evaluate the toxicity of certain pollutants, was used to establish a priority list for the region for this report.

Metals have been the subject of many 303(d) listings and TMDLs in the Los Angeles region; in particular, copper, lead, selenium, zinc, and mercury exceed WQOs most frequently. With many metals, including copper, lead, and zinc, concentrations can be expressed either as the total recoverable concentration or as the dissolved fraction; it is the dissolved fraction that is bioavailable. Many 303(d) listings are based on total recoverable metals concentrations; however, the more relevant dissolved concentrations (especially for copper and lead) are frequently below WQOs. Local agencies in the Los Angeles River watershed are nearing completion of a three-year effort to complete water effect ratio (WER) studies for copper (Los Angeles River and tributaries) and WQO recalculation studies for lead (Los Angeles River, but likely applicable to other regional streams). The studies have been submitted to the Regional Water Board, with the anticipation that the Board will act on them in the fall of 2014. Selenium is present in groundwater that enters streams (“rising groundwater”) primarily from natural geologic formations, and thus has historically been present, and is considered to be lower priority. By contrast, zinc has exceeded WQOs, the dissolved concentration is typically a larger fraction of the total recoverable concentration, and WER studies have not been done to evaluate WQOs for zinc – thus, the reported exceedances of WQOs for zinc may have more significant ecosystem impacts. Mercury is also considered a higher priority than other metals, as its tendency to bioaccumulate in fish tissue can pose a significant threat to human health when fish consumption is high; however, much mercury derives from atmospheric deposition, so treating flows to meet WQO may be technically difficult and expensive. Other metals – cadmium, nickel, silver, and chromium – are lower priorities because they cause few WQO exceedances.

Concentrations of organic compounds in sediment, fish tissue, and occasionally in water exceed WQOs or other regulatory thresholds throughout the Los Angeles Region. The most common of these are organochlorine (OC) compounds (such as the pesticides DDT, toxaphene, and chlordane; and PCBs, which had a range of industrial uses). However, use of these compounds ceased long ago, and therefore they are considered a low priority despite their widespread, low-level persistence in the environment. Current use pesticides include some organophosphates (OP) and pyrethroids, and are believed to represent a medium water quality priority; these compounds are generally less persistent than the organochlorines, and further study is warranted to understand their impacts and control measures. Polycyclic aromatic hydrocarbons (PAHs) are volatile, lipophilic compounds that are introduced into the atmosphere primarily via incomplete combustion and bond to soils, sediment, and oily substances that carry the PAHs into water bodies. While PAH concentrations exceed WQOs in several water bodies, they are considered a medium priority as more research is required to develop a comprehensive control strategy.

Indicator bacteria (e.g., *E. coli*, fecal coliform, total coliform, enterococcus) are particularly difficult pollutants to control. Water quality criteria for indicator bacteria are intended to protect swimmers from illness and are considered a medium priority; but WQOs for indicator bacteria cannot distinguish human sources from other sources (such as wildlife, birds, and regrowth in sediments, which are believed to pose a lesser threat to human health). While it is vitally important to minimize human sources of bacteria, existing regulatory programs have already accomplished this to a significant degree (e.g., wastewater treatment, sanitary sewer overflow regulations), and non-human, lower risk sources preclude attainment of WQOs for bacteria. Recent work by the City of Los Angeles “Cleaner Rivers through Effective Stakeholder TMDLs” (CREST) effort clearly showed that in certain reaches of the Los Angeles River, non-human sources of bacteria are responsible for exceedances of water quality criteria. The CREST work also showed that bacteria concentrations and loads in the river are far larger than the inflows to the river — inflows from storm drains and tributaries were shown to account for only 10%-50% of bacteria loads in the river during dry weather conditions. In addition, the source of water may strongly influence bacteria loadings; groundwater rising into the channel may have lower bacteria concentrations than overland runoff, and runoff from even pristine, undeveloped watersheds frequently contains bacteria concentrations in excess of water quality criteria. For these reasons, even complete control of bacteria in inflows to the region’s streams and rivers is unlikely to result in attainment of water quality objectives.

Traditional pollutants include nutrients, salinity, trash, and sediment. Nutrients currently represent a low priority, as significant controls are in place (e.g., tertiary treated wastewater is discharged to rivers in the region), ammonia WER studies for the wastewater treatment plants are ongoing, and the State Board is developing tools to directly measure biological endpoints and refine nutrient objectives; nutrients may become a higher priority on completion of these studies. Salinity impairment in surface waters is a low priority, as numerous control measures are in place, effects are relatively limited to agriculture, and little agriculture remains within the Los Angeles Basin. Trash is a medium priority, as several TMDLs — which have established widespread control measures — are already in place. Sediment and hydromodification are currently low priority but, similar to nutrients, new regulations are being developed to better understand the threats they might pose and to assess the goals and objectives that may be applied to these pollutants.

Summary of Current Water Quality Threats	
High Level	zinc
Medium Level	current use pesticides, PAHs, bacteria, trash, mercury
Lower Level	copper, lead, selenium, minor metals (cadmium, nickel, silver, chromium), nutrients, salinity, sediment/hydromodification

### III. Understanding the Regulatory Framework

The stormwater program is governed by the federal Clean Water Act and California's Porter-Cologne Water Quality Control Act. The requirements of these Acts, as well as the water quality standards, TMDLs, and permits issued thereunder, are imposing new and increasingly costly obligations on municipalities, giving rise to the need to find new funding sources.

There are four key regulations and a federal court order impacting Los Angeles County and its communities that are driving the need to explore stormwater funding. These are the federal Clean Water Act, California's Porter-Cologne Act, the National Pollution Discharge Elimination System (NPDES) permit, the Total Daily Maximum Load Program, and the federal Consent Decree governing TMDLs in Los Angeles County and Ventura County.

#### THE FEDERAL CLEAN WATER ACT

In 1972, when the Clean Water Act first established the NPDES permit program, most efforts at improving water quality focused on regulating pollutant discharges from known end-of-pipe "point sources," such as factories and sanitary sewer treatment plants (i.e., pollutants easily traced to specific, discrete sources). The Clean Water Act has done a good job in addressing many of these sources of pollution. In the 1987 amendments, Congress expanded the NPDES permit program to encompass the much more complex and difficult to control "non-point sources" of pollution, including stormwater and urban runoff.

The Clean Water Act also requires that states identify and address impaired waterbodies. Waterbodies that fail to attain water quality standards, even after implementation of point and nonpoint source controls, are placed on the federal 303(d) list of impaired waterbodies. Federal law requires the development of TMDLs for these waterbodies in order to reduce pollutants in impaired waters to meet water quality standards. TMDLs establish an overall allowance for each pollutant, defining the maximum amount of a pollutant (e.g., trash, bacteria, metal, etc.) that can enter a water body and still meet the applicable water quality objective. For MS4s and other "point sources," these allowances are called waste load allocations (WLAs). For non-point sources (not regulated through an NPDES permit) they are called load allocations (LAs). TMDLs are developed for pollutants from all sources, including non-point sources. The TMDLs have compliance time schedules, which generally work to reduce the pollutant level in a water body over a specific time frame.



#### CALIFORNIA'S PORTER-COLOGNE ACT

In addition to implementing the Clean Water Act and its amendments, California has adopted its own water quality control laws. The Porter-Cologne Water Quality Control Act (Porter-Cologne), first adopted in 1969, authorizes the California State Water Resources Control Board (SWRCB) and nine California Regional State Water Quality Control Boards (RWQCBs) to implement both federal and state water quality regulations. The relationship between the CWA and Porter-Cologne is complex and relates to the issue of unfunded mandates. The Water Boards claim they are just implementing federal mandates, while most Permittees believe that many State and Regional Water Board requirements go beyond federal mandates. The issue is currently being litigated.

The permit also establishes non-stormwater action levels and municipal action levels (MALs) for stormwater to identify subwatersheds requiring additional best management practices (BMPs) to reduce pollutant loads and prioritize implementation of additional BMPs.

Article 3 of Porter-Cologne requires that each RWQCB formulate and adopt a water quality control plan (Basin Plan) for its region and provides guidelines for the development of water quality objectives. A Basin Plan contains water quality standards and is designed to preserve and enhance water quality while protecting the beneficial uses of waters within the region. Specifically, a Basin Plan (i) designates beneficial uses for surface and ground waters, (ii) sets narrative and numeric objectives that must be attained or maintained to protect the designated beneficial uses and conform to the state's antidegradation policy, and (iii) describes implementation programs to protect all waters in the region. Some of the tools for attaining and maintaining water quality standards are the National Pollutant Discharge Elimination System (NPDES) and TMDL programs.

Most of the Basin Plan's water quality standards (beneficial uses and water quality objectives) were established in the 1970s, when wastewater and industrial discharges ("traditional point sources") were assumed to pose the greatest water quality threats; the application of water quality standards to these types of discharges was thoroughly analyzed, and funding was provided in many cases for control measures to address these types of discharges. From the 1970s until about 1990, water quality efforts focused on controlling these sources through NPDES permits, which, for traditional point source discharges, provided a means of meeting concentration standards for certain pollutants within the effluent or within a zone of dilution in receiving waters. Dilution zones are not applicable to stormwater discharges.

### NPDES MS4 PERMIT FOR LOS ANGELES COUNTY

The State Water Board and the Regional Water Boards are responsible for implementing and enforcing the Clean Water Act and the Porter-Cologne Act within the state. At the local level, LACFCD and municipalities must obtain NPDES stormwater discharge permit coverage from the Los Angeles Regional Water Board. Under NPDES permits known as MS4 Permits, municipalities are responsible for reducing the discharge of pollutants from their MS4s to the maximum extent practicable (MEP). The publically owned treatment works (POTWs) owned by the County Sanitation Districts and others are not covered by the MS4 permits. Rather, they are issued individual NPDES permits for their discharges of treated wastewater to surface waters, and are also required to enroll under the General Industrial Stormwater Permit adopted by the State Water Resources Control Board, which regulates management of their facilities' stormwater discharges.

Los Angeles County and its communities have been regulated under NPDES municipal separate stormwater sewer system (MS4) permits since 1990, following the amendment to the Clean Water Act requiring that permits be issued to storm drain systems that discharge stormwater into the nation's waterways. (It should be noted that the City of Long Beach operates under a separate NPDES Permit, which was issued in 1999, and which contains similar requirements to the Los Angeles County 1996 and 2001 permits.)

The Clean Water Act specifies that permits be reissued every five years. The Regional Water Board issued permits in 1991, 1996, and 2001, but delayed the most recent permit reissuance until 2012. The 1991 and 1996 permits focused on implementing BMPs, such as increased street sweeping and public education programs. The 2001 NPDES permit was a significant departure from the two prior permits. The 2001 permit included requirements that went beyond the CWA's "maximum extent practicable" standard and included receiving water language that sought to prohibit MS4 discharges that cause or contribute to the violation of water quality standards. The 2001 permit was the subject of litigation by the County of Los Angeles, the City of Los Angeles, and 48 other cities over this language and other issues. The Regional Water Board did not reissue the permit again until 2012, partially because permit issues have become more complex over time. The 2012 permit is under appeal by several Cities and environmental groups to the State Water Board.

The 2012 NPDES permit differs significantly from the prior versions of the stormwater permit. For example, in prior permits the LACFCD served as the Principal Permittee, while the unincorporated County was included as a municipality. In this capacity, the LACFCD was responsible for certain activities, such as a water quality monitoring program. The new permit does not contain a Principal Permittee and the unincorporated County and the LACFCD are included as individual permittees. However, the permit does contain separate minimum control measures for the LACFCD since it is not a general purpose government. The new permit now requires that each community conduct water quality monitoring, as well as other programs. It is estimated that cities will collectively invest over \$6-7 million in the first year to establish the required monitoring programs. The new permit has also added TMDL requirements and increased the compliance risks, as outlined in this report. In addition, the permit encourages cooperation among Permittees, especially through the preparation and implementation of Watershed Management Programs and Enhanced Watershed Management Programs.

As each successive permit has contained more detailed requirements, more technical challenges arise. County engineers and consultants are still struggling with several issues, including:

1. Pollutant sources over which MS4 systems have little or no regulatory authority, such as cars and trucks;
2. Natural background issues, particularly in relation to Total Maximum Daily Loads;
3. Cross-media pollution such as atmospheric deposition that contributes pollutants to stormwater; and
4. The appropriate mix of low impact development measures and treatment controls.

### TMDL CONSENT DECREE FOR LOS ANGELES COUNTY

USEPA and the Regional Water Board failed to develop TMDLs for more than ten years after the Clean Water Act was amended to specifically address municipal and industrial discharges, triggering litigation brought by the environmental community in Los Angeles County in 1998 (Heal the Bay et al. v. Browner, No. C98-4825 SBA [N.D. Cal.]). As a result of this litigation, USEPA entered into a consent decree with the environmental community in 1999 that established a 13-year schedule for EPA to complete TMDLs for approximately 500 waterbody/pollutant combinations in Los Angeles County. For example, the Los Angeles River Watershed was listed in the Consent Decree with ten separate water bodies, including the main river, channels and lakes. The Consent Decree required the completion of TMDLs for 103 waterbody/pollutant combinations in the Los Angeles River Watershed alone. Thirty-three grouped TMDLs have been completed to date in the region, including TMDLs regulating trash, bacteria, nutrients, pesticides, and certain metals.

### TMDLS ADDED TO THE 2012 NPDES PERMIT

TMDLs are not “self-implementing” under the Clean Water Act and must be implemented and enforced through agreements, permits, and/or other regulations. The Regional Water Board has chosen to implement the TMDLs by incorporating them into the Los Angeles Area NPDES permits. The thirty-three grouped TMDLs have now been added to the MS4 permit, impacting the vast majority of the region’s communities. The TMDLs include over 500 waterbody/pollutant combinations that must be addressed by the Permittees. The permit can also be “reopened” at any time to add new TMDLs as they are adopted. TMDL provisions in permits are required by federal regulation to be consistent with the assumptions and requirements of the WLAs and the TMDLs.



TMDLs are incorporated into permits as water quality-based effluent limits (WQBELs), which can be narrative or numeric. The environmental community prefers numeric WQBELs and EPA has issued conflicting guidance on the issue. The new permit allows compliance with interim WQBELs through submission and implementation of WMPs and EWMPs. However, compliance with final WQBELs requires compliance with numeric standards.

A special set of numeric standards that apply to MS4 permits is the California Toxics Rule (CTR). This rule was adopted by EPA on May 18, 2000 to establish numeric criteria for 126 priority toxic pollutants for the State of California. It includes metals, pesticides, and other toxic pollutants, and specifies a mix of freshwater, saltwater, and human health criteria that must be met in inland surface waters, enclosed bays, and estuaries.

Once the TMDLs are included in an MS4 permit, TMDL permit terms can be enforced by both the Regional Water Board and by private citizens who can file lawsuits under the CWA in federal court. In an action brought by a citizen group, a municipality can be held liable for civil penalties and attorney’s fees and may also be subject to costly injunctive relief. The LACFCD, County, and local Cities have been served with notices of violation of the 2001 MS4 Permit by the Regional Water Board and have been sued by citizen groups in federal court in the past.

Specific TMDLs Incorporated into the 2012 NPDES Permit	
Watershed	Pollutants of Concern
1. Ballona Creek	trash, toxics, bacteria, and metals
2. Ballona Wetlands	sediment and invasive vegetation

Specific TMDLs Incorporated into the 2012 NPDES Permit	
Watershed	Pollutants of Concern
3. Colorado Lagoon	pesticides, PCBs, sediment toxicity, PAHs, and metals
4. Lakes Elizabeth, Munz and Hughes	trash
5. Legg Lake	trash
6. Los Angeles Harbor	bacteria, metals, chlordane, DDT, PAHs, PCBs, and toxicity
7. Los Angeles River	trash, nitrogen, metals, and bacteria
8. Los Angeles River Estuary	bacteria
9. Los Cerritos Channel	metals
10. Machado Lake	trash, nutrients, pesticides, and PCBs
11. Malibu Creek	bacteria, trash, and nutrients
12. Marina Del Rey	bacteria and toxics
13. Middle Santa Ana River	bacteria
14. Santa Clara River	nitrogen, chloride, and bacteria
15. Santa Monica Bay	bacteria, debris, trash, DDT, and PCBs
16. San Gabriel River	metals and selenium

The current MS4 permit for the Los Angeles Region (Order No. R4-2012-0175) was adopted on November 8, 2012, and implements multiple TMDLs, as shown above. This Order, along with previous Orders, utilizes a TMDL approach that specifies WLAs for contaminants. The 2012 Order requires that “each permittee shall propose BMPs to achieve WLAs contained in the applicable USEPA established TMDL(s), and a schedule for implementing BMPs that is as short as possible.” Also, the permit requires that “permittees shall comply immediately with water quality-based effluent limitations and/or receiving water limitations to implement WLAs in state-adopted TMDLs for which final compliance deadlines have passed pursuant to the TMDL implementation schedule.”

### WATERSHED MANAGEMENT PROGRAMS & ENHANCED WATERSHED MANAGEMENT PROGRAMS

The 2012 MS4 permit has three new compliance options, from which permittees were required to choose. In the first option, permittees could choose to implement Minimum Control Measures (MCMs) and be subject to strict compliance with numeric limits. In the second option, permittees could also develop Watershed Management Programs, which provide a BMP-based compliance alternative to meet interim deadlines and TMDL milestones. The WMP must outline BMPs the permittee intends to implement, and the WMP must also include a Reasonable Assurance Analysis (RAA) to confirm that the proposed plans will meet water quality standards. Compliance with final TMDL limits is determined by strict compliance with numeric limits.

The new permit also allowed permittees to choose a third option called an Enhanced Watershed Management Program, which is very similar to the WMP except that it provides additional time for permittees to evaluate opportunities for multi-benefit regional projects that retain all non-stormwater runoff and retain stormwater runoff from a specified “design storm.” Areas that drain to the multi-benefit regional projects are automatically deemed in compliance with the permit and the final TMDL limits. Areas not served by projects that capture the design storm are subject to the Reasonable Assurance Analysis as under the WMP. Communities following this requirement must also comply with interim milestones and deadlines. Permittees were required to notify the Regional Water Board of their choice by June 28, 2013. Permittees could choose to group together to prepare the WMPs or the EWMPs, or to file individual applications.



The County has reported that twelve Cities decided to file individual WMPs (Carson, Compton, El Monte, Gardena, Irwindale, La Habra Heights, Lawndale, Lomita, San Fernando, South El Monte, Walnut, and West Covina). The City of Rolling Hills decided to comply with the permit requirements (numeric limits) by implementing MCMs. The remaining cities have formed regional groups to implement either WMPs or EWMPs. The WMPs must be submitted to the Regional Water Board by either December 28, 2013 or June 28, 2014, depending on whether or not specified LID and Green Streets Policy requirements are met. EWMPs are due by June 28, 2015. The

cost for the preparation of the WMPs and the EWMPs is estimated at nearly \$16 million collectively countywide. For example, the seven cities draining into the Los Cerritos Channel have chosen to prepare a WMP, a monitoring program, and a Reasonable Assurance Analysis, which requires that these communities invest \$650,000 for the 17,700-acre watershed. A full listing of the Cities and their planning activities can be found in Exhibit C of this report.

#### IV. GENERAL COST AND FUNDING ISSUES

The Steering Committee found the most complex and debated of the issues surrounding the stormwater program is the estimated costs of compliance and the obstacles to providing a stable funding program for local government. This section explores the status of the unfunded mandates claims, the costs of compliance and non-compliance, and the reality of grant funding to meet program requirements. The section explores the issues related to Proposition 218, the funding of traditional utilities, and the “orphan utility” – stormwater.

#### UNFUNDED MANDATES

Although the Regional Water Board continues to adopt new water quality requirements, the federal and state agencies driving these regulations have not generally been receptive to funding these mandates. Nevertheless, language added to the stormwater permits routinely insists that the new requirements are not unfunded mandates.

In the past, both state and federal financial support was provided to help support new water quality requirements. When the Clean Water Act was first established in 1972, the federal government established a major public works financing program to fund upgrades to municipal sewage treatment plants in order to meet new Clean Water Act requirements. However, this federal financing model was not repeated when the federal government expanded the NPDES permit program by requiring local governments to target water pollution created by stormwater and urban runoff. Instead, the responsibility for funding these programs shifted largely to municipalities, which are hard-pressed to find the required financial resources without jeopardizing other important public services. The Water Boards have implemented competitive grant programs funded by Propositions 13, 40, 50, and 84. However, these State propositions have historically allocated limited funds to stormwater quality management.

During the Board’s protest hearing, several parties, including a Board Member, members of the public, and City officials, stated that the stormwater requirements were unfunded mandates. The County and several cities filed a lawsuit in 2004 on the unfunded mandates in the 2001 permit. The mandate claim was limited to two mandates. The first claim was that the Regional Water Board’s requirement that cities place trash receptacles at every transit stop was an unfunded mandate. The second claim was that the Regional Water Board’s requirement that cities inspect State permitted commercial/industrial sites was an unfunded mandate. The State collects permit revenues from commercial and industrial permit holders, but is unwilling to pass these revenues on to the Cities to perform their inspections.

The policies and legal principles involved in the mandates case are much larger than the issue of who pays for trash receptacles and inspections in Los Angeles County. The case goes to the core issues of whether Cities have flexibility in implementing the NPDES permits and whether the State should reimburse local government for programs that go beyond federal requirements as expressed in EPA-issued permits and guidance. Also at the heart of the case is the problem of when the MEP standard is reached and who is in the best position to determine this - the Regional Water Board or the State Commission on Mandates. This court case is being closely followed statewide, since a number of counties and cities have filed unfunded mandates claims based on their NPDES permits.

The Commission on State Mandates, the state agency responsible for reviewing mandate claims, first found that it had no authority to consider the County and cities’ unfunded mandate claim. After a court ruled that the Commission did have jurisdiction and should consider the claims, the Commission considered the matter and ruled in the County and cities’ favor on the trash receptacle claims. The State appealed that decision to the Superior Court, which ruled in the State’s favor. The case was heard by a Court of Appeals on July 17, 2013, a ruling was issued, and the Petitioners have asked the California Supreme Court to intervene. There is also a significant concern that the State has stopped payment on all unfunded mandates, so if the County and Cities prevail it is unclear if and when the payments would be made.

#### COST ESTIMATES FOR MEETING WATER QUALITY STANDARDS

Although the requirements of the MS4 permits have become more and more stringent over the years, MS4 permittees do not have a built-in ability to assess fees or raise rates to fund the necessary water quality controls, and the state and federal funding that has been made available is small in comparison to the funding needed to fully implement current regulatory requirements.

The first study to attempt to quantify the costs to the region of the new stormwater requirements was prepared for Caltrans in 1998 by the environmental engineering firm Brown and Caldwell. This study estimated the Los Angeles

region's costs for full compliance at \$53.6 billion. The study was peer-reviewed by LACSD, which concluded that the costs were more likely in the range of \$65 billion.

In 2002, the University of Southern California (USC) was tasked with estimating the costs of meeting new and emerging water quality regulations in the Los Angeles area. This study examined rainfall scenarios and based cost estimates on storm size and three treatment levels for each rainfall scenario. The USC researchers concluded that the costs in the Los Angeles region would range from \$43.7 billion to \$283.9 billion, depending on storm size and treatment level, and including compliance with the California Toxics Rule (CTR).

A recent review by the City of Los Angeles of nine cost studies completed between 1998 and 2005 show cost estimates for TMDL implementation in the Los Angeles region ranging from \$1 billion to over \$70 billion, and even as high as \$200 billion when land acquisition costs are considered. In its own study, the City of Los Angeles estimated that the total cost over the next 20 to 30 years for implementation of its Water Quality Compliance Master Plan for Urban Runoff would range between \$7 billion and \$9 billion.

The Regional Water Board has also estimated the costs for the implementation of various TMDLs. For example, in 2010 the cost to implement the Dry Weather Bacteria TMDL on the Los Angeles River was estimated at \$1.3 billion, while the cost of implementing the Wet Weather Bacteria TMDL on the Los Angeles River was estimated at \$5.4 billion. The Regional Water Board also recently adopted the Harbors Toxics TMDL, with an estimated implementation cost of \$9 billion.

The actual costs to implement the NPDES Permit and the TMDL program have been debated for the past decade. However, through the new water quality planning process required by the 2012 NPDES permit, it is becoming increasingly clear that compliance with the NPDES permit and TMDL programs will be expensive for local governments over a long period of time, a conclusion that is not expected to change as cost estimates are refined after the completion of WMPs and EWMPs. The County of Los Angeles and most of the cities in the County lack a stable, long-term, dedicated local funding source to address this need. These entities are faced with either cutting existing services or finding new sources of revenues to fund the NPDES and TMDL programs. A sustainable funding source for public investment in water quality improvement programs is essential, given the overall cost burdens that are being placed on municipalities to achieve compliance with NPDES permits and TMDL implementation plans.

## THE COST OF NON-COMPLIANCE

In addition to the extremely high costs of complying with water quality standards, the cost of non-compliance can also be very high. While some stakeholders have suggested that local government should not be concerned about enforcement or legal actions, this is simply not the case. Federal and state laws allow the Regional Water Board to levy fines for non-compliance as noted above. Failure to comply with the MS4 permit terms that are based on TMDLs could result in significant State fines for a non-compliant community of up to \$10,000 for each pollutant for each day of violation, and \$3,000 per violation per day in mandatory minimum penalties assessed by the State. Congress also added a provision in the Clean Water Act that allows any citizen to file a complaint in federal court for violations of NPDES permits. Violations of the Clean Water Act can be enforced by USEPA and by private parties such as environmental groups. The resulting federal penalties could be assessed at \$37,500 per day.

Regional Water Board enforcement activities and third-party litigation have grown in the last several years. Most recently, the County and LACFCO were sued in federal court by the Natural Resources Defense Council and Los Angeles Waterkeeper over numerous water quality exceedances in the region's water bodies; the implications of this suit are discussed in Section VII (see Potential Impacts of the Recent Opinion of the United States Court of Appeals for the Ninth Circuit).

Overall, the Work Group found that many elected officials and the public in general do not understand the significant issues faced by local governments and the business community with enforcement actions, fines, and citizen litigation. The Work Group researched the enforcement data bases from both the State Water Board and the Los Angeles Regional Water Quality Control Board (Region 4) for enforcement actions, fines and citizen litigation stemming from federal and State water quality regulations during the 2003-2013 time period. The Work Group found the following information:

1. Statewide there have been 16 citizen lawsuits brought against local agencies for stormwater and NPDES permit violations over the past 10 years. Of these, three are still pending, one has been decided in the local agency's favor, and 12 have been resolved through settlement agreements or consent decrees. The 12 settlements/consent decrees have resulted in the payment of approximately \$19,202,550 in mitigation costs and miscellaneous penalties, along with payments of \$3,493,244 in attorney's fees to the plaintiffs' lawyers and \$208,500 in

additional monitoring costs, bringing the total estimated payments from the settlements in excess of \$23,000,000. One of the cases, the NRDC v. County of Los Angeles case, appeared to have been largely resolved in the favor of the County, but only after the case went all the way to the U.S. Supreme Court and was then modified by the Ninth Circuit Court of Appeals. The County and LACFCO requested the U.S. Supreme Court to review the Ninth Circuit ruling finding Los Angeles County liable for untreated stormwater pollution. On May 5, 2014, the U.S. Supreme Court declined to review the decision.



2. Statewide there have been at least 20 citizen lawsuits brought against private entities, for a total of \$1,661,450 in payments and costs obtained through settlement of 19 of the cases.
3. In 2012, the City of Malibu settled with the Santa Monica Bay Keeper and the NRDC for alleged stormwater runoff violations. The City agreed to pay a total of \$6.6 million (\$5.6 million in infrastructure upgrades, \$750,000 in legal fees and \$250,000 for an ocean health assessment).
4. The Los Angeles Regional Water Board issued notices of violation to 23 LA County Cities for violations of the 2001 Permit, including NPDES permit violations for municipal facilities. However, they were all eventually rescinded after the Board received the information requested.
5. The Regional Water Board has initiated 15 enforcement actions against private parties for violations of Industrial/Construction stormwater permits. The majority of these actions have been violations of NPDES permits required for construction activities. The minimum fines sought in these actions total approximately \$327,050.
6. Over the past decade, the Los Angeles Regional Water Board has brought a total of 155 enforcement actions against local agencies for violations of NPDES permits for the operation of sanitary sewer facilities. Of these, 119 involved actions for penalties in excess of \$8.7 million. The majority of the fines involved sewage spills and violations of effluent limits and compliance time schedules. Fines have been levied against Los Angeles County, Caltrans, the Los Angeles Unified School District, and 11 Cities (Avalon, Bellflower, Beverly Hills, Burbank, LA County Parking Authority, LA County Fairplex, Long Beach, Los Angeles, LAUSD, Monterey Park, Port of Los Angeles, San Gabriel Valley Water Quality Authority, Santa Clarita, Santa Monica, Torrance, and West Hollywood).
7. The LA Regional Water Board has initiated 195 enforcement actions against private parties since 2003. Of these, 191 involved actions for penalties totaling in excess of \$8.2 million.

In some cases the final disposition of the cases could not be determined. There are also numerous unresolved and/or unreported resolutions of enforcement cases. As such, this information is representative of the potential enforcement and litigation exposure local agencies face, but should not be viewed as a complete picture of actual litigation filed and resolved.

A separate recent survey of enforcement actions based on information from the State Water Board's website verifies the magnitude of recent enforcement actions (See Appendix B). From January 1, 2000 through April 30, 2013 the State Water Board and the nine Regional Water Boards together fined violators a total of \$128 million in 2,487 enforcement actions. In addition to the fines, violators were required to pay an additional \$69 million for projects to comply with water quality laws. Adding together the fines and compliance projects, violators were compelled to spend \$197 million by the Water Boards during that time period. The Water Boards view enforcement as a critical ingredient in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations (see State Water Board Water Quality Enforcement Policy [effective May 20, 2010]).

It should also be noted that the 2012 MS4 permit incorporates 33 TMDLs with specific effluent limits and compliance time schedules. This makes compliance with the 2012 Permit much more complicated than compliance with the 2001 Permit, which did not contain specific effluent limits or numeric limits from the TMDLs, except for the amendments that were added to reflect the Los Angeles River Trash TMDL and the Marina del Rey Harbor Bacteria TMDL. The Work Group believes that this illustrates the major risks that public agencies and the business community face if they are deemed out of compliance with their NPDES permit and the TMDLs.



## THE REALITY OF FEDERAL AND STATE GRANTS

There are limited grants from the federal and state governments to fund stormwater and urban runoff cleanup programs. The most recent example, the Proposition 84 Stormwater Grant Program, provided funding for local public agencies to reduce and prevent stormwater contamination in rivers, lakes and streams. However, the amount of statewide competitive grant funding available was limited. Approximately \$48.7 million of the total available \$82 million was awarded in Round 1 in 2012.

On May 15, 2014, the State Water Board announced the results of the second and final round of Proposition 84 funding. The State Board approved funding for 27 LID stormwater implementation projects. A total of \$38.7 million in grant funds was awarded, including left-over funds from Proposition 40. The selected projects will leverage an additional \$16 million in matching funds to meet total project costs exceeding \$54 million. The agencies awarded grants in Los Angeles County in Round 2 were: 1) LA County Metropolitan Transportation Authority (\$752,000 for a pervious concrete project); 2) City of LA Sanitation (\$1,153,446 for phase two of an LID demonstration project); and 3) a \$1.073 million grant to the Gateway Water Management Authority (GWMA) for a multi-agency project to incorporate LID BMPs into major transportation corridors. Participating cities in the GWMA project include: Bell Gardens, Downey, Lynwood, Norwalk, Paramount, Pico Rivera, Santa Fe Springs, Signal Hill, South Gate, Vernon, and Whittier. In addition, the Housing Authority of the County of Los Angeles and the Los Angeles Unified School District are on the list of Conditionally Approved projects pending acceptable revisions. These grants are welcome, but they do not go very far in solving the region's water quality problems.

A limited amount of the American Reinvestment and Recovery Act (ARRA) grants also was directed to stormwater programs. With the help of legislators, cities were successful in petitioning the Department of Water Resources to fund \$10 million for trash capture programs in the Lower Los Angeles River. This grant resulted in the installation of over 11,000 catch basin "full capture" devices. It is estimated that the entire Los Angeles River Watershed has over 110,000 catch basins. There are thousands of additional catch basins in the region's other watersheds. Grants are often limited to funding capital improvements and do not provide funds for ongoing costs, such as maintenance and operations.

## HOW PROPOSITION 218 APPLIES TO STORMWATER FEES/TAXES

Property-related fees provide a potential funding source. However, since its passage in 1996, Proposition 218 has required that, with certain exceptions, new or increased property-related fees must be approved by voters (see California Constitution, Article XIIIID). Proposition 218 includes an exemption to the voter approval requirement for water, sewer and refuse collection fees, and many municipalities at first believed that a stormwater fee also qualified for this exemption. However, a stormwater fee imposed by the City of Salinas on property owners in that city was challenged by the Howard Jarvis Taxpayers Association, and in a 2002 decision, an appellate court agreed this was a property-related fee that was not exempt from Proposition 218 voter approval requirements. As a result of this ruling, public entities considering a new or increased stormwater fee must first obtain voter approval either by property owners or registered voters. The business community argued at the Board of Supervisors' protest hearing that the lack of a specific project list requires that the stormwater fee be scheduled for a general election as a special tax (with 2/3<sup>rd</sup> voter approval required for passage).

## CURRENT STATUS OF LOCAL STORMWATER FUNDING

In light of the increasing cost of compliance with the increasing requirements of NPDES MS4 permits, a handful of Cities have adopted special fees and other funding mechanisms. However, the majority of the greater Los Angeles area cities have relied on their General Funds to finance the stormwater programs. Cities report that this is increasingly at the expense of other critical public services, and they are struggling to find other, more sustainable funding sources. However, a convergence of economic, societal, legal, and regulatory constraints severely limits the available funding options.

## EDUCATION OF ELECTED OFFICIALS AND THE PUBLIC

The subject of stormwater and urban runoff is complex in terms of the science, technology, and requirements of the MS4 permit and TMDLs. LACFCD staff found through an informal survey that many elected officials lack basic information on stormwater pollution and the requirements of the Regional Water Board. Workshops conducted by the Council of Governments or other organizations may be necessary to increase awareness. These workshops should focus on the NPDES permit and the TMDL programs, while also addressing the benefit to the local water supply of stormwater capture and reuse. There also is a lack of common knowledge among stakeholders and the public on the need for stormwater programs and the very real funding issues. This public information program needs to recognize that the LACFCD, the County, and the cities cannot advocate for fees or taxes. Key questions include:

1. What public information efforts are needed to educate local elected officials and the public to the need for stormwater programs and on the funding issues?
2. What are the key messages for the public information program (i.e. clean beaches, water conservation, ground water recharge, regional water self-sufficiency, etc.)?

#### V. The LACFCD Funding Initiative

The search for a stable revenue source to fund stormwater utilities began over a decade ago with the formation of a multi-stakeholder committee by LACFCD. This section explores the results of this work, the lead role of LACFCD in drafting enabling legislation, and its efforts to draft the Clean Water, Clean Beaches funding initiative. This section also explores funding initiatives statewide for lessons learned.

### REPORT BY THE AMERICAN SOCIETY OF CIVIL ENGINEERS

In May 2003, the American Society of Civil Engineers (ASCE) held a Water Symposium that began a process that resulted in recommendations concerning alternative funding sources for the County's stormwater program. In 2005, the LACFCD, along with ASCE, established the Los Angeles Regional Watershed Infrastructure Funding Workgroup to assess options for a regional, sustainable long-term funding source as an alternative to the use of County or City General Funds. In many parts of the nation, stormwater and urban runoff are treated by combined sanitary sewer systems, and utility fees support the operation, maintenance and capital construction needs. However, even these fee-supported systems report having difficulty complying with new federal stormwater requirements.

ASCE viewed the flood control system as similar to water and sewage systems and other public utilities, and encouraged decision makers and the public also to think of stormwater capture and treatment requirements as a utility, similar to sewage treatment and drinking water treatment. However, there is one major distinction – no dedicated funding source existed to focus on improving water quality. ASCE believed that it needed to address the lack of dedicated funding and formed a collaborative, multi-stakeholder task force comprising leaders from federal, state, and regional municipalities, as well as representatives from environmental groups, universities, and others to explore funding constraints and options.

Among the various funding sources considered by the ASCE work group were a property tax, a special purpose local sales tax, a surcharge on vehicle license registration, a gasoline tax surcharge, benefit assessments, service fees, grants, and a parcel tax. Various criteria were applied to evaluate these alternative funding sources, including how well each funding source provided a nexus between contributions to runoff pollution problems and financial responsibility for correcting them. The three most promising sources included (1) property taxes for capital costs coupled with parcel fees for operations and maintenance costs, (2) benefit assessments, and (3) service fees. The ASCE report did not recommend a single best funding source but presented the advantages and disadvantages of each so policy makers could decide among them. The ASCE work group completed its report and disbanded in 2005.

### AB 2554 – SPECIAL LEGISLATION FOR STORMWATER FUNDING

On September 13, 2005 the Los Angeles County Board of Supervisors unanimously approved a motion asking County departments to conduct research on how to best implement a stable and long-term regional funding mechanism. The LACFCD moved forward in 2008 with the drafting of special legislation – AB 2554 (Brownley) – to amend the original Los Angeles County Flood Control Act to give the LACFCD the authority to levy a property-related water quality fee to be used to finance water quality improvement projects and programs undertaken by municipalities within the LACFCD's boundaries. As a regional agency tasked with providing for the control and conservation of flood, storm, and other wastewaters within its jurisdiction, with infrastructure covering more than 3,000 square miles, the LACFCD was well positioned to help develop a funding source to implement water quality improvement projects and programs.

AB 2554 established the framework for new property-related fees to fund water quality programs, including requiring that the 40% of the fees generated in each community be returned back to that community. The legislation was approved by the Governor on September 30, 2010, enabling the Board to consider a Proposition 218 compliant property-related fee for a water quality program.

Prior to AB 2554, the Flood Control Act expressly authorized the LACFCD to raise funds by issuing bonds and levying a tax upon the assessed value of real property. AB 2554 expressly authorized a third method of raising funds: the imposition of a fee or charge in compliance with Article XIIIID of the California Constitution. In addition, the legislation envisioned the creation of nine regional Watershed Area Groups (WAGs) responsible for developing and implementing plans to reduce pollutant loads in the impaired waters of their respective watersheds. The legislation

specified that fee revenues must be split between municipalities, WAGs, and the LACFCD in specified percentages described below.

Throughout 2011 and 2012, LACFCD funded the development of a draft fee implementation ordinance, draft project criteria guidelines, an engineer's report outlining the rationale for the proposed fee, and other documents, working with a large number of stakeholders. These efforts have become collectively known as the Clean Water, Clean Beaches Measure. (See Appendix D for a more complete discussion of the background of the Measure. Detailed information on the Measure can be found on the County's website at [www.lacountycleanwater.org](http://www.lacountycleanwater.org)).

At the time AB 2554 was adopted, Proposition 218 required that the LACFCD undertake a two-step process in order to impose the Clean Water, Clean Beaches fee. First, the LACFCD was required to send notices to owners of each of the approximately 2.2 million parcels within the LACFCD, and secondly it was required to conduct a public hearing to consider all protests against the fee. As noted earlier, the Board of Supervisors conducted its protest hearing in January and March of 2013. It was estimated that the fee would annually raise approximately \$295 million to fund water quality improvements within the LACFCD boundaries. From January to March 2013, the Board expanded the process to allow for e-mail protests. Nearly 120,000 valid protests, representing 5.18% of properties, were received during the protest period. The County Board closed the protest hearing, found that no majority written protest existed, but voted not to proceed with the funding measure "at this time" and to take the following actions:

- I. Instruct the County Executive Officer (CEO) to send a letter to the Regional Water Quality Control Board requesting that the Board work with the Public Works Director and the cities to educate the public about stormwater pollution;
- II. Instruct the CEO and DPW to continue to work with the business community, school districts, and non-profits to address their concerns, such as including a 30-year sunset date and making further refinements to the rate reduction program;
- III. Direct the CEO to report back regarding the necessary steps the LACFCD must take should the Board of Supervisors decide to place this item on a general election ballot, and determine potential future election dates, with June 2014 or November 2014 as a goal, to ensure transparency to the public;
- IV. Instruct DPW to provide the Board with quarterly reports on the status of the Regional Water Board's implementation and enforcement of the MS4 Stormwater Permit; and
- V. Instruct DPW to designate a staff person to act as the Unincorporated County Stormwater Manager responsible to reporting to the Board quarterly on the status of projects, budget expenditures, and budget forecasting.

The Board adopted a subsequent motion on June 25, 2013, which directed County staff to send a letter signed by all members of the Board to the Executive Officers of LACSD and other sanitation districts and sewer operators in the County. The letter requested their collaborative participation to evaluate, at a regional level, methods to address the treatment of urban runoff and to assess the governance system of the Sanitation Districts (a consortium of 23 special sanitation districts that work cooperatively under a Joint Administration Agreement with a governing board consisting of Mayors of member Cities) as a potential model to improve stormwater and urban runoff quality to address stormwater planning and funding issues. In addition, the Board directed the County Chief Executive Officer and the Director of Public Works to collaborate with the LACSD, County Counsel, and other stakeholders, and to identify and reach out to other water suppliers and conveyers that should be core participants in the development of a comprehensive approach to address urban runoff and stormwater concerns. The group was mandated to report their findings in writing to the Board within 120 days. Reporting to the Board was delayed, but the formal report was sent to the Board of Supervisors on March 18, 2014.

The report, entitled, Report on Treatment of Urban Runoff and Governance of Los Angeles County Sanitation Districts and dated January 1, 2014, focuses on the governance and financial structure of the Los Angeles County Sanitation Districts, rather than on proposing recommendations. It notes that the Sanitation Districts' governance is "somewhat similar to that proposed under the Clean Water, Clean Beaches Program," but that developing a similar structure for the purpose of stormwater pollution-related matters would "require new authorities under State law and various joint powers agreements" if the Watershed Authority Groups (WAGs), as proposed, were followed.

The report states, “There is little similarity in funding sources between the LACSD and the CWCBMP. Although both are subject to provisions of Proposition 218 to obtain new funding or to raise current fees, the rules to implement new stormwater fees are more stringent than those related to sewer and refuse fees.” The report also discusses the current low-flow diversion infrastructure and assessment of future needs based on the 33 grouped TMDLs incorporated into the 2012 MS4 Permit and significant Permit restrictions on illicit dry-weather urban runoff. LACSD identified a number of potential low-flow diversion sites, and the report notes that a cost-benefit analysis is the next necessary step. The report notes that DPW has commenced to develop a GIS database of storm drain and trunk sewer locations to aid in future analysis.

The Board of Supervisors’ actions in requesting collaborative participation prompted City Managers to seek to understand more fully the issues and the options. It became clear through the Board’s hearing process that LACFCD, the County, and the Cities need to increase their efforts to educate constituents, officials, and the stakeholders about the regulatory, funding and practical stormwater quality problems confronting the region. The Managers found that it is important for all stakeholders to understand the background and context of the issues in order to intelligently discuss the options. The Managers started with a brief review of the Clean Water Act, the NPDES Permit, the TMDL Consent Decree, and the specific TMDLs that currently regulate Los Angeles County and its municipalities.

### Governance of the Clean Water, Clean Beaches Measure

The LACFCD drafted an implementation ordinance for the Clean Water, Clean Beaches Measure, which allocated fee revenues and established a governance structure in accordance with AB 2554 and the requirements of Proposition 218. It divided anticipated revenues between the LACFCD, municipalities, and the WAGs (made up of municipalities and other agencies) along the following lines:

**Flood Control District:** The LACFCD would be responsible for administering the overall Fee program. The proposed Ordinance provided that the LACFCD would receive 10% of the fee revenues.

**Municipalities:** Municipalities (cities and the County on behalf of the unincorporated areas) would receive 40% of fee revenues in proportion to the fees collected within each municipality. The Draft Ordinance required that the municipalities spend the funds to implement local water quality improvement projects and programs in accordance with specific criteria.

**Watershed Authority Groups (WAGs):** AB 2554 called for the formation of joint powers authorities (JPAs) in each of nine watershed areas within the boundaries of the LACFCD. These regional JPAs would receive 50% of revenues collected in proportion to the fees collected from the parcels located within each respective watershed area. The proposed Ordinance required the WAGs to spend the regional funds in accordance with specified criteria on regional water quality projects and programs.

**Oversight Board:** To be appointed by the Board of Supervisors to conduct public hearings and make findings and recommendations to the Board on matters related to key elements of the program.

### Eligible Expenditures Under the Measure

All funds would be required to be completely dedicated to water quality improvement programs and projects. The draft Ordinance encouraged “sustainable solutions” that would address multiple objectives and provided a list of expenditures that could be funded (See Appendix D).

## **BASIS OF THE PROPERTY-RELATED FEE**

### **ENGINEER’S REPORT**

The County contracted with Willdan Financial Services to complete the required Proposition 218 Engineer’s Report. The Engineer’s Report determined a methodology to calculate the fee based on imperviousness and the proportional cost of service to each property. The proposed fee structure was not intended to cover all future compliance costs; it would be impractical and costly to do so.

### **SINGLE-FAMILY RESIDENTIAL FEE**

Single-family residential properties (including condominiums) represent over 75 percent of all properties in the County, but only about 25% of the total impervious area. Based on the typical residential pattern in Los Angeles County, most residential lots range between 5,000 to 10,000 square feet in size, with an average impervious surface of 2,100 square feet. The LACFCD calculated an annual residential fee amount at \$54 for the average single-family residential lot.

## FEES FOR NON-RESIDENTIAL LAND USES

Proposition 218 also requires the establishment of an “equivalent” fee for non-residential or other uses. Therefore, the Engineer’s Report includes a fee structure for other public and private land uses based on imperviousness. The average fee is approximately \$0.02 per square foot of impervious surfaces for non-residential land uses.

Government parcels are required to pay the fee because they contribute water runoff and use the water quality services that will be funded by the fee. If government parcels were excluded, other property owners would pay for more than their proportional share of the services being funded, which would violate Proposition 218.

## FEE CREDIT PROGRAM

The draft ordinance permits municipalities to adopt local incentive programs for parcel owners to receive credit (up to 25% of the annual municipal water quality fee) for implementing significant on-site measures to reduce impervious areas or to implement other low impact development measures that lessen the pollutant loading from the parcel.

## VI. THE EXPERIENCES OF OTHER FUNDING INITIATIVES

A number of funding options have been proposed and/or achieved by cities, counties, and agencies in California. The City Manager Work Group conducted a survey to examine other proposed regional stormwater fees and determine which cities had adopted fees and other funding measures for urban runoff, absent a regional fee. The survey found that the Cities of Los Angeles, Pasadena, and Santa Clarita had adopted stormwater fees prior to the adoption of Proposition 218 in 1996. Fee increases would be subject to either a property owner protest hearing/vote or a general election procedure.

In 2004, voters in the City of Los Angeles approved the Proposition O Clean Water Bond, authorizing \$500 million in general obligation bonds for projects to protect public health by implementing projects to improve water quality. To date, general obligations bonds totaling \$439,500,000 have been sold, and 39 projects with approved budgets of \$479,342,922 have been identified. As of October 1, 2013, Prop O expenditures totaled \$257,506,302 and 19 projects had been completed. The remaining 20 projects were in various stages of implementation, including pre-design, bid & award, construction, and post-construction. This bond issue did not authorize ongoing funding for maintenance, operation, and replacement of the facilities as they aged. Further, as detailed in this report, the City of Los Angeles believes that it will require over \$9 billion in additional funding to comply with permit and TMDL requirements.

Municipalities statewide have attempted to address the unfunded stormwater utility issue. Following is a description of several California cities and programs that have attempted to deal with the problem.

### LOS ANGELES COUNTY

#### SANTA CLARITA

The City of Santa Clarita began collecting an annual Stormwater Pollution Prevention Fee in 1992. The fee, which is paid by all property owners in the City, pays for maintenance and replacement of storm drain facilities, as well as permit-required inspection, monitoring, and enforcement activities, and other costs of complying with the federal Clean Water Act and the NPDES Permit.

In 2009, the City held a Mailed Ballot Special Election process to raise the fee. Pursuant to City Ordinance, the City annually holds a public meeting or hearing in which oral and written comments may be given regarding the Fee, and then City Council determines the fee amount, subject to a fee maximum authorized by the Ordinance.

The fee is based on a median single-family residential parcel size of 7,000 square feet (0.16 acre). The equivalent residential unit (ERU) is equal to the runoff from a 0.16-acre parcel. [(0.16 acres of area) x 42% = 0.0672 Drainage Units = 1 ERU]. For FY 2013-14, the City took the estimated annual costs for proposed storm drain improvements (\$3,067,659) and divided that by the number of ERUs in the City to derive the Stormwater Pollution Prevention Fee of \$22.45 per ERU. The City has an appeals process owners can use if they disagree with the calculation of their fees based on parcel area and estimated impervious percentage assigned to the property.

#### CITY OF SANTA MONICA

The City of Santa Monica has two stormwater parcel fees that are paid annually by all property owners. The Stormwater User Fee is a flat fee that was passed in 1995 and is based on property size and land use type. The Clean Beaches & Ocean Parcel Tax (Measure V) was passed in November 2006 by over two-thirds of voters and is used exclusively to fund implementation of the City’s Watershed Management Plan. These fees are assessed through property taxes and together generate approximately \$3.9 million annually (approximately 73% comes from Measure V, which was subject to Proposition 218 election rules).

## CITY OF SIGNAL HILL

Following the adoption of the Los Angeles River Trash TMDL, the City of Signal Hill in 2004 used the Proposition 218 protest vote process to pass an NPDES Trash Fee for Refuse, Litter, and Debris Removal. Since the Trash TMDL received a great deal of publicity, and approximately 1.1 square miles of the City drain ultimately to the LA River, the City was able to adopt a flat assessment of 5.6% of refuse bills to fund activities to meet trash-related TMDL and NPDES program requirements. This fee, which covers approximately 30% of the City's stormwater program, is an example of using specific fees to fund specific portions of stormwater quality programs.

## CITY OF RANCHO PALOS VERDES

The City of Rancho Palos Verdes passed a fee ordinance in 2005 with a 30-year sunset clause. Two years later, a measure passed that reduced the sunset clause to 10 years. The first year the fee was collected, FY 2006-07, the fee was \$86 per equivalent residential unit, which was derived by a formula involving parcel area and impervious percentage. The fee has been increased by 2% each subsequent fiscal year except one. The fee will now expire in 2016, and the City does not plan to pursue another fee.

## ORANGE COUNTY

### CITY OF SAN CLEMENTE

Property owners in the City of San Clemente passed a Clean Ocean Fee in 2002 that was to be in effect through December 31, 2007. In June 2007, staff began a mail ballot election process to determine whether or not the fee would be continued. The City was able to propose continuing the fee at existing levels because of success in obtaining grant funds to leverage fee revenues collected. The election was well publicized, and a community group was formed to campaign for passage of the Clean Ocean Fee continuation. Local media coverage was favorable, and focused on the fact that, because of the fee, significant amounts of trash had been prevented from reaching the beaches of San Clemente. If the continuation did not pass, one op-ed writer wrote, "The final result would be both a reduction in water quality of our beaches and a reduction in the level of services the city provides to its residents." In the mail-in ballot vote, 75% of ballots returned were in favor of continuation of the Clean Ocean fee for another six years.

In late 2013, City Council pursued a continuation of the fee, which was scheduled to expire at the end of the year. In a December 2013 vote, property owners narrowly voted to renew the fee. The vote was extremely close; in fact, the City Clerk initially announced that property owners who had returned ballots had rejected the renewal by a vote of 6,094 to 5,709. Subsequently, however, the result of the election was certified as 5,005.36 (52.97%) in favor of fee renewal and 4,443.68 (47.03%) against. The change was due to a rule that votes of timeshare units are valued at 1/50 of a vote.

The vote also approved the first fee increase in the Clean Ocean Fee's history. The fee for single-family residences (on public streets) increased to \$6.23 per month from \$5.02 per month. The rate for residences on private streets is lower because these streets do not require sweeping by the City. There are higher rates for commercial, industrial, and business park sites. The fee will be valid for six years; the next renewal vote will be at the end of 2019.

## ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (OCTA) incorporated stormwater funding into the renewal of its transportation improvements funding measure. In 1990, Orange County voters approved Measure M, a 20-year program for local transportation improvements funding by half-cent sales tax. In 2006, Orange County voters approved continuation of Measure M for another 30 years, extending the end date of the sales tax from 2011 to 2041. The renewed Measure M contains a water quality and environmental cleanup program. Under this program, 2% of gross revenues (estimated at \$327 million over 30 years) will be set aside to help Orange County municipalities improve water quality.

The environmental cleanup monies may be used for water quality improvements with a transportation nexus, including capital and operations improvements. This program is intended to augment, not replace, existing water quality expenditures. In addition, all new transportation projects funded by Measure M will include water quality mitigation as part of the project scope and costs (i.e., this will not be funded through the 2% set aside for water quality).



## SAN DIEGO COUNTY

### CITY OF DEL MAR

Several cities in San Diego County have successfully established fees to assist with stormwater management program funding. The City of Del Mar adopted a Clean Water Service charge in 2003. In May 2004, the City Council adopted a five-year utility rate schedule for water, sewer, and clean water. In 2006, the City initiated the first stage of the required two-stage vote to increase the fee. There were not enough protest votes to block an election, so the vote – requiring a simple majority – was allowed to go forward. The first measure, ratifying collection of the existing fee through June 30, 2009 won 68.8% of the total votes cast. The City must conduct annual vote processes to ratify rate increases based on the Consumer Price Index.

The Del Mar Clean Water Fee is usage-based and does not cover 100% of stormwater costs, but provides a valuable supplement to General Fund monies used. The Clean Water Program costs approximately \$472,000 per year to implement, approximately 80% of which is paid for through the dedicated fee added to residents' water bills. The City regularly reviews the Clean Water Program to determine whether or not a fee increase or decrease is necessary. As of May 2014, the City is planning the next five-year rate cycle, which commences with FY 14-15. The rate for FY 14-15 has not yet been determined, but the annual API-based increase for FY 2013-14 was 1.5% and went into effect July 1, 2014. During the next five-year planning cycle, the Program Manager anticipates that rates may exceed inflation by a modest amount. Although the City is required to perform protest votes with each rate increase, they have not had a problem maintaining the fee, as Del Mar residents typically value preserving the environment and natural resources. Careful cost management has allowed the Clean Water Program to decrease the amount of General Fund subsidy over the years. City of Del Mar staff attribute the success of their initial efforts to public outreach. The City held “community coffee meetings” in private homes to discuss the importance of the issue directly with residents. There is no sunset clause on the Del Mar fee.

### CITY OF OCEANSIDE

The City of Oceanside began assessing a fee for the Clean Water Program in 2002, and in 2007, when the new San Diego region MS4 permit went into effect, City Council notified residents that a fee increase was needed. The City formed a Citizen's Advisory Council to inform residents about the stormwater program itself and about the need for a fee increase to help meet the costs of permit compliance. There was no majority protest. In November 2007 the increase was passed by City Council, and it went into effect in January 2008. Prior to this increase, the Clean Water Program Fee only covered about  $\frac{1}{3}$  of program costs, with the balance paid out of the General Fund. Following the increase, nearly 100% of costs for the basic program are covered. The monies pay for public outreach, monitoring, inspection, and a staff of seven people. Staff reports that grant monies supplement what is not funded by the fee, and that General Fund monies are not used. There is no sunset clause for the City of Oceanside fee; it is ongoing. The current fee is approximately 8¢ per water unit (748 gallons).

### CITY OF SOLANA BEACH

The City of Solana Beach began collecting an NPDES solid waste fee on trash collection bills in 2005. Monies collected went toward funding activities such as public street and parking lot sweeping, litter removal, and storm drain cleaning and other light maintenance. The City was subsequently sued by the Howard Jarvis Taxpayers Association on the basis that the fee was a tax and, therefore, subject to approval by a two-thirds majority, pursuant to Proposition 218. A settlement agreement was reached with the Association, and the fee was placed on the ballot for voter approval. In 2007, 59% of Solana Beach property owners approved the fee through mail-in ballot. Billing is handled by the City's two waste management companies through their franchise agreements with the City. The fee has not been increased since adoption and there is no sunset clause.

### City of Poway

The City of Poway originally established a fee in approximately 2000. The City hired a consultant to review options and produced a Stormwater Collection Fee Update Study in September 2007. The City decided to replace the stormwater fee with a solid waste fee, since the primary focus of the stormwater program is the prevention of wastes in the City's MS4.

The City Manager became concerned about the fee's validity after the November 2010 passage of Proposition 26 and consulted with the City Attorney. In 2011, the City completely rescinded the Stormwater Fee, and refunded residents

and businesses a portion of the approximately \$5 million it had collected in the preceding four years. While the fee was in place, the average residential cost was about \$44 per year, with businesses paying up to \$1,230 per year. The over \$1.3 million per year raised by the fee paid for more than 80% of the Stormwater Program's annual budget.

Residents and business owners were reimbursed for fees paid during the preceding 12 months. The City of Poway now pays for Stormwater Program costs from the General Fund.

## FEES ELSEWHERE IN CALIFORNIA

### CITY OF PALO ALTO

In the Bay area, the City of Palo Alto successfully involved the public to gain majority support for implementing stormwater fees as funding mechanisms. The City had a Stormwater Utility Fee in place beginning in 1989, and had been preparing for another fee increase when Prop 218 passed in 1996. After failing to win support for an increase in 2000, the City in 2005 looked to San Clemente's successful example. Palo Alto added a 12-year sunset clause to the proposed fee increase and formed a Citizen Advisory Committee, which City staff views as having been the key to winning the majority property owner vote. The first attempt at passing a fee was staff-initiated and staff-driven and failed. The second attempt, in which the Citizen Advisory Committee was active, was successful – due in large part to their efforts. The Committee, a group of involved, knowledgeable citizens, generated support for the fee through campaign committees and actively engaging with the community to emphasize the importance of the Stormwater Utility Fee. The City plans to conduct another Proposition 218 ballot measure by mail during the summer of 2016 requesting that property owners approve a continuation of the storm drainage fees beyond the current program "sunset" date of 2017.



### CONTRA COSTA COUNTY CLEAN WATER PROGRAM

The Contra Costa County Clean Water Program (CCCCWP), after a multi-year effort to analyze water quality costs and Permittee's needs, survey voters, and develop a watershed-based, three-tiered rate countywide initiative proposal, failed to get adequate voter support for a proposed fee. The Water Program staff's report on the initiative provides some "lessons learned" that could provide guidance for another countywide effort. CCCCWP staff attributes some of the lack of voter support to significant opposition from the major local newspaper, which regularly opposes local taxes, assessments, and fees. Since virtually all the media coverage of the proposed fee was critical, and focused on the Proposition 218 process, rather than on the benefits of funding a clean water program, Program staff believes property owners were distracted from the critical issues of water quality and pollution prevention.

## VII. Significant Issues and Concerns

The City Manager Work Group conducted a series of interviews with stakeholders involved in the fee process, including both oral and written testimony during the Board's assessment hearings. The following section is intended to summarize the significant issues and concerns being raised by the stakeholders.

## PERSPECTIVES OF THE ENVIRONMENTAL COMMUNITY

The environmental community has been very supportive of past clean water funding measures, including Proposition O in the City of Los Angeles and Measure V in the City of Santa Monica. The region has a very active and engaged environmental community that consists of dozens of organizations, including groups that formed around individual watersheds, such as Friends of the Los Angeles River; broad-based organizations such as the Council for Watershed Health, which promotes understanding and awareness of the importance of a watershed approach to resource management issues among government, business, and community organizations; and Heal the Bay, which works with community partners and local businesses to make solid, measureable changes in the health of oceans and beaches. The perspective and input of these organizations is valuable and must be consulted in any funding measure.

The City Managers Work Group wanted to better understand the perspective of the environmental community and invited Heal the Bay to provide a summary of "Lessons Learned" for its July 2013 meeting. These lessons are not intended to cover all of the concerns of the individual environmental organizations, but serve as a summary providing valuable insights:

1. Any successful initiative will need elected officials to be vocal and visible champions;
2. The LACFCD lacked the capacity to campaign for the measure;
3. There needs to be complete transparency among the stakeholders to ensure that everyone has the correct and most up-to-date information;
4. Stakeholders must have a finalized program prior to committing support; and
5. There must be outreach and engagement of all stakeholders throughout the process.

In fairness to the LACFCD, state laws prohibit the use of taxpayer funds to advocate for political causes, including funding measures. Local governments can provide only basic information on the proposed water quality programs, including specific projects that are anticipated, their costs, and the likely impacts of not moving forward with a funding measure on the local government budgets.

Advocacy for the funding measure should be organized by a highly committed core group of organizations and individuals. This core group could include elected officials, who can advocate as individuals but cannot commit public resources to the funding measure. The core group could also include environmental, business, and other groups committed to the success of the funding measure. This group would be responsible for overall leadership, strategic planning, and organizing committed activists and active supporters.

Many environmental, business community, and government stakeholders expressed concerns that the County had not completed the final version of the ordinance and program guidelines prior to mailing the property owner hearing notices in December 2012. They felt it was difficult to decide on supporting the program when key specific information was unknown or had not been decided upon. They recommend that any future funding measure should have details worked out prior to outreach and moving forward to the public for a vote.

#### **PERSPECTIVES OF OTHER COMMUNITY ORGANIZATIONS**

In addition to comments from the major environmental groups, the Board of Supervisors received comments from several smaller community/conservation/environmental justice groups. They made recommendations related to environmental justice and assuring that the fee measure provides direct benefits to their communities. The representatives of these groups suggested that in order to secure their individual and/or organizational support for the funding measure, it was imperative that the following measures be resolved to their satisfaction (Note: the amounts listed in these recommendations are not cumulative – they believe many of the projects can meet several of the target percentages listed below):

1. The ordinance or other instrument which will memorialize this agreement must be binding not only on this, but also future Los Angeles County Boards of Supervisors, to preserve the strength of the measure.
2. Funding Allocations: In order to insure that community needs are addressed, it is essential that from the total fees collected annually the following allocations must be specified in the measure/ordinance:
  - a. Youth At Risk - At least 20% of funds must be used to employ youth at risk, with no less than 50% of that amount allocated to 501(c)(3) approved youth corps groups either directly or through subcontracts.
  - b. Small Local Business - At least 20% of funds must be used to hire small local businesses, and additional project evaluation criteria points must be given to project proponents with adopted policies to promote hiring small local businesses, with the most points given to those that have strong enforceable policies for hiring disadvantaged, minority, and/or women-owned businesses.
  - c. Disadvantaged Communities - At least 20% of the funds must be allocated to projects that provide direct benefits to Disadvantaged Communities, with the most disadvantaged (less than 60% of the median household income) receiving the most points.
  - d. Small Projects of Less than 10 Acres - At least 40% of the funds must be allocated to small projects, and of that amount at least 25% shall be allocated to projects under one acre.

- e. Community Water Quality Education - At least 5% of the funds must be allocated to non-profit organizations for water quality education programs primarily directed at K-12 aged children.
  - f. Community Engagement: 1) Not less than \$1.5 million annually must be allocated for each WAG to support the participation of not less than two non-governmental organization (NGO) Executive Level representatives on the Public Advisory Council(s); 2) Not less than \$2 million annually must be allocated for each WAG to support, through technical assistance programs, community-based organizations to develop and implement water quality neighborhood projects; and 3) Not less than \$2 million annually must be allocated for each WAG for community engagement activities which will promote sustained engagement primarily for adults through NGOs.
3. The project evaluation criteria must give significant preference to multi-purpose projects, particularly those that: provide for improved public health, develop projects in disadvantaged communities, provide new recreational opportunities, create new open space, and improve habitat. These criteria must be scalable to ensure that projects that provide the most community benefits are competitive, and the points assigned to multi-benefit projects must be given the same weight as other priority considerations while acknowledging that all projects must first achieve water quality benefits. The criteria must also include points for community participation in the project development and implementation process.
  4. The County should only move forward if the needs of schools can be addressed to their satisfaction.

## PERSPECTIVES OF THE PUBLIC SCHOOLS

The proposed stormwater fee has the potential to impact public schools, including K-12 districts, community colleges, state colleges, and universities. Seventy-one of the 80 K-12 school districts in Los Angeles County are within the boundaries of the LACFCD, including the larger Long Beach Unified School District (LBUSD) and Los Angeles Unified School District (LAUSD). The districts comprise over 6,200 parcels, with a potential annual estimated assessment of over \$14 million. For a sense of the magnitude of the impact, the average 10-acre elementary school would have an annual assessment of approximately \$8,000. These fees would vary based on district size, parcel size, and the number of parcels in each district. For example, the Los Angeles Unified School District would be assessed over \$4.8 million under the proposed fee.

A number of school districts and community colleges expressed concern that the assessments would be paid from their general operating funds. School districts are primarily financed through a formula set forth by the State based on a fixed monetary amount per student, and do not have the ability to raise separate revenues; the assessment would need to be paid from general operating funds based on the per student formula. It is unlikely that the State will increase the amount paid per student to pay the assessment, which would result in the districts having to reduce funding of personnel and programs. However, efforts should be made at the state level to encourage the state to fund these needs.

The economic impacts of the Great Recession adversely affected all public agencies statewide, including public education. Funding in the State budget for K-12 education reached a low of \$35.7 billion in FY 2009-10, from a high of \$41.3 billion in FY 2007-08. Many school districts and community colleges were forced to borrow monies during the recession – even to fund a reduced level of services. During the recession, over 32,000 teachers were permanently laid-off statewide. The community college system likewise experienced losses.

Since the passage of Proposition 30 in November 2012, funding for public education has begun to stabilize. Proposition 30 permanently raised income taxes on individuals in higher tax brackets and temporarily increased the state sales tax by one quarter of a cent to fund public education. Public education funding approved in the FY 2013-14 State budget was \$39.6 billion. Based on student population growth, inflation, and the requirement to pay back borrowed funds, total public education funding is not expected to return to pre-recession levels until FY 2016-17. Even with the return to higher funding levels, school districts, many of which have had to forestall basic program improvements due to lack of funds, are unlikely to support the new fee.

The public schools indicate that they are committed to clean water programs. Some of the school districts have been constructing new schools or completing substantial renovations based on State and local bond funding. For example, the Los Angeles Unified School District has constructed 130 new schools in the last decade. The District indicates that it applied BMPs to the design and retrofit of its schools, including turf replacement, drought tolerant landscaping, and drain traps for trash. It is unknown to what degree the other 70 districts implement best management practices. The City Managers Work Group found that K-12 and community college bond measures in Los Angeles County from 2008-2012 totaled \$17,619,190,000. Some of the smaller bonds may not have been for public schools, but for services

only. However, the magnitude of these bond measures indicates that school bond measures could be a future source of funding for K-12 schools and the community colleges for stormwater quality facilities and programs. (See Appendix E.) This possibility is enhanced because the approval success rate for school bonds increased dramatically in November of 2000, when voters lowered the requirements for passage of school bond measures from 66 <sup>2</sup>/<sub>3</sub>% to 55%.

The City Managers Work Group also found that public schools are generally not regulated under MS4 Permits. The Water Boards consider Higher Education Institutions (community colleges and universities) as well as K-12 school districts to be Non-Traditional MS4s. The first California Small MS4 General Permit, adopted by the State Water Board in 2003, listed non-traditional MS4s to be designated by the end of the permit term by either the State or Regional Water Boards. However, many non-traditional MS4s were not designated. The current Small MS4 Permit, adopted February 5, 2013, made all non-traditional MS4s not yet designated – except K-12 school districts, Offices of Education, and Community Colleges – subject to the Order. State Water Board staff had originally proposed that K-12 school districts, Offices of Education, and Community Colleges be subject to the new permit, but the schools successfully lobbied the Governor’s office and were removed from the permit unless previously designated. The State Water Board has historically exempted public schools from the requirements applied to cities, residents, and businesses based on financial concerns raised by public education during the rule-making process. In addition, school construction is monitored by the State Architect and is exempted from City review. The Work Group believes that there is a missed opportunity to use State and local construction bond funds to meet the MS4 stormwater requirements. The State Architect should be encouraged to require implementation of MS4 requirements for bond-funded school construction.

Los Angeles County staff conducted negotiations with LAUSD and the County Office of Education on mitigation for the financial impacts of the stormwater assessment on school districts. The districts proposed fee reduction through in-kind services, such as funding water/sustainability-related education, and credits for infrastructure investments. Credits could include vegetated swales, rain barrels, dry wells, parking lot swales, rain gardens, and other stormwater treatment options.

County staff proposed that school districts jointly participate with surrounding local governments in constructing neighborhood scale or regional capture and infiltration projects on school playgrounds and parking lots. This proposal was based on a study by the Los Angeles-based NGO North East Trees, which completed an inventory of sites in Los Angeles County suitable for the capture and treatment of stormwater. High priority sites include public schools (playgrounds and parking lots) and city parks. School districts should consider providing a land donation for projects and relying on either State or local bond funds for their portion of the improvements. School district attorneys expressed concern over future liability for soil or groundwater contamination. The Work Group believes that State legislation might be necessary to address this liability concern and encourage the state to help fund water quality protection.

## PERSPECTIVES OF ORGANIZED LABOR

Although the Los Angeles/Orange County Building and Construction Trades Council has not had a significant presence in the discussions about the stormwater fee, the City Managers Work Group has been informed that the Trades Council is likely to request that language be included in the Clean Water, Clean Beaches fee measure requiring a Project Labor Agreement (PLA, also referred to as Project Stabilization Agreement). The County Board of Supervisors would likely honor that request.

These agreements were originally developed in the 1930s to prevent work stoppages on large, multi-year projects. Most recently, PLAs have been a part of METRO measure R funding, LA Ports and LAX expansion, LA Community College District measures A, AA, and J facilities construction, LA Unified School District measures BB and K construction and rehabilitation, and City of Los Angeles capital projects. While it might be argued that the nature of most stormwater projects is dissimilar to these larger scale projects – which tend to be large, single projects, with multi-year contracts reflecting 7-, 8-, or even 10-figure budgets – the objectives of organized labor groups are still the same.

Most PLAs range from 50 to 75 pages in length. They usually include “no-strike” provisions, expedited arbitration of disputes, “no-lockout” provisions, priority union hall hiring, payment of union dues, prevailing wage components, substance abuse testing, local hire percentages, disadvantaged worker hiring percentages (qualified by income, education, or arrest record), apprentice training components, payment of prevailing wage, mandatory grievance arbitration, and requirements for hiring based on zip codes. Some agreements also stipulate a dollar value below which the PLA does not apply.

## PERSPECTIVES OF THE BUSINESS COMMUNITY

The Los Angeles County Business Federation (Biz Fed) raised a series of concerns prior to and during the hearings. Biz Fed represents over one hundred top business and industry trade groups, chambers of commerce, business improvement districts, realtor associations, commercial property owners associations, apartment associations, and two of the largest private commercial landowners in the county. The group collectively represents 268,000 businesses, with over 2.5 million employees.

Biz Fed engaged with County staff and the Board of Supervisors and ultimately crafted a private sector response that has broad, but not unanimous, support in their community. They identified several key issues and expressed concerns that they were not at the negotiation table when AB 2554 and the assessment report were crafted. There are five broad principles that Biz Fed believes needs to be realized:

1. UPDATE THE BASIN PLAN – Before the region commits billions of local taxpayer dollars, the Basin Plan needs to be revised, including reviewing inappropriate beneficial uses never intended for stormwater.
2. STATE ENGAGEMENT – The Governor, the Legislature, and the State and Regional Water Boards need to engage in creating a funding framework to comply with the regulations.
3. FIX THE MS4 PERMITS – The current municipal stormwater permit should include incentives for regional solutions. The permit seems to prioritize on-site filtration before regional options can be considered.
4. SOURCE CONTROL – There needs to be some recognition that not all of the pollution is generated locally and it cannot be cleaned up locally.
5. Regional Rules and Fee – Biz Fed members are concerned that there will be 85 different sets of rules and 85 separate fees, for each community in the County. The business community would prefer to have one set of rules and one fee region-wide.

Biz Fed has several suggestions to improve the chances of the fee being approved by the voters:

1. Inclusion of a sunset clause
2. Voted on by the general electorate and not a property owner vote
3. No exemptions – we are either all in or we are all out.
4. Cap on administrative costs
5. Specific projects must be listed in the tax measure, just like park bonds, transportation taxes and school funding.
6. Credit for work already done – thousands of property owners are already complying with industrial permits, so they don't want to pay twice. Developments with LID provisions should have reduced fees.
7. Rent control ordinances will need to be revised to allow property owners to pass on the new fee to their tenants.
8. There need to be rigorous cost-effectiveness criteria.
9. Ramp-up or stage the fee, so as to not front-load it into the first year. Be realistic about how much funding is needed and when it is needed. It will take time to plan.
10. The projects should include prevailing wage, apprentice programs, local hire, and disadvantaged and minority business programs.
11. The stakeholders need a broad education program to educate the public that there is a problem and that their money needs to be spent on solutions.

Biz Fed also wants to re-think the WAGs to structure them as planning only – and not construction and maintenance organizations. They emphasize that there are suitable existing government organizations to construct and manage these improvements. Biz Fed recommends that the fee be used to construct some large projects up front – e.g., increasing dam capacity to provide water retention and treatment. The association also cautions against what they term as “Eco Pork;” they argue that the fee is not a recreation tax, nor is it for trails or highway beautification projects.

Biz Fed recommends that the region consider multiple sources of funding, since such massive costs cannot be imposed only on the property owners. Their final recommendation is that we consider a component to the fee effort to “monetize” captured stormwater. If the fee passes, property owners will spend billions to treat and store water, so it should not be given away. They suggest that the value of groundwater should be recovered from water supply agencies that ultimately are the beneficiaries of the capture and treat programs. It is recognized that State law may need to be amended to legally transfer ownership of this water to the ultimate purchasers.

## PERSPECTIVES OF THE COUNTY SANITATION DISTRICTS

The Sanitation Districts of Los Angeles County provide solid waste and wastewater services to about 5.4 million people in 78 cities and unincorporated areas in Los Angeles County.<sup>7</sup> The Sanitation Districts are not legally authorized to manage stormwater from sources outside of their facilities, nor do the Sanitation Districts own or operate regional stormwater infrastructure. However, at the request of some cities and the Los Angeles County Department of Public Works, the Sanitation Districts currently accept dry weather diversions (DWDs) at 10 coastal locations in the cities of Long Beach, Hermosa Beach, Redondo Beach, and Manhattan Beach under the Industrial Waste Program. Many of these dry weather diversions are operated by the Los Angeles County Department of Public Works. Additionally, most of the Sanitation Districts’ facilities are required to comply with the Statewide General Industrial Stormwater Permit and the Statewide General Construction Permit.

The Sanitation Districts could potentially play an increased role in managing dry weather urban runoff through an expansion of the number of dry weather diversions, subject to capacity limitations in the wastewater collection system and treatment facilities, and with adequate assurances that all applicable regulatory and infrastructure requirements could continue to be met (e.g., numeric effluent limitations in permits, recycled water program requirements, equitable cost recovery, and prevention of sanitary sewer overflows). Some stakeholders have also called for an increased role by the Sanitation Districts in managing stormwater, which potentially could be pursued. However, stormwater management is not one of the Sanitation Districts’ areas of expertise, the Sanitation Districts do not own any stormwater management infrastructure, nor does staff have expertise in managing stormwater. Pursuing a larger role for the Sanitation Districts would first require a broad discussion with the Sanitation Districts’ Boards of Directors and resolution with them of complex legal, policy, infrastructure and financial issues. Moreover, changes to the County Sanitation District Act would be necessary to provide authority for the Sanitation Districts to manage stormwater (beyond acceptance of dry weather diversions), and fees or other funding would be needed to pay for new stormwater-related activities.

Another approach for incorporation of a sanitation agency into management of stormwater was developed in Orange County and involved adoption of special legislation. Sanitation districts statewide are created under Health and Safety Code Sections 4600 through 6127, known as the County Sanitation District Act. Section 4730.66, which was enacted in 2002, applies only to the Orange County Sanitation District and grants that district supplemental powers of 1) diversion of urban runoff from drainage courses within the district, 2) the treatment of urban runoff, 3) the return of the water to the drainage courses, and 4) the beneficial use of the water. This code section also grants the Orange County Sanitation District the ability to exercise any of its powers otherwise granted to carry out the urban runoff program. However, to date the Orange County Sanitation District has only accepted dry weather diversions into its system, similar to the Sanitation Districts of Los Angeles County and the City of Los Angeles, and has not activated the broader powers described above.

## PERSPECTIVES OF THE REGIONAL WATER BOARD

Both the members of the Los Angeles Regional Water Quality Control Board and their staff are interested stakeholders in the development of a viable funding program for stormwater quality management in Los Angeles County.

<sup>7</sup> In Los Angeles County, wastewater treatment services are also provided by the Cities of Los Angeles and Burbank, Las Virgenes Municipal Water District, and the County Consolidated Sewer Maintenance District. In addition, all of the 88 cities and Los Angeles County own thousands of miles of satellite sewers that are connected to the aforementioned regional municipal wastewater treatment systems. Also, it should be noted that, unlike many parts of the United States, sanitary sewers and municipal separate storm sewers (MS4) are separate infrastructure systems and are not interconnected nor managed in a coordinated fashion (i.e., there are no combined sewer systems).

The Regional Water Board appears to recognize that compliance with the new area-wide MS4 permit for the Coastal Watersheds of Los Angeles County (excluding those discharges originating from the City of Long Beach) will be very expensive, and they had hoped that a stormwater fee would be adopted. Since the County Board of Supervisors decided to not move forward with a fee, the Regional Water Board has emphasized the differences in costs between the current planning stage and the future implementation stage. They have noted the potential availability of grant funds and have suggested that if stormwater could be monetized, the State Revolving Fund could be a source of construction money. They appear to assume that municipalities will somehow be able to pay for the very high costs associated with constructing treatment controls to meet water quality standards within the relatively short time frames provided in most TMDL implementation schedules. The Regional Water Board's Executive Officer has indicated that the Board is working with the County and that the fee is still a possibility.

As indicated by the Chair of the Regional Water Board during the March 15, 2013 County Board of Supervisors hearing on the proposed Clean Water, Clean Beaches Initiative, the Regional Water Board considers the high cost of complying with TMDLs and meeting water quality standards as just another requirement with which municipalities will have to deal. This perspective is reinforced by two fiscal resources standard conditions within the permit. One specifies, "Each Permittee shall conduct a fiscal analysis of the annual capital and operation and maintenance expenditures necessary to implement the requirements of this Order." The other requires that "Each Permittee shall also enumerate and describe in its Annual Report the source(s) of funds used in the past year, and proposed for the coming year, to meet necessary expenditures on the Permittee's stormwater management program."

### Issues Surrounding Basin Plan Updates

The Water Quality Control Plan (the "Basin Plan") is the key regulatory document governing water quality in each hydrographic region statewide, much like a city's general plan. It contains the beneficial uses, the water quality objectives, monitoring requirements and policies for protecting groundwater and surface waters. Many in the municipal and business communities believe that the Basin Plan, which was first adopted in 1974, is outdated and was never originally intended to address stormwater, especially through numeric limits and TMDLs. They give the analogy that cities could not survive with general plans that have not been updated in forty years. However, the environmental community is concerned that attempts to update the Basin Plan will result in an unwinding of the requirements, in what they see as "regulatory backsliding." It is clear that the Basin Plan was designed to meet the environmental challenges of the 1970s, prior to the 1990 inclusion of municipal stormwater permits in federal regulations and the present requirements for Integrated Water Management Planning, including the capture, treatment, and reuse of stormwater. Currently, the Regional Water Boards have demonstrated neither the intent nor the funds to sufficiently update the Basin Plans.

The Basin Plan's water quality standards were intended to be applied to point-source runoff from factories and discharges from wastewater treatment plants. Except for the inclusion of TMDLs, the only major update to the region's Basin Plan was in 1994, and it did not address the episodic and variable nature of stormwater, even though the Clean Water Act had been amended in 1987 to address municipal stormwater discharges and the regulations had been updated in 1990. Municipal and business community stakeholders have long argued that the Basin Plan fails to address modern water quality issues, including incorporating new data and science, dealing appropriately with legacy issues, or the diffuse sources of stormwater pollution. Stakeholders have also expressed concern that the traditional system of issuing NPDES permits to dischargers and monitoring those dischargers is not well equipped to handle complicated issues that involve land use, diffuse pollution sources, and complex scientific inquiry.<sup>8</sup>

Past litigation involving the Los Angeles Basin Plan demonstrated the volatile nature of considering Basin Plan Updates. California's Porter-Cologne Water Quality Control Act requires the boards to enact standards that "attain the highest water quality which is reasonable," and the water boards must consider several factors when they set standards, such as existing and probable future beneficial uses of water, environmental characteristics of watersheds, water quality conditions that could be reasonably achieved, and economic considerations. In 2004, as the Los Angeles Regional Water Board was conducting its triennial review of the Basin Plan, many cities and the Building Industry Association (BIA) asked the Board to review water quality standards in relation to the State's stormwater regulations. The cities and BIA argued that new standards should be developed during the triennial review process and applied in stormwater permits.

The Regional Water Board did not review the standards, arguing they were adequate because the Board had considered reasonableness and other factors when they were first adopted in the 1970s. The State Water Board refused to hear a petition from the regulated community and litigation was pursued (Cities of Arcadia, et.al. vs. Los Angeles Water Board).

8 Little Hoover Commission, Clear Structure, Clean Water: Improving Performance and Outcomes at the State Water Boards, January 2009, Page 27.



The lawsuit estimated that the cities needed several billion dollars to comply with numeric limits on trash, metals, bacteria, and other water quality requirements in the Basin Plan.

In 2008, the Superior Court concluded, “during the creation of the original Basin Plan and subsequent revisions there is no substantial evidence in the record to show that the Board has ever analyzed the 13241/13000 factors as they relate to stormwater.”<sup>9</sup> The Court then ordered the Board to review the water quality standards as applied to stormwater. The judge later allowed the standards to stand while the Board conducted its review. The State appealed the lower court’s decision and the Third Appellate Court reversed the ruling, essentially giving deference to the Regional Water Board. The water quality standards in the

Basin Plan have yet to be substantially modified to reflect the variable and episodic nature of stormwater.

The State’s Little Hoover Commission, in its 2009 report, “Clearer Structure, Clean Water, Improving Performance and Outcomes at the State Water Boards,” studied the issue of Basin Plan litigation and updates, and concluded that:

“The lack of data and science mean that the core regulatory document for each region – the basin plan – often is decades out of date. As basin plans guide virtually all [water quality] regulations in each region, this undermines the legitimacy of the state’s regulatory efforts. Basin plans list the uses of water bodies and the limits on contaminants in each of the water bodies to support those uses. Despite this, the state has not committed the resources to update them: Less than 3 percent of the boards’ nearly 1,600 employees are dedicated to updating basin plans. The boards’ funding structure, which relies mostly on fees to support specific permitting programs and almost no General Fund dollars, leaves little money available for this critical task.” (Page vi)



## POTENTIAL IMPACTS OF RECENT OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The NRDC and the Los Angeles Waterkeeper recently sued the County of Los Angeles and LACFCD in federal court over numerous water quality exceedances in the region’s water bodies. The court case did not focus on pollution levels, but, rather, on who was responsible for the pollution. The litigation was based in part on monitoring results collected by the LACFCD at “mass emission stations” within the region’s streams and rivers. The water at these monitoring stations is a combination of water flowing from city and LACFCD storm drains, other NPDES permitted discharges, unpermitted discharges, and natural sources.

A lower federal court ruled that the LACFCD was entirely responsible for the pollution and exempted the Cities. The LACFCD requested tolling agreements from the Cities in order to avoid triggering immediate litigation with the municipalities while the LACFCD appealed the decision. The U.S. Supreme Court granted a review of the case in 2012.

On remand from the U.S. Supreme Court, the appellate court panel held that pollution exceedances detected at monitoring stations of the County of Los Angeles and the LACFCD in the Los Angeles River and the San Gabriel River were sufficient to establish the County defendants’ liability as a matter of law for violations of the terms of the MS4 Permit. The County requested the Supreme Court review the appellate court’s ruling. The Supreme Court declined.

The Ninth Circuit Court of Appeals filed an Opinion on August 8, 2013 that will not directly impact stormwater funding options, but it could result in significantly increased monitoring costs, which, in turn, could accelerate the need to secure a sizeable and dependable source of funding for stormwater quality management.

It is reasonable to presume that the Ninth Circuit Opinion will eventually trigger a new round of litigation by the NRDC (or other individuals or groups) against the County, the LACFCD, and the Cities, as water quality monitoring data are submitted in compliance with the new MS4 permit.

## SIGNIFICANT ISSUES/STAKEHOLDER CONCERNS RAISED DURING THE PROTEST PERIOD/PROTEST HEARINGS

The Clean Water, Clean Beaches Measure was closely followed by various organized stakeholders, who met with County staff and the County Board of Supervisors to discuss issues and concerns. Stakeholders included the public schools, the County Office of Education, community colleges, the environmental community, Biz Fed, the, Valley Industry and Commerce Association (VICA), the Building Industry Association, municipalities, and others.

### SUMMARY OF ISSUES AND CONCERNS

The following stakeholder concerns are summarized from the Board's protest hearing and subsequent meetings with stakeholders. The stakeholders commenting are: Public (P), Business Community (BC), Public Schools (PS), Environmental Community (EC), and the Municipal Community (MC). Additional discussion of the issues follows this summary.

1. \$54 fee per average single family residence too high (P, BC)
2. Should be vote of the electorate and not a vote of parcel owners (P, BC)
3. Implementation costs were unclear/No definitive project list/Timing issues (P, BC)
4. Cities with existing stormwater fees should be exempted (MC)
5. Fiscal impact of the fee on public education (P, PS, MC)
6. Lack of a sunset clause (P, BC)
7. Appeals process (P, BC)
8. Fee reduction program for onsite capture/treatment (BC)
9. Lower administrative fees (BC)
10. Contiguous parcels under common ownership (BC, MC)
11. Oversight board membership (BC)
12. Maintenance of effort by the cities/county (BC)
13. Ensure property owners can pass through tax to tenants (BC)
14. Specific revisions to the project criteria (BC)
15. Basin Plan requires comprehensive update (BC, MC)
16. There needs to be a plan to "monetize" or convert the value of captured stormwater to drinking water (BC)
17. Concerns over Regional Water Board fines/ third party litigation/TMDL Consent Decree (MC)
18. Lack of Regional Water Board engagement (P, BC, MC)
19. Education of Elected Officials and the Public (BC, MC, EC)
20. Equitable distribution of fees for projects among jurisdictions (MC)
21. The possibility of fee assessments that exceed the reasonable cost of the proportional special benefit conferred on a parcel (MC)
22. Impervious percentage assumptions not taking into account differences in municipal development codes (MC)
23. Lack of consideration of parcels preserved as open space (MC)

## POTENTIAL ORGANIZATION SUPPORT FOR NEW POLICIES AND/OR FEES

One of the critical issues Los Angeles County permittees face with respect to gaining approval of a stormwater fee is the ability to promote approval of a ballot measure. Municipalities will only be able to educate voters – not promote a vote of approval. One or more community-based political efforts to pass a fee will be necessary. One group that has already been created is the Coalition for Our Water Future. This group, founded in 2013, is a broad coalition of community, business, and conservation leaders working to ensure Los Angeles County residents and businesses can count on a future with a clean, safe, and reliable local water supply and an end to polluted beaches, rivers, creeks, channels, and lakes. The Coalition has formed 501c(3) and 501c(4) non-profit organizations with separate Boards of Directors. These organizations are focused on policy development, research, alliance building, education, and outreach for a better water future for the region. The 501c(3) will focus on education and advocacy, while the 501c(4) organization will be able to participate in political campaigns. The Coalition's purpose is to build public support for a reliable funding source for water quality programs – one that provides for project design, construction, and operation and maintenance across the county. The group asserts that while the need for these projects is great, so is the need for public education and engagement of civic leaders to produce a regional solution.

### VIII. DISCUSSION OF ISSUES AND CONCERNS

The Work Group wanted to determine what changes stakeholders and the Cities suggested for the program, to understand what issues could result from those proposed changes, and determine whether the changes would be viable. One major question is whether changes can be made to the LACFCD's proposed program to address stakeholder and City concerns. The following discussion of issues and concerns is the Work Group's compilation of comments received by the public, stakeholders, and the cities.

#### PROPOSED FEE WAS TOO HIGH

Several commenters from the public and the business community suggested that the proposed base fee was too high. Other comments noted the bad timing of the fee, citing the weak economic recovery and the high unemployment rate in many local communities. There were also concerns expressed by the business community over high fees for commercial, industrial, and apartment properties.

#### VOTE OF THE ELECTORATE VS. VOTE OF THE PARCEL OWNERS

A question of widespread interest was whether parcel owners should vote on the fee in a mailed ballot, or whether the fee should be voted on by the general electorate. Proposition 218 applies and either the parcel owner vote or general electorate vote can be scheduled. A general electorate vote would require a super-majority or 2/3rds of the electorate to pass the proposed fee as a special purpose tax. A property parcel owner vote would require a simple majority (50% plus 1) of the returned ballots. This is a critical question and raises a series of related questions:

1. Would the option be available for the Board of Supervisors (BOS) to schedule the parcel owner vote?
2. What other options would be available, and how viable are they?
3. What is the likelihood that the general electorate would support a special tax (2/3rds vote required)?
4. Is there a period of time after which the results of the March 2013 BOS protest hearing would be considered "stale?"
5. What is the best way to address the fact that some cities have pre-existing fees and may not support an additional fee?
6. What is the best way to address the fact that some cities support the fee, while other cities do not?
7. What type of support is needed by the BOS from the cities and the other stakeholders to move forward with an election?

The Board of Supervisors appeared to move away from the parcel owner vote. The Board may still schedule a general electorate vote in the November 2014 or November 2016 general election. However, according to the County Chief Executive Officer, the Board will be required to appropriate up to \$10 million to cover the costs of the election. The latest public opinion survey conducted in January of 2013 by the LACFCD indicated that support among registered

voters was 48%, which is far lower than the 66% necessary for passage. County Counsel expressed that the notice of public hearing made in March 2013, in which parcel owners were notified about the proposed fees, would not need to be repeated for a November 2014 election, but may need to be repeated if the election were to be held in 2016.

The Managers believe that a key consideration in moving forward would be giving the Cities flexibility to “opt in” or “opt out” on the election and the program. This concept may be necessary to address the concerns expressed by the Cities that already have fees in place or wish to pursue other means to finance water quality projects. Based on County Counsel’s opinion, amending the Flood Control District Act may be necessary to allow for this flexibility. Based on statements made by Board members during the public hearings, it would be helpful if Cities supported the fee or the election process. In addition, the other stakeholders would need to be engaged and supportive.



### **CITIES WITH EXISTING FEES SHOULD BE EXEMPTED**

The City of Santa Clarita made a compelling argument that their city had already adopted a fee to deal with stormwater. In addition to Santa Clarita, the City of Santa Monica has adopted a pair of stormwater fees and the City of Rancho Palos Verdes has a Storm Drain Users’ Fee. The existence of these fees raises the question of whether a new regional fee would be considered “double taxation” in these cases. There needs to be an option to allow individual Cities to “opt out” of the regional fee. The NPDES permit and TMDL program requirements would still need to be met, such that these communities would need to decide if their existing local fees were sufficient to implement the new requirements.

### **THE IMPLEMENTATION COSTS WERE UNCLEAR/ NO DEFINITIVE PROJECT LIST/ TIMING ISSUES**

One of the issues raised in the public hearings was that the municipalities had not provided specific projects and costs that they anticipated would be necessary to comply with the new regulations. The County of Los Angeles supplied a list of projects in unincorporated areas that would cost \$225 million over the next five years. The LACFCD collected project information that some cities had prepared, but had difficulty collecting project information from all cities. Some of the projects were considered by commenters to be generic and lacking specificity. The current NPDES permit requires Cities that are preparing WMPs or EWMPs to outline specific projects that are being proposed, and prepare more detailed cost estimates. This issue will be clarified in the next 12- to 18-month planning period. The Work Group believes that Cities are more likely to support a funding measure upon completion of these plans, after specific projects are identified and annual projected expenditures estimated. Businesses and the general public would also be more likely to support (or to not oppose) a fee measure where they have a better understanding of the program and the costs. The lack of specific projects for many of the Cities raises a series of other questions that require review:

1. What are the funding timing needs of the Cities and the County?
2. Is consideration of the fee premature, since most Cities are currently preparing their stormwater quality plans (WMPs or EWMPs)?
3. Should the fee effort be suspended in order to allow communities to develop lists of water quality improvements and to develop more precise budgets?
4. Should the prepared cities move forward on the regional fee or is it more desirable to move forward as a group?

### **FISCAL IMPACT OF FEE ON PUBLIC EDUCATION**

The public school districts (K-12) and the community colleges opposed the fee on the grounds of adverse financial impacts to public education. The State has partially reversed the major reductions in public education expenditures made as a result of the economic recession, however, most school districts are reporting that they anticipate it will take six more years to return to pre-recession funding levels. The City Managers met with representatives from the Los Angeles Unified School District and the County Office of Education to better understand their concerns with the initiative. The total amount of the school districts’ share of the LACFCD’s proposed fee was \$15 million countywide, and districts would have to pay for the fee from their general education funds. The LACFCD has begun discussing mitigation measures for the schools during the fee development process. This discussion includes providing allowances for the school districts to provide in-kind services, such as curriculum activities related to pollution, to offset their fee obligations.

## LACK OF A SUNSET CLAUSE

Some commenters pointed out that the proposed fee lacked a “Sunset Clause.” The LACFCD staff proposed alternatives, including a 30-year sunset clause and a “dusk” clause, which would greatly reduce the fee at a specified date. The dusk clause recognizes that there needs to be a minimum funding level for providing on-going operation and maintenance funds to the cities for stormwater BMPs, once the major construction projects have been completed.



## APPEALS PROCESS

Some commenters expressed concern that there was not an appeals process for property where there was more than a 10% variance from impervious factors for the average of that land use.

## FEE REDUCTIONS NEEDED FOR ONSITE CAPTURE/TREATMENT

The development community requested a 100% credit program for existing and future development that captured and treated stormwater on-site. The LACFCD staff had presented alternative credit scenarios and recommended increasing the credit allowance to 80% from 25%.

## CONTIGUOUS PARCELS UNDER COMMON OWNERSHIP

The issue was raised about how best to assess the fee to contiguous parcels under common ownership. The Draft Ordinance includes an allowance to treat contiguous parcels under same ownership as one in fee calculation, resulting in a lower fee.

## LOWER ADMINISTRATIVE ALLOWANCE

It was suggested that the funds for administering the program be reduced from 10% to 5%. LACFCD staff recommended lowering the administrative allowance for cities and WAGs.

## OVERSIGHT BOARD MEMBERSHIP

The business community expressed concerns that the Oversight Board should consist of members that also had business experience to help to oversee and monitor the program’s expenses. In later discussions with Biz Fed, LACFCD staff agreed to recommend that an oversight board member from the business community be added.

## MAINTENANCE OF EFFORT BY THE CITIES/COUNTY

The business community suggested that the ordinance should require maintenance of effort (MOE) by the County and the cities. This would not allow local government to supplant existing expenditures with the new revenues. In general, cities and the County were opposed to an MOE provision in the program. Such a provision would hurt cities that have allocated significant resources to stormwater programs over the past few years, often with funds diverted from other programs, while benefiting those who have not invested in stormwater programs.



## ENSURE PROPERTY OWNERS CAN PASS THROUGH THE FEE TO TENANTS

The Apartment Owner’s Association asked for the ability to pass the fee through to their tenants in rent-controlled areas. However, rent control is typically covered by local land use ordinances. This “pass through” request would need to be reviewed by individual cities with rent control ordinances.

## SPECIFIC REVISIONS TO THE PROJECT CRITERIA

The LACFCD worked with a stakeholder group to develop a project ranking system or project criteria list. There were four suggestions on the draft Project Criteria list, including: making sure that reduction of pollution load would be the highest benefit on multi-benefit projects; establishing cost-benefit thresholds for pollution reduction; ranking projects with the most pollution reduction and the lowest cost highest; and assuring that funds should not be used to achieve social benefits other than pollution reduction.

## REGIONAL WATER BOARD FINES/THIRD PARTY LITIGATION/TMDL CONSENT DECREE

The Board of Supervisors and several cities expressed concern about a general lack of understanding of how stormwater regulations are enforced through the Regional Water Board and through third-party litigation. There is also very limited public knowledge regarding how the region is regulated under a federal Consent Decree. Further, there is a

perception that the Regional Water Board has not taken enforcement actions against “bad actors.” The Work Group also found there is little common knowledge of the third-party litigation. The Work Group noted that the LACFCD, the County, and the cities would need to improve their communication and make a direct connection to the business community and other constituents on the stormwater program requirements and the funding issues.

## REGIONAL WATER BOARD ENGAGEMENT

There were general comments that the Regional Water Board needs to be more involved in working with the LACFCD, the County, and the cities in increasing public awareness of the serious nature of stormwater pollution problems in the region and in being responsive to program expenses and the lack of funding. Shortly after the March 2013 BOS meeting, the Executive Director and individual members of the Regional Water Board began an outreach effort to the cities.

### IX. EVOLVING OPPORTUNITIES

Although there were many significant issues and concerns with the LACFCD funding initiative, there are also evolving opportunities to at least partially address funding of stormwater improvements. Most of these opportunities require action at the regional, state, and federal level. They vary greatly in the amounts of money that could be available and in the time before money might be available.

#### The Meaning of Griffith v. Pajaro Valley Water Management Agency: A Fee for “Water Service” for Purposes of the Proposition 218 Election Exception Includes Fees for Stormwater Capture and Reuse Projects

On October 15, 2013, the Court of Appeals of California, Sixth Appellate District, affirmed the trial court’s decision in Griffith v. Pajaro Valley Water Management Agency, a Proposition 218 challenge to the agency’s groundwater augmentation fees. The court determined that the groundwater augmentation charge that funded, among other projects, stormwater diversion to a groundwater basin for later use is considered a fee for “water service” and therefore exempt from the Proposition 218 election.

The district’s fee was levied to fund management, operations and capital costs primarily of a water recycling project, a water pipeline, and a wet-weather water capture project. The water district’s Harkins Slough project diverts excess wet weather flows to recharge a groundwater basin, from which landowners pump water for various uses. The Griffith case is the first published appellate guidance on several issues related to Proposition 218’s procedural and substantive mandates regarding water, sewer, refuse and other property-related fees and the Sixth District’s explanation of its own holding in Howard Jarvis Taxpayers’ Association v. City of Salinas regarding storm drainage fees.

Funding of stormwater programs has been affected by the Salinas decision, where the Sixth Appellate Court held in 2001 that a storm drainage fee was not to be treated like traditional water or sewer utility fees for purposes of the election requirements of Proposition 218. Proposition 218 requires a “two-step” process for the adoption of property-related fees. First, the fee must be adopted pursuant to a noticed public hearing where it must survive a majority protest of the property owners subject to the fee. Second, every fee, with the exception of fees for “sewer, water, or refuse collection services,” must be ratified pursuant to an election either by a majority of the property owners subject to the fee or by 2/3 of the general electorate. The agency imposing the fee may choose either election.

In Griffith, however, the Sixth District explained that its Salinas decision must be interpreted narrowly to mean only that storm drainage cannot be considered part of “water service.” In other words, “a system or program that monitors stormwater for pollutants, carries it away [from property], and discharges it into the nearby creeks, river and ocean” is not what the “average voter” would envision as “water service,” or “the supply of water for personal, household, and commercial use.” The Court held that, on the other hand, the district’s service, which included the project to divert stormwater for re-use in a groundwater basin, is “water service” for purposes of Proposition 218 and for the exception from the election requirement.

The Court relied on the definition of “water” in the Proposition 218 Omnibus Implementation Act of 1997, which the Legislature passed to clarify the requirements of Proposition 218. The Act defines water as “any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water,” which the Court interpreted broadly enough to cover more than the pipes and infrastructure delivering water to a property. (See Gov. Code, § 53750 (m).) It concluded, “The entity who produces, stores, supplies, treats, or distributes water necessarily provides water service.”

The decision also provides guidance for the calculation of a property-related fee and how the proceeds of the fee may be used. The Court affirmed the use of a cost of service approach to setting rates. It accepted the district's position that its groundwater service management, which included identifying and determining future supplemental projects is water service. The Court also confirmed that customers may be grouped into classes with comparable service costs and rates set by class rather than parcel to parcel. The Court also found that the fact that all groundwater users benefit from and pay for the Agency's service does not mean the service is a general benefit, which must be funded by a "tax" as opposed to a property fee.

Based upon the Court's holding, it follows that a property fee imposed to pay for stormwater capture projects intended to supplement water supply is a fee for "water service" exempt from the election requirement. AB 2403 has been introduced by Assembly Members Rendon and Mullin to codify the Griffith decision by amending the definition of "water" in Section 53750 of the Government Code. The language of this amendment is under review by several organizations, including the League of California Cities and the Howard Jarvis Taxpayers Association.

However, Griffith does not address other stormwater services needs outside of the capture and use of stormwater. There are several options, including an amendment to the State's Constitution that would define stormwater as a traditional utility much like water and sewer utilities. The League of California Cities in March of 2010 officially adopted a policy to amend Proposition 218 to provide this clarification. The proposed amendment would require public notice and continue the protest hearing process. Another option includes making the validation procedure available for stormwater to reduce the time to challenge stormwater fees adopted by cities and counties. The validation procedure would create certainty for stormwater project funding "

Although a fee for stormwater capture and reuse would not be subject to the election requirement, any fee for storm drainage and monitoring for pollutants is still subject to the election requirement.

## MONETIZATION OF CAPTURED STORMWATER

It is unclear if State law permits the "monetization" of captured stormwater. The concept is simple; water captured and infiltrated could be purchased by a local water agency or company, creating a value back to the municipality, school district or local government that installed the stormwater capture device on public property, like a park or school playground. However, the implementation of this concept is not simple. One implementation question revolves around the intermittent nature of stormwater. Without consistent annual flows, would an agency need to meter captured stormwater in order to claim it as a credit? Section 7075, Division Four, Chapter Six of the Water Code discusses the reclamation of water, its reuse and mingling of water in streams. Streams are further defined by Section 1200 as both surface and groundwater streams. It is unclear if the water code allows for an agency to assert ownership of captured stormwater. The water rights issues involved are complex and will require additional technical and legal clarification. The necessary research could be undertaken by a permanent Steering Committee if one is formed.

To establish certainty over ownership of such water and establish further that any captured stormwater is not subject to the appropriation permitting jurisdiction of the State Water Resources Control Board, legislation should be introduced to exempt water captured by a public agency from Water Code Section 1201. Similar legislation was successful in 2012. Assembly Member Solorio introduced AB1750, titled the Rainwater Capture Act, which exempts from the Board's permitting jurisdiction any rainwater captured by a property owner on his or her property. The Act was codified as Water Code Sections, 10570-10574.

Additionally, following the Griffith v. Pajaro Valley Water Management Agency decision, legislation could also seek to implement the Court's broad interpretation of "water service" for purposes of Proposition 218. As the Court held in Griffith, the election exemption for water service extends to a fee that funds, in part, the capture of water for groundwater replenishment. Further, the Court explained that when it distinguished "water" service from "sewer" service, it explained only that "water" does not encompass the drainage of water for discharging. Stormwater capture for re-use or replenishment of groundwater for re-pumping by a public agency does not constitute discharge.

## DROUGHT RELIEF LEGISLATION

On March 1, 2014, Governor Jerry Brown signed into law a \$687 million drought relief package that had been unveiled by the Governor and legislative leaders on February 19, 2014. The package combines elements of the administration's California Water Action Plan with new relief aid and water efficiency legislation written by Senator Darrell Steinberg. It includes \$549 million in unspent funds from previously approved water and disaster preparation bonds to provide construction grants for "shovel-ready" water conservation, recycling, and stormwater capture projects. However, the "shovel-ready" requirement could limit the number of projects from municipal stormwater agencies since most lack funding to pre-design projects in preparation for grant funding.

## WATER BOND 2014

The State Legislature and the Governor have considered placing a water bond before the electorate since 2010. However, significant criticism over the size of the bond (originally set at \$11.1 billion), the amount of earmarked projects (\$2 billion), and the lack of public support has twice caused postponement of the ballot vote. The League reports that the Legislature could delay the water bond again or significantly amend it by July of 2014.

The Assembly's Water Bond Working Group, chaired by Assembly Member Anthony Rendon (Chair of the Assembly Water, Parks, and Wildlife Committee), developed an encouraging set of principles, which include the following:

1. Increase regional self-reliance and diversification for water supply, and reduce reliance on water imported from other watersheds, using Integrated Regional Water Management as the instrument for achieving regional self-reliance;
2. Promote development of new water technology to support greater water conservation and water reuse; and
3. Expand California water storage options, including surface storage, groundwater cleanup, and stormwater capture.



In addition, the League of California Cities recently adopted a resolution calling upon the Governor and the Legislature to work with the League in providing adequate funding and to prioritize water bonds to assist local government in water conservation, groundwater recharge and reuse of stormwater and urban runoff programs. (See Appendix C.)

Thus far, nine bond proposals have been introduced this session. The three bills considered most likely to proceed – AB 1331, authored by Assembly Member Rendon, AB 2686, authored by Assembly Member Perea, and SB 848, authored by Senator Wolk – specifically address stormwater. These bills reflect significant concern over the State's continued and persistent drought and the need to assist local government in water sustainability programs. As of May 8, 2014, AB 1331 was set for \$8.0 billion and specifically provides \$250 million for grants and loans for multi-benefit stormwater management projects. As of May 1, 2014, AB 2686 was set for \$10.6 billion and also specifically provides \$250 million for stormwater management projects. In addition, it contains other sections with the potential to provide funding to programs to improve surface water quality, provide for stormwater capture and reuse projects, and water conservation programs. As of February 20, 2014, SB 848 was set at \$6.825 billion and specifically provides \$500 million for stormwater or dry weather runoff capture and reuse projects. As with all bond programs, it is critical at the drafting stage that local governments engage in providing input and direction to the Legislature on the critical funding needs.

## INCREASED PUBLIC CONCERN ABOUT WATER SUPPLY

A Public Policy Institute of California (PPIC) statewide survey described in the March 2014 issue of *Californians & Their Government* demonstrates that a large percentage of Californians recognize that water supply is a problem across the state.

A record number of residents, 55% of those surveyed, believe California's water supply is a "big problem" in their region, and an additional 20% say it is "somewhat of a problem." The percentage of Californians naming water and drought as the most important issue facing California has grown from 2% in March 2013 to 15% in March 2014.

In the Los Angeles Region, 51% of those surveyed characterized water supply as a "big problem." An additional 17% say it is "somewhat of a problem." Only 28% said it was not much of a problem," leaving 3% who said they did not know.

The concern with water supply appears to have increased the probability that a water bond measure could be approved during the 2014 fall election. The PPIC asked survey respondents if they would vote yes or no on an \$11.1 billion bond measure on the November 2014 ballot to pay for state water projects. Sixty percent of adult Californians and 50% of likely voters said they would vote yes. This is a significant increase in support from March 2013, when 44% of adults and 42% of likely voters said they would vote for the bond. When asked how they would vote if the bond were for a lower amount, 69% of all adults and 59% of likely voters said they would vote yes. This could mean that the legislature may be able to craft an alternative water bond bill that would provide money for stormwater quality management and be acceptable to the voters.

## COLLABORATION WITH WATER DISTRICTS

The Water Replenishment District of Southern California (WRD) has studied opportunities for stormwater capture in their service area based on several factors, including the geology of the basin. The municipal and private pumpers, along with WRD and the Central Basin MWD, are currently pursuing amendments to the water storage agreements that would create incentives for pumping rights holders to invest in capital facilities to capture and conserve stormwater. The water could be owned by the entity that captured and stored it. Hurdles to overcome include quantifying the amount of stormwater captured and ensuring that projects are located in areas of the basin that are capable of storing water. The WRD collaborated with Los Angeles County Department of Public Works on a study to increase the capacity of the Montebello Forebay, such that it would function more as a reservoir. These storage concepts and stormwater capture projects, in collaboration with federal, state and local agencies could be replicated in other areas of the County.

## GROUND WATER STORAGE AGREEMENTS – THE CASE OF THE CENTRAL BASIN WATER STORAGE AGREEMENT

Another potential funding opportunity developed during the drafting of this report that could have a significant positive impact on the communities located in Southeast Los Angeles County, increasing the economic viability of projects that capture and recharge stormwater in the Central Basin area (Southeast Los Angeles County). The Los Angeles Superior Court on December 18, 2013 approved a new water storage plan for the 27 communities located in the Central Basin. The model for this storage agreement could be used in other regions. The Court is currently reviewing a similar water storage plan in the West Basin area (Southwest Los Angeles County).

Prior to this storage amendment, cities could capture and recharge the groundwater aquifer, but they had no ability to get credit for this stored water. The lack of a storage plan hindered the economic viability of stormwater capture and recharge projects. This regional water storage agreement had been in negotiations for over a decade and in litigation for the last five years. The water storage agreement includes a Disadvantaged Communities Incentive Program, where funds can be applied to projects that capture stormwater for recharge. Qualifying communities that would benefit need not own water rights. It should be noted that capture and recharge projects will need to be located in areas that can take advantage of favorable soil conditions and other factors, so not all of the communities will benefit.

The Los Angeles Regional Water Quality Control Board commented that the new storage amendment “will encourage the development of groundwater recharge projects by allowing project proponents to capture the economic benefit and improved water supply reliability from storage of water in the Basins.” The Board went on to note that “ground water recharge projects not only enhance the available water supply, but often have the dual purpose of enhancing surface and ground water quality” (letter from Sam Unger dated December 13, 2013). The Regional Water Board encourages or requires the retention of stormwater through many of its permits and programs. The MS4 NPDES permit encourages the formation of watershed groups to develop regional stormwater retention and infiltration projects. Water agreements are complex throughout the region. However, cities without water storage agreements should consider similar amendments to provide economic incentives for capture and infiltration projects.

## CLIMATE ACTION PLAN UPDATE/POTENTIAL FOR WATER CONSERVATION FUNDING

The connection between AB 32, the Global Warming Solutions Act of 2006, and funding for stormwater and urban runoff programs is not readily apparent. However, AB 32 is a comprehensive approach to reducing emissions that impacts several sectors of California’s economy, including water use efficiency and water conservation. AB 32 requires the reduction of greenhouse gas (GHG) emissions to 1990 levels by 2020. It identifies the goal of reducing GHG levels by 50% by 2020 and 80% by 2050. Local governments are more familiar with SB 375, implementing legislation geared towards the reduction of vehicle miles traveled through land use and transportation programs. However, a water capture program could be developed as part of a carbon avoidance strategy focusing on reducing the need to pump water into the Los Angeles Basin. This would greatly reduce the carbon emissions associated with the generation of electricity needed to power the pumps currently used to bring water into the basin.

The State Department of Water Resources (DWR) adopted a GHG Reduction Plan in May of 2012, since the GHG emissions generated by the State Water Project are significant. DWR estimated that its total GHG emissions in 1990 were nearly 3.5 million metric tons, roughly the equivalent of a coal-fired power plant or 680,000 passenger cars. Moving water in California is the single largest source of electrical consumption.

DWR’s plan is the first phase in the department’s Climate Action Plan and establishes aggressive goals to meet AB 32. DWR stated that its plan complements efforts by the department to continually increase water use efficiency and water conservation statewide. The DWR Climate Action Plan does not reduce the need for local governments to increase water use efficiency and reduce GHG emissions associated with local water use activities.

AB 32 requires the California Air Resources Board (CARB) to adopt an AB 32 Scoping Plan and to update the plan in five-year cycles. The first plan was adopted in 2008 and is currently undergoing a required update. The plan focuses on six key areas: water, natural resources, waste and recycling, clean energy, transportation, and land use. The Scoping Plan includes GHG reduction goals for infrastructure and water systems, aligning the State's longer-term GHG reduction strategies with other State priorities. CARB is will be in the update process throughout 2014, including a public hearing to consider the Final Scoping Plan Update and Environmental Assessment.

Another critical component of AB 32 is the adoption of the "cap-and-trade" program by the California Air Resources Board in 2011, which is payment by various economic sectors to offset their GHG emissions. CARB administers the program through an auction, which results in revenue generation from GHG emissions credits. The revenue generated from the auctions is significant; the first auction resulted in \$289 million in November of 2012. Revenue estimates for future GHG auctions vary between \$600 million to \$3 billion annually. Revenues generated from the program are allocated into two "buckets," with auction revenues from the energy sector designated for clean energy programs and revenues from the industrial and transportation sectors used to further the State's other GHG goals. Legislation signed in September of 2013 requires that 25% of the revenues generated from industrial and transportation sectors benefit the States' disadvantaged communities

The State adopted the Cap-And-Trade Auction Proceeds Investment Plan in May of 2013. The plan covers the three fiscal years from 2013-14 through 2015-16. Program funding will be implemented by the Legislature in the annual budget appropriation process. The Investment Plan establishes eligible investments, including reducing "GHG emissions associated with water use and supply." Investment priorities include water system and use efficiency, such as energy efficiency in water pumping/conveyance.

The Governor's May 2013 budget proposed borrowing \$500 million from the fund, while State agencies tasked with implementing the GHG reduction plans begin designing their programs. The Administration's proposal is to begin investments of auction proceeds in the FY 2014-15 budget year, which will allow the CARB to complete the Scoping Plan Update. Project implementation guidelines will allow State agencies to pass auction revenues through to local entities, or conduct solicitations (e.g. grants, pilot projects, research).

Our communities need to engage in the update of the AB 32 Scoping Plan to ensure that water conservation, and the capture and reuse of stormwater and urban runoff are specifically cited as priorities. The County and the Cities also need to engage DWR and the State Water Resources Board to develop funding programs relying on the cap-and-trade revenues to assist local government in funding stormwater and urban runoff capture and water conservation plans. Another concept would to be to use some of the cap-and-trade funds for grant program similar to the Carl Moyer Program. A parallel competitive grant program could be established to help fund a water capture program that would reduce dependence on imported water while reducing stormwater and non-stormwater flows that transport pollutants to the receiving waters. The new program would allow residents and businesses to apply for water conservation and reuse funds geared towards implementing increased water supply. The Carl Moyer program has been very successful and assists residents and businesses with purchasing new equipment and vehicles while phasing out older and more polluting engines.

## **FUTURE TRANSPORTATION BONDS**

Future transportation bonds may provide an opportunity to fund water quality improvements associated with transportation. Transportation officials in Los Angeles County reportedly are planning for a bond measure in the fall of 2014 or in 2016 to either raise the County's sales tax by half a cent to 9.5% or extend Measure R's half-cent beyond its current 2039 expiration date. In either case, the measure could include an Environmental Cleanup Allocation Program similar to the program in the Orange County Transportation Authority's Measure M2, passed by Orange County voters in 2006. That program was designed to help improve overall water quality in Orange County from transportation-generated pollution. Measure M2 will generate approximately \$300 million over 30 years to control transportation-generated water pollution. (See Appendix \_\_\_\_.) Such a program could be very useful because surface transportation projects generate significant amounts of several pollutants that impair local waterbodies.

## PARTNER WITH OTHER AGENCIES

Multiple opportunities may be available by partnering with other agencies that are also concerned with water quality to develop strategies and seek grants. For those jurisdictions discharging to Santa Monica Bay there may be a significant opportunity to partner with the Santa Monica Bay Restoration Commission to seek grant funding for critical water quality impairment projects. One of the Commission's priority issues is water quality. The 2013 update to the Bay Restoration Plan has three water quality goals:

- Improve water quality through treatment or elimination of pollutant discharges;
- Improve water quality through pollution prevention and source control; and
- Address potential impacts of emerging contaminants

All of these goals are important, but the one that could be most important to Permittees while long-term financing of stormwater programs is developed is the goal to “improve water quality through pollution prevention and source control.” This approach is the most cost-effective long-term method of achieving compliance with water quality standards.

## OTHER OPPORTUNITIES FOR STATE INVOLVEMENT

Several municipalities mentioned a similar “double standard” when dealing with State facilities, other than Caltrans. The City of Malibu cited examples where newly constructed parking lots by the Santa Monica Rivers and Mountains Conservancy drain into sensitive ecological areas with no use of low impact development or green infrastructure techniques to filter parking lot runoff. Similar to public school improvements, cities have no planning control over improvements made to State facilities or on State owned lands. It is incumbent upon the Governor and the legislature to provide administrative and legislative guidance to State agencies requiring that these agencies implement LID and green infrastructure techniques that are required of local governments and the private sector.

The Gateway Cities Council of Governments is completing a Transportation Water Quality Strategic Plan in cooperation with Caltrans. Caltrans is regulated under a Statewide NPDES permit, which is similar to the MS4 Permits issued by Regional Water Boards, and has also been subject to enforcement through citizen lawsuits. Part of the strategic plan addresses freeways and highways controlled by the State. A key component of the plan addresses the water quality impacts of State owned facilities and establishes a framework for collaboration between Caltrans and adjacent local governments in joint planning and construction of water quality improvements. The strategic plan also provides a planning framework to coordinate improvements with federal transportation facilities. These joint-planning programs could serve as a model and be expanded region-wide.

## OPPORTUNITIES FOR FEDERAL ACTION

### NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES (NACWA)

NACWA, the Water Environment Federation (WEF) and the Water Environment Research Foundation (WERF) released The Water Resources Utility of the Future: A Blueprint for Action earlier this year. The Blueprint contained several policy recommendations for Congressional action, including Congressional action to develop, clarify and expand tax credit, incentive and market-based programs to encourage clean water agencies and their private sector partners to engage in Utility of the Future (UOTF)-related activities, especially in energy conservation and production, water reuse, resource recovery, and green infrastructure.

Several municipalities mentioned that federal facilities and lands appear not to be held to the same water quality and planning standards as local government and the private sector. For example, a “Zero” Trash TMDL was adopted on the East Fork of the San Gabriel River in the Angeles National Forest by the Regional Water Board in 1999. The US Forest Service has had difficulty implementing the requirements, due to lack of resources and the Regional Water Board has faced difficulties in enforcing the TMDL.

The Los Angeles Times reported in September 30, 2012 that thousands of picnickers and gold prospectors park every weekend along the road facing the East Fork, causing littering and other problems. “U.S. Forest Service rangers try in vain to curtail the abuses but are hopelessly outnumbered.” The Regional Water Board adopted a similar Trash TMDL for the Los Angeles River in 2001 and has been actively monitoring the progress and enforcing this regulation upon Los Angeles County and the 40 cities in the watershed. To date the Regional Water Board has not accepted the argument of lack of municipal resources for not meeting the TMDL's requirements, despite local government revenues having faced the steepest decline since the 1930's.

The National Park Service, as part of a comprehensive review of the San Gabriel River watershed, recommended that Congress adopt legislation that would designate the area as National Recreational Area, which would allow the NPS and the US Forest Service to work together. Congresswoman Judy Chu introduced H.R. 4200 in the 111<sup>th</sup> Congress to implement the NPS recommendations, with the hope of bringing more federal resources to bear on protecting and improving the environment. The bill died in the House of Representatives. However, this example illustrates the difficulty of the interface between the local government and federal properties and lands when it comes to local water quality programs. There needs to be improved federal awareness, urgency and funding to water quality issues. Local officials will also need to step up their efforts to educate and partner with Federal officials on water quality issues facing their communities.

## SUPPORT PAGES

(Under Development)

### Exhibits

Exhibit 1 – Projection of Local Revenues Under the Measure

Exhibit 2 – Projection of WAG Revenues Under the Measure

Exhibit 3 – WMP/EWMP Groups and Individual Cities (August 19 , 2013)

### Appendices

Appendix A – The TMDL Program

Appendix B - Water Quality Enforcement Actions Undertaken by the State Water Resources Control Board and the Regional Water Quality Control Board 01/01/2000-04/30/2013

Appendix C – League of California Cities Resolution

Appendix D – Clean Water, Clean Beaches Measure

Appendix E - K-12 & Community College Bond Measures in Los Angeles County

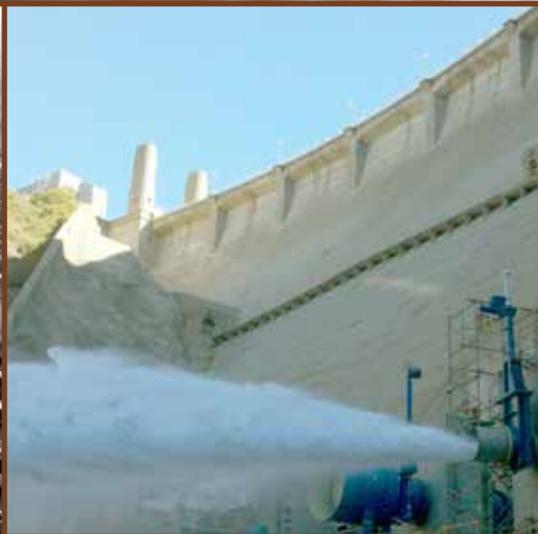
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“County to revise proposed tax,” Los Angeles Times, March 13, 2013

Clean Water, Clean Beaches Website





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