



Information Item

Date: June 4, 2012

To: Mayor and City Council
From: Dean Kubani, Director, Office of Sustainability and the Environment
Subject: Los Angeles County Water Quality Funding Initiative

Introduction

This report presents background information and analysis of the Los Angeles County Flood Control District's (LACFCD) proposed [Water Quality Funding Initiative](#) (WQFI).

Background

The Los Angeles region faces critical and very costly urban runoff (wet and dry weather runoff) pollution challenges. Untreated runoff containing trash, bacteria, metals and other pollutants drains from cities and unincorporated communities into streams and waterways and ultimately to the ocean. Almost all water bodies in Los Angeles County do not meet state and federal water quality standards and are listed as impaired under the federal Clean Water Act—nearly 100 pollutants affect over 500 miles of rivers and streams and the County's coastal waters and beaches.

The State Water Resources Control Board, through its Regional Water Quality Control Boards, is responsible for ensuring that counties, cities and other dischargers meet the requirements of the Clean Water Act. To enforce clean water at the local level, municipalities and County unincorporated areas must obtain a National Pollutant Discharge Elimination System (NPDES) discharge permit from the Los Angeles Regional Water Quality Control Board (RWQCB). Under the respective NPDES permits, cities and County unincorporated communities are all responsible for cleaning up polluted (impaired) waters in their jurisdictions.

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” (pollutants easily traced to specific, discrete sources). However, the 1987 amendments to the Clean Water Act extended the NPDES program to also encompass the much more complex and difficult to control “non-point source” pollution found in stormwater and dry weather runoff. Since their establishment in 1987, urban runoff regulations under the NPDES permit program have been significantly revised and expanded.

As a central element of the expanded NPDES program, the Clean Water Act requires that states and localities develop and implement clean-up plans using Total Maximum Daily Loads (TMDLs) to reduce pollutants in impaired waters. The TMDL establishes 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 its water quality standards. TMDLs encompass pollutants from all sources, including non-point sources. If the assessment by the RWQCB of a water body determines that it is not achieving water quality standards, it is listed as an impaired water body. If the sum of allowable pollutants from all sources (both point and non-point) exceeds this maximum amount, then a TMDL implementation plan is required. Since 1999, cities and County unincorporated areas in the Los Angeles region have been subject to a federal consent decree that established a 13-year schedule for meeting TMDL requirements in the region’s impaired water bodies. Failure to comply can result in significant fines of up to \$10,000 for each TMDL, for each day of violation.

Reports commissioned by LACFCD and other organizations place the total cost of achieving compliance with TMDL requirements for the Los Angeles region in the billions of dollars. In 2010 the RWQCB estimated costs to implement the Dry Weather Bacteria TMDL on the Los Angeles River at \$1.3 billion and the costs of implementing the Wet Weather Bacteria TMDL were estimated at \$5.4 billion. Costs for implementing these TMDL implementation plans, as required by the federal consent decree, are borne by all cities and County unincorporated areas.

Current Funding for Water Quality Improvements in Santa Monica

Santa Monica property owners currently pay a Stormwater Management User Fee and a Clean Beaches and Ocean Parcel Tax, both of which are based on the size and amount of wet weather runoff generated by their properties, to fund activities necessary to comply with TMDLs.

On [July 25, 1995](#) City Council adopted an ordinance establishing the Stormwater Management User Fee to support the following stormwater management activities:

- Enforcement of local, state and federal stormwater regulations, such as the City's Urban Runoff Pollution Prevention Ordinance (SMMC 7.10) and the Los Angeles County NPDES permit
- Implementation of the Santa Monica Bay Restoration Plan
- Strategies, such as Best Management Practices (BMPs), aimed at reducing the volume and pollutant load of urban runoff flowing into Santa Monica Bay
- Periodic upgrades, and operation and maintenance of the City's storm drain system and BMPs

The average annual cost to the owner of a single family property for the Stormwater Management User Fee is \$36 per year, which varies depending upon parcel size and land use type. This fee is fixed and does not include an annual CPI escalator for inflation.

The Clean Beaches and Ocean Parcel Tax (Measure V) was passed by 67% of Santa Monica voters in November 2006 for the purposes of implementing the City's Watershed Management Plan (Plan) and to supplement funding generated by the Stormwater Management User Fee. The goals of the Plan are to: reduce urban runoff pollution; reduce urban flooding; increase water use and reuse, and conservation; increase recreational opportunities and open space; and increase wildlife and marine habitat. Revenues generated by Measure V can be used for operations and maintenance costs related to storm drainage systems, and multipurpose capital improvement projects that improve the quality of urban runoff, as well as paying for any indebtedness incurred for these purposes. Watershed management and pollution

prevention activities of the Plan assist the City in complying with the NPDES permit requirements, meeting the goals of the Clean Water Act, and new regulations promulgated by the LARWQCB relating to TMDLs.

The current average cost to a single family property owner for Measure V is \$91.65 per year, which varies depending upon parcel size and land use type. This tax rate can increase each year based on the annual CPI. The current total annual average cost to the average single family property owner in Santa Monica is \$127.65 for the Stormwater Management User Fee and Measure V Tax. Together these two fees generate approximately \$3,900,000 per year for stormwater pollution mitigation in Santa Monica.

Discussion

Proposed Los Angeles County Water Quality Funding Initiative

Property-based fees and taxes for urban runoff are the exception, rather than the norm in Southern California. In addition to Santa Monica, only the cities of Los Angeles, Manhattan Beach and Rancho Palos Verdes currently have parcel-based fees in place to provide funds for urban runoff water quality projects and activities. In recognition of the high costs for compliance with the TMDLs for the region and the lack of available funding sources, the LACFCD proposed the WQFI to provide a stable, long-term dedicated local funding source to address this need for all cities within the county as well as the County unincorporated areas.

In 2010, AB2554 (Brownley) amended the Los Angeles County Flood Control Act to give the LACFCD the authority to levy a property-related water quality fee to be used to help finance water quality improvement projects and programs undertaken by local jurisdictions in Los Angeles County. An amendment was required because the 1915 Flood Control Act had established the LACFCD for the primary purpose of preventing floods, not improving water quality. Also, the original LACFCD enabling legislation had allowed the District to only raise funds by issuing bonds or levying a tax upon the assessed value of real property. AB2554 changes this by authorizing a third method:

the imposition of a fee or charge in compliance with Article XIID of the California Constitution. In addition, the legislation created nine regional Watershed Area Groups (WAGs) responsible for developing and implementing plans to reduce pollutant loads in the impaired waters of their respective watersheds and specifies that funds raised must be split between municipalities, WAGs and the LACFCD. The WQFI implementation ordinance follows AB2554 in laying out its structure.

The current [draft ordinance](#) (Attachment A) was released on September 1, 2011 for public input and has been revised to incorporate the input received. LACFCD has indicated that the draft ordinance will be forwarded to the County Board of Supervisors on June 6, 2012 for adoption. Once approved by the Board the ordinance would need to be approved by a vote of Los Angeles County property owners in compliance with Proposition 218 before it would take effect.

The proposed ordinance structure recognizes that land areas draining to storm drains that empty into impaired water bodies are under the jurisdiction of municipalities and County unincorporated areas. Because they have jurisdiction or control over the land uses that generate the pollutants of concern, they have the best ability to prevent pollutants from entering the water bodies. Similarly, the structure recognizes that municipalities are situated within larger watersheds shared with other jurisdictions and need to develop and implement shared solutions across jurisdictional boundaries.

Basis of the Property-Related Fee

The proposed WQFI ordinance would create a property-related fee, based on the concept that if it rains on a property, that property is likely contributing to water quality issues. The proposed fee for the average single family residential parcel is \$54 per year in the current draft of the implementation ordinance, which varies depending upon parcel size and land use type.

- The fee would apply to all parcels, including residential, commercial, industrial and government.

- The fee would be based on the size of the parcel, its land use, and the percentage of its impervious area.
- It is possible that parcels with mitigations already in place (cisterns, pervious concrete, swales, greenways and other low-impact development measures) could apply for rebates or pay discounted fees.
- Government parcels would pay because they contribute runoff, use the water quality services and receive a benefit, in accordance with Proposition 218.

Revenue Distribution

- **Municipalities:** Municipalities would receive 40 percent of revenues collected on a “*situs* basis” from their community. These revenues would be allocated to implement local water quality improvement projects and programs. Projects over \$1 million would be required to submit to an Oversight Board for prior approval. Municipalities would be required to submit an annual report and would be subject to annual audits.
- **Watershed Area Groups (WAGs):** WAGs would receive 50 percent of revenues collected on a “*situs* basis” from the cities in their watershed areas. These combined funds would only be allocated for the implementation of regional water quality projects and programs. Since each WAG is made up of municipalities that share a watershed area, each must develop Water Quality Improvement Plans (WQIP) that identifies and prioritizes the regional projects and programs to be undertaken by the WAG to reduce pollutant loads in the receiving water bodies of their watershed. The WQIP developed by a WAG must have input from a Stakeholder Advisory Panel, be reviewed by an Oversight Board and be approved by the LA County Board of Supervisors. Joint power authorities (JPAs) would be formed to govern each of the WAGs. Sixty percent participation by member municipalities within each WAG is required to form a JPA, and only one JPA is allowed in each WAG. Once a JPA has been established, implementation of a WQIP or program by a WAG would require the consent of any member jurisdiction that comprises more than 40 percent of the total land area within the WAG. WAGs would be subject to annual audits.

Santa Monica is located within the [Santa Monica Bay WAG](#), which also includes the cities of Agoura Hills, Hermosa Beach, Malibu, Westlake Village, westerly portions of Palos Verdes Estates, Redondo Beach, southerly portion of Rancho Palos Verdes, westerly portions of Calabasas, El Segundo, Manhattan Beach, Rolling Hills Estates, Torrance, portions of the City of Los Angeles, and various portions of unincorporated areas of the County of Los Angeles.

- **LACFCD:** The LACFCD would receive 10 percent of the revenues collected to provide administration, research, water quality monitoring, engineering and financial reports, and assistance to municipalities and WAGs.
- **Oversight Board:** The ordinance would create an Oversight Board which would conduct public hearings and make findings and recommendations to the Board of Supervisors on matters related to:
 - WQIPs submitted by WAGs;
 - project selection and project selection criteria;
 - municipal projects and programs costing more than \$1 million; and
 - appropriate use of Water Quality Fees

As currently proposed, the Board would consist of 13 members: each of the nine Watershed Authority Groups would appoint one member and the Board of Supervisors would appoint one member from the environmental community, one to represent the LACFCD, and two members from the general public.

Eligible Expenditures

All funds would be required to be completely dedicated to water quality improvement programs and projects. The Ordinance encourages “sustainable solutions” that provide multiple objectives such as:

- Protecting and enhancing available groundwater supply through rain water harvesting and ground water replenishment
- Water conservation/use/reuse

- Protection of open space and natural areas that provide water quality benefits
- Creation or restoration of wetlands, riparian and coastal habitats

Expenditures can include:

- Construction of water quality facilities
- MS4 (municipal separate storm sewer system) permits
- Studies and monitoring
- Existing programs
- Maintenance of new and existing projects and programs
- Education

Funds collected through WQFI cannot be used:

- to pay back previous water quality improvement efforts;
- for non-water quality components of projects and programs; or
- for fines/violations or any expense associated with litigation.

Next Steps

Following adoption of the draft WQFI ordinance by the Los Angeles County Board of Supervisors, currently scheduled for June 6, 2012, LACFCD is proposing to conduct a vote of property owners (funded by the County) in compliance with Proposition 218. The vote would be a return-by-mail ballot sent to all property owners of record. There is one vote per parcel, regardless of size. Passage requires 51% of all *returned* ballots. The LACFCD, working with the research firm of Fairbank, Maslin, Maullin, Metz & Associates, conducted focus groups and several public opinion surveys in the past few years. The most recent surveys (conducted in 2011) determined that property owner support is at about 60%, which is higher than what is needed for passage. The vote is tentatively planned for spring 2013.

Potential Impacts and Benefits to Santa Monica

As noted above, the current annual average cost to the average single family property owner in Santa Monica for stormwater mitigation is \$127.65 for the Stormwater Management User Fee and Measure V Clean Beaches and Oceans Parcel Tax. If the WQFI were to be adopted by Los Angeles County voters that cost would increase by \$54 per year to \$181.65.

The City currently collects approximately \$1,200,000 through the Stormwater Management User Fee and \$2,790,000 through Measure V (this amount increases each year based on the CPI escalator) each year to pay for construction, operation and maintenance of stormwater infrastructure and treatment systems throughout Santa Monica. As previously noted, the Stormwater Management User Fee does not contain a CPI escalator, so the annual fees collected have not changed since the fee was established in 1995. Because of this, annual cost increases for operations and maintenance of stormwater infrastructure funded by the Stormwater Management User Fee have caused the Stormwater Management Fund to be overdrawn in FY 2009-10, and the Fund has required subsidies since that time. During the current fiscal year approximately \$1,100,000 will be transferred from the Measure V Fund to the Stormwater Management Fund to maintain a positive fund balance. Staff has determined that the costs to construct and maintain the stormwater infrastructure necessary to comply with the terms of the current NPDES permit cannot be met using existing funding sources beyond 2015. Staff has calculated that the rate of the Stormwater Management User Fee would need to be doubled to \$72 per year and an annual CPI escalator would need to be added to ensure that both funds are self-sustaining beyond 2015. This change would need to be ratified by Santa Monica voters per the terms of Proposition 218.

The WQFI preliminary estimates show that about \$2,156,000 in WQFI fees would be collected annually from Santa Monica property owners. Forty percent or \$862,400 would be returned to the City for local projects and fifty percent or \$1,078,000 would be allocated to the Santa Monica Bay WAG for regional projects located anywhere within

the watershed. The proposed ordinance does not include an annual CPI escalator so this revenue would remain constant from year to year.

The Santa Monica Bay WAG would be comprised of 16 city members with Santa Monica having one vote. Los Angeles County approval would be required for the Plan as well as any funding of projects that comprise over 40% of the Santa Monica Bay WAG. This provision creates concern. While the City will receive 40% of any fees collected in Santa Monica, Santa Monica will be one of 16 votes on the use of the other over \$1 million collected from Santa Monica property owners. These funds must go towards regional projects as determined by the 16 member WAG which covers an area from Malibu and Westlake Village on the north, all the way to Rancho Palos Verde and Rolling Hills on the south.

The City of Santa Monica has been a leader in stormwater management and intends to continue that role because of the positive effects it has on the environment. However, this fourth assessment of property taxes (Santa Monica property owners also pay a Los Angeles County flood control property fee in addition to the two Santa Monica assessments) for largely regional projects may limit Santa Monica's ability to ask voters in the future for additional funding to support the City's stormwater infrastructure and treatment systems. Santa Monica's ability to meet its financial requirements for continued local water quality improvements may be negatively impacted by the WQFI.

In addition, the LARWQCB is nearing enactment of a new municipal NPDES permit that is potentially more prescriptive than any previous permit. Because of the numeric limitations proposed in the new permit, the cost and methodology of achieving all the numeric limits are unknown at this time. More information about Santa Monica's cost of implementing and maintaining the new permit requirements is needed.

Summary

The Los Angeles County Flood Control District has proposed a Water Quality Funding Initiative to raise funds to address urban runoff pollution and water quality in Los Angeles County. If approved by the voters, all property owners in Los Angeles County would be assessed an annual fee based on the property size and land use. The average fee for the average single family residential parcel would be \$54. Currently Santa Monica single family home owners are paying two urban runoff parcel fees which fund water quality improvements within Santa Monica: \$91.65 per year for Measure V and \$36 per year for the Stormwater Parcel Fee. And they are paying one LA County flood control fee. If the second County fee is adopted by the voters, Santa Monica homeowners' total annual fees would rise from \$127.65 to \$181.65 (this total does not include the 1st county flood control fee).

The revenues from the County fee would be split with 10% going to the County, 40% going to municipalities, in the same proportion as the amount of fees collected within each municipality, and 50% to nine Watershed Authority Groups (WAGs) for the completion of regional watershed-based projects. It is estimated that Santa Monica would receive about \$862,400 per year through its 40% apportionment to fund water quality improvement projects in the city. Each WAG governing board would be required to develop an annual Water Quality Improvement Plan (WQIP) for the watershed which identifies and prioritizes regional watershed-based projects for funding using the 50% apportionment to the WAGs. Santa Monica is within the Santa Monica Bay WAG and would be able to appoint one voting member to its governing board.

Staff is concerned about directing property owners' fees towards regional projects and about the City's future ability to generate sufficient revenues for local stormwater infrastructure and treatment.

The County Board of Supervisors is scheduled to vote on the draft WQFI ordinance on June 6, 2012. If the Board approves the draft ordinance the county plans go to the voters with this initiative in spring 2013 using a mailed ballot to all property owners.

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Attachment: [Draft LACFCD Water Quality Funding Initiative Ordinance](#)