



San Gabriel Valley Council of Governments

AGENDA AND NOTICE

OF THE JOINT MEETING OF THE WATER POLICY COMMITTEE & WATER TECHNICAL ADVISORY COMMITTEE (TAC)

Tuesday, June 12, 2018, 10:00 AM

Upper San Gabriel Valley Municipal Water District – 602 E. Huntington Dr., Monrovia, CA

Water Policy Committee

Chair: Diana Mahmud

City of South Pasadena

Vice-Chair: Judy Nelson

City of Glendora

Members

Claremont

Diamond Bar

Glendora

Monrovia

Rosemead

Sierra Madre

South Pasadena

West Covina

Water TAC

Chair: David Dolphin

City of Alhambra

Vice Chair:

Upper San Gabriel Valley

Municipal Water District

Members

Alhambra

Arcadia

Bradbury

Covina

Monrovia

Pomona

Sierra Madre

South Pasadena

LA County DPW

San Gabriel Valley MWD

Upper San Gabriel Valley

MWD

Ex-Officio Members

LA County Sanitation

Districts

SG Basin Watermaster

Thank you for participating in today's meeting. The Water Committee encourages public participation and invites you to share your views on agenda items.

MEETINGS: *Regular Meetings of the Water Committee are held on the third Wednesday of each month at 10:00 AM at the Upper San Gabriel Valley Municipal Water District Offices 602 E. Huntington Drive, Suite B Monrovia, CA 91016.* The agenda packet is available at the San Gabriel Valley Council of Government's (SGVCOG) Office, 1000 South Fremont Avenue, Suite 10210, Alhambra, CA, and on the website, www.sgvco.org. Copies are available via email upon request (sgv@sgvco.org). Documents distributed to a majority of the Committee after the posting will be available for review in the SGVCOG office and on the SGVCOG website. Your attendance at this public meeting may result in the recording of your voice.

CITIZEN PARTICIPATION: Your participation is welcomed and invited at all Water Committee and Water TAC meetings. Time is reserved at each regular meeting for those who wish to address the Committee. SGVCOG requests that persons addressing the Committee refrain from making personal, slanderous, profane or disruptive remarks.

TO ADDRESS THE COMMITTEE: At a regular meeting, the public may comment on any matter within the jurisdiction of the Committee during the public comment period and may also comment on any agenda item at the time it is discussed. At a special meeting, the public may only comment on items that are on the agenda. Members of the public wishing to speak are asked to complete a comment card or simply rise to be recognized when the Chair asks for public comments to speak. We ask that members of the public state their name for the record and keep their remarks brief. If several persons wish to address the Committee on a single item, the Chair may impose a time limit on individual remarks at the beginning of discussion. **The Water Committee and Water TAC may not discuss or vote on items not on the agenda.**

AGENDA ITEMS: The Agenda contains the regular order of business of the Water Committee and the Water TAC. Items on the Agenda have generally been reviewed and investigated by the staff in advance of the meeting so that the WRWG Committee can be fully informed about a matter before making its decision.

CONSENT CALENDAR: Items listed on the Consent Calendar are considered to be routine and will be acted upon by one motion. There will be no separate discussion on these items unless a Committee member or citizen so requests. In this event, the item will be removed from the Consent Calendar and considered after the Consent Calendar. If you would like an item on the Consent Calendar discussed, simply tell Staff or a member of the Committee.



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the SGVCOG office at (626) 457-1800. Notification 48 hours prior to the meeting will enable the SGVCOG to make reasonable arrangement to ensure accessibility to this meeting.



Preliminary Business

1. Call to Order
2. Roll Call
3. Public Comment (*If necessary, the Chair may place reasonable time limits on all comments*)

CONSENT CALENDAR (*It is anticipated that the Water Committee/TAC may act on the following matters*)

4. Water Committee/TAC Meeting Minutes – 5/8/2018 Page 1
Recommended Action: Approve.

PRESENTATION

ACTION ITEMS (*It is anticipated that the Water Committee/TAC may act on the following matters*)

5. Election of Chair and Vice Chair for the Water Policy Committee for 2018-2019
Recommended action: receive nominations and elect Chair and Vice Chair for 2018-2019
6. Election of Chair and Vice Chair for the Water Technical Advisory Committee for 2018-2019
Recommended action: receive nominations and elect Chair and Vice Chair of the Water TAC for 2018 -2019.
7. S. 2800 America’s Water Infrastructure Act of 2018 (Barrasso)/H.R. 8 Water Resources Development Act of 2018 (Shuster) Page 5
Recommended action: recommend that the Governing Board support Sections 5001, 5002, and 5006 of S. 2800 and urge that similar language be included in the reconciled federal legislation.
8. SB 1133 (Portantino) Page 25
Recommend action: recommend that the Governing Board support SB 1133 (Portantino)

DISCUSSION ITEMS (*It is anticipated that the Water Committee/TAC may act on the following matters*)

9. Safe, Clean Water update Page 35
- Recommended Action: for Information

INFORMATION ITEMS

10. Legislative Updates:
Recommended Action: for information
 - AB 2538 (Rubio) Page 73
 - SB 1422 (Portantino)
 - AB 1668 (Friedman)/SB 606 (Hertzberg) Page 75
11. Regulatory Updates:
EPA: Discharges of Pollutants via a Direct Hydrologic Connection to Surface Water
Recommended Action: for information. Page 79
12. E/WMP Updates
 - RH/SGR
 - East SGV
 - ULAR*Recommended Action: for information.*
13. Water Boards Update
Recommended Action: for information.
14. Water Supply Update
Recommended Action: for information.
15. Stormwater Litigation Update
Recommended Action: for information

EXECUTIVE DIRECTOR’S COMMENTS

CHAIR'S REPORT

ANNOUNCEMENTS

ADJOUR



SGVCOG Joint Water Policy Committee/TAC Unapproved Minutes

Date: May 8, 2018
Time: 10:00 AM
Location: Upper San Gabriel Valley Municipal Water District
602 E. Huntington Drive, Monrovia, CA

PRELIMINARY BUSINESS

1. Call to Order: The meeting was called to order at 10:02 A.M.
2. Roll Call

Water Policy Committee Members Present

S. Pedroza, Claremont
N. Lyons, Diamond Bar
J. Nelson, Glendora
G. Crudgington, Monrovia
M. Clark, Rosemead
J. Capoccia, Sierra Madre
D. Mahmud, South Pasadena
M. Spence, West Covina

Water Policy Committee Members Absent

Water TAC Members Present

D. Dolphin, Alhambra
V. Hevener, Arcadia
B. Lathrop, K. Kearney, Bradbury
S. Costandi, Covina
A. Tachiki, Monrovia
J. Carver, Pomona
J. Carlson, Sierra Madre
M. Lambos, A. Lasso, LACDPW

Water TAC Members Absent

SGVMWD
USGVMWD

Ex Officio Members Present

S. Green, LACSD
A. Jimenez, Watermaster

Ex Officio Members Absent

Guests

M. Lyons, Asm Holden
W. La, SGMRC
D. Dillon, El Monte

D. Correy, V. Murphy, Sen Portantino
R. Tahir, TECs

SGVCOG Staff

E. Wolf
K. Ward
P. Hubler

3. Public Comment. R. Tahir read into the record portions of his Safe, Clean Water comment letter that he sent to Supervisor Barger in which he states that he cannot recommend

- moving forward with the proposed stormwater tax plan for the following reasons:
- TMDLs were improperly established and incorrectly applied to various receiving waters.
 - The State Auditor’s report found that the Regional Board failed to consider the costs associated with the 2012 permit.
 - A verdict in favor of ongoing litigation challenging the validity of the MS4 permit process, including E/WMPs, may eliminate the need for the stormwater tax.

CONSENT CALENDAR

4. Water Committee/TAC Meeting Minutes – 4/10/2018
There was a motion to approve the minutes. (M/S: J. Nelson/J. Cappocia).
[MOTION PASSED]

AYES:	Claremont, Diamond Bar, Glendora, Monrovia, Rosemead, Sierra Madre, South Pasadena, West Covina, Alhambra, Arcadia, Bradbury, Covina, Pomona, LACDPW
NOES:	
ABSTAIN:	
ABSENT:	SGVMWD, USGVMWD

PRESENTATION

ACTION ITEMS

DISCUSSION ITEMS

INFORMATION ITEMS

5. Safe, Clean Water update
The committee received a presentation on the SCW program draft of April 12, 2018. Members provided the following comments:
- There was a recommendation to consider basing the parcel tax on runoff coefficient rates found in the *Hydrology Manual* produced by the Los Angeles Department of Public Works.
 - M. Lombos stated that the Stakeholder Advisory Committee would receive an update on the taxing method at its May 30th meeting, including more information of LIDAR, the technology the County will use to detect impermeable surface.
 - D. Mahmud stated her view that the program should include \$20 million over 5 years for scientific studies to update the basin plan—an amount equal to the County’s proposed amount in support of education and training programs.
 - J. Cappocia recommended removing the Open Space seat on the Watershed Area Steering Committee and limiting the number of Community Stakeholder seats to one.
 - D. Mahmud reported the County’s timeline. The BOS will conduct a public hearing on June 26th, by which time a new draft of the program will be available.
 - Mahmud expressed concerns that the Credit, Rebate, Incentive program has yet to be released.
6. Legislative Updates:
- SB 1133 (Portantino). The bill, which allows permittees to fund scientific studies aimed at updating the Basin Plan, passed out of the Senate Environmental Quality (EQ) committee with major amendments that stripped all language stating specifically how the money must be spent. It is now at Appropriations. Staff will continue monitoring the bill.

- SB 1422 (Portantino). This bill requires the State Water Board to develop a method for testing drinking water for the presence of microplastics, and then directs the use of this method in testing. The committee was concerned that the testing constitutes an unfunded state mandate. SB 1422 passed out of EQ and is now at Appropriations. Staff will continue monitoring.
 - H.R. 465/2355, S. 692. S. Green updated this item, stating that these competing bills have some differences but many similarities. Congress is discussion options for reconciling the bills and may use the Water Resource Development Act (WRDA) as a vehicle for moving forward some of the aspects by adding them to WRDA.
 - H.R. 5127. This is a Congresswoman Napolitano bill establishing grants promoting water recycling and reuse. Since this is currently a partisan bill, with no Republican support, it is unlikely to move. There is discussion of also adding elements of this to WRDA.
 - AB 2538: April 24th testimony before the Environmental Safety and Toxic Materials Committee. D. Mahmud reported that the committee unanimously supported the bill, there was no opposition presented in committee, and the bill was forwarded to Appropriations.
7. Regulatory Updates:
There were no updates.
8. E/WMP Updates. Each of the E/WMP groups reported that they are currently working on their presentation for the Regional Board’s MS4 workshop.
- RH/SGR
 - East SGV
 - ULAR
9. Water Boards Update
- Update on status of 303(d) list. On April 6, 2018, the EPA approved the 303(d) list. S. Green reported that she is aware of several lawsuits brought by environmental groups who do not agree with some of the delistings.
 - May 10: MS4 Workshop. The Regional Water Board is hosting an MS4 workshop on May 10th, beginning at 1:00 p.m. The workshop marks the kickoff of the crafting of the new permit by hearing from permittees what worked and what concerns they have about the current permit. The Board has invited 15 permittees/WMPs/EWMPs to give short presentations highlighting their accomplishments over the last five-year permit cycle.
10. Water Supply Update. A. Jimenez reported that the key well is currently at 181.6 feet. The Watermaster has set the operating safe yield at 150 feet for FY 2018-2023. A \$70 Resource Development Assessment has been levied. Our allocation from the State Water Project stands at 30%.

EXECUTIVE DIRECTOR’S COMMENTS

E. Wolf reminded members that Water Policy Committee and Water TAC elections will be held in June.

CHAIR’S REPORT

ANNOUNCEMENTS

ADJOURN

The meeting adjourned at 12:01 p.m.

DATE: June 12, 2018
TO: Water Policy/Technical Advisory Committee
FROM: Marisa Creter, Executive Director
RE: **S. 2800/H.R. 8**

RECOMMENDED ACTION

Recommend that the Governing Board support Sections 5001 and 5006 of S. 2800 and urge that similar language be included in the reconciled federal legislation.

BACKGROUND

S. 2800, America's Water Infrastructure Act of 2018 (Barrasso), and H.R. 8, Water Resources Development Act of 2018 (Shuster), are companion bills in the U.S. Senate and House of Representatives respectively. Every two years, a bill similar to H.R. 8 must be passed in order to fund the U.S. Army Corps of Engineers. This year, these two bills include additional language addressing other water and stormwater policy and infrastructure goals, some of which are issues that the SGVCOG has long advocated for. Specifically, S. 280 includes the following sections:

- Stormwater Infrastructure Funding Task Force: Section 5001 creates a task force of public and private interests to study and recommend how to improve funding and financing of stormwater infrastructure.
- Integrated Plans: Section 5006 incorporates the legislation from S. 962 (previously passed by the Senate) that would allow for integrated planning, including water, wastewater, stormwater, sanitary sewer, and water quality-based effluent limits. Section 5006 includes establishment of the position of municipal ombudsman within the EPA and directs the EPA to update its financial capability assessment guidelines.

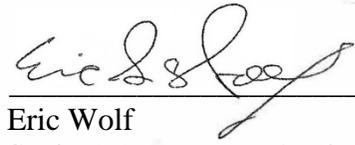
Both bills were presented on the floor of their respective chambers on June 6, 2018. Eventually, they will need to be reconciled and it is hoped that the final version would continue to include language similar to Sections 5001 and 5006 of S. 2800.

RECOMMENDED ACTION

Recommend that the Governing Board support Sections 5001 and 5006 of S. 2800 and urge that similar language be included in the reconciled federal legislation.

REPORT

Prepared by:



Eric Wolf
Senior Management Analyst

Approved by:



Marisa Creter
Executive Director

ATTACHMENT

Attachment A – Sections 5001 and 5006 of S. 2800

Calendar No. 425

115TH CONGRESS
2D SESSION

S. 2800

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 8, 2018

Mr. BARRASSO (for himself, Mr. CARPER, Mr. INHOFE, Mr. CARDIN, Mr. WICKER, Mrs. CAPITO, Mr. VAN HOLLEN, Mr. BOOZMAN, Mr. WHITEHOUSE, and Mr. SULLIVAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

MAY 22, 2018

Reported by Mr. BARRASSO, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To provide for the conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 *sources Development Act of 1996 (110 Stat.*
 2 *3757), and modified by section 313 of the Water*
 3 *Resources Development Act of 1999 (113 Stat.*
 4 *301).*

5 *(I) The project for flood control, McMicken*
 6 *Dam, Arizona, authorized by section 304 of the*
 7 *Act of August 7, 1953 (67 Stat. 450, chapter*
 8 *342).*

9 *(J) The project for flood protection, Cave*
 10 *Buttes Dam, Arizona, authorized by section 204*
 11 *of the Flood Control Act of 1965 (79 Stat. 1083).*

12 *(K) The project for navigation, Mississippi*
 13 *River to Shreveport, Louisiana, Red River Wa-*
 14 *terway, authorized by section 101 of the River*
 15 *and Harbor Act of 1968 (82 Stat. 731).*

16 **TITLE V—EPA-RELATED**
 17 **PROVISIONS**

18 **SEC. 5001. STORMWATER INFRASTRUCTURE FUNDING TASK**
 19 **FORCE.**

20 *(a) IN GENERAL.—Not later than 180 days after the*
 21 *date of enactment of this Act, the Administrator of the En-*
 22 *vironmental Protection Agency (referred to in this section*
 23 *as the “Administrator”) shall establish a voluntary*
 24 *stormwater infrastructure funding task force comprised of*
 25 *representatives of public, private, and Federal entities to*

1 *study and develop recommendations to improve the funding*
 2 *and financing of stormwater infrastructure to ensure*
 3 *that—*

4 (1) *municipalities are able to identify appro-*
 5 *priate funding sources; and*

6 (2) *funding is—*

7 (A) *available in all States;*

8 (B) *affordable (based on the integrated*
 9 *planning guidelines described in the Integrated*
 10 *Municipal Stormwater and Wastewater Plan-*
 11 *ning Approach Framework, issued by the Envi-*
 12 *ronmental Protection Agency and dated June 5,*
 13 *2012); and*

14 (C) *sufficient to support capital expendi-*
 15 *tures and long-term operation and maintenance*
 16 *costs.*

17 (b) *REPORT.—Not later than 18 months after the date*
 18 *of enactment of this Act, the Administrator shall submit*
 19 *to Congress a report that describes the results of the study*
 20 *under subsection (a).*

21 **SEC. 5002. REAUTHORIZATION OF THE WATER INFRASTRUC-**
 22 **TURE FINANCE AND INNOVATION ACT.**

23 *Section 5033 of the Water Infrastructure Finance and*
 24 *Innovation Act of 2014 (33 U.S.C. 3912) is amended—*

1 **SEC. 5006. WATER INFRASTRUCTURE FLEXIBILITY.**

2 (a) *DEFINITION OF ADMINISTRATOR.*—*In this section,*
3 *the term “Administrator” means the Administrator of the*
4 *Environmental Protection Agency.*

5 (b) *INTEGRATED PLANS.*—

6 (1) *INTEGRATED PLANS.*—*Section 402 of the*
7 *Federal Water Pollution Control Act (33 U.S.C. 1342)*
8 *is amended by adding at the end the following:*

9 “(s) *INTEGRATED PLAN PERMITS.*—

10 “(1) *DEFINITIONS.*—*In this subsection:*

11 “(A) *GREEN INFRASTRUCTURE.*—*The term*
12 *‘green infrastructure’ means the range of meas-*
13 *ures that use plant or soil systems, permeable*
14 *pavement or other permeable surfaces or sub-*
15 *strates, stormwater harvest and reuse, or land-*
16 *scaping to store, infiltrate, or evapotranspirate*
17 *stormwater and reduce flows to sewer systems or*
18 *to surface waters.*

19 “(B) *INTEGRATED PLAN.*—*The term ‘inte-*
20 *grated plan’ has the meaning given in Part III*
21 *of the Integrated Municipal Stormwater and*
22 *Wastewater Planning Approach Framework,*
23 *issued by the Environmental Protection Agency*
24 *and dated June 5, 2012.*

25 “(C) *MUNICIPAL DISCHARGE.*—

1 “(i) *IN GENERAL.*—*The term ‘municipal discharge’ means a discharge from a*
 2 *treatment works (as defined in section 212)*
 3 *or a discharge from a municipal storm*
 4 *sewer under subsection (p).*

6 “(ii) *INCLUSION.*—*The term ‘municipal discharge’ includes a discharge of*
 7 *wastewater or storm water collected from*
 8 *multiple municipalities if the discharge is*
 9 *covered by the same permit issued under*
 10 *this section.*

12 “(2) *INTEGRATED PLAN.*—

13 “(A) *IN GENERAL.*—*The Administrator (or*
 14 *a State, in the case of a permit program ap-*
 15 *proved under subsection (b)) shall inform a mu-*
 16 *nicipal permittee or multiple municipal permit-*
 17 *tees of the opportunity to develop an integrated*
 18 *plan.*

19 “(B) *SCOPE OF PERMIT INCORPORATING IN-*
 20 *TEGRATED PLAN.*—*A permit issued under this*
 21 *subsection that incorporates an integrated plan*
 22 *may integrate all requirements under this Act*
 23 *addressed in the integrated plan, including re-*
 24 *quirements relating to—*

25 “(i) *a combined sewer overflow;*

1 “(ii) a capacity, management, oper-
2 ation, and maintenance program for sani-
3 tary sewer collection systems;

4 “(iii) a municipal stormwater dis-
5 charge;

6 “(iv) a municipal wastewater dis-
7 charge; and

8 “(v) a water quality-based effluent lim-
9 itation to implement an applicable
10 wasteload allocation in a total maximum
11 daily load.

12 “(3) COMPLIANCE SCHEDULES.—

13 “(A) IN GENERAL.—A permit for a munic-
14 ipal discharge by a municipality that incor-
15 porates an integrated plan may include a sched-
16 ule of compliance, under which actions taken to
17 meet any applicable water quality-based effluent
18 limitation may be implemented over more than
19 1 permit term if the compliance schedules are
20 authorized by State water quality standards.

21 “(B) INCLUSION.—Actions subject to a com-
22 pliance schedule under subparagraph (A) may
23 include green infrastructure if implemented as
24 part of a water quality-based effluent limitation.

1 “(C) *REVIEW.*—*A schedule of compliance*
2 *may be reviewed each time the permit is re-*
3 *newed.*

4 “(4) *EXISTING AUTHORITIES RETAINED.*—

5 “(A) *APPLICABLE STANDARDS.*—*Nothing in*
6 *this subsection modifies any obligation to comply*
7 *with applicable technology and water quality-*
8 *based effluent limitations under this Act.*

9 “(B) *FLEXIBILITY.*—*Nothing in this sub-*
10 *section reduces or eliminates any flexibility*
11 *available under this Act, including the authority*
12 *of—*

13 “(i) *a State to revise a water quality*
14 *standard after a use attainability analysis*
15 *under section 131.10(g) of title 40, Code of*
16 *Federal Regulations (or a successor regula-*
17 *tion), subject to the approval of the Admin-*
18 *istrator under section 303(c); and*

19 “(ii) *the Administrator or a State to*
20 *authorize a schedule of compliance that ex-*
21 *tends beyond the date of expiration of a per-*
22 *mit term if the schedule of compliance meets*
23 *the requirements of section 122.47 of title*
24 *40, Code of Federal Regulations (as in effect*
25 *on the date of enactment of this subsection).*

1 “(5) *CLARIFICATION OF STATE AUTHORITY.*—

2 “(A) *IN GENERAL.*—*Nothing in section*
3 *301(b)(1)(C) precludes a State from authorizing*
4 *in the water quality standards of the State the*
5 *issuance of a schedule of compliance to meet*
6 *water quality-based effluent limitations in per-*
7 *mits that incorporate provisions of an integrated*
8 *plan.*

9 “(B) *TRANSITION RULE.*—*In any case in*
10 *which a discharge is subject to a judicial order*
11 *or consent decree as of the date of enactment of*
12 *the America’s Water Infrastructure Act of 2018*
13 *resolving an enforcement action under this Act,*
14 *any schedule of compliance issued pursuant to*
15 *an authorization in a State water quality stand-*
16 *ard shall not revise a schedule of compliance in*
17 *that order or decree unless the order or decree is*
18 *modified by agreement of the parties and the*
19 *court.”.*

20 (2) *MUNICIPAL OMBUDSMAN.*—

21 (A) *ESTABLISHMENT.*—*There is established*
22 *within the Office of the Administrator an Office*
23 *of the Municipal Ombudsman.*

1 (B) *GENERAL DUTIES.*—*The duties of the*
2 *municipal ombudsman shall include the provi-*
3 *sion of—*

4 (i) *technical assistance to municipali-*
5 *ties seeking to comply with the Federal*
6 *Water Pollution Control Act (33 U.S.C.*
7 *1251 et seq.) and the Safe Drinking Water*
8 *Act (42 U.S.C. 300f et seq.); and*

9 (ii) *information to the Administrator*
10 *to help the Administrator ensure that agen-*
11 *cy policies are implemented by all offices of*
12 *the Environmental Protection Agency, in-*
13 *cluding regional offices.*

14 (C) *ACTIONS REQUIRED.*—*The municipal*
15 *ombudsman shall work with appropriate offices*
16 *at the headquarters and regional offices of the*
17 *Environmental Protection Agency to ensure that*
18 *the municipality seeking assistance is provided*
19 *information—*

20 (i) *about available Federal financial*
21 *assistance for which the municipality is eli-*
22 *gible;*

23 (ii) *about flexibility available under*
24 *the Federal Water Pollution Control Act (33*
25 *U.S.C. 1251 et seq.) and, if applicable, the*

1 *Safe Drinking Water Act (42 U.S.C. 300f et*
2 *seq.); and*

3 *(iii) regarding the opportunity to de-*
4 *velop an integrated plan, as defined in sec-*
5 *tion 402(s)(1)(B) of the Federal Water Pol-*
6 *lution Control Act (as added by paragraph*
7 *(1)).*

8 *(D) INFORMATION SHARING.—The munic-*
9 *ipal ombudsman shall publish on the website of*
10 *the Environmental Protection Agency—*

11 *(i) general information relating to—*

12 *(I) the technical assistance re-*
13 *ferred to in subparagraph (B)(i);*

14 *(II) the financial assistance re-*
15 *ferred to in subparagraph (C)(i);*

16 *(III) the flexibility referred to in*
17 *subparagraph (C)(ii); and*

18 *(IV) any resources related to inte-*
19 *grated plans developed by the Adminis-*
20 *trator; and*

21 *(ii) a copy of each permit, order, or ju-*
22 *dicial consent decree that implements or in-*
23 *corporates an integrated plan.*

1 (3) *MUNICIPAL ENFORCEMENT.*—Section 309 of
 2 the *Federal Water Pollution Control Act* (33 U.S.C.
 3 1319) is amended by adding at the end the following:

4 “(h) *IMPLEMENTATION OF INTEGRATED PLANS*
 5 *THROUGH ENFORCEMENT TOOLS.*—

6 “(1) *IN GENERAL.*—In conjunction with an en-
 7 forcement action under subsection (a) or (b) relating
 8 to municipal discharges, the Administrator shall in-
 9 form a municipality of the opportunity to develop an
 10 integrated plan (as defined in section 402(s)).

11 “(2) *MODIFICATION.*—Any municipality under
 12 an administrative order under subsection (a) or set-
 13 tlement agreement (including a judicial consent de-
 14 cree) under subsection (b) that has developed an inte-
 15 grated plan consistent with section 402(s) may re-
 16 quest a modification of the administrative order or
 17 settlement agreement based on that integrated plan.”.

18 “(4) *REPORT TO CONGRESS.*—Not later than 2
 19 years after the date of enactment of this Act, the Ad-
 20 ministrator shall submit to the Committee on Envi-
 21 ronment and Public Works of the Senate and the
 22 Committee on Transportation and Infrastructure of
 23 the House of Representatives and make publicly
 24 available a report on each integrated plan developed
 25 and implemented through a permit, order, or judicial

1 “(b) *DUTIES.*—*The Administrator shall ensure that*
2 *the Office of Water—*

3 “(1) *promotes the use of green infrastructure in*
4 *the programs of the Environmental Protection Agen-*
5 *cy; and*

6 “(2) *coordinates efforts to increase the use of*
7 *green infrastructure with—*

8 “(A) *other Federal departments and agen-*
9 *cies;*

10 “(B) *State, tribal, and local governments;*
11 *and*

12 “(C) *the private sector.*

13 “(c) *REGIONAL GREEN INFRASTRUCTURE PRO-*
14 *MOTION.*—*The Administrator shall direct each regional of-*
15 *fice of the Environmental Protection Agency, as appro-*
16 *priate based on local factors, and consistent with the re-*
17 *quirements of this Act, to promote and integrate the use*
18 *of green infrastructure within the region that includes—*

19 “(1) *outreach and training regarding green in-*
20 *frastructure implementation for State, tribal, and*
21 *local governments, tribal communities, and the pri-*
22 *ivate sector; and*

23 “(2) *the incorporation of green infrastructure*
24 *into permitting and other regulatory programs, codes,*
25 *and ordinance development, including the require-*

1 *ments under consent decrees and settlement agree-*
 2 *ments in enforcement actions.*

3 “(d) *GREEN INFRASTRUCTURE INFORMATION SHAR-*
 4 *ING.—The Administrator shall promote green infrastruc-*
 5 *ture information sharing, including through an Internet*
 6 *website, to share information with, and provide technical*
 7 *assistance to, State, tribal, and local governments, tribal*
 8 *communities, the private sector, and the public regarding*
 9 *green infrastructure approaches for—*

10 “(1) *reducing water pollution;*

11 “(2) *protecting water resources;*

12 “(3) *complying with regulatory requirements;*

13 *and*

14 “(4) *achieving other environmental, public*
 15 *health, and community goals.”.*

16 (d) *FINANCIAL CAPABILITY GUIDANCE.—*

17 (1) *DEFINITIONS.—In this subsection:*

18 (A) *AFFORDABILITY.—The term “afford-*
 19 *ability” means, with respect to payment of a*
 20 *utility bill, a measure of whether an individual*
 21 *customer or household can pay the bill without*
 22 *undue hardship or unreasonable sacrifice in the*
 23 *essential lifestyle or spending patterns of the in-*
 24 *dividual or household, as determined by the Ad-*
 25 *ministrator.*

1 (B) *FINANCIAL CAPABILITY.*—The term “fi-
2 nancial capability” means the financial capa-
3 bility of a community to make investments nec-
4 essary to make water quality or drinking water
5 improvements.

6 (C) *GUIDANCE.*—The term “guidance”
7 means the guidance published by the Adminis-
8 trator entitled “Combined Sewer Overflows—
9 Guidance for Financial Capability Assessment
10 and Schedule Development” and dated February
11 1997, as applicable to the combined sewer over-
12 flows and sanitary sewer overflows guidance
13 published by the Administrator entitled “Finan-
14 cial Capability Assessment Framework” and
15 dated November 24, 2014.

16 (2) *USE OF MEDIAN HOUSEHOLD INCOME.*—The
17 Administrator shall not use median household income
18 as the sole indicator of affordability for a residential
19 household.

20 (3) *REVISED GUIDANCE.*—

21 (A) *IN GENERAL.*—Not later than 1 year
22 after the date of completion of the National
23 Academy of Public Administration study to es-
24 tablish a definition and framework for commu-
25 nity affordability required by Senate Report

1 114–70, accompanying S. 1645 (114th Con-
2 gress), the Administrator shall revise the guid-
3 ance described in paragraph (1)(C).

4 (B) *USE OF GUIDANCE.*—Beginning on the
5 date on which the revised guidance referred to in
6 subparagraph (A) is finalized, the Administrator
7 shall use the revised guidance in lieu of the guid-
8 ance described in paragraph (1)(C).

9 (4) *CONSIDERATION AND CONSULTATION.*—

10 (A) *CONSIDERATION.*—In revising the guid-
11 ance, the Administrator shall consider—

12 (i) the recommendations of the study
13 referred to in paragraph (3)(A) and any
14 other relevant study, as determined by the
15 Administrator;

16 (ii) local economic conditions, includ-
17 ing site-specific local conditions that should
18 be taken into consideration in analyzing fi-
19 nancial capability;

20 (iii) other essential community invest-
21 ments;

22 (iv) potential adverse impacts on dis-
23 tressed populations, including the percent-
24 age of low-income ratepayers within the
25 service area of a utility and impacts in

1 *communities with disparate economic con-*
2 *ditions throughout the entire service area of*
3 *a utility;*

4 *(v) the degree to which rates of low-in-*
5 *come consumers would be affected by water*
6 *infrastructure investments, the use of rate*
7 *structures, and customer assistance pro-*
8 *grams to address the rates of low-income*
9 *consumers;*

10 *(vi) an evaluation of an array of fac-*
11 *tors, the relative importance of which may*
12 *vary across regions and localities; and*

13 *(vii) the appropriate weight for eco-*
14 *nomi c, public health, and environmental*
15 *benefits.*

16 *(B) CONSULTATION.—Any revised guidance*
17 *issued to replace the guidance shall be developed*
18 *in consultation with stakeholders.*

19 *(5) PUBLICATION AND SUBMISSION.—*

20 *(A) IN GENERAL.—On completion of the re-*
21 *vision of the guidance, the Administrator shall*
22 *publish in the Federal Register and submit to*
23 *the Committee on Environment and Public*
24 *Works of the Senate and the Committee on*

REPORT

DATE: June 12, 2018
TO: Water Policy/Technical Advisory Committee
FROM: Marisa Creter, Executive Director
RE: **SB 1133 (PORTANTINO)**

RECOMMENDED ACTION

Recommend that the Governing Board support SB 1133 (Portantino)

BACKGROUND

SB 1133 was originally set to be heard by this committee in April 2018 but was pulled from the agenda at the request of the author due to the fact that the bill was pending major amendments in the Senate Environmental Quality (EQ) Committee. As originally written, the bill would have allowed the Los Angeles Regional Water Board to receive funding from permittees, including the Los Angeles County Flood Control District, for the purpose of updating the Los Angeles region Basin Plan. It went on to specify the areas of study that those funds could be used for. The EQ Committee stripped all language specifying how the money could be spent. Currently, SB 1133 states only that:

A regional board may accept and spend donations of moneys from a permittee for the purpose of updating a water quality control plan.

As amended, the EQ Committee passed SB 1133 by a vote of 7 to 0 and sent the bill to a full floor vote where it passed 38 to 0. Currently, SB 1133 has been forwarded to the Assembly and is pending a hearing in the Environmental Safety and Toxics Materials Committee.

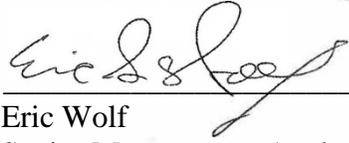
RECOMMENDED ACTION

In January 2018, the Governing Board passed Resolution 18-03, supporting the use of funds collected as part of the proposed Safe, Clean Water stormwater funding program, to fund the cost of studies to update the Basin Plan. SB 1133, as amended, is still consistent with this goal of updating the Basin Plan.

Recommend that the Governing Board support SB 1133 (Portantino)

REPORT

Prepared by:



Eric Wolf
Senior Management Analyst

Approved by:



Marisa Creter
Executive Director

ATTACHMENT

Attachment A – Resolution 18-03

RESOLUTION 18-03

A RESOLUTION OF THE GOVERNING BOARD OF THE SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS (“SGVCOG”) SGVCOG POSITION ON SAFE, CLEAN WATER PROGRAM ELEMENTS

WHEREAS, the Safe, Clean Water Program is the stormwater funding element of Los Angeles County’s (the County) water resilience program; and

WHEREAS, the overall goals of Safe, Clean Water are to fund multi-benefit stormwater projects and programs that increase water supply, improve water quality, and provide community enhancements; and

WHEREAS, the County and Los Angeles County Flood Control District (FCD) have formed a Stakeholder Advisory Committee (SAC) to discuss and provide input to the Safe, Clean Water program elements; and

WHEREAS, the SGVCOG is a member of the SAC;

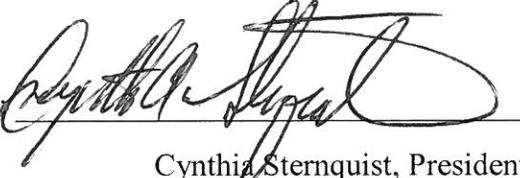
NOW, THEREFORE BE IT RESOLVED, that the Governing Board adopts the following overarching position on Safe, Clean Water program elements and directs its delegates to the SAC to advocate for the following:

- **Regional Funding:** Due to the already high cost of stormwater requirements, the vast majority of revenue from the Safe, Clean Water Program should go to design, construction, and ongoing operations and maintenance of capital projects, especially those identified in approved stormwater permits, not programs.
- **Governance:** Disbursement of Regional Funds should be approved by a strong governance structure, comprised primarily of MS4 permittees, with responsibility for selecting projects according to defined criteria and overseeing how taxpayer money is spent.
- **Local Return:** Cities should have maximum flexibility and independence in spending local return money in a manner consistent with AB 1180.
- **Project Funding Priority.** Funding priority should be given to those projects that cost-effectively address water supply and water quality concerns.
- **Basin Plan.** The Basin Plan establishes the foundation for water quality standards which are then incorporated into MS4 permits. Since the Plan has not received comprehensive review since before stormwater discharges were made subject to it, we support use of the funds allocated to the Flood Control District to fund the cost of studies to update the Basin Plan.

- **Leverage Existing Funding.** Money from existing voter-approved sources should be leveraged as the primary source of funding for community enhancements, leaving all of the stormwater funding raised through this measure strictly for stormwater compliance.

PASSED, APPROVED, and ADOPTED this 18th day of January 2018.

SAN GABRIEL VALLEY COUNCIL OF GOVERNMENTS

By 
Cynthia Sternquist, President

Attest:

I, Marisa Creter, Interim Executive Director and Secretary of the Board of Directors of the San Gabriel Valley Council of Governments, do hereby certify that Resolution 18-03 was adopted at a regular meeting of the Governing Board held on the 18th day of January 2018, by the following roll call vote:

AYES:	Alhambra, Azusa, Baldwin Park, Claremont, Covina, Diamond Bar, Duarte, El Monte, La Canada Flintridge, La Puente, La Verne, Monrovia, Montebello, Monterey Park, Pasadena, Rosemead, San Dimas, San Marino, Sierra Madre, South Pasadena, Temple City, Walnut, LA County District 1, LA County District 4, LA County District 5, Water Districts
NOES:	West Covina
ABSTAIN:	
ABSENT:	Arcadia, Bradbury, Glendora, Industry, Irwindale, Pomona, San Gabriel, South El Monte



Marisa Creter, Secretary

AMENDED IN SENATE APRIL 24, 2018
AMENDED IN SENATE MARCH 19, 2018

SENATE BILL

No. 1133

Introduced by Senator Portantino

February 13, 2018

An act to add Section 13249 to the Water Code, relating to water quality, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1133, as amended, Portantino. California regional water quality control board: water quality control plans: ~~funding: Los Angeles region.~~ *funding.*

Existing law, the Porter-Cologne Water Quality Control Act, requires each California regional water quality control board to adopt water quality control plans and to establish water quality objectives in those plans, considering certain factors, to ensure the reasonable protection of beneficial uses and the prevention of nuisance.

This bill would authorize a regional board to accept and spend donations of moneys from a permittee for the purpose of updating a water quality control plan, thereby making an appropriation. ~~The bill would authorize the California regional water quality control board, Los Angeles region, to accept and spend certain funds from the Los Angeles County Flood Control District to prepare a major revision to the water quality control plan for the Los Angeles region, as prescribed.~~

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. The Legislature finds and declares as follows:~~

2 ~~(a) Consistent with Section 13000 of the Water Code, the quality~~
3 ~~of waters of the state should be regulated to attain the highest water~~
4 ~~quality which is reasonable considering the uses of the water and~~
5 ~~the values involved.~~

6 ~~(b) The water quality control plans adopted by the State Water~~
7 ~~Resources Control Board and the California regional water quality~~
8 ~~control boards pursuant to Section 13240 of the Water Code need~~
9 ~~to be based on the best available science and consider the~~
10 ~~recommendations of the federal Environmental Protection Agency,~~
11 ~~as well as the recommendations of affected state and local agencies.~~

12 ~~(c) Section 13241 of the Water Code lists several important~~
13 ~~factors that water boards are to consider when establishing water~~
14 ~~quality objectives that will ensure the reasonable protection of~~
15 ~~beneficial uses and the prevention of nuisance, and the section also~~
16 ~~recognizes that the quality of water may be changed to some degree~~
17 ~~without unreasonably affecting beneficial uses.~~

18 ~~(d) At the request of the United States Congress, the National~~
19 ~~Research Council examined the basis of the total maximum daily~~
20 ~~load (TMDL) program and explained its findings in a 2001 report~~
21 ~~titled Assessing the TMDL Approach to Water Quality~~
22 ~~Management.~~

23 ~~(e) A finding of the council's report was that scientific~~
24 ~~uncertainty cannot be avoided in water quality programs, and water~~
25 ~~quality regulations should recognize this inherent uncertainty by~~
26 ~~means of flexible adjustable implementation programs.~~

27 ~~(f) The report recommended that states define appropriate~~
28 ~~beneficial use designations, and before TMDL development, refine~~
29 ~~these designations, and use and consider attainability analyses for~~
30 ~~all water bodies.~~

31 ~~(g) The council also recommended that plans implementing~~
32 ~~TMDLs be adaptive, with TMDL goals to be periodically assessed~~
33 ~~and scientific data used to revise the plan, if necessary.~~

34 ~~(h) Permittees and others funded an Environmental Defense~~
35 ~~Sciences report from February 2002, titled A Review of the Los~~
36 ~~Angeles Basin Plan Administrative Record, that provided a detailed~~
37 ~~analysis of the administrative record as had been provided to date~~
38 ~~of the water quality control plan for the Los Angeles region and~~

1 identified four priority areas for water quality control plan reform,
2 as follows:

3 ~~(1) Incorporation of the Water Code Sections 13241 and 13242~~
4 ~~requirements of the Porter-Cologne Water Quality Control Act~~
5 ~~(Division 7 (commencing with Section 13000) of the Water Code).~~

6 ~~(2) Development and implementation of water quality objectives.~~

7 ~~(3) Correction and revision of beneficial use designations.~~

8 ~~(4) Revision of the tributary rule.~~

9 ~~(i) The water quality control plan for the Los Angeles region~~
10 ~~was first developed in 1975 and the last major revision was in~~
11 ~~1994.~~

12 ~~(j) The water quality control plan for the Los Angeles region~~
13 ~~does not thoroughly distinguish between traditional point sources~~
14 ~~and stormwater discharges in the development and application of~~
15 ~~water quality standards.~~

16 ~~(k) California regional water quality control boards have not~~
17 ~~completed major revisions of water quality control plans because~~
18 ~~of staff and financial resource shortages, although they have made~~
19 ~~revisions through the triennial review process.~~

20 ~~(l) California needs to find a way to finance comprehensive~~
21 ~~water quality control plan revisions by all California regional water~~
22 ~~quality control boards.~~

23 ~~(m) The County of Los Angeles is proposing a stormwater~~
24 ~~quality funding measure that could provide a source of funding~~
25 ~~for the California regional water quality control board, Los Angeles~~
26 ~~region, to conduct a major revision to its water quality control plan~~
27 ~~to improve the technical and scientific basis of the plan.~~

28 ~~(n) Allowing the California regional water quality control board,~~
29 ~~Los Angeles region, to accept funds from a stormwater quality~~
30 ~~funding measure would provide funding for a pilot project on how~~
31 ~~to fund and structure necessary major revisions to water quality~~
32 ~~control plans to incorporate new criteria recommended by the~~
33 ~~federal Environmental Protection Agency and bring the plans up~~
34 ~~to date with current science and technology.~~

35 ~~SEC. 2.~~

36 ~~SECTION 1.~~ Section 13249 is added to the Water Code, to
37 read:

38 13249. ~~(a)~~ A regional board may accept and spend donations
39 of moneys from a permittee for the purpose of updating a water

1 ~~quality control plan. plan as consistent with the designated use of~~
2 ~~the funds.~~

3 ~~(b) If the proposed Safe, Clean Water Program is approved by~~
4 ~~the voters of the County of Los Angeles, the California regional~~
5 ~~water quality control board, Los Angeles region, may accept funds~~
6 ~~from the Los Angeles County Flood Control District to prepare a~~
7 ~~major revision to the water quality control plan for the Los Angeles~~
8 ~~region to strengthen the scientific and technical basis for the plan~~
9 ~~as a pilot project for the state. These funds shall be used by the~~
10 ~~regional board only for staff and consultants and direct costs to~~
11 ~~prepare a major revision to the water quality control plan that does~~
12 ~~all of the following:~~

13 ~~(1) Develops a watershed chapter structured to be consistent~~
14 ~~with Sections 13241 and 13242 while integrating a fiscal capability~~
15 ~~assessment process to implement subdivision (d) of Section 13241.~~

16 ~~(2) Recognizes that concrete-lined flood control channels are~~
17 ~~different from natural streams.~~

18 ~~(3) Incorporates a compliance floor above which permittees are~~
19 ~~not expected to comply with water quality objectives.~~

20 ~~(4) Incorporates applicable federal Environmental Protection~~
21 ~~Agency recommended revised water quality criteria.~~

22 ~~(5) Incorporates stormwater-specific water quality objectives~~
23 ~~consistent with the episodic and highly variable nature of~~
24 ~~stormwater and urban runoff.~~

25 ~~(6) Revises the beneficial use chapter to delete potential uses~~
26 ~~and replace them with probable future beneficial uses consistent~~
27 ~~with subdivision (a) of Section 13241.~~

28 ~~(7) Modifies the strategic planning and implementation chapter~~
29 ~~to include a section addressing stormwater and urban runoff, as~~
30 ~~well as a source control strategy and implementation program.~~

31 ~~(8) Develops a thoroughly revised water quality control plan~~
32 ~~treating stormwater as a resource and includes a scientific advisory~~
33 ~~panel and a stakeholder advisory committee.~~

O

SAFE, CLEAN WATER PROGRAM

Draft Program Elements

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DRAFT

I. Introduction to the Safe, Clean Water Program

The Safe, Clean Water Program is a multi-benefit Stormwater and Urban Runoff capture program intended to increase water supply, improve water quality, and provide community investments. The Program helps put Los Angeles County on a path to water resiliency and economic security through equity-focused strategies and policies to increase drought preparedness, improve water quality and public health, grow good jobs, build capabilities, and remove barriers. It also encourages leveraging other funding sources to maximize the ability to provide multiple benefits and prioritizes nature-based solutions at both regional and neighborhood scales.

II. Definitions

The following definitions apply to this SCW Program Elements document:

Auditor: Auditor-Controller of the County of Los Angeles.

Benefit to DACs: Water Quality Benefits, Water Supply Benefits, and/or Community Investment Benefits experienced directly by a DAC population. Benefits may be achieved by Projects, and also by policies and programs that promote living-wage jobs; credit, incentive, and rebate programs; technical assistance and capacity building and programs. For purposes of evaluating whether the Project meets the goal providing benefit to DACs, benefits will be measured by a variety of means including wages paid to workers constructing or maintaining projects who reside in DACs; credit, incentive, rebates for properties located in DACs; funds expended for technical assistance and capacity building paid to individuals and organizations located in DACs; and the amount expended for construction, operations and maintenance of multi-benefit projects located in DACs.

Board of Supervisors: Los Angeles County Board of Supervisors acting as the governing body of the Los Angeles County Flood Control District.

Chief Engineer: Chief Engineer of the District or his/her authorized deputy, agent, or representative.

Community Investment Benefit: Benefit created in conjunction with Stormwater Capture and reduced Stormwater and Urban Runoff pollution Projects as stated in AB 1180, including but not limited to: improved flood management, conveyance, and flood risk mitigation; creation and enhancement of parks and wetlands, or restoration of habitat and wetlands; improved public access to waterways providing enhanced or new recreational opportunities; and greening of schools. May also include a benefit to the community derived from a Project to increase Stormwater Capture and reduce Stormwater and Urban Runoff pollution, including improved public health, reduction of urban heat island effect, carbon reduction/sequestration, improved air quality, green waste reduction/diversion, education or local workforce investment and job training.

County: County of Los Angeles.

Disadvantaged Community (DAC): A community with an annual median household income that is less than 80 percent of the Statewide annual median household income (as defined in California Water Code §79505.5).

District: Los Angeles County Flood Control District.

District Program: Part of the SCW Program as described in Section 2, subsection 8b(A) of the Flood Control Act.

Feasibility Study: A detailed technical investigation and report that is conducted to determine the feasibility of a proposed Project. At a minimum, a Feasibility Study must provide, but not be limited to: a description of the Project and its objectives; an estimate of the benefits provided (determined through best engineering estimates and modeling as appropriate); a preliminary lifecycle cost estimate and schedule required to design, construct, operate and maintain the Project (including land acquisition costs); a historical background for the Project site location; a review of effectiveness of similar types of Projects already constructed; an engineering analysis of site conditions (eg. soil sampling, preliminary hydrology report, site layout, utility search, environmental impacts, etc); an assessment of potential CEQA and permitting challenges; details for how operations and maintenance will be carried out; a plan to address and incorporate stakeholder input on the Project; and a summary of any legal requirements or obligations that may arise as a result of constructing the Project. The District will provide guidance on the minimum requirements, as well as a template for Feasibility Studies.

Flood Control Act: Los Angeles County Flood Control Act, as amended by Assembly Bill (AB) 1180 (Holden, 2017).

Infrastructure Program Project: A Project carried out through the Regional Program's Infrastructure Program. Infrastructure Program Projects must be Multi-Benefit Projects.

Impermeable Area: Areas covered by surfaces such as pavement, concrete, rooftops, or others which prevent the infiltration of Stormwater and Urban Runoff into the ground.

Multi-Benefit Project: A Project that has a Water Quality Benefit as well as either or both a Water Supply Benefit and Community Investment Benefit.

Municipal Program: Part of the SCW Program as described in Section 2, subsection 8b(B) of the Flood Control Act.

Municipal Program Project: A Project carried out through the Municipal Program that has a Water Quality Benefit. A Municipal Program Project may also be a Multi-Benefit Project.

Municipality: A city or a County unincorporated area within the District.

Nature-Based Solutions: Projects that manage stormwater to provide a Water Quality Benefit, Water Supply Benefit, and/or Community Investment Benefit by doing any of the following: rely predominantly on soils and vegetation to restore the natural ecosystem processes required to slow, detain, and absorb water; infiltrate water to aquifers; filter pollutants out of water and air; which may include utilizing strategically undeveloped mountains and floodplains, wetlands, rain gardens and grading, compost, mulch, soil building, tree and vegetation planting, and parkway basins; and may also sequester carbon; support biodiversity; provide shade; and aesthetically enrich environments.

Parcel: A parcel of real property situated within the established boundaries of the District, as shown on the latest equalized assessment roll of the County and identified by its Assessor's Parcel Number.

Project: An infrastructure Project, or non-infrastructure activity or program, or other eligible expenditure funded by SCW Program revenue, that results in a Water Supply Benefit, Water Quality Benefit, or Community Investment Benefit.

Project Applicant: Any entity, which could include but not be limited to an individual, group, business entity, special district, school, Municipality, NGO, non-profit organization, CBO, public utility, federally recognized Indian tribes, state Indian tribes listed on Native American Heritage Watershed Area Steering Committee's California Tribal Consultation List, mutual water company, or others that submits a Project for consideration. .

Project Developer: The entity that carries out or causes to be carried out part or all the actions necessary to complete a Project for the Regional Program. The Project Applicant may or may not be the Project Developer.

Regional Oversight Committee (ROC): A body empaneled by the Board of Supervisors whose responsibilities are to review the Watershed Area Steering Committees' Stormwater Investment Plans for the Regional Program.

Regional Program: Part of the SCW Program as described in Section 2, subsection 8b(C) of the Flood Control Act. The Regional Program includes subprograms: Infrastructure Program, Technical Resource Program, and Scientific Studies Program.

Safe, Clean Water (SCW) Program: Program or system established to administer revenues from a tax levied pursuant AB 1180, including criteria and procedures for selecting and implementing Projects and allocating revenues among the Municipal, Regional and District Programs.

Stakeholder: A person, citizens' group, homeowner or other property-owner, business, NGO, environmental group, labor union, academic institution, neighborhood council, town council or other similar community group, water resources agency such as groundwater pumper or manager, private or public water agency, other government agency, or other interested party that has a direct or indirect stake in the SCW Program.

Stormwater: Water that originates from atmospheric moisture (rainfall or snowmelt) and falls onto land, water, and/or other surfaces.

Stormwater Capture: The capture of temporary surface water runoff and drainage generated by immediately preceding storms.

Stormwater Investment Plan: A five (5) year plan developed by Watershed Area Steering Committees that programs funding for Projects in the Regional Program's Technical Resources Program, Infrastructure Program, and Scientific Studies Program.

Surface Water: Water that flows or collects on the surface of the ground.

Threshold Score: A minimum score that Projects must meet or exceed in order to be eligible for Infrastructure Program funding. The initial recommendations for the Threshold Score is sixty (60) points, but may be modified by the ROC and approved by the Board of Supervisors.

Urban Runoff: Surface water flow that may contain but is not entirely comprised of Stormwater, such as water flow from residential, commercial, and industrial activities.

Water Quality Benefit: An increase in Stormwater Capture and reduction in Stormwater and/or Urban Runoff pollution. An improvement in the chemical, physical, and biological characteristics of Stormwater. Activities resulting in this benefit include but are not limited to: infiltration or treatment of Stormwater runoff, non-point source pollution control, and diversion of Stormwater to sanitary sewer system.

Watershed Area: Regional boundary formed considering hydrologic conditions, as well as Enhanced Water Management Plan (E/WMP) group boundaries. Each Watershed Area has its own Watershed Area Steering Committee.

Watershed Area Steering Committees: The nine (9) bodies empaneled by the Board of Supervisors, one for each Watershed Area, whose responsibilities are to program funding for the Regional Program.

Water Supply Benefit: Increase in the amount of locally available water supply, provided there is a nexus to Stormwater Capture. Activities resulting in this benefit include but are not limited to the following: reuse and conservation practices, water recycling, increased groundwater replenishment, storage or available yield, offset of potable water use. Water Supply Benefit created through the SCW Program is subject to applicable adjudicated judgments of water rights.

III. General SCW Program Requirements

A. Overview

This Program Elements document sets forth the procedures for implementing the SCW Program.

B. Authority and Allocation of Revenues

The Board of Supervisors shall annually levy a tax upon the taxable real property within the District. The revenues from the tax will be allocated and used, in accordance with the provisions of Section 2, subsection 8b of the Flood Control Act as follows:

- **District Program:** *“(A) Ten percent shall be allocated to the district for implementation and administration of projects and programs described in subsection 8a, and for payment of the costs incurred in connection with the levy and collection of the tax, fee, or charge and the distribution of the funds generated by imposition of the tax, fee, or charge, in accordance with the procedures established by the ordinance adopted pursuant to subsection 8c.”*
- **Municipal Program:** *“(B) Forty percent shall be allocated to cities within the boundaries of the district and to the County of Los Angeles, in the same proportion as the amount of revenues collected within each jurisdiction and within the unincorporated territories, to be expended by those cities within the cities’ respective jurisdictions and by the County of Los Angeles within the unincorporated territories that are within the boundaries of the district, for the implementation, operation and maintenance, and administration of projects and programs described in subsection 8a, in accordance with the procedures established by the ordinance adopted pursuant to subsection 8c.”*
- **Regional Program:** *“(C) Fifty percent shall be allocated to pay for the implementation, operation and maintenance, and administration of watershed-based projects and programs described in subsection 8a, including projects and programs identified in regional plans such as stormwater resource plans developed in accordance with Part 2.3 (commencing with Section 10560) of Division 6 of the Water Code, watershed management programs developed pursuant to waste discharge requirements for municipal separate storm sewer system (MS4) discharges within the coastal watersheds of the County of Los Angeles, issued by the Los Angeles Regional Water Quality Control Board, and other regional water management plans, as appropriate, in accordance with the procedures established by the ordinance adopted pursuant to subsection 8c.”*

Requirements for use of funds within the District, Municipal, and Regional Programs are discussed in their respective sections of this document.

C. Agreements for Transfer of SCW Program Funds

SCW Program funds will be transferred to Municipalities and Project Developers in advance of eligible expenditures taking place. Prior to their receipt of SCW Program funds, Municipalities and Project Developers must enter into an agreement with the District to transfer SCW Program funds. The funds transfer agreement will require recipients of funds to comply with the requirements of the SCW Program and other appropriate provisions established by the Board of Supervisors. A standard agreement will be prepared by the Chief Engineer and approved by the Board of Supervisors, including but not limited to:

- a. Requirements for compliance with the terms of the SCW Program.
- b. Provisions, as necessary, to provide clarity and accountability in the use of SCW Program funds.
- c. Provisions, processes, and schedules for disbursement of funds.
- d. Project parameters such as schedule, budget, scope, and benefits.
- e. Provisions for management of interest funds, debt, liability, and obligations.
- f. Provisions for indemnification of the District.
- g. Requirements for auditing and Annual or Quarterly Progress/Expenditure Reports.
- h. With respect to capital projects funded with SCW funds that have a budget of over \$2.5 million (or such other monetary threshold as may be later specified by the County of Los Angeles (County)), provisions encouraging Municipalities and Project Developers to use their best efforts to adhere to, and to cause contractors working on such projects to adhere to, terms and conditions that are consistent with those set forth in a future county-wide Project Labor Agreement (PLA) for County projects, if such a PLA is ultimately successfully negotiated between the County and the Los Angeles/Orange Counties Building and Construction Trades Council (Trades) and is approved by the Board of Supervisors.
- i. With respect to capital projects funded with SCW funds, irrespective of whether a county-wide PLA, as referenced above, is approved, provisions encouraging Municipalities and Project Developers to use their best efforts: (1) to provide that contractors working on such projects adhere to terms and conditions that are consistent with the County's Local and Targeted Workforce Hire Policy, and (2) to adopt and apply additional policies and requirements, applicable to such projects, that include:
 - Maximizing the use of employees of the Municipality to perform work on capital projects implemented by Municipalities.
 - Identification of Skilled Labor and Employment in LA County.
 - Encouragement of Small Local Business.
 - Local/Targeted Hire and Workforce Development.
 - Safety and Protection of Persons and Property.
- j. Requirements for post-construction/implementation monitoring.

D. Eligible Expenditures

Expenditures eligible for SCW Program funds include, but are not limited to, the following:

- a. The development of Feasibility Studies to enable interested parties to submit Projects for SCW Program funds.
- b. Infrastructure development tasks including design, preparation of environmental documents, obtaining permits, construction, operations & maintenance (O&M), inspection, and similar activities.
- c. Operation and maintenance of Projects.
- d. Real property acquisition, leases, and easements necessary to implement eligible Projects.
- e. Scientific and technical studies such as Stormwater modeling and monitoring.
- f. Projects or studies to investigate new technologies or methodologies to increase Stormwater Capture and reduce Stormwater and Urban Runoff pollution for improving water quality, increasing local water supplies, or improving the ability of communities to adapt to the impacts of climate change.
- g. The modification, upgrade, retrofit, or expansion of an existing Project to incorporate new elements to increase Stormwater Capture and reduce Stormwater and Urban Runoff pollution to provide additional Water Quality Benefit, Water Supply Benefit, and/or Community Investment Benefit.
- h. Debt financing should the District or a Municipality determine that bonds are prudent and necessary to implement Projects. Watershed Area Steering Committees may request the District to issue a bond for their Watershed Area's revenue stream for Regional Projects.
- i. Stormwater programs such as but not limited to school education and curriculum, public education, watershed coordinators, technical assistance teams, regional water quality planning and coordination, local workforce job training, and others.
- j. Credit, rebate and incentive programs aligned with the core principles and outcomes of the SCW Program.
- k. Maintenance of Effort: Use of up to 30% annually of a Municipality's Municipal Program funds to pay for SCW Program eligible activities commenced before the election date of the SCW Program Tax (See Section VI.B.). Operations and maintenance activities for Projects built to comply with the 2012 MS4 Permit are not subject to the 30% limitation so long as they comply with Municipal Program requirements.
- l. Stormwater residential and/or commercial retrofit programs.

E. Ineligible Expenditures

Ineligible expenditures for SCW Program funds include, but are not limited to, the following:

- a. Payment of fines imposed by any State, Federal, or local regulatory agency.

- b. Expenditures related to the investigation, defense, litigation, or judgment associated with any regulatory permit violations, notices of violation, or noncompliance regulations brought forth by any State, Federal, local regulatory agency, or a third party unrelated to eligible Projects.
- c. Expenditures for the investigation or litigation of any claim or action against the District, County, or their officers, employees or agents alleging improper allocation, withholding or reassignment of SCW Program revenues.
- d. Costs associated with any litigation including investigation, defense, litigation, settlement, and payment of any judgements for claims and liability related to the design and implementation of eligible Projects.

IV. Regional Program

A. Regional Program Fund Allocation

Fifty (50) percent of the revenue from the tax is allocated for the Regional Program pursuant to the Flood Control Act section 2, subsection 8b(C). The Regional Program will consist of three programs:

- Infrastructure Program (not less than 85% of Regional Program funds)
- Technical Resources Program (up to 10% of the Regional Program funds)
- Scientific Studies Program (up to 5% of Regional Program funds)

Infrastructure Program

The intent of the Infrastructure Program is to implement Multi-Benefit watershed-based Projects that have a Water Quality Benefit as well as either or both a Water Supply Benefit and Community Investment Benefit.

Infrastructure Program funds:

- Shall be spent on post-Feasibility Study activities such as: design, permits, CEQA, right-of-way and land acquisition, construction, operations and maintenance, associated staffing costs, and other related eligible activities. Development of Feasibility Studies is funded through the Technical Resources Program.
- Shall be programmed by the nine (9) Watershed Area Steering Committees proportional to the funds generated in each Watershed Area.
- Shall be programmed such that each Municipality receives benefits in proportion to the funds generated within their jurisdiction, to be evaluated over a ten (10) year period.
- Shall be programmed such that a spectrum of Project types and sizes are implemented throughout the region, to be evaluated over a five (5) year period.
- Shall be allocated such that funding for Projects that provide a Benefit to DACs be not less than 110% of the ratio of the DAC population to the total population in each Watershed Area.

Table 1. Disadvantaged Population by Watershed

Watershed Area	Pop	DAC Pop	%DAC
Central Santa Monica Bay	1,757,708	885,846	50%
Lower Los Angeles River	895,933	607,650	68%
Lower San Gabriel River	903,045	177,905	20%
North Santa Monica Bay	71,764	0	0%
Rio Hondo	744,634	259,860	35%
Santa Clara River	286,114	23,753	8%
South Santa Monica Bay	1,003,438	342,049	34%
Upper Los Angeles River	2,969,577	1,496,863	50%
Upper San Gabriel River	1,015,552	218,467	22%
Total	9,647,765	4,012,392	42%

The following parameters shall apply to the Infrastructure Program:

- Projects may receive funding for any post-Feasibility Study phase. Projected and actual operations and maintenance costs for Projects are to be considered and included in the Infrastructure Program to ensure that Projects are properly maintained.
- Project Developers are responsible to carry out the actions necessary to complete a Project that is selected for funding.
- Project Applicants must demonstrate technical, financial, and other necessary capabilities to be the Project Developer. If the Project Applicant is unable to be the Project Developer for any aspect of a Project, the District may take on that role for the Project.
- Applicants are encouraged to bundle small and medium scale, community level Projects to promote efficiency, achieve economies of scale and advance local hire and job training goals.
- Project Developers may utilize a construction authority to implement Projects.
- Projects must be designed for a minimum useful life of thirty (30) years.
- Projects must be included in an approved water quality plan such as E/WMPs and their updates, Integrated Regional Water Management Plans, or other plans as approved by the District. Projects can be part of a programmatic EIR, but it is not a requirement. All Projects will be scored by the Scoring Committee.

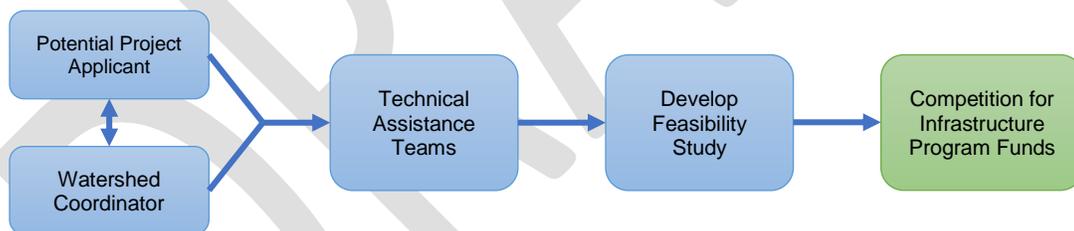
Technical Resources Program

The intent of the Technical Resources Program is to provide resources for the development of Feasibility Studies through support from Technical Assistance Teams; and provide Watershed Coordinators to educate and build capacity in communities and facilitate community and stakeholder engagement.

Technical Assistance Teams

- The District will provide Technical Assistance Teams comprised of subject matter experts in Stormwater infrastructure design, hydrology, soils, Nature Based Solutions, green infrastructure, Stormwater quality, water supply, recreation, open space, community needs, and other areas. The Technical Assistance Teams will complete Feasibility Studies in partnership with and on behalf of Municipalities, CBOs, NGOs, and others who may not have the technical resources or capabilities to develop Feasibility Studies.
- The Technical Resources Program funds the development of Feasibility Studies. Technical Assistance Teams will assist identifying a sponsor for non-Municipal Project Applicants, adding the potential Project to an eligible water quality plan; and addressing other prerequisites to apply to the Infrastructure Program. Upon completion of a Feasibility Study, Projects receiving Technical Resources Program funds apply to the Infrastructure Program and compete for funding for post-Feasibility Study Project phases of design, permits, CEQA, right-of-way and land acquisition, construction, operations and maintenance.
- The Technical Assistance Teams will be funded through the Technical Resource Program funds.

Figure 1. Technical Assistance Process



Watershed Coordinators

- In addition to working with Technical Assistance Teams to bring resources to potential Project Applicants, Watershed Coordinators will also:
 - Integrate community, Municipality, and regional priorities through partnerships and extensive networks.
 - Facilitate collaborative decision-making between private and public entities to develop and implement actions that best address community issues.
 - Educate local stakeholders through public outreach events such as workshops, demonstrations, community forums and restoration activities.
- Not less than one Watershed Coordinator will be funded from Technical Resource Program funds for each Watershed Area plus one additional Watershed Coordinator for each one-million of population.

Table 2. Watershed Coordinator Breakdown

Watershed Area	Total Population	Watershed Coordinators
Central Santa Monica Bay	1,757,708	2
Lower Los Angeles River	895,933	1
Lower San Gabriel River	903,045	1
North Santa Monica Bay	71,764	1
Rio Hondo	744,634	1
Santa Clara River	286,114	1
South Santa Monica Bay	1,003,438	1
Upper Los Angeles River	2,969,577	3
Upper San Gabriel River	1,015,552	1

- Watershed Area Steering Committees will determine how to appropriate funds for the Technical Resources Program funds.
- The District will administer the Technical Assistance Teams and Watershed Coordinators.

Scientific Studies Program

The intent of the Scientific Studies Program is to provide funding for eligible scientific and other activities, such as but not limited to: scientific studies, technical studies, monitoring, modeling, and other similar activities. Watershed Area Steering Committees will determine how to appropriate funds for the Scientific Studies Program. The District will administer the Scientific Studies Program.

B. Stormwater Investment Plans

Regional Program funds shall be programmed by each Watershed Area Steering Committee via Stormwater Investment Plans. Stormwater Investment Plans shall be formatted similar to the table below. The table reflects the first budget submittal for the Regional Programs starting in fiscal year 2020-21. Each subsequent annual submittal of the Stormwater Investment Plan shall reflect funds programmed for the next five (5) years.

Table 3. Stormwater Investment Plan Budget Template

	FY 2020-2021	FY 2021-2022	FY 2022-2023	FY 2023-2024	FY 2024-2025
	Budget	Projection	Projection	Projection	Projection
PROJECT – FEASIBILITY STUDY DEVELOPMENT					
TECHNICAL RESOURCES PROGRAM (up to 10%)					
Feasibility Studies/Concepts					
Watershed Coordinators					
Technical Assistance Team/Feasibility Study					
Technical Assistance Team/Feasibility Study					
PROJECT – POST-FEASIBILITY STUDY					
INFRASTRUCTURE PROGRAM (not less than 85%)					
Design/Permits/CEQA Budget					
Project					
Project					
Project					
Right of Way Acquisition Budget					
Project					
Project					
Project					
Construction					
Project					
Project					
Project					
O&M					
Project					
Project					
Project					
NON-PROJECT ACTIVITIES					
SCIENTIFIC STUDIES PROGRAM (Up to 5%)					
Special Studies					
Project					
Project					
Monitoring					
Project					
TOTAL =					

Funding Allocations for Projects

Watershed Area Steering Committees will assign funding to Projects in the Technical Resources Program, Infrastructure Program, and Scientific Studies Program. Projects will be given conditional funding approval for their entire Project budget, including operations and maintenance. Funding will be transferred to Project Developers in annual increments subject to the Project meeting the schedule, budget, scope and benefit terms outlined in the transfer agreement.

Annually, the suite of Projects included in the Stormwater Investment Plans shall be evaluated by the corresponding Watershed Area Steering Committees using the information provided in the Quarterly Expenditure/Progress Report (See Section X.C). Watershed Area Steering Committees will verify the Project schedule, budget, scope and benefits have not significantly changed and are consistent with the transfer agreement. Projects that run over budget, are behind schedule, or reduce scope or benefits may be subject to loss of funding.

C. Regional Program Quarterly Progress/Expenditure Reports

Each Project Developer shall arrange for a Quarterly Progress/Expenditure Report for all Projects. The Quarterly report shall include details that summarize the expenditures and quantify the benefits of Water Quality, Water Supply, and Community Investment realized through use of SCW Program funds. The Project Developer shall be subject to and comply with all applicable requirements of the District regarding Project-reporting requirements. The Quarterly Progress/Expenditure Report details:

- Percent complete estimate.
- SCW Program funds expended.
- Documentation that the SCW Program funds were used for eligible expenditures.
- Discussion of work accomplished during the reporting period.
- Milestones or deliverables completed/submitted during the reporting period.
- Scheduling concerns and issues encountered that may delay completion of the task.
- Work anticipated for the next reporting period.
- Photo documentation, as appropriate.
- Any anticipated schedule or budget modifications.
- Additional information as necessary.

D. Regional Program Governance Structure and Selection Process

A procedure is established for the funding for the Infrastructure, Technical Resources, and Scientific Studies Programs.

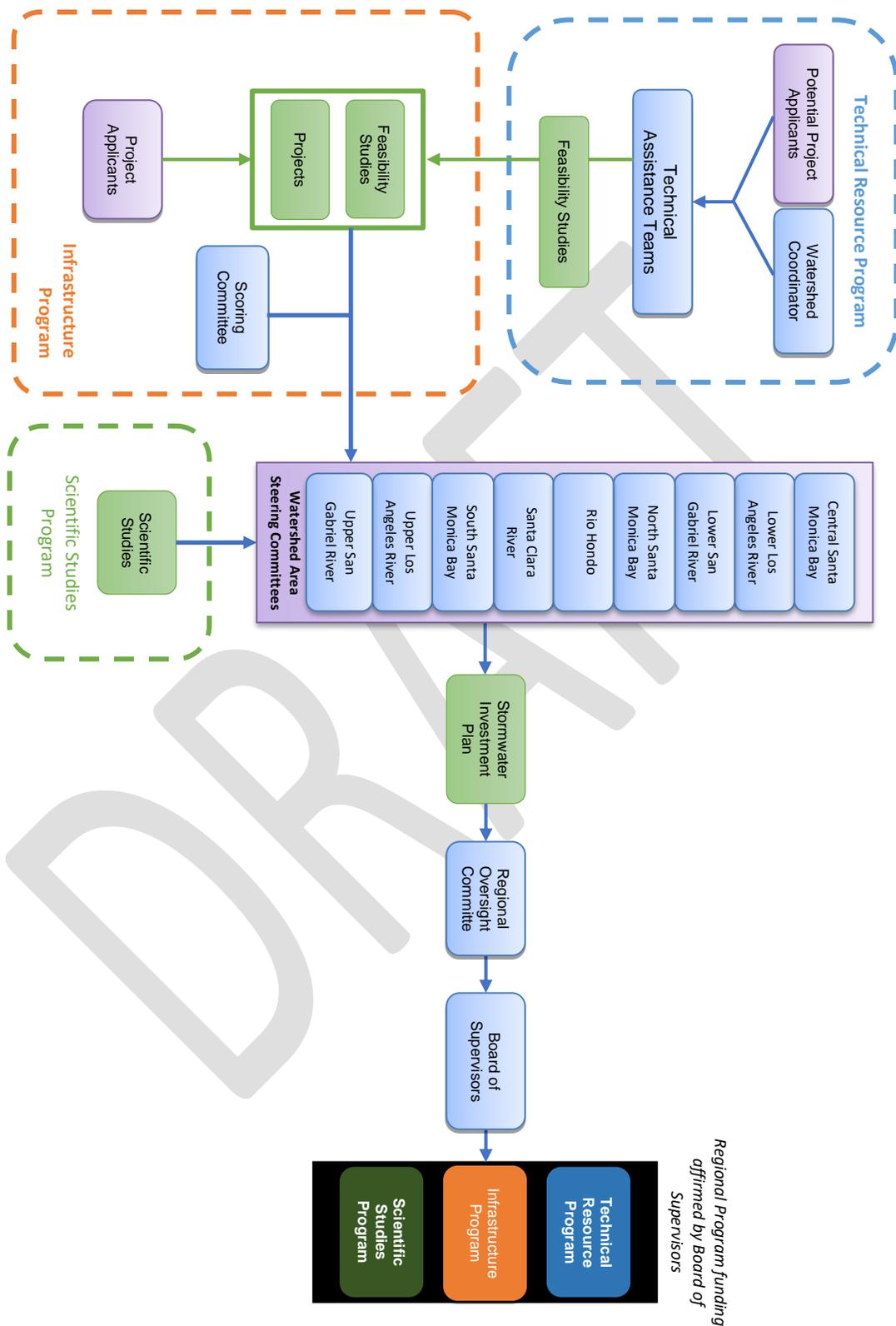
Annually, these steps will occur:

- Step 1:
 - Board of Supervisors, via the District, prepares a five (5) year revenue forecast for each Watershed Area.
- Step 2
 - District, on behalf of the Watershed Area Steering Committees, initiates a request for Projects to be funded through the Infrastructure, Technical Resources, and Scientific Studies Programs.
 - Watershed Area Steering Committees forward all Infrastructure Program Projects and Feasibility Studies received to the Scoring Committee. Scoring Committee scores these Projects and Feasibility Studies and applies a Threshold Score.

- Scoring Committee returns all scored Projects and Feasibility Studies to the Watershed Area Steering Committee.
- Step 3
 - Watershed Area Steering Committee reviews Projects and Feasibility Studies and prepares a Stormwater Investment Plan which programs funds for the Infrastructure, Technical Resources, and Scientific Studies Programs.
- Step 4
 - Watershed Area Steering Committee submits the Stormwater Investment Plan to the Regional Oversight Committee (ROC). For details on the membership of the ROC see section V.K.
 - The ROC reviews the Stormwater Investment Plans and makes a recommendation to the Board of Supervisors.
- Step 5
 - Board of Supervisors considers approval of the Stormwater Investment Plans. Board of Supervisors may return Stormwater Investment Plans to the Watershed Area Steering Committees for further revision.
- Step 6
 - Project Developers enter into an agreement with the District to transfer annual funding allocations.

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Figure 2. Regional Program Governance Structure and Selection Process Flowchart



E. Regional Program: Initial Year Events

Should voters approve the SCW Program tax in November 2018, the following schedule of events will occur:

- Winter 2018
 - Formation of Watershed Area Steering Committees, the Regional Oversight Committee, and Scoring Committee.
 - Establishment of Technical Assistance Teams and Watershed Coordinators.
 - Initiation of District administered Stormwater education programs.
- Spring 2019
 - Initiate a request for Projects to be funded through the Infrastructure, Technical Resources, and Scientific Studies Programs.
 - Projects forwarded to the Scoring Committee.
 - Scoring Committee scores and forwards results to the Watershed Area Steering Committees.
 - Watershed Area Steering Committees prepare Stormwater Investment Plans including budgets for Projects in the Infrastructure, Technical Resources, and Scientific Studies Programs.
- Summer 2019
 - Regional Oversight Committee reviews Stormwater Investment Plans and provides a recommendation to the Board of Supervisors.
- Fall/Winter 2019
 - Board of Supervisors considers approval of the Stormwater Investment Plans.
 - District executes agreements for transfer of funds to begin implementation of Projects.
- Beginning of 2020
 - First installment of the tax will be available.
 - District transfers funds to Project Developers.

F. Eligible Project Applicants

An eligible Project Applicant can be any entity, which could include but not be limited to an individual, group, business entity, special district, school, Municipality, NGO, non-profit organization, CBO, public utility, federally recognized Indian tribes, state Indian tribes listed on Native American Heritage Watershed Area Steering Committee's California Tribal Consultation List, mutual water company, or others that submits a Project for consideration. Non-Municipal Project Applicants are required to secure a Municipal sponsor/partner to receive funding through the Infrastructure Program. Parties will be required to execute a memorandum of understanding to document roles and responsibilities.

G. Boundaries of the Watershed Areas

The Chief Engineer will maintain on file detailed maps establishing the precise boundaries of the Watershed Areas. The boundaries of the Watershed Areas are based on hydrologic conditions and modified to keep E/WMP groups whole, wherever practical. The Watershed Area boundaries may be updated as necessary.

There are nine (9) Watershed Areas within the District, as shown in Figure 3 and Figure 4.

Figure 3. Regional Watershed Area Boundaries with City Boundaries

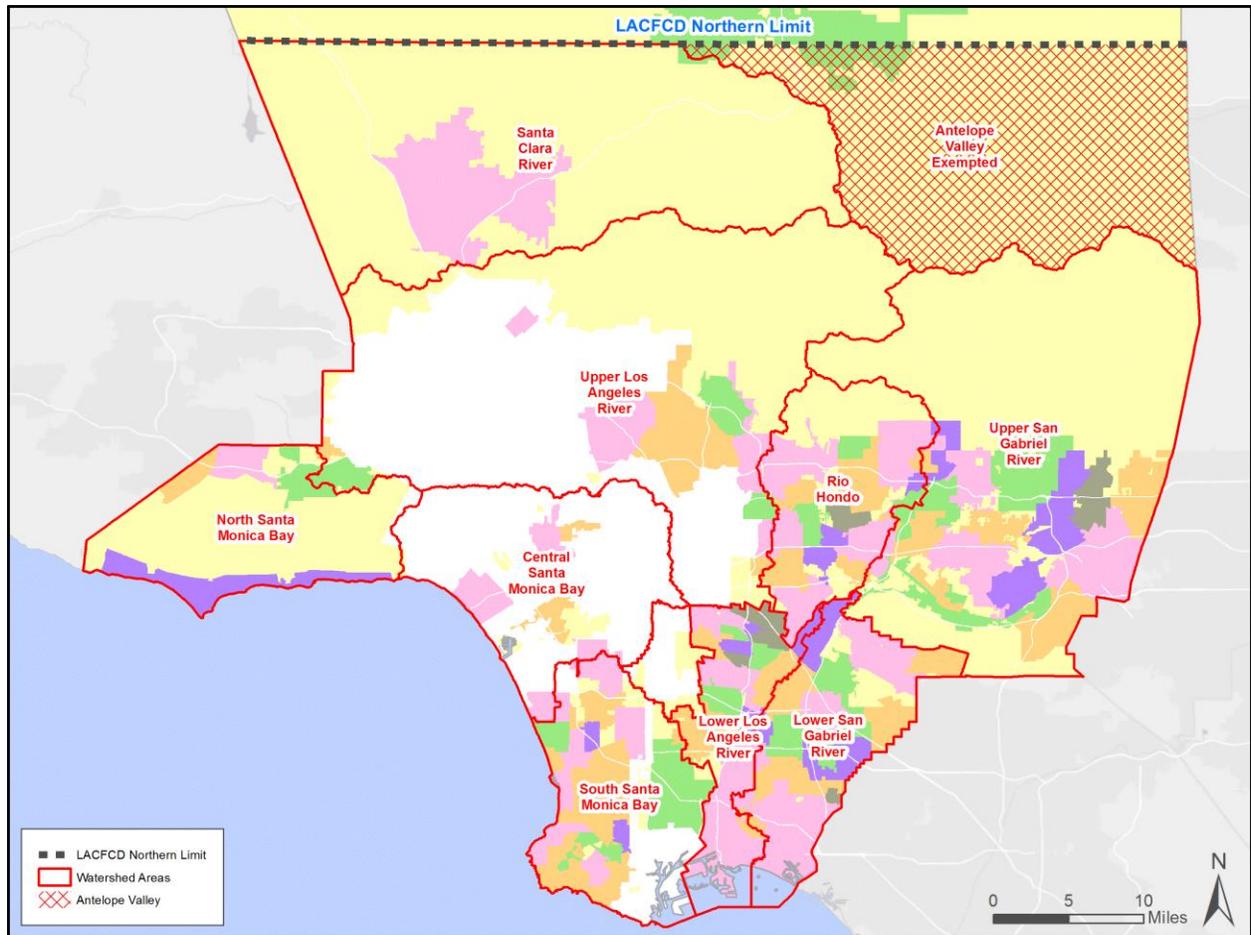
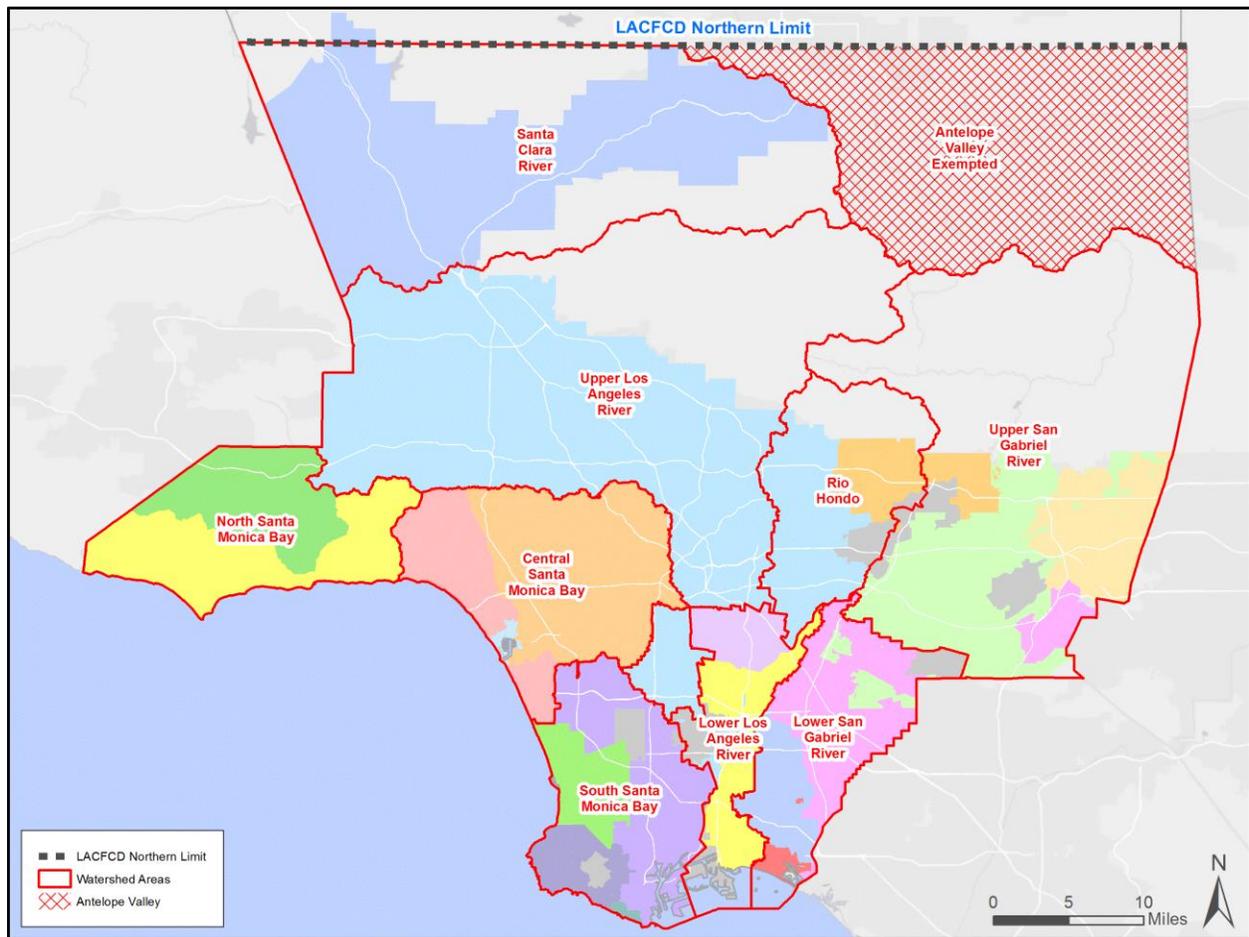


Figure 4. Regional Watershed Area Boundaries with E/WMP Boundaries



H. Membership of the Watershed Area Steering Committees

The Board of Supervisors will empanel Watershed Area Steering Committees for each of the nine (9) Watershed Areas for the purpose of recommending funding appropriations for the Regional Program. The District will provide staff support to each Watershed Area Steering Committee and carry out their decisions. Operating guidelines for Watershed Area Steering Committees will be developed by the District.

Each Watershed Area Steering Committee consists of sixteen (16) members and each member receives one equally weighted vote. Six (6) members are designated from Municipalities located within the Watershed Area, five (5) members are sector-specific stakeholder representatives, and five (5) members are community stakeholder representatives, as shown in Table 3.

The five (5) sector-specific stakeholder representatives and five (5) community stakeholder representatives will be chosen to maintain a geographic balance and be representative of a range of interests within the Watershed Area. These representatives must demonstrate a regional focus. Watershed Area Steering Committee members are required to have knowledge of the sector they represent, as described in Appendix A. Each Watershed Area Steering Committee member will assign an alternate, who must also demonstrate knowledge of the sector they represent, to serve in the absence of the member. The alternate will be selected in the same manner the member seat was assigned.

Members of the Watershed Area Steering Committees, unless prohibited by their employer, will be compensated in the amount of Fifty Dollars (\$50) per meeting attended. Said compensation will be paid through the District Program.

The anticipated membership for each Watershed Area Steering Committee can be found in Appendix B.

Municipal Members: Six (6) seats will be assigned to Municipalities. Any Municipality with at least 16% of the impermeable area located within the Watershed Area receives one seat. A Municipality with at least 33% of the impermeable area located within the Watershed Area receives two seats. A Municipality with at least 50% of the impermeable area located within the Watershed Area receives three seats. A single Municipality may occupy up to three (3) seats on each Watershed Area Steering Committee.

Municipal members for the remaining seats will be chosen by the unrepresented Municipalities. The remaining seats are flexible and could be assigned to a Municipality, E/WMP, COG, or other jurisdiction. Each member will assign an alternate to serve in their absence who must meet the requirements of a Watershed Area Steering Committee member.

Sector-Specific Members: Five (5) sector-specific seats will be assigned by the Board of Supervisors. A seat will be assigned to each of the following sectors:

- District
- Water Agency (to be filled by municipal water district in the Watershed Area)
- Groundwater (to be filled by the largest watermaster in the Watershed Area), or second Water Agency if a groundwater agency does not exist in the Watershed Area
- Sanitation (to be filled by the largest sanitation service provider in the Watershed Area)
- Open Space (to be filled by the largest local park and/or open space agency in the Watershed Area)

Each sector-specific member will assign an alternate from their specific sector to serve in their absence who must meet the requirements of a Watershed Area Steering Committee member, and is subject to Board of Supervisors' approval.

Community Stakeholder Members: Representatives for the five (5) Community Stakeholder seats will be appointed by the Board of Supervisors. A dedicated seat will be assigned to represent environmental justice interests, business interests, and environment interests. The two remaining seats will be assigned to representatives from the community, such as: public health, labor, non-governmental organization, disadvantaged community, community-based organization, schools, academia, and others. In addition to these members, the Watershed Coordinator will also participate on the Steering Committee as a non-voting member (See Section V.A). Each community stakeholder member will assign an alternate from their organization to serve in their absence who must meet the requirements of a Watershed Area Steering Committee member, and is subject to Board of Supervisors approval.

Table 4. Regional Program Watershed Area Steering Committee Membership

	Member	Appointed By
1	Municipality	Varies for Each Watershed Area
2	Municipality	Varies for Each Watershed Area
3	Municipality	Varies for Each Watershed Area
4	Municipality	Varies for Each Watershed Area
5	Municipality	Varies for Each Watershed Area
6	Municipality	Varies for Each Watershed Area
7	District	Appointed by Board of Supervisors
8	Largest Service Provider- Water Agency	Appointed by Board of Supervisors
9	Largest Service Provider- Groundwater/Water Agency #2	Appointed by Board of Supervisors
10	Largest Service Provider- Sanitation	Appointed by Board of Supervisors
11	Largest Municipality Agency- Open Space/Recreation	Appointed by Board of Supervisors
12	Business	Appointed by Board of Supervisors
13	Environmental Justice	Appointed by Board of Supervisors
14	Environment	Appointed by Board of Supervisors
15	At large	Appointed by Board of Supervisors
16	At large	Appointed by Board of Supervisors
	Watershed Coordinator	Non-voting

I. Voting and Meeting Requirements of the Watershed Area Steering Committees

The Watershed Area Steering Committees will determine the frequency and schedule for regular meetings necessary to select Projects for inclusion in their Stormwater Investment Plan.

A quorum is required for Watershed Area Steering Committees to act on any item of business. A quorum will consist of a simple majority of the members or their alternates. If a quorum is present, approval of any item of business requires a simple majority vote of those in attendance.

Meetings conducted by the Watershed Area Steering Committee will be made public and meeting materials will be made available

J. Responsibilities of the Watershed Area Steering Committees

Watershed Area Steering Committees have the following responsibilities:

- a. Receive Projects and Feasibility Studies from Project Applicants, forward the Projects and Feasibility Studies to the Scoring Committee for scoring, review the list of scored Projects and Feasibility Studies returned by the Scoring Committee, and prepare a Stormwater Investment Plan. Potential Projects or Feasibility Studies that lack sufficient information to be scored, or that fail to pass the Threshold Score will be referred to the Technical Resources Program.
- b. Provide the recommended Stormwater Investment Plan to the ROC which will be affirmed by the Board of Supervisors for final adoption.

- c. Ensure Project Developers within their Watershed Area comply with all SCW Program Quarterly Progress/Expenditure report requirements. Submit the Quarterly Progress/Expenditure reports (See Section X.C) to the ROC annually.
- d. Provide additional financial and other information, as required by the Board of Supervisors.
- e. Help identify Project partners and additional sources of funding to augment SCW Program revenues for Projects.
- f. The District will provide staff support to the Watershed Area Steering Committees using funds from the District Program.

K. Watershed Area Steering Committee Conflict of Interest

No member of the Watershed Area Steering Committee shall participate in discussions or vote where that member has a direct personal financial interest in the Project under consideration.

L. Formation and Composition of the Regional Oversight Committee

The ROC is an independent body that reviews all Regional Program Stormwater Investment Plans to ensure Regional Program goals are met. The ROC consists of nine (9) subject matter experts, with knowledge in Water Quality Benefits, Water Supply Benefits, and Community Investment Benefits. The members will be appointed by the Board of Supervisors. ROC members shall not have any direct personal connection to Projects implemented through the SCW Program. The District will provide staff support to the Regional Oversight Committee.

Members of the Regional Oversight Committee, unless prohibited by their employer, will be compensated in the amount of Fifty Dollars (\$50) per meeting attended. Said compensation will be paid through the District Program.

Table 5. Regional Oversight Committee Membership

	Member	Appointment
1	<u>Subject Matter Experts:</u> Water Quality Benefits Water Supply Benefits Community Investment Benefits	Appointed by Board of Supervisors
2		Appointed by Board of Supervisors
3		Appointed by Board of Supervisors
4		Appointed by Board of Supervisors
5		Appointed by Board of Supervisors
6		Appointed by Board of Supervisors
7		Appointed by Board of Supervisors
8		Appointed by Board of Supervisors
9		Appointed by Board of Supervisors

M. Voting and Meeting Requirements of the Regional Oversight Committee

The ROC will determine the frequency and schedule for regular meetings necessary to process the review of Stormwater Investment Plans submitted by the Watershed Area Steering Committees.

A quorum is required for the ROC to take action on any item of business. A quorum will consist of five (5) members of the ROC. If a quorum is present, approval of any item of business requires a simple majority vote of those in attendance.

Meetings conducted by the ROC will be made public and meeting materials will be made available.

N. Responsibilities of the Regional Oversight Committee

The ROC will have the following responsibilities:

- a. Review each of the Watershed Area Steering Committee's Stormwater Investment Plans to ensure Regional Program goals are met. Through this review process, the ROC will make a recommendation to the Board of Supervisors whether each of the Stormwater Investment Plans meets the goals of the SCW program. The Board of Supervisors will have the final determination for funding.
- b. Annually, review the Quarterly Progress/Expenditure Reports (See Section X.C) received by the Watershed Area Steering Committees to account for correct use of funds and ensure progress has been achieved.
- c. Determine whether Regional Program funds have been programmed such that each Municipality receives benefits in proportion to the funds generated within their jurisdiction, to be evaluated over a successive ten (10) year period.
- d. Determine whether Regional Program funds have been programmed such that an appropriate spectrum of Project types and sizes have been implemented throughout the region, to be evaluated over a five (5) year period, taking into consideration a Watershed Area's hydrological conditions.
- e. The District will provide staff support to the Regional Oversight Committee using funds from the District Program.

O. Regional Oversight Committee Conflict of Interest

The intent of the Regional Oversight Committee is to be a fully independent oversight committee with no direct personal financial connection to Projects or programs implemented through the SCW Program. However, in the event a member has a direct personal financial interest in a Project, that member shall abstain from discussions or voting on the Project under consideration.

P. Board of Supervisors Approval of Stormwater Investment Plans

The Board of Supervisors shall review the Stormwater Investment Plans to ensure they conform to the parameters of the SCW Program. Upon approval of each of the Stormwater Investment Plan, the Board of Supervisors will direct the District to transfer funds.

Q. Scoring Committee

The Board of Supervisors will empanel a Scoring Committee composed of six (6) subject matter experts in Water Quality Benefits, Water Supply Benefits, and Community Investment Benefits. The members of the Scoring Committee shall not have any personal connection to Projects implemented through the SCW Program. District will provide staff support for the Scoring Committee using funds from the District Program. The Scoring Committee will utilize technical documents for reference and consideration such as new water quality and water supply studies, plans, and white papers.

The Scoring Committee will score all Infrastructure Program Projects using the Infrastructure Program Project Criteria and will apply a Threshold Score. The Threshold Score is sixty (60) points, but may be modified by the ROC and approved by the Board of Supervisors. The Scoring Committee forwards Projects with their respective score to the appropriate Watershed Area Steering Committees. Projects that lack sufficient information to be scored, or that fail to pass the Threshold Score will be referred to the Technical Resources Program.

Members of the Scoring Committee, unless prohibited by their employer, will be compensated in the amount of Hundred Dollars (\$100) per meeting attended. Said compensation will be paid through the District Program.

Meetings conducted by the Scoring Committee will be made public and meeting materials will be made available.

Table 6. Scoring Committee Membership

	Member	Appointment
1	<u>Subject Matter Experts:</u> Water Quality Benefits Water Supply Benefits Community Investment Benefits	Appointed by Board of Supervisors
2		Appointed by Board of Supervisors
3		Appointed by Board of Supervisors
4		Appointed by Board of Supervisors
5		Appointed by Board of Supervisors
6		Appointed by Board of Supervisors

R. Infrastructure Program Project Criteria

Scoring of Infrastructure Program Projects utilizes the Infrastructure Program Project Criteria, shown in Table 5. Projects will be eligible for scoring if they have a completed Feasibility Study. The District will provide guidance on the minimum requirements, as well as a template for Feasibility Studies. All Projects will be scored according to the Infrastructure Program Project Criteria; all scores will be made available to the public.

Infrastructure Program Project Criteria include the following four sections, which are assigned different ranges of points:

- Section A: Water Quality Benefit (40 Points)
 - Wet weather Projects:
 - Applies a range of points for effectiveness and extent of pollution reduction
 - Dry weather Projects:
 - Applies a range of points for full capture of Urban Runoff and tributary size.
- Section B: Water Supply Benefit (25 Points)
 - Applies a range of points for cost effectiveness and volume of supply created or offset
- Section C: Community Investment Benefit (25 Points)
 - Applies a range of points for Projects that utilize nature-based solutions and one or more Community Investment Benefits.

- Section D: Leveraging Funds (10 Points)
 - Applies points for Project funding match, partnerships, community involvement, and Project readiness. Projects that are already part of an existing plan receive additional points.
 - Funding matches could include but are not limited to: grants, other Measures, in-kind services, Municipal Program funds, and others.

The Scoring Committee will score Projects, apply the Threshold Score, and forward all scored Projects to the appropriate Watershed Area Steering Committee.

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Table 7. Infrastructure Program Project Criteria

Section	Score Range	Scoring Standards			
A.1 Wet Weather Water Quality Benefits	40 points max	The Project provides water quality benefits			
	15 points max	A.1.1: For Wet Weather BMPs Only: Water Quality Cost Effectiveness (Cost Effectiveness) = (24-hour BMP Capacity) ¹ / (Capital Cost in \$Millions) <ul style="list-style-type: none"> <0.4 (acre feet capacity / \$-Million) = 0 points 0.4-0.6 (acre feet capacity / \$-Million) = 4 points 0.6-0.8 (acre feet capacity / \$-Million) = 8 points 0.8-1.0 (acre feet capacity / \$-Million) = 11 points >1.0 (acre feet capacity / \$-Million) = 15 points <p>¹. Management of the 24-hour event is considered the maximum capacity of a Project for a 24-hour period. For water quality focused Projects, this would typically be the 85th percentile design storm capacity. Units are in acre-feet (AF).</p>			
	25 points max	A.1.2: For Wet Weather BMPs Only: Water Quality Benefit - Quantify the pollutant reduction (i.e. concentration, load, exceedance day, etc.) for a class of pollutants using a similar analysis as the E/WMP which uses the Districts Watershed Management Modeling System (WMMS). The analysis should be an average percent reduction comparing influent and effluent for the class of pollutant over a ten-year period showing the impact of the Project. Modeling should include the latest performance data to reflect the efficiency of the BMP type. <table border="0" style="width: 100%; margin-top: 10px;"> <tr> <td style="text-align: center;"><u>Primary Class of Pollutants</u></td> <td style="text-align: center;"><u>Second or More Classes of Pollutant</u></td> </tr> <tr> <td> <ul style="list-style-type: none"> >50% = 10 points >80%= 15 points (15 Points Max) </td> <td> <ul style="list-style-type: none"> >50% = 5 points >80%= 10 points (10 Points Max) </td> </tr> </table>	<u>Primary Class of Pollutants</u>	<u>Second or More Classes of Pollutant</u>	<ul style="list-style-type: none"> >50% = 10 points >80%= 15 points (15 Points Max)
<u>Primary Class of Pollutants</u>	<u>Second or More Classes of Pollutant</u>				
<ul style="list-style-type: none"> >50% = 10 points >80%= 15 points (15 Points Max) 	<ul style="list-style-type: none"> >50% = 5 points >80%= 10 points (10 Points Max) 				
- OR -					
A.2 Dry Weather Water Quality Benefits	20 points	A.2.1: For dry weather BMPs only, Projects must be designed to capture, infiltrate, or divert 100% of all tributary dry weather flows.			
	20 points max	A.2.2: For Dry Weather BMPs Only. Tributary Size of the Dry Weather BMP <ul style="list-style-type: none"> <200 Acres = 10points >200 Acres = 20points 			
B. Significant Water Supply Benefits	25 points max	The Project provides water supply benefits			
	13 points max	B1. Water Supply Cost Effectiveness. The Total Life-Cycle Cost ² per unit of acre foot of stormwater volume captured for water supply is: <ul style="list-style-type: none"> >\$2500/ac-ft = 0 points \$2,000–2,500/ac-ft = 3 points \$1500-2,000/ac-ft = 6 points \$1000–1500/ac-ft = 10 points <\$1000/ac-ft = 13 points <p>². Total Life-Cycle Cost: The annualized value of all Capital, planning, design, land acquisition, construction, and total life O&M costs for the Project for the entire life span of the Project (e.g. 50-year design life span should account for 50-years of O&M). The annualized cost is used over the present value to provide a preference to Projects with longer life spans.</p>			
	12 points max	B2. Water Supply Benefit Magnitude. The yearly additional water supply volume resulting from the Project is: <ul style="list-style-type: none"> <25 ac-ft/year = 0 points 25 - 100 ac-ft/year = 2 points 100 - 200 ac-ft/year = 5 points 200 - 300 ac-ft/year = 9 points >300 ac-ft/year = 12 points 			
C. Community Investments Benefits	25 points max	The Project provides Community Investment Benefits			
	15 points	C1. Project implements Nature Based Solutions (as per the SCW Program Definition)			
	10 points	C2. Project has at least: <ul style="list-style-type: none"> One of the Community Investment Benefits defined above = 5 points More than one distinct Community Investment Benefit = 10 points 			
D. Leveraging Funds & Readiness for Implementa- tion	10 points max	The Project achieves one or more of the following:			
	6 points max	D1. Cost-Share. Additional Funding has been awarded for the Project. <ul style="list-style-type: none"> >25% Funding Matched = 3 points >50% Funding Matched = 6 points 			
	4 points	D2. The Project demonstrates strong local, community-based support and/or has been developed as part of a partnership with local NGOs/CBOs.			
Total	Total Points All Sections 100				

V. Municipal Program

Forty (40) percent of the funds from the SCW Program tax are allocated for the Municipal Program pursuant to the Flood Control Act section 2, subsection 8b(B). Municipal funds shall be allocated proportionally to the revenues generated within each Municipality or the County Unincorporated Areas in the District. Considering the geologic, geographic and demographic diversity within the District, the Municipal Program is designed to maximize the ability of local governments to address local Stormwater challenges and opportunities. Projects are required to include a Water Quality Benefit. Multi-Benefit Projects that incorporate a Water Supply Benefit and/or a Community Investment Benefit are strongly encouraged but are not required. Municipal Program funds allow flexibility for Municipalities to fund Stormwater programs, activities, studies, associated staffing costs, as well as capital Projects along all phases of Project development, including but not limited to: concept development, planning, design, construction, monitoring, and operations & maintenance.

A. Municipal Program Responsibilities

Each Municipality receiving Municipal Program funding from the SCW Program will have the following responsibilities:

- a. Engage stakeholders in the planning process for use of the Municipal Program funds during the planning and implementation of Municipal Program Projects.
- b. As part of the Municipal Program planning process, consider a Municipal level request for Projects from eligible Project Applicants.
- c. Prepare informational materials to provide members of the public with up-to-date information on the Municipality's actual and budgeted use of revenues from the SCW Program and make the information available to the public through the Municipality's websites and upon request.
- d. Operate in accordance with best practices for government agencies.
- e. Be strictly accountable for all funds, receipts, and disbursements by the Municipality.
- f. Prepare, prior to the start of that Municipality's fiscal year, a budget for how SCW Program funds will be used.
- g. Prepare within six (6) months after the end of that Municipality's fiscal year an Annual Progress/Expenditure Report that details a program level summary of expenditures and a quantification of Water Quality Benefit, Water Supply Benefit, and Community Investment realized through use of Municipal Program funds.
- h. Comply with all SCW Program reporting and audit requirements (See section XI). And provide the District additional financial and other information, as required by SCW Program or upon request.
- i. Comply with revenue transfer agreement requirements.

B. Maintenance of Effort

A Municipality must spend at least 70% of their Municipal Program funds annually on new Projects, which also includes operations and maintenance of infrastructure Projects built to comply with the 2012 MS4 Permit, so long as the Project complies with Municipal Program requirements. Up to 30% of a Municipality's Municipal Program funds may be used to pay for SCW Program eligible activities commenced before the election date of the SCW Program Tax.

C. Municipal Program Annual Progress/Expenditure Reports

Each Municipality shall arrange for an Annual Progress/Expenditure Report for all Projects. The Annual report shall include details that summarize the expenditures and quantify the benefits of Water Quality, Water Supply, and Community Investment realized through use of SCW Program funds. The Municipality shall be subject to and comply with all applicable requirements of the District regarding Project-reporting requirements. The Annual Progress/Expenditure Report details:

- Percent complete estimate.
- SCW Program funds expended.
- Documentation that the SCW Program funds were used for eligible expenditures.
- Discussion of work accomplished during the reporting period.
- Milestones or deliverables completed/submitted during the reporting period.
- Scheduling concerns and issues encountered that may delay completion of the task.
- Work anticipated for the next reporting period.
- Photo documentation, as appropriate.
- Additional information as necessary.

VI. District Program

Ten (10) percent of the revenue from the tax on each parcel is allocated for the District Program pursuant to the Flood Control Act section 2, subsection 8b(A).

A. Responsibilities

The District will have the following responsibilities:

- a. Administer the SCW Program such as but not limited to: Tax and payment administration, review annual budgets and reports, conduct audits, and manage appeals of scoring process.
- b. Annually prepare a five (5)-year revenue forecast for each Watershed Area.
- c. Plan, implement, and maintain District Projects.
- d. Administer logistics for the Regional Program.
- e. Provide staff support to the Scoring Committee, Watershed Area Steering Committees, and the ROC.

- f. Provide Technical Assistance Teams and Watershed Coordinators funded by the Technical Resources Program.
- g. Engage stakeholders in the planning process for use of the District Program funds.
- h. Plan, implement, and maintain District Projects in conjunction with stakeholders.
- i. Operate in accordance with best practices for government agencies.
- j. Conduct independent audits as described in section XI. to ensure compliance with requirements of the SCW Program.
- k. Prepare, prior to the start of the District's fiscal year, a budget for how SCW Program funds will be used.
- l. Prepare within six (6) months after the end of the District's fiscal year an annual report that details a program level summary of expenditures and a quantification of Water Quality Benefit, Water Supply Benefit, and Community Investment realized through use of Municipal Program funds.
- m. Comply with all SCW Program audit requirements (See section XI).
- n. Administer and ensure effectiveness for the Technical Resources Program Watershed Coordinators and Technical Assistance Teams.

B. Programs

The District will administer the programs below. The District will commence these programs within the first year of passage of the Safe, Clean Water Tax. Not less than \$25-million of District Program funds shall be allocated for these programs over a revolving five (5) year period. These programs will be implemented throughout the region with special attention toward the needs of disadvantaged communities. The District will partner with stakeholders to collaboratively implement these programs.

The District create Stormwater education programs that proactively involve stakeholders and community groups to carry out activities that may include, but are not limited to:

- a. Public education programs.
- b. Local workforce job training, which will provide certification classes and vocational training at the community level for the design, construction, inspection, and operations and maintenance of Stormwater management and Multi-Benefit Projects.
- c. Schools education and curriculum program, such as classroom curriculum, guest speakers, etc.

C. District Projects and Regional Water Quality Planning & Coordination

The District will carry out the following activities:

- a. Regional water quality planning and coordination to carry out activities which may include, but are not limited to providing regional leadership and coordination for scientific studies, research, and water quality modeling.
- b. Implementation of Multi-Benefit Projects. The District will engage stakeholders in the planning process for District Projects.

VII. Tax Calculation and Collection Provisions

A. Calculation of the Tax

The tax will be calculated for each parcel subject to the tax based upon the parcel's impermeable area. The boundaries of the area, and identification of the parcels subject to the tax and the method for calculating the tax for each parcel will be established by the ordinance adopted by the Board. The rate used for calculating the tax, as established by the ordinance adopted by the Board, will remain the same from year to year, unless a change is approved in accordance with all applicable laws. The Chief Engineer may periodically re-evaluate the characteristics of parcels to ensure accuracy of tax calculations.

B. Collection – General Procedure

The tax will be collected for each fiscal year on the property tax roll in the same manner, and at the same time as, the general taxes of the County are collected. The Auditor will provide an annual statement of the revenues collected for the SCW Program to each Municipality as well as each Watershed Area Steering Committee.

Insofar as feasible and not inconsistent with the SCW Program, the times and procedures regarding exemptions, due dates, installment payments, corrections, cancellations, refunds, late payments, penalties, liens, and collections for secured roll ad valorem property taxes will be applicable to the collection of the tax.

C. Claims for Reimbursement and Appeals

Parcel owners who believe their tax has been calculated incorrectly will be able to seek review on one or more of the following grounds:

- a. Mathematical error in the calculation of the tax.
- b. Discrepancy of more than either the result of a 10% error in the actual impermeable area or \$50 in the tax amount, whichever is greater.

Tax appeals must be filed with the District.

D. Passthrough of Tax

There are no provisions in the SCW Program Tax that would limit a parcel owner's ability to passthrough the proposed parcel tax to a tenant. Land owners must comply with all applicable rent control ordinances, contractual provisions in the specific lease, federal subsidized housing requirements, and others.

E. Rebate Program

The rebate program shall provide mechanisms to provide rebates to private property owners that recognize improvements to water quality that may also support water conservation and resiliency and/or provide other community benefits through outcomes that are consistent with the SCW Program goals

VIII. Revenue Bonds

Bonds issued hereunder by a Municipality or the District, to the extent such entity is authorized by law to issue and sell revenue bonds, may be secured by SCW Program revenues as set forth in this document. Only those amounts specifically allocated to a Municipality or the District may be used as security for its respective bonds. Watershed Area Steering Committees may request the District to bond against their Watershed Area's revenue stream for Regional Projects.

Any such revenue bonds shall not constitute any indebtedness of the District or the County, but shall be payable, principal and interest, only from revenues received from the tax.

IX. Miscellaneous Provisions

A. Carryover of Uncommitted Municipal and Regional Program Funds

Municipalities and Project Developers will be able to carry over uncommitted SCW Program revenues for up to five (5) years from the end of the fiscal year in which those revenues are transferred from the District to the Municipality or Project Developer. Additional requirements may be included in the transfer agreement.

B. Procedures for Lapsing Funds

Municipalities and Project Developers who are unable to expend their approved funding as described in their Stormwater Investment Plan will be subject to lapsing funds procedures. Lapsing funds are funds that were committed and approved but were not able to be spent per the approved schedule. Funds are considered lapsed five (5) years after the transfer agreement execution date.

SCW Program revenues that are not expended by a Municipality or Project Developer within the five (5) years will revert back to the Watershed Area Steering Committee of the respective Watershed Area and be reprogrammed to a new Project with benefit to that Municipality or Watershed Area.

C. Record-Keeping and Audits

The following recordkeeping and audit requirements will apply:

- a. SCW Program revenues received by the District, Municipalities, and Project Developers will be required to be held in separate interest-bearing accounts and not combined with other funds. Interest earned on SCW Program revenues will be required to be used for SCW Projects in the Watershed Area Steering Committee or Municipality in which it was earned, consistent with the requirements of the SCW Program.
- b. Municipalities, Project Developers, and the District will be required to retain, for a period of seven (7) years after Project completion, all records necessary to determine the amounts expended, and eligibility of Projects. Municipalities and Project Developers, upon demand by authorized representatives of the District will be required to make such records available for examination and review or audit by the District or its authorized representative.

- c. At all reasonable times, Municipalities and Project Developers will be required to permit the Chief Engineer, or his or her authorized representative, to examine all Projects that were erected, constructed, implemented, operated, or maintained using SCW Program revenues. Municipalities and Watershed Area Steering Committees will be required to permit the authorized representative, including the Auditor, to examine, review or audit, and transcribe any and all audit reports, other reports, books, accounts, papers, maps, and other records that relate to Projects funded with revenues from the SCW Program.
- d. Municipalities will be subject to an independent audit of their use of SCW Program funds not less than once every five (5) years. Municipal audits are to be funded with Municipal Program funds.
- e. Project Developers will be subject to an independent audit upon completion of the Project. Additional interim audits may be conducted.
- f. District will be subject to an independent audit of their use of SCW Program funds not less than once every five (5) years.

D. Procedures for Addressing Misuse of Funds and Failure to Comply with Requirements

The following procedures apply for misuse of funds and failure to comply with requirements.

- a. If the District determines that a Project Developer or Municipality has misused SCW Program revenues, the District may issue a written notice to the Project Developer or Municipality of that determination and to refund those revenues, including associated interest, to the District within thirty (30) days of notification.
- b. Revenues refunded by a Project Developer or Municipality will, at the Board of Supervisors' discretion, be reassigned and used to plan, implement, and maintain Projects in accordance with the following:
 - SCW Program revenues refunded by a Municipality will be used to fund Municipal or Regional Projects that are located within the jurisdiction of the Municipality.
 - SCW Program revenues refunded by a Project Developer will be used to implement Projects in the same Watershed Area from which the revenues were collected.
- c. Failure to comply with a notice to refund revenues by the required date will result in immediate suspension of future SCW Program revenue disbursements to that entity until such time as revenues are refunded.
- d. If the District determines that a Municipality or Project Developer has failed to comply with any applicable requirement of the Program, the District, at its discretion, may issue a written notice to the Municipality or Project Developer of that determination and that the District will withhold future disbursements of SCW Program revenues pending compliance. Withheld disbursements will be retained by the District for a period of five (5) years after which, if the violation has not been resolved, they will revert back to the respective Watershed Area Steering Committee for reprogramming to another Project.

- e. If a Project Developer or Municipality disputes a determination by the District, as described above, the Project Developer or Municipality may submit a notice of appeal to the District not later than ten (10) business days from the date of the written notice from the District. The District will appoint a hearing officer to conduct a hearing on the appeal. The submission of a notice of appeal does not relieve the Municipality or Project Developer of the obligation to refund the SCW Program revenues in dispute. If the hearing officer determines an adjustment is required, that adjustment will be reflected in the next disbursement of SCW Program revenues.

E. District Held Harmless

The District will not be required to accept ownership or responsibility for any Project developed, implemented or constructed by a Municipality or a Project Developer with SCW Program revenues. Unless the District enters into an express agreement with a Project Developer or Municipality to the contrary, neither the District, nor the County to the extent that it is acting on behalf of the District, their officers, employees, agents or volunteers ("District Indemnitees") will be liable in connection with errors, defects, injuries, property damage caused by or attributed to any Project that is funded in whole or in part with SCW Program revenues, and each Municipality and Project Developer will be required to indemnify the District Indemnitees and hold them harmless for claims, liability, and expenses, including attorneys' fees, incurred by any District Indemnitees as a result of any Project developed, implemented, or constructed by the Municipality or Project Developer that is funded with the SCW Program revenue, except for claims, liability, and expenses, including attorneys' fees, resulting from the sole negligence or willful misconduct of District Indemnitees.

F. Period Review of the SCW Program

- a. The Board of Supervisors will review and make revisions to the SCW Program as needed, including updates to the Infrastructure Program Project Scoring Criteria; Watershed Area boundaries; Threshold Score; membership of the Watershed Area Steering Committees, Regional Oversight Committee, and Scoring Committee; and other sections.
- b. After a period of thirty (30) years, the Board of Supervisors shall evaluate the need for the SCW Program and make a determination of whether the tax should be rescinded.

SAFE, CLEAN WATER PROGRAM
Draft Program Elements Appendices

X. APPENDIX

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A. Watershed Area Steering Committee Minimum Requirements

Sector	Years Of Experience	Description
Municipalities	Five +	<ul style="list-style-type: none"> • General knowledge of pollution abatement projects and knowledge in Stormwater programs, and knowledge of NPDES Stormwater Permit and TMDL issues as related to the region. • Knowledgeable of the roles of federal, state and local governmental agencies involved in either the regulation of or the operation of water supply facilities, as well as familiarity with key nongovernmental agencies that influence the operations of water systems.
Groundwater	Five +	<ul style="list-style-type: none"> • Experience in one of the following groundwater areas: remediation, supply, management and/or storage. • Educational background or equivalent work experience in engineering, natural sciences, land use management, conservation, or other water resource-related field.
Water Agency	Five +	<ul style="list-style-type: none"> • Educational background or work experience in engineering, environmental science, biology, chemistry, toxicology, microbiology, urban planning or closely related field. • Ability to provide a regional perspective on water supply issues. • Expertise in the planning, design and construction, financing, and operations of water works facilities which includes storage reservoirs, transmission and distribution systems, pumping plants, water treatment, water conservation, and system optimization particularly as it effects power usage. • Sound knowledge of existing and emerging regulations, as well as environmental matters and familiarity with California water law and regulations. • Knowledgeable of the roles of federal, state and local governmental agencies involved in either the regulation of or the operation of water supply facilities, as well as familiarity with key nongovernmental agencies that influence the operations of water systems. • Experience in the acquisition of water rights.
Sanitation	Five +	<ul style="list-style-type: none"> • Experience in local or regional agency that provides wastewater collection, treatment, recycling and/or disposal services. • Education background and work experience in science, engineering, waste management or related fields.
Open Space	Five +	<ul style="list-style-type: none"> • Experience with habitat, open space and/or recreational issues at a regional level (i.e. across Municipal jurisdictions and watershed boundaries). • Educational background or equivalent work experience in natural sciences, land use management, conservation, or other water resource-related field. • Familiar with the agencies and organizations involved in habitat/open space issues in the District who are likely to be Project Developers, land owners or permittees of Projects.
At large Community Stakeholders	Five +	<ul style="list-style-type: none"> • General knowledge of pollution abatement projects and knowledge in Stormwater programs, and knowledge of NPDES Stormwater Permit and TMDL issues as related to the region. • Experience in community engagement • Knowledge and experience in working with government agencies to achieve community investment
Environmental	Five +	<ul style="list-style-type: none"> • Experience in water resource issues • Educational background or equivalent work experience in natural sciences, land use management, conservation, or other water resource-related field • Educational background or work experience in engineering, environmental science, biology, chemistry, toxicology, microbiology, urban planning or closely related field.

Sector	Years Of Experience	Description
Business	Five +	<ul style="list-style-type: none"> • Experience in developing commercial/business Stormwater Capture facilities • Knowledge and experience in working with government agencies to achieve water resource improvements for residential and commercial properties • Educational background or equivalent work experience in natural sciences, land use management, conservation, or other water resource-related field.
Environmental Justice	Five +	<ul style="list-style-type: none"> • Experience in community engagement • Knowledge and experience in community priorities regarding resource needs for quality of life issues with respect to the development, implementation, and enforcement of environmental law, regulation, and policies. • Knowledge and experience in working with government agencies to achieve community investment.
Watershed Coordinator	Five +	<ul style="list-style-type: none"> • Experience in coordination and implementation of technical assistance. • Knowledge and experience in watershed protection planning, water quality, and/or watershed assessment. • Knowledge and experience to provide and/or coordinate technical assistance that results in Projects that are integrated and result in regionally significant and measurable watershed benefits • Experience in community engagement particularly with disadvantaged communities and small cities is desirable.
<p>General Minimum Qualifications for all Members:</p> <ul style="list-style-type: none"> • General knowledge of pollution abatement projects and knowledge in Stormwater programs, and knowledge of NPDES Stormwater Permit and TMDL issues as related to the region. Must be able to attend and participate in Watershed Area Steering Committee meetings. 		

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B. Watershed Area Steering Committee Membership

	Central Santa Monica Bay	Lower Los Angeles River	Lower San Gabriel River	North Santa Monica Bay	Rio-Hondo	Santa Clara River	South Santa Monica Bay	Upper Los Angeles River	Upper San Gabriel River
Municipal Representation (6 seats)	Los Angeles	77%	3	Non-represented City (Self Selected)	3	Non-represented City (Self Selected)	3	Non-represented City (Self Selected)	3
	Santa Monica	6%	1	Belvoir	6%	Belvoir	6%	Belvoir	6%
	El Segundo	4%	1	Pico Rivera	5%	Pico Rivera	5%	Pico Rivera	5%
	Culver City	4%	1	Paramount	2%	Paramount	2%	Paramount	2%
	Bayview Hills	4%	1	Alhambra	2%	Alhambra	2%	Alhambra	2%
	Inglewood	2%	1	Signal Hill	1%	Signal Hill	1%	Signal Hill	1%
	Unincorporated	2%	1	Carson	1%	Carson	1%	Carson	1%
	West Hollywood	2%	1	La Habra	1%	La Habra	1%	La Habra	1%
				Hawaiian Gardens	1%	Hawaiian Gardens	1%	Hawaiian Gardens	1%
				Los Angeles	0%	Los Angeles	0%	Los Angeles	0%
			Unincorporated	29%	Unincorporated	29%	Unincorporated	29%	
			Malibu	25%	Malibu	25%	Malibu	25%	
			Agoura Hills	21%	Agoura Hills	21%	Agoura Hills	21%	
			Westlake Village	14%	Westlake Village	14%	Westlake Village	14%	
			Calabasas	10%	Calabasas	10%	Calabasas	10%	
			Hidden Hills	1%	Hidden Hills	1%	Hidden Hills	1%	
			South Pasadena	0%	South Pasadena	0%	South Pasadena	0%	
			Temple City	5%	Temple City	5%	Temple City	5%	
			San Marino	4%	San Marino	4%	San Marino	4%	
			Sierra Madre	3%	Sierra Madre	3%	Sierra Madre	3%	
			Duarte	2%	Duarte	2%	Duarte	2%	
			Inverdale	1%	Inverdale	1%	Inverdale	1%	
			San Gabriel	5%	San Gabriel	5%	San Gabriel	5%	
			Monrovia	6%	Monrovia	6%	Monrovia	6%	
			Alhambra	6%	Alhambra	6%	Alhambra	6%	
			Rosemead	6%	Rosemead	6%	Rosemead	6%	
			Monte Park	7%	Monte Park	7%	Monte Park	7%	
			El Monte	9%	El Monte	9%	El Monte	9%	
			Monterey Park	10%	Monterey Park	10%	Monterey Park	10%	
			Arcadia	10%	Arcadia	10%	Arcadia	10%	
			Unincorporated	11%	Unincorporated	11%	Unincorporated	11%	
			Pasadena	14%	Pasadena	14%	Pasadena	14%	
			Unincorporated	14%	Unincorporated	14%	Unincorporated	14%	
			Carson	18%	Carson	18%	Carson	18%	
			Torrance	16%	Torrance	16%	Torrance	16%	
			Unincorporated	10%	Unincorporated	10%	Unincorporated	10%	
			Gardena	6%	Gardena	6%	Gardena	6%	
			Hawthorne	5%	Hawthorne	5%	Hawthorne	5%	
			Redondo Beach	5%	Redondo Beach	5%	Redondo Beach	5%	
			Inglewood	5%	Inglewood	5%	Inglewood	5%	
			Rancho Palms Verdes	5%	Rancho Palms Verdes	5%	Rancho Palms Verdes	5%	
			Manhattan Beach	3%	Manhattan Beach	3%	Manhattan Beach	3%	
			El Segundo	2%	El Segundo	2%	El Segundo	2%	
			Palms Verdes Estates	2%	Palms Verdes Estates	2%	Palms Verdes Estates	2%	
			Lomita	2%	Lomita	2%	Lomita	2%	
			Lanvale	1%	Lanvale	1%	Lanvale	1%	
			Rolling Hills Estates	1%	Rolling Hills Estates	1%	Rolling Hills Estates	1%	
			Hermosa Beach	1%	Hermosa Beach	1%	Hermosa Beach	1%	
			Rolling Hills	1%	Rolling Hills	1%	Rolling Hills	1%	
			Compton	0%	Compton	0%	Compton	0%	
			San Gabriel	36%	San Gabriel	36%	San Gabriel	36%	
			Unincorporated	3%	Unincorporated	3%	Unincorporated	3%	
			Los Angeles	75%	Los Angeles	75%	Los Angeles	75%	
			Unincorporated	9%	Unincorporated	9%	Unincorporated	9%	
			Glendale	5%	Glendale	5%	Glendale	5%	
			Burbank	5%	Burbank	5%	Burbank	5%	
			La Canada Flintridge	1%	La Canada Flintridge	1%	La Canada Flintridge	1%	
			Passadena	1%	Passadena	1%	Passadena	1%	
			Calabasas	1%	Calabasas	1%	Calabasas	1%	
			Alhambra	1%	Alhambra	1%	Alhambra	1%	
			San Fernando	1%	San Fernando	1%	San Fernando	1%	
			Lanvale	1%	Lanvale	1%	Lanvale	1%	
			South Pasadena	1%	South Pasadena	1%	South Pasadena	1%	
			Monterey Park	0%	Monterey Park	0%	Monterey Park	0%	
			Hidden Hills	0%	Hidden Hills	0%	Hidden Hills	0%	
			San Gabriel	0%	San Gabriel	0%	San Gabriel	0%	
			Arceata	0%	Arceata	0%	Arceata	0%	
			Memoria	0%	Memoria	0%	Memoria	0%	
			Unincorporated	19%	Unincorporated	19%	Unincorporated	19%	
			Pomona	13%	Pomona	13%	Pomona	13%	
			Industry	11%	Industry	11%	Industry	11%	
			West Covina	9%	West Covina	9%	West Covina	9%	
			Glendora	6%	Glendora	6%	Glendora	6%	
			Diamond Bar	6%	Diamond Bar	6%	Diamond Bar	6%	
			Covina	5%	Covina	5%	Covina	5%	
			Baldwin Park	5%	Baldwin Park	5%	Baldwin Park	5%	
			Chermon	4%	Chermon	4%	Chermon	4%	
			Azusa	4%	Azusa	4%	Azusa	4%	
			La Verne	4%	La Verne	4%	La Verne	4%	
			San Dimas	4%	San Dimas	4%	San Dimas	4%	
			Walnut	3%	Walnut	3%	Walnut	3%	
			Inverdale	3%	Inverdale	3%	Inverdale	3%	
			La Puente	2%	La Puente	2%	La Puente	2%	
			El Monte	2%	El Monte	2%	El Monte	2%	
			Duarte	1%	Duarte	1%	Duarte	1%	
			South El Monte	0%	South El Monte	0%	South El Monte	0%	
			Bradbury	0%	Bradbury	0%	Bradbury	0%	
			Arceata	0%	Arceata	0%	Arceata	0%	
			Memoria	0%	Memoria	0%	Memoria	0%	
LAFCD	FCD	FCD	FCD	FCD	FCD	FCD	FCD	FCD	FCD
Water Agency	LADWP	Central Basin	Central Basin	Las Virgenes	Upper San Gabriel District	Cascade Lake	West Basin	LADWP	Upper San Gabriel District
Ground Water / Water Agency 2	West Basin	Water Replenishment District	Water Replenishment District	County Waterworks District	Main San Gabriel Basin	GSA for the Santa Clara River Valley	Water Replenishment District	LADWP	Main San Gabriel Basin
Sanitation	LASNM	San Districts	San Districts	Las Virgenes	San Districts	San Districts	San Districts	LASNM	San Districts
Open Space	LA Rec & Parks	City of Long Beach Parks and Recreation	City of Long Beach Parks and Recreation	Mountains Recreation and Conservation Authority	City of Pasadena Parks and Recreation	City of Santa Clara Parks and Recreation	LA Rec & Parks	LA Rec & Parks	County Parks and Rec
Community Stakeholder (6 seats)	Appointed by BOS	Appointed by BOS	Appointed by BOS	Appointed by BOS	Appointed by BOS	Appointed by BOS	Appointed by BOS	Appointed by BOS	Appointed by BOS

DATE: June 12, 2018
TO: Water Policy/Technical Advisory Committee
FROM: Marisa Creter, Executive Director
RE: **UPDATE ON AB 2538 (RUBIO)**

RECOMMENDED ACTION

For information only

BACKGROUND

AB 2538 (Rubio) requires the State Water Resources Control Board (State Water Board) to establish financial capability assessment (FCA) guidelines for municipal separate storm sewer system (MS4) permittees that are adequate and consistent when considering the costs to local jurisdictions. Specifically, this bill:

- 1) Requires, by July 1, 2019, the State Water Board to establish FCA guidelines for MS4 permittees that are adequate and consistent when considering the costs to local jurisdictions, including costs incurred in previous years.
- 2) Requires the State Water Board, in developing the guidelines, to document any source it uses to develop an estimate of local costs and the overall cost of stormwater management.
- 3) Requires the State Water Board to consider at least both of the following United States Environmental Protection Agency (US EPA) policies in drafting the FCA guidelines: Combined Sewer Overflows – Guidance for FCA and Schedule Development, dated February 1997; and, Affordability Criteria for Small Drinking Water Systems: An EPA Science Advisory Board Report, dated December 2002.

Among the comments heard by the Assembly Appropriations Committee were the following:

State Audit on costs of stormwater regulation: On March 1, 2018, the California State Auditor released Report 2017-118, *State and Regional Water Boards: They Must Do More to Ensure That Local Jurisdictions' Costs to Reduce Storm Water Pollution Are Necessary and Appropriate*, and found that when imposing stormwater requirements, the State Water Board and the Regional Water Boards lack consistent information on the costs that local jurisdictions incur in complying with storm water requirements, and have not adequately considered the costs that local jurisdictions would incur to comply with these requirements. The Report also states that the Regional Water Boards did not obtain all relevant information on some water bodies before imposing storm water requirements, potentially resulting in local jurisdictions incurring excessive costs or failing to meet water quality goals. Obtaining this information is important, as it can have a substantial effect on the pollutant control plans the regional board ultimately develops.

This bill is responsive to the findings of the aforementioned State Audit report. The bill finds and declares that, "A FCA is necessary to set achievable schedules for water quality objectives in water quality control plans under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) and to develop integrated regional water

REPORT

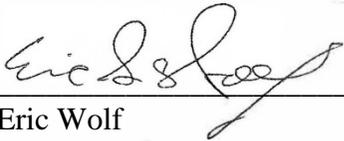
management plans." This bill would compel the creation of FCA guidelines for compliance with MS4 permit holders that take costs of compliance mechanisms into consideration.

DISCUSSION

On May 25th, AB 2538 passed the Assembly Appropriations Committee on a vote of 12 to 0, and passed a full Assembly floor vote on May 30th with 75 ayes and 0 noes. AB 2538 is currently in the Senate Rules Committee awaiting assignment to a policy committee.

RECOMMENDED ACTION

For information only

Prepared by: 
Eric Wolf
Senior Management Analyst

Approved by: 
Marisa Creter
Executive Director

ATTACHMENT

DATE: June 12, 2018

TO: Water Policy/Technical Advisory Committee

FROM: Marisa Creter, Executive Director

RE: **SB 606 (SKINNER AND HERTZBERG), AB 1668 (FRIEDMAN)**

RECOMMENDED ACTION

For information only

BACKGROUND

In May of 2016 Governor Edmund G. Brown Jr. signed Executive Order (B-37-16) (EO) that updated the drought emergency declaration, and directed state agencies to take specific additional actions designed to make water conservation a California way of life. Beginning in June 2016, the administration had a series of meetings and workshops with key interest groups to develop specific proposals for implementing the EO. On July 11, 2017, the Senate Natural Resources and Water Committee (SNRW) had a special order of business to hear four bills related to the administration's proposed water conservation framework. These were AB 1323 (Weber), AB 1654 (Rubio), AB 1667 (Friedman), and AB 1668 (Friedman). SNRW heard presentations from the administration and three authors on their objectives for their proposals. The chair then laid out a process for harmonizing the interests of the Senate, Assembly, administration, and the various interest groups. In the end, SB 606 and AB 1668 emerged as the two-bill package that would carry the agreed upon water conservation policy.

The package required that both bills be passed on order for either to take effect. AB 1668 establishes authority for the State Water Resources Control Board (SWRCB) in coordination with the Department of Water Resources (DWR), to establish long-term urban water use efficiency standards by June 30, 2022. Whereas, SB 606 establishes urban water use objectives and water use reporting requirements.

AB 1668 (FRIEDMAN)

AB 1668 establishes authority for the State Water Resources Control Board (SWRCB) in coordination with the Department of Water Resources (DWR), to establish long-term urban water use efficiency standards by June 30, 2022. The standards are to, among other things, include:

- Requiring the long-term efficient water use standards to have a component for indoor residential water use, outdoor residential water use, outdoor irrigation of landscape areas with dedicated irrigation meters in connection with Commercial, Institutional, and Industrial (CII) water use, and a volume for water loss, as specified.
- Establishing an urban water use objective as the aggregate of the efficient water use components (indoor residential, outdoor residential, outdoor irrigation of CII on a dedicated meter, and water loss) based on previous year water use and reported annually.

- Establishing an indoor water use standard of 55 gallons per capita daily (GPCD) until January 1, 2025. Beginning January 1, 2025, until January 1, 2030, establishes an indoor water use standard of 52.5 GPCD and beginning January 1, 2030, establishes an indoor water use standard of 50 GPCD.
- Requiring the DWR in coordination with the SWRCB to conduct studies and investigations and recommend, no later than October 1, 2021, standards for outdoor residential use for adoption by the SWRCB. Requires the standards to incorporate the principles, as specified, of the model water efficient landscape ordinance. Requires the DWR to provide each urban retail water supplier with data that can reasonably be applied to the standard, and is sufficient to allow the urban retail water supplier to verify its accuracy at the parcel level.
- Requiring the DWR in coordination with the SWRCB to adopt regulations for variances, as specified.
- Authorizing the SWRCB to issue information orders on and after July 1, 2024, written notices on and after July 1, 2025, and conservation orders on and after July 1, 2026, to an urban water supplier that does not meet its urban water use objective. Prohibits the conservation orders from requiring an urban water supplier to impose civil liability.
- Establishing liability of \$1,000 per day for a violation of orders or regulations on the long-term standards after November 1, 2027. Increases the liability to \$10,000 if there is a drought emergency declared by the Governor or during a critically dry year that is preceded by two or more below average rainfall years.
- Specifying that nothing in the long-term urban water use efficiency standards shall be construed to determine or alter water rights.

SB 606 (SKINNER AND HERTZBERG)

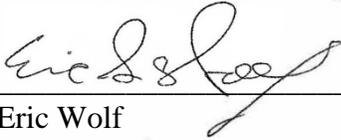
SB 606 deals with the reporting requirements for urban water retailers. Specifically, this bill:

- Establishes urban water use objectives and water use reporting requirements, including:
 - Requires an urban water supplier to calculate an aggregate urban water use objective for the previous calendar year by November 1 of each year, beginning November 1, 2023.
 - Provides a bonus incentive for potable reuse water equal to the volume of that delivered, up to 15% for existing projects, as defined, and 10% for all other potable reuse projects.
 - Requires an urban water supplier to submit an annual report to DWR that reports the urban water use objective and actual water use by November 1 of each year.
 - Authorizes SWRCB to issue information orders, written notices, and conservation orders to an urban water supplier that does not meet its water use objective. Conservation orders are prohibited from curtailing or otherwise limiting the supplier's exercise of water rights.

- Revises Urban Water Management Plans (UWMP) to include the following:
 - Requires UWMPs to include a simple lay description of the reliability of its water supplies, the agency’s strategy for meeting its water needs, and other information necessary to provide a general understanding of the agency’s plan.
 - Requires UWMPs to contain a drought risk assessment that examines water shortage risks for a drought lasting the next five years.
 - Requires, as a part of the shortage contingency plan, a determination of the reliability of each source of supply under a variety of water shortage conditions.
 - Requires an urban water supplier to conduct a water supply and demand assessment and provide that information to DWR with information for anticipated shortage, triggered shortage response actions, compliance and enforcement actions, and communication actions consistent with the supplier’s water shortage contingency plan each May.
 - Requires, instead of authorizing, the governing body of a distributor of a public water supply to declare a water shortage emergency condition to prevail within the area served by the distributor whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the distributor to the extent that there would be insufficient water for human consumption, sanitation, and fire protection.

RECOMMENDED ACTION

For information only.

Prepared by: 
Eric Wolf
Senior Management Analyst

Approved by: 
Marisa Creter
Executive Director

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA-HQ-OW-2018-0063; FRL-9973-41-OW]

Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is requesting comment on the Agency’s previous statements regarding the Clean Water Act (CWA) and whether pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional surface water may be subject to CWA regulation. EPA is requesting comment on whether the Agency should consider clarification or revision of those statements and if so, comment on how clarification or revision should be provided.

DATES: Comments must be received on or before May 21, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2018-0063, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Scott Wilson, Office of Wastewater Management, Water Permits Division (MC4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW,

Washington, DC 20460; telephone number: (202) 564-6087; email address: wilson.js@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. General Information
 - A. Does this action apply to me?
 - B. What should I consider as I prepare my comments for EPA?
- II. Background
 - A. The Clean Water Act’s National Pollutant Discharge Elimination System Program
 - B. EPA’s Previous Statements Regarding the Clean Water Act’s “Discharge of a Pollutant” Provision Where There Is a Direct Hydrologic Connection
 - C. Direct Hydrologic Connection
- III. Request for Comment

I. General Information

A. Does this action apply to me?

Tribes, states, local governments, the regulated community, and citizens interested in federal jurisdiction over activities that may release pollutants to groundwater may wish to provide input. Entities releasing pollutants to groundwater or other subsurface flow that has a direct hydrologic connection to jurisdictional surface waters may be affected by whether and how EPA clarifies when or if direct hydrologically connected releases are subject to regulation under the CWA. Potentially affected entities include:

Category	Examples of potentially affected entities
States, Tribes, and Territories	State, Tribal, and Territorial water quality agencies and NPDES permitting authorities that may need to determine whether sources of pollutants should be addressed by standards or permitting actions.
Federal Agencies	Federal agencies with projects or other activities near surface waters.
Industry	Industries that may have releases that affect groundwater with connections to surface waters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by a potential clarification of EPA’s previous statements in response to comments received on this notice. Other types of entities not listed in the table could also be affected. If you have questions regarding the effect of this action on a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the

disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. The Clean Water Act's National Pollutant Discharge Elimination System Program

The CWA—initially enacted as the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and subsequent amendments—establishes the basic structure in place today for regulating discharges of pollutants to the waters of the United States. In the CWA, Congress established the national objective to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA Section 1251(a). Congress also expressly intended that states retain their traditional role in preventing, reducing and eliminating pollution: “It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources” CWA Section 1251(b).

The CWA National Pollutant Discharge Elimination System (NPDES) permitting authority, whether implemented by EPA or an authorized State, is limited to regulating the discharge of pollutants from point sources to navigable waters. Congress prohibited any “discharge of any pollutant” to “navigable waters” unless it is authorized by statute, generally by a permit. CWA Sections 1311, 1342, 1344, 1362. The CWA defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” CWA Section 1362(12)(A). Pollutant means “dredged spoil, solid waste, incinerator, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” CWA Section 1362(6). The CWA defines “navigable waters” as “the waters of the United States, including the territorial seas”; and a “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA Sections 1362(7), (14).

The CWA authorizes EPA to issue NPDES permits under Section 402(a), but EPA may authorize a state to

administer its own NPDES program if EPA determines that the program meets the statutory criteria. CWA Sections 1342(a), (b). When a state receives such authorization, EPA retains oversight and enforcement authorities. CWA Sections 1319, 1342(d).

B. EPA's Previous Statements Regarding the Clean Water Act's “Discharge of a Pollutant” Provision Where There Is a Direct Hydrologic Connection

EPA has previously stated that pollutants discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water may be subject to CWA permitting requirements. EPA has not stated that CWA permits are required for pollutant discharges to groundwater in all cases, but rather that pollutants discharged from point sources to jurisdictional surface waters that occur via groundwater or other subsurface flow that has a direct hydrologic connection to the surface water may require such permits. The Agency has made these statements in previous rulemaking, permitting, and guidance documents, although most of these statements were collateral to the central focus of a rulemaking or adjudication. *See* Final NPDES Permit Application Regulations for Storm Water Discharges, 55 FR 47,990, 47,997 (Dec. 2, 1990) (“[T]his rulemaking only addresses discharges to water of the United States, consequently discharges to ground waters are not covered by this rulemaking (unless there is a hydrological connection between the ground water and a nearby surface water body.)”); 1991 Final Rule Addressing Water Quality Standards on Indian Lands, 56 FR 64,876, 64,892 (Dec 12, 1991) (“Notwithstanding the strong language in the legislative history of the Clean Water Act to the effect that the Act does not grant EPA authority to regulate pollution of groundwaters, EPA and most courts addressing the issues have recognized that . . . the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters. In these situations, the affected groundwaters are not considered ‘waters of the United States’ but discharges to them are regulated because such discharges are effectively discharges to the directly connected surface waters.”); Final General NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho ID–G–01–0000, 62 FR 20,178 (1997) (“the Clean Water Act does not give EPA the

authority to regulate groundwater quality through NPDES permits. The only situation in which groundwater may be affected by the NPDES program is when a discharge of pollutants to surface waters can be proven to be via groundwater. . . . [T]he permit requirements . . . are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.”). *See also* Proposed NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 66 FR 2,960, 3,017 (Jan. 12, 2001) (“As a legal and factual matter, EPA has made a determination that, in general, collected or channeled pollutants conveyed to surface waters via ground water can constitute a discharge subject to the Clean Water Act. The determination of whether a particular discharge to surface waters via ground water which has a direct hydrologic connection is a discharge which is prohibited without an NPDES permit is a factual inquiry”).

When taking final action on the proposed regulation of discharges from CAFOs, EPA rejected establishing nationally applicable effluent limitation requirements related to releases to groundwater with a direct hydrologic connection to jurisdictional water and recognized that “there are scientific uncertainties and site-specific considerations with respect to regulating discharges to surface water via groundwater with a direct hydrologic connection to surface water [and] conflicting legal precedents on this issue.” Final NPDES Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 68 FR 7,175, 7,216 (Feb. 12, 2003). EPA stated in the preamble to the final rule, in the context of ensuring proper closure of CAFOs, that the permitting authority may impose special permit terms and conditions addressing such circumstances on a case-by-case basis as appropriate. 68 FR at 7,229. The Agency further noted that “[n]othing in this rule shall be construed to expand, diminish, or otherwise affect the jurisdiction of the Clean Water Act over discharges to surface water via groundwater that has a direct hydrologic connection to surface water.” *Id.* at 7,216–17.

In CWA citizen suits against regulated entities, courts have faced the question of whether regulation under the CWA of point source discharges of pollutants includes regulation of releases to groundwater with a direct hydrologic connection to jurisdictional surface

waters. Some courts have determined that the statute does not explicitly answer this question, while others have held that the statute does not extend to releases to groundwater. Other courts have interpreted the CWA as covering not only discharges of pollutants to navigable waters, but also releases of pollutants that travel from a point source to navigable waters over the surface of the ground. *E.g.*, *Sierra Club v. Abston Constr. Co.*, 620 F.2d 41, 44–45 (5th Cir. 1980). As one court noted, “the inclusion of groundwater with a hydrological connection to surface waters has troubled courts and generated a torrent of conflicting commentary.” *Potter v. ASARCO*, Civ. No. S:56–cv–555, slip op. at 19 (D. Neb. Mar. 3, 1998).

Certain courts have concluded that a hydrological connection between groundwater and surface waters is insufficient to justify CWA regulation. In *Village of Oconomowoc Lake v. Dayton Hudson Corporation*, the Seventh Circuit concluded that “[n]either the Clean Water Act nor the EPA’s definition [of waters of the United States] asserts authority over ground waters, just because these may be hydrologically connected with surface waters.” 24 F.3d 962, 965 (7th Cir. 1994), *cert. denied*, 513 U.S. 930 (1994). The court cited EPA’s statement in the preamble to the 1990 Final NPDES Permit Application Regulations for Storm Water Discharges noting the potential for a hydrologic connection between groundwater and jurisdictional surface water, but concluded that the reference was “collateral” and “not a satisfactory substitute for focused attention in rulemaking or adjudication.” *Id.* at 966. In *Rice v. Harken Exploration Co.*, the Fifth Circuit held that “a generalized assertion that covered surface waters will eventually be affected by remote, gradual, natural seepage from the contaminated groundwater” was outside the scope of the Oil Pollution Act in order “to respect Congress’s decision to leave the regulation of groundwater to the States.” 250 F.3d 264, 272 (5th Cir. 2001). In *Cape Fear River Watch v. Duke Energy Progress*, the district court held that “Congress did not intend for the CWA to extend federal regulatory authority over groundwater, regardless of whether that groundwater is eventually or somehow ‘hydrologically connected’ to navigable surface waters.” 25 F. Supp. 3d 798, 810 (E.D.N.C. 2014).

A number of other district courts have taken the view that Congress intended to regulate the release of pollutants that reach waters of the United States, whether the pollutants reach the surface

water directly, or through groundwater with a direct hydrologic connection. *E.g.*, *Idaho Rural Council v. Bosma*, 143 F. Supp. 2d 1169, 1179–80 (D. Idaho 2001). Because these courts interpreted the term “discharge of a pollutant” to cover discharges that reach jurisdictional water over the ground and through other means, they concluded that exempting discharges through groundwater could lead to confusion and unintended results. One court noted that “it would hardly make sense for the CWA to encompass a polluter who discharges pollutants via a pipe running from the factory directly to the riverbank, but not a polluter who dumps the same pollutants into a man-made settling basin some distance short of the river and then allows the pollutants to seep into the river via the groundwater.” *N. Cal. River Watch v. Mercer Fraser Co.*, No. 04–4620, 2005 WL 2122052, at *2 (N.D. Cal. Sept. 1, 2005). And the Ninth Circuit recently held that a point source discharge to groundwater of “more than [a] de minimis” amount of pollutants that is “fairly traceable from the point source . . . such that the discharge is the functional equivalent of a discharge into a navigable water” is regulated under the Act. *Haw. Wildlife Fund v. Cty. of Maui*, No. 15–17447, slip. op. at 19 (9th Cir. Feb. 1, 2018).

C. Direct Hydrologic Connection

In addition to the mixed case law on whether certain releases of pollutants to groundwater are within the jurisdictional reach of the CWA, ascertaining whether there is a direct hydrologic connection such that a particular release to groundwater could be considered a “discharge of a pollutant” to a “water of the United States” and therefore subject to the CWA has been characterized previously by EPA as a fact-specific determination. See 66 FR at 3,017. EPA has stated that relevant evidence includes the time it takes for a pollutant to move to surface waters, the distance it travels, and its traceability to the point source. *Id.* These factors are affected by other site specific factors, such as geology, flow, and slope. *Id.*

III. Request for Comment

EPA is requesting comment from tribes, states, members of the public, and other interested stakeholders regarding whether EPA should review and potentially revise its previous statements concerning the applicability of the CWA NPDES permit program to pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic

connection to a jurisdictional surface water. Specifically, EPA seeks comment on whether subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA. If EPA has the authority to permit such releases, EPA seeks comment on whether those releases would be better addressed through other federal authorities as opposed to the NPDES permit program. Furthermore, EPA seeks comment on whether some or all such releases are addressed adequately through existing state statutory or regulatory programs or through other existing federal regulations and permit programs, such as, for example, state programs that implement EPA’s underground injection control regulations promulgated pursuant to the Safe Drinking Water Act.

EPA also seeks comment on whether EPA should clarify its previous statements concerning pollutant discharges to groundwater with a direct hydrologic connection to jurisdictional water in order to provide additional certainty for the public and the regulated community. Such a clarification could address the applicability of the CWA to groundwater with a direct hydrologic connection to jurisdictional water, or could define what activities would be regulated if not a discharge to a jurisdictional surface water (*i.e.*, placement on the land), or which connections are considered “direct” in order to reduce regulatory uncertainties associated with that term. EPA also seeks suggestions on what issues should be considered if further clarification is undertaken, including, for example, the consequences of asserting CWA jurisdiction over certain releases to groundwater or determining that no such jurisdiction exists. Finally, EPA seeks comment on what format or process EPA should use to revise or clarify its previous statements (*e.g.*, through memoranda, guidance, or in the form of rulemaking) if the Agency pursues further action in response to this request for comment.

Dated: February 12, 2018.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2018–03407 Filed 2–16–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA-HQ-OW-2018-0063; FRL-9973-41-OW]

Clean Water Act Coverage of “Discharges of Pollutants” via a Direct Hydrologic Connection to Surface Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is requesting comment on the Agency’s previous statements regarding the Clean Water Act (CWA) and whether pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional surface water may be subject to CWA regulation. EPA is requesting comment on whether the Agency should consider clarification or revision of those statements and if so, comment on how clarification or revision should be provided.

DATES: Comments must be received on or before May 21, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OW-2018-0063, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Scott Wilson, Office of Wastewater Management, Water Permits Division (MC4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW,

Washington, DC 20460; telephone number: (202) 564-6087; email address: wilson.js@epa.gov.

SUPPLEMENTARY INFORMATION:

- I. General Information
 - A. Does this action apply to me?
 - B. What should I consider as I prepare my comments for EPA?
- II. Background
 - A. The Clean Water Act’s National Pollutant Discharge Elimination System Program
 - B. EPA’s Previous Statements Regarding the Clean Water Act’s “Discharge of a Pollutant” Provision Where There Is a Direct Hydrologic Connection
 - C. Direct Hydrologic Connection
- III. Request for Comment

I. General Information

A. Does this action apply to me?

Tribes, states, local governments, the regulated community, and citizens interested in federal jurisdiction over activities that may release pollutants to groundwater may wish to provide input. Entities releasing pollutants to groundwater or other subsurface flow that has a direct hydrologic connection to jurisdictional surface waters may be affected by whether and how EPA clarifies when or if direct hydrologically connected releases are subject to regulation under the CWA. Potentially affected entities include:

Category	Examples of potentially affected entities
States, Tribes, and Territories	State, Tribal, and Territorial water quality agencies and NPDES permitting authorities that may need to determine whether sources of pollutants should be addressed by standards or permitting actions.
Federal Agencies	Federal agencies with projects or other activities near surface waters.
Industry	Industries that may have releases that affect groundwater with connections to surface waters.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by a potential clarification of EPA’s previous statements in response to comments received on this notice. Other types of entities not listed in the table could also be affected. If you have questions regarding the effect of this action on a particular entity, please consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the

disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. The Clean Water Act's National Pollutant Discharge Elimination System Program

The CWA—initially enacted as the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500) and subsequent amendments—establishes the basic structure in place today for regulating discharges of pollutants to the waters of the United States. In the CWA, Congress established the national objective to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” CWA Section 1251(a). Congress also expressly intended that states retain their traditional role in preventing, reducing and eliminating pollution: “It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources” CWA Section 1251(b).

The CWA National Pollutant Discharge Elimination System (NPDES) permitting authority, whether implemented by EPA or an authorized State, is limited to regulating the discharge of pollutants from point sources to navigable waters. Congress prohibited any “discharge of any pollutant” to “navigable waters” unless it is authorized by statute, generally by a permit. CWA Sections 1311, 1342, 1344, 1362. The CWA defines “discharge of a pollutant” as “any addition of any pollutant to navigable waters from any point source.” CWA Section 1362(12)(A). Pollutant means “dredged spoil, solid waste, incinerator, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.” CWA Section 1362(6). The CWA defines “navigable waters” as “the waters of the United States, including the territorial seas”; and a “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA Sections 1362(7), (14).

The CWA authorizes EPA to issue NPDES permits under Section 402(a), but EPA may authorize a state to

administer its own NPDES program if EPA determines that the program meets the statutory criteria. CWA Sections 1342(a), (b). When a state receives such authorization, EPA retains oversight and enforcement authorities. CWA Sections 1319, 1342(d).

B. EPA's Previous Statements Regarding the Clean Water Act's “Discharge of a Pollutant” Provision Where There Is a Direct Hydrologic Connection

EPA has previously stated that pollutants discharged from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to the jurisdictional water may be subject to CWA permitting requirements. EPA has not stated that CWA permits are required for pollutant discharges to groundwater in all cases, but rather that pollutants discharged from point sources to jurisdictional surface waters that occur via groundwater or other subsurface flow that has a direct hydrologic connection to the surface water may require such permits. The Agency has made these statements in previous rulemaking, permitting, and guidance documents, although most of these statements were collateral to the central focus of a rulemaking or adjudication. *See* Final NPDES Permit Application Regulations for Storm Water Discharges, 55 FR 47,990, 47,997 (Dec. 2, 1990) (“[T]his rulemaking only addresses discharges to water of the United States, consequently discharges to ground waters are not covered by this rulemaking (unless there is a hydrological connection between the ground water and a nearby surface water body.)”); 1991 Final Rule Addressing Water Quality Standards on Indian Lands, 56 FR 64,876, 64,892 (Dec 12, 1991) (“Notwithstanding the strong language in the legislative history of the Clean Water Act to the effect that the Act does not grant EPA authority to regulate pollution of groundwaters, EPA and most courts addressing the issues have recognized that . . . the Act requires NPDES permits for discharges to groundwater where there is a direct hydrological connection between groundwaters and surface waters. In these situations, the affected groundwaters are not considered ‘waters of the United States’ but discharges to them are regulated because such discharges are effectively discharges to the directly connected surface waters.”); Final General NPDES Permit for Concentrated Animal Feeding Operations (CAFO) in Idaho ID–G–01–0000, 62 FR 20,178 (1997) (“the Clean Water Act does not give EPA the

authority to regulate groundwater quality through NPDES permits. The only situation in which groundwater may be affected by the NPDES program is when a discharge of pollutants to surface waters can be proven to be via groundwater. . . . [T]he permit requirements . . . are intended to protect surface waters which are contaminated via a groundwater (subsurface) connection.”). *See also* Proposed NPDES Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 66 FR 2,960, 3,017 (Jan. 12, 2001) (“As a legal and factual matter, EPA has made a determination that, in general, collected or channeled pollutants conveyed to surface waters via ground water can constitute a discharge subject to the Clean Water Act. The determination of whether a particular discharge to surface waters via ground water which has a direct hydrologic connection is a discharge which is prohibited without an NPDES permit is a factual inquiry”).

When taking final action on the proposed regulation of discharges from CAFOs, EPA rejected establishing nationally applicable effluent limitation requirements related to releases to groundwater with a direct hydrologic connection to jurisdictional water and recognized that “there are scientific uncertainties and site-specific considerations with respect to regulating discharges to surface water via groundwater with a direct hydrologic connection to surface water [and] conflicting legal precedents on this issue.” Final NPDES Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations, 68 FR 7,175, 7,216 (Feb. 12, 2003). EPA stated in the preamble to the final rule, in the context of ensuring proper closure of CAFOs, that the permitting authority may impose special permit terms and conditions addressing such circumstances on a case-by-case basis as appropriate. 68 FR at 7,229. The Agency further noted that “[n]othing in this rule shall be construed to expand, diminish, or otherwise affect the jurisdiction of the Clean Water Act over discharges to surface water via groundwater that has a direct hydrologic connection to surface water.” *Id.* at 7,216–17.

In CWA citizen suits against regulated entities, courts have faced the question of whether regulation under the CWA of point source discharges of pollutants includes regulation of releases to groundwater with a direct hydrologic connection to jurisdictional surface

waters. Some courts have determined that the statute does not explicitly answer this question, while others have held that the statute does not extend to releases to groundwater. Other courts have interpreted the CWA as covering not only discharges of pollutants to navigable waters, but also releases of pollutants that travel from a point source to navigable waters over the surface of the ground. *E.g.*, *Sierra Club v. Abston Constr. Co.*, 620 F.2d 41, 44–45 (5th Cir. 1980). As one court noted, “the inclusion of groundwater with a hydrological connection to surface waters has troubled courts and generated a torrent of conflicting commentary.” *Potter v. ASARCO*, Civ. No. S:56–cv–555, slip op. at 19 (D. Neb. Mar. 3, 1998).

Certain courts have concluded that a hydrological connection between groundwater and surface waters is insufficient to justify CWA regulation. In *Village of Oconomowoc Lake v. Dayton Hudson Corporation*, the Seventh Circuit concluded that “[n]either the Clean Water Act nor the EPA’s definition [of waters of the United States] asserts authority over ground waters, just because these may be hydrologically connected with surface waters.” 24 F.3d 962, 965 (7th Cir. 1994), *cert. denied*, 513 U.S. 930 (1994). The court cited EPA’s statement in the preamble to the 1990 Final NPDES Permit Application Regulations for Storm Water Discharges noting the potential for a hydrologic connection between groundwater and jurisdictional surface water, but concluded that the reference was “collateral” and “not a satisfactory substitute for focused attention in rulemaking or adjudication.” *Id.* at 966. In *Rice v. Harken Exploration Co.*, the Fifth Circuit held that “a generalized assertion that covered surface waters will eventually be affected by remote, gradual, natural seepage from the contaminated groundwater” was outside the scope of the Oil Pollution Act in order “to respect Congress’s decision to leave the regulation of groundwater to the States.” 250 F.3d 264, 272 (5th Cir. 2001). In *Cape Fear River Watch v. Duke Energy Progress*, the district court held that “Congress did not intend for the CWA to extend federal regulatory authority over groundwater, regardless of whether that groundwater is eventually or somehow ‘hydrologically connected’ to navigable surface waters.” 25 F. Supp. 3d 798, 810 (E.D.N.C. 2014).

A number of other district courts have taken the view that Congress intended to regulate the release of pollutants that reach waters of the United States, whether the pollutants reach the surface

water directly, or through groundwater with a direct hydrologic connection. *E.g.*, *Idaho Rural Council v. Bosma*, 143 F. Supp. 2d 1169, 1179–80 (D. Idaho 2001). Because these courts interpreted the term “discharge of a pollutant” to cover discharges that reach jurisdictional water over the ground and through other means, they concluded that exempting discharges through groundwater could lead to confusion and unintended results. One court noted that “it would hardly make sense for the CWA to encompass a polluter who discharges pollutants via a pipe running from the factory directly to the riverbank, but not a polluter who dumps the same pollutants into a man-made settling basin some distance short of the river and then allows the pollutants to seep into the river via the groundwater.” *N. Cal. River Watch v. Mercer Fraser Co.*, No. 04–4620, 2005 WL 2122052, at *2 (N.D. Cal. Sept. 1, 2005). And the Ninth Circuit recently held that a point source discharge to groundwater of “more than [a] de minimis” amount of pollutants that is “fairly traceable from the point source . . . such that the discharge is the functional equivalent of a discharge into a navigable water” is regulated under the Act. *Haw. Wildlife Fund v. Cty. of Maui*, No. 15–17447, slip. op. at 19 (9th Cir. Feb. 1, 2018).

C. Direct Hydrologic Connection

In addition to the mixed case law on whether certain releases of pollutants to groundwater are within the jurisdictional reach of the CWA, ascertaining whether there is a direct hydrologic connection such that a particular release to groundwater could be considered a “discharge of a pollutant” to a “water of the United States” and therefore subject to the CWA has been characterized previously by EPA as a fact-specific determination. See 66 FR at 3,017. EPA has stated that relevant evidence includes the time it takes for a pollutant to move to surface waters, the distance it travels, and its traceability to the point source. *Id.* These factors are affected by other site specific factors, such as geology, flow, and slope. *Id.*

III. Request for Comment

EPA is requesting comment from tribes, states, members of the public, and other interested stakeholders regarding whether EPA should review and potentially revise its previous statements concerning the applicability of the CWA NPDES permit program to pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic

connection to a jurisdictional surface water. Specifically, EPA seeks comment on whether subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA. If EPA has the authority to permit such releases, EPA seeks comment on whether those releases would be better addressed through other federal authorities as opposed to the NPDES permit program. Furthermore, EPA seeks comment on whether some or all such releases are addressed adequately through existing state statutory or regulatory programs or through other existing federal regulations and permit programs, such as, for example, state programs that implement EPA’s underground injection control regulations promulgated pursuant to the Safe Drinking Water Act.

EPA also seeks comment on whether EPA should clarify its previous statements concerning pollutant discharges to groundwater with a direct hydrologic connection to jurisdictional water in order to provide additional certainty for the public and the regulated community. Such a clarification could address the applicability of the CWA to groundwater with a direct hydrologic connection to jurisdictional water, or could define what activities would be regulated if not a discharge to a jurisdictional surface water (*i.e.*, placement on the land), or which connections are considered “direct” in order to reduce regulatory uncertainties associated with that term. EPA also seeks suggestions on what issues should be considered if further clarification is undertaken, including, for example, the consequences of asserting CWA jurisdiction over certain releases to groundwater or determining that no such jurisdiction exists. Finally, EPA seeks comment on what format or process EPA should use to revise or clarify its previous statements (*e.g.*, through memoranda, guidance, or in the form of rulemaking) if the Agency pursues further action in response to this request for comment.

Dated: February 12, 2018.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2018–03407 Filed 2–16–18; 8:45 am]

BILLING CODE 6560–50–P



MARK PESTRELLA, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

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IN REPLY PLEASE

REFER TO FILE: **SWP-7**

May 21, 2018

Mr. Scott Wilson
Office of Wastewater Management,
Water Permits Division (MC4203M)
United States Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20460

Submitted electronically – <http://www.regulations.gov>

DOCKET ID: EPA-HQ-OW-2018-0063; CLEAN WATER ACT COVERAGE OF "DISCHARGES OF POLLUTANTS" VIA DIRECT HYDROLOGIC CONNECTION TO SURFACE WATER (83 FED. REG. 7126 (FEBRUARY 20, 2018))

Dear Mr. Wilson:

These comments are submitted on behalf of the County of Los Angeles (County) and the Los Angeles County Flood Control District (District). The United States Environmental Protection Agency (EPA) has requested comments on the issue of whether discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connect to the jurisdictional surface water should be subject to regulation under the Clean Water Act. These comments are submitted for the purpose of identifying considerations that EPA should consider in making that determination.

The District is dedicated to providing flood protection, water conservation, and associated recreational opportunities and esthetic enhancement within its boundaries. The District encompasses more than 2,700 square miles and approximately 2.1 million land parcels within six major watersheds. Its infrastructure includes 14 major dams and reservoirs, 27 spreading grounds, debris and detention basins, and three seawater intrusion barriers. The County and the District are also permittees under the municipal stormwater permit issued to jurisdictions within the Los Angeles County Coastal watersheds.

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In adopting any regulation or policy with respect to discharges to groundwater, EPA should consider the following:

1. California, and much of the southwest has been gripped by historic drought and the retention and infiltration of surface waters is essential to meeting water supply needs. Any regulatory regime should promote, not hinder, water conservation efforts.
2. States, counties and cities should be encouraged to construct infrastructure that captures and infiltrates stormwater and urban runoff to replenish aquifers and serve the drinking water needs of these communities.
3. Infrastructure that captures and infiltrates stormwater and urban runoff provides both water quality and water conservation benefits. Accordingly, any regulation or policy should not increase the cost of these projects or make them less likely to be built.
4. In many cases the States already regulate these discharges, as is the case in California.
5. There is no threat to the overall water quality of surface waters from capture and infiltration projects because they infiltrate stormwater, imported, or recycled water through layers of soil and are not intended to discharge to surface waters.

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The County and the District appreciate the opportunity to share these considerations with the EPA. If you have any questions, please contact me at (626) 458-4300 or dlaff@dpw.lacounty.gov or your staff may contact Mr. Frank Wu at (626) 458-4358 or fwu@dpw.lacounty.gov.

Very truly yours,

MARK PESTRELLA
Director of Public Works



DANIEL J. LAFFERTY
Assistant Deputy Director
Stormwater Planning Division

FW: sw

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