



San Gabriel Valley Council of Governments

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

Tuesday, March 9, 2021, 10:00 AM

Zoom Link: <https://zoom.us/j/98905826102>

Livestream Link: <https://youtu.be/UFcquFarxxg>

Water Policy

Chair

Gloria Crudgington

City of Monrovia

Vice-Chair

Diana Mahmud

City of South Pasadena

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Claremont

Glendora

Monrovia

Rosemead

Sierra Madre

South Pasadena

Water TAC

Chair

Alex Tachiki

City of Monrovia

Vice Chair

Tom Love

Upper San Gabriel Valley

Municipal Water District

MEMBERS

Alhambra

Bradbury

Covina

Duarte

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Monrovia

Pomona

Sierra Madre

LA County DPW

Upper San Gabriel Valley

MWD

EX-OFFICIO

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 second Tuesday 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.

PUBLIC 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 Committee/TAC 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.



MEETING MODIFICATIONS DUE TO THE STATE AND LOCAL STATE OF EMERGENCY RESULTING FROM THE THREAT OF COVID-19:

On March 17, 2020, Governor Gavin Newsom issued Executive Order N-29-20 authorizing a local legislative body to hold public meetings via teleconferencing and allows for members of the public to observe and address the meeting telephonically or electronically to promote social distancing due to the state and local State of Emergency resulting from the threat of the Novel Coronavirus (COVID-19).

To follow the new Order issued by the Governor and ensure the safety of Committee Members and staff for the purpose of limiting the risk of COVID-19, in-person public participation at the Water Policy Committee and Technical Advisory Committee (TAC) meeting scheduled for March 9, 2021 at 10:00 a.m. will not be allowed. To allow for public participation, the Water Police Committee and TAC will conduct its meeting through Zoom Video Communications. To participate in the meeting, download Zoom on any phone or computer device and copy and paste the following link into your browser to access the live meeting: <https://zoom.us/j/98905826102>. You may also access the meeting via the livestream link on the front of the agenda page.

Submission of Public Comments: For those wishing to make public comments on agenda and non-agenda items you may submit comments via email or by phone.

- Email: Please submit via email your public comment to Samantha Matthews at smatthews@sgvcog.org at least 1 hour prior to the scheduled meeting time. Please indicate in the Subject Line of the email “FOR PUBLIC COMMENT.” Emailed public comments will be part of the recorded meeting minutes. Public comment may be summarized in the interest of time, however the full text will be provided to all members of the Committee prior to the meeting.
- Zoom: Through Zoom, you may speak by using the web interface “Raise Hand” feature. Wait to be called upon by staff, and then you may provide verbal comments for up to 3 minutes. Public comment is taken at the beginning of the meeting for items not on the agenda. Public comment is also accepted at the beginning of each agenda item.

Any member of the public requiring a reasonable accommodation to participate in this meeting should contact Samantha Matthews at least 48 hours prior to the meeting at (626) 457-1800 or email smatthews@sgvcog.org.

PRELIMINARY BUSINESS

1. Call to Order
2. Roll Call
3. Public Comment (*If necessary, the Chair may place reasonable time limits on all comments*).
4. Changes to Agenda Order: Identify emergency items arising after agenda posting and requiring action prior to next regular meeting.

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

5. Water Committee/TAC Meeting Minutes – Page 1
Recommended Action: Approve February 9, 2021 Water Committee/TAC meeting minutes.

PRESENTATIONS

6. Appellate Court Decision in *Department of Finance v. Commission of State Mandates* – Howard Gest, Attorney, Burhenn & Gest LLP – Page 5
Recommended Action: For information only.

ACTION ITEMS

7. AB 377 – Page 11
Recommended Action: Recommend the Governing Board oppose AB 377.
8. Financial Capability Assessment (FCA) State Legislation – Page 26
Recommended Action: Recommend the Governing Board adopt a resolution to sponsor state legislation directing the State Water Resources Control Board to promulgate and adopt Financial Capability Assessment (FCA) guidelines.

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

9. State Water Resources Control Board Order on Approval of Watershed Management Programs (WMPs) and an Enhanced Watershed Management Program (EWMP)
10. Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit
11. Safe Clean Water Program – Page 27
12. Legislative Updates – Page 36
13. Litigation Updates
14. E/WMP Updates
15. Water TAC Chair Report
16. Water Supply Update
17. Water Boards Update

CHAIR'S REPORT

ANNOUNCEMENTS

ADJOURN



**SGVCOG Joint Water Policy Committee/TAC Meeting
Unapproved Minutes**

Date: February 9, 2021
Time: 10:00 AM
Location: Zoom/YouTube teleconference meeting

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

J. Stark; Claremont
G. Crudgington; Monrovia
M. Clark; Rosemead
K. Kriebs; Sierra Madre
D. Mahmud; South Pasadena

Water Policy Committee Members Absent

Glendora

Water TAC Members Present

D. Dolphin; Alhambra
K. Kearney; Bradbury
S. Costandi, S. Gallant; Covina
Y. Paez; Duarte
R. Wang, M. Lombos; LA County Public Works
A. Tachiki; Monrovia
J. Carver; Pomona
J. Carlson; Sierra Madre
A. Tesfaye; South Pasadena
E. Reyes; SGVMWD
T. Love, P. Cortez; USGVMWD

Water TAC Members Absent

Glendora

Ex Officio Members Present

T. Zampietro; SG Basin Watermaster
S. Green; LA County Sanitation Districts

Ex Officio Members Absent

Guests

K. Cowan; CASQA
V. Murphy; Portantino's Office

SGVCOG Staff

S. Matthews
C. Sims

3. Public Comment
R. Tahir commented on the LA County Arboretum project. He noted that public agencies are required to comply with pre-conservation requirements, that CEQA is applicable to E/WMP projects, and there is no reference to CEQA clearance in this project. He

questioned why this wasn't done and argued that the E/WMP project will need to be revised. He said that it is clear that no tree will be lost to this project without triggering litigation. He plans on raising this issue with the Regional Board. Finally, he noted that Senator Susan Rubio sent a letter to the Regional Board asking for removal of the bacteria TMDL and will share that letter to the group.

4. Changes to Agenda Order.
No changes to agenda order.

CONSENT CALENDAR

5. Water Committee/TAC January Meeting Minutes
There was a motion to approve the Water Committee/TAC January meeting minutes.
(M/S: T. Love/D. Mahmud)

[MOTION PASSED]

AYES:	Committee – Claremont; Monrovia; Rosemead; South Pasadena TAC – Alhambra; Bradbury; Covina; Duarte; LA County Public Works; Monrovia; Pomona; Sierra Madre; South Pasadena; SGVMWD; USGVMWD
NOES:	
ABSTAIN:	Committee – Sierra Madre
ABSENT:	Committee – Glendora TAC – Glendora

6. Water TAC January Meeting Minutes
There was a motion to approve the Water TAC January meeting minutes.
(M/S: T. Love/D. Dolphin)

[MOTION PASSED]

AYES:	Alhambra; Bradbury; Covina; Duarte; LA County Public Works; Monrovia; Pomona; Sierra Madre; South Pasadena; USGVMWD
NOES:	
ABSTAIN:	SGVMWD
ABSENT:	Glendora

PRESENTATIONS

7. Department of Toxic Substances Control (DTSC) Tire Zinc Content Regulation – Karen Cowen, Executive Director, California Stormwater Quality Association (CASQA)
California Stormwater Quality Association (CASQA) presented on their petition to the California Department of Toxic Substances Control (DTSC) to list motor vehicle tires containing zinc as a Priority Product under Safer Consumer Products regulations. This petition was granted in January 2021. DTSC will soon issue a document explaining the decision and will solicit stakeholder feedback prior to deciding whether to list tires containing zinc as a Priority Product.
8. PFOA and PFOS Update – Tony Zampiello, Executive Officer, Main San Gabriel Basin Watermaster

Main San Gabriel Basin Watermaster provided updates on PFAS, a group of per- and polyfluoroalkyl chemicals, in our region. In February 2020, the California Division of Drinking Water (DDW) set new Response Levels (RLs) of 10 parts-per-trillion (ppt) for PFOA and 40 ppt for PFOS. Exceedance of the RL requires the affected well to be shut down or provide public notification. In May 2020, DDW revised its drinking water sample collection guidance for PFAS and in September 2020 issued new PFAS monitoring orders. 19 producers in the Main San Gabriel Basin received these orders. Wells with detection of PFOA and/or PFOS above an RL must remove the chemicals through various treatment technologies. There were questions on whether other states have adopted these RLs, to which T. Zampiello responded that other states align with EPA levels. D. Mahmud noted that South Pasadena received an order and began using granular activated carbon (GAC) technique to remove these chemicals. The Sanitation District commented that its collecting data and completing its first quarter data to look at what sources of PFOA are.

UPDATE ITEMS

- 9.** State Water Resources Control Board Second Proposed Order on Approval of Watershed Management Programs and an Enhanced Watershed Management Program
No updates.
- 10.** Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit
No updates.
- 11.** Safe Clean Water Program
A. Tachiki provided an update on the Safe Clean Water program, that District staff and the Regional Oversight Committee (ROC) are working on new program guidelines and SGVCOG staff provided public comment on two program guidelines, water supply benefits and nature-based solutions.
- 12.** Legislative Updates
S. Matthews provided an update on AB 377, the California Clean Water Act. AB 377 was introduced on February 1, 2021. The legislation sets a specific date for Clean Water Act compliance accelerating compliance measures with no additional funding being made available. The Committees agreed to agendaize for March and take action.
- 13.** Litigation Update
S. Matthews provided an update on City of Duarte/Gardena v. State Board, in which the appellate court reversed the trial court decision finding that the State Board did sufficiently consider the factors required by California law, including economic factors, in issuing the Permit. D. Mahmud provided an update on Department of Finance v. Commission of State Mandates, in which the appellate court found that certain State-mandated stormwater permit requirements imposed on local governments are subject to cost reimbursement under the California constitution. D. Mahmud requested a presentation at a future meeting on the Department of Finance case and how it will affect pending claims on MS4 Permit and AB 377.

- 14. E/WMP Updates**

A. Tachiki acknowledged an LA Times article about a project in Arcadia at the LA County Arboretum and said the project group is working closely with the arboretum on the project. The Upper LA River Group is updating its reasonable assurance analysis (RAA) and beginning work on the Pre-SIP and Bacteria LRS studies and are looking to put separate attachment on website to report progress on these studies.
- 15. Water TAC Chair Report**

A. Tachiki recommended paying attention to the Safe Clean Water program and ROC meetings as new guidance is in the process of being developed. He also announced an SB 1383 solid waste working group with the SGVCOG.
- 16. Water Supply Update**

T. Love provided a water supply update, announcing demands for imported water are at historic lows. He also announced the increasingly possibility that the Colorado River-based supply will go into shortage in next couple of years. However, there is a new record amount of storage in the Main Basin and adequate imported water for next few years regardless of precipitation on the Colorado River or in Northern California. The key well is hovering just under 200 feet.
- 17. Water Boards Update**

No updates.

CHAIR'S REPORT

ANNOUNCEMENTS

ADJOURN

Meeting adjourned at 11:55 A.M. in honor of Hector Alvarez, former staff person for Grace Napolitano and a veteran who dedicated his life to improving the lives of other veterans.

REPORT

DATE: March 9, 2021
TO: Water Policy Committee/TAC
FROM: Marisa Creter, Executive Director
RE: **DEPARTMENT OF FINANCE V. COMMISSION OF STATE MANDATES**

RECOMMENDED ACTION

For information only.

BACKGROUND

In January 2021, in *Department of Finance v. Commission of State Mandates (Department of Finance II)*, the California Court of Appeal found that certain State-mandated stormwater permit mandates imposed on local governments, particularly trash receptacle requirements, are subject to cost reimbursement under the California constitution.

The County of Los Angeles and the Cities of Bellflower, Carson, Commerce, Covina, Downey, and Signal Hill brought this appeal, seeking reimbursement for costs related to the trash receptacle and inspection requirements mandated by the Los Angeles Regional Water Quality Control Board (Regional Board).

The appellate court found that these local agencies are entitled to subvention, or reimbursement of costs, for these stormwater permit trash receptacle requirements under article XIII B, section 6 of the California constitution. This section of the state constitution provides for the reimbursement of costs of any state-mandated “new program or higher level of service.” On the issue of inspection requirements, however, the appellate court found these agencies are not entitled to subvention because the agencies have the authority to levy fees to pay for the inspections.

Based on the 2001 stormwater permit, the initial action of *Department of Finance II* was brought in 2009. In 2016, the California Supreme Court found in *Department of Finance I* that the permit requirements in question were not federal mandates and so potentially subject to state subvention.

The court opinion in *Department of Finance II* is important as it makes it more likely that the Commission on State Mandates will grant pending stormwater claims. A memo on this case opinion is included as Attachment A.

Howard Gest, Partner, Burhenn & Gest LLP will present on the case and its potential impact on the municipal separate storm sewer system (MS4) permit and AB 377.

Prepared by:



Samantha Matthews
Management Analyst

REPORT

Approved by: Marisa Creter
Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – *Department of Finance v. Commission of State Mandates* Opinion Memo

Court of Appeal Finds Certain State-Mandated Stormwater Permit Requirements Imposed on Local Governments Are Subject to Cost Reimbursement under the California Constitution

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January 27, 2021

In *Department of Finance v. Commission of State Mandates (Department of Finance II)*, the Second Appellate District of the California Court of Appeal held that (1) local governments are entitled to subvention (i.e., reimbursement of costs) for certain stormwater permit trash receptacle requirements under article XIII B, section 6 of the California Constitution (“section 6”) which provides for the reimbursement of costs of any state-mandated “new program or higher level of service;” and (2) these agencies are not entitled to subvention for stormwater permit inspection requirements because the local agencies have the authority to levy fees sufficient to pay for those permit conditions. *Department of Finance II* is this latest judicial ruling in the underlying action which was initially brought in 2009 and is based on permit conditions that were initially imposed in 2001. The California Supreme Court previously found in *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749 (“*Department of Finance I*”), that the permit conditions at issue here were not federal mandates and therefore potentially subject to subvention by the state. The analysis in *Department of Finance II* is particularly important because it makes it much more likely that the Commission on State Mandates (“Commission”) will grant the numerous storm water test claims currently pending on its docket.

This appeal was brought by the County of Los Angeles and the Cities of Bellflower, Carson, Commerce, Covina, Downey, Signal Hill (“local agencies”) which sought subvention for costs related to the trash receptacle and inspection requirements mandated by the Los Angeles Regional Water Quality Control Board (“Regional Board”). Specifically, the Regional Board issued a National Pollutant Discharge Elimination System (“NPDES”) stormwater permit that required the local agencies (1) to install and maintain trash receptacles at transit stops and (2) periodically inspect commercial facilities, industrial facilities and construction sites to ensure compliance with various environmental regulatory requirements. The local agencies filed “test claims” with the Commission seeking subvention of costs under section 6. The Commission ultimately found that the trash receptacle requirement is a reimbursable state mandate and that the inspection requirements are not. Following that decision, the California Department of Finance, the State Water Resources Control Board and the Regional Board (collectively, the “state agencies”) filed a petition for writ of administrative mandamus in the Los Angeles County Superior Court, which reversed the Commission. The subsequent appeal resulted in the Supreme Court’s aforementioned *Department of Finance I* decision, where the Supreme Court directed the trial court to address the remaining issues in the state agencies’ petition. In February 2018, the trial court once again found for the state agencies, resulting in the instant appeal.

New Program or Higher Level of Service

In 1979, the California voters approved Proposition 4, which added article XIII B to the state constitution to restrict the amounts state and local governments may appropriate and spend each year from the proceeds of taxes. Concerned that that the restriction on state government spending could result in attempts by the state legislature to shift the costs of new programs to local governments, the drafters of article XIII B included

section 6, which provides that “[w]henver the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service.” California courts have previously established two alternative tests to determine if a mandate was a “program” under section 6: “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.” (*County of Los Angeles v. State of California* (1997) 43 Cal.3d 46, 56.)

Rejecting the analysis of the superior court, the Court of Appeal found that both the inspection and trash receptacle permit requirements at issue here are new programs or higher levels of service under both of the alternative tests. First, the Court found that there were three pertinent government functions implicated by the challenged permit requirements for purposes of section 6: the operation of stormwater drainage and flood control systems; the installation and maintenance of trash receptacles at transit stops; and the inspection of commercial, industrial and construction facilities and sites to ensure compliance with environmental laws and regulations. The first existed prior to the Regional Board’s permit, the other two are new. The Court held that both the inspection and trash receptacle requirements were higher levels of service to existing stormwater programs because they will help reduce pollution entering stormwater drainage systems and receiving waters. Alternatively, the Court held that both the inspection and trash receptacle requirements are new programs that provide services to the public.

With regard to the second test, the Court of Appeal held that both the inspection and trash receptacle permit conditions impose unique requirements on local governments to implement a state policy. The pertinent state policy at issue, according to the Court, is the protection of the “beneficial uses of receiving waters in Los Angeles County” and to “reduce the discharge of pollutants in storm water to the maximum extent practicable.” The Court then found the challenged requirements are unique to local governments in two ways: (1) the permit applies by its terms only to the local governmental entities identified and no one else; and (2) the activities compelled by the conditions are typically within the purview of government agencies. According to the Court, “[b]y requiring the local governments to comply with the trash receptacle and inspection requirements, the state agencies have effectively shifted the financial responsibility for such programs to the local governments.” This finding is critical to local governments because state agencies were routinely arguing as a complete defense to stormwater-related test claims that stormwater programs mandated in permits were not new programs or higher levels of service under section 6.

The Ability of Local Governments to Levy Fees to Pay for the Programs

The Court of Appeal then looked at whether any exception to subvention applies, such as when the requirement is mandated by federal law or the local agency has the authority to levy fees sufficient to pay for the program or increased level of service. As noted above, the California Supreme Court previously had found in *Department of Finance I* that the permit conditions at issue were not federal mandates. The Court of Appeal in *Department of Finance II*, therefore, addressed the issue of whether the local agencies have the authority to levy fees to fund the state-mandated programs under Government Code section 17556(d). Under that provision, when the state imposes on local governments a new program or higher level of service, the state is not required to provide subvention to the local government if the local government “has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.” The Court found that the local agencies here have the authority to impose a regulatory fee if (1) the amount of the fee does not exceed the reasonable costs of providing the services for which it is charged; (2) the fee is not levied for unrelated revenue purposes; and (3) the amount of the fee bears a reasonable relationship to the burdens created by the fee payers’ activities or operations or the benefits the fee payers receive from the regulatory activity.

Inspection Requirements. With regard to the inspection requirements, the Court found that the inspections do not duplicate or supplant inspections the Regional Board is required to undertake under the Water Code and the local agencies here “can impose and collect a fee to cover the reasonable costs of the particular inspections they are required to undertake and the Regional Board can fulfill its expenditure requirements by addressing ‘stormwater inspection and regulatory compliance issues’ [see Water Code section 13260] in other ways.” Further, the Court found that such local fees would not be preempted by section 13260’s requirement that

some business waste discharges pay annual fees: “the local government fee would pay for the costs of the local government’s inspection and the fees paid to the state could be used for the activities required or permitted under state law other than the local government’s inspection.”

The Court rejected the local agencies’ argument that a fee that must be no more than necessary to cover the reasonable costs of the inspections “would be difficult to accomplish.” The local agencies specifically noted “problems that would arise from a general business license fee on all businesses, including those not subject to inspection, and to charging fees for inspections in years in which no inspection would take place.” The Court was unmoved: “Even if we assume that drafting or enforcing a law that imposes fees to pay for inspections would be difficult, the issue is whether the local governments have the authority to impose such a fee, not how easy it would be to do so.”

Trash Receptacle Requirements. With regard to the trash receptacle requirements, the Court of Appeal first noted the Commission’s finding that “[b]ecause the trash receptacles are required to be placed at transit stops that would typically be on city property (sidewalks) or transit district property (for bus, metro, or subway stations), there are no entities on which the [local governments] would have authority to impose the fees.” In response, the state agencies argued that transit agencies or transit riders could be charged under Government Code section 54999.7(a), which states that public agencies providing public utility service may impose a fee for their service “provided to [another] public agency.” The Court disagreed, finding the local governments’ “installation and maintenance of trash receptacles at transit stops pursuant to the permit is not a service ‘provided to a public agency’ within the meaning of the statute” because the receiving public agency “is [not] a public utility customer that solicited and uses the services for which it is charged.”

The state agencies next argued that the local governments could levy a fee on the property owners “in the vicinity of the trash receptacles” “in accordance with the burdens created and benefits enjoyed by each parcel.” In rejecting this argument, the Court of Appeal first notes that Article XIII D of the California Constitution provides both procedural and substantive hurdles to such fees. Procedurally, Article XIII D sets forth protest procedures and voter approval for fees and charges. Substantively, under Article XIII D, a fee or charge may not be imposed on a parcel or upon a person as an incident of property ownership unless, among other requirements, the fee or charge “[does] not exceed the proportional cost of the service attributable to the parcel,” the fee or charge is for a service that “is actually used by, or immediately available to, the owner of the property in question,” and it is not “imposed for general governmental services.” The Court found that “[e]ven if we assume that a fee imposed on adjacent property owners for trash collection at transit stops could overcome the procedural hurdles,” the state agencies have failed to meet their burden to show the local agencies have the substantive authority to impose a fee on property owners: “Not only have the state agencies failed to cite to the record or authority to support the point that a fee imposed on property owners adjacent to transit stops could satisfy the substantive constitutional requirements, but common sense dictates that the vast majority of persons who would use and benefit from trash receptacles at transit stops are not the owners of adjacent properties but rather pedestrians, transit riders, and other members of the general public; any benefit to property owners in the vicinity of bus stops would be incidental.”

Third, the Court of Appeal addressed whether Health and Safety Code section 5471(a) provides the necessary authority. That section provides that “any entity shall have power, by an ordinance or resolution approved by a two-thirds vote of the members of the legislative body thereof, to prescribe, revise and collect, fees, tolls, rates, rentals, or other charges for services and facilities furnished by it, either within or without its territorial limits, in connection with its water, sanitation, storm drainage, or sewerage system.” The Court rejected that this provision provides the necessary authority: “To the extent a fee enacted under [section 5471] is imposed on transit agencies or property owners, it cannot survive scrutiny for the reasons explained above [with respect to section 54999.7(a) and Article XIII D]; and no cogent argument has been made as to how a fee could be imposed on pedestrians or transit riders who would be the primary users and beneficiaries of the trash receptacles.” Because the state agencies could point to no authority that permits the local agencies to levy fees to pay for the trash receptacle requirements, the Court held the costs of this requirement is subject to subvention under section 6 and must be reimbursed.

Department of Finance II potentially has far-reaching implications as it suggests that many state-mandated permit requirements that cannot be charged to business dischargers may be subject to subvention. In addition to the trash receptacle requirements at issue here, these requirements might include trash capture systems and other trash removal programs, green infrastructure requirements designed to reduce pollutant loads into stormwater, public education programs, etc.

AUTHORS



Gregory J. Newmark

Greg Newmark represents clients in litigation and compliance matters regarding water quality, water rights, environmental contamination, inverse condemnation, brownfields, and First Amendment and other constitutional issues. Greg also advises on land use laws, including the California Environmental Quality Act and the National Environmental Policy Act, and reviews environmental documents.



Brown K. Brown

Bryan Brown is Senior Of Counsel in the Land Use and Environmental Law Practice. He has more than 20 years of experience with transactional, regulatory, administrative and litigation matters involving land use and environmental law. A significant part of Bryan's practice involves assisting clients in preparing environmental impact reports and environmental impact studies under CEQA and NEPA.

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REPORT

DATE: March 9, 2021
TO: Water Policy Committee/TAC
FROM: Marisa Creter, Executive Director
RE: **AB 377 (RIVAS, HERTZBERG)**

RECOMMENDED ACTION

Recommend the SGVCOG Governing Board oppose AB 377 (Rivas, Hertzberg).

BACKGROUND

On February 1, 2021, Assemblymember Robert Rivas (D-Hollister), Senate Majority Leader Bob Hertzberg (D-Van Nuys) and California Coastkeeper Alliance introduced AB 377. The legislation would set a specific date for Clean Water Act compliance and would aim to make all surface waters statewide fishable, swimmable, and drinkable by 2050. Per the California Stormwater Quality Association (CASQA), the bill would prohibit the State Water Resources Control Board (State Board) and regional boards from adopting NPDES permits with compliance schedules or deemed compliance terms. The bill would also require development of an Impaired Waterways Enforcement Program to enforce all water quality standards violations.

Ultimately, the bill would reduce the amount of time for implementation and increase penalties and enforcement with no additional funding provided that is needed to achieve the desired water quality outcomes. Per CASQA, the bill would also significantly reduce the regulatory authority of the water boards and would likely result in permit violations for all permittee categories.

Since existing local, state, and federal resources are inadequate to implement Clean Water Act compliance, the bill should, at minimum, authorize additional funding. The bill should also be amended to direct the State Water Board to develop Financial Capability Assessment (FCA) guidelines for MS4 permittees, modeled on existing US EPA regulatory guidelines which apply to all states other than California due to the state Porter-Cologne Act preemption.

The press release announcing the introduction of this legislation is included as Attachment A and the bill text is included as Attachment B.

Paul Hubler, Director of Government and Community Relations at the SGVCOG will present on the bill and Karen Cowan, Executive Director of CASQA will participate in sharing CASQA's position on the bill.

Prepared by:



Samantha Matthews
Management Analyst

REPORT

Approved by: Marisa Creter
Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – Press Release

Attachment B – AB 377 (Rivas, Hertzberg) Bill Text

For the latest COVID-19 updates, please see our dedicated page (<https://a30.asmdc.org/what-you-need-know-lo-que-necesitas-saber>).

Please contact my office at 831-759-8676 if you have any questions about these resources.

Asm. Rivas, Sen. Hertzberg Introduce CA Clean Water Act to Clean Up All Waterways by 2050

Tuesday, February 2, 2021

Approaching the 50th Anniversary of the Clean Water Act, roughly 95% of all California waterways remain impaired

SACRAMENTO – On Tuesday, Assemblymember Robert Rivas (D-Hollister), Senate Majority Leader Bob Hertzberg (D-Van Nuys) and California Coastkeeper Alliance introduced the California Clean Water Act, Assembly Bill 377, legislation that will put California back on track to eliminate impaired waterways and make all waters statewide suitable for conversion to drinking water, swimming, and fishing by 2050.

“Roughly 19 out of 20 waterways in California are polluted or ‘impaired,’” Asm. Rivas said. “Clearly, we need to do more to protect the health of Californians, communities and the environment. And, as with so many of our other environmental challenges, it’s our low-income communities and our communities of color who are hit the hardest by this issue. Access to clean water is a basic human right, and I am proud to introduce legislation that will give teeth to the original Clean Water Act and create a healthier environment for the entire State.”

Specifically, the California Clean Water Act will require the State and Regional Water Boards to close permit loopholes, ensure that all dischargers are in compliance with water quality standards, and direct a larger proportion of existing funding toward cleaning up impaired waterways. The effects of this bill will be

especially significant in disadvantaged communities, where water is disproportionately likely to be polluted or even toxic. Attachment A

“California made history in 2012 when it became the first U.S. state to declare that clean drinking water is a human right. Yet, nearly a decade later, some communities still struggle for access to clean water – this is unacceptable,” said Senator Hertzberg. “I have worked for decades to end the state’s drinking water crisis, and I am proud to continue that effort with Assemblymember Rivas on AB 377.”

In 1972, Congress passed the Clean Water Act, which set a goal of restoring and maintaining clean water in all of the nation’s rivers, lakes, wetlands, and other waterways by 1985. Five decades later, the vast majority of waterways in California and across the nation are still polluted or “impaired” by discharges of chemicals, sediment, or other materials into those waterways. These discharges can range from a chemical company pouring waste into a nearby swimming hole, to a logging project clogging up a stream with sediment runoff, to untreated urban storm water carrying bacteria, toxic metals, and trash onto the beach.

“California is 36 years past its Clean Water Act deadline to provide swimmable, fishable and drinkable waters for all Californians,” said Sean Bothwell, Executive Director for California Coastkeeper Alliance. “It’s time for California to once again lead the nation on this critical issue, so that every kid can swim safely in their favorite swimming hole, every tribe can continue their cultural fishing practices, and every farming community has access to drinkable water.”

Fifty years after Congress passed the Clean Water Act, roughly 95% of all waterways in California remain impaired, including 82% of rivers and streams, 93% of lakes and ponds, 99% of wetlands, and 99% of bays and estuaries.

Technical Aspects

AB 377, the California Clean Water Act, will change the way the State and Regional Water Boards enforce compliance with water quality standards and ensure that waterways are taken off the impaired list over time by:

- **Eliminating loopholes.** Currently, many discharge permits direct the permittee to comply with water quality standards but allow for exploitation of a number of loopholes. (A permit holder may never have

to provide any evidence that they're actually complying with water quality standards, for example.) AB 377 will not change the terms of existing permits, but will ensure that as new or renewed permits are issued, loopholes are eliminated and permittees are brought into compliance with water quality standards.

- **Changing Water Board enforcement procedures**, requiring them to spend more time and effort enforcing against the worst polluters instead of ignoring violations.
- **Directing a larger portion of existing Water Board financial resources toward cleaning up impaired waterways**, without imposing any new fees or costs.

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ASSEMBLY BILL**No. 377**

Introduced by Assembly Member Robert Rivas
(Principal coauthor: Senator Hertzberg)

February 1, 2021

An act to add Chapter 3.5 (commencing with Section 13150) to Chapter 3 of Division 7 of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 377, as introduced, Robert Rivas. Water quality: impaired waters.

(1) Under existing law, the State Water Resources Control Board and the 9 California regional water quality control boards regulate water quality and prescribe waste discharge requirements in accordance with the federal national pollutant discharge elimination system (NPDES) permit program established by the federal Clean Water Act and the Porter-Cologne Water Quality Control Act. Existing law requires each regional board to formulate and adopt water quality control plans for all areas within the region, as provided.

This bill would require all California surface waters to be fishable, swimmable, and drinkable by January 1, 2050, as prescribed. The bill would prohibit the state board and regional boards from authorizing an NPDES discharge, waste discharge requirement, or waiver of a waste discharge requirement that causes or contributes to an exceedance of a water quality standard, or from authorizing a best management practice permit term to authorize a discharge that causes or contributes to an exceedance of a water quality standard in receiving waters. The bill would prohibit, on or after January 1, 2030, a regional water quality control plan from including a schedule for implementation for achieving a water quality standard that was adopted as of January 1, 2021, and

would prohibit a regional water quality control plan from including a schedule for implementation of a water quality standard that is adopted after January 1, 2021, unless specified conditions are met. The bill would prohibit an NPDES permit, waste discharge requirement, or waiver of a waste discharge requirement from being renewed, reissued, or modified to contain effluent limitations or conditions that are less stringent than those in the previous permit, requirement, or waiver.

(2) Existing law authorizes the imposition of civil penalties for violations of certain waste discharge requirements and requires that penalties imposed pursuant to these provisions be deposited into the Waste Discharge Permit Fund, to be expended by the state board, upon appropriation by the Legislature, for specified purposes related to water quality. For violations of certain other waste discharge requirements, including the violation of a waste discharge requirement effluent limitation, existing law imposes specified civil penalties, the proceeds of which are deposited into the continuously appropriated State Water Pollution Cleanup and Abatement Account, which is established in the State Water Quality Control Fund.

This bill would require, by January 1, 2030, the state board and regional boards to develop an Impaired Waterways Enforcement Program to enforce all remaining water quality standard violations that are causing or contributing to an exceedance of a water quality standard. To ensure any water segments impaired by ongoing pollutants are brought into attainment with water quality standards, the bill would require the state board and regional boards, by January 1, 2040, to evaluate the state's remaining impaired waters using a specified report. The bill would require, by January 1, 2040, the state board and regional boards to report to the Legislature a plan to bring the final impaired water segments into attainment by January 1, 2050. The bill would create the Waterway Attainment Account in the Waste Discharge Permit Fund and would make moneys in the Waterway Attainment Account available for the state board to expend, upon appropriation by the Legislature, to bring remaining impaired water segments into attainment in accordance with the plan. The bill would create in the Waterway Attainment Account the Waterway Attainment Penalty Subaccount, composed of penalties obtained pursuant to the Impaired Waterways Enforcement Program, and would make moneys in the subaccount available for the state board to expend, upon appropriation by the Legislature, for purposes of the program. The bill would require, by January 1, 2040, and subject to a future legislative act, 50% of the annual

proceeds of the State Water Pollution Cleanup and Abatement Account to be annually transferred to the Waterway Attainment Account. The bill would require the state board, upon appropriation by the Legislature, to expend 5% of the annual proceeds of the State Water Pollution Cleanup and Abatement Account to fund a specified state board program.

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

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

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) Water is a necessity of human life, and every Californian
4 deserves access to clean and safe water. Yet climate change
5 jeopardizes the quality and safety of our water. Climate change is
6 impacting the state's hydrology to create water resource
7 vulnerabilities that include, but are not limited to, changes to water
8 supplies, subsidence, increased amounts of water pollution, erosion,
9 flooding, and related risks to water and wastewater infrastructure
10 and operations, degradation of watersheds, alteration of aquatic
11 ecosystems and loss of habitat, multiple impacts in coastal areas,
12 and ocean acidification.

13 (2) Many aspects of climate change and associated impacts will
14 continue for centuries, even if anthropogenic emissions of
15 greenhouse gases are reduced or stopped. Given the magnitude of
16 climate change impacts on California's hydrology and water
17 systems, the state's climate change response should include
18 attainment of water quality standards to allow the state's
19 watersheds to resiliently adapt to forthcoming and inevitable
20 climate change stressors.

21 (3) The federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.)
22 was enacted on October 18, 1972, to establish the basic structure
23 for regulating discharges of pollutants into the waters of the United
24 States and regulating quality standards for surface waters. The
25 objective of the federal Clean Water Act is to restore and maintain
26 the chemical, physical, and biological integrity of the nation's
27 waters. To achieve that objective, Congress declared a national
28 goal that the discharge of pollutants into navigable waters be
29 eliminated by 1985.

1 (4) California has long been a national and international leader
2 on environmental stewardship efforts, including the areas of air
3 quality protections, energy efficiency requirements, renewable
4 energy standards, and greenhouse gas emission standards for
5 passenger vehicles. The program established by this act will
6 continue this tradition of environmental leadership by placing
7 California at the forefront of achieving the nation’s goal of making
8 all waterways swimmable, fishable, and drinkable.

9 (5) The State Water Resources Control Board, along with the
10 nine California regional water quality control boards, protect and
11 enhance the quality of California’s water resources through
12 implementing the federal Clean Water Act, as amended, and
13 California’s Porter-Cologne Water Quality Control Act (Division
14 7 (commencing with Section 13000) of the Water Code).

15 (6) The State Water Resources Control Board’s mission is to
16 “preserve, enhance, and restore the quality of California’s water
17 resources and drinking water for the protection of the environment,
18 public health, and all beneficial uses, and to ensure proper water
19 resource allocation and efficient use, for the benefit of present and
20 future generations.”

21 (7) Under Section 303(d) of the federal Clean Water Act (33
22 U.S.C. 1313(d)), California is required to review, make changes
23 as necessary, and submit to the United States Environmental
24 Protection Agency a list identifying water bodies not meeting water
25 quality standards (303(d) list). California is required to include a
26 priority ranking of those waters, taking into account the severity
27 of the pollution and the uses to be made of those waters, including
28 waters targeted for the development of total maximum daily loads
29 (TMDLs).

30 (8) As of the most recent 2018 303(d) list, nearly 95 percent of
31 all fresh waters assessed in California, and over 1,400 water bodies,
32 are listed as impaired, with only 114 TMDLs have been approved
33 since 2009 in California. Of 164,741 assessed miles of rivers and
34 streams, 82 percent were impaired. Of 929,318 assessed acres of
35 lakes, reservoirs, and ponds, 93 percent were impaired. Of 575,000
36 assessed acres of bays, harbors, and estuaries, 99 percent were
37 impaired. Of 2,180 assessed miles of coastal shoreline, 93 percent
38 were impaired. Of 130,084 assessed acres of wetlands, 99 percent
39 were impaired.

1 (b) (1) In honor of the federal Clean Water Act's 50-year
2 anniversary, it is the intent of the Legislature in enacting this act
3 to recommit California to achieve the national goal to restore and
4 maintain the chemical, physical, and biological integrity of the
5 state's waters by eliminating the discharge of pollutants into
6 impaired waterways.

7 (2) It is further the intent of the Legislature in enacting this act
8 to require that the State Water Resources Control Board and the
9 California regional water quality control boards meet the national
10 goal of achieving swimmable, fishable, and drinkable waters by
11 no later than January 1, 2050.

12 SEC. 2. Chapter 3.5 (commencing with Section 13150) is added
13 to Chapter 3 of Division 7 of the Water Code, to read:

14

15 CHAPTER 3.5. STATE WATERS IMPAIRMENT

16

17 13150. All California surface waters shall be fishable,
18 swimmable, and drinkable by January 1, 2050. To bring all water
19 segments into attainment with this requirement, the state board
20 and regional boards shall comply with the requirements of this
21 chapter.

22 13151. (a) The state board and regional boards shall not do
23 either of the following:

24 (1) Authorize an NPDES discharge that causes or contributes
25 to an exceedance of a water quality standard.

26 (2) Authorize an NPDES permit that uses an alternative
27 compliance determination, safe harbor "deemed in compliance"
28 term, or any other best management practice permit term to
29 authorize a discharge that causes or contributes to an exceedance
30 of a water quality standard in receiving waters.

31 (b) The state board and regional boards shall not do either of
32 the following:

33 (1) Authorize a permit that does not include monitoring
34 sufficient to demonstrate compliance with water quality standards
35 and, unless infeasible, that does not include end-of-discharge pipe
36 monitoring.

37 (2) Authorize a permit unless it establishes criteria for, and
38 requires, monitoring to evaluate compliance with water quality
39 standards.

1 (c) The state board and regional boards shall not do either of
2 the following:

3 (1) Authorize a waste discharge requirement or waiver of a
4 waste discharge requirement for a discharge that causes or
5 contributes to an exceedance of a water quality standard.

6 (2) Authorize a waste discharge requirement or waiver of a
7 waste discharge requirement that uses an alternative compliance
8 determination, safe harbor “deemed in compliance” term, or any
9 other best management practice permit term to authorize a
10 discharge that causes or contributes to an exceedance of a water
11 quality standard in receiving waters.

12 (d) The state board and regional boards shall not issue an
13 enforcement order pursuant to Chapter 12 (commencing with
14 Section 1825) of Part 2 of Division 2 or Article 1 (commencing
15 with Section 13300) of Chapter 5 that includes a compliance
16 schedule deadline that extends beyond January 1, 2030, to a
17 discharger for a discharge that is causing or contributing to an
18 exceedance of a water quality standard.

19 13152. (a) Notwithstanding Section 13242, on and after
20 January 1, 2030, a regional water quality control plan, including
21 the program of implementation, shall not include a schedule for
22 implementation for achieving a water quality standard that was
23 adopted in an approved regional water quality control plan as of
24 January 1, 2021. It is the intent of the Legislature in enacting this
25 requirement to ensure that all water quality standards in effect as
26 of January 1, 2021, are fully implemented and achieved by January
27 1, 2030.

28 (b) The state board and regional boards shall only include in a
29 regional water quality control plan a schedule for implementation
30 of a water quality standard that is adopted after January 1, 2021,
31 if all of the following conditions are met:

32 (1) The schedule for implementation of the water quality
33 standard is the shortest time necessary, and in no instance exceeds
34 five years.

35 (2) The schedule for implementation is necessary for the
36 permittee to undertake physical construction that is necessary to
37 achieve compliance with the water quality standard.

38 (3) The water quality standard is not substantially similar to a
39 water quality standard that was in effect as of January 1, 2021.

1 (c) An NPDES permit, waste discharge requirement, or waiver
2 of a waste discharge requirement shall not be renewed, reissued,
3 or modified to contain effluent limitations or conditions that are
4 less stringent than the comparable effluent limitations or conditions
5 in the previous permit, requirement, or waiver.

6 (d) The state board and regional boards shall not authorize an
7 NPDES permit, waste discharge requirement, or waiver of a waste
8 discharge requirement that does not include a complete
9 antidegradation analysis as set out in State Water Resources
10 Control Board Resolution No. 68-16 and Administrative Procedures
11 Update 90-004.

12 13153. (a) (1) By January 1, 2030, the state board and regional
13 boards shall develop an Impaired Waterways Enforcement Program
14 to enforce all remaining water quality standard violations pursuant
15 to Chapter 12 (commencing with Section 1825) of Part 2 of
16 Division 2 and Article 1 (commencing with Section 13300) of
17 Chapter 5 that are causing or contributing to an exceedance of a
18 water quality standard.

19 (2) An enforcement action taken pursuant to the program shall
20 result in sufficient penalties, conditions, and orders to ensure the
21 person subject to the enforcement action is no longer causing or
22 contributing to an exceedance of a water quality standard.

23 (3) A discharger shall remain liable for a violation of a water
24 quality standard until sampling at the point of discharge
25 demonstrates that the discharge is no longer causing or contributing
26 to the exceedance.

27 (4) Penalties obtained pursuant to the program shall be deposited
28 into the Waterway Attainment Penalty Subaccount, which is hereby
29 created in the Waterway Attainment Account. Moneys in the
30 subaccount shall be available for the state board to expend, upon
31 appropriation by the Legislature, for purposes of the program.

32 (b) (1) By January 1, 2040, to ensure any water segments
33 impaired by ongoing legacy pollutants and nonpoint source
34 pollution are brought into attainment with water quality standards,
35 the state board and regional boards shall evaluate the state's
36 remaining impaired waters using the most current integrated report.

37 (2) The state board and regional boards shall, by January 1,
38 2040, report to the Legislature in compliance with Section 9795
39 of the Government Code a plan to bring the final impaired water
40 segments into attainment by January 1, 2050.

1 (3) The requirement for submitting a report imposed under
2 paragraph (2) is inoperative on January 1, 2044, pursuant to Section
3 10231.5 of the Government Code.

4 (c) (1) The Waterway Attainment Account is hereby created
5 in the Waste Discharge Permit Fund. Moneys in the Waterway
6 Attainment Account shall be available for the state board to expend,
7 upon appropriation by the Legislature, to bring remaining impaired
8 water segments into attainment in accordance with the plan
9 submitted pursuant to paragraph (2) of subdivision (b), subject to
10 subdivision (d).

11 (2) (A) By January 1, 2040, subject to a future legislative act,
12 50 percent of the annual proceeds of the State Water Pollution
13 Cleanup and Abatement Account shall be annually transferred to
14 the Waterway Attainment Account.

15 (B) This paragraph shall become inoperative January 1, 2051,
16 or when all water segments are in attainment with water quality
17 standards, whichever comes first.

18 (d) Moneys in the Waterway Attainment Account shall be
19 expended by the state board, upon appropriation by the Legislature,
20 to bring impaired waterways into attainment with water quality
21 standards to the maximum extent possible. Moneys in the account
22 shall only be expended on the following:

23 (1) Restoration projects, including supplemental environmental
24 projects, that improve water quality.

25 (2) Best management practice research innovation and incentives
26 to encourage innovative best management practice implementation.

27 (3) Source control programs.

28 (4) Identifying nonfilers.

29 (5) Source identification of unknown sources of impairment.

30 (6) Enforcement actions that recover at least the amount of
31 funding originally expended, which shall be deposited into the
32 Waterway Attainment Account.

33 (e) The state board shall, upon appropriation by the Legislature,
34 expend 5 percent of the annual proceeds of the State Water
35 Pollution Cleanup and Abatement Account to fund the state board's
36 SWAMP - Clean Water Team Citizen Monitoring Program in
37 order to inform the integrated report.

38 13154. This chapter does not affect the process by which
39 voluntary agreements are entered into to assist in the

1 implementation of new water quality standards lawfully adopted
2 by the state board.

3 13155. For purposes of this chapter, the following definitions
4 apply:

5 (a) “Best management practice” means a practice or set of
6 practices determined by the state board or a regional board for a
7 designated area to be the most effective feasible means of
8 preventing or reducing the generation of a specific type of nonpoint
9 source pollution, given technological, institutional, environmental,
10 and economic constraints.

11 (b) “Drinkable” applies to waters subject to a regional water
12 quality control plan and means that the waters are drinkable to the
13 extent required by the regional water quality control plan.

14 (c) “Integrated report” means the state report that includes the
15 list of impaired waters required pursuant to Section 303(d) of the
16 federal Clean Water Act (33 U.S.C. 1313(d)) and the water quality
17 assessment required pursuant to Section 305(b) of the federal Clean
18 Water Act (33 U.S.C. 1315(b)).

19 (d) “NPDES” means the national pollutant discharge elimination
20 system established in the federal Clean Water Act (33 U.S.C.A.
21 Sec. 1251 et seq.).

22 (e) “Regional board” means a California regional water quality
23 control board.

24 (f) “Regional water quality control plan” means a water quality
25 control plan developed pursuant to Section 13240.

26 (g) “State board” means the State Water Resources Control
27 Board.

28 (h) “State Water Pollution Cleanup and Abatement Account”
29 means the State Water Pollution Cleanup and Abatement Account
30 created pursuant to Section 13440.

31 (i) “Supplemental environmental project” means an
32 environmentally beneficial project that a person subject to an
33 enforcement action voluntarily agrees to undertake in settlement
34 of the action and to offset a portion of a civil penalty.

35 (j) “Waste Discharge Permit Fund” means the Waste Discharge
36 Permit Fund created pursuant to Section 13260.

37 (k) “Waterway Attainment Account” means the Waterway
38 Attainment Account created pursuant to paragraph (1) of
39 subdivision (c) of Section 13153.

- 1 (l) “Waterway Attainment Penalty Subaccount” means the
- 2 Waterway Attainment Penalty Subaccount created pursuant to
- 3 paragraph (4) of subdivision (a) of Section 13153.

O

DATE: March 9, 2021
TO: Water Policy Committee/TAC
FROM: Marisa Creter, Executive Director
RE: **FINANCIAL CAPABILITY ASSESSMENT (FCA) STATE LEGISLATION**

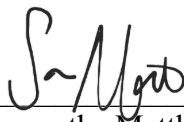
RECOMMENDED ACTION


Recommend the SGVCOG Governing Board adopt a resolution to sponsor state legislation directing the State Water Resources Control Board to promulgate and adopt Financial Capability Assessment (FCA) guidelines.

BACKGROUND

State Senator Rubio will be reintroducing legislation sponsored in previous years by the SGVCOG to require the State Water Resources Control Board (State Board) develop Financial Capability Assessment (FCA) guidelines for cities and counties (permittees) seeking to comply with the Federal Clean Water Act (CWA). FCA guidelines intend to provide a uniform, equitable and transparent methodology for assessing the financial capability of communities to afford the cost of compliance with municipal separate storm sewer system (MS4) permits. The state guidelines would be modeled on federal guidelines developed by the U.S. EPA over the past 20 years to achieve Clean Water Act compliance without in any way altering or waiving clean water standards but instead allowing elongated timeframes to avoid unacceptable cost burdens on communities. FCAs consider a wide range of financial capacity factors, including residential capability (e.g. median household income) and the financial strength of the permittee organization, such as bond ratings, debt, unemployment rate, tax revenue, and property tax rates. Although the federal FCA process has long been in place for use by MS4 permittees, in California the state Porter Cologne Water Quality Control Act (1969) assumes precedence over federal implementation and is vague on economic considerations. State Board staff have not issued FCA guidelines and dismissed the need for written guidelines during a meeting with SGVCOG Governing Board members and staff in spring 2020.

Paul Hubler, Director of Government and Community Relations at the SGVCOG will present on the proposed legislation.

Prepared by: 
Samantha Matthews
Management Analyst

Approved by: 
Marisa Creter
Executive Director

DATE: March 9, 2021
TO: Water Policy Committee/TAC
FROM: Marisa Creter, Executive Director
RE: **SAFE CLEAN WATER PROGRAM**

RECOMMENDED ACTION

For information only.

COMMITTEE AND WATERSHED AREA STEERING COMMITTEE (WASC) UPDATES

The following activities have happened since the last Water Committee/TAC meeting.

Regional Oversight Committee (ROC)

- Met on February 25, 2021 to discuss clarification of two program guidelines: Applying Consistent Disadvantaged Community (DAC) Benefits Program Policies and Strengthening Community Engagement and Support. Staff from the Los Angeles County Flood Control District (District) had prepared a workbook that identified areas that may need further clarification in the project guidelines and sought general concurrence on principles to guide potential changes in the project guidelines related to DAC benefits and community engagement. SGVCOG staff provided a public comment on the need for projects located outside of a DAC but provide benefits to a DAC to receive DAC benefits scoring points. Staff also urged that letters of support from City Councils, adjacent municipalities, chambers of commerce, special districts and other local stakeholders should be recognized as community support.

Scoring Committee

- Met on February 2, 2021 to discuss a recap of FY21-22 Scoring of Feasibility Studies and guidance updates for Feasibility Study Guidelines and Scoring Criteria. The Committee voted to send all passing scored projects from the January 27, 2021 meeting to the WASCs.

Upper Los Angeles River (ULAR) WASC

- Met on February 3, 2021 to discuss a summary of feasibility studies, project concepts, and scientific studies submitted to the WASC for consideration. The Committee presentations on the following four Infrastructure Program (IP) projects:
 - Los Angeles Pierce College Northeast Campus Stormwater Capture & Use and Biofiltration
 - Metro Orange Line a Water Infiltration and Quality Project
 - Altadena – Lake Avenue Green Improvement Project
 - Westmont – Vermont Avenue Green Improvement Project
- Met on February 18, 2021 to hear presentations on the following six Infrastructure Program (IP) projects:
 - David M. Gonzales Recreation Center Stormwater Capture Project

- North Hollywood Park Stormwater Capture Project
- Valley Plaza Park Stormwater Capture Project
- Lincoln Park Neighborhood Green Street Network
- Broadway-Manchester Multi-Model Green Streets Project
- Arroyo Seco-San Rafael Treatment Wetlands

Upper San Gabriel River (USGR) WASC

- Met on February 25, 2021 to discuss a summary of the feasibility studies, project concepts, and scientific studies submitted to the WASC for consideration. The Committee heard presentations on the following four Infrastructure Program (IP) projects:
 - Lone Hill Park underground infiltration gallery and park improvement project
 - Washington Park underground infiltration gallery and park improvement project
 - Fairplex underground infiltration gallery (NDS StormChamber) project
 - Larkin Park underground infiltration gallery and parking lot bioswale project

Rio Hondo WASC

- Met on February 16, 2021 to discuss a summary of feasibility studies, project concepts, and scientific studies submitted to the WASC for consideration. The Committee heard presentations on the following four Infrastructure Program (IP) projects:
 - Sierra Madre Boulevard Green Street Stormwater Capture Project
 - South El Monte High School Project
 - Mt. Lowe Median Stormwater Capture Project
 - Merced Ave Greenway (Phase I – South Residential Corridor)

TRANSFER AGREEMENTS

The District is currently working with municipalities and regional program recipients on executing Transfer Agreements (TAs). So far, the District has received 70 annual plans from municipalities and has executed agreements with 63 cities, providing payment to 50 of them. For the regional program, the District has received 35 scopes of work out of 48 projects and has not yet executed agreements with recipients.

WATERSHED COORDINATORS

The District is currently onboarding watershed coordinators. Each WASC has selected a preferred consultant and the District currently executing contracts with each consultant. The District expects to onboard the watershed coordinators and hold a collective meeting for all coordinators by early April.

PARTIAL FUNDING GUIDELINES


The District released guidelines on Stormwater Investment Plan (SIP) programming partial funding. While the District states that projects in SIPs should typically be recommended (i.e., programmed) to receive funding for their total estimated cost or requested need, the District recognizes that there are circumstances that warrant flexibility to allow WASCs recommend partial funding.


REPORT

During SIP development and programing, the WASCs are now authorized to recommend partial funding if the project application demonstrates a willingness and ability to complete the full project or scope identified in the application. The full guidelines to do so are included as attachment A.

UPCOMING MEETINGS

- Regional Oversight Committee – TBD
- Scoring Committee – Tuesday, April 6, 2021, 9:00 am – 12:00 pm
- Upper Los Angeles River WASC – Thursday, March 18, 2021, 2:00 – 5:00 pm
- Upper San Gabriel River WASC – Every 4th Thursday of the Month, 1:00 – 3:00 pm
- Rio Hondo WASC – Every 3rd Tuesday of the Month, 1:00 – 3:00 pm

Prepared by: 
Samantha Matthews
Management Analyst

Approved by: 
Marisa Creter
Executive Director

ATTACHMENTS

Attachment A – Safe Clean Water Program Partial Funding Guidelines

Safe, Clean Water Program

Programming of Partial Funding



Purpose

Los Angeles County Flood Control District Code Section 18.07.B.2.g states that activities included in a Stormwater Investment Plan (SIP) should typically be recommended (i.e., programmed) to receive funding for their total estimated cost or requested need. Experience to-date in the program reveals that there may be circumstances that warrant flexibility to allow Watershed Area Steering Committees (WASCs) to recommend a lesser amount than the amount requested in an Infrastructure Program Project Applicant's (IPPA's) or Scientific Studies Applicant's (SSA's) application ("partial funding"). The purpose of this guidance is to describe the process to address partial funding awards, providing flexibility to the WASCs during the development of SIPs.

Project and Study Eligibility

This guidance will address partial funding awards for IPPA's and SSA's that applied during each current SIP cycle. This guidance does not change the ability for WASCs to program the award of a request for full funding over a series of program years.

Process

During the SIP development and programming phase, the WASCs are authorized to recommend partial funding (for each current budget year or future projections) only if the IPPA or SSA demonstrates, to the satisfaction of the WASC, a willingness and ability to complete the full project or study scope identified in the application and submitted Feasibility Study, if applicable, with Safe, Clean Water Program (SCWP) partial funding.

Any IPPA that receives partial funding as described in this guidance will be required to assert and demonstrate that the project scope as described in the project application and submitted Feasibility Study will still be achieved using outside funding to fill the gap left by the partial award. This is required to maintain the applicability of the SCWP project score, which is allocated because of the scope and budget of a submitted project. A project can be awarded partial funding for a complete design phase, where a subsequent construction phase (or phases), once funded, would achieve the submitted benefits and therefore retain the SCWP score. However, a partial award that would diminish the scope of a project and therefore reduce the SCWP score of that project is not allowed – this situation would require the revised project to be resubmitted for scoring in the next program year.

Any SSA that receives partial funding as described in this guidance will be required to assert that the study scope as described in the study application will still be achieved using outside funding to fill the gap left by the partial award.

This programming of partial funding will be initiated by the WASC when an offer of partial funding is made to an IPPA or SSA. The IPPA or SSA will need to concur that the circumstance are applicable, confirm capabilities in accordance with this guidance, and accept the offer for partial funding. Once the WASC decides to offer partial funding, SCWP staff will engage with the IPPA or SSA to complete a Funding Reduction Concurrence (FRC) form and collect supporting documentation to share with the WASC. The

Safe, Clean Water Program

Programming of Partial Funding



FRC process will allow IPPAs and SSAs to clarify details and provide justification for the partial funding award before the WASC considers it for inclusion into a Stormwater Investment Plan.

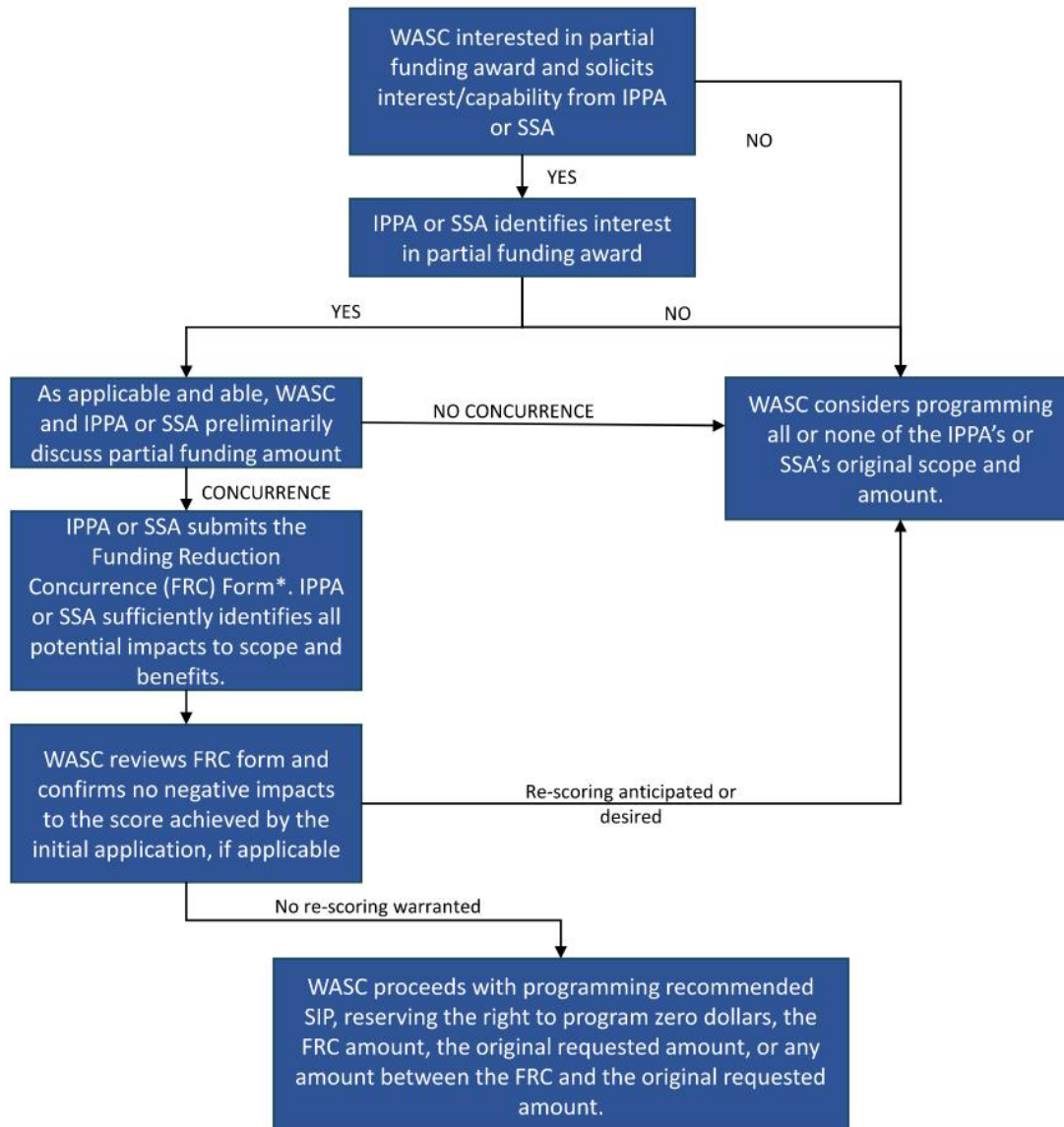
The partial funding award should not result in ANY reduction to the scope or benefits of (or the score assigned to) the project or study as identified in the application (and as submitted in the Feasibility Study, if applicable). De minimis additions to the scope that would be anticipated to increase the project score or improve the study may be considered through the FRC process, provided that the applicant demonstrates, to the satisfaction of the WASC, that any additional cost, in addition to the shortfall from the original request, will be covered by other funds and the project or study will be fully completed. The WASC may elect to recommend funding in any amount between the amount stated in the FRC and the amount requested in the project's or study's application.

Once the WASC reviews the FRC and recommends a partial funding award for the project or study, the FRC becomes an attachment to the SIP.

See Figure 1 and Attachment A for the Flowchart and the FRC form.

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* - FRC form is due at least one week before the WASC meeting. WASC to defer further discussion regarding programming the subject project or study in the recommended SIP until next meeting

Figure 1: Flowchart for Partial Funding recommendation for projects and studies in each current SIP cycle.

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ATTACHMENT A: Funding Reduction Concurrence (FRC) FORM

The purpose of this FRC form is to demonstrate an IPPA's or SSA's willingness and ability to complete a project or study with a lesser amount than the amount requested in its application ("partial funding"), in order for the project or study to be recommended in a Stormwater Investment Plan for partial funding. The partial funding award must not negatively impact the score achieved by the initial application or result in any changes to the project's or study's scope or benefits as identified in the application and submitted Feasibility Study, if applicable. The IPPA or SSA is required to submit a FRC form to facilitate the partial funding process.

Project/Study Name	
Project/Study Lead	
Watershed Area(s)	

Brief description of why and how the funding request included in the application is being reduced (e.g. Project or Study will be phased, more information has become available, additional leveraged funding was secured, etc.):

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Revised Eligible Expenditure Projections:

Funding Year	Fiscal Year	Amount	Description/Phase
1			
2			
3			
4			
5			
Future Funding			
TOTAL			

A: Total Original SCW Funding Request	
B: Total Revised SCW Funding Award	
C: Shortfall (A-B)	

Compensation plan for shortfall – Include evidence of the status (must be assurance of timely secured funds for WASC to consider partial funding award) and amount of each additional funding source to ensure completion of all activities proposed in the application and submitted Feasibility Study, if applicable (cost share, grants, SCW Municipal Program funds, subsequent SCW funding request, etc.). Also, include description of the which elements will be funded by this SCW funding request and by funds outside this SCW funding request to demonstrate all elements are funded. For phased projects or studies, provide information on additional funding sources to complete all activities proposed in the phased scope of work (if any).

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If applicable, provide a description and justification of any de minimis scope changes that will maintain or increase the Project Score or improve the Scientific Study. De minimis scope changes should be within the parameters and design of the project or study scope identified in the submitted Feasibility Study or Scientific Study application and any associated additional cost, in addition to the shortfall from the original request, must be covered by other non-SCWP funds.

I confirm that partial funding award will not negatively impact the achieved score or result in changes to Project or Study scope or benefits provided as described in the application and submitted Feasibility Study, if applicable. YES

If Project or Study is to be considered in phases, I understand that funding for future phases is not guaranteed, and that submission of a new application is required for funding for future phases not shown in the current SIP, and that annual funding is at the discretion of the WASC, ROC, and ultimately the Board of Supervisors. YES N/A

Name _____

Organization _____

Signature _____

Date _____

DATE: March 9, 2021

TO: Water Policy Committee/Water TAC

FROM: Marisa Creter, Executive Director

RE: **LEGISLATIVE UPDATES**

RECOMMENDED ACTION

For information only.

BACKGROUND

Below is an overview of state legislation that the Water Committee and Water TAC are currently tracking.

SB 37 (Cortese) – Contaminated Sites: the Dominic Cortese “Cortese List” Act of 2021

- **Summary:** The bill would require the State Water Resources Control Board, instead of the State Department of Health Care Services, to compile and update a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis by local health officers.
- **Status:** Introduced on December 7, 2020. Referred to Committee on Rules on February 10, 2021.
- **SGVCOG Position:** Watch

SB 45 (Portantino, Allen, Hurtado, and Stern) – Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2022

- **Summary:** This bill would authorize the issuance of bonds in the amount of \$5,510,000,000 pursuant to the State General Obligation Bond Law to finance projects for a wildfire prevention, safe drinking water, drought preparation, and flood protection program. This bill would provide for the submission of these provisions to the voters at the November 8, 2022, statewide general election.
- **Status:** Introduced on December 7, 2020. Set for hearing March 16.
- **SGVCOG Position:** Watch

SB 273 (Hertzberg) – Water quality: municipal wastewater agencies

- **Summary:** This bill would authorize a municipal wastewater agency, as defined, to enter into agreements with entities responsible for stormwater management for the purpose of managing stormwater and dry weather runoff, to acquire, construct, expand, operate, maintain, and provide facilities for specified purposes relating to managing stormwater and dry weather runoff, and to levy taxes, fees, and charges consistent with the municipal wastewater agency’s existing authority in order to fund projects undertaken pursuant to the bill. The bill would require the exercise of any new authority granted under the bill to comply with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000.

To the extent this requirement would impose new duties on local agency formation commissions, the bill would impose a state-mandated local program. This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provision.

- **Status:** Introduced on January 29, 2021.
- **SGVCOG Position:** Watch

AB 100 (Holden) – Drinking Water: Pipes and Fittings: Lead Content

- **Summary:** Bill amend Sections 25214.4.3 and 116875 of the Health and Safety Code, relating to drinking water. This bill would additionally define “lead free,” with respect to endpoint devices, as defined, to mean that the devices do not leach more than one microgram of lead under certain tests and meeting a specified certification. would require the department, when evaluating an endpoint device’s compliance with the above-specified definition of “lead free” The bill would also establish, to base its evaluation upon specified documentation that demonstrates certification that the endpoint device does not leach more than one microgram of lead under certain tests.
- **Status:** Introduced on December 11, 2020. Referred to Committee on Environmental Safety and Toxic Materials on January 11, 2021.
- **SGVCOG Position:** Watch

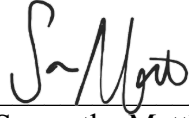
AB 377 (Rivas) – Water quality: impaired waters

- **Summary:** This bill would require all California surface waters to be fishable, swimmable, and drinkable by January 1, 2050. The bill would prohibit the state board and regional boards from authorizing an NPDES discharge, waste discharge requirement, or waiver of a waste discharge requirement that causes or contributes to an exceedance of a water quality standard, or from authorizing a best management practice permit term to authorize a discharge that causes or contributes to an exceedance of a water quality standard in receiving waters. The bill would prohibit, on or after January 1, 2030, a regional water quality control plan from including a schedule for implementation for achieving a water quality standard that was adopted as of January 1, 2021, and would prohibit a regional water quality control plan from including a schedule for implementation of a water quality standard that is adopted after January 1, 2021, unless specified conditions are met. The bill would prohibit an NPDES permit, waste discharge requirement, or waiver of a waste discharge requirement from being renewed, reissued, or modified to contain effluent limitations or conditions that are less stringent than those in the previous permit, requirement, or waiver. This bill would require, by January 1, 2030, the state board and regional boards to develop an Impaired Waterways Enforcement Program to enforce all remaining water quality standard violations that are causing or contributing to an exceedance of a water quality standard.
- **Status:** Introduced on February 1, 2021. Referred to Committee on Environmental Safety and Toxic Materials on February 12, 2021.
- **SGVCOG Position:** Staff recommends “oppose” position, consistent with “oppose” position adopted by California Stormwater Quality Association. AB 377 would reduce the amount of time for implementation of mitigation measures and increase penalties and

enforcement without adequate funding provided that is needed to achieve the desired water quality outcomes.

AB 1195 (Garcia) – Southern Los Angeles County Regional Water Agency

- **Summary:** This bill would create the Southern Los Angeles County Regional Water Agency as a regional water agency serving the drinking water needs of the cities, unincorporated areas, and residents in the communities overlying the Central Basin and West Coast Basin aquifers in southern Los Angeles County. The bill would require the agency to serve the region as the leader in interagency collaboration on water resource issues and to be governed by a 5-member board of locally elected officials in the agency’s jurisdiction, each appointed by a specified state or local entity. The bill would authorize the agency to serve the water needs of its region through specified activities, including, among others, operating public water systems or other water infrastructure and integrating other water systems in the region into its operations, as prescribed. The bill would authorize the agency to finance its operations through specified means, including, among others, collecting water rates, charges, fees, or established parcel charges previously charged by a water system for which the agency has assumed control.
- **Status:** Introduced on February 18, 2021. May be heard in committee March 21, 2021.
- **SGVCOG Position:** Watch

Prepared by: 
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Approved by: 
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