

Council Meeting of
June 5, 2012

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Public Works – Position of Support for the Los Angeles County Flood Control District’s Clean Water, Clean Beaches Protection Measure

RECOMMENDATION

Recommendation of the Public Works Director that the City Council take a position of support for the County Board of Supervisors in setting a Property Owner Election on the Los Angeles County Flood Control District’s Clean Water, Clean Beaches Protection Measure, for the residents of Los Angeles County to vote on an annual water quality fee for the cities to comply with existing and pending stormwater and urban run off water quality regulations.

Funding

Not applicable.

BACKGROUND

Stormwater and urban runoff often contain trash, bacteria, metals and other pollutants that flow into streams, channels, rivers and ultimately to the ocean. Many water bodies in the Los Angeles region are listed as impaired (polluted), having not met State and Federal water quality standards under the Clean Water Act.

The State Water Quality Control Board, through its regional boards, is responsible for enforcing the Clean Water Act. At the local level, Los Angeles County and the Cities of Los Angeles County must obtain a National Pollutant Discharge Elimination System (NPDES) permit from the Los Angeles Regional Board to discharge stormwater and urban run off to waterways and the ocean. Under the NPDES permit, municipalities are responsible for controlling pollution and cleaning up impaired waters in their jurisdictions.

The Clean Water Act requires that states develop what are known as Total Maximum Daily Loads (“TMDLs”) to limit pollutants discharged from the storm drain system to impaired waters. The TMDLs establishes the maximum amount of a pollutant (e.g., trash, bacteria, metal, etc.) that can be discharged to a water body from a City’s storm drain system. The City of Torrance will be regulated by multiple TMDLs including:

- Machado Lake Trash TMDL
- Machado Lake Nutrient TMDL
- Machado Lake Toxics TMDL

- Santa Monica Bay Beaches Bacteria TMDL
- Santa Monica Bay Debris TMDL
- Santa Monica Bay Toxics TMDL
- Dominguez Channel Harbor's Toxic TMDL

The costs of complying with stormwater regulations continue to increase with each new NPDES Permit and each new TMDL. A new NPDES permit with all of these TMDLs incorporated is scheduled to be issued September 2012. Many cities have relied on their general fund budgets, but that is increasingly at the expense of other vital public services. Economic studies by Los Angeles County show the cost of complying with the proposed NPDES permit and TMDLs for local governments in Los Angeles County in billions of dollars. For example, the South Santa Monica Bay Jurisdictional Group, which Torrance is a member, have estimated that compliance with the Santa Monica Bay Beaches Bacteria TMDL for the South Bay cities will cost \$50 million and Carollo Engineers' draft Stormwater Quality Master Plan estimates the City of Torrance will need \$120 million to comply with the remaining TMDLs. Failure to comply with the TMDLs could result in fines of up to \$10,000 for each day of violation. Violations have also resulted in third-party litigation, since violations of the Clean Water Act can be enforced by private parties, such as environmental groups.

It is clear that compliance with the NPDES permit and TMDL programs will be expensive for local governments over a long period of time. Unfortunately, local governments lack a stable, long-term dedicated local funding source to address these mandates. Local governments will be faced with either cutting existing services or finding new sources of revenues to fund the NPDES permit and TMDL programs. Given the overall cost burdens that are being placed on municipalities to achieve compliance with NPDES permit and TMDL programs, a sustainable funding source for public investment in water quality improvement is essential.

In September 2010, Governor Brown approved AB 2554 which allows the Los Angeles County Flood Control District to establish a fee to be levied and collected. The Water Quality Funding Initiative (also referred to as the Clean Water, Clean Beaches Protection Measure) aims to provide a stable, dedicated, long-term funding source for the implementation, construction, and maintenance of water quality improvements through a property-related fee. Since September 2010, the Los Angeles County Flood Control District has worked extensively with municipalities and other stakeholders to draft a proposed ordinance. The ordinance would codify the governance, administration and use of the fee, if and when the fee is approved by the voters.

The proposed fee would be calculated based upon the size of the property and impervious area (e.g., roof, patio, etc.) as determined by the property's land use. Fee amounts for single family residential homes will range between \$8 and \$83 annually, with the majority of homeowners paying \$54 annually. Commercial and industrial parcels, which typically have much more impervious area, will be assessed larger amounts. Government parcels must also be assessed since they contribute run off as well.

The proposed ordinance will allocate fee revenues and establish a governance structure in accordance with AB 2554 and the requirements of Proposition 218. It divides

anticipated revenues with 40% to the cities, 50% to watershed area groups (comprised of municipalities within each watershed) and 10% to the Los Angeles County Flood Control District for administration. Based on this formula, the City of Torrance is expected to receive annually approximately \$2.44 million, the Dominguez Channel and Santa Monica Bay Watershed Area Groups will receive \$3.05 million and the Los Angeles County Flood Control District would receive \$610,000 annually from fees collected in the City of Torrance.

Expenditures can include:

- Implementation of the NPDES permit requirements
- Preparation of environmental documents
- Education and public outreach
- Planning, design, construction of water quality projects
- Operation and maintenance of projects
- Required water quality monitoring

In summary, the **Pros** for supporting the Water Quality Funding Initiative, should it pass are:

- Approximately \$2.44 million per year in local funding for compliance with TMDLs and NPDES Permit
- Approximately \$3.05 million per year in funding for the South Bay region for compliance with TMDLs
- Implementation of water quality projects protects City from \$10,000 a day Regional Board fines and third party lawsuits
- Protects City's General Fund from funding requirements for water quality projects and NPDES Permit
- Improved water quality for Torrance Beach and other receiving water bodies sooner

The **Cons** for supporting the Water Quality Funding Initiative, should it not pass are:

- City will continue to rely on General Fund and grant monies to comply with TMDLs and NPDES Permit requirements
- Increased liability for use of General Fund to pay for violations for slow or no progress of NPDES Permit requirements and TMDL water quality projects
- Increased liability for third party lawsuits due to slow or no progress on meeting mandatory water quality regulations

The Los Angeles County Flood Control District staff has developed the following **tentative schedule** subject to the approval by the Los Angeles County Board of Supervisors:

- June 6, 2012: Board of Supervisors consideration of the Water Quality Funding Initiative Implementation Ordinance and Engineers Report
- Fall 2012: Proposition 218 mandated public hearing for the Water Quality Funding Initiative Fee
- March – May 2013: Property owner mail-ballot election for the Water Quality Funding Initiative Fee

Given the financial challenges to comply with the NPDES permit and multiple TMDLs, staff recommends that City Council send a letter of support to the County Board of Supervisors in setting a property owner election on the Los Angeles County Flood Control District's Clean Water, Clean Beaches Protection Measure.

Respectfully submitted,

ROBERT J. BESTE
Public Works Director



By John C. Dettle
Engineering Manager

CONCUR:



Robert J. Beste
Public Works Director



LeRoy J. Jackson
City Manager

Attachment A: Draft Fee Ordinance for L.A. County Flood Control District

ORDINANCE NO. _____

An ordinance adding Chapter 18 to the Los Angeles County Flood Control District Code to impose, subject to voter approval, a fee upon parcels located within the Los Angeles County Flood Control District to pay for projects relating to improving surface water quality within the district.

The Board of Supervisors of the County of Los Angeles ordains as follows:

Section 1. Chapter 18 is hereby added to the Los Angeles County Flood Control District Code to read as follows:

Chapter 18

18.01 Short Title.

18.02 Definitions.

18.03 Purpose and Intent.

18.04 Water Quality Fee Imposed.

18.05 Allocation of Revenues from Imposition of the Water Quality Fee.

18.06 Agreements for Transfer of Proceeds of the Water Quality Fee.

18.07 Required Water Quality Project Criteria.

18.08 Implementation of this Chapter.

18.09 Formation and Composition of Watershed Authority Groups.

18.10 Water Quality Projects Oversight Board.

18.11 Revenue Bonds.

18.12 District Held Harmless.

18.01 Short Title.

This chapter shall be known as the "Los Angeles County Flood Control District Water Quality Improvement Program Ordinance."

18.02 Definitions.

The following definitions apply to this Chapter 18:

"Auditor" means the Auditor-Controller of the County of Los Angeles.

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

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

"County" means the County of Los Angeles.

"District" means the Los Angeles County Flood Control District.

"Impervious area" means impermeable surfaces, such as pavement or rooftops, which prevent the infiltration of stormwater and urban runoff into the ground.

"Implementation Manual" means goals, policies, guidelines, procedures, standards, and requirements prepared by the Chief Engineer and approved by the Board of Supervisors to implement this chapter, as described in Section 18.08.

"Municipal projects" means water quality projects carried out by Municipalities and financed in whole or in part with Water Quality Fee revenues allocated to the Municipalities.

"Municipality" means a city or the collective unincorporated areas within the boundaries of the District.

"Parcel" means 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 ("APN").

"Regional projects" means water quality projects of regional significance that are carried out by Watershed Authority Groups and financed in whole or in part with Water Quality Fee revenues, and that affect a combined tributary area exceeding one hundred (100) acres of land, address pollutant loads from more than one Municipality, or are part of a plan that treats an entire reach of a river or subwatershed.

"Stormwater" means water that originates from atmospheric moisture (rainfall or snowmelt) and falls onto land, water, and/or other surfaces within the District.

"Surface water" means water that flows or collects on the surface of the ground.

"Treasurer" means the Treasurer and Tax Collector of the County of Los Angeles.

"Urban runoff" means surface water flow that may contain, but is not composed entirely of stormwater, such as flow from residential, commercial, or industrial activities.

"Water quality benefit" means any activity that contributes to the improvement of surface water quality.

"Water Quality Fee" means the fee imposed pursuant to this chapter to provide funding for water quality projects.

"Water Quality Improvement Plan (WQIP)" means a plan prepared by a Watershed Authority Group for the watershed area it represents and approved by the Board of Supervisors, which identifies pollutants, establishes targets for improvement,

and identifies and prioritizes regional projects for planning, design and implementation within the ensuing five (5) years, in accordance with procedures and requirements set forth in the Implementation Manual.

"Water quality project" means a project or program that includes a water quality benefit.

"Watershed Area" means one of the nine (9) geographic areas identified in Section 18.09 of this chapter and in Section 2 of the Los Angeles County Flood Control Act, subsection 8b(C), as described on maps prepared and maintained by the Chief Engineer based upon the Chief Engineer's determination of the hydrologic topographies of the watersheds.

"Watershed Authority Group" means a group formed in accordance with Section 18.09 and with the Joint Exercise of Powers Act, Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, consisting of Municipalities and other public agencies within each watershed area identified in Section 18.09, and which is responsible for preparing a WQIP and carrying out regional projects within the watershed area.

18.03 Purpose and Intent.

This chapter is enacted pursuant to Section 2, subsection 8c, of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915 and subsequent amendments). The purpose of this chapter is to implement the authority provided by Assembly Bill 2554 (2010) to provide funding for Municipalities, Watershed Authority Groups, and the District to initiate, plan, design, construct, implement, operate,

maintain, and sustain projects and services to improve surface water quality and reduce stormwater and urban runoff pollution in the District. It is also the intent of this chapter to encourage the design of such projects to achieve multiple benefits and incorporate sustainable solutions, as provided in the Implementation Manual.

18.04 Water Quality Fee Imposed.

A. A Water Quality Fee will be imposed upon certain parcels within the District in the manner set forth in this chapter. The Water Quality Fee will be levied and collected by the Treasurer and apportioned by the Auditor. The Board of Supervisors will make appropriations from the District's funds in a manner that authorizes the disbursement of Water Quality Fee revenues in accordance with Section 18.05.

B. The Water Quality Fee will be calculated for each parcel subject to the fee based upon the parcel's impervious area, which will be determined based upon the lot size and other specified characteristics of the parcel, to reflect the parcel's proportional allocation of the cost of the projects and services that are funded by revenues from the Water Quality Fee. The boundaries of the area, and identification of the parcels, subject to the fee and the method for calculating the Water Quality Fee for each parcel are supported by, and set forth in, an engineer's report prepared at the direction of the Chief Engineer and filed with the clerk of the Board of Supervisors. The Chief Engineer will make the engineer's report available to any person upon request at no charge. The maximum rate used for calculating the Water Quality Fee, as set forth in the engineer's report, will remain the same from year to year, unless an increase is approved in accordance with Article XIII D of the California Constitution.

C. The Water Quality Fee 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, or through direct invoicing to parcel owners that do not receive a consolidated property tax bill. The Auditor will provide each Watershed Authority Group with an annual accounting of the total revenues collected from the Water Quality Fee in its respective watershed area, including the revenues collected in each Municipality. The Auditor will also provide an annual statement of the revenues collected from the Water Quality Fee to each Municipality.

D. Insofar as feasible and not inconsistent with this chapter, 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 Water Quality Fee.

18.05 Allocation of Revenues from Imposition of the Water Quality Fee.

The revenues from the Water Quality Fee shall be allocated and used, subject to the terms and conditions of this chapter, as follows:

A. Ten percent (10%) shall be allocated to the District to be used for implementation and administration of water quality projects, as determined by the District, including activities such as planning, water quality monitoring, and any other related activities, and for payment of the costs incurred in connection with the levy and collection of the Water Quality Fee and distribution of the funds generated by imposition of the Water Quality Fee, and any other related activities associated with administering this chapter.

B. Forty percent (40%) shall be allocated to the Municipalities, in the same proportion as the amount of the Water Quality Fee collected within each Municipality, to be expended by the Municipalities within the Municipalities' respective jurisdictions for eligible municipal projects. Any Municipality may assign some or all of its allocation of the Water Quality Fee to the Watershed Authority Group for any watershed area(s) in which the Municipality is located for funding regional projects located in whole or in part within the jurisdiction of the Municipality.

C. Fifty percent (50%) shall be allocated to the nine (9) Watershed Authority Groups established in accordance with Section 18.09, in the same proportion as the amount of the Water Quality Fee collected within the watershed area of each Watershed Authority Group, to be expended by the Watershed Authority Groups to prepare WQIPs and carry out regional projects within that watershed area through a collaborative process as provided in the Implementation Manual. The implementation of a WQIP by a Watershed Authority Group requires the consent of any Municipality member of the Watershed Authority Group whose jurisdiction comprises more than forty percent (40%) of the total land area in the applicable watershed area.

18.06 Agreements for Transfer of Proceeds of the Water Quality Fee.

Prior to its receipt of any Water Quality Fee revenues, a Municipality or Watershed Authority Group must enter into an agreement with the District to provide for the transfer and use of the revenues as provided in this chapter. The transfer of proceeds agreement is designed to carry out the requirements of this chapter, the Implementation Manual and other laws governing the Water Quality Fee. A form

agreement will be prepared by the District in collaboration with Municipalities and Watershed Authority Groups and approved by the Board of Supervisors and will include:

- A. Requirement for compliance with the terms of this chapter and the Implementation Manual.
- B. Provisions as necessary to provide clarity and accountability in the use of Water Quality Fee revenues.
- C. Provision for indemnification of the District.

18.07 Required Water Quality Project Criteria.

A. All water quality projects funded under this chapter are required to comply with the following criteria:

- 1. That the water quality project demonstrates the ability to provide and sustain long-term water quality benefits.
- 2. That the water quality project is based on generally accepted scientific and engineering principles and the best available information.
- 3. Pursuant to the Los Angeles County Flood Control Act, that only the costs of the water quality benefit(s) provided by a water quality project are funded with revenues from the Water Quality Fee. Other costs of water quality projects are not eligible to be funded with revenues from the Water Quality Fee except insofar as these costs are incidental to a water quality benefit provided by the project.

B. All regional projects funded under this chapter are required to be included in an approved WQIP that is prepared in accordance with the Implementation Manual.

18.08 Implementation of this Chapter.

The Chief Engineer will develop an Implementation Manual setting forth goals, policies, guidelines, procedures, standards, and requirements to implement this chapter, subject to approval by the Board of Supervisors.

The Implementation Manual will include standards for determining eligibility of water quality projects to be funded with Water Quality Fee revenues, as well as requirements and procedures for preparation of WQIPs by Watershed Authority Groups and evaluation procedures for selection of water quality projects by Watershed Authority Groups, the evaluation procedures to be developed in collaboration with Watershed Authority Groups, Municipalities, and stakeholders, consistent with the provisions of this chapter. The Implementation Manual will include goals and policies for the planning and selection of water quality projects by Municipalities, Watershed Authority Groups, and the District, including policies and guidance to encourage and facilitate the design of water quality projects to achieve multiple benefits and incorporate sustainable solutions where feasible and appropriate.

The Implementation Manual will also set forth procedures and requirements for the following:

- A. Audits, reporting and recordkeeping relating to expenditures of Water Quality Fee revenues by Municipalities, Watershed Authority Groups, and the District.
- B. Addressing misuse of Water Quality Fee revenues and other failures to comply with the terms of this chapter or the Implementation Manual.

C. Executing transfer agreements pursuant to Section 18.06 and addressing the failure of any Municipality or Watershed Authority Group to sign a transfer agreement.

D. Formation and governance of Watershed Authority Groups, including requirements and procedures for an existing joint powers authority to serve as a Watershed Authority Group(s).

E. Provisions for stakeholder involvement.

F. Matters relating to the Water Quality Projects Oversight Board described in Section 18.10.

G. Request by a property owner for correction or adjustment of the fee that has been imposed on his or her property.

18.09 Formation of Watershed Authority Groups.

A Watershed Authority Group will be established for each of the following nine (9) watershed areas within the boundaries of the District: Ballona Creek, Dominguez Channel, Upper Los Angeles River, Lower Los Angeles River, Rio Hondo River, Upper San Gabriel River, Lower San Gabriel River, Santa Clara River, and Santa Monica Bay. Each Watershed Authority Group must be formed in accordance with the Joint Exercise of Powers Act, Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code. The Chief Engineer will prepare and maintain on file maps setting forth the precise boundaries of the watershed areas based upon the Chief Engineer's determination of the hydrologic topographies of the watersheds.

All Municipalities that are located within the boundaries of a watershed area and contain parcels that are subject to the Water Quality Fee, as established by Section 18.10, are eligible to become members of the Watershed Authority Group for that watershed area. A Municipality that is located in more than one watershed area is eligible for membership in the Watershed Authority Groups for all watershed areas in which it is located. A Municipality may join a Watershed Authority Group at any time.

For each Watershed Authority Group except the Santa Clara River Watershed Authority Group, the Board of Supervisors will select two (2) public agencies to serve as non-Municipality members. One public agency will be a public water supply, wastewater, or replenishment agency with experience in stormwater capture and/or water reuse for water supply augmentation, and the other public agency will be a state conservancy or other public agency with experience identifying and bringing together funding from multiple sources and implementing projects with multiple benefits in the watershed area for the Watershed Authority Group for which the agency is selected. For the Santa Clara River Watershed Authority Group, the Board of Supervisors will select only one (1) public agency meeting the requirements of one (1) of the types of public agencies described above, and this agency will be eligible to serve as a non-Municipality member of the Santa Clara River Watershed Authority Group.

Each Watershed Authority Group is strictly accountable for all funds, receipts, and disbursements of the Watershed Authority Group. The Treasurer will act as the treasurer of each Watershed Authority Group and will be the depository and have custody of all funds of each Watershed Authority Group. The Auditor will perform the

functions of the controller of each Watershed Authority Group. The Treasurer and Auditor, at their discretion, may delegate their functions to a treasurer or controller designated by the Watershed Authority Group. The Watershed Authority Group is required to reimburse the Treasurer and the Auditor for costs incurred in connection with the performance of their duties.

18.10 Water Quality Projects Oversight Board.

A Water Quality Projects Oversight Board is established and will be referred to hereinafter in this chapter as the "Oversight Board." The Oversight Board will consist of members with water quality experience drawn from academia, professional societies, nongovernmental organizations, and the private and public sectors, as well as members from the general public who are not necessarily required to have water quality experience. The composition and qualifications of the Oversight Board, the method of appointing members, and procedures governing the Oversight Board and its duties will be set forth in the Implementation Manual.

The purpose of the Oversight Board is to conduct public hearings and make findings and recommendations to the Board of Supervisors on matters related to the WQIPs prepared by Watershed Authority Groups. In addition, review and approval by the Oversight Board is required for proposed municipal projects for which the total costs of the water quality benefit, excluding operation and maintenance, are expected to exceed two million dollars (\$2,000,000), as described in the Implementation Manual.

18.11 Revenue Bonds.

Bonds issued hereunder by the governing body of a Municipality, the District, or a Watershed Authority Group, to the extent such entity is authorized by law to issue and sell revenue bonds, may be secured by Water Quality Fee revenues as set forth in this chapter. Only those amounts specifically allocated to a Municipality, the District, or a Watershed Authority Group may be used as security for its respective bonds.

Revenue bonds issued pursuant to this chapter shall not constitute any indebtedness of the District or the County, but shall be payable, principal and interest, only from revenues received from the Water Quality Fee.

18.12 District Held Harmless.

Nothing in this chapter requires the District to accept ownership or responsibility for any water quality project developed, constructed, or otherwise carried out or implemented by a Municipality or a Watershed Authority Group with the Water Quality Fee revenues. Unless the District enters into an express agreement with a Watershed Authority Group or Municipality to the contrary, neither the District nor the County to the extent that it is acting on behalf of the District, nor their officers, employees, agents or volunteers ("District Indemnitees") will be liable in connection with errors, defects, injuries, or property damage caused by or attributed to any water quality project that is funded in whole or in part with Water Quality Fee revenues, and each Municipality and Watershed Authority Group is 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 water quality project developed, constructed,

or otherwise carried out or implemented by the Municipality or Watershed Authority Group pursuant to this chapter, except for claims, liability, and expenses, including attorneys fees, resulting from the sole negligence or willful misconduct of District Indemnitees.

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