

SENATE GOVERNANCE & FINANCE COMMITTEE
SENATE NATURAL RESOURCES & WATER COMMITTEE

**Strategies and Innovations in
Financing Local Stormwater and Dry Weather Runoff
Improvements**

February 25, 2015

Committee Background

Traditionally, policymakers have viewed stormwater and dry weather runoff as local problems; ones that either must be moved to the ocean as quickly as possible, or as a source of contamination, contributing to a loss of usable water supplies and the pollution and impairment of rivers, lakes, streams, and coastal waters.

This traditional view, however, is changing. Increasingly, stormwater and dry weather runoff are viewed not as local problems, but as underutilized regional sources of surface water and groundwater supplies.

Indeed, last session the Legislature passed and the Governor signed two measures furthering this emerging view. Senate Bill 985 (Pavley, 2014) more finely focused the Stormwater Resources Act on the capture and use of stormwater and dry weather runoff, and required a Stormwater Resources Plan as a condition of receiving funds from any bond approved after January 2014. Voters also ratified Proposition 1, a water bond measure which authorized \$200 million in grants for multibenefit stormwater management projects. Eligible projects include green infrastructure, rainwater and stormwater capture projects, and stormwater treatment facilities. Moreover, development of plans for stormwater projects must address the entire watershed and incorporate the perspectives of communities adjacent to the affected waterways, especially disadvantaged communities.

It is unclear how local governments can best develop plans and fund such projects consistent with this emerging view of stormwater and dry weather runoff being underutilized regional resources. Are local governments' fiscal powers sufficient to develop plans and fund such projects? How are existing projects financed? Are there specific strategies that work better than others? These are the types of questions this hearing is intended to address.

This paper provides background information for members of the Senate Committees on Governance and Finance and Natural Resources and Water for its joint hearing on February 25, 2015, "Strategies and Innovations in Financing Local Stormwater and Dry Weather Runoff Improvements." The hearing is intended to:

- Describe how local governments currently finance stormwater and dry weather runoff projects, identify obstacles to effective stormwater policies in the current policy environment, and investigate the state's role in reducing or eliminating those obstacles.
- Learn from local agencies that are innovating in the current policy environment.
- Evaluate emerging approaches that may be reproduced or increased in scale and consider how the state can foster best practices to leverage the maximum benefits from Proposition 1's water bond funding.

The witnesses will address three issues:

- Current challenges to funding stormwater and dry weather runoff projects.
- Recent project financing approaches.
- Emerging and potential approaches to financing stormwater management planning and projects.

To provide a context for members of the Senate Committees on Natural Resources & Water and Governance & Finance, this paper:

- Describes current financial tools for financing stormwater projects
- Previews some of the issues witnesses are likely to raise.

Local Financing Options

For decades, local governments' General Fund revenues have been the most common source of funding for local stormwater and dry weather runoff management activities. However, as regulatory changes rapidly increase the pressure on local governments to pay for new stormwater compliance efforts, including large public works projects, many local governments' general fund revenues are being stretched thin. Because stormwater programs must annually compete with other core public services provided by local governments, general fund revenues appear to be an unsustainable source of financing for the extensive and costly stormwater management investments that local government must make to comply with regulatory standards.

As an alternative, counties, cities, and some special districts can impose special taxes and benefit assessments to fund water pollution prevention and stormwater management programs. The

California Constitution allows a local government to impose a special tax only with 2/3-voter approval. In some communities, a portion of revenues from voter-approved parcel taxes or transactions and use taxes pay for stormwater and dry weather runoff projects.

A benefit assessment is a charge that property owners pay for a public improvement or service that provides a special benefit to their property. The amount of the assessment must be directly related to the amount of benefit that the property receives. A local government must obtain weighted-majority property owner approval before imposing a benefit assessment on real property. The Benefit Assessment Act of 1982 allows local governments to impose benefit assessments to pay for the operations and maintenance costs of drainage and flood control services. While some communities receive benefit assessment revenues to pay for stormwater projects, the property owner approval requirement, like the 2/3-voter approval requirement for special taxes, makes it difficult for many public agencies to get approval to impose benefit assessments.

Property related fees are another potential revenue source for county and city stormwater compliance efforts. The California Constitution defines a property-related fee or charge as any levy other than an ad valorem tax, a special tax, or an assessment imposed by an agency on a parcel or on a person as an incident of property ownership, including a user fee or charge for a property-related service.

Before a local government can charge a new property-related fee, or increase an existing one, the California Constitution requires local officials to:

- Identify the parcels to be charged.
- Calculate the fee for each parcel.
- Notify the parcels' owners in writing about the fees and the hearing.
- Hold a public hearing to consider and count protests.
- Abandon the fees if a majority of the parcels' owners protest.

Further, new or increased property-related fees require:

- A majority-vote of the affected property owners; or,
- Two-thirds registered voter approval.

The election requirements don't apply to property-related fees for sewer, water, or refuse collection services. A 2002 appellate court decision in *Howard Jarvis Taxpayers Association v. City of Salinas* found that a city's charges on developed parcels to fund stormwater management were property-related fees, and were not covered by Proposition 218's exemption for "sewer" or

“water” services. As a result, stormwater fees require a vote of property owners or registered voters.

Some local governments have considered imposing other types of local fees to generate revenues for stormwater management activities. For example, several counties in the San Francisco Bay Area obtained majority voter approval in 2010 for countywide vehicle registration fees which could be used to fund transportation projects, including the mitigation of water pollution associated with motor vehicles. However, amendments made to the California Constitution by voters’ approval of Proposition 26 (2010) may require counties to obtain 2/3-voter approval before imposing new vehicle registration fees or other similar types of regulatory fees.

Legislative responses

Legislators have responded to the constraints on local financing tools for stormwater projects in a variety of ways. For example, legislators have proposed measures that:

- Allow Mello-Roos special tax revenues to pay for stormwater management services (AB 2194, Mullin, 2014).
- Grant some local governments new authority to impose property-related fees to pay for stormwater projects (AB 554, Nava, 2005; AB 2554, Brownley, 2010; AB 418, Mullin, 2014).
- Codify the court opinion in *Griffith v. Pajaro Water Management Agency (2013)*, which found that some stormwater fees that relate to water service are exempt from the Constitution’s election requirement (AB 2403, Rendon, 2014).
- Amend the California Constitution to exempt new or increased stormwater and dry weather runoff management fees or charges from voter approval requirements for property-related fees and charges (ACA 10, Harman, 2003; SCA 12, Tolakson, 2007; SCA 18, Liu, 2009)

Some stakeholders are determined to amend the California Constitution to treat all local stormwater fees in the same manner as local fees for water, sewer, and refuse collection service by eliminating the current voter approval requirements. However, it is uncertain whether such an amendment would be a “silver-bullet” solution to local agencies’ stormwater financing challenges. While a successful ballot measure to amend the Constitution cannot be ruled out, the recent history of such proposals in the Legislature suggests that amending the Constitution could be a lengthy and costly process with uncertain prospects for success. As a result, the February 25th joint hearing will focus on stormwater and dry weather runoff strategies and innovations that can be implemented *within California’s existing constitutional framework*, and not on proposals to amend voter-approval requirements established by the Constitution.

Overview of Hearing

The hearing will consist of three panels plus public comment.

I. Current challenges to funding stormwater and dry weather runoff projects.

The first panel will describe the current fiscal landscape regarding financing of stormwater and dry weather plans and projects, from both a statewide and local agency's perspective.

Key Questions:

- What are the biggest challenges in financing stormwater and dry weather runoff plans and projects?
- Are current funding sources sufficient to meet necessary levels of investment in such plans and projects?
- What role does state funding play in financing such projects?
- What additional funding sources might be helpful?
- In addition to funding, what other strategies are important to financing and constructing stormwater and dry weather projects?

Ellen Hanak, Ph.D. is a senior fellow at the Public Policy Institute of California (PPIC), a non-partisan research institute dedicated to informing and improving public policy in the state. Since joining PPIC in 2001, she has built an influential, multi-disciplinary water policy research program involving scholars from across California. PPIC's water publications (available at www.ppic.org) address key challenges facing the management this important resource, including water supply and quality, flood protection, aquatic ecosystem health, and financing and governance solutions. Before joining PPIC, Dr. Hanak held research positions with the French agricultural research system, the U.S. President's Council of Economic Advisors, the World Bank, and the Brookings Institution. She holds a Ph.D. in economics from the University of Maryland.

Dr. Hanak will provide a statewide perspective on the challenges in funding stormwater projects. Her presentation will draw from a number of PPIC reports, including *Paying for Water in California (2014)*.

Chris Berch is the Executive Manager of Engineering/Assistant General Manager at the Inland Empire Utilities Agency (IEUA). IEUA provides wholesale imported and recycled water, regional wastewater treatment and water resource management for more than 830,000 people in a 242-square mile service area within San Bernardino County, California. Mr. Berch is a

licensed civil engineer, a board certified environmental engineer and a certified wastewater operator. During his 18-years of experience with IEUA, Mr. Berch has directed various water resource management programs including the planning, design, construction and operation of IEUA's regional ground water recharge program. With more than \$250M invested to date, recharge of stormwater, recycled water and imported water through this program has been a cornerstone to the drought proofing of the IEUA service area.

Mr Berch will provide a local agency perspective on the challenges in funding stormwater projects. His presentation will include observations drawn from IEUA's current initiative to restructure its rates.

II. Recent project financing approaches.

Rather than waiting for new fee or tax revenue to materialize, some local governments in California are navigating through obstacles in the current policy environment to invest in cutting-edge stormwater management programs. The hearing's second panel of witnesses will represent public and private organizations that are pioneering new approaches to stormwater projects.

Key Questions:

- What specific strategies helped successful projects to overcome the financing and governance challenges that characterize the current policy environment?
- What data are being collected, or will be collected, to assess project outcomes including: cost savings, water supply effects, environmental benefits, and public health improvements?
- How should policymakers assess the scalability and ease of reproducing innovative pilot projects in other jurisdictions?
- What legislative actions, within existing Constitutional constraints, would help to facilitate more widespread implementation of successful local policy initiatives?

Martin L. Adams is the Senior Assistant General Manager of the Water System for the Los Angeles Department of Water and Power. A civil engineer by training, Mr. Adams is a native of Glendale, California, and attended Loyola Marymount University in Los Angeles. He has been involved in local and regional water issues for 30 years with a career that has touched on most every aspect of Los Angeles' water system, including planning, design, and operation. No stranger to drought and water supply challenges, Mr. Adams is now tasked with overseeing the infrastructure investments that will more than double the City's use of local water resources and meet the City's commitment to dramatically reduce its reliance on supplies imported from hundreds of miles away.

Mr. Adams' presentation will focus on LADWP's development of a Stormwater Capture Master Plan and discuss specific projects and programs that fall within the scope of the master plan.

Nancy L. C. Steele, Ph.D. is the Executive Director of Council for Watershed Health, a regional hub for practical watershed research and analysis, headquartered in Los Angeles, California. Dr. Steele uses the tools of science and policy to catalyze change towards sustainable and resilient urban environments. Her career includes fourteen years of environmental regulatory policymaking and compliance for the State of California and over fifteen years of urban watershed practice. Dr. Steele serves on the boards of the Marine Conservation Research Institute and Southwest Megaregion Alliance, and as vice-chair to the Upper Los Angeles Watershed Steering Committee and member of the Leadership Committee of the Greater Los Angeles Regional Water Management Group. She is a past Stanton Fellow of the Durfee Foundation and Switzer Fellow of the Robert & Patricia Switzer Foundation.

Dr. Steele's presentation will focus on lessons learned from measuring the performance and outcomes of the Elmer Avenue pilot project.

Deborah Weinstein Bloome joined TreePeople in 2008. She is currently the Director of Policy, where she engages in strategic planning and cultivates partnerships with agencies, policymakers and the broader environmental community to promote TreePeople's integrated approach to greening Los Angeles and developing local water supplies. For the past two decades, Ms. Bloome's work experience has been devoted to creating and promoting policies to improve the environment. She brings a wealth of national and international environmental policy experience from her tenure at the U.S. Department of the Interior in Washington, D.C. and local knowledge from her experience working for the L.A. City Council. Ms. Bloome holds a B.A. in Business/Economics from the University of California, Santa Barbara and an M.A. in Public Policy from the University of California, Los Angeles. Deborah was also selected as a Presidential Management Fellow.

Ms. Bloome's presentation will focus on TreePeople's efforts to identify stormwater and dry weather runoff management strategies that are most likely to be scalable and reproducible in local jurisdictions throughout California.

III. Emerging approaches to financing stormwater management

Rapidly evolving regulatory requirements, water supply challenges, and urban growth pressures will require state and local policy makers to be increasingly creative in implementing new strategies and methods for attacking stormwater challenges. The hearing's third panel of witnesses will be asked to discuss emerging policy options in the areas of: finance, land use, and governance structure.

Key Questions:

- What role can public-private-partnerships play in financing stormwater and dry weather runoff management projects in California?
- What are the prospects in California for “monetizing” captured stormwater and dry weather runoff to pay for projects?
- What role can Enhanced Infrastructure Financing Districts (EIFDs), which were authorized by SB 628 (Beall, 2014), play in financing stormwater and dry weather runoff projects?
- How can a metrics-based approach to stormwater projects help generate new local and regional stormwater revenues that comply with Proposition 218?
- How can policymakers break down jurisdictional silos among various local governments within a watershed to improve policy outcomes through more cooperative, regional approaches to stormwater management challenges?

Andrea Roess is the Managing Director at David Taussig & Associates. Ms. Roess has a background in finance and public policy analysis. She has a BA in Psychology/Public Policy Analysis from Pomona College and an MBA from San Francisco State University. Since joining DTA in 1992, Ms. Roess has participated in all aspects of the formation and implementation of special finance districts to fund infrastructure and services. She has managed the formation of more than 300 land-secured financing districts, including several PACE programs. She also has expertise in the preparation of rate and fee studies, fiscal consultant reports, and fiscal impact reports. In addition, Ms. Roess established and manages DTA's water, sewer, and stormwater practice. She has prepared stormwater/flood control funding studies and financing plans for numerous agencies. Ms. Roess is the chair of the Orange County/Inland Empire regional leadership team for the Association of Women in Water, Energy, and Environment (AWWEE) and has participated on numerous panels and workshops related to public financing including the Stormwater Financing Workshop held by the US EPA in February, 2015.

Ms. Roess' presentation will consider the prospects for local governments to pay for stormwater and dry weather runoff projects using emerging public finance tools, including public-private partnerships, enhanced infrastructure financing districts, and the monetization of captured stormwater.

Esther Feldman, President of Community Conservation Solutions (CCS), has a long history of pioneering new conservation initiatives that successfully address challenging environmental problems, and of leveraging new funds to ensure the longevity of the projects she directs. As President of CCS, a non-profit conservation organization focused on solving problems where

people and nature intersect, Ms. Feldman conceived of and spearheaded the two-square mile Baldwin Hills Park Project in the heart of urban Los Angeles, and is directing a landmark L.A. River restoration project in the San Fernando Valley. She has developed and is advancing throughout California an innovative, metrics-driven 'Green Solution' tool to help decision-makers know where – and in what order – to implement “smart” stormwater and dry weather runoff capture projects to create new local water supplies, while reducing greenhouse gas emissions associated with importing water. She has a B.S. in Soil and Water Science from UC Davis, and is an avid outdoorswoman.

Ms. Feldman’s presentation will focus on state-of-the-art approaches to identifying where – and in what order – to use public lands to capture and re-use stormwater – and how these approach are critical to successfully generating new local and regional stormwater revenues.

Celeste Cantú, General Manager, for the Santa Ana Watershed Project Authority (SAWPA) has been working on the crest-to-coast, corner-to- corner Integrated Regional Watershed Management Plan called, One Water One Watershed (OWOW) that addresses all water-related issues, joins all entities and hundreds of stakeholders seeking to create a new vision of sustainability for the Santa Ana River Watershed. Ms. Cantú has served as the Executive Director for the California State Water Resources Control Board, which is responsible for water rights and water quality for the State. Ms. Cantú has a BA from Yale in Urban Planning and Policy and a Masters in Public Administration from Harvard’s Kennedy School of Government.

Ms. Cantú’s presentation will describe how SAWPA has overcome obstacles normally posed by the mismatch between watershed boundaries and local government boundaries in developing and implementing its OWOW plan.

Sources:

Several recent studies and reports have examined funding tools that governments can use to finance stormwater and dry weather runoff projects. Three publications that discuss stormwater financing options specifically in the context of California are:

California Department of Water Resources and U.S. Army Corps of Engineers. 2013. "Attachment I: Finance Strategies." *California's Flood Future: Recommendations for Managing the State's Flood Risk*. Sacramento, CA. Available online at: http://www.water.ca.gov/sfmp/resources/Attachment_I_Finance.pdf

Ken Farfsing and Richard Watson. 2014. *Stormwater Funding Options: Providing Sustainable Water Quality Funding in Los Angeles County*. Los Angeles, CA: California Contract Cities Association and League of California Cities, Los Angeles County Division. Available online at: <http://www.cacities.org/Resources-Documents/Private-LAC-Documents/StormWaterStormwater-Report-rev2.aspx>

Ellen Hanak, Brian Gray, Jay Lund, David Mitchell, Caitrin Chappelle, Andrew Fahlund, Katrina Jessoe, Josué Medellín Azuara, Dean Misczynski, James Nachbaur, and Robyn Suddeth. 2014. *Paying for Water in California*. San Francisco: Public Policy Institute of California. Available online at: http://www.ppic.org/content/pubs/report/R_314EHR.pdf