

ENERGY, CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE COMMITTEE REPORT
relative to funding options for the implementation strategy of five Enhanced Watershed
Management Plans (EWMPs).

Recommendations for Council action:

1. ACKNOWLEDGE that a comprehensive funding strategy is needed to address the City's compliance cost and provide direction on which funding options the City shall pursue.
2. INSTRUCT the Bureau of Engineering (BOE), Bureau of Sanitation (BOS), City Administrative Officer (CAO), and the Los Angeles Department of Water and Power, as appropriate, to coordinate and identify specific projects that will meet permit compliance.
3. INSTRUCT the CAO to work with the Chief Legislative Analyst (CLA), BOS, and other City departments, as necessary, to develop an implementation plan that includes program oversight structure and funding strategies.
4. INSTRUCT the BOS, BOE, and the CAO to provide an updated project list, including project costs, for the next five years.
5. INSTRUCT the BOS to report with a range of cost/benefit analysis to ensure that the most cost-effective ways to achieve the policy objectives are available for Council to consider, not necessarily the maximum environmental benefits.
6. REQUEST the BOS, CLA, CAO, and the Office of the Mayor to report on how any funding strategy and implementation plan will:
 - a. Best position the City of Los Angeles for its fair share of resources.
 - b. Ensure infrastructure equity in disadvantaged communities and communities of color, and further prioritize areas that have not historically been prioritized for water quality based funding.
 - c. Support the remediation of the aquifer and improvement of the stormwater system in the San Fernando Valley.
 - d. Ensure a commitment to support and invest in multi-benefit projects.
 - e. Recognize the efforts of the business community.
 - f. Support local hiring and job training opportunities for disadvantaged residents.

Fiscal Impact Statement: The CAO reports that there will be a significant General Fund impact should the City not comply with state and regional water quality requirements as set forth in the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit. The City's estimated total cost to implement the five EWMPs is \$7.2 billion, excluding the cost of operating and maintaining the projects. In order to avoid potential fines and penalties

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: January 5, 2017

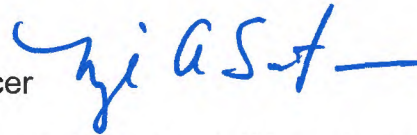
CAO File No. 0220-05283-0000

Council File No. 15-0605

Council District: ALL

To: Council
Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Enhanced Watershed Management Plans for Ballona Creek Watershed, Upper Los Angeles River Watershed, Santa Monica Bay Watershed, Dominguez Channel Watershed, and Marina del Rey; Bureau of Sanitation's Stormwater and Green Infrastructure Five-Year Capital Improvement Plan

Subject: **FUNDING OPTIONS FOR THE IMPLEMENTATION STRATEGY FOR THE ENHANCED WATERSHED MANAGEMENT PLANS**

RECOMMENDATIONS

That the Council and Mayor:

1. Acknowledge that a comprehensive funding strategy is needed to address the City's compliance cost and provide direction on which funding options the City shall pursue.
2. Instruct the Bureau of Engineering, Bureau of Sanitation, the City Administrative Officer, and the Department of Water and Power, as appropriate, to coordinate and identify specific projects that will meet permit compliance.
3. Instruct the City Administrative Officer to work with the Chief Legislative Analyst, Bureau of Sanitation, and other City departments, as necessary, to develop an implementation plan that includes program oversight structure and funding strategies.
4. Instruct the Bureau of Sanitation, Bureau of Engineering, and the City Administrative Officer to provide an updated project list, including project costs, for the next five years.

SUMMARY

On June 19, 2015, the Council instructed our Office to work with the Bureau of Sanitation (LASAN) to report back relative to funding options for implementing the five Enhanced Watershed Management Plans (EWMPs). The EWMPs, which were developed by LASAN, in collaboration with other participating responsible agencies in each watershed, address the compliance requirement set forth in the National Pollutant Discharge Elimination System Municipal Separate

Storm Sewer System Permit (NPDES MS4 Permit). According to LASAN, the City's total cost to implement the five EWMPs over the next 25 years is estimated to be \$7.2 billion, excluding the ongoing cost of operation and maintenance (O&M). LASAN developed the City of Los Angeles Stormwater and Green Infrastructure 5-Year Capital Improvement Plan (CIP), the first five-year implementation plan to meet near term compliance deadline. In order to implement the EWMPs, funding is required to support capital and O&M costs. Many funding options, as well as non-revenue generating options, were analyzed and our Office is requesting direction on the funding strategies that the City shall pursue. This report provides an overview of the regulations, the City's obligations and needs, and the financing options that were explored.

BACKGROUND

The Federal Water Pollution Control Act ("Clean Water Act") establishes the basic structure for regulating discharges of pollutants into the waters of the United States and establishing quality standards for surface waters. The Clean Water Act requires the States to identify "impaired" water bodies and to develop a Total Maximum Daily Load (TMDL) for each pollutant contributing to impairment. The U.S. Environmental Protection Agency has delegated this responsibility to the Los Angeles Regional Water Quality Control Board (LARWQCB), which governs the City of Los Angeles. On November 8, 2012, the LARWQCB adopted the NPDES MS4 Permit Order No. R4-2012-0175, which became effective on December 28, 2012. The permit names the City along with the Los Angeles County Flood Control District ("LACFCD"), the County of Los Angeles ("County"), and 83 incorporated cities as permitted dischargers. The City is designated as the "responsible jurisdiction" for twenty-two of the thirty-three TMDLs identified on the permit. These TMDLs encompass a total of 192 pollutants in the Los Angeles River, Ballona Creek, the Santa Monica Bay shoreline, Dominguez Channel, Marina Del Rey, and several lakes within the City.

Enhanced Watershed Management Plans

Pursuant to the NPDES MS4 permit, permittees are provided the option to voluntarily develop and implement the EWMPs. The EWMPs allow permittees to address permit requirements on a watershed scale by developing and utilizing customized strategies, control measures, and Best Management Practices ("BMPs") that are multi-beneficial. These benefits include, but are not limited to, improved water quality, reduction in impairment of water bodies for designated beneficial uses, flood control, enhanced recreation opportunities, water supply, and reducing the heat island effect. The City was the lead agency in the preparation of the EWMPs for the Ballona Creek (BC), Upper Los Angeles River (ULAR), Santa Monica Bay (SMB), and Dominguez Channel (DC) watershed. The City also participates in the Marina del Rey subwatershed, for which the County was the lead agency in the preparation of that EWMP. As of April 2016, the LARWQCB has approved all five EWMPs.

The EWMPs are a key aspect of the new safe harbor provisions contained in the NPDES MS4 permit. The safe harbor provisions state that a permittee will be deemed in compliance during the development of EWMPs, provided all requirements and deadlines related to EWMP development are met (2012 MS4 Permit Part VI.E.2.d.i(4)(d), Part VI.E.2.e.i.). While the EWMPs are in effect, if a permittee is found to be in compliance with its EWMP but not in compliance with the interim

milestones, they will still be deemed in compliance with the interim limits set in the NPDES MS4 permit. The newly adopted safe harbor provisions have proven controversial with opponents arguing that the safe harbors are illegal as they violate the interim and final limits set forth in the TMDLs. However, the State Board has allowed the safe harbor provisions to stand.

Cost of Non-Compliance

LASAN estimates that the City faces capital cost of \$7.2 billion over the next 25 years to comply with the NPDES MS4 Permit. This need is currently unfunded. Within the next 10 years, the City faces sixteen unfunded interim milestones and final compliance deadlines under the TMDLs. Further, the City is likely to receive more TMDLs in the coming years adding unknown costs to the overall price of compliance. The City has missed three compliance deadlines and is currently subject to three Time Schedule Orders (TSOs). Authorized under Section 13300 of the California Water Code, a TSO is an enforcement action issued by the LARWQCB that provides a permittee additional time to comply with the final water quality-based effluent limitations and/or receiving water limitations.

The LARWQCB has the authority to impose significant fines for non-compliance as follows:

- Federal fines are \$37,500 per pollutant, per day of violation. This equates to \$13,687,500 per pollutant per year of violation.
- State fines may range from \$3,000 to \$10,000 per pollutant, per day of violation. This equates to \$1,095,000 to \$3,650,000 per pollutant per year of violation.

Enforcement actions by the Regional Boards are administrative actions that carry civil, rather than criminal penalties. However, it should be noted that in the 2002 version of its enforcement policy, the State Board noted that the Regional Boards may refer cases to the appropriate prosecutorial office where it is believed specific individuals or entities may be engaged in criminal activity. While the exact penalties would be dictated by the charges brought, individuals and responsible parties in public agencies may face fines or imprisonment.

When weighing the cost of funding a stormwater program against the cost associated with noncompliance, the City must consider the following: (1) financial penalties for noncompliance; (2) the threat of third party litigation; (3) agency enforcement actions; and (4) the cost of implementing the projects.

TMDL Compliance

The NPDES MS4 permit requires that the EWMPs incorporate multi-benefit regional projects that achieve TMDL limits through retention of all non-stormwater and stormwater volume from the 85th percentile, 24-hour storm (the first three-quarter inch of rainfall) for the drainage areas tributary to the multi-benefit regional projects. Additionally, the permit requires the EWMPs to include a Reasonable Assurance Analysis (RAA), similar to a modeling approach, that demonstrates the effectiveness of the proposed BMPs in meeting pollutant load reductions and

resulting receiving water concentrations. The RAA utilized in each EWMP complies with the RAA policy developed by the Regional Water Quality Board. The implementation strategy is comprised of the following BMPs:

- Low Impact Development (LID) – Control measures implemented on parcels to retain stormwater runoff during rain events such as bioretention, permeable pavement.
- Green Street Projects – Control measures implemented on public right-of-way to retain runoff from the gutter via curb cuts or curb extensions.
- Regional Projects – Control measures that are able to capture runoff from large upstream areas; particularly those that retain the 85th percentile, 24-hour storm.

Through an adaptive management process, the EWMPs will be re-assessed every two years to ensure the effectiveness of the implementation strategy based on new monitoring data, lessons learned, and experience gained from the implemented projects. The chart below provides the total volume (acre foot) of stormwater that must be managed by the selected BMPs in order to attain TMDL compliance over the 25 year period.

Watershed	Acre feet				City's EWMP Cost	Operation & Maintenance Cost
	LID	Green Streets	Regional BMPs	Total Structural BMP Capacity		
Marina del Rey	159.8	351.3	160.7	673.1	\$ 251,976,141	\$ 32,499,182
Santa Monica Bay	0	60.3	135.4	195.7	\$ 408,800,000	\$ 54,200,000
Dominguez Channel	51	96	58	370.2	\$ 412,562,285	\$ 4,125,623*
Ballona Creek	214	278	1,217	1709	\$ 2,281,840,000	\$ 62,500,000
Upper Los Angeles River	344	607	2,115	3065	\$ 3,819,520,000	\$118,070,000

TOTAL: \$ 7,174,698,426

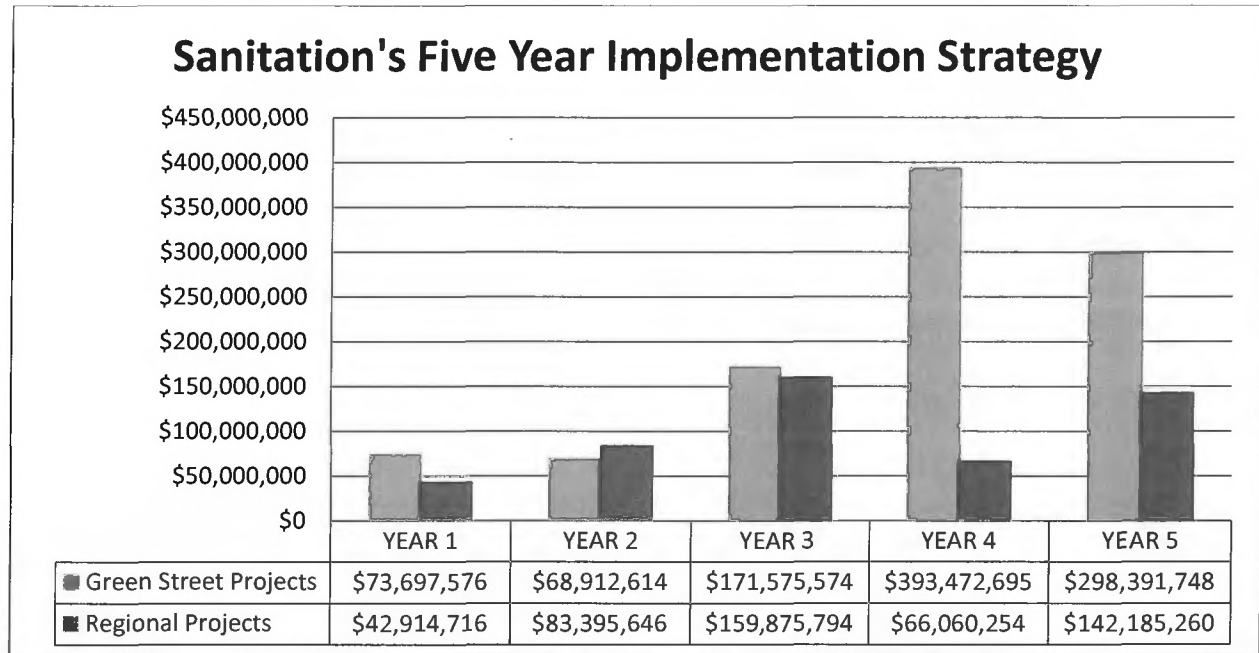
* The EWMP for the Dominguez Channel Watershed Management Area does not provide an estimated O&M cost. Therefore, the assumption is that the O&M cost shall be equal to one percent of the capital cost.

Alignment with EWMPs - Bureau of Sanitation's Stormwater Five-Year CIP

LASAN has prepared an initial five-year CIP aimed at implementing the EWMPs and maintaining the City's compliance. These projects are categorized by watershed, but they cannot be evaluated by TMDL. In managing stormwater volume, these projects effectively benefit each of the TMDLs in their respective watershed. The plan will require updates throughout the 25 year implementation period to meet the compliance requirement. The total cost to implement the CIP is approximately \$1.52 billion, comprised of \$494 million for regional projects and \$1.03 billion for

green street projects.

The chart below provides the annual cost breakdown to implement the regional and green street projects contained in the CIP.



To meet near term compliance deadlines through 2021, the CIP has set the following project priorities:

- Priority #1 includes the required Time Schedule Orders (TSOs). Two of the three TSOs involve monitoring and reporting activities with a compliance deadline of 2017. The third TSO requires two projects to be operational by 2019. In Fiscal Year 2016-17, the City has partially funded the predesign cost of the TSOs and additional funding of \$19,346,550 will be required to implement the projects.
- Priority #2 includes the load reduction strategy ("LRS") projects required by the LA River Bacteria TMDL.
- Priority #3 includes the EWMP projects pertaining to approaching deadlines.

As noted, full compliance with final deadlines will require implementation of projects beyond the five-year CIP. The CIP also incorporates storm drain projects for flood control, which is in line with the NPDES MS4 permit and embodies the multi-benefit approach to improving stormwater quality. It does so by supporting the City's broader water resource initiatives to ensure that water supply benefits are maximized while also providing flood protection.

Whereas some of the multi-benefit regional projects contained in EWMPs are easily incorporated into the proposed CIP, the green street projects in the EWMPs cannot be directly linked to the projects in the CIP. LASAN reports that the association between the green street projects in both plans is the volume of stormwater that will be managed. Therefore, specific green street projects

have not yet been identified. As shown on the chart above, a significant portion of the CIP cost, totaling \$1.0 billion, is associated with green street projects and identification of these projects is crucial for TMDL compliance. The project list in the CIP must be updated regularly to reflect changes to the projects or costs. Thus, our office shall continue to work with the LASAN, as well as the Bureau of Engineering, to confirm that it is updated.

Funding Requirements and Options

The City faces substantial funding needs to successfully and fully implement the necessary components of its stormwater program. With the issuance of the 2012 NPDES MS4 permit, the City continues to face mounting compliance costs. LASAN estimates that by 2037, total cumulative capital costs associated with the City's stormwater program will reach \$7.2 billion. This does not account for ongoing O&M costs associated with those projects. Future funding sources must account for both capital and O&M needs.

Current Funding Landscape

Since 1992, the sole dedicated source of funding for stormwater and flood control related activities has been the Stormwater Pollution Abatement Fund (SPAF), primarily consisting of revenues generated from the Stormwater Pollution Abatement Charge (SPAC) and the developer plan review fees. The SPAC was adopted in August 1990 and imposes a fee on all commercial and residential properties in the City. The fee is collected by the Los Angeles County Assessor and appears on a property's annual tax bill. This fee relies on an equivalent dwelling unit ("EDU"), which is based on a residential lot size of 6,650 sq. ft. The fee has not been adjusted since 1993 and generates roughly \$1.92 per month, totaling \$23 per year, for a typical single family residential parcel. For the last four fiscal years, annual revenue is approximately \$29 million.

The developer plan review fee, in effect since 2011, generates an average of \$480,301 in annual revenue. LASAN indicates that these fees are insufficient to cover the staffing costs associated with reviewing plans pursuant to the ordinance.

The funds available in the SPAF serve a dual purpose: (1) funding the treatment and abatement of stormwater pursuant to requirements imposed by the EPA and (2) funding construction of flood control and pollution abatement projects. The fund also supports the cost of stormwater-related activities in various City departments, offices, and bureaus.

Recently, the City adopted an ordinance for the establishment of a new MS4 permit compliance inspection fee for commercial and industrial facilities. The inspections are required under the current NPDES MS4 permit. The assessed fee will be based on the annual staffing costs incurred by LASAN to ensure compliance with the NPDES MS4 permit and thus, the fee cannot exceed the reasonable costs of providing the service for which the fee is collected. There has been a delay to the fee implementation.

The Clean Water Bond, Proposition O (Prop O), has also been a funding source for many projects supporting compliance with the City's TMDLs. Prop O, approved in November 2004 by

the voters of Los Angeles, authorized the City to issue \$500 million in general obligation bonds to fund water quality improvement projects. However, these funds are insufficient to ensure compliance with all TMDLs. In addition, while these funds can be used for optimization to ensure that the projects are effective, they cannot be used to support operation and maintenance.

Collectively, the SPAC, the developer plan review fee, the inspection fee, Prop O, and any grant funding received yield insufficient funds to meet the City needs. LASAN is taking action to explore all viable funding options, including Proposition 1 funding. Proposition 1, passed in 2014, authorized the State Water Resources Control Board to issue \$7.545 billion in general obligation bonds for water projects, including surface and groundwater storage, ecosystem and watershed protection and restoration, and drinking water protection. Of this amount, \$200 million is available for stormwater projects. LASAN has applied for Prop 1 funding for water projects and is waiting for the State's response.

Lessons Learned

In 2013, the County of Los Angeles' Board of Supervisors discussed placing on the ballot the "Clean Water, Clean Beaches" initiative. However, after a series of public hearings regarding the proposed measure, the Board of Supervisors voted to place the measure on hold in an effort to address issues raised by stakeholders. Currently, the County is exploring the feasibility of placing a similar initiative on the next ballot. Should it be placed on the ballot and be approved by voters, the City can benefit from it in that the regional projects could be built by the County and the City can utilize the funds to implement multi-beneficial projects.

On a local level, the City can look at Culver City's Measure CW, the Clean Water, Clean Beach Parcel Tax, which was recently approved by 73.82 percent of residents in Culver City. Measure CW provides a dedicated source of funding for Culver City to pay for water quality program by levying a parcel tax on property owners. Lessons learned from the "Clean Water, Clean Beaches" initiative and Measure CW may be beneficial to the City should it explore the possibility of amending its current fee, subject to Proposition 218, the "Right to Vote on Taxes Act". A simplified overview of the potential penalties faced by the City presented with the assistance of environmental groups may prove beneficial in educating the public and garnering support for a new fee.

Passed in 1996, Proposition 218 defines taxes, fees and assessments and limits the City's ability to impose or increase a property-related fee by requiring the agency to obtain voter approval. To comply, the City must identify those parcels to be charged and calculate the fee to be charged to each. The City must then provide written notice to the record owner of each parcel. A public hearing must then be conducted at least 45 days after the mailing. If a written protest is received from a majority of the affected property owners, the fee cannot proceed. Where the proposed fee fails to elicit a majority protest, a vote must be held at least 45 days after the hearing. An agency may seek approval from either (1) a majority of affected property owners or (2) two-thirds of local voters. Where an affected property owner challenges a fee in court, Prop 218 places the burden of establishing compliance with these requirements on the public agency seeking to collect the fee.

Funding Options

Based on our discussion with the Mayor's Office, the Chief Legislative Analyst, and LASAN, our Office acknowledges that a combination of funding options, as well as an incentive program to complement any fee increase, may be necessary to provide sufficient support for the stormwater program. If beneficial to the City, it may also be worthwhile to consider working with the County of Los Angeles in developing one or more of the funding options. Below are fee-generation funding options, as well as incentive programs, that were explored (the Attachment provides a description of each option/program).

- Changes to SPAC
- General Obligation Bonds
- AB 850 Joint Powers Authority (JPA)
- Public Private Partnerships (P3s)
- Grant Funding/Government Loans
- Watershed-specific JPAs
- Vehicle Pollution Source Tax
- Community Facilities District
- Special Benefit Assessment District
- General Fund
- Infrastructure Financing District/Enhanced Infrastructure Financing District
- New Sales Tax / Issuance of Sales Tax Revenue Bonds
- Sanitation Districts
- Monetization of Captured Stormwater
- Reallocation of Settlement Proceeds
- Environmental Impact Bonds
- PACE Financing
- Stormwater Credit Trading Program

FISCAL IMPACT

There will be a significant General Fund impact should the City not comply with State and Regional water quality requirements as set forth in the NPDES MS4 Permit. The City's estimated total cost to implement the five EWMPs is \$7.2 billion, excluding the cost of operating and maintaining the projects. In order to avoid potential fines and penalties for non-compliance, the City must develop a funding strategy to implement the EWMPs. This funding strategy must account for both capital costs and the ongoing operation and maintenance costs.

Attachment

MAS:SMC:06160060

ATTACHMENT: FUNDING OPTIONS

I. CHANGES TO SPAC/IMPLEMENTATION OF NEW SPAC

Any increase of the current SPAC would be subject to Prop 218 requirements. BOS proposed the following three options for turning the SPAC into a sustainable source of funding for the stormwater program: increasing the current SPAC; creating a new SPAC; and applying the SPAC to government parcels. BOS proposed to increase the fee by an additional \$48 per year, which will generate approximately \$70 million per year to fund the stormwater program. However, prior to proposing the \$48 per year increase, the City should assess the current needs and recommend a fee that will enable the City to address its compliance requirements.

Pursuant to AB 2403, signed by Governor Brown on June 2014, the definition of “water” under Prop 218 is expanded to include “any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source”, encompassing stormwater reuse projects. In August 2014, the City Attorney’s office considered the impact AB 2403 would have on any attempt to adjust the SPAC and/or impose the SPAC on parcels not already subject to the charge. The City Attorney’s office determined that if the SPAC were increased or applied to parcels not now subject to the charge, a vote would not be required only if the SPAC funded only those programs that contribute directly or indirectly to the water supply. Thus, Prop 218 would not apply to a charge intended to fund reuse and groundwater augmentation projects. Any fee increase should also provide a fee credit incentive program, which will allow certain types of property to receive credits toward reduction of their overall fee where the property owner has implemented certain qualifying BMPs (see Stormwater Credit Trading Program).

II. GENERAL OBLIGATION BONDS (GO BONDS)

GO bonds are a debt financing tool commonly used to pay for large scale infrastructure projects. Typically, GO bonds provide the lowest borrowing costs because they are secured by a pledge of the City’s general revenues and are rated higher than sales tax revenue bonds. A tax on all taxable property to pay principal and interest on GO bonds is levied by the City and collected on property tax bills by the County. Thus, GO bonds provide a stable stream of funding. The advantages of GO bonds are that they allow more projects to be undertaken in the early years of the program, to acquire land during years when it is relatively low in price and to fund large projects without requiring a large portion of City funds to be set aside. In addition, future residents, who will benefit from the completed project, will contribute to the project cost.

In light of the passage of Prop O, the challenge associated with issuing more GO bonds for the stormwater program is that they require two-thirds voter approval. Further, GO bonds may not be used to fund maintenance costs. If GO bonds were issued to cover a portion of the capital costs associated with administering the City's stormwater program, a stable source of revenue would still be required to fund the ongoing O&M costs.

III. AB 850 JOINT POWERS AUTHORITY (JPA)

Approved by the State legislature in 2013, AB 850 (Gov. Code §§ 6585, 6588.7, 6590-6592, and 6599.3) authorizes joint powers authorities to issue rate reduction bonds to finance "utility projects" constructed by a local agency which owns and operates a publicly owned utility. The authority to issue such bonds will expire on December 31, 2020. This law offers further guidance on the types of projects which may be funded by rate reduction bonds. On June 2016, Council adopted Ordinance 184369 which authorizes the establishment of JPA for water project financing. LADWP will be designated as the City's lead agency in this JPA. LADWP and BOS are working closely to ensure the proposed water projects are strategically aligned. The creation of this JPA raises the potential that projects proposed by BOS may qualify for financing through the JPA. Specifically, the authorization of this JPA raises the possibility that, as an alternative to the development of a new SPAC, EWMP projects identified as water resources project may be financed through the JPA. Further data would be required to determine whether the utility project charges necessary to repay the revenue reduction bonds associated with certain projects would be lower than the proposed SPAC fee.

IV. PUBLIC-PRIVATE PARTNERSHIP (P3)/CLOSE PARTNERSHIPS

P3s are arrangements between government and the private sector for the provision of a public project or service. In most cases, risk of the project or service is primarily transferred to the private entity. In exchange, the entity often receives revenues generated by the facility constructed. P3s also offer stability in that payment can be fixed over the life of the agreement and can be structured to include maintenance requirements. California P3 legislation prevents cities from utilizing P3s to deliver projects funded by state grant monies. Should BOS obtain a loan from the State Revolving Fund, the P3 delivery method could not be utilized for projects supported by those funds. Further, any projects supported by Proposition 1 funding would also be ineligible for a P3 model. However, BOS is currently exploring the utilization of P3s and has been approached by a private golf course regarding the possibility of establishing a P3. Where innovative proposals are presented, BOS should work with the CAO to determine whether the project at issue is suitable for delivery through a P3.

V. GRANT FUNDING/GOVERNMENT LOANS

Limited governmental grant funding is available, at both the state and federal level, for stormwater and runoff pollution abatement programs. Available grants are often limited to use for capital costs. Thus, where grant funding may be utilized to fund construction, the City would still be required to secure a funding source for the ongoing O&M costs. Further, most grant programs operate on a reimbursement basis, requiring the City to front fund a project approved for grant funding. Thus, where BOS applies for grants, the Bureau should work with the CAO to determine how necessary funds may be secured to front fund projects. Further, grant funds are limited to use on the specific types of projects covered by a particular grant program. Thus, grant funds would, at best, serve as a supplemental source of funding for capital costs associated with a limited set of projects proposed by BOS.

A. TIGER Program (Federal) (Max award \$200,000,000)

The purpose of this program is to support capital investments in surface transportation infrastructure projects that provide significant impacts nationally, in a metropolitan area, or in a region. In FY 2015, the maximum award was \$200 million, with no more than \$125 million awarded to projects in a single state. For those projects located in urban areas, the minimum award was \$10 million.

A primary selection criterion targets projects promoting environmental sustainability. Specifically, DOT will evaluate a project's ability to address stormwater through natural means, avoiding impacts to water quality, and providing benefits like groundwater recharge, brownfield redevelopment, and stormwater mitigation including green infrastructure. Eligible applicants are State, local, and tribal governments, transit agencies, port authorities, metropolitan planning organizations, other political subdivisions of State or local governments, and multi-State or multi-jurisdictional groups applying through a lead applicant.

B. Infrastructure State Revolving Fund Program (CA) (Max award: \$25,000,000)

The purpose of this program is to provide public agencies with low-cost financing for a variety of infrastructure projects. Loans are offered for a term of up to 30 years and the interest rate is fixed for the term of the loan. Intending to promote economic development and the conservation of natural resources, projects must facilitate effective and efficient use of public resources, as well as develop and enhance public infrastructure in a manner that will create and retain long-term employment opportunities.

BOS has engaged in discussions with the State Board concerning the possibility of utilizing debt financing to generate immediate funds to cover the capital costs associated with implementing the five-year CIP. The funds would be provided through the Infrastructure State Revolving Fund program. BOS has proposed exploring the possibility of offering general fund revenues as security for that debt. However, the General Fund currently has limited capacity to carry non-voter approved debt. When the State Board provides the full terms of the proposed loan, further analysis will be required to determine the debt service and optimal means of repayment. At this stage, BOS has raised the possibility of utilizing capitalized interest, delaying payment on the loan until year six. Capitalized interest increases the amount of debt to be issued and the City's financial policies call for its use to be avoided unless essential from a credit standpoint, as in the case of lease-purchase obligations. It is not recommended that the General Fund be offered as security for any proposed loan at this time.

C. Water Quality, Supply, and Infrastructure Improvement Act of 2014 - Prop 1

In November 2014, California voters approved the Water Quality, Supply, and Infrastructure Improvement Act of 2014 ("Prop 1"). Prop 1 authorizes \$7.545 billion in general obligation bonds to address water quality, supply, and infrastructure improvement issues throughout California. The funds are further allocated among California's ten hydrologic regions. Los Angeles is located in the South Coast Hydrologic Region. Each region is eligible for funding allocated to it by Prop 1. Each region is also eligible for funds dedicated to the particular conservancies or activities within its boundaries. Prop 1 funds will be distributed through a competitive grant process overseen by eighteen state agencies, including the State Water Resources Control Board. Prop 1 provides a basic framework but requires each agency to develop project solicitation and evaluation guidelines. Several of the agencies have already developed guidelines for the programs they are administering. However, the process is still ongoing for many including the water storage, groundwater sustainability, and state flood management chapters.

As new guidelines are released, BOS will continue to evaluate the requirements against existing project lists. Where necessary, BOS will evaluate whether proposed projects should be modified or if new projects must be proposed to maximize the City's chances of receiving funding. BOS will undertake this analysis with input from the council districts, the Mayor's Office, and impacted city departments.

VI. WATERSHED-SPECIFIC JPAs

BOS has proposed developing a JPA for each of the City's five watersheds to pursue funding for pollution abatement projects. After establishing a JPA, the City would then move forward, with its partners to explore watershed specific fees to defray the cost of the proposed capital improvement projects. BOS envisions the development of JPAs consisting of the lead agencies from each of the City's watershed partners. While any JPAs formed would be unable to levy fees, the member departments and cities could pursue taxes or benefit assessments, subject to Prop 218 requirements.

The formation of a JPA would not generate revenue for the City, but would allow the City to leverage the funds and expertise of the member cities and departments. Further, in pursuing grants, the City will be able to demonstrate that it is working cooperatively and collaboratively on a watershed scale. Formation of a JPA would require Council and Mayoral approval. Outside consultation would be required to determine the scope of the JPA and the parameters of any agreements

VII. VEHICLE POLLUTION SOURCE TAX

In 2013, BOS prepared a report exploring the adoption of an environmental fee to be charged on rental car contracts. BOS proposed a fee of \$2 per day, per rental contract, to be charged on cars rented from the companies serving the four Los Angeles owned and operated airports and based on available data, the fee would generate approximately \$23.3 million per year. Further research is required to ascertain a more accurate revenue estimate.

The CLA's Office has indicated there is no precedent for such a fee or the possibility of enacting such a fee. In all likelihood, the City would be required to charge the fee on all rental contracts, rather than solely on those originating from Los Angeles airports. Further, an environmental impact fee may require voters approval as a "special" tax under Prop 218. Assuming such a fee were pursued and approved, one benefit of this source of funding is that the revenues would be available to fund O&M. However, it is unlikely the revenue generated would be sufficient to fund the stormwater program in its entirety.

An alternative is a countywide motor vehicle registration fee. In 2010, the State legislature approved Gov. Code §65089.20 which authorizes countywide transportation agencies to levy a \$10 fee on each motor vehicle registered in the county. Section 65089 A.20 fee may only be initiated by a "countywide transportation planning agency." For Los Angeles County, this agency is Metro. The measure would require approval through a majority vote ballot measure before the voters in the county. Based on 2005 data, a \$10 fee would yield approximately \$70

million annually, which would then be allocated throughout the county. Thus, any effort to promote this countywide registration fee would likely result in very little revenue for the City. The feasibility of such a fee being imposed at the county level may be low in consideration of other ballot measures.

VIII. COMMUNITY FACILITIES DISTRICT (CFD)

The Mello-Roos Community Facilities Act of 1982 established the legislative framework for CFDs in California as an alternative method for local governments to finance public facilities. The City has established nine CFDs of which four have been terminated for various reasons and three have issued bonds. The Mello-Roos act permits the use of CFDs to fund “flood and storm protection services, including but not limited to, the operation and maintenance of storm drainage, and sandstorm protection services.”

CFDs typically have lower ratings in comparison to GO bonds. However, local governments must contend with the same two-thirds voter requirement necessary for Prop 218 fee implementation. This would result in higher costs as a result of the difference in credit quality. Unlike GO Bonds, CFDs can be used to finance maintenance costs. Annual special tax levies from CFDs would then be used to fund qualified annual O&M costs.

As noted in the Mello-Roos policy developed by this office, one advantage of CFDs is that a special tax can be structured more flexibly because the law does not require a direct relationship between the benefit received and the tax imposed. If the use of a CFD is considered a desirable financing option, further analysis would be required to assess appropriate boundaries and projects suitable for this type of funding. Apportionment and administration of a CFD can often be difficult.

IX. SPECIAL OR BENEFIT ASSESSMENT DISTRICT

An assessment district may be used to fund the construction or maintenance of public improvements. However, the funds derived from the district must directly and clearly benefit properties in the district. As a charter city, Los Angeles may levy an assessment for any kind of services or facilities. However, the formation of an assessment district is subject to the requirements of Prop 218. An assessment is a charge levied to pay for identified public improvements or services. In the context of stormwater management, the special benefit afforded individual parcels may be difficult to demonstrate. Assessment districts are attractive in that they provide a steady source of funds with which a city may fund capital costs, as well as O&M costs.

While certain types of stormwater projects may result in special benefits to neighboring properties, creating individual assessment districts would require substantial bifurcation of financing strategies for the City's stormwater program. It may be feasible to establish assessment districts where flood control projects are co-located with green infrastructure. However, further analysis would be required before this option may be fully explored.

X. GENERAL FUND

The City may issue non-voter approved debt secured by the General Fund. The issuance of such debt is subject to certain State law requirements and is accomplished through the execution of lease arrangements with a nonprofit established for this purpose, the Municipal Improvement Corporation of Los Angeles (MICLA). The issuance of debt through MICLA requires some tangible asset the City may lease. This issue was explored in the context of utilizing streets as a lease asset for purposes of funding SOSLA. At that time, bond counsel indicated streets cannot be used as a lease asset. The stormwater program presents a similar limitation. By way of example, the current five-year CIP consists of a combination of green street projects, stormwater detention facilities, and retrofits. Further research into assets that could be used to support a program of this size would be required.

XI. INFRASTRUCTURE FINANCING DISTRICT (IFD)/ENHANCED IFD (EIFD)

In 1990, legislation was passed allowing cities and counties to form Infrastructure Financing Districts (IFD) to finance infrastructure projects. IFDs can shift property tax increases (tax increment), excluding school districts, for up to 30 years, to finance public infrastructure. On September 29, 2014, Senate Bill 628 (SB 628) was passed which authorized the legislative bodies of cities and counties to form Enhanced Infrastructure Financing Districts (EIFDs) to finance infrastructure projects that provide a communitywide benefit. The bill strengthened ("enhanced") Infrastructure Financing Districts by lowering the vote threshold from two-thirds to 55 percent and broadening the types of projects that can be funded.

EIFDs may issue bonds backed by tax increment for up to 45 years from the date bonds are issued with 55 percent voter approval. If it is not approved by voters, the EIFD may not submit a similar proposition to the voters for at least one year after the first election. Since EIFDs cannot pay for O&M costs, the City will still require a stable source of revenue to fund the inevitable future O&M costs.

EIFDs will only be able to collect tax increment (TI) from participating agencies, except school districts, that voluntarily agree to contribute those funds. In comparison to the tax increment collected by the City's former

community redevelopment agency (CRA), the EIFD will collect a smaller amount of tax increment.

The TI revenues that were previously allocated to the former CRA are now directed to the General Fund. As such, the TI revenues available to a new EIFD formed by the City are not new revenue and will impact the General Fund if it is redirected to fund the stormwater program. EWDD has proposed that the TI revenues, estimated at \$41.3 million for FY 2015-16, be used to fund economic development and housing. As such, the only potential new funds that an EIFD can use are benefit assessments and user fees. However, this will require voter approval.

XII. NEW SALES TAX/ISSUANCE OF SALES TAX REVENUE BONDS

State law permits local jurisdictions to assess up to 2 percent for a local sales transaction tax. Los Angeles County has utilized 1.5 percent for three transportation measures (Proposition A, Proposition C, and Measure M). The City may increase the local sales transaction tax by an additional 0.5 percent. In the SOSLA report, it considered the revenue that will be generated by a quarter-cent and half-cent sales tax increase. In 2012, Beacon Economics provided an analysis of such an increase. Using Fiscal Year 2011-2012 receipts, they estimated that assuming the sales tax increase has no impact on sales activity, a quarter cent increase would generate \$107.75 million and a fifty cent increase would generate an additional \$215.5 million. It should be noted that revenues generated from any sale tax increase will fluctuate from year to year based on spending patterns. Assuming a sales tax increase is approved by voters, other City funded programs may be earmarked for receipt of the revenues generated. Thus, it is not clear if the stormwater program would be a priority in receiving such funding. Further, the difficulty in passing such an increase must be considered in light of other proposed ballot measures.

XIII. SANITATION DISTRICTS

BOS has raised the possibility of leveraging the authority of the Sanitation Districts of Los Angeles County pursuant to recently passed legislation, SB 485. The Sanitation Districts provide wastewater and solid waste service to 78 cities and unincorporated areas of Los Angeles County. However, the majority of the City of Los Angeles is excluded from the sanitation districts. Of the twenty four individual districts, portions of the City of Los Angeles fall within District Nos. 3, 4, 5, 8, 9, and 16. It is unclear to what extent the City might be able to rely on the benefits of this statute. Those cities which choose to participate will pay the Sanitation Districts on a fee for service basis. While the statute appears to be aimed at aiding those cities which lack the capacity to manage stormwater, SB 485 still has the potential to benefit Los Angeles. However, it is unlikely the City will be able to contract out its obligations to the Sanitation Districts. Regarding O&M costs, the statute indicates the Districts can

"maintain" facilities constructed. However, the city benefitting from the facility to be maintained will likely have to pay the Sanitation Districts for that work.

XIV. MONETIZATION OF CAPTURED STORMWATER

The monetization of stormwater is still relatively theoretical and is not currently in use. While the CAO is aware that BOS is currently selling recycled water, the laws governing stormwater seem to indicate the monetization of stormwater requires more legal analysis. Assuming the City wanted to sell captured stormwater as a method of providing funding to fund some stormwater projects, further analysis is needed in regards to the City and state laws governing water rights, the sale of exchange of surplus water, and the water quality liability issues.

XV. REALLOCATION OF SETTLEMENT PROCEEDS

Sanitation has proposed the possibility of depositing settlement proceeds into BOS accounts in those legal cases where BOS enforcement has assisted with investigation and prosecution. Sanitation has proposed that for those cases in which it investigates and testifies in court, the settlement funds, less reasonable attorney's fees, should be returned to the BOS' Watershed Protection Division and earmarked for future water quality improvements. The City Attorney's Office has indicated that civil environmental actions initiated by the City Attorney's Office are most often filed as consumer protection actions under the relevant sections of the California Business and Professions Code. These sections of the Business and Professions code explicitly provide that the prosecuting entity may only recover restitution, certain delineated civil penalties, and/or injunctive relief. Additionally, the laws serving as a predicate for these consumer protection actions often provide for further allocation of funds to State environmental agencies. Thus, BOS's ability to recover settlement proceeds beyond its reasonable expenses is limited by law where a civil action is pursued. Where criminal violations are pursued, the City may explore requiring a donation or payment of a fine when negotiating plea deals. Those funds could then be deposited in the appropriate BOS account. However, such a requirement would require Council action.

XVI. ENVIRONMENTAL IMPACT BONDS (EIBs)

In 2013, The Fuqua School of Business at Duke University released a paper exploring the use of EIBs, a bond as a "pay for performance" contract focusing on an environmental issue. A private investor and a government entity would enter into a contract whereby the private investor receives returns under either a "principal-at-risk" or "return-at-risk" model. In such an arrangement, investor returns would be paid primarily from actual or future costs savings associated with a particular project. The report's authors identify three criteria necessary for the applicability of an EIB – (1) use of a standardized metric; (2) consistent annual payments;

and (3) implementation of required governmental regulation. The authors propose that stormwater management is particularly suited for use of EIBs. Philadelphia's green infrastructure initiative is used as an example of a system well suited for the use of an EIB structure. However, the authors acknowledge that EIBs are but one method in the overall toolkit of financing. This method of financing is largely theoretical and does not provide a strong option as a financing solution.

NON-REVENUE OPTIONS

The two options provided below will not generate revenue for the stormwater program. The intent of both programs is to incentive private construction of small scale BMPs in an effort to facilitate a cultural change and in the long term, alleviate the burden on the City to construct grey infrastructure.

I. STORMWATER CREDIT TRADING SYSTEM (SCTS)

The development of SCTS, a fee credit based incentive system, would incentivize and reward private behavior in an effort to facilitate a cultural change and in the long term, it will alleviate the burden on the City to construct grey infrastructure. Such a system would allow property owners to reduce their fee burden in exchange for some benefit to the City. Before a fee credit system is implemented, the City must consider the following issues: determine what circumstances or and/or BMPs will trigger the distribution of credits and whether both residential and non-residential properties may receive fee credits; maintenance covenants; and, the time period for which credits will be certified. Once the City adopts a funding strategy, further research may be conducted to determine the proper framework for a beneficial fee credit based incentive system.

II. PACE FINANCING

PACE allows for commercial and residential property owners to obtain financing for the acquisition and installation of energy-efficiency, water-conservation, and renewable energy improvements pursuant to the American Recovery and Reinvestment Act ("ARRA") and state legislation passed in 2008. In 2009, AB 474 authorized PACE financing to fund water efficiency solutions. Specifically, PACE funding may be used to fund "installation of water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property, including, but not limited to, recycled water connections, synthetic turf, cisterns for stormwater recovery, and permeable pavement."

Local jurisdictions can opt to develop and administer their own PACE program or join a JPA offering the PACE program to its member agencies. Property owners participating in PACE receive financing through the PACE provider and repay the investment as an assessment added to their property tax bill for up to 20 years. The assessment is a lien that stays with the property, even if the property is subsequently sold. Thus, it does

not follow the property owner as a personal loan would. Property owners can select contractors from pre-approved lists and combine various improvements under one assessment.

The City is already a participating agency in the County's PACE program. However, for commercial properties, the County PACE program does not include water efficiency upgrades as eligible projects.

PACE is property owner initiated and there is little immediate benefit to local agencies. PACE does not address the City's immediate funding needs. As with the stormwater credit trading program, PACE focuses on incentivizing private behavior. PACE may support the creation of a market for small scale green infrastructure. In theory, this may aid in supporting a cultural change easing the burden on the City to construct traditional grey infrastructure. The City may consider incentivizing the use of PACE financing through implementation of a fee credit system or incorporation into the larger stormwater credit trading program. While AB 474 authorizes the use of PACE financing for water efficiency projects, it covers very limited types of improvements. Financing of projects not already covered may be considered on a case by case basis. Thus, there is a chance additional stormwater related projects may be incorporated into existing PACE programs but it is unclear.

for non-compliance, the City must develop a funding strategy to implement the EWMPs. This funding strategy must account for both capital costs and the on-going operation and maintenance costs.

Community Impact Statement: None submitted.

Summary:

At a meeting held on October 17, 2017, the Energy, Climate Change and Environmental Justice Committee considered a report from the CAO relative to funding options for the implementation strategy of five EWMPs. During the discussion of this item, a representative from the CAO's office provided an overview of the report and responded to related questions from the Committee members.

After providing an opportunity for public comment, the Committee recommended that Council approve the CAO recommendations, as amended in Committee and detailed above. This matter is now submitted to Council for its consideration.

Respectfully Submitted,

ENERGY, CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE COMMITTEE

<u>MEMBER</u>	<u>VOTE</u>
MARTINEZ:	YES
KORETZ:	YES
KREKORIAN:	YES
CEDILLO:	YES
O'FARRELL:	YES

MLE
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-NOT OFFICIAL UNTIL COUNCIL ACTS-