

CITY COUNCIL COMMITTEE

INFRASTRUCTURE & FRANCHISE

Dan Helix, Chair

Edi Birsan, Committee Member

5:30 p.m.

Monday, January 11, 2016

**Building A, Garden Conference Room
1950 Parkside Drive, Concord**

AGENDA

ROLL CALL

PUBLIC COMMENT PERIOD

- 1. PRESENTATION** – of Annual Report of Compliance with Municipal Regional Permit (MRP 1.0) with Summary of Deficiencies, and New Requirements Included in Municipal Regional Stormwater Permit Order R2-2015-0049 (MRP 2.0). Report by Kevin Marstall, Senior Civil Engineer, Current Development Manager.
- 2. ADJOURNMENT**

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Distribution: City Council
Valerie Barone, City Manager
Jovan Grogan, Deputy City Manager
Brian Libow, Interim City Attorney
Victoria Walker, Director, Community & Economic Development
Robert Ovadia, City Engineer
Kevin Marstall, Senior Civil Engineer, Current Development Manager
City Clerk

**REPORT TO INFRASTRUCTURE AND FRANCHISE COMMITTEE**

TO THE HONORABLE COMMITTEE MEMBERS:

DATE: January 11, 2016

SUBJECT: PRESENTATION OF ANNUAL REPORT OF COMPLIANCE WITH MUNICIPAL REGIONAL PERMIT (MRP 1.0), WITH SUMMARY OF DEFICIENCIES, AND NEW REQUIREMENTS INCLUDED IN MUNICIPAL REGIONAL STORMWATER PERMIT ORDER R2-2015-0049 (MRP 2.0)

Report in Brief

The City of Concord submitted the FY 2014-2015 Annual Report to the Contra Costa Clean Water Program on August 26, 2015. The City's Annual Report, along with the annual reports from all other Co-Permittees in the County Program, was submitted to the Regional Water Quality Control Board for compliance with the Municipal Regional Permit.

It was noted within the Annual Report that the City of Concord fell below the benchmarks established in the Municipal Regional Permit in two areas:

1. Required level for Trash Load Reduction did not meet the targeted achievement percentage.
2. Integrated Pest Management included several areas of non-compliance.

The City of Concord previously operated under the Municipal Regional Stormwater Permit Order R2-2009-0074 (MRP 1.0) that was adopted in 2009 and amended/extended periodically. The Regional Water Quality Control Board drafted the new tentative order (MRP 2.0), which was adopted on November 19, 2015 as Order R2-2015-0049.

Included in the MRP 2.0 are new regulations for implementing Green Infrastructure, which focuses on inclusion of low impact development drainage design into storm drain infrastructure on public and private lands. Green Infrastructure is a more resilient, sustainable system that promotes clean stormwater runoff. Over the long term, the City and its Co-Permittees will be required to shift impervious surfaces and storm drain infrastructure away from traditional storm drain infrastructure where runoff flows directly into the storm drain and then the receiving water.

To achieve that end goal will require the City of Concord, and its Co-Permittees, to expend significant monies in long range planning, engineering and infrastructure reconstruction for which no funding mechanism is provided. MRP 2.0 requires that a workplan to achieve these and other goals must be approved by the City Council, mayor, or city manager by June 30, 2017. MRP 2.0 also imposes removal limits on trash, mercury and polychlorinated biphenyl (PCB's) from storm water flows.

Through this report, staff requests guidance from the Infrastructure & Franchise Committee regarding the options presented regarding trashload reductions, and feedback regarding the funding initiative submitted to the Attorney General and alternative funding mechanisms.

**PRESENTATION OF ANNUAL REPORT, DEFICIENCIES, AND UPDATE ON
PENDING ADOPTION OF NEW MUNICIPAL REGIONAL PERMIT (MRP 2.0)**

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Background

The new Municipal Regional Stormwater Permit (MRP 2.0) was adopted on November 19, 2015. Although several jurisdictions have filed protests, it is unlikely that the Permit will be substantially revised. However, on August 26, 2015 when the City of Concord submitted its FY 2014-2015 Annual Report to the Contra Costa Clean Water Program to the Regional Water Quality Control Board, the City was operating under the previous and less restrictive provisions and benchmarks of MRP 1.0. This report discusses those areas where the City fell below the benchmarks in MRP 1.0, and also explains the new requirements and challenges that will be faced in addressing the more rigorous requirements and benchmarks established in the new MRP 2.0.

There were two areas within the Annual Report for which the City of Concord fell below the benchmarks established in MRP 1.0, including Trash Load Reduction and Integrated Pest Management.

Trash Load Reduction:

The Regional Water Quality Control Board sets certain milestones through the MRP for trash load reduction into receiving waters. These milestones included a 40% reduction in trash load from a 2009 baseline by July 1, 2014, a 70% reduction by July 1, 2017, and a 100% reduction by July 1, 2022. In the FY 2013-2014 Annual Report, the City of Concord reported a trash load reduction of 34%, which fell short of the 40% benchmark. In December 2014 after review of the City's Annual Report, the Regional Board reduced the City's trash load reduction from 34% to 22%. This determination by the Regional Board was based on the elimination and reduction of certain credits which the City of Concord had claimed, including a 9% reduction in trash load due to volunteer cleanup events and a 3% reduction as a result of County-wide education efforts.

In the subsequent FY 2014-2015 Annual Report, after accounting for the revisions in the 2014 load reduction calculations, the City of Concord reported a trash load reduction of 33%, up from 22%. The City based this increased trash load reduction on the following: a 4% increase due to installation of several full trash capture devices, a 4% increase from visual assessments of curb miles within certain areas of Concord, and a 3% increase attributable to creek and shoreline cleanups. However, the reported 33% reduction still falls short the 2014 benchmark of 40%. Even more challenging, given the next programmed benchmark of a 70% reduction that is required by July 1, 2017, it results in the City requiring an additional trash reduction of 37% (from 33% to 70%) over the next two fiscal years.

In anticipation of comments from the Regional Board regarding the shortfall in percentage trash load reduction, the FY 2014-2015 Annual Report included narrative describing the City's efforts to increase the level of trash reduction. The report noted that the City of Concord had applied for, but was denied, a State grant to fund additional trash capture devices. However, included in this year's (FY 2015-16) and next year's (FY 2016-17) Stormwater Fund operating budget, the City Council has approved an allotment of \$150,000 per year for the purchase and installation of between 100-150 additional trash capture devices. Therefore, it is staff's intention to demonstrate to the Regional Board that the City of Concord is proactive in addressing this issue. It is estimated that these planned installations in the first year will yield an approximate additional trash load reduction of 20%, and a slightly lower yield in the second year.

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Integrated Pest Management:

With regards to benchmark requiring incorporation of Integrated Pest Management (IPM), the City of Concord had three (3) areas in the FY 2014-2015 Annual Report that could potentially be ruled as non-compliant:

1. The City of Concord does not have a current IPM Policy. The two (2) guidances currently in use expired in 2009 and 2013, respectively.
2. One of the City's contractors utilized by the Public Works Department for facilities maintenance did not have IPM Policy included as part of its contract language with the City, as is required by the Regional Board.
3. The City reported a marked increase over the past year of a particular pesticide that has been discouraged as part of IPM, and which is to be used only as a final solution when preferred alternatives have been thoroughly exhausted.

How staff plans to address these areas of non-compliance is outlined later in this report.

Municipal Regional Stormwater Permit (MRP 2.0)

For the past two years, representatives from Contra Costa municipalities, along with a consortium of Bay Area agencies and Bay Area Stormwater Management Agencies Association (BASMAA), have been engaged in an ongoing dialogue with Regional Water Quality Control Board staff regarding: (1) experience gained and lessons learned from the current MRP; (2) how to apply that experience toward maximizing the effectiveness of MRP 2.0; and (3) ensuring that the requirements contained in MRP 2.0 provide for a clear path to compliance.

On May 11, 2015, the San Francisco Bay Regional Water Quality Control Board issued a draft Tentative Order for the National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act covering municipal stormwater discharges from the Permittees. This new Municipal Regional Stormwater Permit (MRP 2.0) became effective on effective January 1, 2016.

The City of Concord worked with its partnering agencies in the Contra Costa Clean Water Program (CCCWP) and BASMAA to review and respond directly to the Regional Board staff, in addition to attending and speaking before the Water Board members at the June 17th and July 8th public hearings in Oakland. To present a unified voice from all of its participating cities, towns, and county, CCCWP and BASMAA called upon each agency to provide a written letter of opposition to the issuance of the tentative order and request that the Water Board instruct its staff to remove many of the less beneficial but time and money intensive minor items. The partnering agencies also collectively requested that the Regional Board provide a clear path for compliance with realistic timelines and expectations. The Concord City Council authorized the Mayor to sign a Letter of Opposition to the Tentative Order Reissuing the Municipal Regional Stormwater Permit (MRP 2.0) in July 2015.

The Regional Water Quality Control Board issued a revised Tentative Order on October 16, 2015 and subsequently held the adoption hearing for the new tentative order (MRP 2.0) at a public hearing on November 18th and 19th. Then Vice-Mayor Hoffmeister attended the Board hearing and spoke on behalf of the City of Concord, opposing certain provisions included in the Tentative Order. However, MRP 2.0 was ultimately adopted by the Regional Board with few modifications.

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Discussion

Trash Reduction:

In addition to the previous 70% reduction milestone to be achieved by July 1, 2017, the MRP 2.0 added an interim performance metric requiring Permittees demonstrate a 60% reduction by July 1, 2016. Though not a mandatory deadline, Permittees that do not meet the 60% performance guideline must submit documentation of a plan and schedule of implementation of additional trash load reduction control actions that will attain the July 1, 2017 deadline.

To comply with the increasingly higher percentages of trash reduction requires new significant measures by the City. Staff has identified the following three (3) potential strategies that would yield the greatest results in reducing calculated trash loads:

1. One of the most effective methods would be to significantly expand the program to purchase and install full trash capture devices within catch basins in areas of medium to very high trash generation. However, to achieve the needed additional 37% trash reduction by July 1, 2017 (to achieve a 70% reduction from the 2009 baseline) over only two fiscal years, additional measures are likely necessary. The approved funding to install 100-150 new trash capture devices will assist the City in increasing its trash load reduction goals, but it is unlikely to fully achieve the needed reductions. It should be noted that each additional trash capture device increases the annual maintenance workload and adding a significant number of devices will place new burdens on the annual operating budget for the City's Stormwater program.
2. A second method is to require existing commercial properties (including multi-family residential developments), or at least those in medium to high trash generation areas, that connect directly to City storm drain facilities to install screens or other trash capture devices on their private parking lot and common area inlets upstream of their connection to City catch basins or manholes prior to July 1, 2017. The maintenance of these devices would be the responsibility of the private property owner. This would require a great deal of staff outreach, education and intervention with property and business owners. Note: New development and redevelopment projects are required to treat storm water run-off prior to entering the City storm drain system under other provisions of the permit.
3. The City would receive credit toward trash load reduction if it chooses to adopt a jurisdiction-wide product ban on disposable paper and plastic bags, as well as disposable containers from restaurants. However, given that a lawsuit has forced the State to place this ban on the ballot in November 2016, and were it to pass any City-wide ban would be invalidated, this approach seems unreasonable at this time. Should the ballot measure fail, then the City could revisit this alternative and determine its benefit at that future date.

The support of the City Council will be crucial in implementing any or all of these three methods of reducing trash loads into the storm drain system, as there will be additional costs associated with their implementation. Therefore staff is requesting guidance from the Infrastructure & Franchise Committee regarding the options provided.

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Integrated Pest Management:

The IPM deficiencies identified were not communicated to the Public Works staff until the time of the preparation of the FY 2014-2015 Annual Report, but they will be adequately addressed and corrected moving forward. Public Works staff are committed and will implement the necessary changes, including:

- Modifying and adopting a Concord IPM Policy based on the Model IPM Policy developed by the Clean Water Program.
- Requiring all selected contractors to either be IPM Certified or include compliance with the City's IPM Policy as part of the contract language.
- Restricting the use of pesticides in accordance with the IPM Policy to be adopted.

The City should be fully compliant with regards to Integrated Pest Management for the FY 2015-2016 Annual Report.

Municipal Regional Stormwater Permit (MRP 2.0):

Significant Changes/Additions: MRP 2.0 includes a new mandate to develop Green Infrastructure Plans. This coordinated, multi-year effort represents a significant paradigm shift toward developing comprehensive long range plans that will significantly reduce urban runoff pollutants, including the pollutants of concern, flowing into receiving waters. MRP 2.0 requires permittees to develop a framework of a new Green Infrastructure Plan and have it approved by either the City Council, Mayor, or City Manager by June 30, 2017. The implementation of such efforts will also require significant investment on the part of all permittees, and funding is not provided. In anticipation of the requirement, the City Council approved \$40,000 in the current year Stormwater Operating budget for initiating the development of the framework.

MRP 2.0 also includes public information and outreach requirements including advertising campaigns, media relations, public outreach events, and stormwater pollution prevention education. Though staff believes that such outreach and education is important, it is likely to be more effective if such efforts are focused at a regional level rather than individual campaigns by permittees or countywide programs. There is great value in consistent messages throughout the region. For that reason, City staff will coordinate with the Clean Water Program to seek regional alternatives for outreach and education campaigns.

In addition, MRP 2.0 requires the following:

- Plan and implement a program to manage PCB-containing materials in commercial and industrial structures constructed or remodeled between 1950 and 1980 at the time those structures are demolished. The most effective program would be consistent either region-wide or state-wide and would be modeled after existing effective programs such as asbestos or lead abatement. The Co-Permittees have requested that the Board consider implementation of a regional or state program administered by the State, where municipalities require contractors to provide appropriate documentation that they have filed with the State prior to the issuance and closure of demolition permits. The Board has left the onus of such reductions on the Permittees;
- As noted earlier, the City must demonstrate trash load reductions of 70% from 2009 levels by July 1, 2017 and 100% by July 1, 2022 by installing full trash capture devices or implementing equivalent trash control measures and evaluating their effectiveness through visual surveys.

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Though these implementation levels were required in MRP 1.0, an additional intermediate reduction level is required in the new Order of 80% by July 1, 2019. Additionally, the Order advises that permittees should achieve a 60% reduction by July 1, 2016. Though not a mandatory deadline, it will be used as a performance guideline regarding compliance with the mandatory July 1, 2017 deadline. Permittees that do not attain the 60% performance guideline are required to submit documentation of a plan and schedule of implementation of additional trash load reduction control actions that will attain the July 1, 2017 reduction requirement. As trash loads are reduced, each incremental reduction requires increased efforts.

- Permittees shall ensure that lands that they do not own or operate, but that are plumbed directly to their storm drain systems in Very High, High, and Moderate trash generation areas are equipped with full trash capture systems or are managed with trash discharge control actions equivalent to or better-than full trash capture systems; and
- Conduct receiving water monitoring and develop receiving water monitoring tools and protocols and a monitoring program designed, to the extent possible, to answer the following questions:
 - Have a Permittee's trash control actions effectively prevented trash within a Permittee's jurisdiction from discharging into receiving water(s)?
 - Is trash present in receiving water(s), including transport from one receiving water to another (e.g., from a creek to a San Francisco Bay segment) at levels that may cause adverse water quality impacts?
 - Are trash discharges from a Permittee's jurisdiction causing or contributing to adverse trash impacts in receiving water(s)?
 - Are there sources outside of a Permittee's jurisdiction that are causing or contributing to adverse trash impacts in receiving water(s)?

These major new mandates will require a significant, sustained effort to implement, absent any new or additional funding source.

Previously Approved/Vested Development Projects must apply for Exemption. In addition, and of particular concern to the City of Concord, is a new requirement that "any Regulated Project that was approved with no Provision C.3. stormwater treatment requirements under a previous MS4 permit and that has not begun construction by the effective date of this permit, shall be required to fully comply with the requirements of C.3.c and C.3.d." This provision would make the City add new requirements onto previously approved or "grandfathered" projects. This poses potentially serious legal ramifications for entitled projects with conditions of approval which were preserved under various vested tentative maps, and Concord still has several such projects pending.

To address this, MRP 2.0 provides exemption criteria recognizing vested rights as precluding new stormwater treatment requirements. However, for projects to receive this exemption, each municipality is required to report all such qualifying projects in the FY 2015-16 Annual Report, which places the burden of research and documentation on the City, beyond the typical requirements.

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Fiscal Impact

Although it is not considered likely, there remains a possibility that the City could be fined by the Regional Board for non-compliance. However, the more imminent threat is that of forced compliance by the Board, and the exposure to third party lawsuits for being found in non-compliance remains a stated concern of the Clean Water Program.

The specific fiscal impact of the new provisions in MRP 2.0 have yet to be determined, but implementation of the Green Infrastructure Plan and other program level requirements could have significant fiscal impacts for which no clear funding source has been identified or provided.

The City's Stormwater program, as with most cities in Contra Costa County, is funded with a stormwater utility assessment and is listed on property tax bills under "Special Taxes and Assessments." The annual assessments were authorized in 1993 and range from \$25 to \$45 for a single-family home, depending on the municipality. In Concord, this assessment is \$35. Assessments for properties are based on estimates of impervious area. The Cities of Richmond and Brentwood do not have a stormwater utility assessment.

Over the last few years the funds received have not been sufficient to cover to City's Stormwater Program expenses. With the increasing requirements related to MRP 2.0, and increasing requirements related to trash load reduction, Green Infrastructure planning and implementation, PCB and Mercury load reduction, as well as additional requirements to be imposed by the Regional Water Quality Control Board with future permit renewals, the current funding source is insufficient to maintain the program.

The City's current options to increase funding for the Stormwater Program are limited. In 2012, the Contra Costa Cleanwater Program and the participating municipalities attempted to increase program funding through an additional parcel assessment. The initiative was not approved by voters.

Funding the Stormwater Program as a Utility. In 2015 the California State Association of Counties joined with the League of California Cities and the Association of Water Agencies in filing an initiative titled "*The California Water Conservation, Flood Control and Stormwater Management Act of 2016*" with the State Attorney General's Office for review and development of the final Title and Summary. Their plan is to have the ballot measure introduced through the Legislature in early 2016 to qualify for the November ballot. The measure would amend Article X of the California Constitution to create a new, optional funding system local agencies can use to finance stormwater management, flood control, sewer and water supply projects, set rates for customers to encourage conservation and reduce water and sewer bills for low-income customers. Any local agency that utilizes this optional funding method would be required to adhere to strict accountability, transparency and ratepayer protections. The comments from the Attorney General filing may result in some modifications of the language to make it stronger.

As there is no guarantee that this measure will be approved by voters in 2016 or, if approved by voters, that such an alternative funding mechanism would be implemented in the City, or the timing of such implementation. The City needs to consider other options in either increasing revenue or decreasing expenses. With the direction of the Committee, staff will be providing further information to the Infrastructure and Franchise Committee regarding those options at future meetings early this year.

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Public Contact

The Infrastructure and Franchise Committee Agenda was posted.

Recommendation for Action

Staff requests guidance from the Infrastructure & Franchise Committee regarding the options presented regarding trashload reductions, and feedback regarding the funding initiative submitted to the Attorney General and alternative funding mechanisms.

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Attachment 1: Joint ACWA, League and CSAC Statement Regarding Initiative
Attachment 2: Article X Constitutional Amendment regarding Water and Sewer Rates



FOR IMMEDIATE RELEASE: DEC. 14, 2015

CONTACT:

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League of California Cities: Eva Spiegel, C: 530-400-9068, espiegel@cacities.org

California State Association of Counties: Gregg Fishman, C: 916-342-9508, gfishman@counties.org

Local Government Statement Regarding Filing of California Water Conservation, Flood Control and Stormwater Management Act

Measure would establish a new optional funding method local agencies can use for stormwater management and flood control projects and establishment of rates to encourage conservation and protect low-income customers.

Sacramento, CA – Today, the Association of California Water Agencies, the California State Association of Counties, and the League of California Cities filed a constitutional amendment with the Attorney General’s office. The measure would create a new, optional funding method local agencies can use to finance stormwater management and flood control projects, set rates for customers to encourage conservation and reduce water and sewer bills for low-income customers. The measure includes strict accountability and transparency requirements for any local agency that chooses to avail itself of this new funding method.

The following statement can be attributed to ACWA, CSAC and the League:

“California’s historic drought and the likelihood of more severe droughts and heavy floods make it critical for local communities to have the tools needed to meet 21st century water management challenges. Those tools will help agencies to further encourage conservation and discourage excessive use of water; effectively capture, clean and eliminate pollution from local water sources; better protect people and property from the dangers of floods; and assist low-income customers.

“This measure recognizes current water realities and would create a new optional funding method local governments can use at their sole discretion to establish conservation pricing, to finance flood control and stormwater management, and to reduce charges for low-income consumers. To protect taxpayers, the measure includes a robust set of new accountability requirements for any local agencies that choose to utilize this new funding method.

“We have filed this measure in the hopes of advancing the discussions toward a viable policy solution in 2016. We will make a determination if we plan to proceed with this measure or some other policy solution in the coming months.”

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Information about the California Water Conservation, Flood Control and Stormwater Management Act:

- Constitutional amendment would establish a new, optional funding method that authorizes local agencies to:
 - Set rates for customers to encourage water conservation, prevent waste and discourage excessive use of water.
 - Levy fees and charges, subject to ratepayer protest, for flood control and for management of stormwater to protect coastal waters, rivers, lakes, streams, groundwater and other sources of drinking water from contamination.
 - Use fees and charges to reduce water and sewer fees and charges for low-income customers.
- Any local agency that utilizes this optional funding method for water service and sewer service would be required to adhere to **strict accountability, transparency and ratepayer protections**. This includes:
 - Providing local ratepayers with a description of the services and facilities projected to be funded by any proposed fee or charge in advance of any public hearing or consideration of the fee or charge;
 - Posting the description of the proposal on the agency's Internet website with all applicable exhibits;
 - Providing local ratepayers a notice of the date and time of the public hearing the local agency will hold on the proposed fee and charges;
 - If written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice about the proposal, then the local agency shall not impose, increase or extend the fee or charge;
 - All money must be spent for the local purpose for which the fee or charge was imposed and cannot be taken by state government;
 - Revenues derived from the fee or charge shall not exceed the reasonable cost to the local agency of providing the water or sewer service or be used for any purpose other than that for which it was imposed;
 - The manner in which the costs are allocated to a fee payer shall bear a fair or reasonable relationship to the fee payer's burden or benefits received from the water service or sewer service;
 - The initiative power of voters may be used to repeal or reduce the fee or charge in the future with the filing of a petition calling for an election on the question;
 - Independent annual audits shall be made available to the public showing how all funds are spent.
- This new, optional funding method will allow local agencies to invest in the water supplies, water quality, flood protection and water management and conservation programs we need, while guaranteeing a high level of accountability and ratepayer protections.

**The California Water Conservation, Flood Control
And Stormwater Management Act of 2016**

SECTION 1. Title

This measure shall be known as the California Water Conservation, Flood Control and Stormwater Management Act 2016

SECTION 2. Findings, Declarations and Purposes

- A. California's historic drought and the likelihood that climate change will increase the severity of droughts and heavy floods mean California must provide local communities with the tools to further encourage conservation and discourage excessive use of water; to effectively manage and increase water supplies; to capture, clean and eliminate pollution from local water sources; and to better protect people and property from the dangers of floods.
- B. Effective local management of water supplies includes authorizing local agencies to design rates to encourage water conservation and discourage excessive use of water.
- C. Local agencies should also invest in infrastructure to capture and clean water polluted by toxic chemicals and trash; recycle and reuse rainwater and stormwater runoff; and to prevent toxic stormwater and urban runoff from contaminating sources of drinking water, including rivers, lakes, streams, and groundwater, and polluting beaches, coastal waters, and wetlands.
- D. California must also improve local flood control by better capturing and managing storm and flood waters and upgrading storm drains, sewer and drainage systems to protect properties from floods and increase local supplies of water available for public use.
- E. Existing state laws governing the funding of local water supplies, clean water, water conservation and resource management, and floodwater protection were not developed with California's current water realities in mind.
- F. An alternative method for funding critical local water supplies, water quality, water conservation and resource management, and flood protection projects is needed.
- G. This measure establishes an alternative funding method that authorizes local agencies to:

December 14, 2015

- i. Set rates for customers to encourage water conservation, prevent waste, and discourage excessive use of water.
- ii. Levy fees and charges, subject to ratepayer protest, for flood control and for management of stormwater to protect coastal waters, rivers, lakes, streams, groundwater and other sources of drinking water from contamination.
- iii. Use fees and charges to reduce water, and sewer fees and charges for low-income customers.

H. Any local agency that utilizes this alternative funding method for water service and sewer service should be required to adhere to strict accountability, transparency and ratepayer protections. This includes:

- i. Providing local ratepayers with a description of the need for the proposed fee or charge and a list of the projects and purposes projected to be funded by any proposed fee or charge in advance of any public hearing or consideration of the fee or charge;
- ii. Posting the description of the proposal on the agency's Internet website with all applicable exhibits;
- iii. Providing local ratepayers a notice of the date and time of the public hearing the local agency will hold on the proposed fee and charges;
- iv. If written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice about the proposal then the local agency shall not impose, increase or extend the fee or charge;
- v. All money must be spent for the local purpose for which the fee or charge was imposed and cannot be taken by state government;
- vi. Revenues derived from the fee or charge shall not exceed the reasonable cost to the local agency of providing the water or sewer service or be used for any purpose other than that for which it was imposed;
- vii. The manner in which the costs are allocated to a fee payor shall bear a fair or reasonable relationship to the fee payor's burden on or benefits received from the water service or sewer service;
- viii. The initiative power of voters may be used to repeal or reduce the fee or charge in the future with the filing of a petition calling for an election on the question;
- ix. Independent annual audits shall be made available to the public showing how all funds are spent.

I. This new funding method will allow local agencies to invest in the water supplies, water quality, flood protection and water management and conservation programs we need, while guaranteeing a high level of accountability and ratepayer protections.

December 14, 2015

SECTION 3. Section 8 is hereby added to Article X of the California Constitution to read as follows:

SEC. 8 Water and Sewer Service

(a). Alternative funding method. This section provides alternative procedures and requirements for funding water service and sewer service independent of any other procedures and requirements in this Constitution for funding these services.

(1) A local agency that adheres to the procedures and requirements of this section, including the strict accountability requirements to protect local ratepayers, may use at its discretion, the provisions of this section instead of any other procedures or requirements in this Constitution for funding the cost of providing water service and sewer service only if undertaken voluntarily and at the sole discretion of the local agency.

(2) The revenues derived from the fees or charges imposed in accordance with this section may only be used by the local agency that imposed, increased or extended the fee or charge, and like other fees or charges imposed, increased or extended by local agencies, the Legislature is prohibited from reallocating, transferring, borrowing, appropriating, restricting the use of, or otherwise using the proceeds of such fees or charges.

(b) Definitions. As used in this section:

(1) "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for water service or sewer service having a direct relationship to property ownership.

(2) "Local agency" means any city, county, city and county, including a charter city or county, special district, or any other local or regional governmental entity.

(3) "Property ownership" shall be deemed to include tenancies of real property where tenants are directly liable to pay the fee or charge.

4) "Sewer service" means any system of public improvements, facilities, projects, or services for the collection, conveyance, conservation, drainage, disposal, recycling or treatment of stormwater, flood water, dry weather runoff, sewage or waste to: (A) conserve and protect sources of drinking water, such as rivers, lakes, streams and groundwater, or the environment, such as beaches, coastal waters, and wetlands, from toxic chemicals, biological contaminants, and other pollutants; (B) protect public health and safety; (C) reduce the risk of flooding of public or private property; or (D) comply with federal or state laws, rules, and regulations.

(5) "Water service" means any system of public improvements, facilities, projects or services intended to provide for the production, management, storage, supply, treatment, recycling, conservation or distribution of water from any source.

(c) Requirements for new, increased or extended fees or charges. A fee or charge for water service or sewer service shall not be imposed, increased, or extended by a local agency pursuant to this section unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the reasonable cost to the local agency of providing the water service or sewer service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The manner in which the costs of the water service or sewer service are allocated to a fee payor shall bear a fair or reasonable relationship to the fee payor's burden on or benefits received from the water service or sewer service.

(d) Conservation fee or charges; low-income households. A local agency that imposes, extends, or increases a fee or charge pursuant to this section may do either or both of the following:

(1) Allocate the cost of water service or sewer service through a rate structure reasonably designed to encourage water conservation and resource management in furtherance of the policy established in section 2;

(2) Increase the amount of a fee or charge to derive revenues that do not exceed the reasonable cost of reducing such fee or charge for lower-income households.

(e) Notice, public hearing and majority protest. A local agency shall comply with the procedures of this subdivision in imposing, increasing, or extending a fee or charge for water service or sewer service pursuant to this section:

(1) The local agency shall provide written notice by mail of the new fee or charge or the proposed increase in or extension of an existing fee or charge to the fee payor listed in the local agency's billing, or customer service records or other appropriate records. If the fee or charge is or will be imposed on a parcel, the local agency shall provide written notice to the record owner as provided in paragraph (4). The local agency may include the notice in the agency's regular billing statement for the fee or charge to the person at the address to which the agency customarily mails the billing statement for water service or sewer service. If the customer is billed only electronically, the agency shall provide notice by mail.

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(2) The notice required by paragraph (1) shall include the amount of the fee or charge proposed to be imposed on the recipient of the notice or the basis upon which the amount of the fee or charge will be calculated, together with the date, time and location of the public hearing on the fee or charge. The notice also shall state that if written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice required by paragraph (1), then the local agency shall not impose, increase or extend the fee or charge.

(3) The notice required by paragraph (1) shall include a general description of the services, facilities and improvements projected to be funded with the proceeds derived from the new fee or charge or proposed increase in, or extension of the fee or charge. A more complete description of the projected services, facilities and improvements, including any applicable exhibits, shall be made available at an accessible location and on the local agency's Internet website.

(4) If the local agency desires to preserve any authority it may have to record or enforce a lien on the parcel to which service is provided, the local agency shall also mail notice to the record owner's address shown on the last equalized assessment roll if that address is different than the billing address.

(5) The local agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice required by paragraph (1). At the public hearing, the local agency shall consider all oral and written protests against the fee or charge. If written protests against the fee or charge are presented by a majority of persons to whom the local agency sent the notice required by paragraph (1), then the local agency shall not impose, increase or extend the fee or charge. One written protest per service address shall be counted in calculating a majority protest pursuant to this paragraph.

(f) Burden of proof. The local agency bears the burden of proving by a preponderance of the evidence that the amount of a fee or charge for water service or sewer service is no more than necessary to cover the reasonable costs of the water service or sewer service, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burden on, or benefits received from, the water service or sewer service. A fee or charge levied pursuant to and in compliance with this section is not a tax

(g) Initiative power for fees or charges. Notwithstanding any other provision of this Constitution, including, but not limited to Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any fee or charge for water service or sewer service adopted, increased or extended pursuant to this section. The power of the initiative to affect such fees or charges shall be applicable to all local agencies and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

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(h) Mandatory audit. Any local agency that approves a fee or charge for water service or sewer service in accordance with this section shall cause to be prepared an independent financial audit of the receipt and expenditure of the revenues derived from the fee or charge. Such an audit may be part of a comprehensive audit of the agency's finances, but the audit shall identify the revenues received and expended in accordance with this section with sufficient clarity to help ratepayers compare the use of the funds to the description provided in paragraph (3) of subdivision (e).

SECTION 4. Severability

If the provisions of this act, or any part thereof, are for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect and to this end the provisions of this act are severable.

SECTION 5. Conflicting Measures

It is the intent of the people that in the event that this measure and another measure relating to the establishment of an alternative method of imposing, increasing, or extending fees or charges to fund water service or sewer service appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure, and if approved by the voters, this measure shall take effect notwithstanding.

SECTION 6. Liberal Construction

The provisions of this act shall be liberally construed in order to effectuate its purposes and the intent of the voters to provide local agencies alternative procedural and substantive requirements for imposing fees and charges for water service and sewer service from those otherwise found in the Constitution.