



project clean water

## Legislative and Regulatory Issues TAC

### STUDY OF POTENTIAL FUNDING SOURCES JUNE 2002

The Legislative and Regulatory Issues TAC was tasked with implementing the action item in the Clean Water Strategic Plan to conduct a study of potential funding sources and alternatives by June 2002. This document describes the evolution of the study as well as the resulting work products.

The TAC's final conclusions and recommendations are presented beginning on the following page. Other work products are provided in the attachments as identified below. The study was conducted in two phases. First, financing alternatives for municipal stormwater programs were provided in February 2002, as follows:

- **Attachment 1: Financing Alternatives for Municipal Stormwater Programs**
- **Attachment 2: Table of Financing Alternatives for Municipal Stormwater Programs**

This first phase, which was a collection of many types of funding options, led to the development of a list of existing stormwater utility districts and further study of other regional governance structures.

- **Attachment 3: Examples of Existing Stormwater Utility Districts**
- **Attachment 4: Alternative Governance Structures**

The compilation of the above documents represents the research of TAC members and in-depth discussion conducted at TAC meetings. This study is intended to be an unbiased document based solely upon voluntary research by TAC members, and is for informational purposes only. It reflects the hard work and research that this TAC has put forth to provide useful information.

[www.projectcleanwater.org](http://www.projectcleanwater.org)



## I. INTRODUCTION

The creation of a governance structure to develop stormwater infrastructure for ensuring that agencies are in compliance with state and local stormwater regulations can take one of several forms, as evidenced below. The boundaries of such a jurisdictional agency, whether it be based on the political boundaries of existing public agencies, or on geographical boundaries, such as watersheds, is a consideration primarily driven by the statutory scheme utilized to form the agency. Within each governance structure delineated below, it is evident whether a particular governance structure is amenable to being structured along jurisdictional/political boundary lines or geographical lines.

Based on the existing California governance structures, we conclude that a legislatively created district or a joint powers agency (JPA), empowered to operate on a hybrid regional/watershed basis, are the most preferable structures for funding and governing stormwater programs in San Diego County. Such structures could allow each watershed to address issues locally while receiving the benefits of a regional governance and financing mechanism.

## II. REGIONAL OR WATERSHED STRUCTURES

One major purpose of a regional or watershed structure is to facilitate the coordination and implementation of watershed Urban Runoff Management Plans (URMPs). The structure must have cross-jurisdictional authority. Thus, the participating jurisdictions must have control over the structure. Another major purpose of a regional or watershed structure is to create economies of scale, spreading the cost of stormwater Best Management Practices (BMPs) over more properties. Studies have demonstrated that it is more cost-effective to implement the requirements of the Permit on a regional or watershed basis, rather than to leave each Copermitttee to bear the costs alone. We believe that a hybrid regional/watershed governance structure of either a joint powers agency or a legislatively created district would best serve the needs of Copermitttees within San Diego County.

### A. Joint Powers Agency (JPA)

Public agencies may enter into agreements for the exercise of their joint powers. The Joint Exercise of Powers Act (Government Code section 6500 et seq.) authorizes public agencies to form a separate entity. The joint powers agreement must delineate the common powers of the entities that they intend to exercise together through the JPA. The joint powers agreement may also delineate a statutory scheme under which it wishes the joint powers agency to operate. No Local Agency Formation Commission (LAFCO) authorization is required to establish a JPA.

The JPA is authorized to exercise power which is subject to the “restrictions upon the manner of exercising the power of one of the contracting parties, which party shall be designated by the agreement.” (Gov. Code § 6509.) This could allow a separate joint powers agency to exercise all the powers that either of the two original agencies could exercise. Additionally, JPAs are expressly authorized to identify, plan for, monitor, control, regulate, dispose of, or abate liquid, toxic, or hazardous wastes or hazardous materials. (Gov. Code § 6502.7(a).)

Moreover, a JPA may issue revenue bonds for certain purposes. JPAs may issue revenue bonds to pay the cost and expenses of acquiring or constructing a project or conducting a program for, among other purposes: (i) a facility for the disposal, treatment, or conversion to energy and reusable materials of solid or hazardous waste or toxic substances; or (ii) facilities for the production, storage, transmission, or treatment of water or waste water. (Gov. Code § 6546 (f)-(g).) A JPA which issues revenue bonds for facilities for the production, storage, transmission, or treatment of water or waste water may also issue revenue bonds for facilities to remove hazardous substances, pollutants, or contaminants from that water. (Gov. Code § 6546.5.)

Individual members are not liable for the contractual liabilities of the JPA if the agreement creating the JPA provides that “the debts, liabilities, and obligations of the agency” shall not “be debts, liabilities, and obligations of the parties to the agreement.” (Gov. Code § 6508.1.)

The agreements which create JPAs may be terminated if the terms of such termination are clearly established in the agreement. These terms can be crafted to make termination difficult. Therefore, the continuity of the JPA to administer a stormwater program can be assured for a lengthy period of time.

These characteristics of JPAs make them feasible options for the administration of a stormwater project on a jurisdictional or watershed level. Because a JPA derives its power from the public agencies which form it, a JPA can be delegated a substantial degree of power. Therefore, a JPA may issue bonds as well as monitor compliance with environmental regulations. Moreover, no LAFCO approval is required to establish JPAs. A JPA would work most effectively if established on a jurisdictional or watershed basis and administered by a few public agencies. We find that the creation of a stormwater JPA on a watershed basis could be a feasible structure.

### ***B. Legislatively Created District***

A legislatively created district could be established by the legislature to govern a regional stormwater management program. The boundaries of the district could coincide with the boundaries of a region, watershed, basin or sub-basin. This single purpose district could be one umbrella-type entity with nine different semi-autonomous areas or zones corresponding to each watershed. The board of directors of the district would be Copermittees and other local agencies, with land use authority.

Regardless of the structure, either regional, watershed-based, or a hybrid of the two, a legislatively created stormwater district, if created, should be vested with the following powers:

1. independent bonding authority;
2. power to assume liabilities, obligations and authority of Copermittees, including:
  - a. authority to approve compliance with SUSMP requirements;
  - b. obligations to conduct inspections and repair MS4s;

- c. obligation to maintain BMPs; and
  - d. authority to apply for state or federal grants to fund stormwater programs;
- 3. power to assess fees, which could be in the form of a user fee and similar to a sewage fee so as to avoid being categorized as a property-based fee subject to Proposition 218; and
  - 4. land use authority.

One potential difficulty with this structure is the fact that some jurisdictions, such as the City of San Diego, are located in multiple watersheds. Therefore, these jurisdictions would need to belong to different areas or zones, much like their participation in the Watershed URMP groups. The manner in which a legislatively created stormwater district is structured, however, could alleviate this type of difficulty because it would allow such jurisdictions to share the burden of stormwater management with other jurisdictions located in each watershed.

A legislatively created stormwater district is also attractive because its implementing legislation could exempt its formation from LAFCO action. Further, no city or agency would need to undergo the lengthy process involved in the creation of a special district under one of numerous existing statutory schemes.

The process of garnering support for a legislative district among businesses, developers, municipalities, industry, and the community, and to draft the legislation, would take approximately six months. Following such a timeline would enable legislation to be introduced in the Legislature when the Legislative Session commences in January 2003. The legislation which established the San Diego Area Wastewater Management District could serve as a model for legislation to create the stormwater district. The Wastewater District was created through legislation entitled, the San Diego Area Wastewater Management District Act (Water Code Appendix section 133-101 et seq.). It was established with the goal of treating wastewater in San Diego on a regional basis. A legislatively created stormwater district could possess some similar characteristics.

### **III. OTHER GOVERNANCE STRUCTURES**

While we believe that a legislatively created stormwater district or a stormwater JPA would best serve the needs of all jurisdictions located in watersheds throughout the region, we discuss several other special districts that could be established under existing statutory schemes to govern stormwater issues. These other special districts, depending on the applicable enabling legislation, can be created on either a watershed or jurisdictional basis.

#### **A. Watershed or Jurisdictional Structures**

##### **1. Municipal Utility Districts**

Municipal Utility Districts (authorized by the Municipal Utility District Act, Public Utilities Code section 11501 et seq) must be created out of at least one public agency, or two or more public agencies, with or without unincorporated territory. (Pub. Utilities Code § 11561.) Generally, Municipal Utility Districts may provide “light, water, power, heat, transportation, telephone service, or other means of communication, or means for the collection, treatment, or disposition of garbage, sewage, or refuse matter.” (Pub. Utilities Code § 12801.) A Municipal Utility District may be created on a regional or watershed basis. Municipal Utility Districts may issue bonds upon approval of 2/3 of the voters in that District. (Pub. Utilities Code § 12841.)

In order to form a Municipal Utility District, the legislative bodies of half or more of the public agencies proposed to be included in the proposed district must pass resolutions declaring their intent to form a Municipal Utility District. These public agencies must then present these resolutions to the County Board of Supervisors for an election by the voters to be included in the district. Municipal Utility Districts are governed by a board of directors consisting of a director from each area or ward served by the district, the district’s general manager, and other executive officers of the district. Another characteristic of note is that formation of a Municipal Utility District requires LAFCO action.

## **2. Community Services District**

Community Services Districts (authorized by the Community Services District Law, Government Code section 61000 et seq.) may be formed to collect, treat, or dispose of the sewage, waste, and storm water of a district and its inhabitants, or to construct, maintain, and operate flood protection works and facilities, among other things. A Community Services District may contain both unincorporated and incorporated territory. If incorporated territory is to be included, the affected city must give its consent. A proposal to form a new district may be made by petition of registered voters in the proposed district, or by the adoption of a resolution by the legislative body of any county or city which contains territory to be included in the district.

The initial board of directors of the district is determined by: (1) the County Board of Supervisors, for a district in an unincorporated area; (2) the county board of supervisors and city council(s), for districts in partially incorporated areas, and (3) the city council(s), for districts in wholly incorporated areas. Additionally, formation of a Community Services District requires LAFCO action.

## **3. County Drainage District**

A County Drainage District (authorized by County Drainage District Act, Water Code section 56000 et seq.) may be formed by resolution of the County Board of Supervisors or by petition of owners of real property within the boundaries of the proposed district. The objective and purpose of a County Drainage District is, in part, to provide for the “control of storm and other waste water of or within said district.” (Water Code § 56040(a).)The district may include both unincorporated and incorporated territory, except that the consent of the majority of the governing board of a city is required, if the whole or any part of a city is proposed to be included in the district. The board of directors of such a district, if cities are included, is composed of

both members of the Board of Supervisors and each city included within the district. Finally, formation of a County Drainage District will most likely require LAFCO action.

#### **4. Community Facilities District (Health and Safety Code)**

A Community Facility District (authorized by the Community Facility Law of 1911, Health and Safety Code section 4600 et seq.) may be formed for the purpose of making any improvement “which will be of benefit to territory partially within the initiating city and partially within any other city or within unincorporated area of the same county, or both.” (Health & Saf. Code §4614.1.) Such districts are governed “by and under the jurisdiction of the governing body of the initiating city.” (Health & Saf. Code §4614.11.) Formation of a Community Facility District, pursuant to the Community Facility District Law of 1911, will probably not require LAFCO since it is more akin to an improvement district.

Community Facilities Districts are governed by the city council of the initiating city. The city council conducts all of the affairs of the district, calls and holds bond elections in the district, constructs all improvements in the district, levies and collects taxes of behalf of the district, and passes such necessary legislation as may be required for such improvements.

Interestingly, Section 4614.15 provides that the Community Facility Law of 1911 “does not prevent two or more cities or the board of supervisors of any county from entering into co-operation agreements for the joint acquisition, construction, or use of joint sanitary sewage facilities, flood control works, and storm water drainage systems.” Although this law envisions joint cooperation among municipalities and/or with a county, this will probably not be a viable option for a regional or watershed structure since these districts are governed by and under the city council that initiated the formation. Therefore, one city council would have both the authority and the ultimate responsibility for treating the stormwater in another jurisdiction.

#### **5. Mello-Roos / Community Facilities Districts (CFD)**

CFDs, also called Mello-Roos Districts, are attractive mechanisms for the financing of stormwater management programs for several reasons, including: (1) No compliance with LAFCO requirements is necessary; and (2) CFDs can assess special taxes and raise bonded indebtedness to fund stormwater management programs. In addition, a CFD may also be able to use other financial sources, including mitigation/waiver fees, to fund facilities and services. CFDs may be established by local agencies, including cities and counties, within their territorial limits.

However, CFDs are subject to one primary drawback; a CFD is a financing mechanism rather than a governance structure to enforce stormwater regulations. As such, it is unclear the extent that a CFD can mandate compliance with such environmental regulations. Perhaps various municipalities or agencies can police compliance within their respective jurisdictions, instead of relying on a CFD to fulfill this role. A CFD, however, could serve as a useful fundraising mechanism for a legislatively created stormwater district or a stormwater JPA.

## **B. Special Act Districts**

In addition to the San Diego Area Wastewater Management District Act, discussed above, there are several other special act districts set forth in the Water Code Appendix that could be created to finance and govern the treatment of stormwater. Two of these acts are the Storm Water District Act of 1909 and the Storm Drain Maintenance District Act. These Acts are discussed in the interest of thoroughness but are not recommended due to their limitations.

### **1. Storm Water District Act of 1909**

The Storm Water District Act of 1909, Water Code Appendix section 13-1 et seq., provides for the formation, organization and government of districts to protect property within the boundaries of the district from damage and soil erosion caused by storm water or other waters. These districts can also protect property within its boundaries from the waters of any unnavigable stream, watercourse, canyon or wash. (Water Code Appendix § 13-1.) Storm water districts also have the express authority to levy taxes and assessments to further their purposes. A Storm Water District, however, can be formed only when twenty-five percent (25%) or more of the owners of land whose names appear as such upon the last assessment roll in any district of land which lies in one body and is liable to damage from storm or other water or from the waters of any unnavigable stream, watercourse, canyon or wash” presents a petition to the County Board of Supervisors. (*Id.*) It appears, therefore, that a Storm Water District can only be formed by property owners owning property that has been or can be damaged by storm or other water.

### **2. Storm Drain Maintenance District Act**

The Storm Drain Maintenance District Act, Water Code Appendix section 42-1 et seq., provides for the formation of a district for the purpose of maintaining storm drain improvements, and of other watercourses or drainage channels. These districts are formed by action of the County Board of Supervisors, or by the legislative body of a city. If a city chooses to include unincorporated territory within a Storm Drain Maintenance District, it must first obtain the consent of the County Board of Supervisors. (Water Code Appendix §42-1.1.) These districts are expressly authorized to raise funds under the provisions of the Improvement Act of 1911, the Municipal Improvement Act of 1913 and the Improvement Bond Act of 1915. (Water Code Appendix § 42-15.5.) Because a Storm Water Drain Maintenance district can only be created by the County, or by a single city, e.g., Copermittee, it appears that operating under this statutory scheme would not best serve the stormwater needs within San Diego County.

### **3. San Diego County Flood Control District**

The San Diego Flood Control District is empowered to control, among other things, the flood and storm waters of the District. The District may protect watersheds, life, and property from damage caused by storm waters. Additionally, it may be possible for the District to monitor landowners’ compliance with environmental regulations. The District consists of all unincorporated territory of San Diego and any portion of an incorporated city, which is annexed to the District as a cooperating territory. The San Diego County Board of Supervisors governs the District.

The District may levy ad valorem taxes in the District or in any zone of the District to finance its programs or services. In addition to this tax, the District may levy special assessments or incur bonded indebtedness to fund its authorized programs or services in any zone by the vote of a majority of registered voters in that zone.

The success of this option will depend upon the receptiveness of the San Diego County Board of Supervisors to establishing a stormwater program in its District. Additionally, the Board of Supervisors and city councils must be willing to collaborate with each other in the administration of stormwater management programs in incorporated areas.

This option is preferable to be undertaken on a regional basis because the District could assess a surcharge or fee on all property within the District. Alternatively, the District could assess the surcharge or fee in a zone of the District, which could be implemented on a watershed or jurisdictional basis.

#### **IV. JURISDICTIONAL STRUCTURES**

##### **A. *Facilities Benefits Assessments (FBA)***

A Facilities Benefits Assessment (FBA) is a special assessment which the City of San Diego may impose to raise funds for the development of certain areas within San Diego. Specifically, the purpose of an FBA is to impose special assessments on lands which will receive special benefits from the acquisition, construction and improvement of public facilities.

FBAs are advantageous because no popular election is needed to impose the FBA. FBAs only require the approval of the City Council following a notice and hearing period. Furthermore, only those landowners in the designated “Area of Benefit” are assessed the FBA. An FBA may be used to finance “instrumentalities of sanitation” and their accompanying catch basins, drains, and other appurtenances. This description would seem to encompass instrumentalities to treat urban runoff. Other cities may consider either passing similar laws or using their existing FBAs to fund stormwater BMPs in their developing areas.

#### **IV. CONCLUSION**

Any structure tasked with both financing and enforcing regulatory mandates on a regional basis must allow for effective joint administration by all Copermittees. A JPA or a legislatively created district are the two most preferable structures for funding and governing stormwater programs in San Diego County because either could allow each watershed to address its issues locally while receiving the benefits of a regional financing structure. Such structures could issue bonds and assess fees to construct, operate and maintain BMPs to treat stormwater on a watershed basis. They could also be authorized to monitor and regulate the discharge of waste and hazardous chemicals. Essentially, either entity’s authority could be broad enough to assume the regulatory obligations of the Copermittees under the San Diego Municipal Stormwater Permit. Additionally, because the entity would enable stormwater treatment on such a large scale, it would create economies of scale. This will decrease the overall cost of implementing BMPs to treat stormwater.

In short, San Diego's best answer to solving the stormwater dilemma is to create a legislative district or a stormwater JPA with a flexible governance structure to suit the Copermittees, broad powers controlled under the aegis of the Copermittees and expansive fundraising authority. If the Copermittees decide to pursue formation of a legislatively created district, moving a bill through Sacramento is a significant additional requirement.

We recommend that special counsel be retained by the Copermittees to research the legal and political considerations involved in the creation of a stormwater district, to draft legislation creating the district, and/or to draft a model JPA agreement to create the JPA. It would be advisable for the Copermittees to enter into a Memorandum of Understanding regarding the obligations of the Copermittees in this process.

Special thanks to the following for preparing this document:

Foley & Lardner  
402 W. Broadway  
San Diego, CA 92101  
(619) 234-6655  
S. Wayne Rosenbaum  
Anne A. Lee

Best, Best & Krieger  
402 W. Broadway, 13th Floor  
San Diego, CA 92101  
(619) 525-1300  
Marguerite S. Strand  
Paula C. P. de Sousa

## **Attachment 1: Financing Alternatives for Municipal Stormwater Programs**

This short paper is intended to share the thinking of the Legislative and Regulatory Issues TAC about potential sources of funds for municipal stormwater programs. It is an annotated list of ideas, and not a thorough evaluation of the pros and cons of each suggestion. It also does not constitute legal advice or the position of any agency. It is offered for information, and it can also be used as a discussion tool by forwarding comments on this paper to either of the TAC co-chairs. Subsequent revised versions will be posted on the web site if comments are forthcoming.

Each municipality will need to design its own program and determine its projected costs. Since most programs will not rely on a single funding source for all aspects of the program, it will be helpful for the municipality to break its program down into categories of costs, then identify funding sources for each kind of cost. For some costs, including program start-up, studies, and some capital improvements, federal and state financial assistance will be valuable. But those sources cannot be considered by a municipality to be reliable, long-term financing for its stormwater program, and they are not further discussed in this short paper.

With regard to local funds, there are three considerations that are particularly important to stormwater program financing. These are (1) the special identity of the funds from a particular source, (2) the characterization of the levy as a fee or a tax, and (3) the fairness of the levy as a mechanism for spreading the costs of the stormwater program over the appropriate community of stakeholders.

1. The special identity of the funds from a particular source. The municipality may appropriate funds from its general fund for the stormwater program, or it may have some form of special assessment. General funds are fed from property and sales taxes and some kinds of fees. Other fees are specifically associated with particular services and programs and the fee revenue is not commingled with the general fund, but is kept in the program. Since a compliant stormwater program requires a commitment to a multi-year course of action, beyond the fiscal year and appropriation cycle of most public agencies, it would be desirable for stormwater programs to be funded from sources that are earmarked or fenced for that program.

2. Characterization of the levy as a fee or charge, a tax, or a special assessment. The creation of new or increased fees, special assessments and taxes is carefully restricted in California by the provisions of Proposition 218. New taxes must be approved by a vote within the assessed jurisdiction, and often need a two-thirds majority. Even sympathetic programs face significant political challenges and uncertainty in winning such electoral approval. Therefore, it would be desirable for a municipal stormwater program to be financed by one or more assessments that are clearly fees according to Proposition 218. For any new exaction, there is an issue as to the adequacy of the nexus between the ostensible purpose of the fee and stormwater quality. That nexus is required for the surcharge to be considered a fee and not a tax subject to Proposition 218.

3. The fairness of the levy as a cost-spreading mechanism. A financing mechanism should charge the costs of the stormwater program to all of the benefited constituencies according to

some logical method of distribution. A truly "county" program would protect water quality for the entire county and everyone in the county would pay for the program through a mechanism such as a special assessment on parcels based on percent of impervious cover. In reality, however, the equities are more complicated. The county contains different cities, each with unique priorities and concerns. Land within the county differs radically in development, topography, and beneficial uses of water. In San Diego County, several government agencies already exist that may provide a means of cost-spreading over the relevant community, e.g. SANDAG, the San Diego County Water Authority, the County itself, or the stormwater co-permittees as an entity bound together by MOU.

**Local general funds.** For the most part, local general funds will likely pay for implementation of stormwater programs and watershed processes, especially at the outset. Even cities or counties that develop other funding sources will likely use local general funds until that can happen. Monitoring and treatment facility O&M are actions that are likely to be funded from the operating budgets of municipalities.

*Examples: San Diego County (initially) and Cities of Oceanside and Del Mar.*

**Property tax.** Property taxes are really a principal source of revenue for the general fund, and therefore the preceding paragraph applies. Additionally, property taxes cannot constitutionally be increased at will. Property related assessments are subject to Proposition 218 and require a two-thirds majority vote to implement. Property taxes must be used to benefit the area assessed, which should mean that water quality improvements may be cost-shared throughout, or largely throughout, a watershed, even where the watershed spans jurisdictions. On the other hand, within an entity like San Diego County, county-wide assessment that spans watersheds may be problematic. True property taxes are vulnerable to being taken away from the locality by the State. Special assessments may be added to the property tax bill for administrative convenience, but are not property taxes just because of the use of that method of collection.

**Sales tax.** Implemented by municipalities. Traditionally feeds the general fund, so the discussion above also applies here.

**Transnet funds (SANDAG).** This is a special sales tax that may be used for transit and transportation. Legislation also allows some of the revenue to be used for projects that are not directly transportation-related with the approval of the SANDAG Board of Directors. This has been discussed as a source of funds for water or water quality efforts. At the time of the discussions, however, there was also discussion of using SANDAG as the implementation entity for the regional stormwater permit, and that idea has apparently been rejected. Transnet sunsets in 2008 and a recent attempt to legislate a 30-year extension has been withdrawn. A new ballot measure this Fall may seek to extend the sunset date and also clarify the authority to use some of these funds for water programs, and particularly stormwater. Another issue is that the current assessment rate of 0.5% will not generate enough money to run the stormwater programs throughout the SANDAG territory. Public support for increasing the rate is uncertain.

**Transient Occupancy Tax (TOT) ('bed tax').** Santa Barbara recently implemented a transient occupancy tax to fund its stormwater program. This puts the cost of protecting the recreational uses (beaches) on tourists (and also business visitors).

*Information source: Encinitas uses part of TOT for beach sand projects, and SANDAG is investigating doing more of the same with TOT funds. The use of such funds for stormwater would be closely analogous.*

**Gas tax.** A portion of the State-collected gas tax is allocated to local governments for road-related work. The County submits a five-year plan for the use of these funds, although the State makes the allocation annually. These funds can clearly be used for road-related actions that relate to stormwater since there is a clear connection between automobile traffic and water quality.

**Fees.** Fees are assessments based on the actual cost of a value or service provided, and can therefore be created, set, or increased without a Proposition 218 election.

- **Grading/development/impact fees.** All municipalities have development approval functions that include actions related to the stormwater program. Most or all municipalities already routinely recover all the costs of these functions through various development fees. None of these fees are allowed to generate additional revenue to apply toward other parts of the stormwater program. Therefore, these fees are expected to be a part of the stormwater program financing, but are very limited in scope.
- **Discharge fees.** Municipal Copermittees now have a regulatory role and are required to enforce ordinances and perform inspections to ensure enforcement, etc. Most municipalities use fees to recover the costs of these services. It may be possible alternatively for the municipality to set up a discharge permit program for stormwater dischargers that the municipality regulates, and charge permit fees that would cover the costs of the program. This could be more flexible than a system of specific cost-recovery fees.
- **Business/activity license.** These are a traditional type of fee.
- **Inspection/oversight/code enforcement fees.** These fees are calculated to reimburse the agency for its costs in providing services that are required by regulation, and the same comments made for development fees above apply here. (See Signal Hill use of permit fees to fund inspectors for particular localities.)
- **Other User fees** (beaches, e.g., toll roads, parking charges)
- **Other fees** (Waste/HAZMAT disposal, Recycling, etc.)
- **Stormwater Utility District.** This would require the creation of a new governmental entity, probably an independent special district. The advantage is that the new district could be created to cover the appropriate region and to divide itself into relevant subregions, e.g. watersheds rather than cities. It could establish a rate structure that might not require a Proposition 218 election because it would be analogous to a utility rate rather than a tax. Another advantage is that the district could ensure perpetual maintenance of post-construction BMPs, while Community Service Areas or Home

Owners' Associations may be less likely to be permanent. The district would likely have a generally elected board. The district could use any of a variety of billing or assessment mechanisms that would allow a clear and direct relationship between revenue and the stormwater purposes of the district. The process of creating such a district could be complex. The Legislative and Regulatory Issues TAC is preparing a fact sheet describing the likely process.

- **Utility rate surcharges (on existing utility bills).** Surcharges could be added to current water, sewer, or trash bills. (See specific example with San Diego County Water Authority below.)  
*Information source: Examples: San Marcos (trash fee)*
- **San Diego County Water Authority rate surcharge.** The County Water Authority is an existing regional entity that is governed by a board the members of which represent retail water agencies and have weighted voting power. It is therefore a conveniently available mechanism for adding a surcharge to an existing billing system, where that surcharge would be imposed by a regional representative governing body. There is an adequate nexus between imported water use and stormwater quality, based on the fact that well over half of all imported water is used for outdoor irrigation, and water conservation will support the elimination of nonstorm runoff. Therefore, the surcharge is a fee and not a tax subject to Proposition 218.  
*Information source: [www.sdcwa.org](http://www.sdcwa.org)*
- **DMV fees.** San Diego County currently receives 2¢ per car for air quality programs. Under future TMDLs, air quality programs may be sufficiently related to water quality to make a legitimate connection, but the amount of revenue generated may not warrant the effort.

Special Thanks to:

Larry McKenney for contributing his expertise and time to produce Attachment 1: Financing Alternatives for Municipal; Stormwater Programs.

**Attachment 2: Table of Financing Alternatives for Municipal Stormwater Programs**

<u>Options:</u>	<u>Description:</u>	<u>Arguments for:</u>	<u>Arguments against:</u>
Local General Funds	Likely to pay for the implementation of stormwater programs, and watershed processes, especially at the outset.	* Monitoring and treatment facility operations/maintenance likely to be funded by the operating budgets of municipalities.	* Competition with other programs for budget priority against all other municipal programs. * Could be portrayed as taking funds from other programs (roads, schools, parks, social programs, etc.).
Property Tax	Principal source of revenue for the general fund (see Local General Funds).	* Must be used to benefit the area assessed. * Water Quality improvements may be cost-shared throughout a watershed even when spanning districts.	* Can not be increased at will (subject to Prop 218 and 2/3 vote). * Countywide assessments may be problematic. * True property taxes are vulnerable to being taken away by the state.
Transnet Funds (SANDAG)	Special sales tax that legislation allows some of the revenue to be used for projects that are not directly transportation, with the approval of the SANDAG Board of Directors.	* Possible source of funding for water and water quality efforts.	* Current assessment rate would not generate enough funding. * Public support for rate increase is not certain. * Limited scope/subject to SANDAG approval
Transient Occupancy Tax (TOT)	Tax (recently implemented by Santa Barbara) that shifts the cost of protection of recreational use areas (beaches) onto tourists.	* Supplemental source of revenue.	* Limited amount of revenue produced. * Perception of putting the burden downstream to pay for upstream pollution.
Gas Tax	State allocated funds that can be used for road-related actions that relate to stormwater due to the clear connection between automobile traffic and stormwater pollution.	* County submits five-year plan for use of revenue.	* Not controlled locally.

Stormwater Utility District	Creation of a new government entity, probably an independent special district.	<ul style="list-style-type: none"> <li>* Created to cover the appropriate region and division into appropriate sub regions.</li> <li>* Establishment of rate structure may not require Prop 218 election b/c analogous with utility rate.</li> <li>* Could ensure perpetual maintenance of post construction BMPs.</li> <li>* Generally elected Board.</li> <li>* Use variety of billing or assessment mechanisms to allow clear and direct relation between revenue and stormwater purposes of the district.</li> </ul>	<ul style="list-style-type: none"> <li>* May require legislation, including LAFCO approval, and general election.</li> <li>* Political perceptions of "new layer of government."</li> <li>* Creation would occur after municipalities have funded a program for one to two years.</li> <li>* Could result in "double fees" unless district's rates replace earlier funding sources.</li> </ul>
Utility Rate Surcharges	Surcharge additions to current water, sewer, and trash bills.	<ul style="list-style-type: none"> <li>* Addition of a fee on an already existing billing mechanism.</li> </ul>	<ul style="list-style-type: none"> <li>* Need nexus to stormwater to consider as fee, or Prop 218 procedures must be followed.</li> </ul>
San Diego County Water Authority Surcharge	Existing regional entity, governed by a Board, which is representative of retail water agencies, and have weighted voting power.	<ul style="list-style-type: none"> <li>* Existing billing mechanism for surcharges.</li> <li>* Implementation by a regional representative governing body.</li> <li>* Adequate nexus between imported water and stormwater quality.</li> <li>* Surcharge is a fee, not a tax subject to Prop 218.</li> </ul>	<ul style="list-style-type: none"> <li>* May be perceived as a conflict.</li> </ul>
DMV Fees	San Diego County receives 2 cents per car for air quality programs.	<ul style="list-style-type: none"> <li>* Future TMDLs may link air quality to stormwater quality.</li> </ul>	<ul style="list-style-type: none"> <li>* Amount of funds may not warrant efforts</li> <li>* Not locally controlled</li> </ul>
Miscellaneous Fees	Assessments based upon the actual cost of value or service provided.	<ul style="list-style-type: none"> <li>* Can be created, set, or increased without Prop 218 election.</li> </ul>	<ul style="list-style-type: none"> <li>* Many options, must be justifiable and fair as a cost spreading mechanism.</li> <li>* May be subject to Prop 218</li> <li>* Very little revenue</li> </ul>
Sales Tax	Implemented by the municipalities and traditionally feeds the general fund (see Property Taxes and Local General Funds).	<ul style="list-style-type: none"> <li>* Locality based.</li> </ul>	<ul style="list-style-type: none"> <li>* Subject to state control, and Prop 218.</li> </ul>

**Attachment 3: Examples of Existing Stormwater Utility Districts**

Organization	Location	Purpose	Contact	Web Sites
1 Hamilton Urban Drainage District	Des Moines, Iowa	To fund and implement drainage district planning and fees.	Kim Schaa, Auditor's Office, 515.832.8501	<a href="http://www.co.polk.ia.us/resources/">http://www.co.polk.ia.us/resources/</a>
2 River Falls Stormwater Utility District	River Falls, Wisconsin	To generate revenue to fund implementation of watershed plan's recommendations.	Mark Lobermeier, 800.325.2055	<a href="http://clean-water.uwex.edu/keepcurt/May98/takecare.html">http://clean-water.uwex.edu/keepcurt/May98/takecare.html</a>
3 Douglas County Stormwater Utility District	Parker, Colorado	To consolidate stormwater efforts under the guidance of a new stormwater utility.	Stormwater Utility Services, 303.841.0353	<a href="http://www.ci.parker.co.us/html/stormwater.html">http://www.ci.parker.co.us/html/stormwater.html</a>
4 Janesville Stormwater Utility Project	Janesville, Wisconsin	To provide a funding mechanism to finance new EPA/DNR Clean Water Standards.	Utility Office, 608.755.3090	<a href="http://www.ci.janesville.wi.us/DeptHome.asp?Dept=Water">http://www.ci.janesville.wi.us/DeptHome.asp?Dept=Water</a>
5 Columbia County Stormwater Utility	Augusta, Georgia	To provide a source of funding for flood control.	Lisa Peters, Manager, 706.868.3424x258	<a href="http://www.co.columbia.ga.us/departments/engineering/stormwater/stormwater.html">http://www.co.columbia.ga.us/departments/engineering/stormwater/stormwater.html</a>
6 Spokane County Stormwater Utility	Spokane, Washington	To provide a flexible utility to cover a variety of stormwater needs.	Brenda Sims, Public Works, bsims@SpokaneCounty.org	<a href="http://www.spokanecounty.org/utilities/stormwtr/history.htm">http://www.spokanecounty.org/utilities/stormwtr/history.htm</a>
7 City of Oviedo, Stormwater Utility	Oviedo, Florida	To manage the urban surface water resources.	Stormwater Utility Services, 407.977.6032	<a href="http://www.ci.oviedo.fl.us/stormwat.htm">http://www.ci.oviedo.fl.us/stormwat.htm</a>
8 Contra Costa Clean Water Program	San Ramon, California	To manage and coordinate stormwater efforts between 19 municipalities.	Maria Robinson, District Engineer, 925.973.2689	<a href="http://www.ci.san-ramon.ca.us/">http://www.ci.san-ramon.ca.us/</a>
9 County of Sacramento Water Resources Division's Stormwater Utility District	Sacramento, California	To maintain and operate the stormwater system for the majority of Sacramento County.	Stormwater Resources Division, 916.874.6851	<a href="http://www.srcsd.com/storm.html">http://www.srcsd.com/storm.html</a>
10 Riverside County Flood Control and Water Conservation District	Riverside County, California	To manage stormwater efforts county-wide.	Information, 909.955.1200	<a href="http://www.co.riverside.ca.us/">http://www.co.riverside.ca.us/</a>

## **Attachment 4: Alternative Governance Structures**

### **INTRODUCTION**

The creation of a new public agency to develop stormwater infrastructure to ensure that agencies are in compliance with state and local stormwater regulations can take one of several forms, as evidenced below. The boundaries of such a jurisdictional agency, whether it be based on the political boundaries of existing public agencies, or on geographical boundaries, such as watersheds, is one that is primarily driven by the statutory scheme utilized to form the agency. Within each governance structure delineated below, it is evident as to whether a particular governance structure is amenable to being structured along jurisdictional/political boundaries or geographical lines. We believe that it may be worthwhile for the TAC to consider consulting with a lobbyist to gain insight as to the political obstacles that may arise in formation of a stormwater public agency.

### **I. JOINT POWERS AGENCY**

**A. AUTHORITY** – The Joint Exercise of Powers Act, Government Code section 6500 et seq.

**B. GENERALLY** – Public agencies may enter into agreements for the exercise of their joint powers. The Joint Exercise of Powers Act authorizes public agencies to form a separate entity. The joint powers agreement must delineate the common powers that the entities party to the agreement intend to exercise together. The joint powers agreement may also delineate a statutory scheme under which it wishes the joint powers agency to operate.

**C. LAFCO ACTION** – Formation of a Joint Powers Agency does not require LAFCO action.

**D. RECOMMENDATION** – This may be a viable option. Would warrant further investigation.

### **II. PUBLIC UTILITY DISTRICT**

**A. AUTHORITY** – The Public Utility District Act, Public Utilities Code section 15501 et seq.

**B. GENERALLY** – Public Utility Districts may only be created to serve unincorporated territory. (Pub. Utilities Code § 15701; see also, Pub. Utilities Code § 15505 (defining the words "elector," "voter," or "qualified elector," as "a voter . . . whose address as it appears on the great register or supplement is in the same unincorporated territory as the address given by him on the certificate or petition that is signed by him.").)

**C. LAFCO ACTION** – Formation of a Public Utility District requires LAFCO action.

**D. RECOMMENDATION** – This would not be a viable option as only unincorporated territory could be part of a Public Utility District.

### **III. MUNICIPAL UTILITY DISTRICT**

**A. AUTHORITY** – The Municipal Utility District Act, Public Utilities Code section 11501 et seq)

**B. GENERALLY** – Municipal Utility Districts must be created out of at least one public agency, or two or more public agencies, with or without unincorporated territory. (Pub. Utilities Code § 11561.) Generally, Municipal Utility Districts may provide “light, water, power, heat, transportation, telephone service, or other means of communication, or means for the collection, treatment, or disposition of garbage, sewage, or refuse matter” (Pub. Utilities Code § 12801.)

**C. LAFCO ACTION** – Formation of a Municipal Utility District requires LAFCO action.

**D. RECOMMENDATION** – This may be a viable option. Would warrant further investigation.

### **IV. COMMUNITY FACILITIES DISTRICT**

**A. AUTHORITY** – Mello-Roos Community Facilities Act of 1982, Government Code section 53311 et seq.

**B. GENERALLY** – The Mello-Roos Community Facilities Act of 1982 provides an alternative method of financing certain public capital facilities and services, especially in developing areas and areas undergoing rehabilitation. Local public agencies create Community Facilities Districts to finance certain capital facilities.

**C. LAFCO ACTION** – Formation of a Community Facilities District, pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, does not require LAFCO action.

**D. RECOMMENDATION** – Because this is a financing mechanism for local public agencies, this is not a viable option for a governance structure. It may be a viable financing mechanism, however.

### **V. COMMUNITY SERVICES DISTRICT**

**A. AUTHORITY** – The Community Services District Law, Government Code section 61000 et seq.

**B. GENERALLY** – Community Services Districts may be formed in order to collect, treat, or dispose of the sewage, waste, and storm water of a district and its inhabitants, or to construct, maintain, and operate flood protection works and facilities, among other things. A Community Services District may contain both unincorporated and incorporated territory. If incorporated territory it to be included, the affected city must give its consent.

**C. LAFCO ACTION** – Formation of a Community Services District requires LAFCO action.

**D. RECOMMENDATION** – This may be a viable option. Would warrant further investigation.

## **VI. COUNTY DRAINAGE DISTRICT**

**A. AUTHORITY** – County Drainage District Act, Water Code section 56000 et seq.

**B. GENERALLY** – A County Drainage District may be formed by resolution of the County Board of Supervisors or by petition of owners of real property within the boundaries of the proposed district. The district may include both unincorporated or incorporated territory, except that the consent of the majority of the governing board of the city is required, if the whole or any part of the city is proposed to be included in the district. The objective and purpose of a County Drainage District is, in part, to provide for the “control of storm and other waste water of or within said district.” (Water Code §56040 (a).) The board of directors of such a district, if cities are included in the district, is composed of both members of the board of supervisors and each city included within the district.

**C. LAFCO ACTION** – Formation of a County Drainage District will most likely require LAFCO action.

**D. RECOMMENDATION** – This may be a viable option. Would warrant further investigation.

## **VII. SPECIAL ACT DISTRICT**

**A. AUTHORITY** – One of a variety of uncodified special act districts set forth in the Water Code Appendix.

**B. GENERALLY** – There are several uncodified special act districts that a regional stormwater government body could be formed as or modeled after. These include but are not limited to the following:

- Storm Water District Act of 1909
- Antelope Valley Storm Water Conservation and Flood Control District
- Contra Costa County Storm Drainage District Act
- Storm Drain Maintenance District Act
- San Diego Area Wastewater Management District Act

**C. LAFCO ACTION** – Whether LAFCO approval is required is dependent upon the language of the implementing legislation of the particular district. For example, the Legislature created the Contra Costa County Storm Drainage District Act when it adopted the Act, rather than simply providing procedures for the formation of such a district.

**D. RECOMMENDATION** – These options would warrant further research. Another option would be to have legislation adopted to create the precise type of entity desired.

### **VIII. COMMUNITY FACILITY DISTRICT (HEALTH AND SAFETY CODE)**

**A. AUTHORITY** – Community Facility Law of 1911, Health & Safety Code section 4600 et seq.

**B. GENERALLY** – Under the Community Facility Law of 1911, a district “may be formed pursuant to this article for the purpose of making any improvement which will be of benefit to territory partially within the initiating city and partially within any other city or within unincorporated area of the same county, or both.” (Health & Saf. Code § 4614.1.) Such districts are governed “by and under the jurisdiction of the governing body of the initiating city.” (Health & Saf. Code § 4614.11.)

**C. LAFCO ACTION** – Formation of a Community Facility District, pursuant to the Community Facility District Law of 1911, would probably not require LAFCO since it is more akin to an improvement district.

**D. RECOMMENDATION** – This will probably not be a viable option since these districts are governed by and under the city council that initiated the formation. Interestingly, Section 4614.15 provides that the Community Facility Law of 1911 “does not prevent two or more cities or the board of supervisors of any county from entering into co-operation agreements for the joint acquisition, construction, or use of joint sanitary sewage facilities, flood control works, and storm water drainage systems.”

We look forward to discussing the advantages and disadvantages of these and any other governance structures that did not come to mind when preparing this outline.

Special Thanks to:

Peggy Strand and Larry McKenney, for their contribution of extensive time and effort in producing Attachment 4: Alternative Governance Structures.