



TERRA LAWSON-REMER
SUPERVISOR, THIRD DISTRICT
SAN DIEGO COUNTY BOARD OF SUPERVISORS

COSD CLERK OF THE BOARD
2022 APR 14 AM 11:07

AGENDA ITEM

DATE: April 27th, 2022

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TO: Board of Supervisors

SUBJECT

**SEEKING FEDERAL AND STATE INFRASTRUCTURE FUNDING TO PROTECT OUR COASTLINES, OCEANS, BAYS, RIVERS, STREAMS, AND WETLANDS FROM TOXIC POLLUTANTS BY UPDATING AND UPGRADING STORMWATER INFRASTRUCTURE
(DISTRICTS: ALL)**

OVERVIEW

The Federal Infrastructure Investment and Jobs Act, passed in November 2021, made over \$2 billion of additional dollars available annually to protect our beaches and coastlines from toxic run-off and pollution. Specifically, the Clean Water State Revolving Loan Fund (CWSRF) received a significant boost in funding — above \$2 billion annually, through 2026. Not only was funding increased, but the legislation created additional programs for pollution control as well as tracking emerging contaminants. It also established innovative funding mechanisms, including negative interest loans and loan forgiveness.

We face a stormwater run-off crisis in San Diego County. For too long, investments in the basic infrastructure we need to protect our coastlines and communities have been underfunded, leading to pollution that threatens our quality of life.

Healthy rivers, creeks, lakes, groundwater, lagoons, bays, and coastal estuaries are vital to maintaining public health, providing a local water supply, managing flooding, and preserving regional ecosystems. Pristine beaches and clean, beautiful, and healthy water are also important economic drivers for regional industries such as tourism, maritime, and defense.

Untreated stormwater carries trash, metals, pesticides, and other pollutants that threaten the health and safety of San Diegans — making the urgent investment in updating and upgrading stormwater infrastructure essential. Stormwater infrastructure includes features such as streets, storm drains, curbs, and gutters that carry surface water into local waterways. Federal and state laws require local governments such as the County of San Diego (County) to reduce pollutants in stormwater runoff from both public and private properties.

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Stormwater programs and infrastructure are critical to protecting and improving the quality of downstream surface waters such as our rivers, creeks, and oceans.

The County currently invests a significant amount of money into activities that address stormwater runoff, approximately \$50 million per year. However, this amount falls far short of the approximately \$100 million per year that is required to make genuine progress towards *reducing* pollution, rather than simply maintaining the status quo, and preventing the situation from deteriorating even further. **We face a \$50 million per year annual deficit in protecting our oceans, rivers, and waterways from toxic pollutants from stormwater runoff. In addition, the costs to meet our stormwater infrastructure needs are expected to grow in the coming years.**

Furthermore, the County is subject to Clean Water Act (CWA) permit requirements enforced by the Environmental Protection Agency (EPA). Enforcement of these requirements by the EPA as well as third-party lawsuits could introduce the risk of incurring additional costs that average \$10,000 per day per violation, which could amount to over \$3,650,000 per year. These additional costs could potentially further deplete any viable stormwater funding streams.

The County has worked diligently to keep up with changing stormwater requirements, updating and upgrading infrastructure, treating water that runs off from urban areas, and addressing the consequences of climate change. However, with limited funding streams, these efforts are simply not enough. This issue is faced by not only the County but also by other jurisdictions in the San Diego region and statewide. This item recommends County staff identify and pursue all available funding opportunities, especially new federal funding, to support and advance stormwater management and infrastructure in the unincorporated area, and to work with regional partners, as appropriate, to ensure a coordinated approach that benefits the region.

RECOMMENDATION(S)

SUPERVISOR TERRA LAWSON-REMER

1. Find that the proposed action is not a project under the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(4) of the State CEQA Guidelines because it involves government fiscal activities, including the identification of funding without a commitment or approval of specific projects.
2. Direct the Chief Administrative Officer to move immediately and with urgency to identify and pursue new federal funding opportunities made available under the 2021 Federal Infrastructure Investment and Jobs Act to invest in our stormwater infrastructure and protect the health and water quality of our oceans, rivers, and wetlands.
3. Direct the Chief Administrative Officer to identify and pursue any and all funding opportunities to support and advance stormwater management and infrastructure in the unincorporated area, including working with regional partners, as appropriate, to ensure a coordinated approach that benefits the region.

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EQUITY IMPACT STATEMENT

As extreme weather conditions become more frequent due to climate change, it is critical, that the County upgrade the region's stormwater facilities, as it will have a direct impact on low-income communities and communities of color. Risk of flooding and failure to capture stormwater runoff can create damage to neighborhoods and interrupt access to transportation, education, and healthcare services. Untreated stormwater carries trash, metals, pesticides, and other pollutants that threaten the health and safety of San Diegans.

It is of paramount importance that we update and upgrade our stormwater infrastructure so that our communities, especially those that have lacked prior investment, are able to benefit. For example, modernizing the system to create green infrastructure can capture and treat rainfall and significantly reduce the amount of pollution entering local waterways. In this context, green infrastructure includes features such as natural vegetated areas that are designed to absorb stormwater and allow it to naturally infiltrate into the ground or move through engineered soils that are designed to remove pollutants in the water before it enters local waterways. Focusing on implementation of this green infrastructure promotes community adaptation and resilience and can provide additional workforce opportunities.

FISCAL IMPACT

There is no fiscal impact associated with today's request to identify and pursue funding opportunities to support and advance stormwater management and infrastructure in the unincorporated area. There may be impacts as a result of identifying funding opportunities in the future and would need to be brought back to the Board for approval as needed.

BUSINESS IMPACT STATEMENT

The proposed actions will help businesses and workers in the unincorporated area through advancing stormwater projects which will provide workforce opportunity.

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

Healthy rivers, creeks, lakes, groundwater, lagoons, bays, and coastal estuaries are imperative to preserving the high quality of life enjoyed throughout San Diego. These waterbodies are vital to maintaining public health, providing a local water supply, managing flood control, and preserving regional ecosystems. Pristine beaches and clean, beautiful water are key focal points of the tourism industry and represent an important economic driver for the region. Stormwater infrastructure is an essential part of maintaining this quality of life because stormwater can be a substantial contributor to water quality issues in local waterways. However, the San Diego region is facing significant challenges in achieving compliance with stormwater regulations and keeping up with stormwater requirements. This issue has been building for decades, due to a lack of ongoing funding streams and technical complexity associated with meeting stormwater permit requirements.

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In California, stormwater compliance is heavily impacted by the Federal Clean Water Act (CWA), which is a powerful tool for the protection and remediation of water ways. Amendments to the CWA in 1987 forced responsibility to industrial and municipal dischargers to control pollutants in stormwater runoff through the National Pollution Discharge Elimination System (NPDES) Permit Program. The 1987 amendments also required municipal agencies such as the County to have controls in place to reduce pollutants from entering local waterways to the maximum extent practical. This provision specifically applies to the Municipal Separate Storm Sewer System (MS4), which includes features such as streets, storm drains, curbs, gutters, and other components that convey surface water into local waterways. The State Water Resources Control Board and Regional Water Quality Control Boards (collectively referred to as Water Boards) implement and enforce regulations pertaining to local MS4 systems. As such, the Water Boards issue stormwater-related permits to municipalities such as the County, which specify actions that must be implemented to ensure compliance with the CWA. Regulatory agencies may issue compliance orders or bring civil lawsuits against persons or municipalities that are not in compliance with applicable stormwater permits. In addition, regulatory agencies can administer civil penalties that average \$10,000 per day per violation. There are thousands of points at which water enters and exits County stormwater infrastructure, so without additional and substantial investment in updating and upgrading the MS4, the County is at risk for litigation. Addressing lawsuits and paying fines for violations could potentially further deplete any viable funds that the County enterprise currently has set aside for stormwater.

To address existing stormwater regulations, the County implements a robust stormwater program that costs approximately \$50 million per year to implement. This program crosses multiple County departments and involves activities in the private sector. The County implements extensive public education, inspection, and code compliance activities to ensure that private property owners in unincorporated communities are employing stormwater best management practices (BMPs). Stormwater BMPs are measures to prevent or control polluted runoff from entering the MS4 and local surface waters. The County inspects industrial and commercial businesses, commercial agricultural businesses, residential neighborhoods, and privately operated construction projects. The County also conducts robust monitoring to test water quality and measure success toward meeting water quality goals. County facilities must also employ stormwater BMPs during and after construction. Capital improvement projects managed by the Departments of General Services, Public Works, and Parks & Recreation incorporate engineered features that infiltrate or treat stormwater runoff to remove pollutants. This adds to departments' capital and maintenance budgets as these BMPs must be regularly inspected and maintained to ensure they are functioning properly. Stormwater controls are also required on private developments. The County reviews and inspects private developments in the unincorporated area to ensure they meet mandated stormwater treatment requirements during the planning, final engineering, construction, and post-construction phases.

The County also has a capital project program for stormwater that involves green infrastructure. Green infrastructure uses natural processes like filtration through plants and soil to treat

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stormwater runoff. Specifically, engineered features are implemented in roadway rights-of-way and other public spaces and include components such as shallow basins containing plants, engineered soils, and underground treatment systems, which slow down water flows and allow water to naturally seep into the ground or filter through the treatment systems to remove pollutants and improve the quality of stormwater before it enters the MS4.

The County recently finalized the Green Streets Clean Water Plan, which is changing the way in which stormwater management is approached along the 1,200 miles of roads in the unincorporated area. The Green Streets Clean Water Plan identifies high priority locations where green infrastructure can be placed within or adjacent to the roadway right-of-way to clean stormwater runoff before it reaches surface waters. These types of projects have potential to create construction jobs, opportunities for green infrastructure skills training, and have other benefits for the surrounding neighborhoods, such as increasing property value and increasing green spaces and trees in communities.

Since most developed areas in the San Diego region were built more than 20 years ago before stormwater regulations were initiated, many communities do not have stormwater infrastructure that meets current standards. As a result, the County's capital project program for projects and retrofits of the existing built environment to improve stormwater infrastructure will be necessary to address water pollution and meet current stormwater requirements. These additional projects are costly to build and maintain and are estimated to increase the annual stormwater compliance costs for the County from \$50 million to up to \$100 million per year. Cumulatively, this results in a multi-billion-dollar shortfall to upgrade and modernize regional infrastructure and add new stormwater treatment infrastructure to address urban runoff. This issue is not faced by the County alone and is a significant issue both regionally and statewide.

Identifying funding for implementation and operation of stormwater projects is difficult and complicated due to restrictions associated with California Proposition (Prop) 218, which was enacted in 1996. This state proposition requires a two-thirds vote of the people to levy special taxes or fees for facility upgrades and maintenance. While the proposition exempted some utility fees such as water, sewer, and refuse collection, it failed to exempt stormwater from requiring a vote of the people to levy special taxes. In 2017, Governor Brown signed SB 231 which attempted to clarify Prop 218 by including stormwater within the definition of "sewer" as an exempted service. However, this has not been tested in court, and many jurisdictions are hesitant to enact a tax to increase funding for stormwater without a ballot measure due to the threat of litigation.

The expense of implementing stormwater projects, combined with lack of an ongoing dedicated funding stream has resulted in a shortfall in stormwater infrastructure investment throughout the state. This has led to a lack of new projects that have the potential to conserve water, improve water quality, reduce greenhouse gases, protect against erosion and flooding, and make our communities more resilient to climate change driven events such as the catastrophic storms that have ravaged many parts of the United States, Europe, and Australia in recent years.

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The Federal Government administers and funds several programs to assist state and local government in managing stormwater infrastructure needs. The largest program is the Clean Water State Revolving Loan Fund (CWSRF) that the U.S. Environmental Protection Agency (EPA) oversees and is administered by the state. Though subject to annual appropriations, the general CWSRF received a significant boost in funding (close to or above \$2 billion annually in addition to annual appropriations, through 2026) under the recent infrastructure bill enacted in November 2021, the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58). Not only was funding increased, but specific language was included to permit negative interest loans and loan forgiveness. Additionally, the legislation created additional programs for pollution control and to track emerging contaminants. Below are federal funding programs authorized under IIJA and the Clean Water Act that the County should investigate further:

- Clean Water State Revolving Fund – General Fund and Emerging Contaminants Fund
- Wastewater Efficiency Grant Pilot Program
- Sewer Overflow and Stormwater Reuse Municipal Grants
- Clean Water Infrastructure Resiliency and Sustainability Program
- Stormwater Infrastructure Technology

Today's action to continue to identify and pursue all available funding opportunities to support and advance stormwater management and infrastructure in the unincorporated area will help ensure we are on a pathway to remedy our stormwater funding issue, shift us closer to a greener economy, and address climate injustices.

ENVIRONMENTAL STATEMENT

Today's request to identify and pursue funding opportunities to support and advance stormwater management and infrastructure is not a project as defined under the California Environmental Quality Act (CEQA) pursuant to Section 15378(b)(4) of the CEQA Guidelines. The proposed action seeks to authorize the County to identify additional funding opportunities to offset costs required to develop and implement future stormwater projects. Since the action involves delegation of authority to seek additional funding without a commitment to implement any particular project, the action is not a project that requires CEQA review. If future funding is identified for projects, those projects will be required to comply with CEQA prior to project implementation.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed actions supports Sustainability, Community, and Equity initiatives in the County's 2022-27 Strategic Plan by providing infrastructure and building safe communities to improve the quality of life for all residents and to invest in communities that have too often been left behind.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Terra Lawson-Remer', with a stylized flourish at the end.

**TERRA LAWSON-REMER
Supervisor, Third District**

ATTACHMENT(S)

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