

To: Board of Supervisors  
From: Julia R. Bueren, Public Works Director/Chief Engineer  
Date: December 6, 2011



Contra  
Costa  
County

Subject: Approve Fee Report for the "2012 Community Clean Water Initiative" and resolutions

**RECOMMENDATION(S):**

Acting as the governing board of the Contra Costa County Flood Control and Water Conservation District:

1. Adopt Resolution No. 2011/465, initiating proceedings to obtain approval of a new property related fee throughout Contra Costa County, approving the 2012 Community Clean Water Initiative Fee Report (attached as Exhibit A) and fixing a public hearing for February 7, 2012, at 10 a.m. in the Board chambers to consider property owner protests to the proposed property related fees.

2. Adopt Resolution No. 2011/467, establishing Proposition 218 election procedures applicable to the proposed fee.

(ALL DISTRICTS)

APPROVE

OTHER

RECOMMENDATION OF CNTY ADMINISTRATOR

RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: 12/06/2011

APPROVED AS RECOMMENDED

OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYES

NOES

ABSENT

ABSTAIN

RECUSE

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

**ATTESTED: December 6, 2011**

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Mitch Avalon, (925) 313-2204

cc: David Twa, Tom Geiger, Mitch Avalon, Mike Carlson, Tom Dalziel

## **FISCAL IMPACT:**

Election costs of approximately \$526,500 will be paid by the participants of the Contra Costa Clean Water Program (CCCWP), which includes the Flood Control District, County and 19 cities and towns. The cost sharing in the CCCWP is based on population. The County's share is \$83,900, which is 15.94 percent of the total. The District, which has no population, does not have a share. The County's share will be paid from a CCCWP reserve fund paid into with Clean Water Program funds over the last several years to fund the fee election.

## **BACKGROUND:**

The CCCWP came into existence in February 1991 in response to amendments to the Federal Clean Water Act addressing urban runoff, or as it is more commonly referred to, stormwater pollution. The San Francisco Bay and Central Valley Regional Water Quality Control boards (Water Boards) issue National Pollutant Discharge Elimination System (NPDES) stormwater permits to all of the cities/towns in the county, the county, and the Flood Control District, referred to as co-permittees. These permits include specific actions to improve water quality. These NPDES stormwater permits are issued for a five-year term, but often remain in place longer as it takes a significant period of time for the Water Boards to issue a new permit.

The first two stormwater permits issued to the co-permittees adopted Stormwater Management Plans developed by the co-permittees. These permits allowed co-permittees to select best management practices to reduce or eliminate stormwater pollution. The current permit includes most of the municipalities in the San Francisco Bay Area, and is known as the Municipal Regional Permit (MRP). The MRP was approved by the San Francisco Bay Water Board in 2009 and by the Central Valley Water Board in 2010. The MRP was written by the Water Boards with very strict conditions that specify exactly what activities the co-permittees must perform to be in compliance. These requirements are much more costly than the requirements of prior permits and have resulted in funding shortfalls. The funding shortfall for the unincorporated County, for example, is estimated to be \$14 million over the life of the five-year stormwater permit. Although these requirements are federally mandated, there are no federal or state funding sources to pay for the permit requirements. Annually, each co-permittee must demonstrate compliance with the permit conditions. Jurisdictions that are found to be in non-compliance are subject to fines of \$10,000 per day per violation and \$10 per gallon of discharge. In addition, the Water Boards can issue "cease and desist" orders. Third-party lawsuits against permittees to enforce the provisions of the Federal Clean Water Act are also a possibility.

When the MRP was being negotiated several years ago, it became clear the existing funding would prove insufficient to pay for increased regulatory mandates. The CCCWP therefore acted proactively by reserving monies contributed by its members to explore alternative sources of funding that would be needed after the MRP was approved. Funds were reserved in subsequent fiscal years until a total of \$1.55 million was collected. These funds were then tapped to retain a consultant in August 2010 to advise on funding issues. A contract between the consultant, SCI Consulting Group (SCI), and the Flood Control District, on behalf of the CCCWP, set forth the following five tasks:

Task 1. Background Analysis and Research

Task 2. Future Program Cost Analysis

Task 3. Potential Funding Sources Analysis

Task 4. Opinion Research and Surveys

Task 5. Stormwater Funding Needs and Options Report.

Phase I sought to address whether there is a preferred financing alternative the public would support to increase funding to improve water quality in the San Francisco Bay-San Joaquin Delta through implementation of the MRP.

An enormous effort ensued, which included research; determining how much funding co-permittees needed to implement the five-year MRP within their jurisdictions; a review of alternative financing methods; a telephone public opinion survey and a survey mailed to property owners, extensive analysis by the consultant and District staff, and finally development of a recommendation.

## **FEE PROPOSAL:**

Based on the above effort and the consultant's recommendation, District staff recommends a property related fee that is imposed countywide, with different fee rates based on different watershed areas. The fee measure will first require a public hearing and majority protest proceeding. In the absence of a majority protest by property owners, the measure then proceeds to an election by mailed ballot over a minimum 45-day voting period. Each parcel has one vote, and passage requires approval of a majority of the voting property owners. This measure would be sponsored by the Board, as governing board of the Flood Control District. The CCCWP is calling the measure the "2012 Community Clean Water Initiative." It includes a 2 percent maximum annual cost-of-living adjustment provision and a 10-year sunset provision.

The recommendation for watershed-based rates is the result of extensive public opinion research and surveys. SCI conducted research, first by telephone, and then by a mailed survey. Mail surveys were sent to 27,000 residential, business, apartment and other property owners. The surveys assessed support for a \$22 annual fee per parcel throughout the 19 cities/towns and unincorporated communities. More than 5,000 property owners returned the survey (21.32% return rate). Countywide, 52 percent

of the respondents supported a \$22 fee. But there was considerable variability between communities. Exhibit B attached hereto shows the breakdown by community.

The following fees would be charged to “average” single family residential parcels:

- West County watersheds (Hercules, Pinole, Richmond, and San Pablo): \$19/parcel/year.
- Central County watersheds (Clayton, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Orinda, Pittsburg, Pleasant Hill, San Ramon, and Walnut Creek): \$22/parcel/year.
- East County watersheds (Antioch, Brentwood, and Oakley): \$12/parcel/year.
- Unincorporated County: \$19/parcel/year, regardless of location within the County.

#### FEE CALCULATION:

An “average” single family residential parcel is considered to be a parcel with one single-family residence that is 5,000 to 21,780 square feet in size. Single family residential parcels that are smaller than this range would pay half the fee that is applicable to the average single family residential parcel. Larger single family residential parcels would pay 1.8 times the amount of the average single family residential parcel fee. The rationale for these differing fee amounts is that the larger the lot, the more impervious surface area is installed. Similarly, impervious surfaces on other types of residential properties and commercial properties have been evaluated in order to determine the fees that should apply to those parcels. Exhibit C attached hereto shows the fee rates for different types of residential and commercial parcels in the three fee areas in the County.

County- and District-owned parcels are not exempt from the proposed fees. Vacant County and District parcels would not receive a charge, but parcels with impervious surfaces would be charged a fee similar to a privately owned parcel.

#### SCHEDULE

- December 6, 2011: Board of Supervisors Approves Resolutions- Accepting Fee Report- Establishing Proposition 218 Process- Initiating Proposition 218 Process – fixing hearing date
- December 16, 2011: Mail Notice of Public Hearing (Attached as Exhibit D)
- February 7, 2012: Public Hearing at Board of Supervisors as the governing body of the Contra Costa County Flood Control & Water Conservation District (majority protest proceeding)
- February 21, 2012: Mail Ballots to property owners (Attached as Exhibit E) along with the Ballot Guide (Attached as Exhibit F)
- April 6, 2012: Balloting closed
- May 8, 2012: Tabulation of ballots completed
- June 5, 2012: Board of Supervisors Approves Resolutions - Accepting election results - Facilitating charging of the fee

An agreement will need to be executed between the Flood Control District and the cities/towns and County that describes how the fee revenue will be calculated, collected, and then dispersed to the co-permittees. This agreement will be included for approval by the board on June 5, 2012 when the election results are accepted and fee collection authorized.

#### **CONSEQUENCE OF NEGATIVE ACTION:**

Failure to generate additional revenue to implement the mandatory requirements of the MRP could cause one or more of the twenty-one co-permittees to be found in non-compliance, which could result in fines (Administrative Civil Liabilities) of \$10,000 per day being levied. The County’s share of fines levied by the Water Boards would be paid by the unincorporated County’s watershed program until funds are exhausted and then would have to be paid out of the General Fund.

#### **CHILDREN'S IMPACT STATEMENT:**

Not applicable.