



LOS ANGELES AREA
CHAMBER OF COMMERCE

May 10, 2018

Los Angeles County Board of Supervisors
Kenneth Hahn Hall of Administration
500 West Temple St.
Los Angeles, CA 90012

Dear Supervisors,

Thank you for the opportunity to comment on the draft proposal for the LA County Safe, Clean Water Program. Our assessment is that at this time, the proposal lacks the transparency and detail required to impose \$400 million annually of new taxes on the property owners of Los Angeles County.

The proposal does not disclose the extent to which the proposed tax would enable the cities and LA County to meet their mandatory Regional Water Quality Control Board, LA Region (RWQCB) storm water quality standards (MS4 compliance), or the measurable amounts of new local water supplies to be created. Without these details, public officials, property owners, and voters do not have a reasonable basis to support a new property tax.

Honest and fair characterization of the need and measurable outcomes, if the County tax is approved, will build public trust and appropriate accountability in the public sector to deliver on promises made to justify a new tax.

Given the imperative of meeting the water quality mandate issued by the RWQCB, this should be the main objective of any new County tax proposal. The necessity to comply with this requirement is explainable to the public, and potentially a justifiable reason to ask voters for new taxes.

A plan developed in close cooperation with the cities to meet the mandate is clearly within the purview and means of the County. The merits of the plan should be the basis for a new tax, and is the only reasonable way for the voters to make an informed decision.

To date, we have only seen general characterizations of the County's aspiration to achieve unspecified water quality and water supply benefits if the "program elements" and tax are approved. Broad claims that more storm water can be captured during infrequent large storms do not provide the level of transparency and detail that taxpayers have a right to expect when making a decision of this magnitude.

No analysis has been provided on the extent to which MS4 compliance will be achieved, or how much it will cost, if the "program elements" and proposed tax are approved. Nor, have we been informed about how much new local water supply would be created, and at what cost per acre-foot. No water supply needs or alternatives analysis has been completed for review and comment by local water agencies, the public entities that are legally responsible for assuring adequate water supplies for our people and economy.

In the recent report issued by the Southern California Water Coalition on Storm Water, and in the earlier LA Department of Water & Power Storm Water Master Plan, it was demonstrated that certain types of storm water collection investments are much more cost effective than others. The County's plan should prioritize the most cost-effective measures that can achieve MS4 compliance.

In a comment letter submitted to the County in February 2018, local water agencies recommended consideration of using existing water treatment and supply infrastructure to collect, treat and recycle storm water, particularly the most contaminated dry weather and first flush flows. Because the costs and feasibility of using and expanding existing public infrastructure can be identified, this approach should be evaluated before the voters are asked to approve a new tax. This will not only help minimize duplication of public investments and avoid stranded public assets, it will provide a greater understanding of how existing infrastructure can be improved to meet essential water quality, water supply and resiliency objectives.

A proposal to tax first and figure out the specifics of the plan later will not be acceptable to most residential and business property owners in Los Angeles County.

Here are recommendations we suggest you consider before proceeding with the proposed County tax:

1. A written plan should be prepared for public review that sets clear, measurable objectives, and prioritizes countywide compliance with MS4.
2. The plan should prioritize funding for projects that utilize existing and planned sanitation and water supply infrastructure, to the extent technically feasible and cost effective relative to alternatives. Cost effectiveness should be measured and compared based on all capital, operations, and maintenance costs.
3. New and retrofitted regional storm water collection facilities that help multiple jurisdictions meet MS4 requirements and provide multiple benefits should also be a priority for funding.
4. Building the distributed collection facilities favored in the County's current plan may still be useful, but this goal should not be ranked higher than facilities and measures listed in 1-3 above, unless an objective evaluation by qualified experts can demonstrate them to be more cost effective in achieving MS4 compliance.
5. Achieving additional water supply and environmental benefits could be part of a thoughtful strategy to achieve MS4 compliance. These investments would be especially cost effective if they can leverage available funds from other sources, e.g., State Water Bonds, federal grants and MWD funding. Clear criteria and measurable outcomes for these types of expenditures would be essential to inform voters and assure accountability.

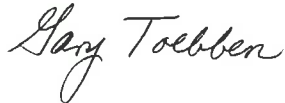
6. If the voters approve an MS4 compliance funding measure based on a written plan as recommended, the County's role would be to implement the plan as approved. An independent audit function should be established to provide regular review and public disclosure on implementation of the plan.

With a transparent plan that meets these criteria, and includes a more detailed cost estimate, voters will have a much greater ability to assess the proposal and determine whether to support a new tax. However, an open-ended tax cannot be justified. A reasonable sunset provision should be added.

More detailed comments on the Program Elements and proposed tax are attached.

These comments and suggestions are offered in the spirit of achieving MS4 compliance and investing wisely in the creation of more local water supplies. We will be pleased to work with the County towards these goals.

Sincerely,

A handwritten signature in cursive script that reads "Gary Toebben".

Gary Toebben
President and CEO
Los Angeles Area Chamber of Commerce

Additional Comments on Proposed LA County Safe, Clean Water Program

May 11, 2018

General Comments

- Overall, taxpayers and voters cannot make an informed judgment on the proposed program because it is not structured to permit a reasonable estimate of the cost or outcomes, before the tax is imposed. Once imposed, the tax could not be undone or modified without a new election called by the County Board of Supervisors or through initiative. This is not a reasonable remedy given the cost of a new election. It is much better for all concerned to have a clear program with sufficient detail on objectives, criteria for project funding, and measurable outcomes specified at the outset.
- The program as presented presents a high risk of waste, duplication of service by public agencies, inefficiency, and failure to fully meet mandatory MS4 compliance standard.
- The County is not currently in the business of water supply or storm water collection at the scale proposed. Without a defined plan, and any experience in the County's recent history that can give taxpayers reasonable assurance that it can accomplish meaningful storm water collection objectives, it is impossible to know what will be achieved, or to have confidence the money will be well spent.
- The proposed program appears to be premised on a perceived need to meet several broad goals related to water quality, water supply, and climate change resiliency. The proposed tax language confirms this orientation: "Shall an ordinance intended to improve and protect water quality; increase safe drinking water supplies; protect public health; reduce storm water pollution entering Los Angeles county waterways and beaches; prepare for future droughts; protect marine life; and upgrade outdated water infrastructure by establishing a parcel tax of x (x) cents per square foot of impermeable surface, exempting low-income senior citizens, raising x million dollars annually until ended by voters, with audits, oversight and local control of funds be adopted?"
- No detail has been provided on what existing infrastructure is outdated or can be improved, and at what cost. Nor does the proposed ballot language inform the voter of how the tax moneys would be spent and allocated to meet each of the other stated goals. The proposed Program Elements fail to provide any more meaningful detail. The proposed Program Elements only assert that: "The SCW Program will help put Los Angeles on a path to water resiliency and economic security through equity-focused strategies and policies to increase drought preparedness, improve water quality and public health, grow good jobs, build capabilities, and remove barriers." How these objectives will be met is not explained. Funding criteria and a decision making process are suggested, but

there are no critical details on how these measures will result in definite and measurable outcomes.

- The proposed ballot language, taken together with the Program Elements, do not sufficiently inform the voters how these goals would be met. In fact, the lack of specificity appears to be more advocacy than an objective and fair presentation of what the tax would achieve if approved (See *Stanson vs. Mott*).
- The ballot language and the Program Elements could be greatly improved if it were clearly disclosed to the voters that the cities and the County have a largely unfunded mandate to comply with the Clean Water Act by the State of California (MS4), and that a tax is necessary to assure compliance without significant penalties that will increase the cost of compliance. It would also be fair to state that in developing projects and programs to achieve compliance, there may be cost effective opportunities to “help put Los Angeles on a path to water resiliency and economic security through equity-focused strategies and policies to increase drought preparedness, improve water quality and public health, grow good jobs, build capabilities, and remove barriers.”
- In order to provide voters the needed detail and transparency, a plan should be adopted that makes clear the primary objective of the new tax will be to expeditiously, and as cost effectively as possible, achieve MS4 compliance. The plan should also state that to the extent feasible and cost effective, compliance would be achieved by using, and expanding as necessary, existing infrastructure.

Specific Comments

- The definition of “Disadvantaged Community” should be related to a map that identifies the communities that fit the definition criteria. This will promote transparency, and help in the evaluation of how targeting expenditure of tax revenues for specific purposes authorized by the tax could relate and promote MS4 compliance, water supply, and climate change resiliency.
- The definition of “Impermeable Area” should include unpaved areas with a certain scientifically validated slope grade, proximity to streets, and other paved areas that drain to storm drains and other water bodies protected by the Clean Water Act. In major storm events, where the first flush is regulated, and where additional opportunity may exist for collection and storage for water supply, the volume of water coming from impermeable areas should be compared to the volume of water from unpaved areas. This should be done to estimate the relative contributors to dry weather flows. It is likely that in these types of events, and particularly in conditions where unpaved surfaces are already saturated, significant volumes of storm water flow from unpaved surfaces as well as paved surfaces.

- Given the broad stated purposes of the tax, and the multiple contributors to dry weather flows (urban run off) and storm water runoff from major storms, the proposed tax method arbitrarily and unfairly places the burden of a new tax, with no expiration and at a point in time. This burden would be placed on impermeable surfaces on the property of homeowners and businesses identified by a proposed computer model. In addition to the basic fairness questions the impermeable surfaces approach raises, the efficacy and flexibility to recalculate individual tax burdens without substantial difficulty and burden on individual taxpayers needs to be fully evaluated.
- The proposed broad exemptions for school and public agency property exacerbate the problem of concentration of the tax burden on homeowners and businesses. Broadening the tax to all property in the County might be the best alternative. Reasonable provision could be made for exemptions for property owners that can demonstrate, in accordance with standard criteria, all urban runoff and storm water will be contained under defined conditions related to achieving MS4 compliance. Such a tax would be fairer and result in less of a burden on individual property tax payers because the program cost would be spread across a much wider base of property owners. The extent of that base could be sized to only encompass property that contributes flows that require management to comply with MS4. That property base would certainly be much larger than the footprint of impermeable surfaces in the County, and would provide a more accurate and fairer way to fund a new storm water tax.
- There would also be many challenges in fairly administering a tax based on impermeability. Individual property owners will want and should have the ability to demonstrate that the County's calculation of square footage of impermeable area is not valid. Or, that they allow none, or very limited Urban Run Off and storm water from their property, and therefore should not be subject to the tax. Some may choose to remove hard surface to reduce their tax burden and will expect an efficient means to reduce their tax accordingly. A broad based tax as described above impose on lot size would not only be fairer, but much easier to administer.
- There should also be recognition of property owners, such as industrial dischargers, that are individually permitted by the Regional Water Board to manage their storm water. They could be given credit for the contribution they are making to minimize the impact of storm water, including Urban Run Off, from their property. Their cost of fees paid for permits, and on-site improvements, may be deserving of exemptions or credits commensurate with their efforts. This group of dischargers could also be an important part of a credit-trading program currently under consideration by the RWQCB, that could facilitate more cost effective compliance with MS4 by cities and the County.

- Another issue deserving of recognition and a remedy is the potential difficulty that property owners will face with tenants when they try to pass through a new storm water tax.
- “Nature-Based Solutions” should be related to MS4 compliance, since the proposed storm water measure is not primarily a water supply program, only incidentally. There is the possibility that the County is seeking to establish and fund a Climate Change resiliency program as part of this effort, but it is difficult to discern what that program would be, or how Nature-Based Solutions would relate, without a plan in place that is supported by a scientifically validated assessment of specific expected impacts, vulnerable locations and populations, and the relative cost and feasibility of measures that could be taken to mitigate those impacts.
- “Project Applicant” should be limited to individuals and entities subject to an MS4 compliance order. The definition could potentially be expanded for authorized Climate Change Resiliency projects, if a strategy and plan were adopted as described above, and approved by the voters. Same comment for “Project Developer”.
- All other definitions should be reviewed and revised to comport with a program that is structured for the primary purpose of achieving MS4 compliance in LA County.
- Equity for Disadvantaged Communities and providing Community Investments are laudable goals and worthy of consideration in the County’s program. These goals should be considered in the context of a primary objective of achieving cost effective MS4 compliance. To the extent that MS4 compliance project choices cost more than available alternatives, the public funding required to pay for these projects will be higher. Property owners and tenants in “disadvantaged communities”, as well as low and fixed income property owners and tenants anywhere in the County, can be disproportionately harmed by higher taxes. A lower tax rate, with a term will naturally benefit these most cost sensitive populations. Higher income communities and tax payers will always have the option to choose higher cost storm water collection measures, but the high percentage of low and moderate income property owners and tenants in Los Angeles County demands the least cost alternatives when using public funds to meet basic water supply, sanitation, storm water collection, and flood control needs.
- “Equity” is also an illusive term to base a program on, much as other difficult terms like “resiliency” are to define and gain consensus on. It might be possible to achieve agreement on what these terms mean in the myriad of conditions that exist in LA County, among a hand picked group of “representatives” tasked with making funding decisions for the new tax program. But that is more akin to a legislative process where there is no expected measurable outcome from use of

the public's tax money, only that the process is open and where all interests can be heard. This model is ill suited to meet the cost of the pressing MS4 mandate that is upon us, most efficiently and within the time required. The goal should unambiguously be MS4 compliance. While the criteria for grants could include due consideration of "equity" and "resiliency", to suggest these should be independent goals would transform the program, and make it even more difficult for the public to evaluate the cost, outcomes, equitable apportionment of benefits, and value of using new property tax funds for this purpose.

- A credit, incentive, and rebate supplemental program designed to leverage private capital and other resources to achieve MS4 compliance should be a part of the County's overall program. This injection of additional money from other sources could reduce the cost for property taxpayers. This possibility merits development of a "storm water credit trading" program based on similar programs that have been successfully implemented in other parts of the Country. This supplemental program should be sufficiently developed for voters to be able to evaluate as part of the proposed County program and tax.
- Relative to the proposed SCW Program Requirements and governance method, the proposal should be revamped entirely to provide grant criteria and measurement of success based primarily on an overarching goal of cost effective MS4 compliance by Municipalities and the County. The "Program Requirements" are not and cannot be sufficiently described in the draft "program elements" by design. Which projects will be funded and for what purposes, will be subject to later determination by the described "Program Requirements" and governance process. In contrast, if MS4 compliance is the primary goal, the cost of meeting that goal can be reasonably estimated, particularly if the priority is utilization of existing infrastructure to the extent feasible. As structured, the cost of the Program cannot be fairly estimated. Nor, can it be fairly represented to the voters that they will not have to pay additional local taxes to comply with the mandatory MS4 Order of the Regional Board because the cities do not receive sufficient funding under the proposed County tax funding allocation.
- Proposed expenditures for water supply and Climate Change resiliency are not mandatory, and without a plan of action with specific projects and measurable outcomes, it is impossible to know if expenditures for these purposes are necessary, or would be duplicative of work that could be done under existing authorities and funding mechanisms.