City of Whittier

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Jeffrey W. Collier
City Manager

May 11, 2018

The Honorable Sheila Kuehl
Chair, Los Angeles County Board of Supervisors
821 Kenneth Hahn Hall of Administration
500 W. Temple Street
Los Angeles, CA 90012

Re: Safe Clean Water Program Expenditure Program

Dear Supervisor Kuehl:

The City of Whittier appreciates the Board of Supervisors' leadership on the development of the Safe Clean Water Program and the extended efforts to engage cities in the stakeholder process to draft a parcel tax for stormwater compliance programs, drought preparedness, water quality, and water sustainability.

There is no question that a funding source is needed to assist the County and cities in meeting their currently unfunded obligations under their respective 2012 municipal separate storm sewer permits (MS4), which contain the most stringent water quality requirements in the country. The Los Angeles County Department of Public Works has estimated that the total countywide capital costs to comply with the permits exceed $20 billion. In the City of Whittier, the cost to comply with our permit is estimated at $14,700,000.

The proposed Safe Clean Water Initiative is intended to establish a revenue source via a parcel tax to fund stormwater infrastructure. We have long recognized the need for a revenue source for this purpose. However, we find it difficult to take a specific position on this initiative due to a variety of issues swirling around this matter. These include:
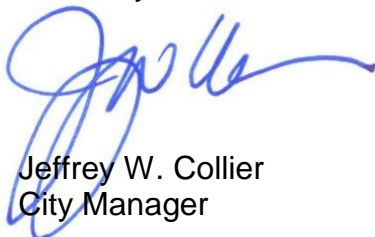
1. The State Auditor General's report of March 1, 2018, concerning stormwater permits which recommends a number of specific actions for the State Legislature and Water Boards.

2. The Cities of Gardena and Duarte have filed a lawsuit challenging the 2012 MS4 Permit and seeking to void the Permit, including Enhanced Watershed Management Plans (EWMPs). A number of Gateway Cities

Council of Governments (GCCOG) cities are involved in this lawsuit, including Cerritos, Lakewood, Santa Fe Springs, South Gate and Whittier. The trial is now over and the court is expected to render a decision in June or July. The legal team for Gardena is optimistic about their chances to prevail. As part of the trial, Gardena asked the court to take "judicial notice" of the State Auditor General's report.

3. The State Supreme Court recently refused to hear the Water Board's appeal of the decision by the Appellate Court that watershed management programs exceed federal regulations and are therefore unfunded mandates under the California Constitution. The Court held that water boards cannot put a requirement in an MS4 Permit that is not required under federal law and then call it a federal requirement by virtue of being in the permit. The EWMP is the case in point.

4. The Regional Water Board is holding a workshop on the MS4 Permit on May 10th. A number of cities plan to raise the State Auditor General's report findings and the unfunded mandate decisions at that workshop.

Again, while there is a need for a revenue source to fund stormwater infrastructure, the cloud of issues surrounding the MS4 Permit make it difficult to clearly express support for the proposed Safe Clean Water Initiative. Once the MS4 Permit costs are brought into line with other regions of the State, it would then be much easier to determine the true amount of revenue needed from a potential parcel tax to fairly assess property owners. As such, it may be more appropriate for the Gateway Cities COG to not take a position at this time and instead encourage their members to submit individual city comments on the proposal.

Sincerely,

Jeffrey W. Collier
City Manager

CC: Katy Young, Office of Supervisor Sheila Keuhl
        Russ Bryden, LAC Department of Public Works
        Leslie Friedman-Johnson, CNRG
        Kristine Guerrero, LA County Division, LOCC