A History of Stormwater Funding

An overview of how Stormwater Services have been funded over the years

Prior to 1978

Stormwater was managed through storm drainage systems built and operated by cities, counties, and Flood Control Districts throughout the state. Major drainage facilities were funded by Flood Control Zones, which were taxing entities established by county flood control districts on a watershed basis. The Flood Control Zones often worked with local community committees to establish the work program and budget necessary each year to pay for managing the stormwater drainage system. The budget requests went to the County Board of Supervisors which was compiled with all other budget requests and resulted in a composite property tax rate for the year. Tax rates at the time hovered around 3%, and property value could be reassessed annually (based on market value) at the discretion of the County Assessor.

Proposition 13

In 1978 California voters passed Proposition 13, reducing property tax rates by about 57%. The basis for property tax calculation was rolled back to the 1976 assessed value. Reassessment of property value was allowed only upon change in property ownership and the assessment was limited to 1% of the sales price. Revenue for stormwater management agencies, such as a Flood Control Zone, was reduced significantly and the tax rate was locked in at the 1976 adopted rate. As time went on, stormwater management agencies could not raise revenue to keep up with needed construction, major maintenance, or replacement of failed drainage facilities.

Proposition 218

After Proposition 13 was passed, many stormwater management agencies turned to assessments and other measures to help fund services. In 1996 California voters passed Proposition 218, expanding the protection against property tax increases established by Proposition 13. Voter approval was now required for all new or increased assessments, charges or fees proposed by a stormwater management agency. Assessment proponents also had to demonstrate the specific benefit to properties before initiating or increasing the assessment. Fees and charges established or increased by agencies providing water or sewer services were expressly exempted from obtaining voter approval.

Salinas Court Case

1987 amendments to the federal Clean Water Act included requirements for cities and counties to reduce or eliminate pollutants contained in stormwater within their jurisdiction. The City of Salinas adopted an ordinance in 1999 establishing a Storm Water Management Utility fee to be imposed on users of the stormwater drainage system. The City relied on the exemption in Proposition 218 for water and sewer services to adopt the ordinance. The amount of the fee was calculated based on the amount of runoff contributed by the property to the city's drainage system from the property's impervious surfaces. Undeveloped parcels or developed parcels with their own stormwater

management facilities were not required to pay the fee. The Howard Jarvis Taxpayers Association filed suit claiming the fee was "property related" and subject to voter approval. While the trial court found in favor of the City and agreed the fee was not "property related" and it was exempt from voter approval because it was "related to" sewer and water services, the appellate court disagreed and found that the fee was indeed "property related", it was not "related to" sewer or water services, and it was subject to voter approval. This stalled attempts by stormwater management agencies to increase revenue through the exemption in Proposition 218 for services related to sewer or water services.

Pajaro Valley Water Management Agency Court Case

The Pajaro Valley Water Management Agency was established in 1984 to manage the Pajaro Valley Groundwater Basin, which the Department of Water Resources had identified as being in a condition of critical overdraft. Groundwater overdraft had lowered the water table below sea level in the coastal area and sea water was migrating into the groundwater basin. The Agency's strategy to manage the water table level was to use a combination of recycled wastewater, supplemental wells, captured stormwater runoff, and a coastal distribution system. In 2010 the Agency adopted a three-tier augmentation charge increase to cover the costs of providing supplemental water service from a combination of recycled water and well water extracted near a groundwater recharge basin supplied by stormwater. The plaintiffs filed suit claiming the Agency violated several provisions of Proposition 218. In 2013, the appellate court dismissed all arguments set forth by the plaintiffs and found the augmentation charge was related to water services and not subject to voter approval. This was good news for stormwater managers.

The Future

The Pajaro Valley Water Management Agency court case now allows stormwater management agencies to explore raising revenue under the Proposition 218 exemption **IF** their stormwater services are related to water or sewer services. The spirit of this court case was codified with passage of Assembly Bill 2403 in 2014. This law amends the definition of water, for the purposes of the Proposition 218 exemption, to add three words at the end, so the definition becomes: "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source. However, many stormwater services don't have a connection to water or wastewater and raising revenue will still require a vote of all property owners in the stormwater service area.

RMA:lz
G:\fldctl\Mitch\Stormwater Funding\WP. History of Stormwater Funding. 3-25-2015.doc