

Governor Brown Signs SB 231 Regarding Stormwater Fee Authority



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In recent years, stormwater permits issued by Regional Water Quality Control Boards, which regulate stormwater discharges from municipal separate storm sewer systems, have become increasingly onerous and expensive. Cities and counties are expected to install new and expensive infrastructure that both captures and treats stormwater runoff entering their stormwater systems. For example, price tag estimates for the latest Los Angeles County stormwater permit are as high as \$20 billion over twenty years.¹

While enhanced stormwater programs improve water quality, cities and counties have struggled to identify dedicated funding sources to comply with their permit obligations. SB 231, which the Governor signed into law in October, is the Legislature's latest response to the growing budgetary problem of stormwater permit compliance.

SB 231 addresses how Proposition 218 applies to fees for municipal stormwater systems. Proposition 218 is the 1996 voter initiative that amended the California Constitution to strictly limit local government fees for property-related services. As important here, Proposition 218 requires a public hearing at which properties subject to the fee have the right to prevent its adoption with a majority protest.² If there is no majority protest at the public hearing, Proposition 218 also requires voter approval for the fee, but this additional requirement is inapplicable to water, sewer and refuse collection fees.³

SB 231 seeks to allow local governments to adopt a stormwater fee without voter approval by amending the definition of "sewer" in the Proposition 218 Omnibus Implementation Act. Specifically, consistent with an existing Public Utilities Code statute,⁴ SB 231 expands the definition of "sewer" to include infrastructure relating to the "collection or disposal of sewage, industrial waste, or surface or storm waters."⁵

In 2002, the California Court of Appeal ruled that stormwater systems are not sewer systems and that Proposition 218 requires voter approval of a stormwater fee.⁶ SB 231 attempts to legislatively overturn this decision, and the bill includes numerous findings and legal arguments intended to guide how courts interpret Proposition 218.⁷ Future litigation will likely resolve whether this legislative measure changes how the courts view voter approval for stormwater fees.





SB 231 aims to provide one more potential tool that cities may utilize to fund costly stormwater programs. Previous efforts include AB 2403 in 2014, amending the Proposition 218 Omnibus Implementation Act to expand the definition of “water” to include “other sources” such as rain.⁸ In addition, several test claims are currently pending before the Commission on State Mandates that argue provisions of various regional stormwater permits constitute unfunded mandates, and therefore require a subvention of state funds to reimburse local governments for their costs.



About The Authors

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1. Steve Scauzillo, LA County cities have a \$20 billion storm water cleanup bill but they want help, San Gabriel Valley Tribune, March 22, 2016, available at <http://www.sgvtribune.com/2016/03/22/la-county-cities-have-a-20-billion-storm-water-cleanup-bill-but-they-want-help/>.
2. Cal. Const. art XIIIID 6(a).
3. Cal. Const. art XIIIID 6(c).
4. Pub. Util. Code § 230.5.
5. Gov. Code § 53750(k), effective January 1, 2018 (emphasis added).
6. Howard Jarvis Taxpayers Ass’n v. City of Salinas, 98 Cal. App.4th 1351 (2002).
7. Gov. Code § 53751, effective January 1, 2018.
8. Gov. Code § 53750(m).