




Contra Costa County Public Works Department

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Memo

October 8, 2018

TO: Transportation, Water and Infrastructure Committee
FROM: Brian M. Balbas, Director 
SUBJECT: Implementation Plan for MRP 2.0

Recommendation

Recommend the Board of Supervisors approve proposed Implementation Plan for the County's Municipal Regional Permit 2.0.

Background

The Committee has received extensive information on several occasions concerning the fiscal impacts of implementing the Municipal Regional Permit (MRP) 2.0. Staff estimated it will cost approximately \$5 million annually to comply with all the provisions in the permit (not including PCB load reduction costs). However, the County only receives about \$3.2 million each year in discretionary revenue for stormwater related services and projects, and there are currently no additional resources available from the General Fund. Staff identified \$510,000 of Road Funds and \$75,000 of Flood Control Funds that could be used to help pay for program activities. It should be noted that if the gas tax is repealed, any contribution from the Road Fund would have to be reconsidered and likely removed.

There are insufficient funds to close the \$1.2 million gap between available revenue and estimated expenditures. As a result, staff has prepared an Implementation Plan that identifies permit tasks that will be completed as well as those tasks that will not be completed during the permit term. It should be noted that, although some tasks will not be completed within the permit timeline, there is still a commitment to complete them eventually. This report outlines the steps staff took to develop the Implementation Plan and arrive at the recommendations. The key steps in developing the Plan were identifying objectives, a business approach, potential service reductions, selection criteria, and task prioritization. Staff also meets with Regional Board staff and attends Board meetings often to understand their priority items.

Plan Objectives. A primary objective is to maximize effectiveness of permit compliance, so our work truly improves water quality. Even though the County does not currently have sufficient funds to complete every task, we want to show the Regional Board that we are committed to improving water quality and working hard to do so. We welcome taking a leadership role in resolving difficult issues, as long as the Regional Board acknowledges that resolution to these issues may take longer than expected. Our primary focus is to identify

key tasks we must complete, but also identify some work that will be done on all other tasks. An important message is work will be done on all tasks but not all tasks will be completed within the permit timeline.

Task Prioritization. Staff identified all of the MRP 2.0 tasks and prioritized them using the following criteria:

- Maximizing pollution removal
- Realizing co-benefits and benefits to the community, and improving community value
- Maximizing program effectiveness (staff resources, program objectives, program costs)
- Matching Regional Board priorities

The prioritized list of tasks was divided into three tiers, Tier 1 being top priority and Tier 3 being low priority. Tier 1 tasks will receive full funding, Tier 2 tasks will receive substantial funding, and Tier 3 tasks will receive limited funding.

Attached is a list of the 13 tasks and their ranking. Since trash reduction is a top priority for the Regional Board, we have made trash related tasks a top priority as well, with most in the Tier 1 category. Also attached is the Implementation Plan and a supporting budget showing the costs for each task.

Service Reductions/Savings. Aside from the MRP 2.0 tasks, there are other baseline tasks and services that have been part of the program for many years. Staff reviewed all of the tasks, services and programs that are funded with Stormwater Utility Assessment funds and determined which services could be reduced. In addition, staff reviewed tasks, services or programs that could be funded from other revenue sources. The service reductions and funding enhancements are shown below:

- **Street Sweeping.** Transfer street sweeping to the Road Fund. This would likely not occur if the gas tax is modified.
- **Inspections.** Reduce inspections by 50%
- **Outreach.** Reduce the Public Information and Participation Program by 50%
- **Calendar.** Eliminate the annual calendar

The attached budget includes these service reductions and funding shifts, with the savings shown in the "Difference" column.

Implementation Plan. Staff recommends approval of a tiered approach to meeting MRP 2.0 requirements, with focus on fully funding on Tier 1 tasks and reduced funding and focus, but commitment to eventually complete, Tier 2 and Tier 3 tasks. Timelines for deferred completion will be developed in light of budgets, staffing, and future MRP 3.0 requirements anticipated. Once the Implementation Plan is approved, staff will meet with

Regional Board staff to discuss the proposed plan and the County's approach in implementing the proposed plan.

Consequences of Non-Compliance. As stated, there is a funding gap of approximately \$1.2 million between revenue and estimated costs of compliance. It should be noted that the \$5 million estimated cost of compliance cited above does not include the cost to reduce PCB loads through green infrastructure. Those additional costs could be tens of millions of dollars. (We are assuming that all PCB load reduction will be performed by or paid by other local project funds for roads, buildings, parks, etc.) So, the \$1.2 million funding gap could be much larger depending on local funds available and the timing. Given there is a funding gap of at least \$1.2 million, permit non-compliance is likely. Non-compliance can lead to fines and third-party lawsuits.

The Regional Board must issue the County a stormwater permit as required by and with authority from the Environmental Protection Agency and the federal Clean Water Act. The Regional Board also has authority to issue permits through State statute that is, in many cases, more stringent than the Clean Water Act. When a permittee is in non-compliance, the Regional Board can issue a Notice of Violation and levy fines of \$37,500 per violation per day through federal authority, and \$10,000 per violation per day through State authority. The County would likely be facing multiple violations. The largest exposure from non-compliance, however, is from third party lawsuits. If the Regional Board finds the County in non-compliance it is highly likely the County would lose any third party lawsuit and face a very expensive settlement agreement or court decision.

These same risks have been in play since the County entered its first permit. The County's Public Works Department has been working collaboratively with the Regional Board and Bay Area clean water advocacy groups to educate and inform them of our constraints on our ability to both meet the requirements of the permit and to commit the proper funds to the permit. So far, those parties have been understanding and taking our plight into consideration. Thus, we anticipate that any concerns raised by those parties in response to our implementation plan will be communicated to us with an opportunity to make adjustments. Those adjustments may entail returning to the TWI Committee and/or Board of Supervisors with a request to consider more aggressive options, such as more funding. We will report back to this Committee at least annually as we move forward with the implementation plan.

Attachments.

- Exhibit 1 - List of MRP 2.0 Tasks in Tiered Priority
- Exhibit 2 - MRP 2.0 Implementation Plan for Unincorporated Communities
- Exhibit 3 - MRP 2.0 Implementation Plan Budget

BMB/RMA/lz
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c: Mike Carlson, Administration
Tim Jensen, Flood Control
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