Contra Costa County

To: Board of Supervisors

From: TRANSPORTATION, WATER & INFRASTRUCTURE COMMITTEE

Date: September 26, 2017

Subject: Options Report on implementing the Municipal Regional Permit issued by Regional Water Quality Control Board

RECOMMENDATION(S):

1. APPROVE recommendations and ACCEPT attached Options Report, "Budget Options for the Municipal Regional Permit", dated April 10, 2017.
2. ACKNOWLEDGE continued commitment to the objective of Municipal Regional Permit (MRP) 2.0 and improving water quality.
3. DIRECT staff to incorporate Green Infrastructure into County projects.
4. ACKNOWLEDGE that non-compliance is very likely.
5. DIRECT staff to work with the Health Services Department on developing service fees to cover inspection costs.
6. DIRECT staff to communicate to the Regional Board the County's fiscal constraints, request more time to comply, and seek regulatory adjustments.
7. DIRECT staff to focus on trash rather than on PCBs.
8. CONFIRM that no General Funds are available for County Watershed Program costs.
9. ACKNOWLEDGE that Road Funds can pay some road related costs with the new gas tax.
10. DIRECT staff to explore other revenue ideas and report back to the Transportation, Water and Infrastructure Committee.

☑ APPROVE ☐ OTHER

☑ RECOMMENDATION OF CNTY ADMINISTRATOR ☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **09/26/2017** ☑ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor

ABSENT: Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: September 26, 2017

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Mike Carlson (925) 313-2321

cc:

FISCAL IMPACT:

Approval of the above recommended actions finalizes and approves the Revised Budget for MRP 2.0. The Revised Budget was prepared consistent with the recommended actions. The Revised Budget for Fiscal Year 2017/18 to implement MRP 2.0 is $3.24 million. This will be funded with a mix of Stormwater Utility Assessment 17 Funds (about $3 million), Flood Control District Funds, and Road Funds. The Revised Budget does not include any General Fund revenue for Watershed Program activities. However, there is some General Fund impact with regards to County projects funded with General Fund revenue. These projects must now include stormwater treatment, which increases project costs. This is similar to the Americans with Disabilities Act requirements over a decade ago, a requirement that has since become integrated into the design process for every project.

BACKGROUND:

On April 10, 2017, the Transportation, Water, and Infrastructure Committee (Committee) considered the attached Options Report which explored and provided recommendations to the Committee for implementing the Municipal Regional Permit adopted by the Regional Water Quality Control Board (Regional Board) in November 2015 (MRP 2.0). It was the third and final report on the issues associated with implementing MRP 2.0. The first report to the Committee on June 9, 2016, the Policy Report, provided an overall background and history of past stormwater permits that have led to the current permit, current permit requirements, and policy implications of implementing MRP 2.0. The new permit requirements also have fiscal implications, which were reviewed in detail in the second report to the Committee, the Financial Report, on October 13, 2016, and updated with the Options Report.

Detailed analysis of permit compliance underscored that PCB[1] costs were far and away the most expensive provision of MRP 2.0. Trash was the other large cost item. The Committee was presented with two budget proposals. One budget was "constrained" to reflect the revenue sources available plus some additional infusion of General Funds, either directly or from other department services. The proposed Constrained Budget for Fiscal Year 2017/18 was $4.9 million, and assumed PCB load reductions would be met by development or other sources, but not directly by the County. The other budget was based on the most likely scenario of PCB load reductions the County would need to meet by building Green Infrastructure. The proposed Most Likely Scenario Budget for Fiscal Year 2017/18 was $17.9 million. The Committee focused on the Constrained Budget as the only viable one to consider. The Committee further refined the Constrained Budget by directing staff to eliminate General Funds as a source to pay for County Watershed Program (Stormwater Program) activities.

Staff subsequently developed a revised budget that had no General Funds paying for staff stormwater activities, focused resources on meeting trash load reduction goals, and reduced resources associated with PCBs. The Revised Budget is $1,665,000 less than the Constrained Budget (34% reduction). The Revised Budget is attached as Table 1. At the

Committee's July 10, 2017 meeting, staff summarized the direction provided by the Committee at the April 10, 2017 meeting and presented it for concurrence and approval. This Board Order reflects the Committee's direction, stated below as the recommended action items with additional information for background and context.

ACKNOWLEDGE continued commitment to the objective of MRP 2.0 and improving water quality. The overarching objective of the MRP 2.0 permit is to improve the quality of stormwater and other runoff, and to increase infiltration of stormwater into the landscape. The permit includes a myriad of required activities to meet these objectives. The County agrees with the overall objective, but does not always agree with the mandated requirements and prioritization of requirements to achieve the objective.

DIRECT staff to incorporate Green Infrastructure into County projects. The County has a variety of capital improvement programs that direct investment of resources in buildings, roads, airports, and other public infrastructure. MRP 2.0 requires the County to include Green Infrastructure in its projects where applicable. Green Infrastructure is a stormwater treatment facility that also enhances infiltration, such as grassy swales, bio-retention facilities, and rain gardens. The County agrees to include Green Infrastructure in all projects required by the permit.

ACKNOWLEDGE that non-compliance is very likely. Staff will attempt to meet permit requirements with the reduced budget, but cannot guarantee the County will meet all of the load reduction goals. At the end of FY 2015/16 the County did not meet the 60% load reduction requirement for trash. The County submitted a plan to meet the next required target of 70% by July 1, 2017, the end of FY 2016/17. By July 1, 2017 the County had not met the 70% trash load reduction requirement nor met the requirement for public outreach. In the September Annual Report staff will be submitting a multi-pronged strategy to meet the 70% target for trash reduction over the next fiscal year.

If the Regional Board does not accept this plan (we are beyond the due date and this would be the second submittal for non-compliance) the permit then requires installation of full trash capture devices in our drainage inlets, which would cost about $4 million. With regards to PCBs, the operative assumption going forward is the County will not have to construct any Green Infrastructure to meet PCB load reduction targets. If PCB load reduction targets are not met through other means, such as source properties, then the County will definitely be out of compliance. The penalty for non-compliance is a potential fine of $37,500 per violation per day through federal authority, and $10,000 per violation per day through state authority. The largest exposure from non-compliance, however, is from third-party lawsuits.

DIRECT staff to work with the Health Services Department on developing service fees to cover inspection costs. While the Committee directed staff not to use General Funds to pay staff costs, it did support the notion of establishing service fees to pay for certain staff costs. The Environmental Health Division and Hazmat Division provide inspection services for the County Watershed Program. This service has traditionally been funded

by the County Watershed Program, but there is now a shortage of Stormwater Utility Assessment funds available. Initial discussions with Environmental Health and Hazmat indicate it would be possible to establish a service fee to pay for inspection costs. It will take at least a year to establish a service fee so this revenue source would not be available for Fiscal Year 2017/18, but would help in following fiscal years.

DIRECT staff to communicate to the Regional Board the County's fiscal constraints, request more time to comply, and seek regulatory adjustments. County staff has been meeting with staff at the Regional Board on a regular basis to explain the methodology County staff used to develop permit compliance costs, review the County's available revenue sources and budget projections, and point out implementation issues. Now that the budget has been finalized, staff can more definitively indicate to the Regional Board what the County will be able to achieve this next fiscal year. At this point it seems extremely likely the County will need additional time to meet the permit requirements. And it also makes sense to discuss the adjustment of certain requirements that would make their achievement more feasible.

DIRECT staff to focus on trash rather than on PCBs. The cost to comply with PCB requirements represented 73% of the Most Likely Scenario Budget, and a minimal amount of the Constrained Budget. To reduce the budget further it would be necessary to continue reducing the budget on PCB related activities and focus on trash load reduction activities. This strategy was identified in staff's strategic plan as the most cost-effective approach given the funds available.

CONFIRM that no General Funds are available for County Watershed Program costs. Direction from the Committee was clear that there were no General Funds available for stormwater activities in Fiscal Year 2017/18. Staff has revised and reduced the budget accordingly. See attached Table 1. However, each year is a new year and at some point there may be General Funds available for the County Watershed Program.

ACKNOWLEDGE that Road Funds can pay some road related costs with the new gas tax. Statutory language in Senate Bill 1 that authorized the new gas tax specifically mentioned stormwater projects being eligible for funding. The new gas tax does not go into effect until November of 2017 so there may be little, if any, funds available for Fiscal Year 2017/18. However, there should be funding available in subsequent fiscal years.

DIRECT staff to explore other revenue ideas and report back to the Committee. Although there were no General Funds available this year to help with the County Watershed Program budget, the Committee acknowledged the need for additional funding to support the County Watershed Program. To that end, the Committee supported looking at other potential revenue sources and bringing them back to the Committee for further discussion and consideration.

[1]*PCBs belong to a broad family of man-made organic chemicals known as chlorinated*

hydrocarbons.

CONSEQUENCE OF NEGATIVE ACTION:

The recommendations and budget will not be approved and staff will lack policy and fiscal direction in implementing MRP 2.0.

CLERK'S ADDENDUM

Speakers: Johnny Jaramillo, Association of Bay Area Governments (ABAG) ACCEPTED the Options Report, "Budget Options for the Municipal Regional Permit"; ACKNOWLEDGED continued commitment to the objective of Municipal Regional Permit (MRP) 2.0 and improving water quality; DIRECTED staff to incorporate Green Infrastructure into County projects; ACKNOWLEDGED that non-compliance is very likely; DIRECTED staff to work with the Health Services Department on developing service fees to cover inspection costs; DIRECTED staff to communicate to the Regional Board the County's fiscal constraints, request more time to comply, and seek regulatory adjustments; DIRECTED staff to focus on trash rather than on PCB; CONFIRMED that no General Funds are available for County Watershed Program costs; ACKNOWLEDGED that Road Funds can pay some road related costs with the new gas tax; DIRECTED staff to explore other revenue ideas and report back to the Transportation, Water and Infrastructure Committee; and DIRECTED the County Administrator to work with the Interim Director of Public Works on what items to prioritize going forward and to work toward providing an ordinance banning styrofoam (polystyrene) food containers as quickly as possible.

ATTACHMENTS

A. Options Report, TWIC Mtg 04-10-17

B. Table 1