

APPENDIX E
Funding and Financing Countywide Green
Stormwater Infrastructure Investments

Funding and Financing Countywide Green Stormwater Infrastructure Investments

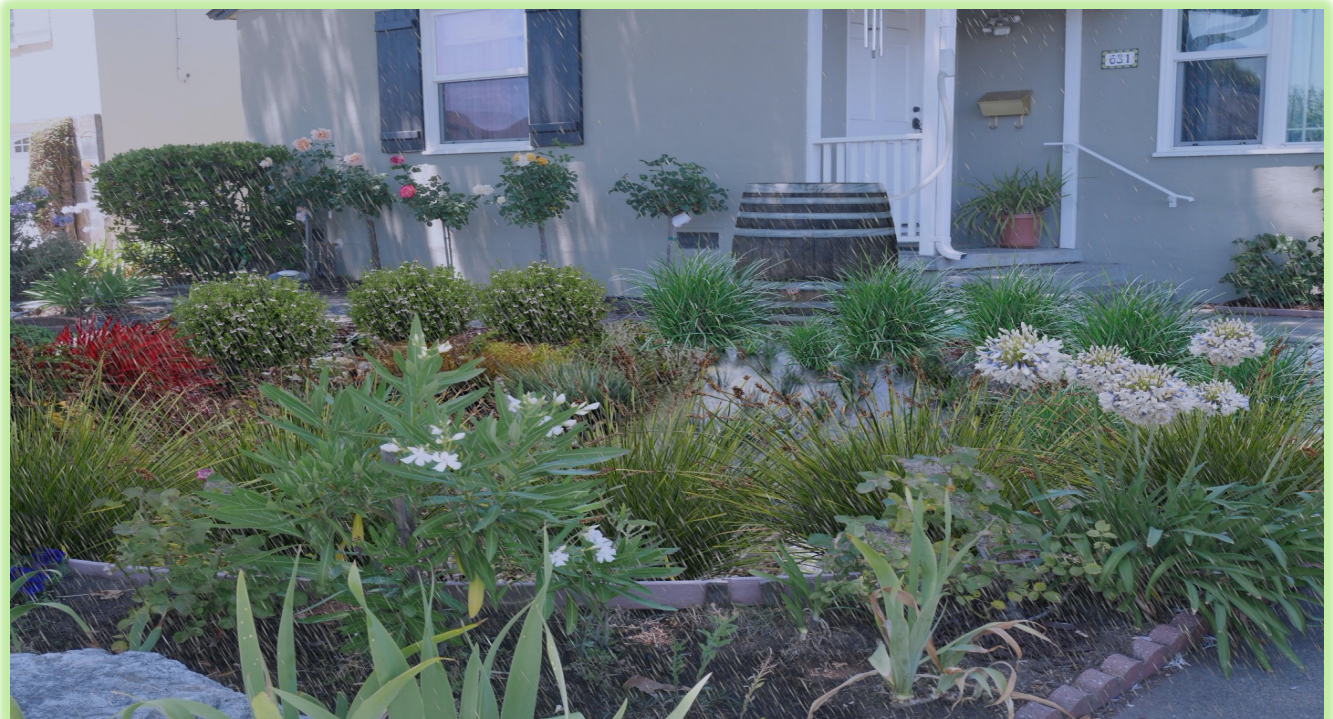
An Exploration of Options for Investing in Regional-Scale and Parcel-Scale GSI throughout San Mateo County

Final
November 15, 2021

Prepared for the City/County Association of Governments of San Mateo County

Caroline Koch
Water Policy Director
WaterNow Alliance

Ed Harrington
Municipal Finance Consultant
WaterNow Alliance



ACKNOWLEDGEMENTS	4
DISCLAIMER	5
EXECUTIVE SUMMARY	6
I. INTRODUCTION & OVERVIEW	10
II. HYPOTHETICAL SPENDING PLAN: LARGE-SCALE GSI PROGRAM	10
III. POTENTIAL FUNDING OPTIONS.....	12
A. NON-BALLOTTED STORMWATER FEE.....	13
1. <i>Authority to Establish Non-Balotted Stormwater Fees.....</i>	<i>13</i>
2. <i>Entities Authorized to Impose Non-Balotted Stormwater Fees.....</i>	<i>16</i>
3. <i>Authorized Uses of Revenues Generated from Non-Balotted Stormwater Fees.....</i>	<i>17</i>
4. <i>Funding GSI Investment with Non-Balotted Stormwater Fees.....</i>	<i>17</i>
B. ENHANCED INFRASTRUCTURE FINANCING DISTRICTS.....	20
1. <i>Authority to Establish EIFDs</i>	<i>21</i>
2. <i>Entities Authorized to Create EIFDs.....</i>	<i>21</i>
3. <i>Funding GSI with EIFDs.....</i>	<i>22</i>
4. <i>Example EIFD: West Sacramento.....</i>	<i>23</i>
C. WATER RATES	23
1. <i>Authorized Uses of Revenues Generated from Water Rates.....</i>	<i>24</i>
2. <i>Co-Funding Green Infrastructure Investment with Water Rates</i>	<i>26</i>
D. SEWER RATES.....	26
1. <i>Authorized Uses of Revenues Generated from Sewer Rates</i>	<i>27</i>
2. <i>Co-Funding Green Infrastructure with Sewer Rates.....</i>	<i>29</i>
IV. POTENTIAL FINANCING OPTIONS	29
A. REVENUE BONDS	30
1. <i>Green & Climate Bonds</i>	<i>30</i>
2. <i>Environmental Impact Bonds.....</i>	<i>30</i>
3. <i>Authority to Issue Revenue Bonds.....</i>	<i>31</i>
B. CLEAN WATER STATE REVOLVING FUND LOANS	34
1. <i>Overview: California’s CWSRF.....</i>	<i>35</i>
2. <i>Entities Eligible for CWSRF Loans.....</i>	<i>35</i>
3. <i>Leveraging CWSRF Loans for GSI Investment.....</i>	<i>35</i>
4. <i>Examples of California Green Project Reserve Projects.....</i>	<i>36</i>
C. WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA) LOANS	36
1. <i>Entities Eligible for WIFIA Loans.....</i>	<i>36</i>
2. <i>Leveraging WIFIA Loans for GSI Investments</i>	<i>37</i>
3. <i>Examples</i>	<i>37</i>
V. ACCOUNTING FOR GSI	38
A. REGULATED OPERATIONS ACCOUNTING	38
B. STANDARD ACCOUNTING	39
C. EXAMPLES	39

VI. INVESTMENTS IN GSI SERVE A PUBLIC PURPOSE40

VII. DRIVERS & OBJECTIVES.....41

VIII. CONCLUSION41

APPENDIX A – FINANCING SCENARIOS SUMMARY WORKSHEET43

APPENDIX B – FUNDING & FINANCING MATRIX44

ENDNOTES45

Acknowledgements

WaterNow is grateful for the contributions to this report from our project partners who are:

Matt Fabry
Program Manager (former)
San Mateo Countywide Water Pollution
Prevention Program
City/County Association of
Governments of San Mateo County

Reid Bogert
Stormwater Program Specialist
San Mateo Countywide Water Pollution
Prevention Program
City/County Association of
Governments of San Mateo County

Jeff Odefey
Director, Clean Water Supply Programs
American Rivers

Janet Clements
Director, Water Economics and
Planning
Corona Environmental Consulting, LLC

Claire Sheridan
Economist
Corona Environmental Consulting, LLC

Kelly Havens, P.E.
Senior Engineer
Geosyntec Consultants

Merrill Taylor, P.E.
Senior Project Manager
Craftwater Engineering, Inc.

WaterNow is also grateful for the contributions to this compendium from our Technical Advisory Committee reviewers who are:

Syed Murtuza
Public Works Director
City of Burlingame

Jennifer Lee
Environmental Regulatory Compliance
Manager
City of Burlingame

Zachary Rokeach
R2 San Francisco Bay Regional Water
Quality Control Board

Len Materman
Chief Executive Officer
San Mateo County Flood and Sea Level
Rise Resilience District

Makena Wong
Associate Project Manager
San Mateo County Flood and Sea Level
Rise Resiliency District

Tom Francis
Water Resources Manager
Bay Area Water Supply and
Conservation Agency

Danielle McPherson
Senior Water Resources Specialist
Bay Area Water Supply and
Conservation Agency

Disclaimer

These materials are not offered as or intended to be legal advice. Readers should seek the advice of an attorney when confronted with legal issues. Attorneys should perform an independent evaluation of the issues raised in these materials.

By providing these materials WaterNow does not endorse, either expressly or by implication, their legality and expressly disclaims any and all liabilities and warranties related to use of these materials.

Executive Summary

The City/County Association of Governments of San Mateo County (C/CAG) implements the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) established in 1990 to reduce the pollution carried by stormwater into local creeks, the San Francisco Bay, and the Pacific Ocean in partnership with each incorporated city and town in the county, and the County of San Mateo, which share a common National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System permit. As part of the SMCWPPP implementation, C/CAG is working to advance regional-scale and distributed, parcel-scale green stormwater infrastructure (GSI) projects in San Mateo County by developing a Regional Collaboration Program Framework to describe a countywide stormwater program focused on both potential regional projects and distributed green infrastructure implemented by private sector developers that can provide water quality and resiliency benefits. C/CAG is also working to identify potential funding and financing mechanisms to implement the strategies to be identified in the Regional Collaboration Program Framework.

As part of WaterNow's Tap into Resilience (TiR) initiative, this report details WaterNow's initial legal and accounting analyses of the potential funding and financing options available to C/CAG, its members, and possible regional partners to inform and advance San Mateo County's increased investments in countywide regional-scale green infrastructure as well as parcel-scale green infrastructure. This report also explores a hypothetical spending plan for a large-scale green stormwater infrastructure program in San Mateo County that includes multiple regional-scale and robust investment in distributed, parcel-scale projects built over a 20 year timeline.

Hypothetical Spending Plan: Large-scale GSI Program

To examine what it would take to invest in a large-scale green stormwater infrastructure program that includes multiple regional-scale and robust investment in distributed, parcel-scale projects built over a 20 year timeline in San Mateo County, based on discussions with the project team and available cost estimates, WaterNow developed a [hypothetical spending plan](#) representing rough estimates of the cost to build and maintain regional-scale and parcel-scale green infrastructure projects. The full spending plan is available in [Appendix A](#).

The spending plan includes investments in 10 regional-scale projects over a 20-year period, and an annual investment of \$1.5 million in parcel-scale projects each year for 20 years. Because the spending plan is a hypothetical example, it is based on several assumptions discussed with the project team, which are:

- Ten region-scale projects were estimated to cost \$15 million each. We assumed capital investment in these regional-scale projects would be concentrated in the first ten years of the 20 year plan. Capital costs for regional scale projects total \$150 million.
- Parcel-scale capital costs total \$28.5 million.
- Maintenance costs were estimated to be 1.5% of the construction costs per year for each major project for a total of \$23.6M. In addition, operations costs were increased over time to reflect increases in staff, consultant, and other needs associated with the

growing GSI program. Operations and maintenance for all project types is estimated at \$71.1 million during the 20 year timeline of the hypothetical plan.

In sum, the spending plan would cost a total of about \$250 million over 20 years. This mix of regional-scale and distributed, parcel-scale projects was chosen as a hypothetical scenario to help theorize how San Mateo County can achieve overall Total Maximum Daily Load (TMDL) goals for PCBs as well as a green acres objective of 6,000 green acres by 2030 with a focus on cost-effective regional projects. While existing and planned GSI projects in the County have put the County on the path towards meeting these goals, additional countywide GSI installations will be needed to achieve the longer-term pollutant reduction goals for the County's population based share of the TMDL.

To fund this type of program, C/CAG will need to establish a mix of potential funding options, as a single funding source is unlikely to generate sufficient revenue to meet program needs. A potentially feasible funding portfolio would include:

- Property-related stormwater fee and/or parcel tax;
- Tax increment revenues;
- Water rates; and
- Wastewater rates.

Achieving the hypothetical spending plan will also require using a debt-financing approach to pay for capital investments in both regional-scale and parcel-scale GSI. For example, issuing three bonds every 5 years during the 20 year period and assuming \$10 million in annual revenues would meet the \$178.5 million capital needs included in the hypothetical plan. This debt-financing approach would help reduce strain on revenues, i.e., rates, by spreading the costs of the spending plan over a long period of time. In particular, if the spending plan were debt-financed with bonds with repayment terms longer than the 20-year period, the County would have the benefit of repaying \$64 million over future years. This extended repayment period would help lessen the impacts of the large-scale program on rates.

This hypothetical mix of regional-scale and distributed, parcel-scale projects was chosen to theorize a possible pathway for funding and financing a large-scale green infrastructure program, and provides a framework for decision making going forward. In that process, decision-makers will need to consider:

1. What is the appropriate level of green infrastructure spending?
2. Is it possible to raise the revenue needed to meet the level of spending?
3. What is the appropriate and feasible mix of revenues?

The Potential Funding and Potential Financing Options sections provide analyses to support decision-makers as they work to answer these questions.

Potential Funding and Potential Financing Options

This report explores four potential funding options available to C/CAG, its members, and potential regional partners to pay for investments in all scales of green stormwater infrastructure: (1) [non-balloted stormwater fee](#); (2) [enhanced infrastructure financing district](#); (3) [water rates](#); and (4) [sewer rates](#). WaterNow's preliminary legal analysis finds that there is potential for each of these options to be used to pay for countywide GSI investments. While accessing one of these funding options alone is unlikely to meet the green infrastructure investment needs of San Mateo County communities, if combined into a portfolio of revenue streams these options may provide a pathway for creating a dedicated source of revenue for long-term stormwater management, including capital investments and ongoing operations and maintenance of those facilities.

To provide information on how these potential funding options can be fully leveraged, this report also explores three potential financing options available to C/CAG, its members, and potential regional partners to finance capital investments in all scales of green stormwater infrastructure: (1) [revenue bonds](#); (2) [State Revolving Fund loans](#); and (3) [Water Infrastructure Finance and Innovation Act \(WIFIA\) loans](#). WaterNow's preliminary legal analysis finds that there is potential for each of these options to be used to finance countywide GSI investments in both regional- and parcel-scale facilities.

Further, from an [accounting perspective](#), as governmental agencies with governing boards empowered to set rates C/CAG's members can likely meet the requirements for capitalizing investments in GSI with Regulated Operations accounting. Regulated Operations accounting allows public agencies to book the cost of "business-type activities" as assets instead of annual expenses. The Regulated Operations approach is a complete alternative to traditional public agency accounting for capital assets, and, importantly, allows local governments to access municipal bond proceeds and other forms of debt to invest in consumer rebate (and/or direct installation) programs. For example, Los Angeles Department of Water and Power uses municipal bond proceeds to finance consumer rebate programs for a variety of water efficiency and stormwater capture programs, including rebates for water-efficient installations, high-efficiency washing machines, permeable pavement, rain barrels, cisterns, and replacement of turf with low-water landscaping using Regulated Operations accounting.

WaterNow's analysis also finds that using public dollars to invest in GSI on private property would [serve public purposes](#), and would, thus, not run afoul of California's prohibition against the gift of public funds is set out at Article XVI, section 6 of the California Constitution. In California, as in most states, so long as the public funds used for private property investments serves a public purpose, there is no gift of public funds even if private persons benefit from the investment. The public purposes of parcel-scale GSI investments are cited throughout this report, including water quality improvement, urban flooding mitigation, and resilience to the impacts of climate change. Given these extensive public purposes, it is likely that using public rates and bond dollars to pay for parcel-scale GSI located on private property will not be a prohibited gift of public funds even if those projects incidentally benefit the private property owner where they are located.

To implement a large-scale, countywide GSI program, C/CAG and/or its member agencies will likely need to take a portfolio approach to funding and financing, as it is unlikely that any single revenue stream alone will be able to meet programmatic needs. Pursuing this portfolio approach within the countywide setting can be both a challenge and an opportunity. As this report outlines, there are a number of funding and financing options available to C/CAG and/or its member agencies, as well as potential regional partners, to build out this portfolio.

I. Introduction & Overview

The City/County Association of Governments of San Mateo County (C/CAG) implements the San Mateo Countywide Water Pollution Prevention Program (SMCWPPP) that was established in 1990 to reduce the pollution carried by stormwater into local creeks, the San Francisco Bay, and the Pacific Ocean in partnership with each incorporated city and town in the county, and the County of San Mateo, which share a common National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System permit. As part of the SMCWPPP implementation, C/CAG is working to advance regional-scale and distributed, parcel-scale green stormwater infrastructure (GSI)¹ projects in San Mateo County by developing a Regional Collaboration Program Framework to describe a countywide stormwater program focused on both potential regional projects and distributed green infrastructure implemented by private sector developers that can provide water quality and resiliency benefits. C/CAG is also working to identify potential funding and financing mechanisms to implement the strategies to be identified in the Regional Collaboration Program Framework.

As part of WaterNow's Tap into Resilience (TiR) initiative, as detailed below, WaterNow has conducted initial legal and accounting analyses of the potential funding and financing options available to C/CAG, its members, and possible regional partners to inform and advance San Mateo County's increased investments in countywide regional-scale green infrastructure as well as parcel-scale green infrastructure. The identified funding and financing options are informed by WaterNow and C/CAG's discussion on February 23 and March 5 scoping memo, as well as C/CAG's existing funding and financing analysis conducted by SCI Consulting Group.² The potential funding and financing options below were also informed by Geosyntec's May 2021 "Advancing Regional Stormwater Capture Projects: Drivers and Objectives" memo to ensure the possible funding and financing options identified can help meet the key drivers and objectives motivating San Mateo County's collaborative, integrated management of stormwater.

In addition, this report explores a hypothetical spending plan for a large-scale green stormwater infrastructure program in San Mateo County that includes multiple regional-scale projects and robust investment in distributed, parcel-scale projects built over a 20 year timeline.

II. Hypothetical Spending Plan: Large-scale GSI Program

To examine what it would take to invest in a large-scale green stormwater infrastructure program that includes multiple regional-scale projects and robust investment in distributed, parcel-scale projects built over a 20 year timeline in San Mateo County, based on discussions with the project team and available cost estimates, WaterNow developed a hypothetical spending plan representing rough estimates of the cost to build and maintain regional-scale and parcel-scale green infrastructure projects. The full spending plan is available in [Appendix A](#). We provide a summary and considerations for future decision-making below.

The spending plan includes investments in 10 regional-scale projects over a 20-year period, and an annual investment of \$1.5 million in parcel-scale projects each year for 20 years. This mix of regional-scale and distributed, parcel-scale projects was chosen as a hypothetical scenario to help theorize how San Mateo County can achieve overall Total Maximum Daily Load (TMDL) goals for PCBs as well as a greened acres objective of 6,000 green acres by 2030 with a focus on cost-effective regional projects. While existing and planned GSI projects in the County have put the County on the path towards meeting these goals, additional countywide GSI installations will be needed to achieve the longer-term pollutant reduction goals for the County's population based share of the TMDL.

Because the spending plan is a hypothetical example, it is based on several assumptions discussed with the project team, which are:

- Ten region-scale projects were estimated to cost \$15 million each. We assumed capital investment in these regional-scale projects would be concentrated in the first ten years of the 20 year plan. Capital costs for regional scale projects total \$150 million.
- Parcel-scale capital costs total \$28.5 million.
- Maintenance costs were estimated to be 1.5% of the construction costs per year for each major project for a total of \$23.6M. In addition, operations costs were increased over time to reflect increases in staff, consultant, and other needs associated with the growing GSI program. Operations and maintenance for all project types is estimated at \$71.1 million during the 20 year timeline of the hypothetical plan.

In sum, the spending plan would cost a total of about \$250 million over 20 years.

Next, we considered how these projects could be paid for assuming annual revenues of \$10 million. Because there is not yet a dedicated revenue stream identified sufficient to meet these investments the project team chose \$10 million in annual revenue as a hypothetical amount for the purposes of this exercise only. The remainder of this report discusses four possible sources of revenue that may be available to fund a GSI spending plan. As shown in the worksheet at [Appendix A](#), using a PayGo—all cash—approach to fund the hypothetical spending plan, costs outpace revenues until the 12th year. Or, in other words, it would not be possible to implement the hypothetical spending plan on an all cash basis.

Alternatively, it would be possible to implement the spending plan using a debt-financing approach to pay for the capital investments. For example, issuing three bonds every 5 years during the 20 year period and assuming \$10 million in annual revenues would meet the \$178.5 million capital needs included in the hypothetical plan. This debt-financing approach also helps reduce strain on revenues, i.e., rates, by spreading the costs of the spending plan over a long period of time. In particular, if the spending plan were debt-financed with bonds with repayment terms longer than the 20-year period reflected in Appendix A, the County would have the benefit of repaying \$64 million over future years. This extended repayment period would help lessen the impacts of the large-scale program on rates.

To fund this type of program, C/CAG will need to establish a portfolio of revenue streams representing a mix of potential funding options, as a single funding source is unlikely to generate sufficient revenue to meet program needs. A potentially feasible funding portfolio would include:

- Property-related stormwater fee and/or parcel tax;
- Tax increment revenues;
- Water rates; and
- Wastewater rates.

As explained in detail below, initial analyses demonstrate that a countywide Enhanced Infrastructure Finance District (EIFD) could generate \$61 million in tax increment revenues over 20 years. Assuming a 1% tax increment funding stream from an EIFD, could reduce the revenue needs from other sources from \$10 million to \$7 million in the first decade of the spending plan, and further reduce the need for other revenues over time as the tax increment grows. In addition, a stormwater credit trading program incentivizing private investment in parcel-scale GSI may provide an additional avenue for C/CAG to bring revenues into its funding portfolio by offsetting the need to pay for parcel-level projects and by potentially becoming a source of revenue if regional projects generate credits saleable in the trading market.³

Establishing this portfolio approach, which will require collaboration with its members and regional partners, aligns with the goals and objectives of C/CAG's Regional Collaboration Program Framework as well as the Advancing Regional Stormwater Capture Projects: Business Case for Regional Collaboration.⁴

The spending plan demonstrates a possible pathway for funding and financing a large scale green infrastructure program for San Mateo County, and provides a framework for decision making going forward. In that process, decision-makers will need to consider:

4. What is the appropriate level of green infrastructure spending?
5. Is it possible to raise the revenue needed to meet the level of spending?
6. What is the appropriate and feasible mix of revenues?

The Potential Funding and Potential Financing Options sections below provide analyses to support decision-makers as they work to answer these questions.

III. Potential Funding Options

WaterNow has explored four potential funding options available to C/CAG, its members, and potential regional partners to pay for investments in all scales of green stormwater infrastructure: (1) non-balloted stormwater fee; (2) [enhanced infrastructure financing district](#); (3) [water rates](#); and (4) [sewer rates](#). While accessing one of these funding options alone is unlikely to meet the green infrastructure investment needs of San Mateo County communities, if combined into a portfolio of revenue streams these options may provide a

pathway for creating a dedicated source of revenue for long-term stormwater management, including capital investments and ongoing operations and maintenance of those facilities. And as explained in the [Potential Financing Options](#) section, below, these revenues can be further leveraged by debt-financing regional and parcel-scale GSI investments.

Each of the potential funding options is described in detail below.

A. Non-Balloted Stormwater Fee

Establishing a dedicated stormwater fee, separate from existing water and sewer fees, will likely be a key component of any funding portfolio for investing in GSI in San Mateo County. California's Proposition 13 and Proposition 218 (and subsequent ballot measure Proposition 26) have created a complex fabric of legal requirements that local governments must meet before they can impose such a fee.

The following sections provide a summary of the: (1) requirements and/or eligibilities for non-balloted stormwater fees, (2) types of entities that can impose a non-balloted stormwater fee, (3) authorized uses of revenues generated from non-balloted stormwater fees, and (4) types of GSI investments non-balloted stormwater fees can fund.

1. Authority to Establish Non-Balloted Stormwater Fees

C/CAG consultants have previously evaluated the prospect of establishing a voter-approved stormwater fee that meets the requirements of Proposition 218.⁵ Those prior evaluations also provide a preliminary analysis of the amendments to the California Government Code implementing Prop 218 enacted in 2017, i.e., SB 231 (Hertzberg), and how those amendments might apply to property-related fees imposed to pay for stormwater services.⁶ To build on these existing materials and because establishing a dedicated, separate revenue stream to fund stormwater investments and operations and maintenance is likely an essential element of a funding portfolio, this section outlines the requirements and/or eligibilities that must be satisfied to impose a property-related fee for stormwater services that is not approved by voters and follows the guidance of SB 231. For purposes of this report we refer to such as fee as a "non-balloted stormwater fee."⁷

As an initial matter, we note that establishing a non-balloted stormwater fee would be a novel approach that has not yet been tested by California courts and may be subject to legal challenge. The analysis below provides possible pathways for creating a Prop 218 compliant non-balloted stormwater fee; however, additional legal analysis is needed and we do not offer an opinion on the legality of this approach.

i. What Is a Non-Balloted Stormwater Fee?

The baseline requirement in California is that all property-related fees must be approved by a majority of the owners of the property subject to the fee or by a two-thirds vote of the electorate residing in the affected area.⁸ Fees for sewer, water, and refuse collection services are exempt from this voter approval requirement.⁹ In the 2002 *City of Salinas* decision, the California Appellate Court found that Salinas's storm drainage fee did not fall within this exception because it was a property-related fee for a property-related service and "sewer services" or "water services" did not include stormwater management. Since this decision, establishing property-related stormwater fees has required voter approval.

However, in response to the *City of Salinas*, via SB 231 (Hertzberg) the California Legislature amended section 53750(k) of the Government Code to legislatively extend the definition of "sewer" to encompass stormwater:

"Sewer" includes systems, all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate sewage collection, treatment, or disposition for sanitary or **drainage** purposes, including lateral and connecting sewers, interceptors, trunk and outfall lines, sanitary sewage treatment or disposal plants or works, drains, conduits, outlets for surface **or storm waters**, and any and all other works, property, or structures necessary or convenient for the collection or disposal of sewage, industrial waste, or surface **or storm waters**. "Sewer system" shall not include a sewer system that merely collects sewage on the property of a single owner.¹⁰

The Legislature further found and declared that for purposes of interpreting whether Prop 218 exempts fees or charges for sewer services the term "'sewer' should be interpreted to include services necessary to collect, treat, or dispose of sewage, industrial waste, or surface or storm waters, and any entity that collects, treats, or disposes of any of these necessarily provides sewer service."¹¹

Thus—while these legislative amendments are not definitive authority and it will be up to the California courts to make the ultimate decision whether "sewer" includes stormwater—it may be possible to make the argument that property-related¹² stormwater fees are exempt from voter-approval requirements on at least two grounds. First, the stormwater fee may be able to avoid voter-approval requirements so long as the fee is imposed for services necessary to collect, treat, or dispose of storm waters. This approach would establish a dedicated, separate stormwater fee to pay for stormwater services. Second, to further make the case that property-related stormwater fees are exempt from voter approval requirements, it's suggested that the local governmental entity establishing the stormwater fee also demonstrate that the stormwater services have a nexus to sewer, water, and/or refuse collection services. Sewer, water, and refuse collection services are the categories of fees that are already exempt from voter approval requirements. Showing that stormwater services funded with a dedicated stormwater fee can also help provide water, sewer, and refuse services may be useful in demonstrating that the dedicated stormwater fee is exempt from

voter-approval requirements, too. As detailed below, regional-scale and distributed, parcel-scale GSI projects can potentially meet these definitions.

ii. Establishing a Non-Balloted Stormwater Fee

While voter approval for property-related stormwater fees necessary to collect, treat, or dispose of storm waters may not be needed, to establish a non-balloted stormwater fee, local agencies must meet certain other procedural requirements as follows:

1. Identify the parcels upon which the fee or charge will be imposed;
2. Calculate the amount of the fee or charge to be imposed;
3. Provide written notice by mail to the recorded owners of each identified parcel of the—
 - a. amount of the fee or charge to be imposed
 - b. basis for the calculation of the amount
 - c. reason for the fee or charge
 - d. date, time, and location of a public hearing on the proposed fee or charge.¹³

The agency proposing the fee or charge must conduct a public hearing on the proposed fee not less than 45 days after the mailed notice.¹⁴ The agency must consider all protests against the proposed fee at the hearing, and if a majority of identified parcel owners protest in writing the agency may not impose the fee.¹⁵

In addition to these procedural requirements, property-related stormwater fees must meet these requirements:

1. Revenues derived from the fee or charge may not exceed the funds required to provide the property related service;
2. Revenues derived from the fee or charge must be used only for the purpose for which the fee or charge was imposed;
3. The amount of a fee or charge imposed may not exceed the proportional cost of the service attributable to the parcel at issue;
4. Service for which the fee or charge is needed must be actually used by, or immediately available to, the property owner being charged; and
5. No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.¹⁶

As to the “proportionality” requirement, a property-related fee must bear a reasonable relationship to burden on or benefits to the property from the agency's activity.¹⁷ For dedicated stormwater fees, the proportionality requirement could, for example, be met by establishing a fee based on a parcel's volume of stormwater runoff determined by impervious area or square footage. In addition, the fees imposed must be for the actual services the agency supplies and must be founded on the costs borne by the agency to provide those services.¹⁸ As to immediate availability of services, a “minimum charge imposed on parcels

with connections to a water district's utility systems for the basic cost of providing water or sewer service, regardless of actual use, is a charge for an immediately available property-related water or sewer service ..., and consequently does not require ballot approval by affected owners.”¹⁹

Satisfying these requirements and eligibilities allows an agency to impose a new or increased property-related fee.²⁰

2. Entities Authorized to Impose Non-Balloted Stormwater Fees

Prop 218 provides that an “agency” may impose fees for property related services. “Agency” means any “county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.”²¹ “Special district” means “an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.”²²

i. C/CAG & C/CAG Members

As cities and a county, C/CAG’s members are eligible entities. C/CAG and several C/CAG member cities already collect nominal stormwater fees, including Belmont, Brisbane, Burlingame, Daly City, East Palo Alto, Hillsborough, Menlo Park, Millbrae, Pacifica, San Bruno, San Carlos, and South San Francisco.²³

In addition, C/CAG would be empowered to adopt a non-balloted stormwater fee as it was formed in 1990 as a joint exercise of powers between San Mateo County and all the cities and towns in San Mateo County.²⁴

ii. Special Districts

Special districts in San Mateo, such as the Bay Area Water Supply and Conservation Agency (BAWSCA) and the Flood and Sea Level Rise Resiliency District (FSLRRD), would also be authorized to establish non-balloted stormwater fees. BAWSCA was created by the separate, but parallel, actions of 24 local government agencies in the Bay Area, as authorized by AB 2058, enacted by the California Legislature in 2002 to foster “coordinated planning and implementation of strategies for water supply, water conservation, water recycling, and repair and improvement of the San Francisco regional system,”²⁵ among other purposes.¹ The

¹ BAWSCA’s governing board includes not only representatives from each of the 24 public agencies, but also from Stanford University and the California Water Service Company, both of which are long term wholesale purchasers of water from San Francisco. AB 2058 was the Legislature’s response to problems related to the institutional framework in which decisions about regional water issues are made. BAWSCA provides the vehicle for member agencies to work with the San Francisco Public Utilities Commission on an equal basis. As referenced in AB 2058, the intent of the Legislature was to enable

FSLRRD was created by special act of the State to “conserve and reclaim water for present and future use within the district,” among other purposes.²⁶

3. Authorized Uses of Revenues Generated from Non-Balloted Stormwater Fees

Revenues generated from property-related stormwater fees must only be used for the purposes for which the fee was imposed, as defined in the public notice about the fee or charge.²⁷ Allowable uses of revenues from fees or charges include:

- capital improvements,
- changes in cost for providing the particular service, and
- costs of operating and maintaining the agency’s system.²⁸

Given that no agencies have imposed a non-balloted stormwater fees or charges, there are not yet any cases that provide guidance on stormwater-specific allowable uses of the revenues generated from stormwater fees or charges. Generally, however, agencies may not use revenues generated from property-related fees for general governmental services where the service is available to the public at large in substantially the same manner as it is to property owners, e.g. police, fire, ambulances, or library services.²⁹

4. Funding GSI Investment with Non-Balloted Stormwater Fees

According to C/CAG’s prior consultants:

As they pertain to [GSI], property-related fees remain a flexible and stout funding source. ... The scope of [GSI] is stretching the traditional boundaries of stormwater services, and great care must be taken when crafting a property-related stormwater fee structure. But just as water agencies have embraced conservation efforts and watershed habitat protections, so, too, can stormwater agencies carefully expand into the area of [GSI].³⁰

While recognizing this prior analysis and caution, for at least four reasons it may be possible to use revenues from a non-balloted stormwater fee to pay for the currently proposed approach to invest in countywide stormwater management through regional stormwater capture projects and implementation of distributed, parcel-scale GSI.

First, C/CAG and/or its member cities and/or the County could satisfy the requirements of section 6(a) of Article XIII D. The parcels in the County upon which the stormwater fee would be imposed can be identified. The amount of the fee to include costs of green infrastructure

local governments responsible for water distribution in the three counties to establish a multicounty agency authorized to plan for and acquire supplemental water supplies, to encourage water conservation and use of recycled water on a regional basis, and to assist in the financing of essential repairs and improvements to the San Francisco regional water system, including seismic strengthening.

facilities of all scales can be calculated. And the bases for the calculated amount and the reason for the fee can be provided, including, e.g., to improve water quality, reduce localized flooding, and create resilience to climate change and to meet the terms of the San Francisco Bay Regional Stormwater NPDES Permit, Order No. R2-2015-0049, Permit No. CAS612008 (MS4 Permit).³¹

Second, establishing a non-balloted stormwater fee that will be used to fund GSI investments could likely be designed to meet the proportionality and other requirements of Section 6(b) of Article XIII D. There do not appear to be any insurmountable legal barriers to structuring a non-balloted property-related fee or charge to meet section 6(b) of Article XIII D.³² Further, a property-related stormwater fee in San Mateo County, or the cities in the County, would be imposed for actual services San Mateo County and the cities in the County, and/or C/CAG, supplies—C/CAG and its member cities and the County are responsible for countywide stormwater management, including for complying with the terms of the MS4 Permit.³³ And green infrastructure is an express part of providing these stormwater management services. The MS4 Permit requires development and implementation of a “Green Infrastructure Plan” for the inclusion of “low impact development drainage design into storm drain infrastructure on public and private lands, including streets, roads, storm drains, parking lots, building roofs, and other storm drain infrastructure elements.”³⁴ A stormwater fee would help fund the implementation of these plans.

Given C/CAG and its members’ responsibility to provide stormwater management services including by implementing green infrastructure the costs incurred to meet these responsibilities would serve as the basis for a fee for C/CAG and/or its members to provide stormwater management services, as required by section 6(b) of Article XII D.

Third, to build green infrastructure installations representing large regional-scale facilities and distributed parcel-scale facilities C/CAG and its members would incur capital improvement costs, the cost for providing stormwater management service in San Mateo County would increase due to these new green infrastructure facilities of all scales, and C/CAG and/or its members would incur costs of operating and maintaining these facilities. These are likely allowable uses of revenues from non-balloted stormwater fees or charges.³⁵ And because this would be a new fee in developing, designing, and noticing a property-related non-balloted stormwater fee or charge in San Mateo County C/CAG and/or its members can expressly cite these uses to make a clear connection between the fee or charge and the purposes for which it will be used.

Finally, with respect to further justifying a non-balloted approach under Prop 218, regional-scale, and distributed, parcel-scale GSI projects provide water, sewer, and trash/refuse services as co-benefits of GSI stormwater management services. GSI can provide water services by offsetting potable water use through rainwater harvesting and use for irrigation or other appropriate non-potable uses and recharging groundwater through infiltration thus replenishing drinking water supplies. It can provide sewer services either by keeping stormwater out of maxed-out sewer systems helping prevent sewer overflows and basement

backups and adding influent to wastewater treatment plants with reduced inflows resulting from conservation allowing improved water quality for effluent discharges or increased opportunities for water recycling. GSI can also be designed to provide refuse collection services by providing pre-treatment for refuse or potentially directing trash and litter carried by stormwater runoff to GSI features such as bioswales or detention basins where it can be collected and kept out of area surface waters. As explained above, fees for sewer, water, and refuse collection are exempt from voter-approval requirements.³⁶ Because GSI can provide these services there may be a strong argument that property-related fees to fund GSI investments are exempt from voter-approval requirements.

For example, the types of future GSI projects that may be fundable via a non-balloted stormwater fee would be similar to existing programs such as:

- C/CAG’s Rain Barrel Rebate Program implemented in partnership with BAWSCA that provides rain barrels to residential customers in San Mateo County to keep polluted stormwater out of area surface waters and allow homeowners to use rainwater for outdoor irrigation;³⁷ and
- Regional-scale projects such as the Orange Memorial Park Storm Water Capture Project under construction as of 2021 in South San Francisco that diverts flows from Colma Creek for treatment via GSI and reuse for irrigation and groundwater recharge.³⁸

While the Rain Barrel rebate program and the Orange Memorial Park project are already funded with other revenues, these projects serve as examples of the types of GSI facilities



that a dedicated stormwater fee could pay for in the future, including to help fund ongoing operations and maintenance costs of those future projects.

Projects eligible to be funded by a non-balloted stormwater fee may also include the potential projects identified by Craftwater Engineers to inform the Regional Collaboration Framework and Business Case for Green Infrastructure Investments. The top

14 projects are estimated to capture 214 acre-feet of stormwater per year, provide 1,365 acre-feet per year in water supply, and cover 5,459 acres for trash removal.

While non-balloted stormwater fees or charges are novel, and GSI for stormwater management is still a growing concept, using property-related taxes to pay for green infrastructure is not unprecedented. In November 2018, Los Angeles County voters passed a

parcel tax commonly referred to as "Measure W" that fund the Los Angeles County Flood Control District's Safe, Clean Water Program.³⁹ Prior to moving forward with Measure W, the Legislature amended the authorizing legislation for the Los Angeles County Flood Control District to specify that the District has authority to levy a tax to pay the costs and expenses of carrying out projects and programs to increase stormwater capture and reduce stormwater and urban runoff pollution in the District subject to voter approval.⁴⁰ The 2.5 cents per square foot parcel tax established by Measure W is assessed on non-exempt properties within the Los Angeles County Flood Control District service area and is based on the amount of stormwater each property generates, measured in terms of impervious area.⁴¹

The tax revenue generated is now being used to help LA County make much-needed infrastructure investments to manage its water supply through projects that capture rainwater and re-use it onsite or allow it to infiltrate back into the ground as well as its water quality through projects that manage rainwater at or near the site where it falls and prevents it from gathering pollutants. In particular, the tax revenues can be used for "Nature-Based Solutions."⁴² As of April 2021, there are at least 89 infrastructure and 29 planning projects being funded with Measure W revenues that include nature-based solutions, including a:

- \$5 million full-scale, [multi-benefit green street project in Beverley Hills](#) project designed to improve stormwater quality, reduce urban runoff and increase local water supply via capturing stormwater onsite and replacing turf with native landscaping
- \$10.6 million [multiple-benefits project in Los Angeles](#) to install infiltration planters and pervious concrete (among other measures) to provide water quality and flood management
- \$300,000 [planning process for green infrastructure retrofits](#) through a natural systems approach focused on community-based design and installation of green infrastructure elements such as pervious paving, landscape infiltration planters, tree wells, bioswales, rain gardens and mulched native plant landscape areas which will provide key ecosystem and community health benefits, on Pasadena Unified School District Campuses.

Additional green infrastructure and multiple benefits projects can be explored here: <https://portal.safecleanwaterla.org/scw-reporting/dashboard>. Los Angeles County Flood Control District's Safe, Clean Water Program provides a useful example of how a non-balloted property-related stormwater fee or charge might be designed to ensure the revenues can be used to pay for green infrastructure.

As outlined above, C/CAG and/or its members' do appear to have a pathway to crafting a legally sound property-related stormwater fee that could be used to pay for green infrastructure of all scales.

B. Enhanced Infrastructure Financing Districts

An Enhanced Infrastructure Financing District (EIFD) may be an additional mechanism available to C/CAG and/or its members to build a portfolio approach for funding GSI

investments. In 2014, the California Legislature authorized the creation of EIFDs to provide local governments and agencies a mechanism for leveraging increases in property taxes, i.e., property tax increment, from cities, counties, and special districts that agree to contribute those funds.

The following sections provide a summary of the: (1) requirements and/or eligibilities for establishing EIFDs, (2) types of entities that can form EIFDs, (3) authorized uses of tax increment revenues collected by EIFDs, (4) types of GSI investments EIFDs can fund, (5) examples of communities that have created EIFDs, and (6) green infrastructure Drivers and Objectives in San Mateo County EIFDs could potentially meet.

1. Authority to Establish EIFDs

The legislative bodies, i.e., city council or board of supervisors, of cities and counties are authorized to establish EIFDs for the sole purpose of financing public facilities or other projects.⁴³ To establish an EIFD several procedural requirements must be met, and the California Association for Local Economic Development describes three main steps to initiating the process:

1. An initial meeting of the county board of supervisors or the city council sponsoring the EIFD where the board or council adopts a “Resolution of Intention” to begin the process and forms a Public Financing Authority to govern the EIFD adoption;
2. Preparation of an Infrastructure Financing Plan by the Public Financing Authority that serves as a detailed business plan for carrying out the work of the EIFD that is sent to district landowners and other taxing agencies within the district for review; and
3. The Public Finance Authority holds a public hearing to adopt the Infrastructure Financing Plan and create the EIFD.

Once established, the EIFD becomes a governmental entity separate and distinct from the city or county that established it.

2. Entities Authorized to Create EIFDs

City councils and/or boards of supervisors for California cities and counties are authorized to establish EIFDs.⁴⁴ The EIFD then becomes a legally distinct agency created to finance public facilities or other projects.⁴⁵ Accordingly, San Mateo County or the cities in San Mateo are authorized to create an EIFD.

The scope of the EIFD may include cities, counties, and special districts that voluntarily agree to be part of the district by contributing agreed-upon property tax increments, but may not include K-12 school districts, community college districts, or county offices of education.⁴⁶ “Cities, counties and special districts, which are generally allocated close to half of the property tax of an area, may agree to contribute all or part of their tax increment to the

EIFD.⁴⁷ For example, an EIFD for San Mateo County could potentially include the County, the 20 cities and towns in the county, as well as area special districts.

Preliminary analysis by C/CAG staff demonstrates that an EIFD for San Mateo County collecting a 1% tax increment from the participating agencies would generate a total of \$61 million over 20 years; WaterNow used this estimated in the [hypothetical spending plan](#) detailed above, which demonstrates that with 1% tax increment revenues approximately \$7 million in other revenues would be needed to fund (and finance) a \$250 million countywide GSI program. Over a 45-year horizon, the EIFD would have an estimated \$330 million in total tax increment revenue available to it.⁴⁸

3. Funding GSI with EIFDs

An EIFD may fund any of the following, among others:

1. The purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer that significantly benefits to the district or the surrounding community;
2. The ongoing or capitalized costs to maintain public capital facilities financed in whole or in part by the district (except ongoing maintenance may not be financed with bond proceeds);
3. Sewage treatment and water reclamation plants and interceptor pipes;
4. Facilities for the collection and treatment of water for urban uses;
5. Flood control levees and dams, retention basins, and drainage channels;
6. Parks, recreational facilities, and open space;
7. Brownfield restoration and other environmental mitigation;
8. Acquisition, construction, or repair of industrial structures for private use;
9. Projects that implement a sustainable communities strategy, when the State Air Resources Board has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets;
10. Projects that enable communities to adapt to the impacts of climate change, including, but not limited to, higher average temperatures, decreased air and water quality, the spread of infectious and vector-borne diseases, other public health impacts, extreme weather events, sea level rise, flooding, heat waves, wildfires, and drought.⁴⁹

Regional-scale and distributed, parcel-scale GSI projects likely fall within several of these categories of eligible projects, e.g., GSI projects have useful lives of more than 15 years, extend or improve the storm sewer system, and significantly benefit the community, combat the impacts of climate change including increased localized flooding and drought, and can be designed as facilities for the collection and treatment of water for urban uses; thus, it may be possible to fund GSI investments with tax increment revenues from an EIFD. These revenues, however, may not be used to fund the costs of an ongoing operation of GSI facilities.⁵⁰

4. Example EIFD: West Sacramento

In June 2017, West Sacramento created the State’s first EIFD to support the City’s efforts to transition many areas of the City from heavy industrial use to mixed-use areas along the City’s waterfront, to enhance the City’s transportation network, and enhance the quality of public facilities for residents, businesses and visitors. West Sacramento’s EIFD is made up of fourteen, non-contiguous subareas encompassing a diversity of land uses including mixed-use riverfront, industrial, and retail across ~4,000 acres, representing 25% of the City. The fourteen subareas are detailed in the table to the right.

Table 1: EIFD No.1 Subareas and Existing Assessed Value

Subarea	Acres	FY 2016/17 Assessed Value (\$millions)
Bridge District	190	\$123
Riverside	336	\$369
Southport Industrial Park	665	\$293
Stone Lock	226	\$0
Washington	350	\$351
The Rivers II	75	\$14
Pioneer Bluff	142	\$54
Seaway	382	\$0
Iron Triangle	134	\$54
West End	195	\$62
North of Port Industrial	240	\$189
Port North Terminal	172	\$19
Port of Sac. Indust. Park	881	\$575
Riverpoint	157	\$214
Total, EIFD No.1	4,144	\$2,317

The EIFD will be in place for the full 45-year timeframe allowed by California law, and can potentially capture 100% of the City’s share of annual property tax increments from properties within the district. When the EIFD was formed in 2017, the assessed value of EIFD properties in base year FY 2016/17 totaled \$2,316,771. From that baseline, it was anticipated that a total of \$3.13 billion of tax increment (\$1.23 billion in 2017 dollars) would accrue to the EIFD. In any event, the projects to be funded by the EIFD will also be supported by a mix of revenues, including development impact fees, local ballot measure funds, federal and state grants, and other special district funds. And the EIFD plans to issue bonds to further finance projects in West Sacramento.

Projects eligible for EIFD funding include purchase, construction, expansion, improvement, seismic retrofit, or rehabilitation of any real or other tangible property with an estimated useful life of 15 years or longer and are projects of communitywide significance that provide significant benefits to the district or the surrounding community. Specific projects include those consistent with the City’s adopted General Plan 2035 and Capital Improvement Plans.

Additional information about West Sacramento’s EIFD is available [here](#) and [here](#), and the Infrastructure Financing Plan can be found [here](#).

C. Water Rates

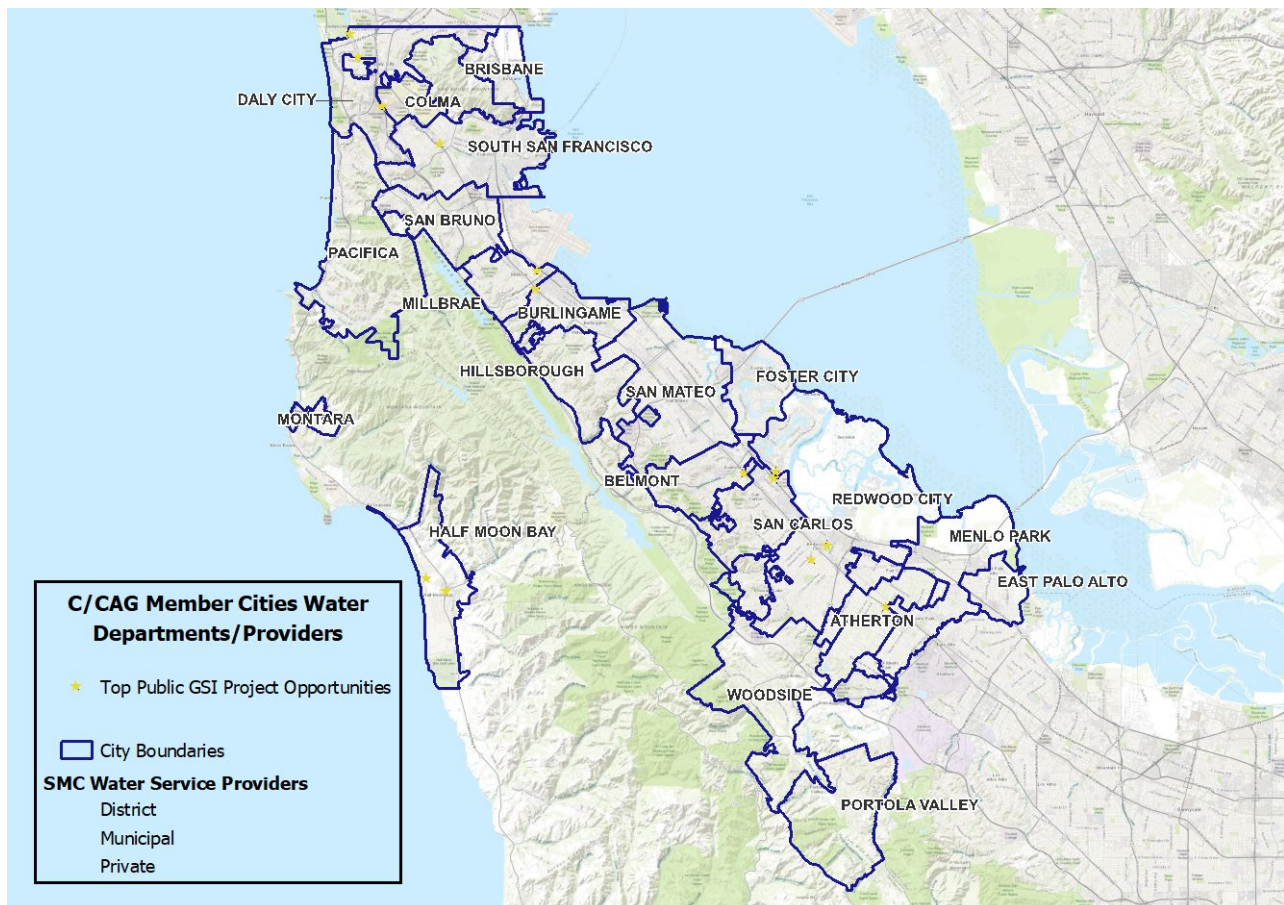
Adding to the options available for a portfolio funding approach, it may be possible to co-fund countywide regional-scale and parcel-scale GSI projects with water rates, which can be used for capital investments as well as ongoing operations and maintenance.

The following sections provide a summary of the: (1) the three types of water providers present in San Mateo County, (2) authorized uses of revenues generated from water rates, (3) types of GSI investments water rates could potentially fund, (4) examples of communities that have used water rates to pay for GSI, and (5) green infrastructure Drivers and Objectives in San Mateo County using water rates to pay for GSI could potentially meet.

1. Authorized Uses of Revenues Generated from Water Rates

There are three types of water rates that may be available to co-fund countywide GSI investments of all scales: (1) rates collected by a municipally owned water provider, (2) rates collected by a special district that provides drinking water, and (3) rates collected by privately owned water systems. As detailed below, whether these rates can be used to help pay for GSI investments depends on the varying degrees of flexibility and legal authorities these different types of water providers have with municipally owned water districts potentially having the most flexibility and privately owned water systems likely having the least. The types of water providers within C/CAG’s membership are mapped in [Figure 1](#), below.

Figure 1 – C/CAG Member Cities Water Departments/Providers



i. Municipal Water Providers

Municipally owned and operated water districts authority to collect rates from their customers is governed by Prop 218. As explained [above](#), rates collected for water services are exempt from voter approval requirements; water rates must, however, meet the remaining requirements of Prop 218. This includes the requirements that water rates be used only for the purpose for which the rate was imposed—i.e., water supply—and that the rate not exceed the proportional cost of the service attributable to the property on which the rate is imposed. In addition, local ordinances regulate municipal water districts rates.⁵¹

Because water rates set by municipally owned and operated water providers are governed by local ordinance there may be flexibilities in the purposes for which these rates may be used, including for GSI as is explored in the next section.

ii. Special Districts

There are several sources of authority to consider when evaluating how special water districts may use their water rates. Special district water providers' rates are governed by Prop 218. They are also governed by the enabling legislation that created the special district. The specific enabling legislation will depend on the particular special district in question.⁵² For example, the Coastside County Water District, a special district in San Mateo County that provides water to certain residents in Half Moon Bay and other jurisdictions, was created pursuant to California Water Code sections 30000 et seq.⁵³ In addition, special water districts authority to collect and use rates for water supplies are governed by the district's regulations, ordinances, and/or resolutions.⁵⁴

Because water rates set by special districts are governed by multiple layers of legal requirements there may be moderate flexibility in the purposes for which these rates may be used. This may nonetheless include the ability to co-fund GSI of all scales, as is explored in the next section.

iii. Privately Owned Water Providers

The authority for privately owned water providers to collect and use water rates is governed by the California Public Utilities Commission.⁵⁵ In setting utility rates, the Commission applies two basic factors: 1) the utility's operating expenses or cost of service and 2) a fair return on the utility's investment.⁵⁶ In particular, sewer rates for privately owned systems are governed by California Public Utility Code section 727.5.

Because water rates set by privately owned water providers are governed by the California Public Utilities Commission there may be less flexibility in the purposes for which these rates may be used. This may nonetheless include the ability to co-fund GSI of all scales, as is explored in the next section.

2. Co-Funding Green Infrastructure Investment with Water Rates

As detailed [above](#), regional-scale and distributed, parcel-scale GSI projects provide water supply and offset potable water use as co-benefits of GSI stormwater management services. For example, GSI can provide water services by offsetting potable water use through rainwater harvesting and use for irrigation or other appropriate non-potable uses and recharging groundwater through infiltration thus replenishing drinking water supplies. Craftwater Engineers estimates that 14 regional-scale projects that could potentially be implemented in San Mateo County could provide 1,365 acre-feet per year in water supply. (These 14 regional-scale projects were identified in the analysis Craftwater Engineers undertook to identify potential regional-scale stormwater capture projects to inform the Regional Collaboration Framework and Business Case for Green Infrastructure Investments.)

And cities in San Mateo County recognize the water supply benefits of parcel-scale GSI, and co-fund these programs through BAWSCA's Lawn Be Gone rebate program. This turf change out rebate program includes an additional \$300 rebate to incentivize installation of rain gardens, which is offered by Brisbane/Guadalupe Valley Municipal Improvement District, Menlo Park, Mid-Peninsula Water District, Millbrae, North Coast County Water District, Redwood City, and San Bruno.⁵⁷ Further, BAWSCA's Long-Term Reliable Water Supply Strategy identifies rainwater harvesting and stormwater capture, including the parcel-scale rain barrel program, as strategies for viable local water supply management projects.⁵⁸ Per the BAWSCA Strategy, "A preliminary estimate of the potential yield for rainwater harvesting in 2040 in residential units in the BAWSCA service areas ranges from 210 [acre feet per year] AFY to 680 AFY."⁵⁹ BAWSCA's Strategy does not estimate the water supply from stormwater capture projects given a lack of reliable data.⁶⁰

These co-benefits of GSI may support the use of water rates to co-fund both capital investments and ongoing operation and maintenance of regional-scale and parcel-scale facilities.

D. Sewer Rates

As with water rates and further adding to the options available for a portfolio funding approach, it may be possible to co-fund countywide regional-scale and parcel-scale GSI projects with sewer rates, which can be used for capital investments as well as ongoing operations and maintenance.⁶¹

The following sections provide a summary of the: (1) the types of sewer providers present in San Mateo County, (2) authorized uses of revenues generated from sewer rates, (3) types of GSI investments sewer rates could potentially fund, (4) examples of communities that have used water rates to pay for GSI, and (5) green infrastructure Drivers and Objectives in San Mateo County using water rates to pay for GSI could potentially meet.

1. Authorized Uses of Revenues Generated from Sewer Rates

There are four types of sewer rates that may be available to co-fund countywide GSI investments of all scales: (1) rates collected by a municipally owned sewer agencies, (2) rates collected by county sewer districts, (3) rates collected by special districts that provide sewer services, and (4) rates collected by privately owned sewer systems. As detailed below, whether these rates can be used to help pay for GSI investments depends on the varying degrees of flexibility and legal authorities these different types of sewer agencies have with municipally owned agencies potentially having the most flexibility and privately owned systems likely having the least.

i. Municipal Sewer Agencies

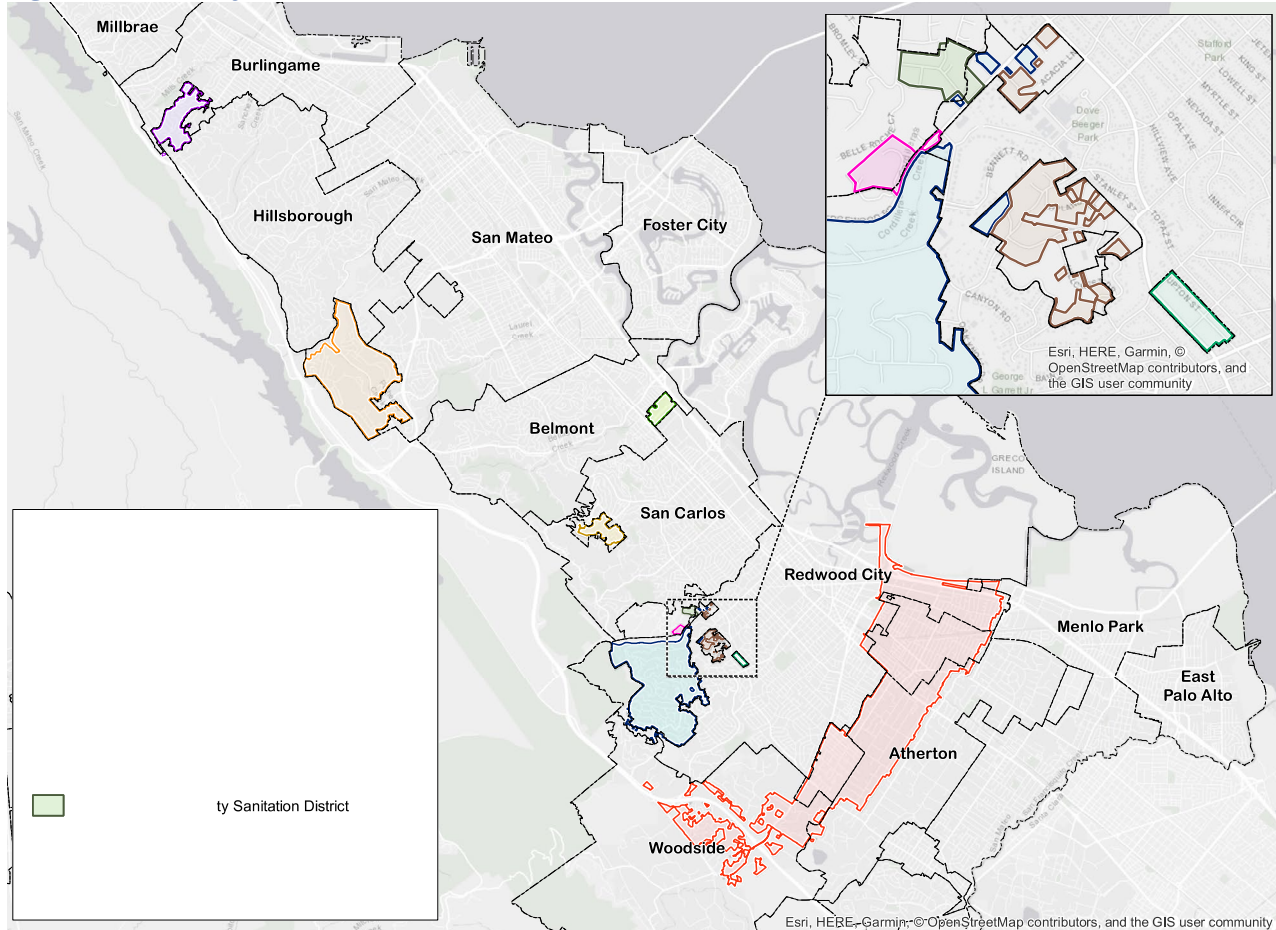
Municipally owned and operated sewer agencies' authority to collect rates from their customers is governed by Prop 218. As explained [above](#), rates collected for sewer services are exempt from voter approval requirements; sewer rates must, however, meet the remaining requirements of Prop 218. This includes the requirements that sewer rates be used only for the purpose for which the rate was imposed—i.e., collecting and disposal of sewage—and that the rate not exceed the proportional cost of the service attributable to the property on which the rate is imposed. In addition, local ordinances regulate the rates which municipal sewer agencies collect and how those rates are used.⁶²

Because sewer rates set by municipally owned and operated sewer agencies are governed by local ordinance there may be flexibilities in the purposes for which these rates may be used, including for GSI as is explored in the next section.

ii. County Districts

Sewer services may also be provided by county-governed districts. Per the San Mateo County San Mateo County Local Agency Formation Commission (LaFCO) there are 10 county-governed sewer districts in San Mateo County, which are shown in [Figure 2](#), below.⁶³ As with municipal sewer agencies, county-governed systems' authority to collect rates from their customers is governed by Prop 218, as well as county ordinances, resolutions, and other regulations.

Figure 2 – County Administered Sewer and Sanitation Districts



Because sewer rates set by county sewer districts are governed by county ordinance there may be flexibilities in the purposes for which these rates may be used, including for GSI as is explored in the next section.

iii. Special Districts

There are several sources of authority to consider when evaluating how special sewer districts may use their sewer rates. Special district sewer providers' rates are governed by Prop 218. They are also governed by the enabling legislation that created the special district. The specific enabling legislation will depend on the particular special district in question.⁶⁴ For example, the Bayshore Sanitary District, a special district in San Mateo County that provides sewer collection and disposal services for portions of serving portions of Daly City and Brisbane, was created pursuant to California Health and Safety Code sections 6400 et seq.⁶⁵ In addition, special sewer districts authority to collect and use rates for sewer services are governed by the district's regulations, ordinances, and/or resolutions.⁶⁶

Because sewer rates set by special districts are governed by multiple layers of legal requirements there may be moderate flexibility in the purposes for which these rates may be

used. This may nonetheless include the ability to co-fund GSI of all scales, as is explored in the next section.

iv. Privately Owned Sewer Districts

The authority for privately owned sewer providers to collect and use water sewer is governed by the California Public Utilities Commission.⁶⁷ In setting utility rates, the Commission applies two basic factors: 1) the utility's operating expenses or cost of service and 2) a fair return on the utility's investment.⁶⁸ In particular, sewer rates for privately owned water providers are governed by California Public Utility Code sections 451-468.

Because sewer rates set by privately owned systems are governed by the California Public Utilities Commission there may be less flexibility in the purposes for which these rates may be used. This may nonetheless include the ability to co-fund GSI of all scales, as is explored in the next section.

2. Co-Funding Green Infrastructure with Sewer Rates

As detailed [above](#), regional-scale and distributed, parcel-scale GSI projects can provide benefits to sewer systems either by keeping stormwater out of maxed-out sewer systems helping prevent sewer overflows and basement backups and adding influent to wastewater treatment plants with reduced inflows resulting from conservation allowing improved water quality for effluent discharges or increased opportunities for water recycling.

Communities in San Mateo County already recognize the benefits of GSI to local sewer systems. For example, the City of San Mateo's Green Infrastructure Plan cites multiple benefits of GSI, and identifies sewer rates as a revenue source for its stormwater program that includes GSI investments.⁶⁹

These co-benefits of GSI may support the use of sewer rates to co-fund both capital investments and ongoing operation and maintenance of regional-scale and parcel-scale facilities.

IV. Potential Financing Options

WaterNow has explored three potential financing options available to C/CAG, its members, and potential regional partners to finance capital investments in all scales of green stormwater infrastructure: (1) revenue bonds; (2) [State Revolving Fund loans](#); and (3) [Water Infrastructure Finance and Innovation Act \(WIFIA\) loans](#). C/CAG can leverage the [revenues detailed above](#) by debt-financing capital investments in regional-scale and distributed, parcel-scale GSI projects.

Each of the potential financing options is described in detail below.

A. Revenue Bonds

There are two types of bonds potentially available to finance countywide regional and parcel-scale GSI: (1) revenue bonds and (2) general obligation bonds. The focus on this report is revenue bonds. There are also several alternative types of municipal financing approaches that might be available; exploration of these alternatives is, however, beyond the scope of this analysis.⁷⁰

Municipal revenue bonds are bonds issued by local governments to raise funds for public capital projects secured by a specific revenue source.⁷¹ These types of bonds provide up-front capital that is paid back over the life of the bond out of specified revenues. Municipal utilities and special districts often have bonding authority as well, which allows them to borrow against expected revenue from ratepayers. In California, revenue bonds can fall within an exception to Constitutional and statutory debt limitations and thus allow the issuing agency to avoid certain voter approval requirements.⁷²

In addition to traditional revenue bonds, this type of bond can be issued as green or climate bonds, or environmental impact bonds. These are detailed below.

1. Green & Climate Bonds

Green and climate bonds are essentially identical to the normal bonds that municipalities issue, except that:

- The bonds are labeled as “green” or “climate” by their issuer,
- Proceeds are earmarked for green or climate-change mitigation or adaptation investments, and
- The issuer tracks and reports on the use of proceeds to ensure green compliance.⁷³

Green and climate bonds also differ from traditional bonds because they undergo a certification process that attests to the environmental benefits of the bond-financed projects.

2. Environmental Impact Bonds

Environmental impact bonds (EIB) are an innovative financing tool that leverages private investment to support high-impact environmental programs. EIBs use a outcomes-based approach where Environmental, Social, and Governance (ESG) investors provide upfront capital for environmental projects and the beneficiary—e.g., a public entity—repays the investors based on the achievement of the agreed-upon project outcomes. A special kind of municipal bond, an EIB focuses on the delivery of successful environmental outcomes and can include investor payments and penalties attached to the achievement, or non-achievement, of those outcomes.

As detailed below, specific legal and accounting requirements govern the extent to which EIBs can finance distributed GSI. As special kind of municipal revenue bond, to issue an EIB, three key players are needed. First is a government agency or municipality that has a project with specific outcomes, e.g., improved stormwater quality or reduced localized flooding, in mind that needs funding, but may be higher risk because they are innovative strategies making traditional financing approaches out of reach. Second are service providers who can meet the project needs, i.e., contractors to build the intended projects, as well as other stakeholders and beneficiaries of the proposed projects. Third are impact investors who are willing to take on the risk of the particular project not performing as expected and bring down the risks on the public agency. An underwriter then brings these participants together the outcomes-based financing structure, which includes:

- ✓ Establishing performance metrics,
- ✓ Developing the outcomes-based payment structure,
- ✓ Aligning and coordinating partners, and
- ✓ Finding and delivering new sources of capital.

With this model, repayment of the bond depends on the project outcomes. Performance is determined by verified third-party evaluations on whether key stated environmental goals are achieved by bond-financed projects. If the projects perform as expected, the bond would be paid back as planned or as traditional bonds are repaid. If the projects underperform as benchmarked against the established performance metrics, investors may be obligated to repay the bond amount—known as “clawback”—allowing the municipality to assess whether to continue the projects. If the projects overperform, the municipality may agree to pay investors an additional amount over the bond interest and principal payments to incentivize the investors to take on the risk of the innovative projects. This payment structure differentiates EIBs from green and climate bonds. EIBs can qualify as green or climate bonds, however. Performance metrics used in EIBs issued in D.C., Atlanta, and Buffalo to finance investments in green infrastructure—including consumer incentives to encourage distributed GSI on private property in Buffalo—were:

- Volume of stormwater flow reduced,
- Volume of stormwater stored, and
- Impervious area managed.

EIBs also require post-issuance reporting and disclosure of the project outcomes to investors. These disclosures and reporting are more rigorous as compared to green or climate bonds, as they provide the basis for determining whether the finance projects are performing as expected, underperforming, or overperforming and whether the agreed upon payment structures are triggered.

3. Authority to Issue Revenue Bonds

To finance GSI with revenue bonds, utilities must have the express or implied legal authority to issue revenue bonds.⁷⁴ In California, a local governmental agency or special district’s authority to issue revenue bonds may be derived from state statute or local ordinance. As

detailed below, the source of legal authority to issue revenue bonds depends on the issuing entity. This report is focused on these legal authorities, but we note that there are additional legal questions to consider when issuing bonds in California, including applicable debt limits. Providing detailed analysis of these additional considerations is beyond the scope of WaterNow's report.

i. Charter Cities

The California Constitution authorizes the creation of charter cities and counties.⁷⁵ California charter cities and counties look to their local charters to determine their authority to incur debt.⁷⁶ Local charters will also govern procedural requirements for issuing revenue bonds, such as voter approval requirements and other administrative steps that must be satisfied.

For example, in June 2018, San Francisco amended its City Charter to make clear that no matter where a project was located, so long as a project furthered the purposes of the utility, the San Francisco Public Utilities Commission would be able to finance the project. As amended, in relevant part, the Charter now specifies:

the Public Utilities Commission is hereby authorized to issue revenue bonds ... for the purpose of reconstructing, replacing, expanding, repairing, or improving water facilities, clean water facilities, power facilities, or combinations of water, clean water, and power facilities ... *for any [] lawful purpose* of the water, clean water, or power utilities of the City... .

The SFPUC has interpreted this Charter provision to provide clear authority to debt finance distributed infrastructure along with centralized projects.⁷⁷ To determine their legal authority to issue debt to finance regional-scale and parcel-scale GSI, charter cities in C/CAG's membership would look to their own charters for an analogous provision.

ii. General Law Cities & Counties

General law cities, i.e., cities and counties that have not adopted a charter, look to state statute to determine their legal authority to incur debt.⁷⁸ State statute will also govern general law cities and counties' procedural requirements for issuing revenue bonds, such as voter approval requirements and other administrative steps that must be satisfied. According to the California Debt and Investment Advisory Commission, "Numerous statutes spread across several California codes give public agencies the power to borrow."⁷⁹

For example, the Revenue Bond Law of 1941,⁸⁰ which applies to any city, county, city and county, or any municipal or public corporation or district which is authorized to acquire, construct, own, or operate any enterprise, authorizes "issuance of bonds and the acquisition, construction, or improvement of any enterprise." Improvements to an enterprise that can be financed by a revenue bond under this statute includes "collection, treatment or disposal of sewage, waste or storm water, including drainage."⁸¹ Given the broad scope of this authority,

it may be possible to debt-finance regional-scale and parcel-scale GSI facilities without the need for the entity issuing the debt to own or control the facilities because these GSI facilities improve the storm sewer, water, and wastewater systems, and collect and treat stormwater. The Revenue Bond Law does, however, impose prior voter approval requirements for revenue bonds issued under this authority.⁸²

To identify their legal authorities to debt-finance regional- and parcel-scale GSI, general law cities in San Mateo County and/or the County would, thus, look to the authorities outlined in state statute. And when evaluating the scope of those authorities to determine whether they are empowered to use bond proceeds for investments on property they do not own or control—which can be particularly relevant for parcel-scale GSI investments—general law cities may consider whether the statutory authority allows for financing of improvements, extensions, or expansion of the storm sewer system, or water or sewer system, that benefit the system. This type of broad language can help support the use of revenue bond proceeds for GSI on property the financing entity does not control.

iii. Joint Powers Authorities

Joint powers authorities, as independent governmental entities separate from the JPA members, have standalone authority to issue revenue bonds set out in California Government Code sections 6540-6579.5.⁸³ In particular, JPAs are authorized to issue revenue bonds to finance the cost and expenses of “acquiring or constructing a project” or “conducting a program” for several purposes, including:

- Programs, facilities, rights, properties, and improvements for the management, conservation, reuse, or recycling of water,⁸⁴ waste water, or recycled water and other programs and facilities designed to reduce the demand for, or permit or promote the efficient use of, water resources;
- Facilities for the production, storage, transmission, or treatment of water or waste water; and
- A regional or local public park, recreational area, or recreational center, and related all facilities and improvements.⁸⁵

These authorized uses of proceeds from a revenue bond issued by a JPA likely include regional-scale and parcel-scale GSI. These GSI facilities manage stormwater, help conserve drinking water, promote the efficient use of water resources, and can be facilities and improvements related to parks and recreation areas.

As with charter cities and general law cities, JPAs must follow certain procedural requirements prior to issuing revenue bonds and all JPA members must authorize the bond issuance.⁸⁶ The specific requirements that apply depend on the type of project to be financed; as relevant to bonds to finance GSI investments procedural steps include adopting an ordinance authorizing the bond and stating that the bond is subject to referendum provisions of section 9142 of the California Elections Code.⁸⁷ Revenue bonds issued by JPAs may be a pathway to issuing debt

without prior voter approval. “Revenue bonds are the preferred financing vehicle for enterprise revenue debt when revenue bonds can be issued without voter approval.”⁸⁸

iv. Special Districts

Special districts also have independent legal authority to issue revenue bonds, which will be defined by the districts’ enabling statutes.

For example, the FSLRRD’s enabling law authorizes this special district to issue revenue bonds. In particular, the FSLRRD is authorized to issue revenue bonds pursuant to the Revenue Bond Law of 1941 “except that no election shall be required for revenue bonds authorized by the board for capital projects” undertaken as an exercise of the FSLRRD’s powers. As explained above, the Revenue Bond Law of 1941 authorizes “issuance of bonds and the acquisition, construction, or improvement of any enterprise” where improvements include “collection, treatment or disposal of sewage, waste or storm water, including drainage,”⁸⁹ which may be sufficiently broad to encompass regional- and parcel-scale GSI.

v. EIFDs

California law also separately authorizes enhanced infrastructure financing districts to issue bonds to finance capital projects to be completed by the district, i.e., tax increment bonds.⁹⁰ As detailed [above](#), the types of capital projects that EIFDs can undertake include improvements to property with an estimated useful life of 15 years or longer that significantly benefits the district, facilities for the collection and treatment of water for urban uses, parks and recreational facilities, and projects that enable communities to adapt to the impacts of climate change. These authorized uses of bond proceeds may include regional-scale and parcel-scale GSI.

Via AB 116, effective January 1, 2020, previous voter approval requirements for bonds issued by EIFDs were repealed.⁹¹ With this change in EIFD law, there are no voter approval requirements for an EIFD to issue tax increment bonds. There are, however, procedural requirements EIFDs must meet including adopting a resolution with a description of the facilities or developments to be financed and estimated cost of the facilities or developments, the estimated cost of preparing and issuing the bonds, and the principal amount of the bond issuance, among other requirements.⁹²

B. Clean Water State Revolving Fund Loans

The Clean Water Act established state revolving funds (SRFs) to assist communities with upfront cash to build water infrastructure.⁹³ EPA allocates SRF funding to each state that administers the CWA. The states then contribute an additional 20% to match federal SRF capitalization grants, and also administer the program according to state-specific eligibility criteria. While states establish their own eligibility criteria, the American Recovery Act of 2009,

and subsequent appropriations bills, require all Clean Water SRF programs to use at least 10% of their federal capitalization grant for green infrastructure, water and energy efficiency projects, or other environmentally innovative activities. This requirement is commonly referred to as the Green Project Reserve.

The below sections provide: (1) an overview of California's CWSRF program; (2) an outline of the entities eligible for CWSRF loans; (3) analysis on how SRF loans might be leveraged to pay for regional- and parcel-scale GSI; and (4) examples of Green Project Reserve projects financed by the California CWSRF.

1. Overview: California's CWSRF

The primary purpose of California's CWSRF is to provide financing for eligible projects to restore and maintain water quality in the state.⁹⁴ California also seeks to reduce the effects of climate change and promote sustainable use of water resources for future generations through implementation of the CWSRF program.⁹⁵

The California CWSRF, administered by the State Water Resources Control Board Division of Financial Assistance, uses federal capitalization grants, state match funds, loan repayments, bond proceeds and interest earnings to make loans for construction of wastewater treatment facilities, the implementation of nonpoint source water quality control projects, and the development and implementation of estuary enhancement projects.⁹⁶ Since it began in 1988 through June 30, 2019, the California CWSRF has executed 838 loans totaling ~\$11.2 billion.

2. Entities Eligible for CWSRF Loans

Borrowers eligible for SRF loans include, but are not limited to any city, town, district, or other public body created under state law.⁹⁷

As local governmental entities, C/CAG and/or its members are eligible entities. Special districts in San Mateo County are also eligible. There are no funding minimums or maximums, and interest rates are set at ½ most recent State General Obligation Bond Rate at time of funding approval. As of September 2021, CWSRF interest rates were 1.10%.⁹⁸

3. Leveraging CWSRF Loans for GSI Investment

CWSRF loans can be used to pay for a variety of projects including, but not limited to:

- Construction of publicly-owned stormwater treatment facilities;
- Implementation of nonpoint source projects to address pollution associated with urban areas, among others; and
- Development and implementation of estuary comprehensive conservation and management plans for San Francisco Bay, among others.⁹⁹

In addition, to meet the Green Project Reserve requirements, California follows EPA's 2012 Guidance for Determining Project Eligibility.¹⁰⁰ EPA's guidance specifically cites green infrastructure as categorically eligible project types, including regional- and parcel-scale GSI such as constructed wetlands, permeable pavement, bioretention, green roofs, green streets, urban forestry programs, rainwater harvesting and reuse, and comprehensive retrofit programs designed to keep stormwater discharges out of all types of sewer systems.¹⁰¹

Given these authorized uses, there is likely a path for seeking CWSRF loans to finance regional-scale and parcel-scale GSI throughout San Mateo County.

4. Examples of California Green Project Reserve Projects

According to the 2021-2022 CWSRF Intended Use Plan, there are over 20 Green Project Reserve projects on the fundable list for 2021/2022.¹⁰²

Only one project on the 2021/2022 fundable list, however, expressly includes green infrastructure—the City of San Diego's South Mission Beach Storm Drain Improvements and Green Infrastructure project. San Diego's project will implement storm drain improvements to increase conveyance capacity, and mitigate surface ponding conditions within the public right-of-way, and install eight (8) proposed biofiltration or bioretention basins to improve local storm water quality tributary to Mission Bay.¹⁰³ San Diego has requested \$16.7 million in CWSRF loans for this project.

C. Water Infrastructure Finance and Innovation Act (WIFIA) Loans

The Water Infrastructure Finance and Innovation Act (WIFIA) was enacted in 2014 to accelerate investment in local water and wastewater infrastructure. It supplements the SRF loan programs by providing long-term, low-cost supplemental credit assistance to broad range of borrowers. This program is separate from, but implemented in coordination with, the SRF programs to provide subsidized financing for large dollar-value projects. The WIFIA program offers loans with low, fixed interest rates that are set at loan closing based on the U.S. Treasury rate of similar maturity and flexible financial terms.¹⁰⁴ As of October 2021, EPA has closed 59 WIFIA loans for \$11.5 in total financing.

1. Entities Eligible for WIFIA Loans

Borrowers eligible for WIFIA loans include, but are not limited to:

- Local, state, tribal, and federal government entities;
- Partnerships and joint ventures; and
- Corporations and trusts.¹⁰⁵

As local governmental entities, C/CAG and/or its members are eligible entities. Special districts in San Mateo County are likely also eligible. And eligible entities can submit joint loan applications for a bundle of projects.¹⁰⁶

In addition, there are certain important program features that borrowers interested in applying for WIFIA funding should consider, including:

- Minimum project size for large communities is \$20 million;
- Minimum project size for small communities (population of 25,000 or less) is \$5 million;
- WIFIA funds can be used to pay for a maximum of 49% of eligible project costs;
- Total federal assistance may not exceed 80% of eligible project costs;
- The term of the loan may be no more than 35 years following substantial completion of the project;
- Repayment may be deferred for a maximum of 5 years following substantial project completion;
- Projects must be creditworthy and have a dedicated source of revenue.

Further, WIFA loan dollars can be used for development-phase activities such as design and planning as well as construction, reconstruction, rehabilitation, and replacement costs.¹⁰⁷

2. Leveraging WIFIA Loans for GSI Investments

Borrowers eligible to receive WIFIA funding, including local governmental entities, can use the funds to pay for many types of infrastructure projects, including those aimed at:

- Drought prevention, reduction, or mitigation;
- Aquifer recharge;
- Water reuse; and
- Alternative water sources.¹⁰⁸

Regional-scale and parcel-scale GSI can likely meet these eligibilities, as GSI projects can serve each of these purposes.

3. Examples

To date, WIFIA has closed 59 loans totaling \$11.5 billion in credit assistance to help finance over \$24 billion for water infrastructure projects. This includes 23 projects in California for water recycling, flood channel improvements, and wastewater treatment plant improvements.¹⁰⁹ However, to date there have been no WIFIA loans issued to finance investments in GSI.

V. Accounting for GSI

Generally Accepted Accounting Principles (GAAP) that apply to local government and public utilities allow “capital expenditures”—expenditures for fixed or capital assets—to be debt financed. For distributed GSI expenditures to be capital expenditures under GAAP, the expenditure must, among other things, result in the acquisition, improvement or creation of an “asset” of the utility. There are two possible approaches to creating this asset: (1) regulated operations accounting, or (2) standard accounting.

A. Regulated Operations Accounting

Distributed GSI on public property not owned or controlled by the utility and private property may constitute an asset of the utility if the distributed GSI expenditure creates a “regulatory asset” under Governmental Accounting Standards Board (GASB) Statement No. 62.

Doesn't My Utility Need to Control an Asset Before We Can Capitalize the Cost?

Not always—this is the basic difference between GASB Concepts Statement 4 and GASB Statement 62.

Standard accounting for public entities is generally done in conformity with Governmental Accounting Standards Board (GASB) Concept 4 which reflects the GAAP rule that only assets controlled by the entity can be financed with debt, i.e., capitalized.

However, GASB Statement 62 authorizes public agencies to book these expenditures as “regulatory assets” that can be capitalized (see below). Statement 62 accounting does not require that the utility own or control the asset in order to capitalize the cost; the asset is the binding promise to repay the loan, not the items procured or produced with the loan.

GASB Statement 62 allows public agencies to book the cost of “business-type activities” as assets instead of annual expenses—a Regulated Operations accounting approach. These are called “regulatory assets” and can be capitalized by cities and public water utilities. The Regulated Operations approach is a complete alternative to traditional public agency accounting for capital assets. To use Regulated Operations accounting and access debt-financing for distributed GSI, local water providers need to have a governing board that:

- Is empowered to set rates;
 - Can set those rates at levels to cover the cost of the specific programs to be financed;
- and
- Can commit to setting rates in the future to pay for the cost of these programs.

As governmental agencies with governing boards empowered to set rates C/CAG’s members can likely meet these requirements.

Electricity utilities have been bond financing distributed energy conservation programs on private properties for many years using GASB 62 accounting. However, this is not an approach that has been widely embraced by the public water resource sector and many

water utility chief financial officers questioned whether it truly could apply to investments in consumer incentives for localized water strategies. Addressing this uncertainty, in May 2018, GASB issued new guidance under GASB 62 making it clear that public water resource agencies are authorized to capitalize investments in localized waters strategies employing consumer rebates and direct installations as “Regulated Operations.” The practical implication of this clarification is that utilities can now access municipal bond proceeds to invest in consumer rebate (and/or direct installation) programs. The GASB 62 accounting approach applies to investments made through both municipal revenue and general obligation bonds and can be used when issuing tax-exempt or taxable municipal bonds, as well as other forms of debt.

B. Standard Accounting

Distributed GSI expenditures can also qualify as capital expenditures if the municipality or utility exercises “control” over the asset sufficient to satisfy the requirement of GASB Concepts Statement No. 4—the traditional accounting treatment for debt financing capital assets. As a general matter, control results from the city or utility’s ability to determine the nature and manner of use of the investment. Easements or contracts can usually establish the needed level of control. A small but important set of water utilities are finding that they can invest municipal bond proceeds in distributed infrastructure and comply with GASB Concepts Statement No. 4. For example, over the last two decades, the Southern Nevada Water Authority has bond financed more than \$250 million (as of 2020) in incentive programs such as private property turf replacements generating approximately 430,000 acre feet in water supply for the Las Vegas region. Similarly, the Milwaukee Metropolitan Sewerage District (MMSD) capitalizes and bond finances GSI investments on property it does not own by requiring recipients of GSI grants to enter into a conservation easement with MMSD. In 2019, MMSD invested \$1.9 million in private property GSI. In February 2020, MMSD issued a certified Climate Bond to finance \$20 million in “community based” GSI.

C. Examples

Los Angeles Department of Water and Power (LADWP) has been using municipal bond proceeds to finance consumer rebate programs for a variety of water efficiency and stormwater capture programs, including rebates for water-efficient installations, high-efficiency washing machines, permeable pavement, rain barrels, cisterns, and replacement of turf with low-water landscaping using the GASB 62 accounting approach. As of 2020, LADWP reported \$160 million in distributed water conservation and stormwater regulatory assets. By using the upfront capital provided by bond sales, LADWP can promote “water use efficiency as a permanent way of life” and work toward achieving the city’s long-term conservation goals. Since 2010, LADWP’s conservation program has saved roughly 25,000 acre-feet of water per year.

Similarly, Seattle Public Utilities finances its RainWise program¹¹⁰ with municipal bond proceeds using the GASB 62 regulated operations accounting approach. By investing in these programs at scale, as of September 2020, Seattle has been able to finance GSI

projects that manage 410 million gallons of stormwater per year, bringing the city closer to meeting its goal of managing 700 million gallons of runoff per year with GI by 2025.

A small but important set of water utilities are finding that they can invest municipal bond proceeds in GSI and comply with GASB Concepts Statement No. 4's requirement that the agency "control" the asset to be financed by entering into property liens or contracts with property owners. For example, over the last two decades, the Southern Nevada Water Authority (SNWA) has bond financed more than \$250 million (as of 2020) in incentive programs such as private property turf replacements generating approximately 430,000 acre feet in water supply for the Las Vegas region. Similarly, the Milwaukee Metropolitan Sewerage District (MMSD) capitalizes and bond and loan finances GSI investments on property it does not own by requiring recipients of GSI grants to enter into a conservation easement with MMSD. In 2019, MMSD invested \$1.9 million in private property GI. In February 2020, MMSD issued a certified Climate Bond to finance \$20 million in "community based" GI.

VI. Investments in GSI Serve a Public Purpose

Nearly all states prohibit "gifts" of public funds to private individuals or groups. However, most states have also developed extensive exceptions allowing public funds to be directed to private parties when these funds are deployed for primarily public benefits. These constitutional provisions were adopted in the wake of the public debt crisis of the 1830s—when eight states defaulted on debt incurred to build public infrastructure through private partnerships—nearly every state adopted a constitutional amendment to prohibit the use of public bonds and credit for private projects that do not benefit public interests. Together the amendments have formed the "public purpose" doctrine, which provides that public dollars must be allocated for public purposes and government interests and cannot only be used to aid private persons.

Because of these exceptions state gift prohibitions should not be viewed as barriers to implementing distributed GSI on private property with public capital. Most states allow expenditures that incidentally benefit private interests, as long as they primarily serve and effectuate a public purpose. Some states choose to apply narrow interpretations of terms like "public purpose" and "private benefit" to limit the scope of the prohibition. Other states, however, have not extended an exemption as broadly as others.

In California the prohibition against the gift of public funds is set out at Article XVI, section 6 of the California Constitution.¹¹¹ "In determining whether an appropriation of public money is to be considered a gift within the constitutional prohibition, the primary question is whether the funds are to be used for a public or a private purpose."¹¹² So long as the money serves a public purpose, there is no gift of public funds even if private persons benefit from the investment.¹¹³ Examples of constitutionally valid public purposes include: free school text books, free treatment in county hospitals for the indigent, and flood control.¹¹⁴

The public purposes of parcel-scale GSI investments are cited throughout this report, including benefits related to stormwater, water supply, sewer, and refuse management. Given these extensive public purposes, it is likely that using public rates and bond dollars to pay for parcel-scale GSI located on private property will not be a prohibited gift of public funds even if those projects incidentally benefit the private property owner where they are located.¹¹⁵

VII. Drivers & Objectives

Pursuing a portfolio approach to funding and financing investments in green infrastructure installations representing large, regional-scale facilities and distributed parcel-scale facilities would be motivated by each of the Drivers¹¹⁶ identified in C/CAG consultant Geosyntec's May 2021 memo. These Drivers are:

1. Driver 1: Limited Resources
2. Driver 2: Existing Stormwater Infrastructure Deficiencies
3. Driver 3: Water Quality
4. Driver 4: Climate Resiliency
5. Driver 5: Beneficial Use of Stormwater
6. Driver 6: Equity and Community Engagement
7. Driver 7: Compliance with MS4 Permit
8. Driver 8: Environmental Justice.

Geosyntec's memo provides a detailed analyses of each of these Drivers.

Countywide green infrastructure installations representing large, regional-scale facilities and distributed parcel-scale facilities funded via a non-balloted stormwater would advance several Objectives¹¹⁷ for a regional approach to stormwater management, including:

1. Objective 1: More Efficiently Use Limited Resources
2. Objective 2: Support Improvements to and/or Alleviate Strain on Existing Stormwater Infrastructure
3. Objective 6: Site and Design Projects to Equitably Serve and Protect Communities
4. Objective 7: Consider Local Community Benefits and Concerns in Project Implementation.

Geosyntec's memo provides a detailed analyses of each of these Objectives.

VIII. Conclusion

To implement a large-scale, countywide GSI program, C/CAG and/or its member agencies will likely need to take a portfolio approach to funding and financing, as it is unlikely that any single revenue stream alone will be able to meet programmatic needs. Pursuing this portfolio approach within the countywide setting can be both a challenge and an opportunity. For example, it may not be feasible for a single city within San Mateo County to issue a revenue

bond to finance green infrastructure investments given specific local challenges, e.g., voter approval requirements. However, as detailed above, joint powers authorities may be authorized to issue revenue bonds without prior voter approval. C/CAG and/or its member agencies will, thus, want to consider how a portfolio approach can create flexibilities a single agency approach might not provide.

As this report outlines, there are a number of funding and financing options available to C/CAG and/or its member agencies, as well as potential regional partners, to build out this portfolio approach. Further WaterNow's analysis includes funding and financing options for all scales of GSI, i.e., large, regional-scale projects and smaller parcel-scale facilities. By including the full range of infrastructure options from the outset it may provide C/CAG and its members more flexibility as planners and decision makers move towards a right sized GSI program.

Appendix A – Financing Scenarios Summary Worksheet

San Mateo Stormwater pro forma	yr 1	yr 2	yr 3	yr 4	yr 5	yr 6	yr 7	yr 8	yr 9	yr 10	yr 11	yr 12	yr 13	yr 14	yr 15	yr 16	yr 17	yr 18	yr 19	yr 20	Totals	
Desired Spending level																						
Regional project spending	\$750,000	\$2,250,000	\$13,500,000	\$13,500,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$14,250,000	\$12,750,000	\$1,500,000	\$1,500,000								\$150,000,000
Parcel sized projects		\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$28,500,000
Total Capital Spending	\$750,000	\$3,750,000	\$15,000,000	\$15,000,000	\$16,500,000	\$16,500,000	\$16,500,000	\$16,500,000	\$16,500,000	\$16,500,000	\$15,750,000	\$14,250,000	\$3,000,000	\$3,000,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$178,500,000
Operations	\$250,000	\$900,000	\$2,100,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$2,600,000	\$47,450,000
Maintenance	\$0	\$0	\$0	\$0	\$0	\$225,000	\$450,000	\$675,000	\$900,000	\$1,125,000	\$1,350,000	\$1,575,000	\$1,800,000	\$2,025,000	\$2,250,000	\$2,250,000	\$2,250,000	\$2,250,000	\$2,250,000	\$2,250,000	\$2,250,000	\$23,625,000
Total Operations and Maintenance	\$250,000	\$900,000	\$2,100,000	\$2,600,000	\$2,600,000	\$2,825,000	\$3,050,000	\$3,275,000	\$3,500,000	\$3,725,000	\$3,950,000	\$4,175,000	\$4,400,000	\$4,625,000	\$4,850,000	\$4,850,000	\$4,850,000	\$4,850,000	\$4,850,000	\$4,850,000	\$4,850,000	\$71,075,000
Total Desired Spending	\$1,000,000	\$4,650,000	\$17,100,000	\$17,600,000	\$19,100,000	\$19,325,000	\$19,550,000	\$19,775,000	\$20,000,000	\$20,225,000	\$19,700,000	\$18,425,000	\$2,400,000	\$2,625,000	\$6,350,000	\$6,350,000	\$6,350,000	\$6,350,000	\$6,350,000	\$6,350,000	\$6,350,000	\$249,575,000
Pay/Go funding alternative																						
Parcel Tax																						
Stormwater fees																						
Water/Sewer revenues																						
Grants																						
Total assumed revenue		\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$190,000,000
Tax increment funding*	\$ 714,713	\$934,074	\$1,157,822	\$1,386,045	\$1,618,833	\$1,856,276	\$2,098,468	\$2,345,504	\$2,597,481	\$2,854,498	\$3,116,654	\$3,384,054	\$3,656,802	\$3,935,005	\$4,218,771	\$4,508,213	\$4,803,444	\$5,104,580	\$5,411,738	\$5,725,040		\$61,428,017
Total Revenues	\$714,713	\$10,934,074	\$11,157,822	\$11,386,045	\$11,618,833	\$11,856,276	\$12,098,468	\$12,345,504	\$12,597,481	\$12,854,498	\$13,116,654	\$13,384,054	\$13,656,802	\$13,935,005	\$14,218,771	\$14,508,213	\$14,803,444	\$15,104,580	\$15,411,738	\$15,725,040		\$251,428,017
Short/over Total Revenue less Desired Spending	(\$285,287)	\$6,284,074	(\$5,942,178)	(\$6,213,955)	(\$7,481,167)	(\$7,468,724)	(\$7,471,532)	(\$7,429,494)	(\$7,402,519)	(\$7,358,502)	(\$6,583,346)	(\$5,048,946)	\$6,256,802	\$6,310,005	\$7,864,771	\$8,154,213	\$8,453,444	\$8,754,580	\$9,061,738	\$9,375,040		\$1,853,017
Debt Funded alternatives																						
Debt Funded Desired Spending level																						
Regional project spending	\$750,000	\$2,250,000	\$13,500,000	\$13,500,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$15,000,000	\$14,250,000	\$12,750,000	\$1,500,000	\$1,500,000								\$150,000,000
Parcel sized projects		\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$28,500,000
Issue Debt in 5 year increments	\$51,000,000					\$82,500,000					\$45,000,000											\$178,500,000
Annual debt service 30 year debt 1.5%																						
First issue	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$44,000,000
Second issue						\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$3,400,000	\$51,000,000
Third issue							\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$1,900,000	\$18,000,000
Total debt service	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$2,200,000	\$5,600,000	\$5,600,000	\$5,600,000	\$5,600,000	\$5,600,000	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000	\$7,500,000	\$114,000,000
Total Operations and Maintenance	\$250,000	\$900,000	\$2,100,000	\$2,600,000	\$2,600,000	\$2,825,000	\$3,050,000	\$3,275,000	\$3,500,000	\$3,725,000	\$3,950,000	\$4,175,000	\$4,400,000	\$4,625,000	\$4,850,000	\$4,850,000	\$4,850,000	\$4,850,000	\$4,850,000	\$4,850,000	\$4,850,000	\$71,075,000
Total Desired Spending with Debt	\$2,450,000	\$3,100,000	\$4,100,000	\$4,800,000	\$4,800,000	\$14,425,000	\$14,650,000	\$14,875,000	\$15,100,000	\$15,325,000	\$11,450,000	\$11,675,000	\$11,900,000	\$12,125,000	\$12,350,000	\$12,350,000	\$12,350,000	\$12,350,000	\$12,350,000	\$12,350,000	\$12,350,000	\$185,075,000
Debt Options																						
1-Assumed revenue of \$10 million Short/over		\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$10,000,000	\$190,000,000
Short/over	(\$2,450,000)	\$6,900,000	\$5,700,000	\$5,200,000	\$5,200,000	\$1,575,000	\$1,350,000	\$1,125,000	\$900,000	\$675,000	(\$1,450,000)	(\$1,675,000)	(\$1,900,000)	(\$2,125,000)	(\$2,350,000)	(\$2,350,000)	(\$2,350,000)	(\$2,350,000)	(\$2,350,000)	(\$2,350,000)	(\$2,350,000)	\$4,925,000
2-Tax increment funding* Short/over	\$ 714,713	\$ 934,074	\$1,157,822	\$1,386,045	\$1,618,833	\$1,856,276	\$2,098,468	\$2,345,504	\$2,597,481	\$2,854,498	\$3,116,654	\$3,384,054	\$3,656,802	\$3,935,005	\$4,218,771	\$4,508,213	\$4,803,444	\$5,104,580	\$5,411,738	\$5,725,040		\$61,428,017
Short/over	(\$1,735,287)	(\$2,165,926)	(\$3,042,178)	(\$3,413,953)	(\$3,801,167)	(\$4,208,724)	(\$4,633,532)	(\$5,079,494)	(\$5,529,494)	(\$6,000,519)	(\$6,470,502)	(\$6,933,346)	(\$7,390,946)	(\$7,843,198)	(\$8,289,995)	(\$8,731,229)	(\$9,171,787)	(\$9,610,566)	(\$10,054,420)	(\$10,502,262)	(\$10,954,960)	(\$123,648,983)
3-Both Tax increment and \$10 M other revenue Short/over	\$714,713	\$10,934,074	\$11,157,822	\$11,386,045	\$11,618,833	\$11,856,276	\$12,098,468	\$12,345,504	\$12,597,481	\$12,854,498	\$13,116,654	\$13,384,054	\$13,656,802	\$13,935,005	\$14,218,771	\$14,508,213	\$14,803,444	\$15,104,580	\$15,411,738	\$15,725,040		\$251,428,017
Short/over	(\$1,735,287)	\$7,834,074	\$6,857,822	\$6,586,045	\$6,818,833	\$3,431,276	\$3,448,468	\$3,470,504	\$3,492,481	\$3,529,498	\$1,666,654	\$1,709,054	\$1,756,802	\$1,810,005	\$1,868,771	\$2,154,213	\$2,453,444	\$2,754,580	\$3,061,738	\$3,375,040		\$66,353,017
4-Both Tax increment and \$7M other revenue Short/over	\$714,713	\$7,934,074	\$8,157,822	\$8,386,045	\$8,618,833	\$8,856,276	\$9,098,468	\$9,345,504	\$9,597,481	\$9,854,498	\$10,116,654	\$10,384,054	\$10,656,802	\$10,935,005	\$11,218,771	\$11,508,213	\$11,803,444	\$12,104,580	\$12,411,738	\$12,725,040		\$194,428,017
Short/over	(\$1,735,287)	\$4,834,074	\$3,857,822	\$3,586,045	\$3,818,833	\$431,276	\$448,468	\$470,504	\$492,481	\$529,498	(\$1,333,346)	(\$1,290,946)	(\$1,243,198)	(\$1,199,995)	(\$1,131,229)	(\$841,787)	(\$546,566)	(\$245,420)	\$61,738	\$375,040		\$9,353,017
* Tax increment can only be used for capital																						

Appendix B – Funding & Financing Matrix

Funding/Financing Type	Capital Investments	Ongoing Operation & Maintenance
Non-balloted stormwater fee	✓	✓
Enhanced Infrastructure Financing District	✓	
Water Rates	✓	✓
Sewer Rates	✓	✓
Revenue bonds	✓	
Clean Water SRF Loans	✓	
WIFIA Loans	✓	

Endnotes

¹ GSI practices include green roofs, rain gardens, permeable pavement, trees, cisterns, and other natural approaches that infiltrate, evapotranspire, or reuse stormwater onsite. For purposes of this report, “regional-scale” GSI includes large installations that capture stormwater runoff from multiple properties and “parcel-scale” refers to GSI facilities that capture stormwater from a single residential, commercial, industrial, or institutional parcel. Together regional-scale and parcel-scale GSI can be implemented to create a countywide GSI program.

² https://www.flowstobay.org/wp-content/uploads/2020/03/CCAG-Task-2-Funding-Analysis2014_Final-Draft_0.pdf;
<https://www.flowstobay.org/wp-content/uploads/2020/03/GIDG-2nd-Edition-2020-03kh-RED.pdf>

³ American Rivers has conducted an analysis of the potential for a stormwater credit trading program in San Mateo County. See their separate report for more details.

⁴ The Advancing Regional Stormwater Capture Projects: Business Case for Regional Collaboration was developed by Geosyntec as part of C/CAG’s overall Regional Collaboration Framework project.

⁵ SCI Consulting Report, 2014; SCI Consulting Report, 2018.

⁶ “As stated earlier, water and sewer fees are exempt from the voter approval requirements of Proposition 218. Senate Bill (SB) 231, signed by Governor Brown on October 6, 2017, provides a definition for sewer that includes storm drainage. This clarification would give stormwater management fees the same exemption from the balloting requirement that applies to sewer, water, and refuse collection fees, and would make stormwater property-related fees a non-balloted option – something very attractive to municipalities. Unfortunately, the Howard Jarvis Taxpayers Association, who authored and sponsored Proposition 218, is expected to file a lawsuit against any municipality that adopts a stormwater fee without a ballot proceeding. Therefore, the SB 231 approach must be given a very cautionary recommendation at this time. Any agency considering moving in that direction should consult with other agencies and industry groups to coordinate their efforts in a strategic manner and avoid setting an unfavorable legal precedent.” ... “Further, Proposition 218 was not sufficiently explicit on the key question of whether stormwater qualifies for the water, sewer, and refuse collection exemption from the voter approval requirement. This issue was settled in 2002 when the appellate court ruled that any new or increased stormwater fee would be required to obtain voter approval. However, SB 231 (2017) attempts to push back on the Salinas decision, and may prove to be the vehicle for putting funding for stormwater services on par with the other water-related services.” (SCI Consulting Report, 2018.)

⁷ “‘Fee’ or ‘charge’ means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service. (Cal Const, Art. XIII D § 2(e).)

⁸ (*Howard Jarvis Taxpayers Ass’n v. City of Salinas* (2002) 98 Cal.App.4th 1351, 1354 (citing Cal. Const. Art. XIII D § 6(c).)

⁹ (*Id.*)

¹⁰ (Cal. Gov. Code § 53750(k) (emphasis added).)

¹¹ (Cal. Gov. Code § 53751(m).)

¹² This memo is based on the presumption that fees or charges imposed to fund stormwater services in C/CAG’s members’ jurisdictions will be “property-related fees or charges.” A “property-related service” is “a public service having a direct relationship to property ownership.” (Cal. Const. Art. XIII D § 2(h).) Analysis whether C/CAG’s members could fund stormwater services with fees or charges that are not related to property ownership outside of the meaning of Article XIII D section 2 of the California Constitution is beyond the scope of this memo.

¹³ (Cal. Const., art. XIII D, § 6(a)(1).)

¹⁴ (Cal. Const., art. XIII D, § 6(a)(2).)

¹⁵ (Cal. Const., art. XIII D, § 6(a)(2).)

¹⁶ (Cal. Const., art. XIII D, § 6(b).)

¹⁷ (*See Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1446.)

¹⁸ (*San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2017) 12 Cal.App.5th 1124, 1153 (citing *Newhall County Water Dist. v. Castaic Lake Water Agency* (2016) 243 Cal.App.4th 1430, 1436-1438, 1441, 1442, 1446).)

¹⁹ (*Paland v. Brooktrails Township Community Services Dist. Bd. of Directors* (2009) 179 Cal. App. 4th 1358, 1362.)

²⁰ (Cal. Const., art. XIII D, § 3(a)(4)); Section 4 of Article XIII D of the California Constitution sets out separate procedures and requirements applicable to “assessments” on parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. These procedures and requirements are beyond the scope of this memo.

²¹ (Cal. Const., art. XIII C, § 1(b).)

²² (Cal. Const., art. XIII C, § 1(b).)

²³ As of April 2021, C/CAG estimates that these stormwater fees generate \$3 million in revenues annually. C/CAG Stormwater Committee, April 18, 2021, Matt Fabry Slides, 17 (2021) https://ccag.ca.gov/wp-content/uploads/2021/04/Fabry_SWCommittee_041521_Presentations.pdf.

²⁴ Under “common powers” rule governing joint powers authorities, C/CAG has the authority to carry out the powers its members are authorized to carry out individually. (Cal. Gov’t Code § 6502; see also *Robings v. Santa Monica Mountains Conservancy*(2010) 188 Cal. App. 4th 952, 962.)

²⁵ (See Cal. Water Code § 81301(e); see also, generally, Cal. Water Code §§ 81300-81461 (establishing the Bay Area Water Supply and Conservation Agency).)

²⁶ (AB 825, Sec. 3.)

²⁷ (Cal. Const., art. XIII D, § 6(b)(2).)

²⁸ (See, e.g., *Paland v. Brooktrails Township Community Services Dist. Bd. of Directors*(2009) 179 Cal. App. 4th 1358, 1363, 1364.)

²⁹ (Cal. Const., art. XIII D, § 6(b)(5).)

³⁰ (SCI Consulting Report, 2018.)

³¹ See Geosyntec Drivers & Objectives May 2021 memo for a detailed outline of the Objectives of regional stormwater management via green infrastructure. These Objectives would inform the bases for a non-balloted property-related stormwater fee or charge.

³² The California Regional Water Quality Control Board San Francisco Bay Region’s analysis of Prop 218 is consistent. (See NPDES Permit No. CAS612008, Order No. R2-2022-XXXX, Attachment A, 89-91, [https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/MRP/Compiled%20Order%20and%20All%20Attachments%20\(RS-ACC\).pdf](https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/stormwater/MRP/Compiled%20Order%20and%20All%20Attachments%20(RS-ACC).pdf).)

³³ (See *San Diego County Water Authority v. Metropolitan Water Dist. of Southern California* (2017) 12 Cal.App.5th 1124, 1153.) In addition, C/CAG implements the Countywide Water Pollution Prevention Program and Stormwater Resource Plan further demonstrating that stormwater management via green infrastructure and other measures are services C/CAG and its members provide.

³⁴ (MS4 Permit, Section C.3.j.i.)

³⁵ (See, e.g., *Paland v. Brooktrails Township Community Services Dist. Bd. of Directors*(2009) 179 Cal. App. 4th 1358, 1363, 1364.)

³⁶ (*Howard Jarvis Taxpayers Ass’n v. City of Salinas*(2002) 98 Cal.App.4th 1351, 1354 (citing Cal. Const. Art. XIII D § 6(c).)

³⁷ Rain Barrels & Rebate Program, Flows to Bay, C/CAG, <https://www.flowstobay.org/preventing-stormwater-pollution/at-home/rain-barrels-rebate-program/>.

³⁸ Orange Memorial Park Regional Stormwater Capture Project, City Of South San Francisco, <https://www.ssf.net/departments/public-works/engineering-division/capital-improvement-program/orange-memorial-park-regional-storm-water-capture-project>.

³⁹ <https://safecleanwaterla.org/>.

⁴⁰ <https://safecleanwaterla.org/wp-content/uploads/2019/08/SCW-Board-Letter-Package-CEO-Signed-20180717-Revised-FINAL-SIGNED.pdf>.

⁴¹ L.A. Cnty. Code, Title 20, Chpt. 16, §§ 16.08 (tax rate), 16.09 (exemptions).

⁴² L.A. Cnty. Code, Title 20, Chpt. 16, §§ 16.03, 16.05. “[A] Project that utilizes natural processes that slow, detain, infiltrate or filter Stormwater or Urban Runoff. These methods may include relying predominantly on soils and vegetation; increasing the permeability of Impermeable Areas; protecting undeveloped mountains and floodplains; creating and restoring riparian habitat and wetlands; creating rain gardens, bioswales, and parkway basins; and enhancing soil through composting, mulching, and planting trees and vegetation, with preference for native species. Nature-Based Solutions may also be designed to provide additional benefits such as sequestering carbon, supporting biodiversity, providing shade, creating and enhancing parks and open space, and improving quality of life for surrounding communities. Nature-Based Solution includes Projects that mimic natural processes, such as green streets, spreading grounds and planted areas with water storage capacity.” (L.A. Cnty. Code, Title 20, Chpt. 16, § 16.03.)

⁴³ (Cal. Gov’t Code §§ 53398.51, 53398.59.)

⁴⁴ (See Cal. Gov’t Code § 53398.51(h).)

⁴⁵ (Cal Gov’t Code § 53398.51(f).)

⁴⁶ (Primer on California’s New Tax Increment Financing Tools, Chpt. 2, 8 (2017).)

⁴⁷ (Id.)

⁴⁸ This hypothetical example is based on historic tax revenue information for the County. Analysis available upon request.

⁴⁹ (Cal Gov’t Code § 53398.52.)

⁵⁰ (Cal. Gov't Code § 53398.52.)

⁵¹ See, e.g., San Bruno Municipal Code, Chpt. 10.14.010, see also, e.g., Brisbane Municipal Code, Chpt. 13.12. Further, while Division 5 of the California Public Utilities Code authorizes municipal corporations to own and operate public utilities, including water utilities, "it is the public entity itself which fixes utility rates pursuant to its independent legislative power. (*American Microsystems, Inc. v. City of Santa Clara* (1982) 137 Cal.App.3d 1037, 1042-1043.)

⁵² For example, Division 6 of the California Public Utilities Code authorizes creation of "municipal utility districts"

⁵³ <https://lafco.smcgov.org/coastside-county-water-district>

⁵⁴ See, e.g., <https://www.coastsidewater.org/images/stories/pdfs/Resolution-2020-04-amending-rate-and-fee-schedule.pdf>

⁵⁵ (*American Microsystems, Inc. v. City of Santa Clara* (1982) 137 Cal.App.3d 1037, 1042.)

⁵⁶ (Id.)

⁵⁷ <https://www.flowstobay.org/preventing-stormwater-pollution/at-home/rain-gardens/>

⁵⁸ BAWSCA, Long-Term Reliable Water Supply Strategy Phase II Final Report, 4-21 – 4-25 (February 2015),

https://bawasca.org/uploads/userfiles/files/BAWSCA_Strategy_Phase_II_Final_Report_Feb_2015.pdf.

⁵⁹ BAWSCA, Long-Term Reliable Water Supply Strategy Phase II Final Report, 4-23 (February 2015),

https://bawasca.org/uploads/userfiles/files/BAWSCA_Strategy_Phase_II_Final_Report_Feb_2015.pdf.

⁶⁰ BAWSCA, Long-Term Reliable Water Supply Strategy Phase II Final Report, 4-24 – 4-25 (February 2015),

https://bawasca.org/uploads/userfiles/files/BAWSCA_Strategy_Phase_II_Final_Report_Feb_2015.pdf.

⁶¹ As a general matter, how wastewater utilities approach rates varies widely structures include rates, property taxes, and fees based on parcel-size or amount of water put into the wastewater system. Approaches can also differ within a utility depending on whether a customer has metered or non-metered use or according to the type of property i.e., residential or commercial, being charged. For purposes of this report we use "rate" to include these various structures. Full exploration of the nuances of each of these approaches is, however, beyond the scope of this report.

⁶² See, e.g., City of San Mateo Municipal Code § 7.38.060 (Sewer Fees and Charges).

⁶³

https://lafco.smcgov.org/maps?f%5B0%5D=search_api_multi_aggregation_8%3ASewer/Sanitation&f%5B1%5D=search_a_pi_multi_aggregation_8%3ACounty-governed.

⁶⁴ For example, Division 6 of the California Public Utilities Code authorizes creation of "municipal utility districts."

⁶⁵ <https://lafco.smcgov.org/bayshore-sanitary-district>

⁶⁶ See, e.g., <http://www.bayshoresanitary.com/documents/construction/Bayshore-Sanitary-District-Code-Updated-to-Ord-No-07-5-27-21.pdf>

⁶⁷ (*American Microsystems, Inc. v. City of Santa Clara* (1982) 137 Cal.App.3d 1037, 1042.)

⁶⁸ (Id.)

⁶⁹ City of San Mateo, Green Infrastructure Plan, Table 6-3,

https://www.cityofsanmateo.org/DocumentCenter/View/78488/City-San-Mateo-GI-Plan-080219_Updated-11-19-2019?bidId=.

⁷⁰ See, generally, Spitz & Brennan, Orrick, Herrington & Sutcliffe LLP, Water and Wastewater Projects: Financing with Tax-Exempt Bonds (2012), <https://media.orrick.com/Media%20Library/public/files/w/water-and-wastewater-projects-financing-with-tax-exempt-bonds-pdf.pdf>; see also California Debt and Investment Advisory Commission, California Debt Financing Guide (June 2021), <https://www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf>.

⁷¹ WaterNow Alliance, Tap into Resilience Toolkit, *What are My Financing Options, Types of Bonds, Municipal/Revenue Bonds*, available at: <https://bit.ly/2ZPMDqK>; see also WaterNow Alliance, *Innovation in Action: 21st Century Water Infrastructure Solutions*, available at: <https://tapin.waternow.org/resources/innovation-in-action-21st-century-water-infrastructure-solutions>.

⁷² The California Debt And Investment Advisory Commission, California Debt Financing Guide, 1-4, E-19 (June 2021), <https://www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf>. Voter approval requirements may still apply depending on the issuing entity and the statutory authority governing the bond issuance.

⁷³ WaterNow Alliance, Tap into Resilience Toolkit, *What are My Financing Options, Types of Bonds, Green Bonds*, available at: <https://bit.ly/2ZPMDqK>; see also WaterNow Alliance, Tap into Resilience Toolkit, *How to Issue a Green Muni Bond: The Green Muni Bond Playbook*, available at: <https://tapin.waternow.org/resources/how-to-issue-a-green-muni-bond/>.

⁷⁴ California cities, towns, counties, and other governmental agencies may also be authorized to issue general obligation bonds. Exploration of the legal authorities related to general obligation bonds is beyond the scope of this report.

⁷⁵ Cal. Const. art. XI, §§ 3(a), 5.

- ⁷⁶ The California Debt And Investment Advisory Commission, California Debt Financing Guide, i-32 (June 2021), <https://www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf>. “Charter cities are also subject to general state laws, and all public agencies are subject to the California Constitution.” Ibid.
- ⁷⁷ <https://sfpub.sharefile.com/share/view/s5b528d2bb628418599a4aa17006299d7>
- ⁷⁸ The California Debt And Investment Advisory Commission, California Debt Financing Guide, i-32 (June 2021), <https://www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf>.
- ⁷⁹ The California Debt And Investment Advisory Commission, California Debt Financing Guide, 1-3 (June 2021), <https://www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf>.
- ⁸⁰ Cal. Gov’t Code §§ 54300-54700.
- ⁸¹ Cal. Gov’t Code § 54309.
- ⁸² Cal. Gov’t Code §§ 54386, 54387.
- ⁸³ See, e.g., The California Debt And Investment Advisory Commission, California Debt Financing Guide, 3-60 (June 2021), <https://www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf>.
- ⁸⁴ The Government Code defines water as: “any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source.” Cal. Gov’t Code § 53750(n).
- ⁸⁵ Cal. Gov’t Code § 6546.
- ⁸⁶ See, e.g., Cal. Gov’t Code § 6547.
- ⁸⁷ Section 9142 provides that if a county records more than 500,000 votes for governor in the prior election that the bond must be placed on the next ballot for voter approval if at least 5% of the entire votes cast in the county sign a petition seeking referendum on the bond, or if a county records less than 500,000 gubernatorial votes in the prior election and receives a referendum petition from at least 10% of the votes cast then voter approval is required. Section 9142 does not specify by what percent approval is required for the referendum to pass.
- ⁸⁸ The California Debt And Investment Advisory Commission, California Debt Financing Guide, 3-17 (June 2021), <https://www.treasurer.ca.gov/cdiac/debtpubs/financing-guide.pdf>.
- ⁸⁹ Cal. Gov’t Code § 54309.
- ⁹⁰ Cal. Gov’t Code § 53398.77.
- ⁹¹ AB 116 (Ting) (repealing Cal. Gov’t Code § 53398.81), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB116
- ⁹² Cal. Gov’t Code § 53398.77.
- ⁹³ Because this report is focused on options for financing distributed GSI discussion of the SRF established under the Safe Drinking Water Act is outside the scope of the report.
- ⁹⁴ California State Water Resources Control Board, Policy for Implementing the Clean Water State Revolving Fund, 1 (December 2019), https://www.waterboards.ca.gov/drinking_water/services/funding/documents/srf/dwsrf_policy/final_policy_1219.pdf.
- ⁹⁵ California State Water Resources Control Board, Policy for Implementing the Clean Water State Revolving Fund, 1 (December 2019), https://www.waterboards.ca.gov/drinking_water/services/funding/documents/srf/dwsrf_policy/final_policy_1219.pdf.
- ⁹⁶ California State Water Resources Control Board, California Clean Water and Drinking Water State Revolving Fund Program Evaluation Report, 2 (December 2020), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/pubs/2019_per.pdf.
- ⁹⁷ https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/srf_basics.html.
- ⁹⁸ https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/trueinterestcost.pdf.
- ⁹⁹ https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/srf_basics.html; see also Cal. Water Code § 13481.
- ¹⁰⁰ California State Water Resources Control Board, CWSRF Intended Use Plan 2021-2022, 16 (June 2021), https://www.waterboards.ca.gov/water_issues/programs/grants_loans/docs/cwsrf_iup_sfy2021_22_final2.pdf.
- ¹⁰¹ https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/fy1213/prdr_implmnt.pdf.
- ¹⁰² https://www.waterboards.ca.gov/water_issues/programs/grants_loans/docs/cwsrf_iup_sfy2021_22_final2.pdf
- ¹⁰³ https://www.sandiego.gov/sites/default/files/646245_-_storm_drain_improvements_and_green_infrastructure_report_1.pdf
- ¹⁰⁴ https://www.epa.gov/sites/default/files/2021-03/documents/wifia_benefits_factsheet.pdf
- ¹⁰⁵ 33 U.S.C. § 3904; see also, <https://www.epa.gov/wifia/what-wifia>.
- ¹⁰⁶ Environmental Protection Agency, WIFIA Program Handbook, 11 (2019), https://tapin.waternow.org/wp-content/uploads/sites/2/2019/11/program_handbook_fy2019_mar_2019.pdf.
- ¹⁰⁷ 33 U.S.C. § 3906.
- ¹⁰⁸ 33 U.S.C. § 3905; see also, <https://www.epa.gov/wifia/what-wifia>.
- ¹⁰⁹ <https://www.epa.gov/wifia/wifia-closed-loans>

¹¹⁰ The RainWise program provides residential customers rebates that cover up to 100% of the costs to install rain barrels and rain gardens to address stormwater runoff and combined sewer overflows. <https://www.kingcounty.gov/services/environment/wastewater/cso/rainwise.aspx>.

¹¹¹ “The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever.”

¹¹² (*County of Los Angeles v. La Fuente* (1942) 20 Cal.2d 870, 876-877.)

¹¹³ (Id.)

¹¹⁴ (Id.)

¹¹⁵ Because regional-scale GSI will be located on publicly owned property there is no gift of public funds question at issue with respect to these projects.

¹¹⁶ Geosyntec has defined “Drivers” as: “The fundamental issues that provide impetus for managing stormwater on a regional scale.”

¹¹⁷ Geosyntec has defined “Objectives” as: “The desired outcomes from addressing the identified stormwater management drivers on a regional scale.”