

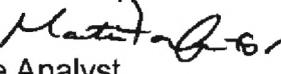
**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

0220-05558-0000

Date: November 27, 2019

To: City Council  
Energy, Climate Change and Environmental Justice Committee

From: Richard H. Llewellyn, Jr.   
City Administrative Officer

Sharon M. Tso   
Chief Legislative Analyst

Subject: **GOVERNANCE STRUCTURE FOR MEASURE W - SAFE, CLEAN WATER PROGRAM (CF 18-0384-S1)**

**RECOMMENDATION**

That the City Council:

1. Request the City Attorney to prepare and present an ordinance to establish the Measure W – Safe Clean Water (SCW) Administrative Oversight Committee (AOC) consisting of representatives from the Offices of the Mayor, City Administrative Officer and the Chief Legislative Analyst and establish AOC responsibilities as noted in the report; actions taken are subject to Council and Mayor approval;
2. Request the City Attorney to prepare and present an ordinance that establishes the Measure W - Safe, Clean Water Regional Projects Special Fund administered by the Department of Public Works, Bureau of Sanitation for the receipt, retention and disbursement of funds received from the Los Angeles County SCW Program for Regional Projects;
3. Request the City Attorney to prepare and present an ordinance that establishes the Measure W - Safe, Clean Water Municipal Program Special Fund administered by the Department of Public Works, Bureau of Sanitation for the receipt, retention and disbursement of funds received from the Los Angeles County SCW Municipal Program;
4. Instruct the Bureau of Sanitation, with assistance from the Chief Legislative Analyst, the City Administrative Officer and other participating departments, to develop a proposed strategic outreach plan to engage community stakeholders and submit to the Administrative Oversight Committee, for review and modification as necessary prior to transmittal to the Mayor and City Council for consideration;
5. Instruct the Bureau of Sanitation, in collaboration with the Working Group, to develop a proposed Watershed Investment Strategy Plan and submit to the Administrative

Oversight Committee, with the Administrative Oversight Committee to review and modify as necessary and transmit to the Mayor and City Council; and

6. Authorize the City Administrative Officer, with the concurrence of the Chief Legislative Analyst, to make technical changes as needed to implement Mayor and City Council intentions.

## **SUMMARY**

On October 2, 2019, the City Council approved a report from the Energy, Climate Change and Environmental Justice Committee (Committee) instructing the Chief Legislative Analyst (CLA) and City Administrative Officer (CAO) to report on a collective governance model for both the regional and municipal program relative to Measure W – Safe Clean Water Program (Measure W; C.F. 18-0384-S1). It specified that the governance model should include the participation of Bureau of Sanitation (BOS), Department of Water and Power (DWP), Department of Recreation and Parks (RAP), Bureau of Engineering (BOE) and Bureau of Street Services (BSS).

In addition, the City Council instructed the CAO and the CLA to develop a comprehensive Program strategy (regional and municipal) for project development and implementation that includes the following:

- Balances water supply, resilience, and water quality compliance obligations of the City;
- Provides *equity* in terms of City-wide funding and supports multi-benefit project approaches;
- Prevents/mitigates project selection conflicts and/or internal City department competition for funding; and
- Supports local hiring objectives, including maximizing Minority Business Enterprise/Women's Business Enterprise opportunities, partnership opportunities with local businesses, and prioritizes burdened communities in addition to Measure W requirements.

## **BACKGROUND**

On November 6, 2018, Los Angeles County voters approved Measure W – The Los Angeles County Safe, Clean Water Program, a parcel tax of 2.5 cents per square foot of impermeable surface to support the costs of stormwater-related projects and activities. The CAO and CLA issued a joint report dated June 28, 2019 that provided an overview of the County program, and recommended the establishment of a special fund for the receipt of Measure W revenues and an appointment process for municipal representatives to the oversight entities established by the County.

This report provides recommendations for a collaborative and transparent governance model that incorporates County requirements, City policy objectives and community input. It is expected that as the City gains experience with this new program or as the County adopts revisions to its implementation guidelines, the governance process may need to be modified accordingly. It is

the intent to develop a structure that does not create additional or burdensome bureaucracy and builds on processes already existing within the stakeholder departments' regular operations.

## **DEPARTMENT ROLES**

The City Council instructed our Offices to report on a collective governance model for both the regional and municipal program and to factor in the participation of BOS, DWP, RAP, BOE and BSS. As a result, our Offices met with each Department to discuss their services and their potential roles with respect to the Measure W program.

### ***Bureau of Sanitation***

The City Council action on October 2, 2019 designated BOS as the City's lead agency to work with Los Angeles County staff to support Steering Committee activities/efforts associated with Central Santa Monica Bay, Upper Los Angeles River, and South Santa Monica Bay Watersheds. In addition, the City Council tasked BOS with preparing informational and advisory materials for the City's municipal seat representatives.

BOS' lead agency designation is based on its role in coordinating and managing the City's stormwater/watershed management and water quality compliance programs. BOS oversees the City's compliance with Federal National Pollutant Discharge Elimination System (NPDES) Permit regulations and related water quality compliance measures. To that end, BOS plays an integral part in implementing the Integrated Regional Water Management Plan (IRWMP) and the Enhanced Watershed Management Programs (EWMPs) which represent the City's strategy for effectively coordinating a variety of water-resource management elements - water quality, water supply, flood control, habitat and wetlands restoration and stormwater/watershed management. BOS also serves as the City's project planning program manager for the Proposition O Program which is a \$500 million general obligation bond program for stormwater/watershed management projects for the City's waterways.

BOS' responsibilities in managing the City's stormwater/watershed management and water quality compliance programs should allow it to work effectively with City departments and regional agencies in coordinating Measure W activities.

### ***Department of Water and Power***

DWP has designated seats on two watershed steering committees - the Central Santa Monica Bay and the Upper Los Angeles River. These seats will allow DWP to play a significant role in Measure W's regional program.

Over the course of the past several years, DWP has focused on ensuring water supply and expanding local water resilience. For example, its Urban Water Management Plan (UWMP) is a blueprint for creating reliable sources of water and increasing the use of recycled water to effectively manage water supply. In addition, DWP has created a Stormwater Capture Master Plan (SCMP) which expanded the UWMP and set goals for stormwater capture over a 20 year period ending in 2035.

DWP has also engaged in cleaning up the San Fernando Groundwater Basin (SFGB) in an effort to increase future local water supplies. DWP initiated the Stormwater Capture Parks Program whereby nine City parks would be improved to capture and divert stormwater and urban runoff

into subterranean infiltration galleries to recharge the SFGB. DWP is working closely with RAP and BOE to implement these projects.

DWP has also worked with City departments in the implementation of Proposition O projects and has participated in other City stormwater/watershed management efforts. With respect to the Measure W program, DWP informed our Offices that it intends to pursue the implementation of regional projects which augment water supply and improve water quality. The pursuit of regional projects of this nature is consistent with its core business. In turn, DWP anticipates a limited role in the municipal program.

#### ***Department of Recreation and Parks***

RAP maintains designated seats on three watershed steering committees under the regional program - Central Santa Monica Bay; South Santa Monica Bay and Upper Los Angeles River. The designation of seats is important to program objectives since it will permit RAP to effectively integrate needed park space into regional projects, thereby maximizing stormwater/watershed management efforts.

Currently, RAP is working with DWP and BOE on the implementation of the Stormwater Capture Parks Program as discussed above. RAP has also played a significant role in designating park space for projects associated with the Proposition O program. These projects have multi-benefit scopes which include watershed management improvements coupled with open space and habitat protections. RAP plans to play a significant role in Measure W's regional and municipal program by identifying project-viable park space, designating the land and assisting in project development and implementation stages.

#### ***Bureau of Engineering***

Under Measure W's regional program, BOE does not maintain designated seats on a watershed steering committee. However, BOE, whose primary role is to design and construct municipal projects, possesses long standing expertise in the implementation and construction of stormwater/watershed management and water quality projects.

BOE enhanced its expertise serving as the Proposition O project implementation program manager. As part of its Proposition O function, BOE was responsible for ensuring that projects were implemented on schedule and within approved budgets. BOE has effectively collaborated with BOS, DWP, RAP and other City departments to implement Proposition O projects successfully, including many "first of its kind" projects such as the South LA Wetlands. In this regard, BOE may work with other City departments to implement and construct projects associated with both the regional and the municipal program.

#### ***Bureau of Street Services***

BSS is primarily responsible for managing and maintaining the condition of City streets and does not maintain designated seats on a watershed steering committee. In recent years, it has expanded its involvement in environmental and sustainable practices. For example, the BSS has been engaged in implementing *green street* elements and projects that convey stormwater and urban run-off from the City corridors. This includes redesigning streets to divert and capture stormwater; and the planting of bioswales and trees to aid in this effort. These practices help improve flood control, reduce pollution and improve water quality.

These activities correlate with the stormwater/watershed management objectives of the Measure W program. As such, BSS's involvement in the program would help to maximize the City's project potential.

It should be noted that participation in the Measure W program should not be limited to the departments identified in this section. Other departments may offer to assist the City in furthering Measure W objectives.

### **WORKING GROUP**

Each of the departments noted above maintain valuable expertise that can help the City optimize its involvement and administration of the Measure W program - both at the regional and municipal level. Given this, these departments should collaborate closely and form a working group to propose and implement projects. Each entity can provide its expertise to further the City's Measure W efforts.

To facilitate the working group effort, BOS, as the City's lead agency on Measure W, can be tasked with organizing the group, and other City departments, on a regular basis and advise and initiate project proposals and compliance plans. It is recognized that City departments will have varying levels of involvement in each component of the program. Some departments will be exclusively focused on the regional program; while others the municipal program or both. The working group's activities can be divided up in a manner that reflects the department's focus. To formalize this effort, these departments should be directed/requested to work collaboratively on the Measure W program consistent with their department's scope of service and expertise.

### **ADMINISTRATIVE OVERSIGHT COMMITTEE**

In order to ensure proper administration of the Measure W program, our Offices recommend the formation of an Administrative Oversight Committee (AOC) to oversee the program. The AOC should consist of the City Administrative Officer, Chief Legislative Analyst and the Mayor's Office.

The establishment of an AOC for programs of this nature is common in City practice. The Proposition O program is one example that maintains an AOC reporting structure. In addition, the CAO serves as the chair for the Proposition O AOC, as it does for other programs. To ensure continuity, the CAO should continue to serve in that capacity for this program's AOC.

The duties and responsibilities of the AOC should consist of the following:

- Develop and review criteria for the selection of projects as proposed by the departments;
- Review project proposals to determine if they meet adopted project criteria;
- Oversee, direct and monitor the program and projects to ensure timely completion within approved schedules and budgets;

- Monitor utilization and cost of City personnel, personal services contracts, expense and equipment for the projects;
- Review Memorandum of Agreements between departments and outside agencies concerning the program;
- Resolve any issues of concern between the departments to address program and project needs.

Any actions of the AOC would be subject to Council and Mayor consideration. The Council and Mayor would have final authority over the program.

### **WATERSHED INVESTMENT STRATEGIC PLAN**

Watershed management is a highly complex effort subject to multiple regulatory agencies, rules and requirements. The State of California Los Angeles Regional Water Quality Control Board (Water Quality Board) oversees the imposition of requirements to preserve and protect the region's water resources by the issuance of Municipal Separate Storm Sewer System Permits (MS4 Permits) to public agencies throughout the region. Permit compliance is guided by various EWMPs that have been prepared collaboratively with partner agencies and approved by the Water Quality Board. BOS is responsible for the City's MS4 Permit and all regulatory compliance efforts within the City, including stringent monitoring and reporting requirements. BOS is the lead agency for four watersheds and is a partner on a fifth watershed, all of which are impacted by City discharges and runoff. The County's Measure W Program combines watersheds such that the City has majority share of three (Central Santa Monica Bay, South Santa Monica Bay and Upper Los Angeles River) and is a partner on a fourth watershed (North Santa Monica Bay).

The County's Measure W Program dovetails into this regional watershed management effort and provides funding and guidance with the ultimate goal of achieving regulatory compliance pursuant to MS4 requirements. The County's Measure W Program goals, as specified by the Flood Control District, include various elements such as the improvement of water quality, water supply and community benefits for both municipal and regional projects (Section 18.04, Chapter 18, Los Angeles County Flood Control District Code; Attachment A).

The City can choose to incorporate additional program goals consistent with the County's implementation requirements, such as prioritizing multiple-benefit projects or projects in disadvantaged communities. Additionally, the City can choose to place highest priority on those projects which will achieve the greatest TMDL compliance outcome. However, additional policy objectives should also take into consideration the County's Measure W scoring criteria, particularly for Regional Projects, to ensure successful outcomes resulting from the competitive process. This is further discussed below.

This report proposes the use of a Watershed Investment Strategic Plan (WISP) with two components: 1) provide policy guidance that encompasses the County's requirements and addresses the City's specific interests; and 2) serve as a capital projects management tool to organize, prioritize and manage both municipal and regional programs with the following broad key elements:

- Project evaluation criteria based on the County's Measure W program goals and include the following City-specific policy objectives:
  - Balance water supply, resilience, and water quality compliance obligations of the City;
  - Provide equity in terms of City-wide funding and support multi-benefit projects approaches;
  - Prevent/mitigate project selection conflicts and/or internal City department competition for funding; and,
  - Support local hiring objectives, including maximizing Minority Business Enterprise/Women Business Enterprise opportunities, partnership opportunities with local businesses, and prioritize burdened communities
- Rolling five fiscal year period prepared annually, including capital and operations and maintenance (O&M) proposed expenditures
- For each project, designate the department(s) responsible for project implementation and O&M
- Provide actual and projected O&M expenditures for completed projects
- BOS lead preparation of the WISP
- Stakeholder departments to provide input and collaborate with BOS

Specific elements of the WISP should be discussed further by the Working Group with the final format approved by the AOC to ensure that a robust and efficient document is developed. Consideration should also be given to the multiple various watershed and/or stormwater planning documents that already exist and integrating these existing documents into the WISP process to achieve efficiencies and avoid redundancy. As the City gains experience with this program, there may be a need to capture and report different elements for either the municipal or regional program.

### ***Municipal Program***

The County's Measure W program requires that municipalities prioritize projects that assist in achieving MS4 Permit compliance, prepare an expenditure plan in advance of each fiscal year, remain in compliance with County reporting and audit requirements, develop and implement a stakeholder engagement plan, and prepare a vector minimization plan for each project (Section 18.06, Los Angeles County Flood Control District Code). Municipalities must spend at least 70 percent of local funds on eligible expenses for projects implemented on or after November 6, 2018, including O&M expenditures for MS4 Permit compliance projects that also meet County requirements. Municipalities can spend up to 30 percent of local funds for O&M expenditures on projects or programs implemented prior to November 6, 2018. In the first year, the City is expecting to receive approximately \$35 million.

For the City's municipal program, the first year of the WISP will serve as the fiscal year Capital Improvement Expenditure Program (CIEP) for the Measure W – Municipal Program and submitted annually by BOS as part of their Proposed Budget. It is recommended that BOS lead the preparation of the document, incorporating input from all stakeholder departments and potentially include projects that may originate from Non-Governmental Organizations (NGOs) as well as other departments. Incorporating the municipal program into the City's regular budget process will ensure that an expenditure plan is in place and that financial information will be

publicly available, as required by the County. Additionally, BOS will coordinate reporting and ensure that the maintenance of effort requirements are satisfied.

### ***Regional Program***

The County Measure W regional program consists of several layers of approval and oversight. Proposed projects must satisfy these requirements for further consideration:

- Completion of a feasibility study or equivalent information
- Provide multiple benefits
- Must be included in a stormwater resource plan developed in accordance with the cited sections of the Water Code, a watershed management program developed pursuant to an MS4 Permit, an Integrated Regional Water Management Plan, or other regional water management plan deemed equivalent by the County
- Minimum useful life of thirty years

Projects that satisfy the threshold requirements may then be considered by the Watershed Area Steering Committee (WASCs) and scored by the Scoring Committee in accordance with the following criteria (110 points maximum):

- Water quality benefits - 50 points
- Water re-use and/or water supply enhancement benefits - 25 points
- Community Investment Benefits - 10 points
- Nature-Based Solutions - 15 points
- Project leverages other funds and/or demonstrates strong local, community-based support and/or has been developed in partnership with an NGO or Community-Based Organization (CBO) - 10 points

Projects must achieve a minimum score of 60 points to be eligible for consideration. WASCs will adopt a five-year Stormwater Investment Plan (SIP), subject to the aforementioned criteria and scoring requirements, as part of the project approval process. If recommended for funding by the WASC, funds will be provided to the City via a Transfer Agreement for each funded project as detailed later in this report.

The WISP should include a regional program component as the planning tool for the City's projects to be submitted to the WASCs for consideration. The Working Group would work collaboratively to determine the highest-priority projects based on their competitive potential and apply the County's scoring matrix to identify the recommended projects to be included in the proposed WISP.

### ***Project Selection Process***

As previously mentioned, the County's Measure W program includes specific goals for eligible projects. BOS currently uses heat maps as the evaluation process for determining project prioritization. These heat maps weigh factors such as water quality, water supply, flood protection, environmental justice, disadvantaged communities, and urban greening. It is recommended that an additional equity factor be integrated into these heat maps that evaluates historic levels of stormwater/watershed management investments and assigns a higher weight for projects in communities lacking in investments over the past five years. It is also

recommended that the evaluation process consider other planned capital investments across the City that may achieve efficiencies if combined with a potential Measure W-funded project. The heat map factors, including the proposed equity and capital efficiency factors, and any other potential factors, should be discussed by the Working Group with the final project selection criteria approved by the AOC.

### ***Stakeholder Engagement Process***

The City's Measure W program should include a stakeholder engagement process that facilitates community involvement and participation for both the regional and municipal component. The process should permit community input on proposed projects, the conceptual design of projects and site selection.

In addition, the stakeholder engagement process should provide information to communities regarding approved project, including their construction schedule and status. To create this process, BOS should be tasked with developing a thorough strategic outreach plan to engage community stakeholders and interested parties/organizations.

### ***Lapsed Funds***

The County implementation ordinance specifies that awarded but uncommitted funds may be carried over for up to five years from the end of the fiscal year in which those funds are transferred by the County. This provision applies to both municipal and regional funds. Funds must be committed to an eligible expenditure by the end of the fifth year, otherwise they will be deemed lapsed funds. The Transfer Agreements may also include additional requirements. WASCs will allocate lapsed funds to a new project or program that benefits the City or watershed area (Section 16.11, Chapter 16, Los Angeles County Flood Control District Code). At a minimum, the WISP should incorporate metrics that track the status of uncommitted funds on a fiscal year basis so as to minimize the risk of lapsed funds. The Working Group and AOC may want to consider additional safeguards to further address this risk, such as the adoption of a disencumbrance rule similar to how MICLA funds are managed.

## **APPROVAL PROCESS**

The proposed approval process for Measure W is bifurcated to address the separate requirements of the municipal and regional programs.

For the municipal program, as previously mentioned, the first year of the WISP would serve as the CIEP for the Measure W Municipal Program submitted annually by BOS as part of its proposed budget each Fall. It is recommended that the proposed CIEP be approved no later than October 15th of each year so as to provide BOS sufficient time to develop the Measure W municipal program budget for submission.

For the regional program, the City's proposed projects will be identified in the WISP and provide cost information across fiscal years. The AOC should also approve a plan for the submission of the application to the WASCs, such as potentially including support letters or additional information that may improve the project's competitive ranking.

The draft WISP will be reviewed and modified as necessary by the AOC, who will then submit the final recommended WISP to the Mayor and Council. Proposed regional projects must be approved by the Mayor and Council prior to submission to the County. Stakeholder departments with proposed projects will have the responsibility to complete the approval process with their respective boards at the appropriate time.

Projects proposed by DWP, or other proprietary departments, will be subject to approval by their respective Boards pursuant to the Charter. Their project information will be included in the WISP and any reports prepared by BOS for informational purposes.

It is uncertain at this time how frequently, or the regularity of when, the County will issue a Call for Projects (CFP). The first CFP for Fiscal Year 2020-21 closes on December 15, 2019; project evaluation will occur through May 2020; and County Board approval is expected in June 2020. The County has stated that the second CFP for Fiscal Year 2021-22 will close July 31, 2020. In response to the first CFP, BOS and DWP are preparing to submit applications and feasibility studies for five proposed projects. We anticipate that this governance process will be in place with sufficient time to address the second CFP.

Attached is a graphical summary of the approval process (Attachment B).

### ***Transfer Agreements***

The County will require agencies to execute Transfer Agreements (TAs) prior to receipt of funds for the municipal and regional programs. The County has not yet publicly released a draft document, however the implementation ordinance specifies that TAs address such issues as compliance requirements, process and schedule of disbursements, post-construction requirements, and indemnification. It will also prohibit the use of Measure W funds for projects implemented as a result of an enforcement action by the State Water Resources Control Board or Water Quality Board, except for Time Schedule Ordered (TSO) projects included in an approved watershed management program pursuant to the MS4 Permit. It will also require Project Labor Agreements for projects that have an estimated capital cost exceeding \$25 million. Some provisions will be specific to the separate municipal and regional programs (Section 18.09, Chapter 18, Los Angeles County Flood Control District Code).

TAs for approved regional projects will require City approvals as specified by the Charter and Administrative Code. TAs for the municipal program will also require approvals, however this process may be streamlined and incorporated into the budget process.

### **PROPOSITION O**

As previously indicated, the Proposition O program has served as the City's key program focused on the implementation of stormwater/watershed management and water quality projects. However, its AOC is considering options for a "wind down" plan to finalize the program. The AOC notes that the majority of its funds have been expended or committed to projects.

As the City moves forward with the formation of its Measure W program, it should also monitor activities associated with the Proposition O program to ensure administrative efficiencies.

### **MEASURE W - SAFE, CLEAN WATER PROGRAM SPECIAL FUNDS**

The previous CAO/CLA joint report included a recommendation regarding the establishment of a special fund to adequately and appropriately track revenues and expenditures, prevent commingling of funds and facilitate required reporting to the LACFCD and other oversight entities, for the municipal program and regional program. Based on further information received from the County and discussions with BOS, CAO/CLA now recommends that two special funds be created to separate the municipal program funds and regional project funds. Interest earnings should remain within the respective special funds for programming purposes and unspent funds should remain in the fund at the close of each fiscal year. As the designated lead City agency for Measure W, it would be efficient to designate the BOS as the Fund Administrator for both special funds. The recommendations include a request for the City Attorney to prepare and present ordinances for the creation of the two special funds, this recommendation supersedes the second recommendation adopted by Council as part of the ECCEJ Committee report (C.F. 18-0384-S1).

### **FISCAL IMPACT**

Measure W is expected to provide annual funding to the City of approximately \$35 million for the local program and approximately \$50 million for the regional program, dependent on competitive award cycles. Funds are expected to be ongoing and support both capital and O&M expenditures, subject to limitations imposed by the Measure. To the extent that expenditures exceed the imposed limitations in future years, potential General Fund impacts will need to be addressed through the City's annual budget process.

Attachment A - Pages from Section 18.04 of Chapter 18 of the Los Angeles County Flood Control District Code

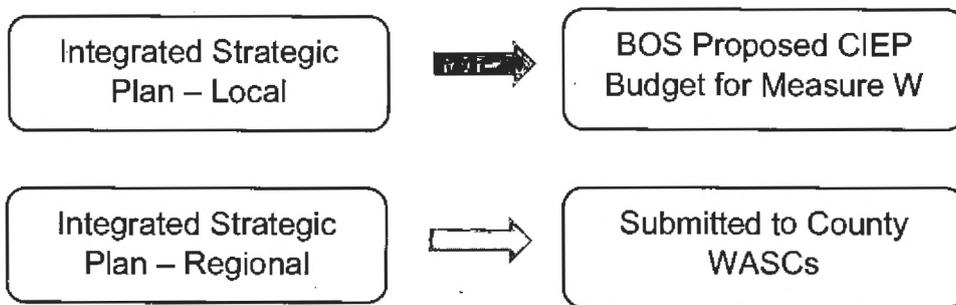
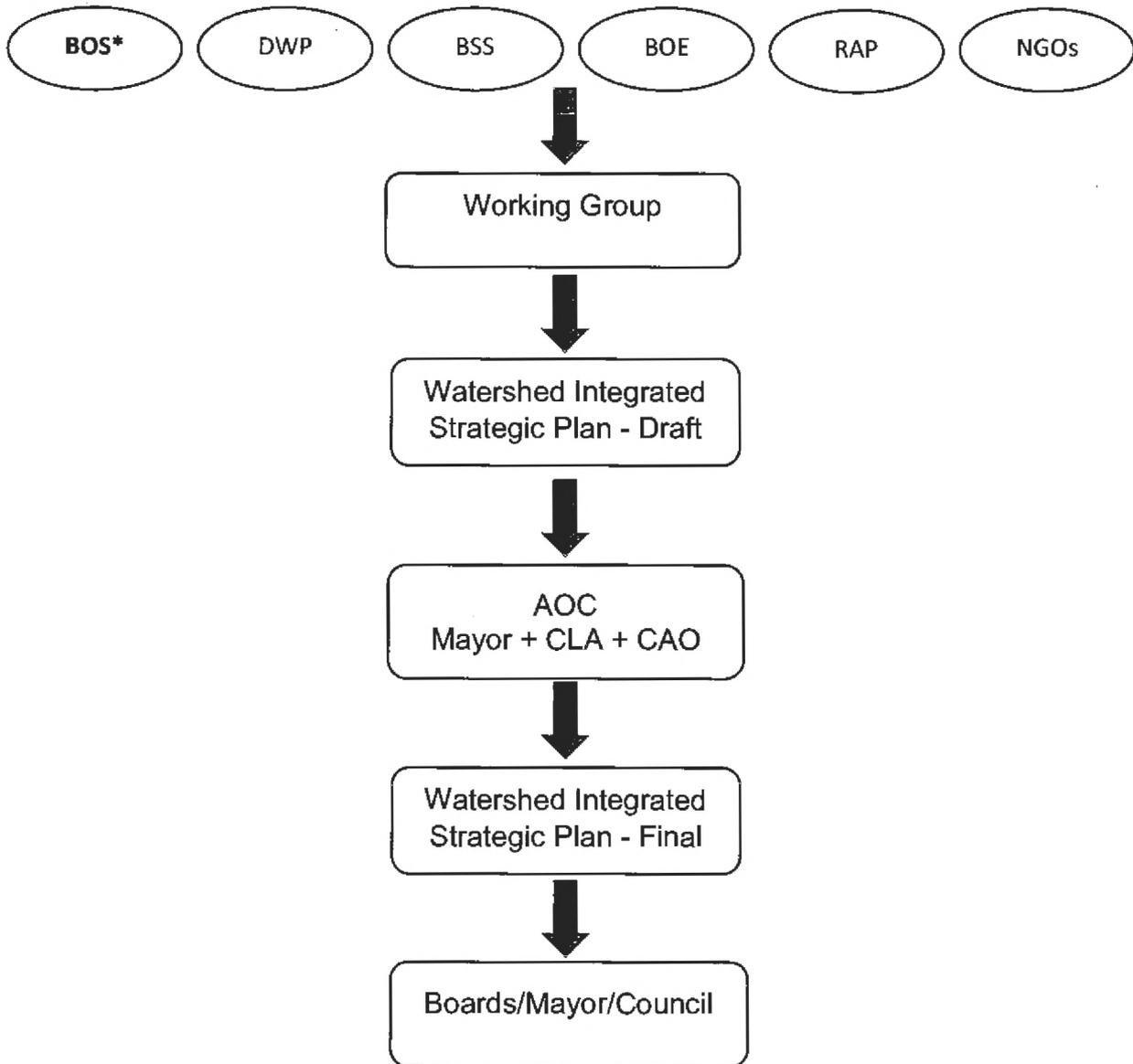
Attachment B - Approval Process Flow Chart

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**Attachment A**

The Los Angeles County Safe Clean Water program goals as stated in Section 18.04 of Chapter 18 of the Los Angeles County Flood Control District Code are:

- Improve water quality and contribute to attainment of water-quality requirements
- Increase drought preparedness by capturing more Stormwater and/or Urban Runoff to store, clean, reuse and/or recharge groundwater basins
- Improve public health by preventing and cleaning up contaminated water, increasing access to open space, providing additional recreational opportunities, and helping communities mitigate and adapt to the effects of climate change through activities such as increasing shade and green space
- Leverage other funding sources to maximize SCW Program Goals
- Invest in infrastructure that provides multiple benefits
- Prioritize Nature-Based Solutions
- Provide a spectrum of project sizes from neighborhood to regional scales
- Encourage innovation and adoption of new technologies and practices
- Invest in independent scientific research
- Provide DAC Benefits, including Regional Program infrastructure investments, that are not less than one hundred and ten percent (110%) of the ratio of the DAC population to the total population in each Watershed Area
- Provide Regional Program infrastructure funds benefiting each Municipality in proportion to the funds generated within their jurisdiction, after accounting for allocation of the one hundred and ten (110%) return to DACs, to the extent feasible
- Implement an iterative planning and evaluation process to ensure adaptive management
- Promote green jobs and career pathways
- Ensure ongoing operations and maintenance for Projects



\*BOS to serve as lead agency