

# **Water Infrastructure Financing**

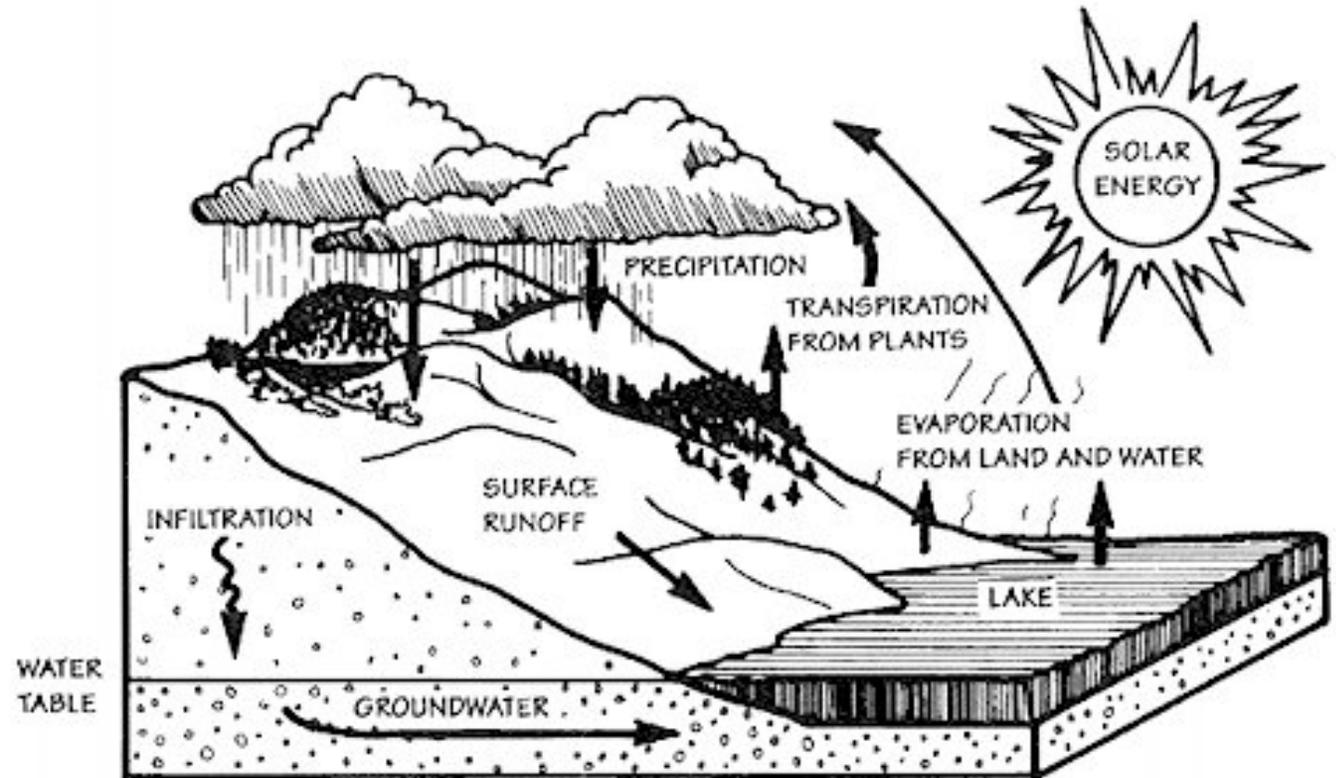
Bay Conservation and Development  
Commission  
Financing the Future Subcommittee

October 19, 2017

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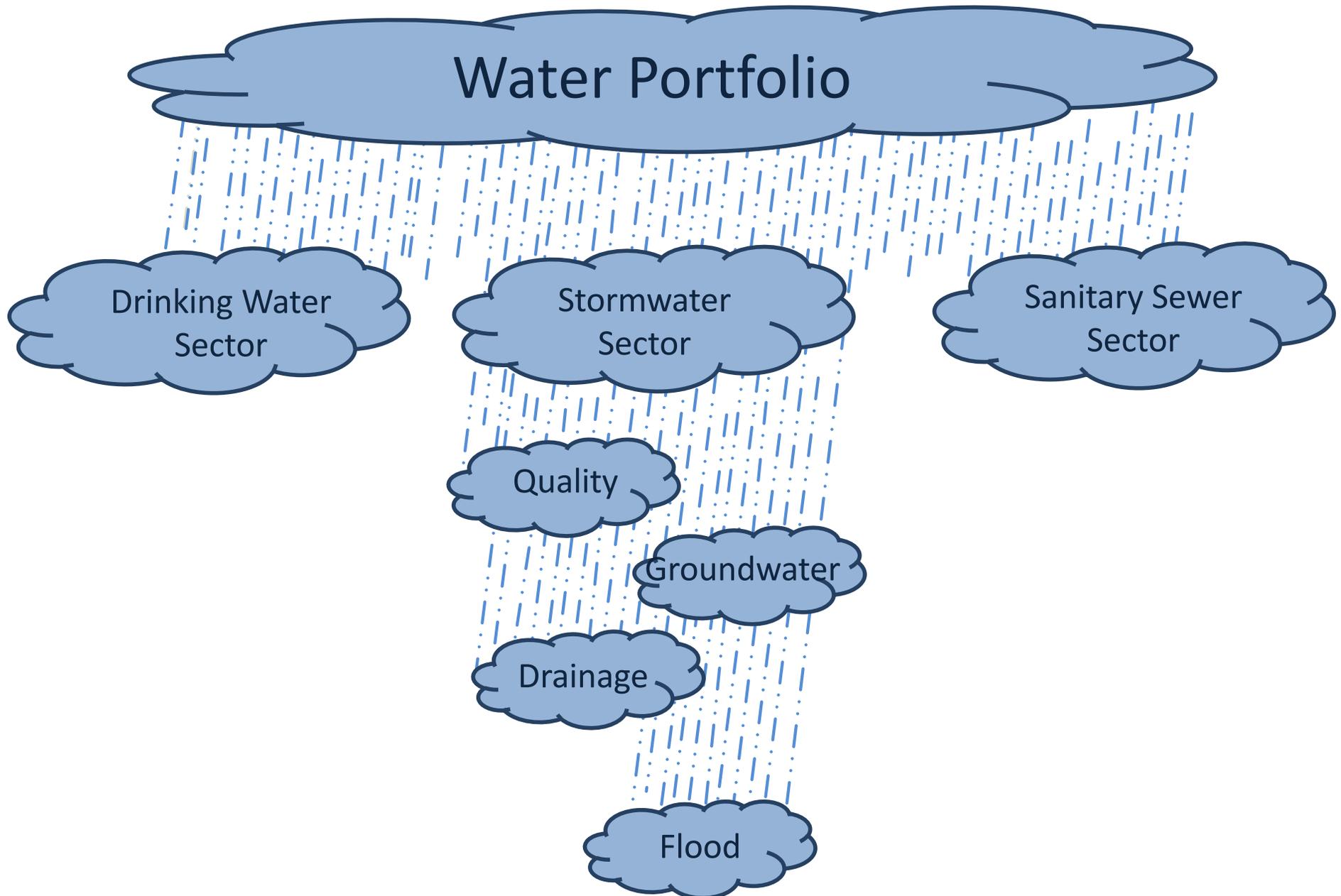
# Overview

- Define “water”
- How water is funded
- Prop 218
- Constitutional Amendments
- Next Steps



**Nature's Water Cycle**

# Anatomy of California Water Portfolio



# Stormwater is.....



Groundwater Supply



Regional Flood Protection



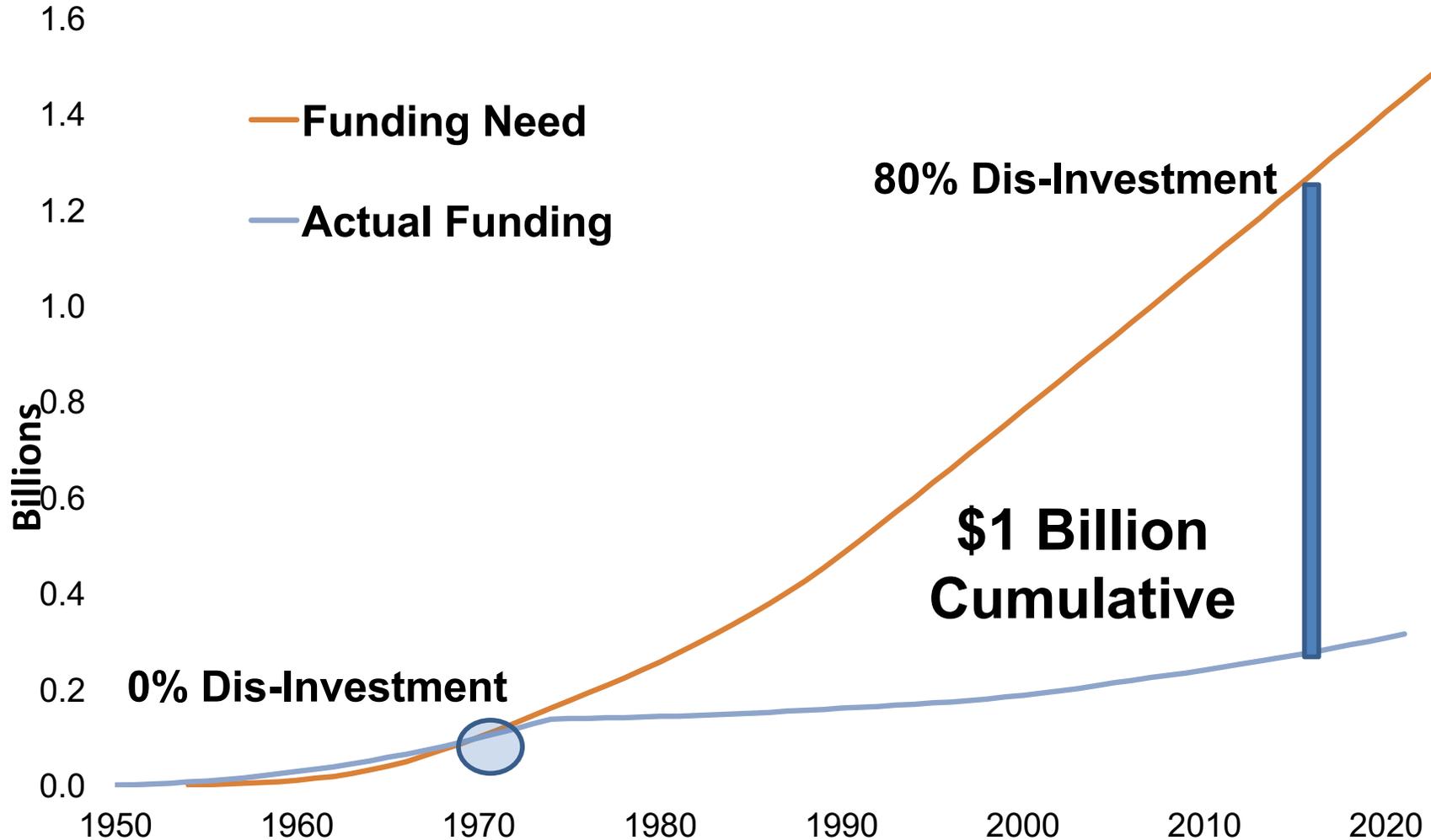
Community Drainage



Stormwater Quality

# Dis-Investment Crisis

## Contra Costa County – Aging Flood Control Facilities



# Capital Financing

- State bonds
- Restoration Authority funds
- Army Corps of Engineers
- State Revolving Funds
- State/Federal grant programs
- Local taxes, assessments, general funds

# Maintenance Financing

- Maintenance Program elements
  - Routine maintenance
  - Major maintenance
  - Capital replacement
- Requires reliable, ongoing stream of revenue
- Requires meeting Proposition 218 process

# Funding Stormwater Services

- Flood Control District Services: Funded with tax revenue “frozen” in 1978 (Prop 13, **39 years ago**)
- Flood Control District Services: Funded with benefit assessments “frozen” in 1996 (Prop 218, **21 years ago**)
- Community Drainage Services: Typically funded from the General Fund (no dedicated funding source)
- Stormwater Quality Services: Typically funded from the General Fund (no dedicated funding source)

# 218 1996 = Voting Requirements

Any property related fee or charge requires approval of a majority vote of property owners or two-thirds vote of electorate in the service area **except** fees or charges for sewer, water, and refuse collection services.

- Stormwater fee/charge is a property related fee, but is not “water” or “sewer” for purposes of the exemption.

# 218 Funding Process: Water and Sewer

- Mail notice to parcels in service area
  - Service charge increase identified and justified
  - Date, time, location of public hearing
- Conduct public hearing after 45 days
- Consider protests to service charge increase
- May impose rate increase if less than 50% protest

# 218 Funding Process: Stormwater

- Same process to conduct initial majority protest public hearing, plus.....
- Mail ballots to all parcels in service area
- At least 45 days allowed to submit ballots
- Count ballots submitted
- Conduct public hearing to certify election results and approve or deny service charge increase

# Current Water Portfolio

**Resource**

Drinking Water Sector

Stormwater Sector

Sanitary Sewer Sector

Quality

Drainage

Groundwater

Flood

**Management**

Water Utilities

Cities, Counties,  
Flood Control Districts

Wastewater  
Utilities

**Funding**

Rate Structure

**No Rate Structure**

Rate Structure

**Process**

Voting Exempt

**Voting Required**

Voting Exempt

# Stormwater Funding Options

- Bonds/grants/etc (not a long-term solution)
- Statewide ballot measure
  - Stormwater is a “utility”
  - Raise revenue similar to water and wastewater districts
  - Local control
- Expand/clarify legislative intent

# Statewide Ballot Measure

- Modify Article 10 of the Constitution
- No modification to Article 13 (Prop 218)
- Direct changes to Proposition 218 will not be successful
- Several statewide associations still interested in this option
- Success requires political and popular support

# Expand Legislative Intent

- Funding must comply with Proposition 218 exemption for water or sewer
- Stormwater is not water or sewer per the courts
- Expanding/clarifying legislative intent will help future court decisions
- 1997 Omnibus Act includes guidelines for implementing Proposition 218

# Successful Legislative Efforts

- Senate Bill 231 (Herzberg) – 2017
  - Modifies the Omnibus Act
  - Includes “stormwater” in the definition of “sewer”
  - If enacted, requires a court decision to “consummate” the change in legal precedence
- AB 2403 (Rendon) – 2014
  - Codifies Griffith decision
  - Modifies the Omnibus Act
  - Adds “from any source” to water definition

# Current Strategy

- Adopt stormwater fees only where there are co-benefits with water or wastewater
- Build case law superseding the Salinas decision that stormwater is not sewer water and therefore not exempt under Proposition 218
- As case law expands, greater opportunity to apply to broader types of stormwater fees

# Possible Next Steps

- National Estuary Program
- Partner with railroads
- Identify co-benefit transportation/utility corridors
- Draw nexus to other funding sources for planning and building infrastructure
- Draw nexus to alternative ongoing funding sources for maintenance