

# Impact of Gardena/Duarte Judgment

## Impact of Gardena/Duarte MS4 Permit Litigation

Presentation to South Bay COG

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# Impact of Gardena/Duarte Judgment

- OC Court Rules in Favor of Gardena/Duarte Litigation
  - ❖ Issues a single writ of mandate on April 19 to both cities setting aside the MS4 Permit pending the water boards reconsideration of the court's order
    - to evaluate EWMP, TMDL, and monitoring costs for necessity and affordability (per water code section 13241)
    - comply with federal regulations (stormwater management program to reduce pollutants to the maximum extent practicable (board did not do this; attempted to replace federal requirements with watershed management programs, which are not federally authorized)

# Impact of Gardena/Duarte Judgment

- The court directed Gardena and Duarte to request relief within 10 days
  - ❖ Gardena and Duarte asked for a declaratory and injunctive relief to prevent the water boards from enforcing an MS4 Permit requirement
  - ❖ Both asked for reimbursement of court costs

# Impact of Gardena/Duarte Judgment

- On September 24, court issues a writ/judgement to Duarte and one to Gardena responding to requests for relief
  - ❖ Court denied the request for declaratory and injunctive relief but set aside numeric effluent limits (viz., EWMPs, TMDLs, and monitoring requirements)
  - ❖ On reimbursement of costs, court said to negotiate with the water boards
  - ❖ Reiterated that the Court's April 19 Order must be complied with (viz., setting aside the MS4 Permit and filing a return within 90 days explaining how the water boards intend to comply)

# Impact of Gardena/Duarte Judgment

- **Upshot of Court's Decision**

- ❖ Voids the 2012 MS4 Permit pending the water boards reconsideration against the Court's order
- ❖ The board has 90 days to tell the court how it will do this (will be a challenge for the board)
- ❖ EWMPs, TMDLs/water quality standards and monitoring requirements cannot be enforced
- ❖ All pending enforcement actions disappear
- ❖ Cannot take enforcement action against Beach Cities for not constructing greenbelt in Hermosa

# Impact of Gardena/Duarte Judgment

- Meeting this order will be difficult for the water boards
  - ❖ Will have to comply with water code section 13241 which requires cost considerations and justification (cost-benefit analysis) – that did not do for it E/WMPs
  - ❖ Will be a tough challenge because E/WMP compliance costs exceed Measure W stormwater tax revenue
  - ❖ Examples:
    - ✓ Hawthorne's annual EWMP cost (per county data) is **\$9.6 million** but its Measure W annual revenue (per county data) is only **\$1.8 million** -- annual hit on the City, **\$7.8 million**
    - ✓ Redondo Beach EWMP annual cost, **\$2.8 million**; Measure W annual revenue **\$1.6 million**; annual hit on the City **\$1.2 million**.

# Impact of Gardena/Duarte Judgment

- Regional Board will have to do an analysis to determine what impact the costs will have municipal programs and services – cities will have to provide this information
  - ❖ Example: What will be more important reducing public safety or constructing green streets?

# Impact of Gardena/Duarte Judgment

- Regional Board Member Jim Stahl (former chief engineer for the San District) said at the October 10 meeting that there is not enough measure W money to fund watershed management programs
  - ✓ Pointed out that \$2 billion annually is needed county-wide while Measure W only takes in \$250 million
  - ✓ Bottom Line: court is not going to go for this; board will have to revise its costs (requires reevaluating regional projects and the need for TMDLs)



# Impact of Gardena/Duarte Judgment

- What happens in the meantime while things are pending?
  - ❖ Could go back to the 2001 MS4 which does not require EWMPs – only the 6 core programs required in all MS4 permits issued in the state (per federal regulations)
  - ❖ While the 2001 is pending a new 5-year permit must be adopted
  - ❖ Requires the submittal of new permit application known as a Report of Waste Discharge (ROWD) - must comply with the OC court's decision and federal stormwater regulations
  - ❖ E/WMPs not likely to be included (unless totally voluntary and unconnected to compliance)
  - ❖ May take 12 to 18 months to adopt

# Impact of Gardena Judgment

- Good News: E/WMPs Go Away, Costs Go Away for SBCOG cities
  - ❖ Beach Cities EWMP
    - ✓ Hermosa, Manhattan, Redondo, Torrance, LACFCD – gets them off the hook because of Hermosa's unwillingness to construct greenbelt project
    - ✓ Palos Verdes Peninsula EWMP
    - ✓ Rancho Palos Verdes, Rolling Hills Estates, LA County, LACFCD
  - ❖ Dominguez Channel EWMP Group
    - ✓ Carson, El Segundo, Hawthorne, Lomita, Lawndale, Torrance, Inglewood (Gardena chose not to participate)

# Impact of Gardena Judgment

- **The Bad News**

- ✓ Cities that invested funds for planning and design of regional infiltration projects that do not wish to proceed could lose the money – unless the county allows Measure W funds to be used retroactively
- ✓ The uncertainty of Measure W funds – How can the county justify measure W funds, which were sold on EWMPs if the EWMPs are no longer an MS4 Permit requirement?

# Impact of Gardena Judgment

- **Possible Solution**

- ❖ Persuade the county to amend its implementation ordinance to allow cities individually or collectively with others, to use both the 50% share for regional infiltration projects and 40% for municipal stormwater-related purposes
  - ✓ Example: Cities could propose improving parks to operate as infiltration basins and put green streets in areas where traffic calming is needed

# Impact of Gardena Judgment

- Questions?

City	50% Regional	40% to Cities	10% Co.Admn	50% + 40%	EWMP Cost	Per Year (over 20 yrs)	General Fund Hit	Surplus
El Segundo	\$ 1,112,500	\$ 890,000	\$ 222,500	\$ 2,002,500	\$41,912,644	\$ 2,095,632.20	\$ 93,132.20	
Gardena	\$ 1,037,500	\$ 830,000	\$ 207,500	\$ 1,867,500	N/A	N/A	N/A	
Hawthorne	\$ 987,500	\$ 790,000	\$ 197,500	\$ 1,777,500	\$192,370,775	\$ 9,618,538.75	\$ 7,841,038.75	
Hermosa Beach	\$ 200,000	\$ 160,000	\$ 40,000	\$ 360,000	\$45,200,000	\$ 2,260,000.00	\$ 1,900,000.00	
Inglewood	\$ 1,275,000	\$ 1,020,000	\$ 255,000	\$ 2,295,000	\$197,193,651	\$ 9,859,682.55	\$ 7,564,682.55	
Irwindale	\$ 550,000	\$ 440,000	\$ 110,000	\$ 990,000	N/A	N/A	N/A	
La Canada Flintridge	\$ 475,000	\$ 380,000	\$ 95,000	\$ 855,000	\$76,500,000	\$ 3,825,000.00	\$ 2,970,000.00	
La Habra Heights	\$ 212,500	\$ 170,000	\$ 42,500	\$ 382,500	N/A	N/A	N/A	
Lawndale	\$ 287,500	\$ 230,000	\$ 57,500	\$ 517,500	N/A	N/A	N/A	
Lomita	\$ 287,500	\$ 230,000	\$ 57,500	\$ 517,500	\$58,456,951	\$ 2,922,847.55	\$ 2,405,347.55	
Los Angeles	\$ 46,250,000	\$ 37,000,000	\$ 9,250,000	\$ 83,250,000	\$8,758,005,653	\$ 437,900,282.65	\$ 354,650,282.65	
Manhattan Beach	\$ 512,500	\$ 410,000	\$ 102,500	\$ 922,500	\$45,600,000	\$ 2,280,000.00	\$ 1,357,500.00	
Palos Verdes Estates	\$ 325,000	\$ 260,000	\$ 65,000	\$ 585,000	\$5,000,000	\$ 250,000.00		\$ 335,000
Rancho Palos Verdes	\$ 862,500	\$ 690,000	\$ 172,500	\$ 1,552,500	\$55,800,000	\$ 2,790,000.00	\$ 1,237,500.00	
Redondo Beach	\$ 900,000	\$ 720,000	\$ 180,000	\$ 1,620,000	\$56,000,000	\$ 2,800,000.00	\$ 1,180,000.00	
Rolling Hills	\$ 137,500	\$ 110,000	\$ 27,500	\$ 247,500	N/A	N/A	N/A	
Rolling Hills Estates	\$ 225,000	\$ 180,000	\$ 45,000	\$ 405,000	\$50,500,000	\$ 2,525,000.00	\$ 2,120,000.00	
Torrance	\$ 2,987,500	\$ 2,390,000	\$ 597,500	\$ 5,377,500	\$15,134,000	\$ 756,700.00		\$ 4,620,800
Carson	\$3,212,500	\$ 2,570,000	\$ 642,500	\$ 5,782,500	N/A	N/A	N/A	N/A