

# Statewide Urban/M&I Water Suppliers

## Draft Urban Water Conservation Proposal

**CALFED**

### Water Use Efficiency Common Program

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Version Of May 20, 1998

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#### NOTICE

This document attempts to reflect the comments and concerns of a cross-section of California water suppliers.

*All subject matter contained in this draft proposal  
is open for discussion and subject to change.*

### **INTRODUCTION**

Building from the Memorandum of Understanding Regarding Urban Water Conservation In California (MOU), the most recently available CUWA/EWC Draft Framework<sup>1</sup>, and initial comments from California M&I water suppliers and others; this proposal contains a structure for assisting a larger number of water suppliers to implement the urban Best Management Practices. This proposal would be submitted to CALFED as an alternative to be incorporated as part of the CALFED Water Use Efficiency Common Program.

The CALFED Water Use Efficiency Common Program proposes several strategies to promote more efficient allocation and use of water from the Bay-Delta watershed. Urban water conservation is one of these strategies. Others include agricultural water conservation, effective use of diverted environmental water, urban and agricultural water reclamation, and market-based water transfers. This proposal addresses the Water Use Efficiency Common Program as it relates to urban water uses.

Since 1991, water agencies from around the state have signed the Memorandum of Understanding Regarding Urban Water Conservation in California (MOU). The MOU provides water suppliers a voluntary, consensus-based context in which to implement water conservation Best Management Practices (BMPs). The MOU process, via the California Urban Water Conservation Council (CUWCC), now involves more than 130 retail and wholesale urban water suppliers serving over two-thirds of the state's population. The MOU and the CUWCC have greatly advanced urban water conservation in California.

Through its 1996 strategic planning process, the CUWCC recognized the need to better monitor and evaluate BMP implementation status to advance urban water conservation efforts throughout the state. It developed a five-point strategy to further encourage implementation of BMPs by signatories. Key to this strategy was a review and revision of the BMP definitions, implementation schedules, and performance and evaluation criteria.

On September 30, 1997, following a year-long process, the CUWCC adopted a comprehensive revision of BMP definitions, implementation schedules, performance standards, and implementation evaluation criteria contained in Exhibit 1 of the MOU. With these revisions in place, the CUWCC is now positioned to more effectively monitor BMP implementation and exemption status of urban water suppliers.

### **PROPOSAL ELEMENTS**

This proposal includes the following elements:

- continued use of the "cost-effective" BMP implementation standard, with clear definitions of quantifiable terms, and removal of many of those which are too subjective to effectively administer;

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<sup>1</sup> California Urban Water Agencies/Environmental Water Caucus, CALFED Water Use Efficiency Common Program; Discussion Draft Proposal-Urban Water Conservation Framework; January 1998

- flexible and achievable BMP implementation standards;
- a workable, non-burdensome process for monitoring and evaluating water agency BMP implementation progress;
- a certification and assurance process that encourages water agency compliance with the MOU, enables water suppliers to achieve certification and furthers achievement of CALFED's goals.

### **Conditions For Support Of Proposal**

Support for and acceptance of this or any proposed urban water conservation framework is conditional on the adoption of an acceptable CALFED Bay-Delta solution. In the absence of a mutually acceptable CALFED solution, there are no commitments to support or accept any elements of any proposed urban water conservation framework deemed to be beyond the scope of the current MOU.

### **Proposal Contents**

In addition to this introduction, this proposal contains the following:

An overview of the proposed urban water conservation framework;

A discussion of the proposed requirements and process to establish and maintain MOU certification;

Proposed implementation assurance mechanisms and phase-in schedules.

### **OVERVIEW OF PROPOSAL**

This proposal is based on the existing BMP process specified by the MOU. Urban water suppliers covered by this proposal would automatically become members of the CUWCC, and would have the opportunity to participate, with all due voting and participation rights. As with the existing process, urban water suppliers would be responsible for implementing cost-effective BMPs and periodically reporting their implementation progress to the CUWCC. The CUWCC would continue to provide outreach and technical assistance to agencies implementing BMPs, as well as conducting studies to advance new conservation technologies and programs. Cost-effectiveness, with clear definitions of quantifiable terms; would continue to serve as the standard for BMP implementation, and the current cost-effectiveness-burden-of-proof requirements would still be applied.<sup>2</sup>

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Under the MOU, it is the responsibility of each water agency seeking a BMP exemption to demonstrate that the BMP is not cost-effective. BMPs are assumed to be cost effective unless proven non-cost-effective. Under this proposal, cost-effectiveness analyses would be required to conform to the CUWCC's Guidelines for Preparing Cost-Effectiveness Analyses Of Urban Water Conservation Best Management Practices, and the Council would be required to critically evaluate all BMP exemption claims. Certification of an agency will not be withheld due to a negative finding by the Steering/Certification Committee, based on a dispute over the environmental costing component of a cost-effectiveness exemption calculation.

This proposal would expand the current BMP implementation process in three important ways. First, the CUWCC would be responsible for determining water supplier compliance with the MOU. Second, mechanisms would be put in place to encourage MOU compliance and enable water supplier certification. Third, all urban water suppliers covered by this proposal would automatically become members of the CUWCC, and would have the opportunity to participate, with all due voting rights. Compliance with the terms of the urban MOU would no longer be solely on a voluntary basis.

### Proposal Elements

This proposal consists of four elements, as follows:

- Agency Reporting--This element consists of agencies preparing BMP implementation status reports and submitting them to the CUWCC for evaluation. This element is part of the existing BMP process.
- Evaluation--This element consists of the CUWCC evaluating agency performance based on evaluation criteria contained in Exhibit 1 of the MOU. Evaluations would be based on agency implementation reports and cost-effectiveness exemption submittals. This element is part of the existing BMP process.
- Certification--This element consists of the CUWCC certifying agency compliance with the MOU. The CUWCC has final approval over the final certification process and standards for urban BMPs. Any SWRCB proceeding reviewing non-certification action by the CUWCC must be a de novo hearing. Any waste or unreasonable use charges would have to be brought by other than CUWCC. **This element expands the current BMP process, and will likely require legislation to implement.**
- Assurance Mechanisms--This element consists of using mechanisms to encourage and reward MOU compliance. **This expands the current BMP process and will likely require legislation to implement.**

### MOU Compliance

- Any retail water supplier (or a wholesaler with its own retail service area, if any) implementing cost-effective BMPs or BMP-variants approved by the CUWCC, and documenting valid BMP implementation exemptions per MOU sections 4.4 - 4.6, Exhibit 3, and the CUWCC Cost-Effectiveness Guidelines, would be in compliance with the MOU. Such water suppliers would be certified as being in compliance.
- Retail water suppliers (or a wholesaler with its own retail service area, if any) serving fewer than 3,000 connections would not be required to participate in the compliance certification program.
- Retail water suppliers serving 3,000 to 10,000 connections (or a wholesaler with its own retail service area, if any) and receiving a portion of their supply from the Bay-Delta or its tributaries, and discharging to or into the Pacific Ocean and/or other salt sink (i.e., having

irrecoverable losses), or receiving direct CALFED benefits, would be required to prepare MOU compliance reports with their Urban Water Management Plans every five years.

- Retail water suppliers serving more than 10,000 connections (or a wholesaler with its own retail service area, if any) and receiving a portion of their supply from the Bay-Delta or its tributaries, and discharging to or into the Pacific Ocean and/or other salt sink (i.e., having irrecoverable losses), or receiving direct CALFED benefits would be required to submit BMP implementation status reports to the CUWCC every two years.
- Retail water suppliers not supplied by the Bay-Delta or its tributaries, and/or not receiving direct CALFED benefits would not be required to participate in the certification program. However, those agencies that do not fit within these criteria and have previously voluntarily signed the MOU may opt to keep their membership in the CUWCC, with all due voting and participation rights. Similarly, those that voluntarily sign in the future will also be members of the CUWCC with all due voting and participation rights, regardless of the number of connections.
- A regional wholesale water supplier could assume certification responsibility or provide BMP implementation assistance for a group of retailers if desired by all participating parties in a given regional service area.

#### **MOU Compliance And Certification Process**

- The CUWCC would review MOU compliance and certification status for retail water suppliers serving more than 10,000 connections every two years, and issue notices of compliance or non-compliance as appropriate.
- The CUWCC would review MOU compliance and certification status for retail water suppliers serving between 3,000 and 10,000 connections every five years, and issue notices of compliance or non-compliance as appropriate;
- Water suppliers receiving compliance notices would be certified for an additional term;
- A regular report would be made to the appropriate CALFED regulatory agency of those agencies that are not in compliance;
- Water suppliers receiving non-compliance notices would receive technical and/or financial assistance in cost-effective BMP implementation methods until compliance and certification were attained;
- Water suppliers could appeal notices of non-compliance and non-certification;
- Suspension of certification would result in increased availability of technical and/or financial assistance, and more frequent reporting and monitoring, until certification is restored.

### **Assurances**

It is important to the success of the entire CALFED Program that retail water suppliers provide appropriate assurances that they will sustain good-faith efforts to implement cost-effective BMPs in their service areas. This proposal currently contains four strategies to develop these assurances.

- Reward MOU compliance, assist agencies in achieving compliance.

Preferential water supply access, preferential loan/grant access or terms for agencies in compliance and those agencies attempting to achieve compliance; restricted program access or terms for agencies not in compliance.

Preferential State Drought Bank access or terms for agencies in compliance; restricted or higher-cost access or terms for agencies in non-compliance.

- Provide technical and financial assistance to all agencies for BMP implementation;
- Publicly disclose water supplier MOU compliance status;

In addition, CALFED regulatory agencies may levy fines and/or deny access to CALFED-generated benefits for persistent and egregious non-compliance.

This proposal would primarily rely on the CUWCC implementing the first four compliance strategies. Monetary fines and/or denial of access to CALFED-generated benefits would be used by CALFED regulatory agencies to deter gross and/or persistent non-compliance, and could be applied only after a water supplier had been given reasonable opportunity and assistance to comply with the MOU, and had exhausted all its appeal opportunities.

### **CERTIFICATION OF MOU COMPLIANCE**

This section provides a more detailed description of the proposed MOU compliance, the compliance determination process, and the certification and appeals process.

### **CUWCC Role And Responsibilities**

Under this proposal, the CUWCC would be vested with the authority and responsibility of monitoring urban water supplier compliance with the MOU. This would add to the CUWCC's mission the following additional responsibilities:

- establishing procedures to collect sufficient information in a timely manner to determine BMP implementation status and MOU compliance of individual retail water suppliers;
- providing staff capability to evaluate compliance reports and provide staff recommendations to continue or suspend a retail water supplier's certification status;

- providing staff capability to assist agencies in obtaining technical and financial assistance for cost-effectiveness evaluations and BMP implementation, thereby enabling agencies to attain certification;
- establishing a formal review committee to make determinations of water supplier MOU compliance status and recommendations of certification of such compliance; and
- establishing a formal appeals committee to hear appeals of non-compliance determinations.

Under this proposal, CUWCC authority and responsibilities would extend only to determining MOU compliance status, and certifying compliance, of retail urban water suppliers. The CUWCC would not have authority or responsibility for enforcing MOU compliance, other than issuing notices and making reports to appropriate regulatory agencies, and assessing nominal fees for late or incomplete reporting, as described in subsequent sections of this proposal. THE CUWCC would not have authority or responsibility for the imposition of fines, penalties or sanctions for non-compliance. Such authority and responsibility would be vested with a regulatory agency such as the SWRCB, DWR or USBR.

### Funding

Current CUWCC funding, based entirely on voluntary dues by CUWCC signatories, is unlikely to be able to fully support the additional duties being proposed. Full implementation of this proposal will require the following funding assurances;

- Funding Commitment--Funding commitments from CALFED regulatory agencies for the CUWCC effort necessary to assure the sustainability and integrity of the compliance evaluation and certification process would need to be secured prior to program implementation.
- CALFED Financing Package--Funding for urban water conservation should be addressed explicitly by the CALFED financing package. Funding mechanisms and sources would need to be secured prior to program implementation.<sup>3</sup> CALFED will need to identify funding sources to meet the costs of this program within its overall solution proposal.
- Group 2 (Public Advocacy Organizations/Environmental Representatives) Funding--Group 2 participation is identified in the urban MOU as part of the structure of the CUWCC. Funding requirements for Group 2 participation over and above that identified in the urban MOU, will need to be identified within the funding portion of the overall CALFED proposal. As declared advocates of the public's interest in the environment, it is appropriate that costs associated with Group 2 participation be publicly funded, in a manner similar to that proposed for other CALFED-generated public benefits.

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It should be noted that under this proposal, payment of a review fee would be necessary pre-requisite for a water supplier to obtain certification of MOU compliance. Hence, failure to pay this fee would automatically result in loss of certification.

### **CUWCC Acceptance Of Monitoring Role**

Implementation of this proposal is conditional on CUWCC acceptance and willingness to assume responsibility for the additional duties being proposed, as indicated by a vote of the CUWCC plenary. On April 8, 1998, the CUWCC Plenary voted to inform CALFED that the CUWCC would accept the role as the entity performing BMP certification as part of an overall CALFED Bay-Delta Program solution, contingent upon its approval of a final certification process and partial funding support from CALFED.

### **Certification Of MOU Compliance**

MOU certification requirements would vary according to the type and size of a retail urban water supplier, as described below.

### **Retail Water Suppliers**

For retail urban water suppliers, the frequency of reporting to and review by the CUWCC would be as follows:

*Retail Urban Water Supplier Reporting And Evaluation*

<i>Number Of Customer Connections</i>	<i>Reporting And Evaluation</i>	<i>Approximate Number Of Suppliers</i>	<i>Percent Of State Population Served</i>
Less than 3,000	Not subject to proposed MOU certification program	2,839	8%
Between 3,000 and 10,000	Submit compliance reports every five years with Urban Water Management Plans	192	14%
More than 10,000	Submit compliance reports every two years	186	78%

These represent minimum reporting and review frequencies for retail suppliers in compliance with the MOU. Suppliers not in compliance with the MOU may be subject to more frequent reporting and review, as described in subsequent sections of this proposal.

### **Retail Water Supplier Local Assistance**

Under this proposal, CALFED would implement a retail water supplier local assistance program. This program would consist of technical and funding support for BMP implementation, directed at retail water suppliers receiving a portion of their supply from the Bay-Delta or its tributaries, and discharging to or into the Pacific Ocean and/or other salt sink (i.e., having irrecoverable loss), or receiving direct CALFED benefits.

### **Wholesale Water Suppliers**

Wholesale water suppliers are not obligated under the MOU to implement BMPs at the retail customer level, except within their own retail service area, if any. A regional wholesale water supplier could assume certification responsibility or provide BMP implementation assistance for a group of retailers if desired by all participating parties in a given regional service area.

### **Regional Coordination**

Under this proposal, retail water suppliers serving adjacent areas, if they were obligated to submit BMP reports on a two-year or five-year cycle, and/or if they chose, would be able to coordinate MOU compliance for their combined service areas. These suppliers could submit a single compliance report for the combined region. Under this provision, a wholesale water supplier, a joint powers authority, or other entity could assume compliance responsibility for a group of retailers if desired by all participating parties. In this case, the wholesale water supplier, joint powers authority, or other entity would be evaluated by the CUWCC as though it were a single, large retail water supplier.

Water suppliers coordinating MOU certification would be required to submit a Memorandum Of Understanding or joint powers authority agreement to the CUWCC specifying:

- (1) the participating water suppliers;
- (2) the geographic area covered; and
- (3) the party or parties responsible for submitting compliance reports to the CUWCC.

### **MOU Compliance And Certification**

For the purposes of this section, water supplier refers to urban retail water suppliers, as well as a group of urban water suppliers coordinating MOU compliance for their combined service areas.

A water supplier meeting all of the following would be certified by the CUWCC as being in compliance with the MOU:

- the water supplier has submitted a compliance report to the CUWCC in accordance with the reporting requirements and schedule specified in Section D of Exhibit 1 of the MOU; or, if the supplier is a Central Valley Project contractor, a BMP report meeting the terms of the Central Valley Project Improvement Act and certified by the U.S. Bureau of Reclamation; or,
- a supplier or group of suppliers submits a plan that meets or exceeds the terms of the urban MOU and the BMPs (meets the "at least as effective as" language of the urban MOU; see subsequent section, BMP Implementation Variances).
- the water supplier's compliance report is complete in all its parts, and all information and claims presented therein can be substantiated by the water supplier;
- using the Criteria To Determine BMP Implementation Status set forth in Section E of Exhibit 1 of the MOU, the CUWCC determines that the water supplier's implementation of BMPs meets the minimum implementation requirements set forth in Sections A, B, and C of Exhibit 1 of the MOU.
- the water supplier has substantiated any exemptions from implementing specific BMPs in accordance with Sections 4.4-4.6 of the MOU, and BMP exemptions based on cost-effectiveness are in accordance with Exhibit 3 of the MOU and the CUWCC Cost-Effectiveness Guidelines. However, it is recognized that simple, clear and comprehensive

instructions for cost-effectiveness determinations are needed. In addition, subjective criteria for cost-effectiveness determinations must be removed from the guidelines, with recognition that such determinations should be locally derived from, and based on the socio-economic parameters of the supplier's service area. An agency's certification will not be denied due to the value it assigns to the environmental benefits/costs portion of a cost effectiveness exemption calculation. The CUWCC will adjust the process or amend the MOU to reflect these needs.

### **BMP Implementation Variances**

Water suppliers may propose to implement variations of the BMPs so long as the proposed variant is at least as effective as the implementation method recommended by Exhibit 1 of the MOU.<sup>4</sup> For purposes of monitoring and evaluation, water suppliers would be required to provide a written description of their proposed variant prior to implementing the BMP-variant. The burden-of-proof would rest with the water supplier to show the proposed variant is at least as effective as the preferred implementation approach specified by Exhibit 1 of the MOU. The water supplier would be able to deviate from the recommended method of implementation for the reporting period, and would be evaluated based on the proposed variation. If, after the term of the reporting period, the BMP variation is proven to be less effective than the MOU standard, the supplier would be placed on conditional compliance until the recommended method of implementation for the BMP was begun.

### **Determination Of Compliance Status**

MOU compliance would be reviewed by the CUWCC as described in the following subsections.

### **CUWCC Staff Review And Recommendation**

CUWCC staff or selected consultant would evaluate water supplier MOU Compliance according to the *Criteria To Determine BMP Implementation Status* set forth in Section E of Exhibit 1 of the MOU. Upon completion of the review, a staff recommendation to issue either a notice of compliance or non-compliance would be forwarded to the CUWCC Steering Committee.

### **CUWCC Steering Committee Compliance Determination**

The CUWCC Steering Committee, as duly-elected representatives of the CUWCC Plenary, would be responsible for issuing notices of compliance or non-compliance to retail water suppliers, based on staff recommendation, subject to MOU certification. Compliance determinations would be decided by a majority vote of the committee based on the staff recommendation.

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This proposal retains the MOU's "at least as effective as" BMP implementation standard. The preamble to Section A of Exhibit 1 of the MOU states: "It is recognized by all parties that a single implementation method for a BMP would not be appropriate for all water suppliers. In fact, it is likely that as the process moves forward, water suppliers will find new implementation methods even more effective than those described. Any implementation method used should be at least as effective as the methods described [in Exhibit 1]."

If a retail water supplier meets all applicable compliance requirements, the Steering Committee would issue a notice of compliance, and the water supplier would be certified. The water supplier's compliance and certification would remain in effect until its next reporting period.

If a retail water supplier does not meet all applicable compliance requirements, the CUWCC Steering Committee would, based on staff recommendation, issue a notice of non-compliance. A notice of non-compliance would specify the following:

- reasons for the non-compliance finding;
- actions required by the water supplier to be in compliance with the MOU in order to attain certification;
- time frame within which specified actions must be taken;
- technical support and funding available to assist with MOU compliance in order to attain certification.

Certification status for a retail water supplier receiving a notice of non-compliance would change from full certification to conditional certification. A water supplier would return to full certification by taking the necessary compliance actions within the time frame specified by the notice of non-compliance. A water supplier would have its certification suspended by failing to take the necessary compliance actions within the time frame specified by the notice of non-compliance. In the latter case, the water supplier may face compliance assurance actions, as described in subsequent sections of this proposal.

At its discretion, the CUWCC Steering Committee may move a retail water supplier issued a notice of non-compliance onto a more frequent reporting and review cycle until the water supplier is in compliance with the MOU. The water supplier would return to its original reporting cycle once certification is restored.

### **Compliance And Certification Appeals**

Under this proposal, a retail water supplier may appeal a determination of non-compliance and non-certification. The appellant would be required to state in writing the basis for the appeal.

(Note: the following language is not finalized:

Water supplier appeals would be sent to the attention of the CUWCC Staff and Steering Committee, but would be reviewed and decided by the SWRCB.

OR

Water supplier appeals would be sent to the attention of the CUWCC Staff and Steering Committee, but would then be referred to a binding arbitration process for a decision.)

If the appeal is sustained, full compliance status and certification would be restored to the water supplier. If the appeal is denied, the water supplier would move to conditional certification, and would have to take the necessary compliance actions as specified by the notice of non-compliance to avoid having its certification suspended.

### **Timeframes For Compliance Review And Appeals**

The following time frames are being proposed to govern the review and appeals cycle:

CUWCC Determination Of MOU Compliance: The CUWCC Steering Committee would have 120 days from the date of the receipt of a water supplier's compliance report or its due date, whichever is later, to issue a notice of compliance or non-compliance. If the CUWCC does not issue a notice within 120 days, the water supplier would be deemed to be in compliance with the MOU until its next reporting period, and would be certified.

Water Supplier Appeals: A water supplier would have 45 days from the date of receipt of a notice of non-compliance to appeal the finding. If the water supplier does not appeal the notice within 45 days, it would be deemed to have accepted the finding of non compliance, and all rights of appeal would expire.

Appeals Review: Review and decision by the SWRCB or binding arbitration would take place within 60 days from the date of receipt of a water supplier appeal, to sustain or deny the appeal. If the arbitration does not take place within 60 days, the CUWCC Steering Committee would be deemed to have sustained the appeal, and full compliance status would be restored to the appellant water supplier.

It is believed that most water suppliers would receive notices of compliance and would be certified following an evaluation. These water suppliers would proceed down the left-hand side of the flow chart. Water suppliers receiving a notice of non-compliance would proceed from left to right along the flow chart. As previously discussed, any water supplier receiving a notice of non-compliance, would have the right to appeal the finding. The flow chart also indicates that any water supplier receiving a notice of non-compliance would be targeted for CALFED technical and/or funding assistance.

### **Reporting Assurances**

To be effective, this proposal requires timely and accurate reporting of BMP implementation status by retail urban water suppliers. This section describes two mechanisms being proposed to help assure that this occurs.

### **CUWCC Audits**

The CUWCC would establish an audit process to help ensure the accuracy of water supplier reporting. Through the audit process, a subset of retail water suppliers would be randomly selected and audited periodically (in a process to be determined by the CUWCC) to substantiate information being reported to the CUWCC. Misrepresentation of BMP implementation status would be grounds for compliance suspension and referral to the appropriate CALFED agency as to the misrepresentation.

### **CUWCC Administrative Fines**

Under this proposal, the CUWCC would also be authorized to assess administrative fines for incomplete or late reports. The fine structure being proposed is shown in the table below. Water suppliers could apply in writing to CUWCC staff for an extension. The Steering Committee would

be responsible for reviewing and approving or denying extension requests. No fines would be applied if a water supplier receives an extension.

***Administrative Fines For Late Or Incomplete Reporting***

<b><i>Reporting Infraction</i></b>	<b><i>CUWCC Administrative Action</i></b>
Report not submitted by due date, or report incomplete in some or all of its parts. <sup>5</sup>	Written notice to water supplier alerting it that report has not been received, or is incomplete.
Complete report not submitted either within 30 days of due date, or first notice of incomplete report.	Written notice to water supplier alerting it that report has not been received; assessment of \$500 fine.
Complete report not submitted within either 60 days of due date, or first notice of incomplete report.	Written notice to water supplier alerting it that report has not been received; <b>assessment of administrative fine of \$1000.</b>
Complete report not submitted within either 90 days of due date, or first notice of incomplete report.	Written notice to water supplier alerting it that report has not been received; <b>assessment of administrative fine of \$2,000;</b> suspension of compliance.

**IMPLEMENTATION ASSURANCES**

One of the main purposes of this proposal is to extend the existing MOU process to include reasonable assurances that retail urban water suppliers will sustain good-faith efforts to implement cost-effective BMPs in their service areas. This proposal utilizes the following MOU compliance strategies to develop these assurances:

- reward MOU compliance; assist and enable agencies to achieve compliance; penalize non-compliance.
- provide technical and financial assistance to implement BMPs;
- publicly disclose water supplier MOU compliance status:

In addition, CALFED regulatory agencies may levy fines and/or deny access to CALFED-generated benefits for persistent and egregious non-compliance.

This proposal would primarily rely on the CUWCC implementing the three implementation assurance strategies. Monetary fines and/or denial of access to CALFED-generated benefits would be used by CALFED regulatory agencies to deter gross and/or persistent non-compliance, and could be

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Under this proposal, the CUWCC would mail reminder notices to all affected Group 1 water suppliers 60 days prior to the date their report is due.

applied only after a water supplier had been given reasonable opportunity and assistance to comply with the MOU, and had exhausted all its appeal opportunities.

#### **Reward MOU Compliance**

This proposal requires that CALFED work with local, state, and federal agencies to develop a set of positive water supplier incentives for MOU compliance as part of the Water Use Efficiency Common Program. For those agencies not in compliance, these same "compliance incentives" can also be viewed as punitive measures. Possible water supplier compliance incentives include:

- Preferential access to water-supply-related government agency low-interest loan and grant programs for agencies in compliance and those agencies making demonstrated good faith efforts to achieve compliance; restricted access for agencies in non-compliance;
- Preferential interest or repayment terms for water-supply-related government agency low-interest loan programs for agencies in compliance and those agencies making demonstrated good faith implementation efforts to achieve compliance; less attractive terms for agencies in non-compliance;
- Preferential access or charges for State Drought Water Bank purchases for agencies in compliance and those agencies making demonstrated good faith implementation efforts to achieve compliance; restricted or higher-cost access for agencies in non-compliance;
- Tax credits for investor-owned water suppliers maintaining MOU certification.

#### **Technical And Financial Assistance**

The purpose of this compliance assurance is to insure that lack of technical, administrative and planning experience or expertise does not impede implementation of cost-effective measures by providing easily accessible assistance for planning and implementing local water management programs.

Administrative, technical and planning assistance is vital to the successful implementation of cost-effective conservation programs. Assistance can be directed at:

1. An agency's initial set-up of administrative mechanisms necessary to implement their program;
2. Identification of opportunities (water management planning, guidebook development, conservation program planning);
3. Implementation of opportunities (including, but not limited to: water audit training, mobile labs, technical review).

Currently, both DWR and USBR provide this kind of assistance directly to their contractors as well as to other water suppliers. Under this action, both DWR and USBR will continue to provide some of these kinds of technical and planning assistance, with funding for these programs augmented and provided by CALFED. This funding will be in place before the certification program begins. Assistance programs will be expanded as necessary to ensure that lack of administrative, technical

and planning experience, expertise or lack of staff does not impede implementation of cost-effective measures. Additional assistance may be provided through local programs operated by Resource Conservation Districts, the California Urban Water Conservation Council, or water suppliers themselves (through professional organizations and other means).

Funding assistance for water suppliers and end-users, such as existing programs available through DWR, USBR, EPA and others, will continue under this action. Determination of most appropriate programs and levels of funding will be made in coordination with CALFED agencies, consistent with the principle that lack of financial resources should not impede implementation of cost effective measures. Examples of funding programs include low interest loans, grants, direct financing, rebate programs, and bond pooling. Acceptable CALFED proposals for local assistance programs will be a necessary prerequisite to the endorsement of this proposal. Funding sources for these programs must be fully identified and described in any CALFED Water Use Efficiency Common Program. This is essential to the acceptability of this proposal.

#### **Public Disclosure Of MOU Compliance Status**

Under this proposal, the CUWCC would be responsible for monitoring each water supplier's MOU compliance status, and would maintain a publicly available listing of agency compliance status based on the most recent CUWCC evaluation results and appeal outcomes. Compliance status reports would be published on the CUWCC's web site, and forwarded to DWR, USBR, SWRCB, and other requesting agencies. Compliance reports would indicate whether a water supplier's certification was full, conditional or suspended, the reason for conditional or suspended certification, and whether an appeal was pending.

#### **REGIONAL WHOLESALE WATER SUPPLIERS**

Regional wholesalers diverting or exporting water from the Delta or its tributaries have expressed concern about their exposure to water-based assurances created by the retail agencies they serve but have only indirect or no control over. MOU compliance requirements differ between wholesale and retail water suppliers. No rights, obligations or authorities between wholesale suppliers, retail agencies or other water suppliers are created or expanded by the MOU. Wholesale water suppliers are not obligated under the MOU to implement BMPs at the retail customer level, except within their own retail service area, if any.

### AUTHORIZATION

As the current CUWCC structure is completely voluntary and legally non-binding, implementing legislation will likely be required for the CUWCC to undertake new responsibilities outlined by this proposal. In particular, the CUWCC is likely to require statutory authority to:

Make legally binding MOU compliance determinations and certification for individual water suppliers;

Levy processing fees on individual water supply agencies for MOU compliance reviews;

Levy administrative fines on individual water supply agencies for late or incomplete MOU compliance reports.

The final CALFED solution must contain appropriate financial and legal indemnifications to protect the CUWCC in its proper exercise of the functions identified and described in this proposal. Any cases brought to the State Water Resources Control Board on water agency appeals of non-certification, or on waste and unreasonable use charges brought against an agency, must be *de novo* hearings.

Additional legislative authorizations will likely be required for CALFED agencies to implement the proposed assurance mechanisms. In particular, legislative authority to assess non-compliance fines may be required.<sup>6</sup>

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It is CALFED's position that it currently has the necessary authority to make compliance with the MOU a precondition for (1) participating in water transfers requiring CALFED agency approval or involving transfer facilities controlled by CALFED agencies; (2) participating in the State Water Bank; and (3) obtaining new water supply from the Delta.



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