

MEMORANDUM OF UNDERSTANDING  
REGARDING  
URBAN WATER CONSERVATION  
IN CALIFORNIA

*As Amended September 17, 2014*



**MEMORANDUM OF UNDERSTANDING REGARDING  
URBAN WATER CONSERVATION IN CALIFORNIA**

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**MEMORANDUM OF UNDERSTANDING  
REGARDING  
URBAN WATER CONSERVATION  
IN CALIFORNIA**

The **Memorandum of Understanding Regarding Urban Water Conservation in California** (MOU) is made and entered into on the dates set forth below among the undersigned parties (signatories). The signatories represent urban water suppliers, public advocacy organizations and other interested groups as defined in Section 1.3 of this MOU.

ADOPTED  
September 1991

AMENDED  
February 10, 1993  
March 9, 1994  
September 30, 1997  
April 8, 1998  
December 9, 1998  
September 16, 1999  
September 21, 2000  
March 14, 2001  
December 11, 2002  
March 10, 2004  
March 9, 2005  
March 14, 2007  
June 13, 2007  
December 10, 2008  
June 11, 2009  
September 16, 2009  
June 9, 2010  
September 16, 2011  
September 17, 2014

Note: *The MOU was substantially revised on September 30, 1997 and again on December 10, 2008. Subsequent revisions are indicated accordingly throughout the MOU.*



## RECITALS

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- A. The signatories to this MOU recognize that California's economy, quality of life and environment depend in large part upon the water resources of the State. The signatories also recognize the need to provide reliable urban water supplies and to protect the environment. Increasing demands for urban, agricultural and environmental water uses call for conservation and the elimination of waste as important elements in the overall management of water resources. Many organizations and groups in California have an interest in urban water conservation, and this MOU is intended to gain much needed consensus on a complex issue.
- B. The urban water conservation practices included in this MOU (referred to as "Best Management Practices" or "BMPs") are intended to reduce long-term urban demands from what they would have been without implementation of these practices and are in addition to programs which may be instituted during occasional water supply shortages.
- C. The combination of BMPs and urban growth, unless properly accounted for in water management planning, could make reductions in urban demands during short-term emergencies such as droughts or earthquakes more difficult to achieve. However, notwithstanding such difficulties, the signatory water suppliers will carry out the urban water conservation BMP process as described in this MOU.
- D. The signatories recognize that means other than urban water conservation may be needed to provide long-term reliability for urban water suppliers and long-term protection of the environment. However, the signatories may have differing views on what additional measures might be appropriate to provide for these needs. Accordingly, this MOU is not intended to address these issues.
- E. A major benefit of this MOU is to conserve water which could be used for the protection of streams, wetlands and estuaries and/or urban water supply reliability. This MOU leaves to other forums the issue of how conserved water will be used.
- F. It is the intent of this MOU that individual signatory water suppliers (1) develop comprehensive conservation BMP programs using sound economic criteria and (2) consider water conservation on an equal basis with other water management options.
- G. It is recognized that present urban water use throughout the State varies according to many factors including, but not limited to, climate, types of housing and landscaping, amounts and kinds of commercial, industrial and recreational development, and the extent to which conservation measures have already been implemented. It is further recognized that many of the BMPs identified in Exhibit 1 to this MOU have already been implemented in some areas and that even with broader employment of BMPs, future urban water use will continue to vary from area to area. Therefore, this MOU is not intended to establish uniform per capita water use allotments throughout the urban areas of the State. This MOU is also not intended to limit the amount or types of conservation a water supplier can pursue or to limit a water supplier's more rapid implementation of BMPs.
- H. It is recognized that projections of future water demand should include estimates of anticipated demand reductions due to changes in the real price of water.





# TERMS

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*Amended December 10, 2008; Amended March 9, 2005; Amended April 8, 1998*

## **SECTION 1. DEFINITIONS**

For purposes of this MOU, the following definitions apply:

1.1 **Best Management Practices.** A Best Management Practice ("BMP") means a policy, program, practice, rule, regulation or ordinance or the use of devices, equipment or facilities which meets either of the following criteria:

- (a) An established and generally accepted practice among water suppliers that results in more efficient use or conservation of water;
- (b) A practice for which sufficient data are available from existing water conservation projects to indicate that significant conservation or conservation related benefits can be achieved; that the practice is technically and economically reasonable and not environmentally or socially unacceptable; and that the practice is not otherwise unreasonable for most water suppliers to carry out.

Although the term "Best Management Practices" has been used in various statutes and regulations, the definitions and interpretations of that term in those statutes and regulations do not apply to this MOU. The term "Best Management Practices" or "BMPs" has an independent and special meaning in this MOU and is to be applied for purposes of this MOU only as defined above.

1.2 **Implementation.** "Implementation" means achieving and maintaining the staffing, funding, and in general, the priority levels necessary to achieve the level of activity called for in the descriptions of the various BMPs and to satisfy the commitment by the signatories to use good faith efforts to optimize savings from implementing BMPs as described in Section 4.4 of this MOU. Section B of Exhibit 1 to this MOU establishes the schedule for initial implementation of BMPs.

1.3 **Signatory Groups.** For purposes of this MOU, signatories will be divided into three groups as follows:

- (a) Group 1 will consist of water suppliers. A "water supplier" is defined as any entity, including a city, which delivers or supplies water for urban use at the wholesale or retail level.
- (b) Group 2 will consist of public advocacy organizations. A "public advocacy organization" is defined as a non profit organization:
  - (i) whose primary function is not the representation of trade, industrial, or utility entities, and
  - (ii) whose prime mission is the protection of the environment or who has a clear interest in advancing the BMP process.
- (c) Group 3 will consist of other interested groups. "Other interested groups" is defined as any other group which does not fall into one of the two groups above.

## **TERMS**

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- 1.4 **California Urban Water Conservation Council.** The California Urban Water Conservation Council or "Council" will have responsibility for monitoring the implementation of this MOU and will be comprised of signatories to this MOU grouped according to the definitions in Section 1.3 above. The duties of the Council are set forth in Section 6 and in Exhibit 2 to this MOU.

### **SECTION 2. PURPOSES**

2.1 **This MOU has Two Primary Purposes:**

- (1) to expedite implementation of reasonable water conservation measures in urban areas; and
- (2) pursuant to Section 5 of this MOU, to establish assumptions for use in calculating estimates of reliable future water conservation savings resulting from proven and reasonable conservation measures. Estimates of reliable savings are the water conservation savings which can be achieved with a high degree of confidence in a given service area. The signatories have agreed upon the initial assumptions to be used in calculating estimates of reliable savings. These assumptions are included in Exhibit 1 to this MOU. It is probable that average savings achieved by water suppliers will exceed the estimates of reliable savings.

### **SECTION 3. LIMITS TO APPLICABILITY OF MOU**

- 3.1 **Relationship Between Water Suppliers.** No rights, obligations or authorities between wholesale suppliers, retail agencies, cities or other water suppliers are created or expanded by this MOU. Moreover, wholesale water suppliers are not obligated to implement BMPs at the retail customer level except within their own retail service area, if any.
- 3.2 **Agriculture.** This MOU is intended to apply only to the delivery of water for domestic, municipal and industrial uses. This MOU is not intended to apply directly or indirectly to the use of water for irrigated agriculture with one exception. A signatory water supplier that serves agricultural customers may decide to include agricultural water deliveries in its calculation of water demand and compliance using the GPCD metric. If such agricultural deliveries are included, the supplier shall include relevant agricultural water demand in its Water Supply & Reuse and Accounts & Water Use standard reports.
- 3.3 **Reclamation.** The signatory water suppliers support the reclamation and reuse of wastewater wherever technically and economically reasonable and not environmentally or socially unacceptable, and agree to prepare feasibility studies on water reclamation for their respective service areas. However, this MOU does not apply to that aspect of water management, except where the use of reclaimed water may otherwise qualify as a BMP as defined above.
- 3.4 **Land Use Planning.** This MOU does not deal with the question of growth management. However, each signatory water supplier will inform all relevant land planning agencies at least annually of the impacts that planning decisions involving projected growth would have

## **TERMS**

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upon the reliability of its water supplies for the water supplier's service area and other areas being considered for annexation.

- 3.5 **Use of Conserved Water.** A major benefit of this MOU is to conserve water which could be used for the protection of streams, wetlands and estuaries and/or urban water supply reliability. This MOU leaves to other forums the issue of how conserved water will be used.

### **SECTION 4. IMPLEMENTATION OF BEST MANAGEMENT PRACTICES**

- 4.1 **The Best Management Practices List, Schedule of Implementation and Assumptions.** Exhibit 1 to this MOU contains:

- (a) In Section A: A list identifying those practices which the signatories believe presently meet the definition of a BMP as set forth in Section 1.1 of this MOU.
- (b) In Section B: A schedule for implementing the BMPs to be followed by signatory water suppliers unless exempted under Section 4.5 of this MOU or an alternative schedule is prepared pursuant to Section 4.6 of this MOU.
- (c) In Section C: Coverage requirements for implementing BMPs. Coverage requirements are the expected level of implementation necessary to achieve full implementation of BMPs. Coverage requirements may be expressed either in terms of activity levels by water suppliers or as water savings achieved.
- (d) In Section D: Reporting Requirements for Documenting BMP Implementation. These requirements vary by BMP, are considered the minimum record keeping and reporting requirements for water suppliers to document BMP implementation levels, and will provide the basic data used evaluate BMP implementation progress by water suppliers.
- (e) In Section E: Criteria to determine BMP implementation status of water suppliers. These criteria will be used to evaluate BMP implementation progress. Evaluation criteria vary by BMP, and are derived from the implementation guidelines and schedules presented in Sections A, B, and C.
- (f) In Section F: Assumptions for use in developing estimates of reliable savings from the implementation of BMPs. Estimates of reliable savings are the water conservation savings which can be achieved with a high degree of confidence in a given service area. The estimate of reliable savings for each BMP depends upon the nature of the BMP and upon the amount of data available to evaluate potential savings. For some BMPs (e.g., public information) estimates of reliable savings may never be generated. For others, additional data may lead to significant changes in the estimate of reliable savings. It is probable that average savings achieved by water suppliers will exceed the estimates of reliable savings.
- (g) In Section G: In the programmatic BMPs, the Flex Tack Menu, a list of potential alternative water savings measures is available for agencies which wish to promote new initiatives in water conservation. In order to qualify as in compliance with the BMP requirements, a utility using this menu, or a part of it, shall show water savings equal to or greater than of those which would have been achieved by following the BMP list.

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There is no section G in the Foundational BMPs.

- 4.2 **Initial BMPs, PBMPs, Schedules, and Estimates of Reliable Savings.** The initial position of conservation practices on the BMP and PBMP lists, the initial schedule of implementation and study for the BMP list, the initial schedule of study for the PBMP list, and the initial estimates of reliable savings represent compromises by the signatories to move the process

forward both for purposes of the present Bay/Delta proceedings as defined in Section 5 and to promote water conservation generally. The signatories agree that as more and better data are collected in the future, the lists, the schedules, and the estimates of reliable savings will be refined and revised based upon the most objective criteria available. However, the signatories agree that the measures included as initial BMPs in Section A of Exhibit 1 are economically justified on a statewide basis.

- 4.3 **Future Revision of BMPs, PBMPs, Schedules, and Estimates of Reliable Savings.** After the beginning of the initial term of the MOU as provided in Section 7.1, the California Urban Water Conservation Council ("Council") will, pursuant to Section 6 of this MOU and Exhibit 2, alter the composition of the BMP and PBMP lists, redefine individual BMPs, alter the schedules of implementation, and update the assumptions of reliable savings as more data becomes available. This dynamic BMP assessment process includes the following specific commitments:

- (a) The assumptions of reliable savings will be updated at least every 3 years.
- (b) The economic reasonableness of a BMP or PBMP will be assessed by the Council using the economic principles in Sections 3 and 4 of Exhibit 3.
- (c) A BMP will be removed from the BMP list if, after review of data developed during implementation, the Council determines that the BMP cannot be made economically reasonable or determines that the BMP otherwise fails to conform to the definition of BMPs in Section 1.1.
- (d) A PBMP will be moved to the BMP list and assigned a schedule of implementation if, after review of data developed during research, and/or demonstration projects, the Council determines that the PBMP is economically reasonable and otherwise conforms to the definition of BMPs in Section 1.1.

[Note: In 1997, the Council substantially revised the BMP list, definitions, and schedules contained in Exhibit 1. These revisions were adopted by the Council September 30, 1997.]

- 4.4 **Good Faith Effort.** While specific BMPs and results may differ because of varying local conditions among the areas served by the signatory water suppliers, a good faith effort to implement BMPs will be required of all signatory water suppliers. The following are included within the meaning of "good faith effort to implement BMPs":

- (a) The proactive use by a signatory water supplier of legal authorities and administrative prerogatives available to the water supplier as necessary and reasonable for the implementation of BMPs.

## TERMS

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- (b) Where implementation of a particular BMP is not within the legal authority of a signatory water supplier, encouraging timely implementation of the BMP by other entities that have the legal authority to carry out the BMP within that water supplier's service area pursuant to existing legal authority. This encouragement may include, but is not limited to, financial incentives as appropriate.
- (c) Cooperating with and encouraging cooperation between other water suppliers and other relevant entities whenever possible and within existing legal authority to promote the implementation of BMPS.
- (d) Optimizing savings from implementing BMPs.
- (e) For each signatory water supplier and all signatory public advocacy organizations, encouraging the removal of institutional barriers to the implementation of BMPs within that water supplier's service area. Examples of good faith efforts to remove institutional barriers include formal presentations and/or written requests to entities requesting approval of, or amendment to, local ordinances, administrative policies or legislation which will promote BMP implementation.

4.5 **Exemptions.** *As Amended on March 9, 2005.* A signatory water supplier will be exempt from the implementation of specific BMPs for as long as the supplier substantiates each reporting period that based upon then prevailing local conditions, one or more of the following findings applies:

- (a) A full cost-benefit analysis, performed in accordance with the principles set forth in Exhibit 3, demonstrates that either the program (i) would not be cost-effective overall when total program benefits and costs are considered; OR (ii) would not be cost-effective to the individual water supplier even after the water supplier has made a good faith effort to share costs with other program beneficiaries.
- (b) Adequate funds are not and cannot reasonably be made available from sources accessible to the water supplier including funds from other entities. However, this exemption cannot be used if a new, less cost-effective water management option would be implemented instead of the BMP for which the water supplier is seeking this exemption.
- (c) Implementation of the BMP is (i) not within the legal authority of the water supplier; and (ii) the water supplier has made a good faith effort to work with other entities that have the legal authority to carry out the BMP; and (iii) the water supplier has made a good faith effort to work with other relevant entities to encourage the removal of institutional barriers to the implementation of BMPs within its service area.

4.6 **Schedule of Implementation.** *As Amended on March 9, 2005.* The schedule of implementation for BMPs is set forth in Section B of Exhibit 1 to this MOU. However, it is recognized by the signatories that deviations from this schedule by water suppliers may be necessary. Therefore, a water supplier may modify, to the minimum extent necessary, the schedule for implementation of BMPs if the water supplier substantiates one or more of the following findings:

## TERMS

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- (a) That after a good faith effort to implement the BMP within the time prescribed, implementation is not feasible pursuant to the schedule. However, implementation of this BMP is still required as soon as feasible within the initial term of this MOU as defined in Section 7.1.
- (b) That implementation of one or more BMPs prior to other BMPs will have a more positive effect on conservation or water supplies than will adherence to the schedule.
- (c) That implementation of one or more Potential BMPs or other conservation measures prior to one or more BMPs will have a more positive effect on conservation or water supplies than will adherence to the schedule.
- (d) That the BMP was not implemented previously because the water supplier was exempt from its implementation as provided for in Section 4.5 above during prior years of required activity. When a water supplier has been exempt from implementing a BMP in the past, but is subsequently no longer exempt, the water supplier shall receive an extension of time to implement the BMP. The extension of time shall be equal to 100% of the time period for which fully documented exemptions were submitted to the Council, not to exceed the time allotted for completing the activities set forth within the BMP itself.

## **SECTION 5. CONSERVATION GOALS**

[Note: The original section 5. BAY/DELTA PROCEEDINGS was adopted with the initial MOU and referred to the State Water Resources Control Board water rights process underway in late 1980s and early 1990s to implement new Bay-Delta flow and export standards. Subsequent to those proceedings, further work under different auspices has proceeded with the same goals, in addition, Council membership has expanded to include agencies whose focus is on other watersheds and broader support for water use efficiency and conservation. Therefore, while including the original intent of this section, in December 2008 it has been amended to reflect these new circumstances.]

- 5.1 **Use of MOU to address Bay/Delta protection and water use efficiency.** The BMPs, the estimates of reliable savings and the processes established by this MOU are agreed to by the signatories for purposes of protection of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary ("Bay/Delta"); in order to move the water conservation process forward; and/or to develop a cost effective alternative to new water supplies. The willingness of the signatories to enter into this MOU for purposes of the protection of the Bay/Delta in no way limits the signatories' ability to propose different conservation practices, different estimates of savings, or different processes, or for non-urban water suppliers or for other water management issues. The signatories may present other assumptions of reliable conservation savings, provided that such assumptions could not have adverse impacts upon the water supplies of any signatory water supplier. Furthermore, the signatories retain the right to advocate any particular level of protection for the Bay/Delta Estuary, including levels of freshwater flows, and do not necessarily agree on population projections for California. This MOU is not intended to address any authority or obligation of the State Board to establish freshwater flow protections or set water quality objectives for the Estuary, or to address any authority of the Department of Water Resources or United States Bureau of Reclamation.

## **TERMS**

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- 5.2 **Recommendations for Water Conservation.** The signatories will make the following recommendations to the State Board, Department of Water Resources or US Bureau of Reclamation to support BMPs and the advancement of water conservation practices:
- (a) That implementation of the BMP process set forth in this MOU represents a sufficient long-term water conservation program by the signatory water suppliers, recognizing that additional programs may be required during occasional water supply shortages;
  - (b) That the State Board should include a policy statement in the water rights considerations of the Bay/Delta protection supporting the BMP process described in this MOU and that the BMP process should be considered in any documents prepared by the State Board pursuant to the California Environmental Quality Act as part of the Bay/Delta proceedings.
  - (c) That the Department of Water Resources and Bureau of Reclamation consider an agency's implementation of the BMPs set for the in the MOU as evidence of good faith efforts by the signatory agency to achieve water use efficiency and conservation.
- 5.3 **Letter to State or Federal Water Agencies.** Within 30 days of signing this MOU, each signatory will jointly or individually convey the principles set forth in Sections 5.1 and 5.2 above by sending a letter to the State Board, Department of Water Resources and/or Bureau of Reclamation copied to the California Urban Water Conservation Council.
- 5.4 **Withdrawal from MOU.** If the State Board or EPA uses future urban water conservation savings that are inconsistent with the use of BMPs as provided in this MOU, any signatory shall have the right to withdraw from the MOU by providing written notice to the Council as described in Section 7.4(a)(I) below.

### **SECTION 6. CALIFORNIA URBAN WATER CONSERVATION COUNCIL**

- 6.1 **Organization.** The California Urban Water Conservation Council ("Council") will be comprised of all signatories to this MOU grouped according to the definition in Section 1. The signatories agree to the necessary organization and duties of the Council as specified in Exhibit 2 to this MOU. Within 30 days of the effective date of this MOU, the Council will hold its first meeting.
- 6.2 **BMP Implementation Reports.** The signatory water suppliers will submit standardized reports every other year to the Council providing sufficient information to inform the Council on the progress being made towards implementing the BMP process. The Council will make annual reports to the State Board. An outline for the Council's annual report to the State Board is attached as Exhibit 5 to this MOU.

### **SECTION 7. GENERAL PROVISIONS**

- 7.1 **Initial Term of MOU.** The initial term of this MOU shall be for a period of 10 years. This initial term shall commence on September 1, 1991.

## TERMS

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- 7.2 **Signatories.** Signatories shall consist of three groups: water suppliers, public advocacy organizations and other interested groups, arranged according to the definition in Section 1.3. Such arrangement will be made by a Council membership committee comprised of three representatives from the water suppliers' group and three representatives from the public advocacy organizations' group.
- 7.3 **Renewal of MOU.** The MOU shall be automatically renewed after the initial term of 10 years on an annual basis as to all signatories unless a signatory withdraws as described below in Section 7.4.
- 7.4 **Withdrawal from MOU.** Signatories to the MOU may withdraw from the MOU in three separate ways as described in sections (a), (b) and 8 below.
- (a) **Withdrawal prior to expiration of initial term.** Before the expiration of the initial term of 10 years, a signatory may withdraw by providing written notice to the Council declaring its intent to withdraw. This written notice must include a substantiated finding that one of the two provisions (i) or (ii) below applies:
- (i) During the present Bay/Delta proceedings, the State Board or EPA used future urban water conservation savings that are inconsistent with the use of BMPs as provided in this MOU; OR
  - (ii) After a period of 5 years from the commencement of the initial term of the MOU:
    - (1) Specific signatory water suppliers representing more than 10 percent of the population included within the combined service areas of the signatory water suppliers have failed to act in good faith pursuant to Section 4.4 of the MOU; and
    - (2) The signatory wishing to withdraw has attached findings to its past two annual reports to the Council beginning no earlier than the fourth annual report identifying these same signatory water suppliers and giving evidence based upon the information required to be submitted in the annual reports to the Council to support the allegations of failure to act in good faith; and
    - (3) The State Board has failed to require conservation efforts by the specific water suppliers adequate to satisfy the requirements of this MOU; and
    - (4) Discussions between the signatory wishing to withdraw and the specific signatories named have failed to satisfy the objections of the signatory wishing to withdraw.

After a signatory declares intent to withdraw under Section 7.4(a), the MOU shall remain in effect as to that signatory for 180 days.

- (b) **Withdrawal after expiration of initial term.** After the initial term of 10 years, any signatory may declare its intent to withdraw from the MOU unconditionally by providing written notice to the Council. After a signatory has declared its intent to



## TERMS

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withdraw as provided in this section, the MOU will remain in effect as to that signatory for 180 days.

- (c) **Immediate withdrawal.** Any signatory who does not sign a modification to the MOU requiring a 2/3 vote as described in Exhibit 2 of this MOU may withdraw from the MOU by providing written notice to the Council. The withdrawing signatory's duties under this MOU will be terminated effective immediately upon providing such written notice.

If a signatory withdraws from the MOU under any of the above methods, the MOU shall remain in effect as to all other signatories.

- 7.5 **Additional Parties.** Additional parties may sign the MOU after September 1, 1991 by providing written notice to and upon approval by the Council. Additional parties will be assigned by the Council to one of the three signatory groups defined in Section 1.3 before entry into the Council. All additional signatory water suppliers shall be subject to the schedule of implementation provided in Exhibit 1.
- 7.6 **Legal Authority.** Nothing in this MOU is intended to give any signatory, agency, entity or organization expansion of any existing authority. No organization formed pursuant to this MOU has authority beyond that specified in this MOU.
- 7.7 **Non-Contractual Agreement.** This MOU is intended to embody general principles agreed upon between and among the signatories and is not intended to create contractual relationships, rights, obligations, duties or remedies in a court of law between or among the signatories.
- 7.8 **Modifications.** The signatories agree that this writing constitutes the entire understanding between and among the signatories. The general manager, chief executive officer or executive director of each signatory or their designee shall have the authority to vote on any modifications to this MOU and its exhibits. Any modifications to the MOU itself and to its exhibits shall be made by the Council as described in Exhibit 2.



## **EXHIBIT 1. BMP DEFINITIONS, SCHEDULES AND REQUIREMENTS**

*As Amended June 9, 2010*

This Exhibit contains Best Management Practices (BMPs) that signatory water suppliers commit to implementing. Suppliers' water needs estimates will be adjusted to reflect estimates of reliable savings from these BMPs. For some BMPs, no estimate of savings is made.

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 in the future, 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 below.

The Council's 14 BMPs are now organized into five categories. Two categories, Utility Operations and Education, are "Foundational BMPs", because they are considered to be essential water conservation activities by any utility and are adopted for implementation by all signatories to the MOU as ongoing practices with no time limits. The remaining BMPs are "Programmatic BMPs" and are organized into Residential, Commercial, Industrial, and Institutional (CII), and Landscape categories. The minimal activities required of each signatory are encompassed within each list, except for activities from which a utility is exempt from completing under section 4.5 of the MOU and for which the utility has filed an exemption with the Council.

### **BMP Naming Changes**

<b>Old BMP Number &amp; Name</b>	<b>New BMP category</b>
1. Water Survey Programs for Single-Family Residential and Multi-Family Residential Customers	Programmatic: Residential
2. Residential Plumbing Retrofit	Programmatic: Residential
3. System Water Audits, Leak Detection and Repair	Foundational: Utility Operations – Water Loss Control
4. Metering with Commodity Rates for All New Connections and Retrofit of Existing Connections	Foundational: Utility Operations – Metering
5. Large Landscape Conservation Programs and Incentives	Programmatic: Landscape
6. High-Efficiency Clothes Washing Machine Financial Incentive Programs	Programmatic: Residential

# EXHIBIT 1

As Amended June 9, 2010

7. Public Information Programs	Foundational: Education – Public Information Programs
8. School Education Programs	Foundational: Education – School Education Programs
9. Conservation Programs for Commercial, Industrial, and Institutional (CII) Accounts	Programmatic: Commercial, Industrial, and Institutional
10. Wholesale Agency Assistance Programs	Foundational: Utility Operations – Operations
11. Retail Conservation Pricing	Foundational: Utility Operations – Pricing
12. Conservation Coordinator	Foundational: Utility Operations – Operations
13. Water Waste Prohibition	Foundational: Utility Operations – Operations
14. Residential ULFT Replacement Programs	Programmatic: Residential

Compliance with the BMP water savings goals can be accomplished in one of three ways including: accomplishing the specific measures as listed in Section A of each BMP; accomplishing a set of measures which achieves equal or greater water savings, referred to in this document as the Flex Track Menu; and accomplishing set water savings goals as measured in gallons per capita per day consumption.

A signatory may elect to adopt additional or alternative measures, in part or in any combination, as described in the Flex Track Menus, provided that the demonstrated water savings in the Flex Track Menu activities are equal to or greater than the water savings that would be achieved by the BMP measures.

“Demonstrated water savings” represent unit water savings for individual BMP or Flex Track Menu conservation technologies and activities as established by either: (a) a water utility; (b) independent research studies; or (c) CUWCC- adopted savings as reviewed by the Research and Evaluation Committee and approved by the Board of Directors.

Another alternative method to satisfying the BMP requirements is “GPCD (gallons per capita per day) Compliance”. Agencies which choose a GPCD Compliance approach will be counting overall water savings of the quantifiable measures from the BMP list or Flex Track Menu plus additional savings achieved through implementation of the Foundational BMPs. [The actual targets and methodology associated with the GPCD Compliance approach will be adopted by the Council Plenary in accord with the MOU; and is intended for adoption by the spring Plenary of 2009 but will be no later than the summer 2009

# EXHIBIT 1

*As Amended June 9, 2010*

Plenary.] Savings goals and methodology will be updated in the MOU Compliance Policies from time to time based upon data and studies.

The BMP definitions below are divided into the following sections:

## **Section A: Implementation**

“Implementation” means achieving and maintaining the staffing, funding and, in general, the priority levels necessary to achieve the level of water savings or activity called for in the implementation section of each definition, and to satisfy the commitment by the signatories to use good faith efforts to optimize savings from implementing BMPs as described in Section 4.4 of the MOU.

## **Section B: Implementation Schedule**

Signatory water suppliers will implement the Best Management Practices according to the schedules in each definition. These schedules state the latest dates by which implementation of BMPs must be underway. It is recognized that some signatories are already implementing some BMPs and that these schedules do not prohibit signatories from implementing BMPs sooner than required.

## **Section C: Coverage Requirements**

This section specifies the minimum level of coverage required by the BMPs.

## **Section D: Requirements for Documenting BMP Implementation**

Section D of each definition contains the minimum record keeping and reporting requirements for agencies to document BMP and Flex Track Menu implementation levels and efforts, and will be used to guide Council development of the BMP implementation report forms and database.

## **Section E: Water Savings Assumptions**

Section E of each definition contains the assumptions of reliable water savings to be used in accordance with Sections 5.1 and 5.2 of the MOU. These will be updated from time by the Research and Evaluation Committee and published in the MOU Compliance Policy and BMP Guidebook.

## **Section F: Flex Track Option**

This section is included in the Programmatic BMP definitions. The approach is defined in this Exhibit, and the Menu is contained in the MOU Compliance Policy and BMP Guidebook, where it can be updated from time to time with approval of the Research and Evaluation Committee.

In this Exhibit, a measure is intended to be an individual activity and a practice is a set of measures.

# EXHIBIT 1

As Amended June 9, 2010

## **FOUNDATIONAL BMPs**

### **1. UTILITY OPERATIONS PROGRAMS** *As amended December 10, 2008*

Water utilities throughout California are implementing water conservation programs and providing services to the customers they serve. There are four subcategories that comprise signatory utility operation program responsibilities.

#### **1.1 OPERATIONS PRACTICES** *As amended December 10, 2008*

This practice will outline several key actions that utilities shall take to better enable conservation program implementation, to supplement conservation incentives with regulations where appropriate, and to assist one another through the wholesaler-retailer relationship.

##### **A. Implementation**

Implementation shall consist of at least the following actions:

- 1) Conservation Coordinator (*formerly BMP 12*)  
Designate a person as the agency's responsible conservation coordinator for program management, tracking, planning, and reporting on BMP implementation.
- 2) Water waste prevention (*formerly BMP 13*)
  - a) New development  
Enact, enforce, or support legislation, regulations, ordinances, or terms of service that (1) prohibit water waste such as, but not limited to: single- pass cooling systems; conveyer and in-bay vehicle wash and commercial laundry systems which do not reuse water; non-recirculating decorative water fountains and (2) address irrigation, landscape, and industrial, commercial, and other design inefficiencies.
  - b) Existing users  
Enact, enforce, or support legislation, regulations, ordinances, or terms of service that prohibit water waste such as, but not limited to: landscape and irrigation inefficiencies, commercial or industrial inefficiencies, and other misuses of water.
  - c) Water shortage measures  
Enact, enforce, or support legislation, regulations, ordinances, or terms of service that facilitate implementation of water shortage response measures.
- 3) Wholesale agency assistance programs (*formerly BMP 10*)  
This section addresses assistance relationships between regional wholesale agencies and intermediate wholesale agencies as well as between wholesale agencies and retail agencies.

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*As Amended June 9, 2010*

- a) Financial investments and building partnerships  
When mutually agreeable and beneficial to a wholesaler and its retail agencies, a wholesaler will provide financial assistance and help build partnerships to accomplish conservation. Wholesale water suppliers will consider avoided capital costs when making financial investments and build regional partnerships to advance water conservation efforts and effectiveness. Where applicable, intermediate wholesale water suppliers that receive conservation-related financial incentives from regional wholesalers will pass through eligible financial incentives to retail agencies operating programs at the retail level.
  
- b) Technical support  
When requested, wholesale water agencies will provide conservation-related technical support and information to retail agencies they serve. Support and information will include, but will not be limited to: workshops and support advice addressing conservation program planning, design, implementation, and evaluation.
  
- c) Program management  
When mutually advantageous, wholesale and retail water agencies will join together to plan, design, implement, manage, and evaluate regional conservation programs.  
  
When mutually agreeable and beneficial, the wholesale agency or another lead regional agency will operate all or part of the conservation program; if the wholesale agency or other lead regional agency operates all or part of a program, then it may, by mutual consent with the retail agency, assume responsibility for CUWCC reporting for funded BMPs; under this arrangement, a wholesale agency or other lead regional agency may aggregate all or portions of the reporting and coverage requirements of all retail agencies joining into the mutual consent.
  
- d) Water shortage allocations  
Wholesale agencies shall pursue water shortage allocation policies or plans which minimize disincentives to long-term water conservation, and encourage and reward investments in long-term conservation shown to advance regional water supply reliability and sufficiency.
  
- e) Non-signatory reporting  
To the extent possible, wholesale water agencies will provide reports on BMP implementation within their service area by retail water agencies that are not signatories to the MOU.
  
- f) Encourage CUWCC membership  
Wholesale agencies will encourage all of their retail agencies to become MOU signatories, provide information to assist the CUWCC in recruitment targeting, and may assist in paying CUWCC dues for their retail agencies.

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As Amended June 9, 2010

## **B. Implementation Schedule**

Implementation shall commence no later than July 1 of the first year following the latter of either: 1) the year the agency signed or became subject to the MOU, or 2) the year this Exhibit is amended.

## **C. Coverage Requirements**

Coverage shall consist of:

- 1) Conservation Coordinator  
Staff and maintain the position of trained conservation coordinator, or equivalent consulting support, and provide that function with the necessary resources to implement BMPs.
- 2) Water waste prevention  
Water Agency shall do one or more of the following:
  - a. Enact and enforce an ordinance or establish terms of service that prohibit water waste
  - b. Enact and enforce an ordinance or establish terms of service for water efficient design in new development
  - c. Support legislation or regulations that prohibit water waste
  - d. Enact an ordinance or establish terms of service to facilitate implementation of water shortage response measures
  - e. Support local ordinances that prohibit water waste
  - f. Support local ordinances that establish permits requirements for water efficient design in new development.
- 3) Wholesale agency programs
  - a) Financial investments and building partnerships  
When mutually agreeable and beneficial to a wholesaler and its retail agencies cost-effectiveness assessments, including avoided cost per acre-foot, will be completed for each BMP the wholesale agency is potentially obligated to support. The methodology used will conform to the Council standards and procedures, and the information reported will be sufficient to permit independent verification of the calculations and of any exemptions claimed on the cost-effectiveness grounds.
  - b) Technical support  
*When requested* provide technical support, incentives, staff or consultant support, and equivalent resources to retail members to assist, or to otherwise support, the implementation of BMPs.
  - c) Program management  
When mutually agreeable and beneficial to a wholesaler and its retail agencies offer program management and BMP reporting assistance to its retailers and the results of the offer will be documented. It is recognized that wholesale agencies have limited control over retail agencies that they



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serve and must act in cooperation with those retail agencies on implementation of BMPs. Thus, wholesale agencies cannot be held responsible for levels of implementation by individual retailers in their wholesale service areas.

- d) Water shortage allocation  
Water shortage allocations plans or policies will encourage and reward investments in long-term conservation.
- e) Non-signatory reporting  
Wholesale water agencies will report on non-signatory BMP implementation, when possible.
- 4) Encourage CUWCC membership  
Wholesale agencies will encourage CUWCC membership and offer recruitment assistance.

## **D. Requirements for Documenting BMP Implementation**

- 1) Conservation coordinator  
Provide the contact information for the conservation coordinator, or consultant assigned, and verification that the position is responsible for implementing the tasks identified in Section A.1).
- 2) Water waste prevention  
Provide the following:
  - a) A description of, or electronic link to, any ordinances or terms of service adopted by water agency to meet the requirements of this BMP.
  - b) A description of, or electronic link to, any ordinances or requirements adopted by local jurisdictions or regulatory agencies with the water agency's service area.
  - c) A description of any water agency efforts to cooperate with other entities in the adoption or enforcement of local requirement consistent with this BMP.
  - d) A description of agency support positions with respect to adoption of legislation or regulations consistent with this BMP.
- 3) Wholesale agency assistance programs
  - a) Financial investments and building partnerships  
List the total monetary amount of financial incentives and equivalent resources provided to retail members to assist with, or to otherwise support, implementation of BMPs, subtotaled by BMP. List regional partnerships developed to encourage resource conservation and maximize economies of scale benefits.
  - b) Technical support  
Supply a summary of types of technical support provided to retail agencies.
  - c) Program management

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If the wholesale agency has assumed reporting responsibility, list the programs managed on behalf of its retail agencies.

- d) Water shortage allocation  
If a water shortage allocation plan or policy has been developed, provide the date of adoption and electronic link to the document or hardcopy.
  - e) Non-signatory reporting  
Receipt of reports
- 4) Encourage CUWCC membership  
List of efforts to recruit retailers and amount of dues paid on behalf of retail agencies.

## **E. Water Savings Assumptions**

Not quantified. However, water savings may be realized in the following ways:

- 1) Wholesalers may use the Council's Cost and Savings document to assess the total amount of water savings achieved by each wholesaler-supported BMP. Other statistically validated sources may be also used to demonstrate water savings.
- 2) Water savings from enforcement of legislation and regulations will be projections developed based on anticipated savings from device(s) applied to the population subject to the regulation(s).
- 3) Water savings from implementation of water waste prevention measures.

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As Amended June 9, 2010

## **1.2 WATER LOSS CONTROL** (formerly BMP 3) As amended September 16, 2009

The goals of modern water loss control methods include both an increase in water use efficiency in the utility operations and proper economic valuation of water losses to support water loss control activities. In May 2009 the American Water Works Association (AWWA) published the 3<sup>rd</sup> Edition M36 Manual *Water Audits and Loss Control Programs*. BMP 1.2 will incorporate these new water loss management procedures and apply them in California. Agencies are expected to use the AWWA Free Water Audit Software ("AWWA Software") to complete their standard water audit and water balance.

### **A. Implementation**

Implementation shall consist of at least the following actions:

- 1) Standard Water Audit and Water Balance. All agencies shall quantify their current volume of apparent and real water loss. Agencies shall complete the standard water audit and balance using the AWWA Water Loss software to determine their current volume of apparent and real water loss and the cost impact of these losses on utility operations at no less than annual intervals.
- 2) Validation. Agencies may use up to four years to develop a validated data set for all entries of their water audit and balance. Data validation shall follow the methods suggested by the AWWA Software to improve the accuracy of the quantities for real and apparent losses.
- 3) Economic Values. For purposes of this BMP, the economic value of real loss recovery is based upon the agency's avoided cost of water as calculated by the Council's adopted Avoided Cost Model or other agency model consistent with the Council's Avoided Cost Model.
- 4) Component Analysis. A component analysis is required at least once every four years and is defined as a means to analyze apparent and real losses and their causes by quantity and type. The goal is to identify volumes of water loss, the cause of the water loss and the value of the water loss for each component. The component analysis model then provides information needed to support the economic analysis and selection of intervention tools. An example is the Breaks and Background Estimates Model (BABE) which segregates leakage into three components: background losses, reported leaks and unreported leaks.
- 5) Interventions. Agencies shall reduce real losses to the extent cost-effective. Agencies are encouraged to refer to the AWWA's 3<sup>rd</sup> Edition M36 Publication, *Water Audits and Loss Control Programs* (2009) for specific methods to reduce system losses.
- 6) Customer Leaks. Agencies shall advise customers whenever it appears possible that leaks exist on the customer's side of the meter.

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*As Amended June 9, 2010*

## **B. Implementation Schedule**

- 1) For agencies signing the MOU prior to December 31, 2008, implementation shall commence no later than July 1, 2009.
  - a) July 1, 2009 through June 30, 2010 will be the first year of implementation;
  - b) Agencies shall provide its first full BMP 1.2 report by December 1, 2010 for years 2008-2009 and 2009-2010;
- 2) Agencies signing the MOU after December 31, 2008, implementation shall commence no later than July 1 of the year following the year the agency signed the MOU.
  - a) Agencies shall provide a full BMP 1.2 report for the first reporting period after implementation and for each reporting year thereafter.
- 3) A benchmark for the performance indicator in terms of water loss standards will be determined after the first 4 years data collected based upon the data reported by agencies. The performance indicator and benchmark; will be voted upon by the Council by year 6 of this revision. Ongoing data collection and data reporting requirements will be established as part of this process.

## **C. Coverage Requirements**

- 1) Agencies to compile the standard water audit and balance annually using the AWWA Software. Beginning in the 2<sup>nd</sup> year of implementation agencies to test source, import, and production meters annually.
- 2) Agencies shall improve the data accuracy and data completeness of the standard water balance during the first four years of implementation. Agencies shall achieve a Water Audit Data Validity score of 66 or higher using the AWWA software no later than the end of the first four year period; and shall achieve data validity Level IV no later than the end of the 5th year of implementation. Estimations for data that are not directly measured should be improved using the methods outlined by the AWWA.
- 3) Agencies shall seek training in the AWWA water audit method and component analysis process (offered by CUWCC or AWWA) during the first four years of BMP implementation. They shall complete a component analysis of real losses by the end of the fourth year, and update this analysis no less frequently than every four years.
- 4) Beginning in the fifth year of implementation, through the tenth year of implementation, agencies shall demonstrate progress in water loss control performance as measured by the AWWA software real loss performance indicator "gallons per service connection per day;" "gallons per mile of mains per day;" or other appropriate indicator by one of the following:

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- a) Achieving a performance indicator score less than the agency's score the previous year;
  - b) Achieving a performance indicator score less than the average of the agency's scores for the previous three years; or
  - c) Achieving a performance indicator score in the top quintile (20%) of all signatory agencies reporting such performance indicator with a Data Validity Level IV; or ;
  - d) In year 6 and beyond reducing real losses to or below the benchmark value determined in the Council's process referenced in section B3.
- 5) Agencies shall repair all reported leaks and breaks to the extent cost effective. By the end of the second year, agencies shall establish and maintain a record-keeping system for the repair of reported leaks, including time of report, leak location, type of leaking pipe segment or fitting, and leak running time from report to repair. By the end of the fourth year, agencies shall include estimated leakage volume from report to repair, and cost of repair (including pavement restoration costs and paid-out damage claims, if any).
- 6) Agencies shall locate and repair unreported leaks to the extent cost effective.

## **D. Requirements for Documenting BMP Implementation**

- 1) Agency shall submit the completed AWWA Standard Water Audit and Water Balance worksheets in the BMP 1.2 report form every reporting period.
- 2) For each reporting period, agency shall keep and make available validation for any data reported.
- 3) Agency shall maintain in-house records of audit results, methodologies, and worksheets for each completed audit period.
- 4) Agency keeps records of each component analysis performed, and incorporates results into future annual standard water balances.
- 5) Agency, for the purpose of setting the Benchmark:
  - a) keeps records of intervention(s) performed, including standardized reports on leak repairs, the economic value assigned to apparent losses and to real losses, miles of system surveyed for leaks, pressure reduction undertaken for loss reduction, infrastructure rehabilitation and renewal, volumes of water saved, and costs of intervention(s); and
  - b) prepares a yearly summary of this information for submission to the Council, during years two through five of implementation, unless extended by the Council.

## **E. Water Savings Assumptions**

To Be Determined

# EXHIBIT 1

*As Amended June 9, 2010*

## **1.3 METERING WITH COMMODITY RATES FOR ALL NEW CONNECTIONS AND RETROFIT OF EXISTING CONNECTIONS**

*(formerly BMP 4) As Amended March 14, 2007*

### **A. Implementation**

For consistency with California Water Code (Section 525b), this BMP refers to potable water systems. A water meter is defined as a device that measures the actual volume of water delivered to an account in conformance with the guidelines of the American Water Works Association. Implementation shall consist of at least the following actions:

- 1) Require meters for all new service connections.
- 2) Establish a program for retrofitting existing unmetered service connections.
- 3) Read meters and bill customers by volume of use.
  - a) Establish and maintain billing intervals that are no greater than bi-monthly (every two months) for all customers.
  - b) For each metered connection, perform at least five actual meter readings (including remotely sensed) per twelve month period.
- 4) Prepare a written plan, policy or program that includes:
  - a) A census of all meters, by size, type, year installed, customer class served and manufacturer's warranty accuracy when new;
  - b) A currently approved schedule of meter testing and repair, by size, type and customer class;
  - c) A currently approved schedule of meter replacement, by size, type, and customer class; and
- 5) Identifying intra- and inter-agency disincentives or barriers to retrofitting mixed use commercial accounts with dedicated landscape meters, and conducting a feasibility study(s) to assess the merits of a program to provide incentives to switch mixed use accounts to dedicated landscape meters.

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*As Amended June 9, 2010*

## **B. Implementation Schedule**

- 1) Agencies signing the MOU prior to December 31, 1997, shall:
  - a) Initiate volumetric billing for all metered customers no later than July 1, 2008; and
  - b) Complete meter installation for all connections no later than July 1, 2009.
- 2) Agencies signing the MOU after December 31, 1997, shall:
  - a) Initiate volumetric billing for all metered customers no later than July 1, 2008 or within one year of signing the MOU if later than July 1, 2008; and
  - b) Complete meter installation for all service connections no later than July 1, 2012 or within six years of signing MOU, but in no case later than one year prior to the requirements of state law.
- 3) For unmetered service areas newly acquired or newly operated by otherwise metered agencies, meter installation shall be completed in these service areas within six years of the acquisition or operational agreement.
- 4) A feasibility study examining incentive programs to move landscape water uses on mixed-use meters to dedicated landscape meters to be completed by the end of Year Four following the date implementation was to commence.
- 5) A written plan, policy or program to test, repair and replace meters [see Section A(4) above] shall be completed and submitted electronically by July 1, 2008 or within one year of signing the MOU if later than July 1, 2008, whichever is later.

## **C. Coverage Requirements**

100% of existing unmetered accounts to be metered and billed by volume of use within above specified time periods. Service lines dedicated to fire suppression systems are exempt from this requirement.

## **D. Requirements for Documenting BMP Implementation**

- 1) Confirmation that all new service connections are metered and are being billed by volume of use and provide:
  - a) Number of metered accounts;
  - b) Number of metered accounts read;
  - c) Number of metered accounts billed by volume of use;

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*As Amended June 9, 2010*

- d) Frequency of billing (i.e. six or twelve times per year) by type of metered customer (e.g. single family residential, multiple family residential, commercial, industrial, and landscape irrigation); and
  - e) Number of estimated bills per year by type of metered customer (e.g. single family residential, multiple family residential, commercial, industrial, and landscape irrigation) vs. actual meter readings.
- 2) Number of unmetered accounts in the service area. For the purposes of evaluation, this shall be defined as the baseline meter retrofit target, and shall be used to calculate the agency's minimum annual retrofit requirement.
  - 3) Number of unmetered service connections retrofitted during the reporting period.
  - 4) Estimated number of CII accounts with mixed-use meters.
  - 5) Number of CII accounts with mixed-use meters retrofitted with dedicated irrigation meters during reporting period.

## **E. Criteria to Determine BMP Implementation Status**

- 1) Agency with existing unmetered service connections has completed a meter retrofit plan by the end of Year Two following the date implementation was to commence.
- 2) Agency has completed a feasibility study examining incentive programs to move landscape water uses on mixed-use meters to dedicated landscape meters by the end of Year Two following the date implementation was to commence.
- 3) Agency with existing unmetered service connections is on track to meter these connections during the schedule shown in Section B. An agency will be considered on track if the percent of unmetered accounts retrofitted with meters equals or exceeds the following:

<b>Target Dates for "On Track" Compliance with BMP 4</b>	
<b>Percent of unmetered accounts retrofitted</b>	<b>Agency signed the MOU prior to December 31, 1997</b>
10 percent	December 31, 2000
24 percent	December 31, 2002
42 percent	December 31, 2004
64 percent	December 31, 2006
90 percent	December 31, 2008



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As Amended June 9, 2010

100 percent	July 1, 2009
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<b>Target Dates for "On Track" Compliance with BMP 4</b>	
<b>Percent of unmetered accounts retrofitted</b>	<b>All agencies signing the MOU after 1997</b>
20 percent	December 31, 2004
40 percent	December 31, 2006
60 percent	December 31, 2008
80 percent	December 31, 2010
100 percent	July 1, 2012

- 4) Agency bills metered customers at least as often as bimonthly within four years.
- 5) Agency reads meters and bills metered customers using volumetric rates.
- 6) Agency has completed a written plan, policy or program to test, repair and replace meters.

## **F. Water Savings Assumptions**

Assume meter retrofits and volumetric rates combined will result in a 20% reduction in demand for retrofitted accounts.

## **G. Commitment to Further Review**

Within three years from the date this BMP revision is adopted, the CUWCC will complete an evaluation of the potential water use efficiency impacts and cost-effectiveness of the following for consideration as future BMP revision(s):

- 1) Criteria for meter testing, repair, replacement and accuracy;
- 2) Transition to installing automated meter reading (AMR) technologies; and
- 3) Transition to monthly billing schedules for all accounts.

# EXHIBIT 1

As Amended June 9, 2010

## 1.4 RETAIL CONSERVATION PRICING (formerly BMP 11)

As Amended June 13, 2007

### Part I - Retail Water Service Rates

#### A. Implementation

BMP 11 promotes water conserving retail water rate structures. BMP 11 recognizes that each agency or water enterprise fund has a unique rate setting system and history. When creating a rate case, professional judgments are made to determine whether costs are accounted to a variable or fixed cost center by the staff of the agency. The final water rate case is an accumulation of all the decisions and judgments made by staff and supplemented by the financial projections leading an agency to establish its final water rate recommendation. BMP 11 is not intended to supplant this process, but rather to reinforce the need for Water Agencies to establish a strong nexus between volume-related system costs and volumetric commodity rates.

In *Bighorn-Desert View Water Agency v. Virjil* the California Supreme Court applied Proposition 218's\* provisions embodied in Articles XIII C and D of the California Constitution to ongoing water service. In addition, Article XIII D, Section 6 imposes procedural and substantive requirements on new or increased fees or charges for on-going water service. The Council considers the conservation principles of BMP 11 to be compatible with the cost of service requirements of Proposition 218. However, should a case arise in which a Water Agency's good faith efforts were unable to meet BMP 11's requirements due to legal constraints (e.g. Proposition 218), this would be grounds for exemption, as specified in MOU Section 4.5.

**Definition:** Conservation pricing provides economic incentives (a price signal) to customers to use water efficiently. Because conservation pricing requires a volumetric rate, metered water service is a necessary condition of conservation pricing. Unmetered water service is inconsistent with the definition of conservation pricing.

Conservation pricing requires volumetric rate(s). While this BMP defines a minimum percentage of water sales revenue from volumetric rates, the goal of this BMP is to recover the maximum amount of water sales revenue from volumetric rates that is consistent with utility costs (which may include utility long-run marginal costs), financial stability, revenue sufficiency, and customer equity. In addition to volumetric rate(s), conservation pricing may also include one or more of the following other charges:

- 1) Service connection charges designed to recover the separable costs of adding new customers to the water distribution system.

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\* Proposition 218 was approved by California voters in November 1996.

# EXHIBIT 1

As Amended June 9, 2010

- 2) Monthly or bimonthly meter/service charges to recover costs unrelated to the volume of water delivered or new service connections and to ensure system revenue sufficiency.
- 3) Special rates and charges for temporary service, fire protection service, and other irregular services provided by the utility.

The following volumetric rate designs are potentially consistent with the above definition:

- 1) **Uniform rate** in which the volumetric rate is constant regardless of the quantity consumed.
- 2) **Seasonal rates** in which the volumetric rate reflects seasonal variation in water delivery costs.
- 3) **Tiered rates** in which the volumetric rate increases as the quantity used increases.
- 4) **Allocation-based rates** in which the consumption tiers and respective volumetric rates are based on water use norms and water delivery costs established by the utility.

**Adequacy of Volumetric Rate(s):** A retail agency's volumetric rate(s) shall be deemed sufficiently consistent with the definition of conservation pricing when it satisfies at least one of the following two options.

**Option 1:** Let V stand for the total annual revenue from the volumetric rate(s) and M stand for total annual revenue from customer meter/service (fixed) charges, then:

$$\frac{V}{V + M} \geq 70\%$$

This calculation shall only include utility revenues from volumetric rates and monthly or bimonthly meter/service charges. It shall not include utility revenues from new service connection charges; revenue from special rates and charges for temporary service, fire protection, or other irregular services; revenue from grants or contributions from external sources in aid of construction or program implementation; or revenue from property or other utility taxes.

**Option 2:** Use the rate design model included with the Municipal Water and Wastewater Rate Manual published by the Canadian Water & Wastewater Association with the signatory's water system and cost information to calculate V', the uniform volume rate based on the signatory's long-run incremental cost of service, and M', the associated meter charge. [Let HCF be annual water delivery (in hundred cubic feet).] A signatory's volumetric rate(s) shall be deemed sufficiently consistent with the definition of conservation pricing if:

$$\frac{V}{V + M} \geq \frac{V'}{V' + M'}$$

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*As Amended June 9, 2010*

The rate design model can be downloaded at <http://www.cuwcc.org/resource-center/technical-resources/bmp-tools.aspx>.

This calculation shall only include utility revenues from volumetric rates and monthly or bimonthly meter/service charges. It shall not include utility revenues from new service connection charges; revenue from special rates and charges for temporary service, fire protection, or other irregular services; revenue from grants or contributions from external sources in aid of construction or program implementation; or revenue from property or other utility taxes.

## **Exemptions and At Least As Effective As**

The exemption provisions in MOU Section 4.5 apply to BMP 11 in the same way they apply to other BMPs. Water supplier signatories meeting at least one of the three exemption conditions in MOU Section 4.5 may submit an exemption to the Council per the requirements of the MOU.

Water supplier signatories may pursue an "At Least As Effective As" implementation of BMP 11 per the Preamble to Exhibit 1 of the MOU. Water supplier signatories adopting an "At Least As Effective As" implementation of BMP 11 may adopt rates that do not meet the requirements of either Option 1 or Option 2 described in Section A provided the resulting water savings are at least as effective as those options.

## **BMP Refinement**

Within five years of the adoption of this BMP revision, the Council shall reconvene the BMP 11 Revision PAC to 1) assess rate of compliance with the revised BMP, 2) identify barriers to implementation, 3) assess its compatibility with Proposition 218 requirements, 4) initiate a water savings assessment appropriate to the data and project resources available to the Council, and 5) develop further refinements as needed to improve the BMP's effectiveness.

## **B. Implementation Schedule**

### **Agencies with fully metered service areas**

- 1) Agencies signing the MOU prior to June 13, 2007, implementation shall commence no later than July 1, 2007.
- 2) Agencies signing the MOU after June 13, 2007, implementation shall commence no later than July 1 of the year following the year the Agency signed the MOU.

### **Agencies with partially metered service areas<sup>1</sup>**

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<sup>1</sup> Agencies following this schedule must be on the Council's list of Agencies with partially metered service areas.

# EXHIBIT 1

*As Amended June 9, 2010*

- 1) Agencies signing the MOU prior to December 31, 1997, implementation shall commence no later than July 1, 2010. [One year after Agency is to complete meter installation per BMP 4.]
- 2) Agencies signing the MOU after December 31, 1997, implementation shall commence no later than July 1, 2013, or within seven years of signing the MOU, but in no case later than the metering deadline specified by state law. [One year after Agency is to complete meter installation per BMP 4.]

## **C. Coverage Requirements**

Agency shall maintain a rate structure that satisfies at least one of the options specified in Section A. Conformance to Option 1 or Option 2 will first be assessed using the revenue from the most recent year. If the most recent year does not satisfy the option, the average revenue from the three (3) most recent years will be used.

## **D. Requirements for Documenting BMP Implementation**

- 1) Report the rate structure in effect for each customer class for the reporting period.
- 2) Report the annual revenue derived from volume charges for each retail customer class, as defined in Section A.<sup>2</sup>
- 3) Report the annual revenue derived from monthly or bimonthly meter/service charges for each retail customer class, as defined in Section A.
- 4) If agency does not comply with Option 1 in Section A, report  $v'$  and  $m'$  as determined by the Canadian Water & Wastewater Association rate design model described in Section A.
- 5) If agency does not comply with Option 1 in Section A, submit to the Council the completed Canadian Water & Wastewater Association rate design model described in Section A.

## **E. Criteria to Determine BMP Implementation Status**

An agency shall be in compliance with BMP 11 provided the following is true for the Agency's total revenue from all retail customer classes within four years after [date of revision]:

For Option 1:  $V \geq 70\% \times 1.00$

For Option 2:  $V \geq V' \times 1.00$

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<sup>2</sup> Note: Compliance with BMP 11 will be determined based on the Agency's total revenue from all retail customer classes.

# EXHIBIT 1

As Amended June 9, 2010

The following schedule is intended to guide agencies in implementing this revision in phases:

YEARS AFTER START YEAR	FOR OPTION 1	FOR OPTION 2
1	$V \geq 70\% \times 0.70$	$V \geq V' \times 0.70$
2	$V \geq 70\% \times 0.80$	$V \geq V' \times 0.80$
3	$V \geq 70\% \times 0.90$	$V \geq V' \times 0.90$
4	$V \geq 70\% \times 1.00$	$V \geq V' \times 1.00$

An agency shall not be required to increase the volumetric component of the rate structure by more than 10% in any single year until the full implementation is achieved.

## F. Water Savings Assumptions

Not quantified.

## Part II – Retail Wastewater Rates

### A. Implementation

This section applies to Water Agencies that provide retail sewer service. Water Agencies that do not provide retail sewer service shall make good faith efforts to work with sewer agencies so that those sewer agencies adopt conservation pricing for sewer service.

Conservation pricing of sewer service provides incentives to reduce average or peak use, or both. Such pricing includes: rates designed to recover the cost of providing service, and billing for sewer service based on metered water use. Conservation pricing of sewer service is also characterized by one or more of the following components: rates in which the unit rate is the same across all units of service (uniform rates); rates in which the unit rate increases as the quantity of units purchased increases (increasing block rates); rates in which the unit rate is based upon the long-run marginal cost or the cost of adding the next unit of capacity to the sewer system. Rates that charge customers a fixed amount per billing cycle for sewer service regardless of the units of service consumed do not satisfy the definition of conservation pricing of sewer service. Rates in which the typical bill is determined by high fixed charges and low commodity charges also do not satisfy the definition of conservation pricing of sewer service.

# EXHIBIT 1

*As Amended June 9, 2010*

## **B. Implementation Schedule**

- 1) Agencies signing the MOU prior to December 31, 1997, implementation shall commence no later than July 1, 1998.
- 2) Agencies signing the MOU or becoming subject to the MOU after December 31, 1997, implementation shall commence no later than July 1 of the first year following the year the agency signed or became subject to the MOU.

## **C. Coverage Requirements**

Agency shall maintain rate structure for sewer service consistent with definition of conservation pricing for sewer service in Part II, Section in A.

## **D. Requirements for Documenting BMP Implementation**

- 1) Report annual revenue requirement for sewer service by customer class for the reporting period.
- 2) Report annual revenue for sewer service from commodity charges by customer class for the reporting period.
- 3) Report rate structure by customer class for sewer service.

## **E. Criteria to Determine BMP Implementation Status**

Agency rate design for sewer service shall be consistent with definition of conservation pricing for sewer service in Section A.

## **F. Water Savings Assumptions**

Not quantified.

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*As Amended June 9, 2010*

## **2. EDUCATION PROGRAMS** *As amended December 10, 2008*

California water agencies have played a major role in stressing the need for their customers to conserve water through both public information and school education programs. The specifics of how these programs are to be implemented are detailed below.

### **2.1 PUBLIC INFORMATION PROGRAMS** *(formerly BMP 7)*

This section addresses opportunities to use public information programs as an effective tool to inform customers about the need for water conservation and ways they can conserve, and to influence customer behavior to conserve.

#### **A. Implementation**

Implement a public information program to promote water conservation and water conservation-related benefits. Implementation shall consist of at least the following actions:

- 1) The program should include, when possible, but is not limited to, providing speakers to employees, community groups and the media; using paid and public service advertising; using bill inserts; providing information on customers' bills showing use for the last billing period compared to the same period the year before; providing public information to promote water conservation measures; and coordinating with other government agencies, industry groups, public interest groups, and the media.
- 2) The program should include, when possible, social marketing elements which are designed to change attitudes to influence behavior. This includes seeking input from the public to shape the water conservation message; training stakeholders outside the utility staff in water conservation priorities and techniques; and developing partnerships with stakeholders who carry the conservation message to their target markets.
- 3) When mutually agreeable and beneficial, the wholesale agency or another lead regional agency may operate all or part of the public information program. If the wholesale agency operates the entire program, then it may, by mutual consent with the retail agency, assume responsibility for CUWCC reporting for this BMP. Under this arrangement, a wholesale agency may aggregate all or portions of the reporting and coverage requirements of the retail agencies joining into the mutual consent.

#### **B. Implementation Schedule**

Implementation shall commence no later than July 1 of the first year following the latter of either: 1) the year the agency signed or became subject to the MOU, or 2) the year this Exhibit is amended.



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*As Amended June 9, 2010*

## **C. Coverage Requirements**

Agencies shall maintain an active public information program to promote and educate customers about water conservation.

At minimum a public information program shall consist of the following components:

- 1) Contacts with the public (minimum = 4 times per year, i.e., at least quarterly).
- 2) Water supplier contacts with media (minimum = 4 times per year, i.e., at least quarterly).
- 3) An actively maintained website that is updated regularly (minimum = 4 times per year, i.e., at least quarterly).
- 4) Description of materials used to meet minimum requirement.
- 5) Annual budget for public outreach program.
- 6) Description of all other outreach programs (List follows in Section D).

## **D. Requirements for Documenting BMP Implementation**

Agencies may report on all of the following activities, although agencies are only expected to meet the minimum requirements in section C. Coverage Requirements.

### **Public Information Programs List**

- 1) Newsletter articles on conservation
- 2) Flyers and/or brochures (total copies), bill stuffers, messages printed on bill, information packets
- 3) Landscape water conservation media campaigns
- 4) General water conservation information
- 5) Website
- 6) Email messages
- 7) Website - provide link to or list of qualified landscape professionals (WaterSense, California Landscape Contractors Association, Irrigation Association, etc.) and other helpful sites
- 8) Direct mail - seasonal postcards noting irrigation requirement changes
- 9) Direct mail or other notification to customer if water use is significantly higher than neighbors with similarly-sized lots
- 10) Customer notification when neighbor reports runoff or runoff is noticed by employees or meter reads show rise in use of 20% or more from same time previous year
- 11) Dedicated phone line or "on hold" messages with recorded conservation information
- 12) Booths at local fairs/events
- 13) Monthly water use reports provided with comparison of water use to water budget
- 14) Presentations
- 15) Point of purchase pieces, including internet point of purchase by type: high efficiency clothes washers, weather based irrigation controller, high efficiency toilets, plant palette information, other.

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*As Amended June 9, 2010*

- 16) Media outreach: news releases, editorial board visits, written editorials, newspaper contacts, television contacts, radio contacts, articles or stories resulting from outreach. Provide names of local media markets: newspaper, TV stations, radio stations reached via media outreach program during the reporting period
- 17) Adult Education/Training Programs: Topic(s) \_\_\_\_\_: number of presentations, number of attendees
- 18) Water Conservation Gardens: involvement in a garden that promotes and educates the public about water-efficient landscaping and conservation techniques. May include "Corporate" or "business" sponsorship or membership.
- 19) Sponsor or co-sponsor landscape workshops/training for homeowners and/or homeowners associations: number of presentations; number in attendance
- 20) Landscape watering calculator and watering index to assist with weekly irrigation scheduling
- 21) Additional program(s) supported by agency but not mentioned above
- 22) Total reporting period budget expenditure for public outreach/training/adult education programs (include all agency costs)

## **Social Marketing Programs List**

Developing the Conservation Message:

- 1) Does your agency have a water conservation "brand," "theme" or mascot: If so briefly describe: \_\_\_\_\_
- 2) Have you sponsored or participated in market research to refine your message? If so topic: \_\_\_\_\_ Message of above brand? Mission Statement?
- 3) Do you have a community conservation committee?  
If yes, its focus is on:
  - a. Conservation in general;
  - b. Landscape;
  - c. Education;
  - d. Commercial/industrial/institutional;
  - e. Other: \_\_\_\_\_
- 4) Training for stakeholders who help support programs or educate others about conservation:
  - a. Professional landscapers: number of sessions/classes; number of attendees: on irrigation equipment; other
  - b. Plumbers: number of sessions/classes; number of attendees
  - c. Homeowners: number of sessions/classes; number of attendees: on irrigation equipment; other
- 5) Additional program(s) supported by agency but not mentioned above.
- 6) Total reporting period budget expenditure for social marketing programs (include all agency costs)

Partnering programs:

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- 1) Master Gardeners; Type of program: \_\_\_\_\_
- 2) CLCA; Type of program: \_\_\_\_\_
- 3) Cooperative Extension; Type of program: \_\_\_\_\_
- 4) Retail and wholesale outlets  
Name(s): \_\_\_\_\_  
Type of program: \_\_\_\_\_
- 5) Local Colleges; Type of program: \_\_\_\_\_
- 6) Green Building Programs; Type of program: \_\_\_\_\_
- 7) Other \_\_\_\_\_
- 8) Newsletter articles published in other entities' newsletters:
  - a. HOAs: number per year to number of customers
  - b. City materials: number per year to number of customers
  - c. Non-profits: number per year to number of customers
  - d. Other: number per year to number of customers
- 9) Other utilities, including electric utilities
- 10) Water conservation gardens at utility or other high traffic areas or new homes
- 11) Water wise landscape contest or awards program

## **E. Water Savings Assumptions**

Not quantified.

# EXHIBIT 1

As Amended June 9, 2010

## **2.2 SCHOOL EDUCATION PROGRAMS (formerly BMP 8)**

School education programs have been implemented to reach the youngest water users at an early age and enforce the need to engage in water conservation as a life-long behavior. This section provides specifics on how school education programs are to be implemented.

### **A. Implementation**

Implementation shall consist of at least the following actions:

- 1) Implement a school education program to promote water conservation and water conservation-related benefits.
- 2) Programs shall include working with school districts and private schools in the water suppliers' service area to provide instructional assistance, educational materials, and classroom presentations that identify urban, agricultural, and environmental issues and conditions in the local watershed. Educational materials shall meet the state education framework requirements and grade-appropriate materials shall be distributed.
- 3) When mutually agreeable and beneficial, the wholesale agency or another lead regional agency will operate all or part of the education program; if the wholesale agency operates all or part of the retail agency's school education program, then it may, by mutual consent with the retail agency, assume responsibility for CUWCC reporting of this BMP; under this arrangement, a wholesale agency may aggregate all or portions of the reporting and coverage requirements of the retail agencies joining into the mutual consent

### **B. Implementation Schedule**

Implementation shall commence no later than July 1 of the first year following the latter of either: 1) the year the agency signed or became subject to the MOU, or 2) the year this Exhibit is amended.

### **C. Coverage Requirements**

Agencies shall maintain an active school education program to educate students in the agency's service area about water conservation and efficient water use. An agency may participate in a mutual arrangement as described in Section A.

At minimum a school information program shall consist of the following:

- 1) Curriculum materials developed and/or provided by agency (including confirmation that materials meet state education framework requirements and are grade-level appropriate).
- 2) Materials distributed to K-6 students. When possible, school education programs will reach grades 7-12 as well.

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- 3) Description of materials used to meet minimum requirement.
- 4) Annual budget for school education program.
- 5) Description of all other water supplier education programs (Lists follow in Section D).

## **D. Requirements for Documenting BMP Implementation**

Agencies may report on all of the following activities, although they are only expected to meet the minimum requirements in section C. Coverage Requirements.

### **School Education Programs List**

- 1) Classroom presentations: number of presentations, number of attendees, topics covered: conservation, recycled water, water sources, pollution prevention, etc.
- 2) Large group assemblies: number of presentations, number of attendees
- 3) Children's water festivals or other events: number of presentations, number of attendees
- 4) Cooperative efforts with existing science/water education programs (various workshops, science fair awards or judging) and follow-up: number of presentations, number of attendees.
- 5) Other methods of disseminating information (i.e. themed age-appropriate classroom loaner kits) Description \_\_\_\_\_; number distributed
- 6) Staffing children's booths at events & festivals: number of booths, number of attendees
- 7) Water conservation contests such as poster and photo Description \_\_\_\_\_; number of participants.
- 8) Offer monetary awards/funding or scholarships to students: number offered; total funding
- 9) Teacher training workshops: number of presentations, number of attendees
- 10) Fund and/or staff student field trips to treatment facilities, recycling facilities, water conservation gardens, etc.: number of tours or field trips, number of participants.
- 11) College internships in water conservation offered: number of internships; total funding
- 12) Career fairs/workshops: number of presentations, number of attendees
- 13) Additional program(s) supported by agency but not mentioned above. Description: \_\_\_\_\_; number of events (if applicable); number of participants.
- 14) Total reporting period budget expenditures for school education programs (include all agency costs)

## **E. Water Savings Assumptions**

Not quantified.

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As Amended June 9, 2010

## **PROGRAMMATIC BMPs**

Signatories have the option of implementing each BMP as described below, or implementing measures identified in the Flex Track Menu alternative included in each Programmatic BMP.

### **3. RESIDENTIAL** *As amended December 10, 2008*

Residential water users throughout California depend on a reliable and safe supply of water for their homes. This BMP will define the best and most proven water conservation methods and measures those residents, working in conjunction with water agencies, can implement. By implementing these methods and measures homeowners, multi-family property owners, and tenants will increase water use efficiency and reliability. Credit for prior activities, as reported through the BMP database, will be given for documented water savings achieved through 2008.

#### **A. Implementation**

Retail water agencies shall implement a water use efficiency program that consists of either the coverage goals listed below or achieving the water savings goals by implementing measures on the Flex Track Menu in Section F below.

- 1) Residential assistance program (*formerly BMPs 1 & 2*)  
Provide site-specific leak detection assistance that may include, but is not limited to, the following: a water conservation survey, water efficiency suggestions, and/or inspection. Provide showerheads and faucet-aerators that meet the current water efficiency standard as stipulated in the WaterSense Specifications (WSS) as needed.
- 2) Landscape water survey (*formerly BMP 1*)  
Perform site-specific landscape water surveys that shall include, but are not limited to, the following: check irrigation system and timers for maintenance and repairs needed; estimate or measure landscaped area; develop customer irrigation schedule based on precipitation rate, local climate, irrigation system performance, and landscape conditions; review the scheduling with customer; provide information packet to customer; and provide customer with evaluation results and water savings recommendations.
- 3) High-efficiency clothes washers (HECWs) (*formerly BMP 6*)  
Provide incentives or institute ordinances requiring the purchase of high-efficiency clothes washing machines (HECWs) that meet an average water factor value of 5.0. If the WaterSense Specification is less than 5.0, then the average water factor value will decrease to that amount.
- 4) WaterSense Specification (WSS) toilets (*formerly BMP 14*)  
Provide incentives or ordinances requiring the replacement of existing toilets using 3.5 or more gpf (gallons per flush) with a toilet meeting WSS.

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- 5) WaterSense Specifications for residential development  
Provide incentives such as, but not limited to, rebates, recognition programs, or reduced connection fees, or ordinances requiring residential construction meeting WSS for single-family and multi-family housing until a local, state or federal regulation is passed requiring water efficient fixtures.

## **B. Implementation Schedule**

Implementation shall commence no later than July 1 of the first year following the latter of either: 1) the year the agency signed or became subject to the MOU, or 2) the year this exhibit is amended.

## **C. Coverage Requirements**

Coverage shall consist of:

- 1) Residential Assistance  
Provide leak detection assistance to an average of 1.5 percent per year of current single-family accounts and 1.5 percent per year of current multi-family units during the first ten years after signing the MOU. After completing the ten-year 15 percent target, agencies will maintain a program at the level of high-bill complaints or not less than 0.75 percent per year of current single-family accounts and 0.75 percent per year of current multi-family units. Showerhead distribution will be considered complete when 75 percent market saturation is achieved.
- 2) Landscape water survey  
Provide landscape water surveys to an average of 1.5 percent per year of current single-family accounts during the first ten years after signing the MOU. After completing the ten-year 15 percent target, agencies will maintain a program at the level of high-bill complaints or no less than 0.75 percent per year of current single-family accounts.
- 3) High efficiency clothes washers  
Provide financial incentives for the purchase of HECWs that meet an average water factor value of 5.0. If the WaterSense Specification is less than 5.0, then the water factor value will decrease to that amount. Incentives shall be provided to 0.9 percent of current single-family accounts during the first reporting period following BMP implementation, rising to 1.0 percent per year of current single-family accounts for the remainder of ten year period following signing of the MOU. An alternative method is to demonstrate 1.4 percent per year of the market penetration during the first ten years after signing the MOU.
- 4) WaterSense Specification (WSS) toilets  
A financial incentive shall continue to be offered for toilets meeting the current WSS and updated standard whenever a more efficient toilet is identified by WSS. Compliance will entail demonstrating a number of toilet replacements

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*As Amended June 9, 2010*

of 3.5 gpf or greater toilets at or above the level achieved through a retrofit on resale ordinance until 2014, or a market saturation of 75% is demonstrated, whichever is sooner.

- 5) WSS for new residential development  
An incentive shall continue to be offered until a water agency, or local, state or federal regulation is in effect meeting at a minimum, WSS for water efficient single-family homes. Multi-family housing shall also meet the WSS in all applicable criteria regardless of the total number of stories in the building.

## **D. Requirements for Documenting BMP Implementation**

- 1) Residential assistance  
Provide reports, disaggregated by single-family and multi-family units, identifying: the number of residential assistance/leak detection survey visits completed; number of WSS showerheads distributed; and number of WSS faucet aerators distributed during the reporting period.
- 2) Landscape water survey  
Provide the number of single-family and multi-family account landscape water surveys completed during the reporting period.
- 3) High efficiency clothes washers  
The number of installations credited to the agency's replacement program for HECWs with an average water factor value of 5.0. If the WaterSense Specification is less than 5.0, then the water factor value will decrease to that amount.
- 4) WaterSense Specification (WSS) toilets  
A description of the program along with the number of WSS toilet installations credited to the agency's replacement program disaggregated by single-family or multi-family units.
- 5) WSS for new residential development  
Provide a copy of the new development ordinance currently adopted by the reporting unit or provide the following incentive program details: number of new single-family and multi-family units built in service area during the reporting period; description of incentives offered; list of incentive amounts; number of WSS fixtures installed; and number of participating single-family home and multi-family units.

## **E. Water Savings Assumptions**

Water savings assumptions will be based on the type and number of actions implemented.



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*As Amended June 9, 2010*

## **F. Flex Track Menu**

In addition to the measures above, the Flex Track Menu may be implemented in part or any combination to meet the savings goal for this BMP. Agencies choosing the Flex Track Menu are responsible for achieving water savings greater than or equal to that which they would have achieved using only the BMP list items. Water savings estimates for the Flex Track Menu will be maintained and regularly updated in the MOU Compliance Policies and BMP Guidebook.

# EXHIBIT 1

*As Amended June 9, 2010*

## **4. COMMERCIAL, INDUSTRIAL, AND INSTITUTIONAL (formerly BMP 9)**

*As amended June 9, 2010*

Commercial, industrial, and institutional (CII) water demands make up a large percentage of total demand for California. CII water use varies dramatically between business sectors as well as within a given water agency's territory. The goal of this BMP is to implement comprehensive yet flexible best management practices, allowing each water agency to tailor the implementation of each practice to fit local needs and opportunities. The end result is a practice that is successful and will produce the greatest amount of cost-effective water savings.

### **A. Implementation**

Implement measures to achieve the water savings goal for CII accounts of 10% of the baseline water use over a 10-year period. Baseline water use is defined as the water consumed by CII accounts in the agency's service area in 2008. Credit for prior activities, as reported through the BMP database, will be given for up to 50% of the goal; in this case, coverage will consist of reducing annual water use by CII accounts by an amount equal to the adjusted percentage goal within 10 years. Implementation shall consist of item 1) or 2) or both in order to reach the agency's water savings goals.

- 1) Implement measures on the CII list with well-documented savings that have been demonstrated for the purpose of documentation and reporting. The full list and their associated savings are included in the "Demonstrated Savings Measure List" in Section E below.
- 2) Implement unique conservation measures to achieve the agency's water savings goals. Sample measures include, but are not limited to: industrial process water use reduction, industrial laundry retrofits, car wash recycling systems, water-efficient commercial dishwashers, and wet cleaning. Water use reduction shall be calculated on a case-by-case basis. Agencies will be required to document how savings were realized and the method and calculations for estimating savings. See the CII Flex Track Menu list in the attachment to Exhibit 1, as updated in the MOU Compliance Policy and BMP Guidebook.

### **B. Implementation Schedule**

Implementation shall commence not later than July 1 of the first year following the latter of either: 1) the year the agency signed or became subject to the MOU, or 2) the year this Exhibit is amended.

# EXHIBIT 1

*As Amended June 9, 2010*

## **C. Coverage Requirements**

Coverage shall consist of meeting the annual water savings goal in Section A. Although it is not one of the criteria in meeting implementation, agencies will be considered on track if estimated savings as a percent of baseline water use equals or exceeds the following:

0.5% by the end of first reporting period (year two), 2.4% by the end of year four, 4.3% by the end of year six, 6.4% by the end of year eight, and 9% by the end of year ten. Percentages will be adjusted proportionally for up to 50% past credit referred to in the Implementation section.

## **D. Requirements for Documenting BMP Implementation**

Each reporting period agencies are required to report the estimated reduction in annual water use for all CII accounts.

### 1) CII Demonstrated Savings Measure List

For measures on the CII Demonstrated Savings Measure list with demonstrated savings, agencies shall report the measure type and quantity installed, as well as savings attributed to water shortage measures, intervention and actions.

### 2) Flex Track Menu

For measures on the Flex Track Menu, agencies shall use one of three methods of measurement listed below to track savings. Agencies shall report the type of measure implemented, the industry in which the measure was implemented, and estimated savings as well as the measure life. Agencies shall keep detailed usage data on file and report the annual and lifetime savings.

#### a) Point of Retrofit Metering

Usage data collected from meters installed at the point of retrofit.

#### b) Customer Bill Analysis

Pre- and post-program usage from utility bills from the appropriate meters related to the measures implemented. For mixed-use meters, a minimum of 12 months pre-retrofit and 12 months post-retrofit usage data shall be used to calculate savings. The data shall be normalized for weather. For dedicated meters, a minimum of 6 months pre-retrofit and 6 months post-retrofit data shall be used to calculate savings.

#### c) Agency-Provided Calculation

If an agency is unable to provide point of retrofit metering or customer bill analysis, the agency must document how savings were realized and the method and calculations for estimated savings. The calculation and assumptions are subject to approval by the Council on a case-by-case basis.

# EXHIBIT 1

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*As Amended June 9, 2010*

## **E. Water Savings Assumptions**

The CII Demonstrated Savings Measure List is found in the MOU Compliance Policy. For assistance in calculating savings from unique measures used in the Flex Track Menu approach, see the BMP Guidebook.

## **F. Flex Track Menu**

In addition to the measures above, the Flex Track Menu options may be implemented in part or any combination for CII customers to meet the water savings goal of this BMP. Agencies may choose to implement any alternative with measurable water savings. Agencies choosing the Flex Track Menu option are responsible for achieving water savings greater than or equal to that which they would have achieved using only the BMP list items. Water savings estimates for the Flex Track Menu items will be maintained and regularly updated in the MOU Compliance Policies and BMP Guidebook.

Custom measures shall be calculated on a case-by-case basis. Agencies will be required to provide documentation on how savings were realized and the method and calculations for estimating savings.

# EXHIBIT 1

As Amended June 9, 2010

## 5. LANDSCAPE (formerly BMP 5) As amended December 10, 2008

Irrigation accounts for a large portion of urban water use in California. Irrigation water use varies dramatically depending on water pricing and availability, plant choice, geographic locations, seasonal conditions, and the level of commitment to sound water efficiency practices. The goal of this BMP is that irrigators, with assistance from signatories, will achieve a higher level of water use efficiency consistent with the actual irrigation needs of the plant materials. Reaching this goal would reduce overall demands for water, reduce demands during the peak summer months, and still result in a healthy and vibrant landscape for California.

### A. Implementation

Agencies shall provide non-residential customers with support and incentives to improve their landscape water use efficiency. Credit for prior activities, as reported through the BMP database, will be given for documented water savings achieved through 2008. This support shall include, but not be limited to, the following:

#### 1) Accounts with Dedicated Irrigation Meters

- a) Identify accounts with dedicated irrigation meters and assign ETo-based water use budgets equal to no more than an average of 70% of ETo (reference evapotranspiration) of annual average local ETo per square foot of landscape area in accordance with the schedule below.

Recreational areas (portions of parks, playgrounds, sports fields, golf courses, or school yards in public and private projects where turf provides a playing surface or serves other high-use recreational purposes) and areas permanently and solely dedicated to edible plants, such as orchards and vegetable gardens, may require water in addition to the water use budget. (These areas will be referred to as "recreational" below.) The water agency must provide a statement designating those portions of the landscape to be used for such purposes and specifying any additional water needed above the water use budget, which may not exceed 100% of ETo on an annual basis.

If the California Model Water Efficient Landscape Ordinance is revised to reduce the water allowance, this BMP will be revised automatically to reflect that change.

- b) Provide notices each billing cycle to accounts with water use budgets showing the relationship between the budget and actual consumption.
  - c) Offer site-specific technical assistance to reduce water use to those accounts that are 20% over budget in accordance with the schedule given in Section B; agencies may choose not to notify customers whose use is less than their water use budget.
- #### 2) Commercial/Industrial/Institutional (CII) Accounts without Meters or with Mixed-Use Meters
- a) Develop and implement a strategy targeting and marketing large landscape water use surveys to commercial/industrial/institutional (CII) accounts with mixed-use meters.

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*As Amended June 9, 2010*

- b) In un-metered service areas, actively market landscape surveys to existing accounts with large landscapes, or accounts with landscapes which have been determined by the purveyor not to be water efficient.
- 3) Offer financial incentives to support 1) and 2) above.

## **B. Implementation Schedule**

- 1) Implementation shall commence not later than July 1 of the first year following the latter of either: 1) the year the agency signed or became subject to the MOU, or 2) the year this Exhibit is amended.
- 2) Per year at least 9% of accounts with dedicated meters and 1.5% of all mixed-use or non-metered accounts will receive the assistance detailed in Section A. 1) and 2) above. At least 90% of all dedicated meters and 15% of all mixed-use and non-metered accounts will receive the assistance over a ten year period.

## **C. Coverage Requirements**

Coverage shall consist of:

- 1) ETo-based water use budgets developed for 90% of CII accounts with dedicated irrigation meters at an average rate of 9% per year over 10 years.
- 2) Offer site-specific technical assistance annually to all accounts that are 20% over budget within six years of the date implementation was to commence.
- 3) Complete irrigation water use surveys for not less than 15% of CII accounts with mixed-use meters and un-metered accounts within 10 years of the date implementation is to commence. (Note: CII surveys that include both indoor and outdoor components can be credited against coverage requirements for both the Landscape and CII BMPs.)

An agency will be considered on track if the percent of CII accounts with mixed-use meters receiving a landscape water use survey equals or exceeds the following: 1.5% by the end of the first reporting period (year two) following the date implementation is to commence; 3.6% by the end of year four; 6.3% by the end of year six; 9.6% by the end of year eight; and 13.5% by the end of year ten.

Agency may credit 100% of the number of landscape water use surveys for CII accounts with mixed-use meters completed prior to July 1, 2007 that have received a follow-up inspection against the coverage requirement; agency may credit 50% of surveys that have not received follow-up inspections. Agency may credit 100% of the number of landscape water use surveys completed for CII accounts with mixed-use meters after July 1, 2007 against the coverage requirement.

- 4) Agency will implement and maintain a customer incentive program(s) for irrigation equipment retrofits.

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*As Amended June 9, 2010*

## **D. Requirements for Documenting BMP Implementation**

- 1) Dedicated Landscape Irrigation Accounts  
Agencies shall preserve water use records and budgets for customers with dedicated landscape irrigation accounts for at least four years. This information may be used by the Council to verify the agency's reporting on this BMP.
  - a) Number of dedicated irrigation meter accounts.
  - b) Number of dedicated irrigation meter accounts with water budgets.
  - c) Aggregate water use for dedicated non-recreational landscape accounts with budgets.
  - d) Aggregate acreage assigned water budgets and average ET for dedicated non-recreational landscape accounts with budgets.
  - e) Number of Accounts 20% over-budget.
  - f) Number of accounts 20% over-budget offered technical assistance.
  - g) Number of accounts 20% over-budget accepting technical assistance
  - h) Aggregate acreage of recreational areas assigned water budgets and average ET for dedicated recreational landscape accounts with budgets.
- 2) CII Accounts without Meters or with Mixed-Use Meters
  - a) Number of mixed use and un-metered accounts.
  - b) Number, type, and dollar value of incentives, rebates, and no- or low-interest loans offered to, and received by, customers.
  - c) Number of surveys offered.
  - d) Number of surveys accepted.
  - e) Estimated annual water savings by customers receiving surveys and implementing recommendations.

## **E. Water Savings Assumptions**

Assume landscape BMP will result in a 15%-20% reduction in demand for landscape irrigation by affected accounts, as defined in Section C: Coverage Requirements.

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*As Amended June 9, 2010*

## **F. Flex Track Menu**

In addition to the measures above, the Flex Track Menu options may be implemented in part or any combination to meet the savings goal for this BMP. Agencies choosing the Flex Track Menu option are responsible for achieving water savings greater than or equal to that which they would have achieved using only the BMP list items. Water savings estimates for the Flex Track Menu items will be maintained and regularly updated in the MOU Compliance Policies and BMP Guidebook.



# EXHIBIT 1

As Amended June 9, 2010

## **GPCD Compliance Option** *As amended June 11, 2009*

Gallons per capita daily (GPCD) is the third compliance approach for the MOU. The combined water savings from implementation of the Foundational and Programmatic BMPs should produce greater water savings than the Programmatic BMPs themselves. Since most Foundational BMPs are not quantified, the GPCD approach evaluates compliance by evaluating the overall reduction in per capita water demand over time. One measure of efficiency, GPCD, indicates the increase in efficiency in water demand over time, by dividing demand by population, which gives average water consumption value per person served. The GPCD Approach includes the following sections: Potable Water GPCD Equation; Baseline GPCD; GPCD Target; Biennial GPCD Targets; Compliance; Appeals and GPCD Calculation Refinement.

### **Potable Water GPCD Equation**

Potable Water GPCD = (PWI – PWS) / Pop / 365; where

- 1) PWI = Potable Water Into the retail water agency's service area distribution system.
- 2) PWS = Potable Water taken out of the retail water agency's service area distribution system and:
  - placed into storage and/or
  - delivered to an agricultural customer through a dedicated agricultural meter, at discretion of the retail water agency.
- 3) Pop = residential population of the retail water agency's service area.

### **Baseline GPCD**

The Baseline GPCD shall equal the average annual Potable Water GPCD for the years 1997 through 2006. Signatory Water Suppliers who signed the MOU prior to 1997 and can demonstrate significant investment in water conservation may propose a different Baseline period as outlined in the MOU Compliance Policy.

### **GPCD Target**

For purposes of compliance, the 2018 GPCD Target for all signatories as of July 1, 2009 shall equal Baseline GPCD multiplied by 0.82 (an 18% reduction).

### **Biennial GPCD Targets**

Using the Compliance Table below, for each "Year" in the table, a retail water agency's Biennial GPCD Target shall equal its Baseline GPCD multiplied by that year's Target (% Baseline). A retail water agency may choose a starting point as either its Baseline GPCD or its 2006 Potable Water GPCD.

### **Compliance**

For retail water agencies choosing the GPCD Option for compliance with the Programmatic BMPs, the retail water agency shall submit the following calculations along with supporting data as part of their first normal biennial report for that period:

- 1) Potable Water GPCD for each year in the baseline period;
- 2) 2018 GPCD Target and five Biennial GPCD Targets; and

# EXHIBIT 1

As Amended June 9, 2010

A retail water agency shall be considered to be in compliance with the BMPs in any reporting period when it submits the following:

- 1) Complete “Water Supply & Reuse” and “Accounts & Water Use”
- 2) Supporting data necessary to calculate that reporting period’s Potable Water GPCD; and
- 3) Calculations showing the reporting period’s Potable Water GPCD is less than or equal to that period’s Biennial GPCD Target, or Highest Acceptable Bound when the period’s Potable Water GPCD has been weather-adjusted.

Compliance will be evaluated in relation to the Compliance Table below and relative progress toward the goal will be acknowledged in Council Compliance Reports. For signatory agencies signing the MOU after July 1, 2009, the compliance table will be read as five increments with reporting goals relative to their 1st through 5th Compliance reports.

## Compliance Table

Year	Compliance Report	Target (% Baseline)	Highest Acceptable Bound (%Baseline)
2010	1	96.4	100
2012	2	92.8	96.4
2014	3	89.2	92.8
2016	4	85.6	89.2
2018	5	82	82

## Appeals

An appeals/ adjustment process will be available, as outlined in the MOU Compliance Policy, for substantiated exceptional impacts to GPCD such as exceptional use of potable water for wildfire suppression and significant changes to a signatory’s economic or customer demographics.

Signatories that signed the MOU prior to 1997 (the beginning of the Baseline Period), and that can substantiate significant investments in conservation leading to declines in water consumption as measured by GPCD, may file an appeal to adjust the baseline period to reflect per capita water demands in the period prior to their signing the MOU.

## GPCD Calculation Refinement

CUWCC GPCD subcommittee shall provide, no later than December 31, 2009, acceptable methods retail water agencies may use when weather-normalizing data for compliance with this BMP. Additional methods or revisions to these methods may be approved by the Steering Committee from time-to-time.



## **EXHIBIT 2. CALIFORNIA URBAN WATER CONSERVATION COUNCIL**

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As Amended on December 10, 2008

1. The California Urban Water Conservation Council (the "Council") will be comprised of a representative of each of the signatories to the MOU.
2. The Council's responsibilities and authorities include:
  - a. Recommending study methodologies for Best Management Practices ("BMPs"), including procedures for assessing the effectiveness and reliability of urban water conservation measures.
  - b. Developing guidelines including discount rate to be used by all signatories in computing BMP benefits and costs pursuant to Exhibit 3.
  - c. Reviewing and modifying the economic principles set forth in Exhibit 3.
  - d. Collecting and summarizing information on implementation of BMPs and Potential Best Management Practices ("PBMPs").
  - e. Adopting or modifying BMPs and PBMPs lists.
  - f. Adopting or modifying reliable water conservation savings data for BMPs.
  - g. Adopting or modifying the schedules of implementation for existing and new BMPs.
  - h. Adopting or modifying the schedules for research and demonstration projects for BMPs and PBMPs.
  - i. Coordinating and/or making recommendations regarding BMPs study and demonstration projects.
  - j. Accepting or denying requests for additional parties to join the MOU and assigning additional parties to one of the three signatory groups as described in Section 1.3 of the MOU.
  - k. Reviewing and modifying report formats.
  - l. Making annual reports to the State Water Resources Control Board and the Council Members on the above items based on the format described in Exhibit 5.
  - m. Within two years of the initial signing of this MOU, developing and implementing procedures and a funding mechanism for independent evaluation of the MOU process at the Council and signatory levels.
  - n. Undertaking such additional responsibilities as the Members may agree upon.

## EXHIBIT 2

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3. The Council will make formal reports to the State Water Resources Control Board and to the governing bodies of all Council Members. Such reports shall include a formal annual written report. Other reports such as status reports and periodic updates may be prepared as deemed appropriate by the Council. Any Member of the Council will be entitled to review draft reports and comment on all reports. Such comments shall be included in any final report at the Member's request.
4. It is anticipated that the Council will develop a committee structure, which will include a Membership Committee as described in Section 7.2 of the MOU. A Board of Directors and one or more technical committees may also be needed.
5. For purposes of the Council, signatories will be divided into three groups: water suppliers ("Group 1"), public advocacy organizations ("Group 2") and other interested groups ("Group 3") as those terms are defined in Section 1 of the MOU. Members of Groups 1 and 2 shall be Signatory members of the Council and shall possess all voting rights. Members of Group 3 shall be Signatory members and shall not have voting rights, but shall act in an advisory capacity to the Council. Beginning January 1, 2004 members shall become Full Members of the Council upon payment of the annual assessment as invoiced by the Council according to Section 11.01 of the Council's Bylaws. Full members shall be eligible to receive all services and benefits available from the Council's resources. For Group 2 members, payment shall mean payment in cash and/or in kind services. Officers and members of the Council Board of Directors shall be Full Members in good standing.
6. Decisions by the Council to undertake additional responsibilities; to modify the MOU itself; or to modify Exhibits 2 or 3 require the following:
  - a. The Council will provide notice to all signatories giving the text of the proposed action or modification at least 60 days in advance of the vote by the Council.
  - b. To pass the action or modification, there must be a vote in favor of the action or modification by at least 2/3 of the members of Group 1 voting, including votes made in person or in writing, and a vote in favor of the action or modification by at least 2/3 of the members of Group 2 voting, including votes made in person or in writing.
7. All other modifications and Council actions shall be undertaken as follows: There must be a vote in favor of the modification or action by a simple majority of the members of Group 1 voting, including votes made in person or in writing, and a vote in favor of the modification or action by a simple majority of the members of Group 2 voting, including votes made in person or in writing.



### **EXHIBIT 3. PRINCIPLES TO GUIDE THE PERFORMANCE OF BMP ECONOMIC (COST-EFFECTIVENESS) ANALYSIS**

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*Amended April 8, 1998*

1. The total cost-effectiveness of a conservation measure will be measured by comparing the present value of the benefits of the measure listed in paragraph 3 below to the present value of the costs listed in paragraph 4. The measure will be cost-effective if the present value of the benefits exceeds the present value of the costs.
2. The cost-effectiveness of a conservation measure to the water supplier will be measured by comparing the present value of the benefits described in paragraph 5 to the present value of the costs described in paragraph 6. The measure will be cost-effective if the present value of the benefits exceeds the present value of the costs.
3. Total benefits exclude financial incentives received by water suppliers or by retail customers. These benefits include:
  - a. avoided capital costs of production, transport, storage, treatment, wastewater treatment and distribution capacity.
  - b. avoided operating costs, including but not limited to, energy and labor.
  - c. environmental benefits and avoided environmental costs.
  - d. avoided costs to other water suppliers, including those associated with making surplus water available to other suppliers.
  - e. benefits to retail customers, including benefits to customers of other suppliers associated with making surplus water available to these suppliers.
4. Total program costs are those costs associated with the planning, design, and implementation of the particular BMP, excluding financial incentives paid either to other water suppliers or to retail customers. These costs include:
  - a. capital expenditures for equipment or conservation devices.
  - b. operating expenses for staff or contractors to plan, design, or implement the program.
  - c. costs to other water suppliers.
  - d. costs to the environment.
  - e. costs to retail customers.
5. Program benefits to the water supplier include:
  - a. costs avoided by the water supplier of constructing production, transport, storage, treatment, distribution capacity, and wastewater treatment facilities, if any.

## EXHIBIT 3

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- b. operating costs avoided by the water supplier, including but not limited to, energy and labor associated with the water deliveries that no longer must be made.
  - c. avoided costs of water purchases by the water supplier.
  - d. environmental benefits and avoided environmental costs.
  - e. revenues from other entities, including but not limited to revenue from the sale of water made available by the conservation measure and financial incentives received from other entities.
6. Program costs to the water supplier include:
- a. capital expenditures incurred by the water supplier for equipment or conservation devices.
  - b. financial incentives to other water suppliers or retail customers.
  - c. operating expenses for staff or contractors to plan, design, or implement the program.
  - d. costs to the environment.
7. The California Urban Water Conservation Council ("Council") will be responsible for developing guidelines that will be used by all water suppliers in computing BMP benefits and costs. These guidelines will include, but will not be limited to, the following issues:
- a. analytical frameworks.
  - b. avoided environmental costs.
  - c. other impacts on the supply system that may be common to many water suppliers.
  - d. time horizons and discount rates.
  - e. avoided costs to non-water supply agencies.
  - f. benefits and costs to retail customers.
  - g. benefits of water made available to other entities as a result of conservation efforts.

These guidelines will recognize the uniqueness of individual water suppliers and will therefore not impose excessive uniformity.

[Note: In September 1996, the Council adopted "Guidelines for Preparing Cost-Effectiveness Analyses of Urban Water Conservation Best Management Practices"]

- 8. Within these guidelines, each water supplier will be responsible for analyses of the cost-effectiveness of particular BMPs on its system. These analyses will be reviewed by the Council.
- 9. The Council will also be responsible for periodically reviewing the overall framework set forth in this Exhibit.





## **EXHIBIT 4. SWRCB ANNUAL REPORT OUTLINE**

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*As Amended on December 10, 2008*

- I. Administration and Project Funding**
- II. Council Activity on Best Management Practices**
  - BMP Reporting on Council Signatories
    - Revised BMP Reporting Forms
    - BMP Biannual Reporting Results
    - BMP Biannual Data Highlights
  - BMP Exemption Policy
  - BMP Modifications
- III. Technical Assistance**
- IV. General Outreach**

### **Tables**

- Table 1: Council MOU Urban Water Conservation Best Management Practices
- Table 2: Comparison of Retail and Wholesale BMP Reporting Requirements
- Table 3: Conservation Milestones
- Table 4: Technical Assistance Provided to Members

### **Figures**

- Figure 1: Number of Water Suppliers Filing BMP Reports per Annum
- Figure 2: Year-by-Year Council Signatory Growth
- Figure 3: CUWCC Signatory Member Water Use as a Percentage of California Urban Water Use
- Figure 4: Percentage of CUWCC Membership Submitting BMP Reports Historical Period to Date
- Figure 5: Percentage of Reporting Units in Compliance with BMPs Historical Period to Date

### **Attachments**

- Attachment A: Council Signatories as of End of Year
- Attachment B: Strategic Plan
- Attachment C: Council Budget
- Attachment D: Council Organization Chart
- Attachment E: Board of Directors Officers
- Attachment F: Signatory Agencies that Submitted Some or All BMP Reports during Reporting Period
- Attachment G: Signatory Agencies Not Submitting BMP Reports during Reporting Period



## EXHIBIT 5. BYLAWS

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*As Amended on September 16, 2009*

### ARTICLE I Recitals and Definitions

**Section 1.01. Name of Corporation.** The name of this corporation shall be California Urban Water Conservation Council. In the balance of these Bylaws the corporation shall be referred to as the "Council."

**Section 1.02. The Council Is Nonprofit** The Council has been formed pursuant to the California Nonprofit Corporation Law as a public benefit corporation.

**Section 1.03. Specific Purpose.** The specific and primary purpose of the Council is to implement the MOU, as defined in Section 1.05(c), below, which has been executed by and among Signatory Members comprised of the water suppliers, public advocacy organizations and other interested groups that are more particularly described in Section 3.01, below. Without limiting the foregoing, the Council shall make formal reports to the State Water Resources Control Board and to the governing bodies of all Council Members. Such reports shall include a formal annual written report. Other reports, such as status reports and periodic updates, may be prepared as deemed appropriate by the Council.

**Section 1.04. Restrictions.** All policies and activities of the Council shall be consistent with and limited by the MOU and shall also be consistent with: (a) applicable federal, state and local antitrust and trade regulation laws; (b) applicable tax-exemption requirements, including the requirement that no part of the Council's net earnings inure to the benefit of any private individual; and (c) all other legal requirements including the California Nonprofit Corporation Law under which the Council is incorporated and to which its operations are subject, as amended from time to time.

**Section 1.05. Defined Terms.** The following terms shall, when used in these Bylaws, have the following meanings:

- (a) Applicant means and refers to an organization or an individual who has formally applied to become a Council Signatory Member pursuant to Section 3.02 and whose application remains subject to ratification by Voting Members.
- (b) Chair of the Board and Vice Chair mean and refer to the persons who, from time to time, occupy those officer positions that are analogous to the positions of Chair and Vice Chair of a nonprofit corporate board. The Chair of the Board and Vice Chair shall have the duties and responsibilities more particularly defined in Section 9.05.
- (c) Council means and refers to the California Urban Water Conservation Council.
- (d) Council Privileges and Benefits means and refers to those matters offered, from time to time, by the Council to its Full Members. Such Council Privileges and Benefits may include, but are not limited to, technical assistance, publications, training, written materials, access to the Council's reporting database, and discounted access to Council events.

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*As Amended on September 17, 2014*

- (e) Full Member means and refers to a Signatory Member that has paid in full its current annual assessment, as set out in Section 11.01. Only a Full Member is entitled to all Council Privileges and Benefits.
- (f) MOU means and refers to the Memorandum of Understanding Regarding Urban Water Conservation in California, originally dated September 1991, and as the MOU has been amended from time to time.
- (g) Plenary Meeting means and refers to a meeting of the Council Signatory Members (see Article V, below).
- (h) Signatory Member: means and refers to an organization or, for certain Group 3 Signatory Members, an individual that has signed the MOU and has been accepted for membership in accordance with Section 3.02. Upon acceptance for membership, all Signatory Members are assigned to one of the three group classifications of membership more particularly defined in Section 3.03. These three groups are:
  - (1) Group 1 Signatory Member means and refers to an organization that is described in Section 3.03 (a).
  - (2) Group 2 Signatory Member means and refers to an organization that is described in Section 3.03 (b).
  - (3) Group 3 Signatory Member means and refers to an organization or individual that is described in Section 3.03 (c).
- (i) Voting Member means and refers to Group 1 Signatory Members and Group 2 Signatory Members. Voting Members do not have to be Full Members in order to exercise their right to vote, although they do need to be Full Members in order to enjoy Council Privileges and Benefits. Group 3 Signatory Members are neither Voting Members within the meaning of these by-laws, nor are they “members” within the meaning of Section 5056 of the California Nonprofit Corporation Law.

### ARTICLE II Principal Office

**Section 2.01. Location of Principal Office.** The principal office of the Council will be located at such place within the State of California as the Board of Directors may from time to time designate by resolution. Currently, the address of the principal office is 716 10<sup>th</sup> Street, Suite 200, Sacramento, California.

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*As Amended on September 17, 2014*

### ARTICLE III Council Membership

**Section 3.01. Members of the Council.** The membership of the Council shall be comprised of, and limited to, organizations that are signatories to the MOU. Eligible signatories are: (1) water suppliers ("Group 1 Signatory Members"); (2) public advocacy organizations ("Group 2 Signatory Members"); and (3) other interested groups or individuals ("Group 3 Signatory Members"). Those three Groups are more particularly defined in Section 3.03.

**Section 3.02. Application for Membership.** As provided in Section 7.2 of the MOU, the Council shall have a Membership Committee which shall have the responsibility of evaluating new Applicants for Membership in the Council and recommending to the Council approval or disapproval of the applicant, and designating the recommended category of membership for the applicant. The Council may adopt and use an application form to be completed by Applicants in order to guide the Council's Membership Committee in making recommendations to the Council regarding the proper Group classification for new Signatory Members. Following the Membership Committee's approval of an application, the Committee's action shall be ratified by the Voting Members at the Plenary Meeting next following the Membership Committee's approval. Immediately upon Plenary Meeting ratification, the Applicants will be deemed to be new Signatory Members. As of the date of the adoption of these Bylaws, the Members of the Council and their respective Group classifications (which are ratified and affirmed by the Members' approval of these Bylaws) are as set forth in Exhibit "5A".

**Section 3.03. Classifications of Membership; Definition of Signatory Groups.** The Council has three classes of membership comprised of the signatory groups identified in subparagraphs (a) through (c) of this Section 3.03:

(a) **Water Suppliers -- Group 1 Signatory Members.** Group 1 Signatory Members include, and are limited to, "water suppliers". A water supplier is any entity, including a city, which delivers or supplies water for urban use at the wholesale or retail level.

(b) **Public Advocacy Organizations -- Group 2 Signatory Members** Group 2 Signatory Members include, and are limited to, public advocacy organizations. A "public advocacy organization" is defined to mean a nonprofit organization exempt from tax and described in either Internal Revenue Code section 501(c)(3) or 501(c)(4); which has as one of its significant missions and exempt purposes, environmentally sound management and conservation of California's waterways and water resources and/or protection of the environment; and which has a clear, but non-vested, interest in advancing the Best Management Practices ("BMPs") of the MOU. No public advocacy organization may be admitted to the Council's membership if such organization has a primary function of representing trade, industrial, or utility entities.

(c) **Other Interested Groups -- Group 3 Signatory Members.** Group 3 Signatory Members include other organizations or individuals, approved for membership as provided in Section 3.02, above, which have a strong interest in, and commitment to, the purposes of the Council, but which are not eligible for inclusion in either Group 1 or Group 2.

**Section 3.04. Representatives of Signatory Members.** Each Signatory Member shall designate one representative to the Council. The Signatory Member shall be responsible for

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*As Amended on September 17, 2014*

informing the Council of the identity of its designated representative at all appropriate times. Signatory Members may also name substitute representatives to attend meetings in place of the designated representative. Substitute representatives have the same voting rights as the Signatory Members designated representative, but may not serve as an officer of the Council. Only one representative from any Signatory Member may vote on any matter presented to the Council Members, to the Board of Directors, or as the designated member of any committee appointed and constituted in accordance with Article X, below; provided, however, that the same person can be designated as the representative, or as a substitute representative, of more than one Signatory Member within the same Group classification. Designated and substitute representatives of Signatory Members are referred to in these Bylaws as "Representatives."

**Section 3.05. Term of Membership.** Each Signatory Member shall remain a Signatory Member until the organization, or individual, no longer qualifies for membership under Section 3.01, above or wishes to withdraw. Organizations listed in Exhibit "5A" shall be deemed to meet the qualification requirements of Section 3.01.

### ARTICLE IV Membership Voting

#### **Section 4.01. Signatory Member Voting Rights**

(a) Generally. Only Group 1 Signatory Members and Group 2 Signatory Members have voting rights with respect to matters requiring the approval of Council Members under the MOU and Voting Members under these Bylaws (see particularly Article VI, below). Collectively, these two Groups are referred to as the "Voting Members" whenever these Bylaws discuss the voting rights of Signatory Members. On each matter submitted to a vote of the Voting Members, whether at a meeting of the membership called and held pursuant to the provisions of these Bylaws or otherwise, each Voting Member shall be entitled to cast one vote. Group 3 Signatory Members have no voting rights.

(b) Required Vote for Valid Action. Unless these Bylaws specifically confer authority on Group 1 Signatory Members or Group 2 Signatory Members to take unilateral action with respect to a particular matter (such as caucus votes to fill Group vacancies on the Board of Directors), any action requiring the vote, or approval, of the Voting Members of the Council shall require the affirmative vote of a majority of each of Group 1 and Group 2 Signatory Members, as to those actions identified in Section 6.02 (b), below, and a two-thirds affirmative vote of each of Group 1 and Group 2 Signatory Members as to those actions identified in Section 6.02(a), below. As to any other action or approval not specifically identified in Section 6.02, below, the required affirmative vote shall be a majority of each of Group 1 and Group 2 Signatory Members.

#### **Section 4.02. Manner of Casting Votes**

(a) Voting at a Meeting or by Written Ballot. Voting by Group 1 and Group 2 Signatory Members may be by voice or by written ballot solicited in accordance with section 5513 of the California Corporations Code, and Section 4.03, below. The vote on any other issue properly before a Plenary Meeting shall be conducted by secret ballot when determined by the chair of the meeting, in his or her discretion, or when requested by 10 percent of the Voting Members present at the meeting.

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*As Amended on September 17, 2014*

(b) Proxy Voting. Proxy voting shall be permitted on any matter put to the vote of the Voting Members subject to the following restrictions:

(i) If a Group 1 or Group 2 Signatory Member cannot be represented at a Plenary Meeting by the Group's designated Representative or substitute Representative, the Group can, by written proxy, authorize another Representative of a Signatory Member within the same Group classification to appear and vote on behalf of the absent Signatory Member.

(ii) The proxy shall only be valid for the Plenary Meeting for which it is issued, and for any adjournment thereof.

(iii) The proxy shall be in the form of a limited proxy, which is defined as a proxy which instructs the proxy holder how he or she is to vote with respect to each matter which is scheduled to be presented at the Plenary for action by the Voting Members.

### **Section 4.03. Action by Written Ballot Without a Meeting**

(a) Written Ballots, Generally. In addition to voting in person or by proxy at Plenary Meetings, any matter or issue requiring the vote of the Voting Members, other than the election of the Board of Directors, may be submitted to the Voting Members for a vote by use of a written ballot without the necessity of calling a Plenary Meeting, so long as the requirements for action by written ballot set forth in this Section 4.03 are met. The determination to seek Voting Member approval by written ballot shall be made by a majority vote of each of Group 1 and Group 2 Signatory Member Representatives on the Board of Directors.

(b) Distribution of Written Ballots. In the event that any matter or issue is to be voted upon by written ballot, the Board of Directors shall distribute the written ballot to every Voting Member at least 30 days prior to the final date the written ballots are to be received for counting.

(c) Content of Written Ballots. Any written ballot distributed to the Voting Members to vote on an issue other than the election of the Board of Directors shall set forth the proposed action, and provide an opportunity to specify approval or disapproval of the proposal.

(d) Balloting Time Requirements. Any written ballot shall also provide a reasonable time within which to return the ballot to the Council's principal office and shall state on its face or in an accompanying notice the date by which the ballot must be returned in order to be counted. The time fixed for the return of ballots may only be extended if the Board of Directors notifies the Voting Members (in the balloting materials originally sent to Voting Members) that the right to extend has been reserved, and then, for no more than two successive periods of 30 days each. The time stated for the return of written ballots can be scheduled to coincide with the date of a Plenary Meeting.

(e) Requirements for Valid Action. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum specified in Section 5.05, below, and the number of approvals equals or exceeds the number of



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*As Amended on September 17, 2014*

votes that would be required to approve the action if approval was sought at a meeting of the Voting Members.

(f) Solicitation Rules. Written ballots shall be solicited in a manner consistent with the requirements of Section 5.04, below, pertaining to the issuance of notice of Plenary Meetings. All solicitations of written ballots shall indicate the number of responses needed to meet the quorum requirement for valid action and shall state the percentage of affirmative votes necessary to approve the measure submitted for Voting Member approval.

(g) Notification of Balloting Results. Upon tabulation of the written ballots, the Board of Directors shall notify the Signatory Members of the outcome of the vote immediately following the close of the balloting process and tabulation of the ballots. If the number of ballots cast is insufficient to constitute a quorum, the Board of Directors shall so notify the Signatory Members.

(h) Prohibition of Revocation. Once cast, a written ballot may not be revoked.

### ARTICLE V Plenary Meetings of the Council

**Section 5.01. Place of Meeting.** Plenary Meetings may be conducted at any reasonable place within the State of California, and at such time as may be designated by the Board of Directors in the notice of the Plenary Meeting.

**Section 5.02. Annual Plenary Meeting.** There shall be an annual Plenary Meeting in December of each year. The date, time and location of the annual Plenary Meeting shall be set forth in the notice of meeting sent to Council Members in accordance with Section 5.05, below.

**Section 5.03. Other Regular Meetings.** In addition to the annual Plenary Meeting, there shall be three additional quarterly Plenary Meetings on a day and at a time and place determined by the Board of Directors, and communicated to all Signatory Members at the inception of each calendar year.

#### **Section 5.04. Special Meetings.**

(a) Persons Entitled to Call Special Meetings. A simple majority of the members of the Board of Directors, or the Chair, may call special meetings of the Council's Signatory Members at any time to consider any lawful business of the Council. In addition, five percent (5%) or more of the Voting Members of the Council may request the Council to convene a Plenary Meeting.

(b) Procedures for Calling Special Meetings Requested by Signatory Members. If a special Plenary Meeting is called by the Voting Members, the request shall be submitted by the requesting Voting Members, in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail, by electronic transmission, or by facsimile transmission to the Chair, the Vice Chair, or the Secretary of the Council. The officer receiving the request shall cause notice to be promptly given to the Voting Members, in

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*As Amended on September 17, 2014*

accordance with the provisions of Section 5.05, below, that a special Plenary Meeting will be held, and the date, time and specific purpose for such meeting; which date shall be not less than 35 nor more than 90 days, following the receipt of the request. If the notice calling for a special Plenary Meeting is not given within the 20 days immediately after receipt of the petitioner's request, the Voting Members requesting the meeting may give the notice. Nothing contained in this subsection shall be construed to limit, fix, or affect the time when a Plenary Meeting may be held when the meeting is called by action of the Board of Directors, or the Chair.

### **Section 5.05. Notice of Meetings of the Voting Members.**

(a) Generally. All notices of Plenary Meetings (whether regular or special) shall be sent, or otherwise given, in writing to each Voting Member who, on the record date for notice of the meeting (as provided in Section 5.09, below) is entitled to vote thereat, in accordance with subparagraph (c) of this Section 5.05, not less than 10, nor more than 90, days before the date of the meeting. The notice shall specify the place, date, and hour of the Plenary Meeting and (i) in the case of a special Plenary Meeting, the general nature of the business to be transacted, and no other business may in that case be transacted, or (ii) in the case of a regular Plenary Meeting, those matters which the Board of Directors, at the time of giving the notice, intends to present for action by the Voting Members. But any proper matter may be presented at the Plenary Meeting for action by the Voting Members so long as a quorum is present.

(b) Mailing of Notice. Notice of any Plenary Meeting shall be given either personally or by first-class mail, or other written communication, charges prepaid, addressed to each Signatory Member, either at the address of that Signatory Member appearing on the books of the Council, or the address given by the Signatory Member to the Council for the purpose of notice. If for any reason notice is given by mail and the notice is not sent by first-class, registered, or certified mail, the notice shall be given not less than 20, nor more than 90 days, before the meeting. Notice shall be deemed to have been given at that time when delivered personally or deposited in the mail or when sent by other means of written communication.

(c) Affidavit of Mailing; Effect Thereof. An affidavit of the mailing or other means of giving notice of any Plenary Meeting may be executed by the Secretary or any Assistant Secretary of the Council, and if so executed, shall be filed and maintained in the Council's minutes book. The Secretary's affidavit shall constitute prima facie evidence of the giving of notice.

### **Section 5.06. Quorum Requirements.**

(a) A quorum of the Voting Members for the purpose of conducting business at any Plenary Meeting shall be at least 30 Voting Members, provided at least 10 percent of the Group 1 Signatory Members and 10 percent of the Group 2 Signatory Members are present. In addition, when a Plenary Meeting is actually attended by less than one-third of the voting power of Council Members (but at which a quorum is present), the only matters upon which action can be validly taken are those matters the general nature of which was described in the notice of the Plenary Meeting.

(b) The Council Members present at a duly held Plenary Meeting at which a quorum is initially present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum, if any action taken (other than

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*As Amended on September 17, 2014*

adjournment) is approved by at least (i) a majority of the Voting Members required to constitute a quorum, and (ii) if applicable, by such greater percentage or class vote as may be required by these Bylaws (see Section 6.02, below). For example, if a Plenary Meeting is called and is initially attended by 31 Voting Members and prior to adjournment two Voting Members leave the Plenary Meeting (thus leaving less than a quorum), a motion to approve the annual budget for the Council could nevertheless be entertained and valid action taken.

(c) When Voting Member approval is sought by written ballot (rather than at a Plenary Meeting) the minimum quorum requirement is satisfied when written ballots are returned to the Council within the prescribed balloting period from both (i) 30 or more Voting Members of the Council, and (ii) at least ten percent of the Group 1 Signatory Members and ten percent of the Group 2 Signatory Members. In addition to satisfying the minimum quorum requirement for valid action, the vote by written ballot must also be approved by the requisite percentage of Group 1 and Group 2 Signatory Members (see Sections 4.01(b) and 6.02).

**Section 5.07. Adjourned Meeting.** Any Plenary Meeting of the Council, annual or special, whether or not a quorum is present, may be adjourned to another time and/or place (but not for more than 45 days) by the vote of a majority of the Voting Members represented at the Plenary Meeting, either in person or by proxy. Unless there is an absence of a quorum (in which case no other business may be transacted at that meeting except as provided in Section 5.06(b) above), the Voting Members attending the reconvened Plenary Meeting may take any action that might have been transacted at the original meeting. When a Plenary Meeting is adjourned to another time or place, notice of the new meeting need not be given if the time and place thereof are announced at the Plenary Meeting at which the adjournment is taken. Notwithstanding the foregoing, if, after adjournment, a new record date is fixed for notice or voting, a notice of the rescheduled meeting must be given to each Voting Member who, on the record date for notice of the meeting, is entitled to vote thereat.

**Section 5.08. Waiver of Notice or Consent by Absent Council Members.**

(a) **Waiver and Consents, Generally.** If decisions are made by the Voting Members at a Plenary Meeting where a quorum is present, but for which proper notice was not given to all Voting Members for whatever reason, the decisions made at that Plenary Meeting will be valid if, either before or after the meeting, each Voting Member entitled to vote who was not present at the meeting consents to the meeting by signing a written (i) waiver of notice, (ii) consent to holding the Plenary Meeting, or (iii) an approval of the minutes of the Plenary Meeting. The waiver of notice need not specify the purpose or general nature of business to be transacted at such meeting unless action is taken, or proposed to be taken, on matters specified in Section 5.05(b), above; in which case, the waiver of notice must state the general nature of the matter. All such waivers, consents, or approvals shall be filed with the Council records or be made part of the minutes of the meeting.

(b) **Effect of Attendance at Plenary Meeting.** Attendance by a Signatory Member's Representative at a Plenary Meeting shall also constitute a waiver of notice of that Plenary Meeting with respect to that Signatory Member, except when the Signatory Member's Representative attends the Plenary Meeting for the sole purpose of objecting at the beginning of the Plenary Meeting to the transaction of any business due to the inadequacy or illegality of the notice.

## EXHIBIT 5

*As Amended on September 17, 2014*

### ARTICLE VI Actions Requiring Voting Member Approval

**Section 6.01. Council Actions Requiring Voting Member Approval.** In addition to those matters requiring approval of the Voting Members under the California Nonprofit Public Benefit Corporation Law or other applicable laws, the following actions of the Council shall require approval of the Voting Members:

- (a) Recommending to Signatory Members to study methodologies for Best Management Practices (BMPs), including procedures for assessing cost effectiveness and reliability of urban water conservation measures;
- (b) Development of guidelines, including discount rates, to be available to all Signatory Members in computing BMP benefits and costs pursuant to Exhibit 3 of the MOU;
- (c) Reviewing and modifying the economic principles set forth in Exhibit 3 of the MOU;
- (d) Collecting and summarizing information on implementation of BMPs and Potential Best Management Practices (PBMPs);
- (e) Adopting or modifying BMP and PBMP lists;
- (f) Adopting or modifying reliable water conservation savings data for BMPs;
- (g) Adopting or modifying the schedules of implementation for existing and new BMPs;
- (h) Adopting or modifying the schedules for research and demonstration projects for BMPs and PBMPs;
- (i) Coordinating and/or making recommendations regarding BMP study and demonstration projects;
- (j) Approving or disapproving Membership Committee recommendations on applications for the addition of parties as Signatory Members to the MOU and assigning Applicants parties to one of the three Signatory groups as described in Section 1.3 of the MOU, or as designated by the Voting Members (see Section 3.02, above);
- (k) Reviewing and modifying report formats for agency implementation programs;
- (l) Making annual reports to the State Water Resources Control Board and Signatory Members on the above items based on the format described in Exhibit 5 of the MOU; and
- (m) Undertaking such additional responsibilities as the Voting Members of the Council may agree upon.

**Section 6.02. Required Member Vote to Approve Various Actions.** The following Voting Member approval requirements apply to particular actions of the Council, as listed in subparagraphs (a) and (b), of this Section 6.02:

## EXHIBIT 5

*As Amended on September 17, 2014*

(a) Actions Requiring Two-Thirds Vote of Voting Members. Any decision by the Council to (i) undertake additional responsibilities not currently described in the MOU and its Exhibits, (ii) modify or amend the MOU itself; (iii) modify Exhibits 2 or 3 of the MOU, or (iv) develop guidelines, including discount rates, to be available to all Signatory Members in computing BMP benefits and costs pursuant to Exhibit 3 of the MOU shall require both of the following:

(1) Written notification by the Council to all Signatory Members, giving the text of the proposed action or modification, at least 60 days in advance of the date of a regular or special meeting called by the Council to vote on the matter; and

(2) Approval of the proposed action or modification by the affirmative vote of at least two-thirds of each of the Group 1 and Group 2 Voting Members actually voting on the matter.

Although a meeting shall be called to coincide with the final date for return of ballots, approval of the Voting Members shall be solicited by use of a written ballot in accordance with Section 4.04, above.

(b) Actions Requiring Majority Voting Member Approval. The following actions shall require the affirmative vote of at least a simple majority of each of the Group 1 and Group 2 Voting Members actually voting on the matter:

(i) Approving the annual budget for the Council following presentation of the budget by the Board of Directors;

(ii) Adopting or modifying Best Management Practices and Potential Best Management Practices;

(iii) Approval and adoption of Council Strategic Plans;

(iv) Approving or disapproving Membership Committee recommendations on applications for the addition of parties as Signatory Members to the MOU and assigning Applicants to one of the three Signatory groups as described in Section 1.3 of the MOU, or as designated by the Voting Members (see Section 3.02, above);

(v) Adoption of Council policies, procedures and rules consistent with these Bylaws and the MOU; and

(vi) Approval of amendments to these Bylaws, other than any amendment to subparagraph (a), above.

**Section 6.03. Right of Members to Comment on Council Reports.** Any Signatory Member shall be entitled to review draft reports prepared by the Council (see Section 1.03, above) and to comment on all reports. Such comments shall be included in any final report at the request of the Signatory Member submitting the comments.

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*As Amended on September 17, 2014*

### ARTICLE VII

#### Board of Directors of the Council

*As Amended on September 16, 2011*

**Section 7.01. General Corporation Powers.** Subject to the requirements of Voting Member approval of certain actions pursuant to these Bylaws or by State law, the business and affairs of the Council shall be vested in and exercised by the Council's Board of Directors, which is referred to herein as the "Board of Directors". The Board of Directors may delegate the management of the activities of the Council to any person or persons, management company, or committee, provided that, notwithstanding any such delegation, the activities and affairs of the Council shall continue to be managed and all corporate powers shall continue to be exercised under the ultimate direction of the Board of Directors. All elected members of the Board of Directors shall be representatives of Full Members of the Council as defined in Section 11.01 of these bylaws.

#### **Section 7.02. Composition, Selection and Term.**

(a) **Composition of the Board of Directors.** The Board of Directors shall consist of the following persons:

(i) Representatives of Group 1 Signatory Members shall select from among themselves up to nine MOU Signatory Members whose Representatives shall serve as voting members of the Board of Directors; and

(ii) Representatives of Group 2 Signatory Members Representatives shall select from among themselves up to eight Signatory Members whose Representatives shall serve as voting members of the Board of Directors; and

(iii) Representatives of Group 3 Signatory Members shall select, from among themselves, up to four Signatory Members, whose Representatives shall serve as non-voting members of the Board of Directors.

In addition, all officers of the Council shall be members of the Board of Directors and have the same voting rights on the Board of Directors as their respective Groups. Finally, the following persons shall serve as non-voting ex-officio members of the Board of Directors: (1) the outgoing Chair shall be a member of the Board of Directors for the calendar year immediately following his or her term of office; and (2) one designee from each of those State and Federal agencies selected by the Board of Directors as a result of the agencies' involvement in California water allotments, distribution, programs, and/or policies shall serve as ex-officio members of the Board of Directors. Currently, the California Department of Water Resources and the U.S. Bureau of Reclamation have designees to the Board of Directors.

(b) **Terms of Office.** Members of the Board of Directors shall hold office for a term of two years. The terms shall be staggered with half of the positions of each group being elected each year. Unlimited consecutive terms may be served.

(c) **Nominating and Election Process for Board of Directors Candidates.** The Group 1 Signatory Members of the Council and the Group 2 Signatory Members of the Council shall nominate from among themselves candidates for election to the Board of Directors in person, or in writing at the third Plenary Meeting of the year prior to the start of a new two-year term. Any

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*As Amended on September 17, 2014*

nomination must be seconded by a Voting Member of the same Group, which second can be made in person, or in writing, and accepted by the nominee in person or in writing, to be included on the ballot. The ballots of Group 1 and 2 candidates for the Board of Directors shall be included in the Plenary Meeting Packet of the fourth and final Plenary of the year. All written nominations, seconds, and acceptances by candidates must be received by the Council prior to the start of the third Plenary Meeting.

The Voting Members of the Council shall vote on the ballot to elect members of the Board of Directors to represent their respective Groups at the final Plenary Meeting of each year. Cumulative voting (casting all four votes for one party) will not be permitted in any election of Board of Directors members. Absentee ballots are permitted so long as the absentee ballot is received by the Council prior to the start of the final Plenary Meeting at which the election is conducted. The successful candidates shall assume office starting January 1 of the following year. Votes may be made in person, or in writing. Group 1 Voting Members may vote for up to four or five candidates from their respective Group depending upon the voting year. Group 2 Voting Members may vote for up to four candidates from their respective Group. The top candidates from Group 1 for each Region as designated in section 7.02 (d) and the top four candidates from Group 2, as ranked by the number of votes received, shall be elected to the Board of Directors. If Group 2 nominates less than four candidates, all candidates from that Group shall be elected to the Board of Directors. If Group 1 nominates less than the total number of candidates for any Region, all candidates from that Region shall be elected to the Board of Directors. In a given election, each Voting Member shall be able to cast one ballot for each one of the open seats belonging to its respective Group.

(d) Regions. For the purpose of selecting Board Members from Group 1 there are three (3) Regions of the State: Coastal, Inland, and South. The Regional Boundaries are defined in the Regional Voting Structure Policy document and Map; of which a true copy is kept at the Council office, and available to the public. The Boundaries of the Regions may be changed with approval of the Board of Directors and the Voting Members.. Representatives of Signatory Members with service areas in more than one Region may run for the Board in the Region in which the greatest population is served by that Signatory.

(e) Apportionment. Regional apportionment of the Group 1 seats on the Board shall follow the formula set out in the Regional Voting Structure Policy document, based upon the average of the proportion of total Group 1 Signatory Members per Region and the proportion of population served by Group 1 member agencies within a Region, times nine seats. Each Region will have at least one (1) seat and no more than five (5) seats on the Board. Signatory Members with service areas in more than one region will be counted as one (1) Signatory Member, and the population served by them in each region will be counted in that region's apportionment calculation. The apportionment will be reviewed every four years beginning in 2015 by a Committee appointed by the Board, and as defined in the Regional Voting Structure Policy document. Any changes to apportionment will be approved by the Board and the Voting Members.

### **Section 7.03. Resignation and Removal from Office; Filling of Vacancies**

(a) Resignation. Any member of the Board of Directors may resign at any time, effective upon giving written notice to the Executive Director, or the Chair, or Vice Chair, unless the resigning member's notice specifies a later time for the effectiveness of the resignation. If the

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*As Amended on September 17, 2014*

resignation is to be effective at some future time, a successor may be elected or designated (as the case may be) to fill the vacancy when the resignation becomes effective.

(b) **Removal.** A sitting member of the Board of Directors may only be removed from office for cause. "Cause" shall be defined as failure of the member of the Board of Directors member to attend at least two consecutive duly noticed meetings of the Board of Directors, and failure to adequately justify to the Committee the reason for the member's absence.

(c) **Filling of Vacancies on the Board of Directors.** If a vacancy occurs in any position on the Board of Directors, other than Chair or Vice Chair, by virtue of the death, resignation or removal of a member of the Board of Directors, the Signatory Member whose Representative created the vacancy shall select a replacement Representative to serve on the Board of Directors for the remainder of the unexpired term, subject to approval by the Board of Directors. If a vacancy occurs on the Board of Directors by virtue of a Signatory Member's decision to withdraw from participation on the Board of Directors, the vacancy shall be filled from among Signatory Members that are of the same Group as the resigned Signatory Member by a caucus of the withdrawing Signatory Member's Group, conducted either at the next Plenary Meeting or by telephone conference call, so long as all members of the Group are notified of the telephone conference and have an opportunity to participate. When a caucus is conducted by telephone conference, the actions taken shall be affirmed at the next Plenary Meeting, by members of the Group that conducted the caucus to fill the vacancy. If the vacancy occurs in a Group 1 seat, the vacancy shall be filled by a Signatory Member from the same Region of the State. If a vacancy occurs in the position of Chair of the Board or Vice Chair of the Board, for any reason other than expiration of the holder's term of office, the vacancy shall be filled by nomination of the Signatory Group of which the resigned Chair/Vice Chair was a member. If a vacancy occurs in the ex-officio positions held by any State or Federal agency (see Section 7.02(a)), the vacancy shall be filled by the governmental agency with the power of designation.

**Section 7.04. Number and Place of Meetings.** The Chair of the Council, and any other persons designated by the Board of Directors, may call meetings of the Board of Directors. At the annual Plenary Meeting, the Board of Directors shall adopt a schedule of regular meeting dates for the following year. Once approved, the scheduled dates may be modified, or meetings initially scheduled to be conducted in person may be changed to a meeting conducted by use of a telephone conference or other permitted electronic media by action of the Board of Directors. Except for meetings conducted in accordance with Section 7.05, regular and special meetings of the Board of Directors may be held at any place designated from time to time by resolution of the Board of Directors and stated in the notice of the meeting. In the absence of such designation, regular meetings shall be held at the principal office of the Council.

**Section 7.05. Meetings by Telephone Conference or Other Electronic Means.** Members of the Board of Directors may participate in a meeting through the use of telephone conference, electronic video screen communications, or other communications equipment. Participation in a meeting through use of a telephone conference pursuant to this subdivision constitutes presence, in person, at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment (other than telephone conference) constitutes presence in person at the meeting if all of the following conditions are satisfied:



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*As Amended on September 17, 2014*

(a) Each member of the Board of Directors participating in the meeting can communicate with all of the other members concurrently;

(b) Each member of the Board of Directors is provided the means of participating in all matters before the Board of Directors including, without limitation, the capacity to propose, or to interpose an objection to a specific action to be taken by the Council; and

(c) The Council adopts and implements some means of verifying both of the following:

(i) That a person participating in the meeting is a Board of Directors member or other person entitled to participate in the Board of Directors meeting; and

(ii) That all actions of, or votes by, the Board of Directors are taken or cast only by the members of the Board of Directors and not by persons who are not members of the Board of Directors.

### **Section 7.06. Notice of Meetings**

(a) Manner of Giving Notice. Notice of the time and place of the annual meeting and any special meetings of the Board of Directors shall be given to each member of the Board of Directors by one of the following methods:

(i) By personal delivery of written notice;

(ii) By first-class mail, postage prepaid;

(iii) By telephone communication, either directly to the member of the Board of Directors, or to a voice messaging system or other system or technology designed to record and communicate messages; or

(iv) By facsimile, electronic mail, or other electronic means; provided however, that if notice is given by any means other than first-class mail or direct communication with a member of the Board of Directors, the notice shall also be confirmed in writing mailed or sent by facsimile or electronic transmission to his or her address, facsimile telephone number, or electronic mail address as shown on the records of the Council.

Notice of a meeting need not be given to any member of the Board of Directors who signs a written waiver of notice, or a written consent to holding the meeting, or an approval of the minutes thereof, whether before or after the meeting, or to any member of the Board of Directors who attends the meeting without protesting, prior thereto or at commencement of the meeting, the lack of notice to such member of the Board of Directors. All such waivers, consents, and approvals shall be filed with the Council records or made a part of the minutes.

(b) Time Requirements. Notices sent by first-class mail shall be deposited into a United States mailbox at least four days before the time set for the meeting. Notices given by other permitted means must be must be given at least 48 hours prior to the scheduled time of the meeting.

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*As Amended on September 17, 2014*

(c) Content of Notices. The notice shall state the date, time, place, and the general purpose of the meeting.

**Section 7.07. Quorum Requirements.** A quorum of the Board of Directors shall consist of at least fifty percent of each of Group 1 and Group 2 Signatory Groups' members of the Board of Directors then in office.

**Section 7.08. Waiver of Notice.** The transaction of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present; and (b) either before or after the meeting, each of the members of the Board of Directors not present, individually or collectively, signs a written waiver of notice, a consent to the holding of the meeting, or an approval of the minutes thereof. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents, and approvals shall be filed with the Council records or made a part of the minutes of the meeting and shall have the same force and effect as a unanimous vote of the Board of Directors. The requirement of notice of a meeting shall also be deemed to have been waived by any member of the Board of Directors who attends the meeting without protesting prior to or at the commencement of the meeting about the lack of notice.

**Section 7.09. Adjournment.** A majority of the members of the Board of Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place or may adjourn for purposes of reconvening in executive session to discuss and vote upon personnel matters, litigation in which the Council is or may become involved and orders of business of a similar nature. If the meeting is adjourned for more than 24 hours, notice of adjournment to any other time or place shall be given prior to the time of the adjourned meeting to the members of the Board of Directors who were not present at the time of the adjournment. Except as provided, above, notice of adjournment need not be given.

**Section 7.10. Action Without a Meeting.** Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board of Directors, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors. For purposes of this Section, "all members of the Board of Directors" shall not include any "interested director" as defined in California Corporations Code section 5233. Section 5233 of the Code defines an interested director as a director who has a material financial interest in a transaction involving the corporation he or she is serving, unless the transaction is expressly excluded from the definition of a "self dealing transaction" by other provisions of the same Code Section. See also Article XII, below ("Conflicts of Interest").

**Section 7.11. No Compensation for Members of the Board of Directors.** Unless otherwise established by resolution of the Board of Directors, members of the Board of Directors of the Council shall not be entitled to compensation for their services as such, although they may be reimbursed, however, for such actual expenses as may be determined by resolution of the Board of Directors to be just and reasonable. Expenses shall be supported by an invoice or voucher acceptable to the Board of Directors

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*As Amended on September 17, 2014*

**Section 7.12. Actions of the Board of Directors.** All actions of the Board of Directors require that a quorum be present, that a majority of the members of the Board of Directors voting from Group 2 vote in favor of the action. For purposes of casting votes, a minimum of six (6) votes of the nine (9) Group 1 Board members must be cast for passage by Group 1 of any proposition put before the Board. Written proxies may serve to achieve the six (6) vote minimum. The Board of Directors may also act without meeting, provided that:

- (a) The taking of the vote has previously been authorized by the Board of Directors;
- (b) The vote has received seven days' notice by first class mail or 48 hours notice delivered personally or by telephone or electronic media; and
- (c) The proposed action is approved by six (6) or more of the Group 1 and fifty percent or more of the Group 2 members of the Board of Directors voting.

The Board of Directors may take action without seeking Voting Member approval only where the Voting Members have delegated such authority to the Board of Directors and only to the extent that the action is consistent with the then current version of the MOU.

### ARTICLE VIII

#### Duties and Powers of the Board of Directors and Limitations Thereon

**Section 8.01. Specific Powers.** Without prejudice to the general powers of the Board of Directors set forth in Section 7.01, above, the Board of Directors shall have the following responsibilities and powers:

- (a) Exercise all powers vested in a board of directors of a nonprofit public benefit corporation under the laws of the State of California.
- (b) Remove all officers of the Council, and other Council employees; prescribe any powers and duties for such persons that are consistent with law, the Articles of Incorporation and these Bylaws; and fix employee compensation. The office of any officer removed by action of the Board of Directors shall be filled by action of the Voting Members at the next Plenary Meeting in accordance with Section 9.03, below.
- (c) Appoint such agents and employ such other employees, including attorneys and accountants, as it sees fit to assist in the operation of the Council, and to fix their duties and to establish their compensation.
- (d) Contract for and pay premiums for insurance and bonds (including indemnity bonds) which may be required from time to time by the Council.
- (e) Pay all taxes and charges incurred by or levied against the Council.

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*As Amended on September 17, 2014*

(f) Delegate its duties and powers hereunder to the Executive Director, to officers of the Council or to committees established by the Board of Directors, subject to the limitations expressed in Sections 7.01, above.

(g) Prepare or cause to be prepared budgets, and maintain a full set of books and records showing the financial condition of the affairs of the Council in a manner consistent with generally accepted accounting principles, and at no greater than annual intervals prepare a financial report, a copy of which shall be delivered to each Signatory Member of the Council as provided in Article XI, below.

(h) Appoint such committees as it deems necessary from time to time to implement the affairs of the Council in accordance with Article X, below.

(i) Open bank accounts and borrow money on behalf of the Council and designate the signatories to such bank accounts.

(j) Bring and defend actions on behalf of the Council so long as the action is pertinent to the operations of the Council.

### **Section 8.02. Limitations on Powers**

(a) Actions Requiring the Consent or Approval of the Voting Members. The Board of Directors shall have no authority to act with respect to any matter identified in Section 6.01, above ("Council Actions Requiring Voting Member Approval"), unless the Voting Members have taken action at a Plenary Meeting to specifically confer on the Board of Directors authority to act with respect to a particular matter, and then only to the extent that the action is consistent with the then current version of the MOU. The responsibilities and powers described in Section 8.01, above, have been approved by the Voting Members for exercise by the Board of Directors.

(b) Self-Dealing Transactions. Notwithstanding the powers conferred on the Board of Directors pursuant to Sections 7.01 and 8.01, above, the Council shall not engage in any transaction which meets the definition of a "self-dealing transaction" as defined in California Corporations Code section 5233 unless the transaction has been approved by one of the means specified in section 5233(d). Generally speaking, section 5233 of the Corporations Code defines a "self-dealing transaction" as any transaction to which the Council is a party and in which one or more of its directors (i.e., Board of Directors members) has a material financial interest. Certain transactions are excluded by that statute from being classified as self-dealing transactions.

(c) Transactions Between Corporations Having Common Directorships. Unless it is established that the contract or transaction is just and reasonable as to the Council at the time it is authorized, approved or ratified in accordance with the requirements imposed by California Corporations Code section 5233, the Council shall not enter into a contract or transaction with any other corporation, association, or entity in which one or more of the members of the Council's Board of Directors are directors, unless the material facts relating to the transaction and the common directorship of the member of the Board of Directors are fully known or disclosed to the Board of Directors. The Board of Directors must approve, authorize, or ratify any such contract or transaction in good faith and by a vote sufficient without counting the vote of the member(s) of the

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Board of Directors having a common directorship in another corporation that is a party to the transaction.

(d) Loans to Members of the Board of Directors or Council Officers. The Council shall not make any loan of money or property to, or guarantee the obligation of, any member of the Board of Directors or other officer, unless the transaction is first approved by the California Attorney General. This provision shall not apply to any reasonable advance on account of expenses anticipated to be incurred in the performance of the duties of the member of the Board of Directors or other officer.

(e) Standards for Investment. Except as provided in California Corporations Code sections 5240(c) and 5241, in the investment, reinvestment, purchase, acquisition, exchange, sale, and management of the Council's investments, the Board of Directors shall:

(i) Avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income, as well as the probable safety of the Council's capital; and

(ii) Comply with additional standards, if any, imposed by the Articles of Incorporation, these Bylaws, any resolutions duly adopted by the Board of Directors, or the express terms of any instrument or agreement pursuant to which the invested assets were contributed to the Council.

### ARTICLE IX Officers

**Section 9.01. Officers.** The officers of the Council shall be a Chair, a Vice Chair, a Secretary and a Treasurer. All elected Officers shall be Full Members of the Council as defined in Section 11.01 of these bylaws.

**Section 9.02. Qualifications.** The offices of Chair and Vice Chair may only be held by members of the Board of Directors who represent Group 1 or Group 2 Signatory Members. No person may hold more than one office at the same time, except that one person may hold the offices of Secretary and Treasurer concurrently.

**Section 9.03. Selection and Term of Office.** The officers shall be selected at the annual (December) Plenary Meeting of the Council and shall assume office starting January 1 of the following year for a term of one year. The offices of Chair and Vice Chair shall not be held by Representatives from the same Group. The office of Chair shall alternate between Group 1 and Group 2, with the Vice Chair assuming the office of Chair in the year immediately following completion of his or her term as Vice Chair. The Secretary and Treasurer shall be a Representative of a Group 3 Signatory Member and shall thus be nominated by the Group 3 Signatory Members, subject to approval by the Board of Directors.

**Section 9.04. Election of Officers.** The Council Members shall nominate candidates for the offices of Chair, Vice Chair, Secretary and Treasurer in person, or in writing at the third Plenary Meeting of each year not less than 60 days prior to the Plenary Meeting during which the

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nominations are slated for election. Written nominations must be received by the Council at its principal office prior to the start of the third Plenary Meeting, either by first class letter, facsimile, or electronic message. Any nomination must be seconded by a Voting Member Representative in person, or in writing, and accepted by the nominee in person, or in writing to be included on the ballot. For the offices of Chair and Vice Chair, Group 1 and 2 Voting Members may only nominate candidates for the office their Group will hold in the coming term. The ballot for the offices of Chair, Vice Chair, Secretary and Treasurer shall be included in the Plenary Meeting Packet of the final Plenary Meeting of each year. The Voting Members of the Council shall vote on the ballot at the final Plenary of each year. Votes may be made in person or in writing. Any absentee ballots must be received prior to the start of the Plenary Meeting to be counted. For the offices of Chair and Vice Chair, Group 1 and 2 Members may only vote for candidates for the office their Group will hold in the coming term. For each office, the candidate receiving the most votes will be awarded the office.

**Section 9.05. Duties.** The officers perform those duties that are usual to their positions and that are assigned to them by the Board of Directors or by the Voting Members at a Plenary Meeting, including those duties that are set forth in the position descriptions for each officer as adopted by the Board of Directors from time to time. In addition, the Chair of the Council acts as Chair of the Board of Directors; the Vice Chair acts in place of the Chair when the Chair is not available; and the Treasurer is the chief financial officer of the Council.

**Section 9.06. Vacancies.** If a vacancy occurs among the officers of the Council, for any reason, the Board of Directors shall elect another Representative from the same Group for the unexpired portion of the term. Signatory Organizations whose Representative serves as an officer of the Council may not substitute another individual to serve in that office.

**Section 9.07. Removal of Officers.** Any officer may be removed, with cause, by the Board of Directors, at any regular or special meeting, so long as written notice of the proposed action is given to the subject officer and to all Signatory Members of the Group that appointed the officer to office at least 30 days prior to the Board of Directors meeting at which the action to remove will be entertained. The notice of the Board of Directors shall identify, with reasonable specificity, the grounds for removal which shall either be (a) failure of the officer to attend at least two consecutive duly noticed meetings without a justified excuse as approved by the Board of Directors, or (b) repeated and material failure to perform the responsibilities of his or her office.

**Section 9.08. Resignation of Officers.** Any officer may resign at any time by giving written notice to the Board or to the Chair or to the Secretary. Any such resignation shall take effect at the date of the receipt of such notice, or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

### ARTICLE X Standing and Other Committees of the Council

**Section 10.01. Standing Committees of the Council.** The Council has established the following Standing Committees:

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(a) **The Membership Committee.** In accordance with Section 7.2 of the MOU, the Council shall have a Membership Committee comprised of three Representatives of the Group 1 Signatory Members and three Representatives of the Group 2 Signatory Members. It shall be the duty of the Membership Committee to evaluate new signatory applicants as follows:

- (i) designate the category of membership, if any, for which an applicant is qualified;
- (ii) provisionally approve or disapprove an Applicant for membership according to a process approved by the Voting Members at a Plenary Meeting; and
- (iii) forward any such provisional membership approvals to the Plenary Meeting for ratification.

**Section 10.02. Other Committees.** The Board of Directors may, by resolution, establish other standing and ad hoc committees, and such committees may include persons who are not members of the Board of Directors; however, all committee members must be either Representatives of a Signatory Member, or the Executive Director of the Council. The Board of Directors, as to matters within its jurisdiction, and the Voting Members, as to matters within their jurisdiction, may delegate management of the Council's activities to any committee to the same extent that those powers could be delegated to agents, employees, or independent contractors generally, and subject to the ultimate direction of the Board of Directors. In all other respects, committees shall be limited to making recommendations and reports to the Board of Directors or to the Voting Members at a Plenary Meeting (as to matters requiring Voting Member action or approval) and to the Executive Director regarding matters that are within their respective missions as defined by the Board of Directors in the resolution establishing the advisory committee.

**Section 10.03. Limitations on Authority of Committees.** No committee appointed by the Board of Directors shall:

- (a) Take any final action on any matter that, under the California Nonprofit Public Benefit Corporation Law, also requires approval of the members or approval of a majority of all members;
- (b) Fill vacancies on the Board of Directors or the Membership Committee;
- (c) Amend or repeal Bylaws or adopt new Bylaws; or
- (d) Amend or repeal any resolution of the Board of Directors or the Council.

**Section 10.04. Meetings and Actions of Committees.** Meetings and actions of committees of the Council may be conducted informally, provided that all members of a committee must receive at least 10 days' prior notice of committee meetings, with notice given by one of the means sanctioned for the issuance of notice of Board of Directors meetings pursuant to Section 7.06, above. The Board of Directors may adopt additional rules for the governance of any committee it establishes, provided such rules are consistent with these Bylaws or, in the absence of rules adopted by the Board of Directors, any committee may adopt such rules for the committee's governance.

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**Section 10.05. Audit Committee.** The Council shall have an audit committee consisting of at least three members of the Board of Directors, and may include nonvoting advisors. No employee of the Council may serve on the audit committee. Members of the Board of Directors who receive, directly or indirectly, any consulting, advisory, or other compensatory fees from the Council may not serve on the audit committee. The audit committee shall perform the duties and adhere to the guidelines set forth in the Council's audit committee charter as amended from time to time by the Board of Directors. Such duties include, but are not limited to:

- (a) Assisting the Board of Directors in choosing an independent auditor and recommending termination of the auditor, if necessary;
- (b) Negotiating the auditor's compensation;
- (c) Conferring with the auditor regarding the Council's financial affairs; and
- (d) Reviewing and accepting or rejecting the audit

Members of the audit committee shall not receive compensation for their service on the audit committee in excess of that provided to the directors, if any, for their service on the Board of Directors. If the Council has a finance committee, a majority of the members of the audit committee may not concurrently serve as members of the finance committee, and the chair of the audit committee may not serve on the finance committee.

**Section 10.06. Compensation Committee.** The Council shall have a compensation committee consisting of at least three members of the Board of Directors and no one who is not a member of the Board of Directors. No employee of the Council may serve on the compensation committee. Pursuant to California Government Code section 12586(g) and the applicable provisions of federal law, the compensation committee shall review the compensation of the executive director, president, and/or chief executive officer and the chief financial officer annually and whenever a modification in compensation is proposed. The review shall include an evaluation of the performance of the executive director, president, and/or chief executive officer and the chief financial officer and an analysis of appropriate compensation comparability data. Based on the compensation committee's review, it shall recommend just and reasonable compensation amounts. At the request of the Chair or a majority of the Board of Directors, the compensation committee shall review any issue involving staff compensation and benefits, including but limited to health and retirement plans.

### ARTICLE XI Finances of the Council

**Section 11.01. Assessments by the Council.** The Board of Directors shall recommend annual assessment amounts for Full Membership. The annual assessments shall be based upon an annual budget duly approved at a Plenary Meeting as required in Section 6.02 of these Bylaws and the Council's adopted policies. The paying of annual assessments to the Council is voluntary for all Signatory Members, but is required for the benefits of Full Membership and with it, the enjoyment of Council Privileges and Benefits as described in Sections 105 (d) and (e). For Group 2 Signatory Members, payment shall mean and refer to payment in cash and/or in kind



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services, as defined in the Council's policies. Officers and members of the Council's Board of Directors shall be representatives of Full Members

**Section 11.02. Checks.** All checks or demands for money and notes of the Council shall be signed by the Executive Director and one or more officers of the Council; except that the Executive Director of the Council shall have authority to be the sole signatory on Council checks not to exceed such amount as may be designated from time to time by the Board of Directors.

**Section 11.03. Operating Account.** There shall be established and maintained a cash deposit account to be known as the "Operating Account" into which shall be deposited the operating portion of all Assessments as fixed and determined for all Members. Disbursements from such account shall be for the general need of the operation including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Council's properties.

**Section 11.04. Other Accounts.** The Council shall maintain any other accounts it shall deem necessary to carry out its purposes.

**Section 11.05. Financial Statements.** The Board of Directors, through the Audit Committee, shall cause an audit of the financial affairs of the Council to be made at least every 12 months. Such audit shall reflect the financial condition of the Council as of the date of the audit and shall summarize the financial transactions in which the Council was involved during the period between the last of such audits and the date of the current audit. A copy of the audit shall be available for examination by each member of the Council's Board of Directors. A copy of any annual financial statement and any income statement of the Council for each quarterly period of each fiscal year, and any accompanying balance sheet of the Council as of the end of such period, that has been prepared by the Council shall be kept on file in the principal office of the Council for 12 months.

The income statements, statements of changes in financial position, and balance sheet referred to in this Section shall be accompanied by the report, if any, of any independent accountants engaged by the Council, or the certificate of an authorized officer of the Council that the financial statements were prepared without audit from the books and records of the Council.

## ARTICLE XII

### Conflicts of Interest / Obligation of Recusal

#### **Section 12.01. Conflicts of Interest.**

(a) No Representative of a Signatory Member of the Council, shall make, participate in making, or in any way attempt to use his or her position as a Representative, member of the Board of Directors, or officer of the Council to influence any decision or action of the Council at a Plenary Meeting or any decision or action of the Board of Directors with respect to contracts to provide services to the Council if the Representative is personally aware that the Signatory Member he or she represents on the Council, or any constituent organization that is a member or affiliate of the

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Signatory Member, has a direct or indirect material financial interest in the subject matter of the decision or action to which the vote of the Council pertains. For purposes of this Article XII, a material financial interest is defined as an interest satisfying each of the following three elements:

(i) the interest relates to a grant received by the Signatory Member (or any member or affiliated organization) or originates from an agreement between the Signatory Member (or any member or affiliated organization) and any other person;

(ii) the interest is or will be worth \$2,000.00 or more in value provided to, received by, or promised to the Signatory Member (or any member or affiliated organization) within twelve (12) months of the date when the Council vote is conducted; and

(iii) the outcome of the vote is, or is likely to have, a positive impact on the aforementioned interest which will enhance its value by a factor of ten percent or more during the term of the agreement or grant.

(b) If a Signatory Member Representative knows that a material financial interest of his or her Signatory Member (or any organization that is a member or affiliate of the Signatory Member) may be positively influenced by a Council vote on any of the matters described in subparagraph (a) above, then prior to any vote by the Council on the matter the Representative shall be obligated to disclose to the Council the fact that his or her Signatory Member (or one or more of its member or affiliated organizations) has/have a conflict with respect to the matter which involves a material financial interest. As a result of that disclosure, the Representative must be recused from voting on behalf of the interested Signatory Member.

(c) Prior to entertaining any discussion and vote on any matter described in subparagraph (a) above, the presiding Chair shall read a statement reminding all attending Voting Members of their obligations under this Article XII. That statement shall include a recital of the above definition of what constitutes a material financial interest.

**Section 12.02. Enforcement.** If any Member Representative or Signatory Member is found by the Board of Directors to have willfully failed to disclose a conflict of interest, as defined in Section 12.01 above, said conduct shall be grounds for voiding the vote of the Signatory Member. In addition, if it is determined that the Representative with the undisclosed conflict actively participated in any deliberations of the Board of Directors preceding the vote, it shall be presumed that the vote was adversely affected and thus rendered void and of no effect unless subsequently ratified by a proper vote which excludes the Representative with the conflict.

## ARTICLE XIII Miscellaneous

### **Section 13.01. Inspection of Books and Records**

(a) Inspection by Council Members. All accounting books and records, minutes of proceedings of the Council's Signatory Members, the Board of Directors and committees appointed by the Board of Directors and membership lists and papers of the Council shall at all times, during reasonable business hours, be subject to the inspection of any Signatory Member or his or her duly appointed Representative at the offices of the Council for any purpose reasonably related to the

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Signatory Member's interest as such. A Signatory Member's rights of inspection hereunder shall be exercisable on ten (10) days' written demand on the Council which demand shall state the purpose for which the inspection rights are requested. Inspection rights shall be subject to the Council's right to offer a reasonable alternative to inspection within 10 days after receiving the Signatory Member's written demand (as more particularly set forth in section 6330 and following of the California Nonprofit Public Benefit Corporation Law).

(b) Inspection by Members of the Board of Directors. Every member of the Board of Directors shall have an absolute right at any reasonable time to inspect all books, records, documents and minutes of the Council and the physical properties owned by the Council. The right of inspection by a Board of Directors member includes the right to make extracts and copies of documents.

(c) Inspection by Members of the Public. Regular reports of Signatory Members concerning their water conservation activities and efforts shall be available for public inspection, as are any reports or filings of the Council with the State Water Resources Control Board.

(d) Rules Regarding Exercise of Inspection Rights. The Board of Directors may establish reasonable rules with respect to (i) notice of inspection, (ii) hours and days of the week when inspection may be made, and (iii) payment of the cost of reproducing copies of documents requested by the Member.

**Section 13.02. Executive Director.** The Council may, from time to time, employ the services of an Executive Director to manage the affairs of the Council. To the extent not inconsistent with the laws of the State of California, and upon such conditions as are otherwise deemed advisable by the Council, the Council, acting by and through its Board of Directors, may delegate to the Executive Director or to other employees or contractors any of its day-to-day management and maintenance duties and powers under these Bylaws, provided that the Executive Director shall at all times remain subject to the ultimate direction and control of the Board of Directors. Subject to those limitations, the Executive Director shall have sole responsibility for management, control and retention of other Council staff members.

**Section 13.03. Amendment or Repeal of Bylaws.** Except as otherwise expressly provided herein, these Bylaws may only be amended or repealed and new Bylaws adopted by the affirmative vote or written ballot of a majority of all the Voting Members of the Council (which majority must also include a majority of each Group of Voting Members). Notwithstanding the foregoing, any amendment of the Bylaws must be consistent with the then current version of the MOU and the percentage of the Voting Members necessary to amend a specific clause or provision of these Bylaws shall be not less than the percentage of affirmative votes, or votes by classes of Voting Members, prescribed for action to be taken under that clause.

**Section 13.04. Notice Requirements.** Any notice or other document permitted or required to be delivered as provided herein shall be delivered as required under these bylaws and shall be sent to address(es) provided to the Council and updated from time to time by the Signatory Members.

**Section 13.05. Annual Statement of General Information.** As and when required by California Corporations Code section 6210, the Council shall file with the Secretary of State of

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the State of California, on the prescribed form, a statement setting forth the authorized number of directors (i.e., Board of Directors members), the names and complete business or residence addresses of all incumbent Board of Directors members, the names and complete business or residence addresses of the Chair, Vice Chair, Secretary and Treasurer, and the street address of its principal office in this state, together with a designation of the agent of the Council for the purpose of service of process.

**Section 13.06. Construction and Definitions.** Unless the context requires otherwise or a term is specifically defined herein, the general provisions, rules of construction, and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the foregoing, the masculine gender includes the feminine and neuter, and singular number includes the plural and the plural number includes the singular.

### **Section 13.07. Indemnification of Corporate Agents.**

(a) Any person who was or is a Board of Directors member, officer, employee, or other agent of the Council (collectively "Agents") may be indemnified by the Council for any claims, demands, causes of action, expenses, or liabilities arising out of, or pertaining to, the Agent's service to, or on behalf of the Council, to the full extent permitted by California Corporations Code section 5238.

(b) The Council shall have power to purchase and maintain insurance on behalf of any agent of the Council against any liability asserted against or incurred by the agent in such capacity, or arising out of the agent's status as such, whether or not the Council would have the power to indemnify the agent against such liability under section 5238 of the Corporations Code; provided, however, that the Council shall have no power to purchase and maintain such insurance to indemnify any agent of the Council for a violation of California Corporations Code section 5233.

**Section 13.08. Nonpaid Members of the Board of Directors; Alleged Failure to Discharge Duties; No Monetary Liability.** Except as provided in California Corporations Code sections 5233 or 5237, there is no monetary liability on the part of, and no cause of action for damages shall arise against, any nonpaid member of the Board of Directors, including any nonpaid Board of Directors member who is also a nonpaid officer of the Council based upon any alleged failure to discharge the person's duties as a Board member, or officer, if the duties are performed in a manner that meets all of the following criteria:

- (a) The duties are performed in good faith;
- (b) The duties are performed in a manner such Board of Directors member believes to be in the best interests of the Council; and
- (c) The duties are performed with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

### **Section 13.09. Personal Liability for Negligence.**

(a) Except as provided in subparagraph (c) below, there shall be no personal liability to a third party on the part of a volunteer member of the Board of Directors or officer of the Council caused by the Board of Directors member's or officer's negligent act or omission in the performance

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of that person's duties as a Board of Directors member or officer, if all of the following conditions are met:

(i) The act or omission was within the scope of the Board of Directors member's or officer's duties;

(ii) The act or omission was performed in good faith;

(iii) The act or omission was not reckless, wanton, intentional, or grossly negligent; and

(iv) Damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the Council, either in the form of a general liability policy or a Board of Directors member's and officer's liability policy, or personally to the Board of Directors member or officer. In the event that the damages are not covered by a liability insurance policy, the volunteer Board of Directors member or volunteer officer shall not be personally liable for the damages if the Board of Directors and the person had made all reasonable efforts in good faith to obtain available liability insurance.

(b) For purposes of this Section 10.10, "volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by the way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a member of the Board of Directors or an officer does not affect that person's status as a volunteer within the meaning of this Section.

(c) This Section does not eliminate or limit the liability of a Board of Directors member or officer for (i) any liability with respect to self-dealing transactions as provided in California Corporations Code section 5233 or any liability with respect to certain prohibited distributions, loans or guarantees as provided in section 5237 of said law; or (ii) in any action or proceeding brought by the California Attorney General.