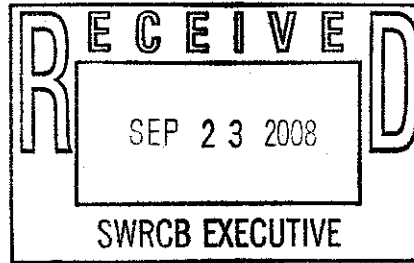


September 23, 2008

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



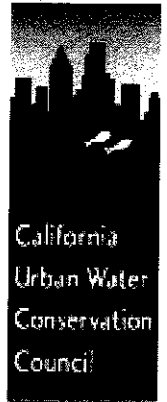
The California Urban Water Conservation Council read with great interest the conservation discussion paper issued by the State Water Resources Control Board on August 22, 2008. We appreciate the opportunity to give input in the Board's efforts to explore mandatory conservation measures using its regulatory authority. We are especially interested in the concept of mandating the 14 Best Management Practices (BMPs) identified in the Memorandum of Understanding (MOU).

I urge caution in this approach. The BMPs as originally envisioned, articulated and updated since 1991 are intended as voluntary measures, with proven water savings, which can be revised as new methods, techniques or practices are identified. The MOU has specific methods by which such revisions are accomplished and the more than 270 water agency and environmental organization signatories to the MOU are committed to reviewing BMPs and updating them as necessary.

The revision process has led to 13 amendments to the MOU and the BMPs since its adoption in 1991, the most recent in June 2007. In 2008, the Council embarked on a yearlong effort to completely update the BMPs document, Exhibit 1 of the MOU.

These most recent proposed revisions are scheduled for adoption in December 2008 and represent hundreds of hours of input from Council signatories, including water agencies, environmental groups and water conservation service providers. Hallmarks of the proposed revisions include introduction of a Flex Track approach to conservation program implementation which is designed to help increase both the rate of water agency compliance with BMP reporting requirements and to focus the BMPs more directly on water savings goals. Included in this proposal is the re-categorization of BMPs as "Foundational" or ongoing practices which are central to a utility commitment to water conservation.

This commitment to continued involvement in and revision to BMPs is not a structure well suited to mandatory regulations, which require formal rule-making and a more static framework on which the regulated community can depend. While the Board's concern for BMP implementation rates is laudable, it strikes us that regulation is better suited in arenas such as plumbing codes and standards; standards of weight and measurement; design standards and/or quality control. Each of these could be, and has in fact been, helpful in



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advancing the art and science of conservation in California. However, as customer relations, marketing and information are all core activities in a successful implementation of the BMPs, the use of a regulatory structure to mandate BMPs appears to be inappropriate.

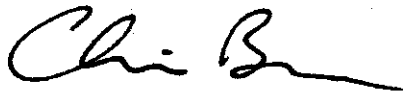
An additional comment is that on page 3 the Conservation Discussion Paper appears to have misinterpreted the CALFED Water Use Efficiency Evaluation, equating the CALFED's statement that 50% of MOU signatories were "out of compliance" (pg 17) with the idea that they were "not implementing" 9 of the 14 BMPs. In Council parlance "out of compliance" can include partially implementing a BMP, partially reporting BMP activities, and implementing an alternative to the BMP but failing to file an Exemption request or a statement that the Agency is doing something At Least As Effective As the BMP. While it is undoubtedly clear that some agencies which were "out of compliance" were "not implementing" a BMP, it is also clear that an agency deemed "out of compliance" was not being evaluated on the extent and success of their conservation efforts. The fact that numerous Council Signatories have implemented conservation programs that are not articulated in the 14 BMPs is a significant motivator for the adoption of the Flex Track approach being considered in the draft BMP revisions of 2008.

A number of potentially successful approaches to urban conservation using mandates could be pursued. It is important that such efforts be enforceable and equitable. The Council encourages the Board to look for opportunities for regulation in measures which are reasonably enforceable.

In 2007, the Board staff sent letters to signatories with State Revolving Fund loans who did not file all of their BMP reports reminding them that a condition of their loan was completion of their BMP reports. Similar actions by the US Bureau of Reclamation with their Contractors on the CVP have also led to greater levels of compliance with the MOU. The Council promotes the Board's use of its authority to request updates from all signatories to the MOU who have failed to report on the BMPs. This will not only assist the Board in promoting the objectives of the Bay/Delta Strategic Workplan, it will help Californians better understand the level and extent of actual conservation activities in the state.

Thanks again for the opportunity to participate in the workshop on October 1, and for the chance to submit these comments.

Sincerely,



Chris Brown, Executive Director
California Urban Water Conservation Council