



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

March 4, 2008

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Via E-mail:
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Dear Messers Todd and Davidoff:

Thank you for the opportunity to comment on the Draft 2008 Water Use Efficiency Proposal Solicitation Package (PSP) and AB1420 compliance guidelines. As you may know, The Metropolitan Water District of Southern California (Metropolitan) and the Natural Resources Defense Council were active co-sponsors of AB 1420. The grant programs administered by the Department of Water Resources (DWR) have advanced the cause of water use efficiency by funding tangible water savings program, investing in research, and promoting market transformation to high efficiency devices and practices. Metropolitan looks forward to applying for Proposition 50 grants in this funding cycle.

Metropolitan's comments on the PSP fall into three categories: AB 1420 compliance guidelines, Urban Water Management Plan requirements, and eligibility for locally cost-effective programs.

AB 1420 Compliance Guidelines

Metropolitan recommends a delay or a significant restructuring of the AB 1420 compliance guidelines. We have identified four basic issues that have led us to this conclusion: 1) AB 1420 compliance is premature and not required for this cycle under the law; 2) compliance testing using CUWCC BMP criteria is possibly unfair, poorly defined, and will lead to exceedingly low numbers of eligible agencies; 3) the allowance to cure non-compliance with a conservation plan cannot work in the time allowed, and 4) the rule that co-applicants and cooperating agencies meet the AB1420 compliance requirement is ambiguous and could be biased against wholesale agencies that seek to implement conservation programs.

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Premature Implementation

AB 1420 conditions the eligibility for grants or loans starting January 1, 2009. DWR had decided to move forward with “early implementation” of AB 1420 requirements as an administrative decision, because the projected date for executing contracts may extend into 2009. However, DWR could make the administrative interpretation that the AB 1420 is triggered based on the issuance date of the final PSP or final selection of projects to be awarded grants, both of which will occur in 2008. This alternative, which Metropolitan is recommending, would allow time for the proper implementation of the AB 1420 requirements in future cycles of grant awards. During the negotiations on the bill last year, the designation of January 1, 2009, was recognized as the earliest possible date to allow DWR and the urban water agencies sufficient time to develop the appropriate and most effective reporting mechanisms.

Unfair and Unreasonable Standard for Compliance

AB 1420 directs DWR to develop eligibility requirements through a process, including consideration of the conservation measures described in the CUWCC MOU. DWR has chosen the CUWCC BMP compliance standard as its standard for AB 1420 in its draft PSP. Metropolitan believes that the CUWCC compliance standard is problematic for no less than six reasons.

- The BMPs have ramping compliance standards depending on the date of signature by an agency. As a result agencies that have been members of the CUWCC the longest have the highest standards to meet. This may be judged, by some, to be unfair. It also creates the interesting paradox of giving agencies the incentive to resign and remain non-signatories or, if allowed, rejoin the CUWCC to be judged as a year-one members.
- BMP compliance for year-one members is zero for all the water savings BMP, which brings in the question of how to judge year-one members and, more importantly, non-signatories.
- The MOU is expiring in 2008 and is therefore undefined as it is currently written for dates January 1, 2009 and beyond.
- The CUWCC members are negotiating the restructure of the BMPs to give more latitude on methods of compliance by allowing agencies to meet water savings targets instead of the minutia

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in the BMPs. In essence, current BMP compliance requirements are felt to be too restrictive to promote the best water conservation policy.

- At least two BMPs, BMP 1 and 5, are broadly felt to be outdated and/or no longer applicable. However, these BMPs have not been re-written because it is unclear what should replace them. In the case of BMP 5, compliance levels are estimated to be less than 10 percent and the redraft of the BMP is awaiting the outcome of a statewide evaluation of weather-based irrigation controllers.
- For the above reasons and others, overall compliance with all BMPs for signatory members of the CUWCC, is less than 10 percent and most complying agencies are wholesalers that are unlikely to qualify for grants under the current rules unless their retail agencies also comply.

As a result, Metropolitan believes that DWR should not use the compliance standards of the CUWCC BMPs for its AB 1420 compliance standards. In accordance with AB 1420, DWR should do the work necessary to develop its own compliance standards that are fair to all water agencies regardless of the arbitrary date associated with that agency joining a voluntary non-profit organization. This would be best achieved by postponing the implementation of AB 1420 per the proposed solution above and/or setting a much lower standard for compliance while these issues are being resolved.

Ineffective "Curing Process"

DWR allows the curing of any deficiency in meeting their AB 1420 compliance standard by providing a plan to bring the agency into compliance. However, development of a conservation strategy plan takes a year or more, approval by local boards, and should have broad community support. And, because the current AB 1420 compliance standards are still in draft form, it is unclear what standard this strategy plan is supposed to meet. This means that work on a plan would likely not start until a standard is set. As a result, this ability to cure deficiencies is flawed for the current round of funding. Metropolitan suggests three possible solutions:

- Delay AB 1420 for this round, as discussed above
- Set lower standards for this round, possible based on the "foundational BMPs" (BMP 3: System Water Audits and Leak Detection; BMP 4: Metering with Commodity Rates; BMP 7: Public

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Information Campaign; BMP 8: Education; BMP 10: Wholesale Agency Assistance Programs;
and BMP 11: Water Rates)

- Require that a plan be developed as part of the grant award over the term of the grant.

Unclear and Potentially Over-Restrictive Rules for Co-Applicants and Cooperating Agencies

DWR has required that all applicants, co-applicants, and cooperating agencies meet DWR's AB 1420 compliance standard. However, it is unclear if wholesalers that provide direct incentives to retail customers actually have co-applicant or cooperating agencies. If it is decided that a wholesaler has cooperating or co-applicant agencies through their customers or retailers, then an agency like Metropolitan would have 300+ co-applicants. This would be a completely unmanageable test for compliance.

AB 1420 addresses wholesalers and "regional programs" as two separate issues. AB 1420 states that the role of wholesalers should be recognized. This could be read as "in situ" for each agency. Under this reading, wholesalers may have naturally occurring relationships and rationales to implement conservation with or without local agencies and therefore may not have co-applicant or cooperating agencies. In another place, AB 1420 refers to regional programs, defined as a lead and at least one other agency. In this circumstance, the lead agency can claim regional compliance based on satisfying the aggregate responsibility of all co-applicant agencies by the cumulative production of their programs. While understandable, this is a very difficult calculation to make in the timeframe allowed by the early implementation of AB 1420 requirements and is also subject to all the underlying issues of using the CUWCC BMP standard, which is discussed above.

As a result of these issues, Metropolitan recommends that DWR allow wholesalers that meet applicable foundational BMPs, to qualify as independent applicants.

Urban Water Management Plan Requirement

The current PSP requires that an agency have a complete and approved Urban Water Management Plan to receive a grant. However, an agency only has control over the submission of these plans, not their approval. The delay in reviewing the UWMP is not the fault of the agency applying for a grant. Further, if an agency has not received notification of deficiency regarding their UWMP in a reasonable time, then it may be very difficult to clear any defect in a timely manner. As a result,

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Metropolitan recommends that DWR qualify all agencies that have submitted an UWMP, unless a deficiency has been reported to the agency prior to the issuance of the final PSP.

Eligibility for Locally Cost-Effective Programs

Metropolitan has identified an apparent inconsistency between AB 1420 and DWR's administrative rules regarding the eligibility for locally cost-effective programs. Current DWR rules do not allow the use of grant funds for locally cost-effective projects. However, AB 1420 states that grants can be awarded to help bring an agency into compliance with cost-effective conservation measures. It is unclear, how to interpret this inconsistency. To resolve this, Metropolitan recommends that DWR allow grant funds to be used for locally cost-effective conservation programs.

Again, I wish to thank you for the opportunity to comment on the Draft 2008 Water Use Efficiency Proposal Solicitation Package and AB 1420 compliance guidelines. Metropolitan has a long history of implementing conservation in Southern California, working with DWR through grant programs, and supporting and sponsoring legislation that promote water efficiency in the state. Metropolitan looks forward to working with DWR to promote conservation and plans to submit grant proposals for the 2008 PSP cycle.

Sincerely,



Stephen N. Arakawa
Manager, Water Resource Management

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