

March 11, 2009

DRAFT
Compliance with AB 1420 Requirements

Assembly Bill (AB) 1420 (Stats. 2007, ch. 628) amended the Urban Water Management Planning Act, Water Code Section 10610 et seq., to require, effective January 1, 2009, that the terms of, and eligibility for, any water management grant or loan made to an urban water supplier and awarded or administered by the Department of Water Resources (DWR), State Water Resources Control Board (SWRCB), or California Bay-Delta Authority (CBDA) or its successor agency (collectively referred to as “Funding Agencies”) , be conditioned on the implementation of the water Demand Management Measures (DMMs) described in Water Code Section 10631(f).

Water management grants and loans include programs and projects for surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability and water supply augmentation. This funding includes, but is not limited to, funds made available pursuant to Public Resources Code Section 75026 (Integrated Regional Water Management Program).

Who is an Urban Water Supplier?

“Urban Water Supplier” means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3000 customers or supplying more than 3000 acre-feet of water annually. An urban water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers (Water Code Section 10617).

All urban water suppliers, whether members or not of the California Urban Water Conservation Council (CUWCC) Memorandum of Understanding (MOU), regardless of duration of membership, are subject to AB 1420 if applying for a water management grant or loan.

Demand Management Measures and Best Management Practices

AB 1420 conditions eligibility for a water management grant or loan on implementing the DMMs listed in Water Code section 10631(f). These DMMs correspond to the fourteen Best Management Practices (BMPs) listed and described in the CUWCC MOU. Based on this, DWR has consulted with the CUWCC and appropriate funding agencies, and determined that it will equate the DMMs with the BMPs described in the CUWCC MOU for loan and grant funding eligibility purposes.

AB 1420 Requirements

AB 1420 requires:

- (1) DWR, the State Water Board, and CBDA to condition water management grants or loans made to an urban water supplier on the implementation of the DMMs described in

Water Code section 10631. [As noted above, the DMMs correspond to the BMPs described in the CUWCC Memorandum of Understanding (MOU)],

(2) DWR, in consultation with the State Water Board and the CBDA, to develop eligibility requirements that consider the California Urban Water Conservation Council's BMPs; and,

3) DWR to exercise its discretionary authority to determine whether an urban water supplier is eligible for a water management grant or loan.

What does BMP Implementation Compliance Mean?

Urban water supplier may be eligible for a water management grant or loan if it demonstrates that it is implementing or scheduling the implementation of BMPs, as follows:

1. The urban water supplier is currently implementing all BMPs at a coverage level determined by the CUWCC MOU: <http://www.cuwcc.org/mou-main-page.aspx> ;
or
2. The urban water supplier has submitted a schedule, budget, and finance plan commencing within the first year of the agreement for which grant funds are requested to implement all BMPs at the coverage level determined by the CUWCC MOU; or
3. The urban water supplier has demonstrated by providing supporting documentation that certain BMPs are "not locally cost effective." "Not locally cost effective" means that the present value of the local benefits of implementing a BMP is less than the present value of the local costs of implementing that BMP.

Compliance on a regional basis requires participation in a regional conservation program consisting of two or more urban water suppliers that achieves the level of conservation or water efficiency savings equivalent to the amount of conservation or savings achieved if each of the participating urban water suppliers implemented the water demand management measures. The urban water supplier administering the regional program shall provide participating urban water suppliers and DWR with data to demonstrate that the regional program is consistent with this clause. DWR shall review the data to determine whether the urban water suppliers in the regional program are meeting the eligibility requirements [Water Code section 10631.5(b)(2)(A)(ii)].

Past, current, and near future implementation of each BMP must together demonstrate that the urban water supplier is implementing BMPs at the coverage level determined by the CUWCC MOU.

Alternative Conservation Approaches:

AB 1420 allows for the implementation of alternative conservation approaches. [Water Code section 10631.5(b)(1)(A)]. For the purpose of loan and grant program this includes CUWCC Flex Track BMPs and/or other alternative conservation approaches. If an urban

water supplier chooses to implement alternative conservation approaches, they must provide equal or greater water savings than the established BMPs.

For the details of BMP implementation and Flex Track, see <http://www.cuwcc.org/mou/exhibit-1-bmp-definitions-schedules-requirements.aspx>. The CUWCC is currently in the process of writing BMP Guidebooks to assist agencies with their BMP program implementation.

What Do I have to do to Demonstrate Compliance with AB 1420?

Urban water suppliers are required to complete the AB 1420 Self-Certification Statement Table 1 (Table 1).

Table 1 is not complete without a signature of an authorized representative of the urban water supplier. By signing Table 1, the authorized representative certifies under penalty of perjury that all information and claims regarding compliance, implementation of the BMPs, and financing plans are true and accurate. The urban water supplier and its authorized representative understand that the information in Table 1 and the supporting documents are extremely important and must be true and accurate. Falsification or inaccuracies in Table 1 and in any supporting documents may, at the discretion of the Funding Agency, result in loss of all grant or loan funds to the applicant. Additionally, the Funding Agency may take legal action to recover any disbursed funds and refer the matter to the Attorney General's Office.

Urban water suppliers must also submit hard copies of any reports that support or substantiate claims made on Table 1 regarding past, current, and planned BMP implementation or alternative conservation approaches, as well as any documentation supporting a claim of exemption. These reports include urban water management plans, and the most recent BMP reports to the CUWCC as part of the Urban MOU. If the urban water supplier is not a CUWCC member, any reports on BMP implementation and/or alternative conservation approaches must be submitted to DWR in the CUWCC report format.

Some Funding Agencies may provide funds to help the urban water supplier implement BMPs and/or alternative conservation approaches to comply with AB 1420. AB 1420 Compliance Table 2 should be completed and submitted **only if** the grant or loan program allows funding to be used for BMP implementation, **and** the urban water supplier is proposing to use grant or loan funds for BMP implementation to comply with AB 1420. The use of grant or loan funds for BMP compliance and/or alternative conservation approaches, and conditions of that usage (amount of funding, cost-share, etc.) are program specific.

How Often Must Documentation be Provided?

An urban water supplier must complete Table 1 for each grant or loan program. An urban water supplier who already has a signed agreement and has submitted Table 1 will need to submit an updated Table 1 when applying for funds from the same or another grant or loan program. Updated information must include any changes in the implementation schedule, financing, budget, and level of coverage.

Where to Submit Documents

The completed documents should be submitted as follows:

1. Submit the original Table 1 (and the original Table 2, if applicable), all supporting reports (BMP reporting), and documents substantiating the status of BMP implementation as described in Table 1 or any other documents (e.g., BMPs that have been implemented in the past, are currently being implemented, or are scheduled for implementation with a schedule, budget, level of implementation, and financing plan).

Via US Mail	Via Hand Delivery
Baryohay Davidoff (Attn. AB 1420 Compliance) Department of Water Resources Office of Water Use Efficiency & Transfers PO BOX 942836 Sacramento, CA 94236	Baryohay Davidoff (Attn. AB 1420 Compliance) Department of Water Resources Office of Water Use Efficiency & Transfers 901 P Street, Third Floor Sacramento, CA 95814

2. Submit a copy of Table 1 (and a copy of Table 2, if applicable) **along with the grant application package to the Funding Agency**

Department Review Process

Upon receipt of a water management grant or loan application, the Funding Agency will request from DWR an AB 1420 eligibility determination. AB 1420 requires that DWR make a determination and respond to the Funding Agency within 60 days of the request. Urban water suppliers that do not submit a completed Table 1 may not be eligible to receive grant or loan funds.

DWR will do the following:

1. Review Self-Certification Statement Table 1 to determine whether the urban water supplier is eligible to receive grant or loan funds. The eligibility determination will be based on information provided in Table 1. DWR eligibility determination is subject to an audit of the supporting documents and information provided with Table 1;
2. Review AB 1420 Compliance Table 2, if applicable;
3. Inform the Funding Agency, within 60 days of DWR’s determination whether an urban water supplier is an eligible to receive funding. DWR may also recommend that Table 1 be included in the grant or loan funding agreement and a schedule for submittal of progress reports to the Funding Agency to ensure continued compliance;

4. May audit the supporting documents to verify if all the information provided in Table 1 is accurate and valid, and to verify continued compliance. DWR will notify both the Funding Agency and the urban water supplier if it finds inaccuracies, discrepancies, or false statements to support claims made in Table 1; and,
5. May request additional information and documentation, including reports to substantiate the accuracy of the information being reviewed before issuing its audit findings.

Failure to Implement BMPs and/or Alternative Conservation Approaches

Failure to implement BMPs and/or alternative conservation approaches as detailed in Table 1, or Table 2, if applicable, may cause the Funding Agency, at its sole discretion, to halt disbursement of grant or loan funds, not pay any pending invoices, and pursue any other applicable legal remedy.