



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

NOTE: For city officials arriving early, please join us from 9 – 9:45 a.m for a **continental breakfast** at the League offices at 1400 K Street, 3rd floor, behind the Sacramento Convention Center

January 6, 2012

TO: Members: Environmental Quality Policy Committee

FROM: Owen Newcomer, (Chair), Council Member, Whittier
Kyra Ross, League Staff (916) 658-8252

RE: **POLICY COMMITTEE MEETING**
DATE: **Thursday, January 19, 2012**
TIME: **10:00 a.m. – 3:00 p.m.**
PLACE: **Sacramento Convention Center**
1400 J Street, Room 203
Sacramento, CA

Attached are the agenda and background materials for the upcoming policy committee meeting. If you plan to attend, and have not yet returned the attendance form, please contact Meg Desmond at mdesmond@cacities.org. Registration for this meeting is not required; however, your response will help us determine the meal count.

In addition, if you will be in town on Wednesday night, **please join us for a reception on January 18, 2012**, 6:00 – 7:15 p.m., at the Mayahuel Restaurant located at 1200 K Street (corner of 12th & K), Sacramento. Come network and mingle with new mayors and council members, state legislators, League Partner company representatives, League leadership and staff. Please RSVP to Emily Cole at 916.658.8283 or ecole@cacities.org with your name, title and city/organization.

Travel Informaton: Air transportation, shuttle service, driving directions, parking and hotel information are provided on the back of this letter.

We look forward to seeing you at our first meeting in 2012!

League of California Cities Policy Committee Meetings - January 19 – 20, 2012

(The League office is located directly behind the Convention Center.)

Meeting Locations: Sacramento Convention Center: 1400 J Street, Sacramento 95814 or
League of California Cities: 1400 K Street, Sacramento 95814

AIR TRANSPORTATION:

Low, refundable airfares are available through the Enhanced Local Government Airfare Program. The program requires that a city be pre-registered; check with your city's travel coordinator. This program is ticketless and includes Southwest, United and United Express. For city pairs, rates, or if your city has not yet registered, please check the League Web site at <http://www.cacities.org/travel> for details.

TRANSPORTATION FROM AIRPORT:

YOLOBUS information - <http://www.yolobus.com/m3.html> - 530/ 666-BUSS (2877)

Cost: \$2.00 each way; seniors (62+) /disabled, \$1.00

Travel time: The bus ride is approximately 20-30 minutes.

From the Airport. (Bus 42A)

Buses run every hour (at approximately 19 minutes past the hour). After departing plane, go to the island outside and locate Public Transit. This is where you will catch YOLOBUS

SUPERSHUTTLE (1-800-BLUE VAN): Upon arrival at the airport, claim your luggage then proceed to the **SuperShuttle** ground transportation booth. A representative will arrange SuperShuttle transportation to your destination. Reservations not required. **One-way ticket per person: \$13.00. Round trip ticket per person: \$26.00.**

Please note: Downtown hotels do not provide shuttle service from the airport.

CABS are quoted between \$30.00 to \$40.00 from airport to downtown.

RETURN TO AIRPORT: SuperShuttle (1-800-BLUE VAN) makes regular stops every 1/2 hour in front of these hotels, both within walking distance of the Convention Center:

Hyatt Sacramento - 1209 L Street, Sacramento - (916) 443-1234

Sheraton Grand -1230 J Street, Sacramento - (916) 447-1700

YOLOBUS: Back to Airport (Bus 42B) Pickup location: L & 13th Streets

Buses run every hour (at 5 minutes past the hour). The bus ride is approximately 20-30 minutes.

DRIVING DIRECTIONS:

Below are suggested driving directions to the Convention Center and may not be the most efficient route from your home. There are many websites which offer assistance with driving directions. Here are two that may be helpful: www.mapquest.com, and <http://maps.yahoo.com>.

From I-5: Exit "J" Street. The Convention Center is located on "J" Street (one-way) between 13th & 15th Streets.

From I-80 (West traveling East): Take I-5 North, then follow the above directions.

From I-80 (East traveling West): Take I-80 to Capitol City Freeway (right lanes), Exit 160 Downtown (right lanes). When freeway ends, merge to near left lane. Turn left on "J" Street, go 1 block.

From the South on Highway 99: Take 99 North to Business 80 West (Capitol City Freeway). Exit at 16th Street. Continue on 16th Street, and turn left on "I", then left on 13th Street.

PARKING: *(Allow time for parking; the downtown area is congested.)*

There are numerous public parking garages in the vicinity. Those **closest to the Convention Center** are located at 13th and "J" Streets - directly across from the Sheraton Grand Hotel and the Convention Center. From "J" Street (one way), turn left on 13th Street; entrances to the parking lots are on both the left and the right. The Hyatt Hotel has its own parking garage and valet parking. From "J" Street, turn right on 13th Street, then right on "L" Street. The parking garages **closest to the League offices** are on "K" Street next to the Capitol Garage, corner of 15th & "K" Streets (enter from K Street).

HOTELS:

Hyatt Sacramento, 1209 L Street, Sacramento (\$165 + taxes and fees) - Please contact Megan Dunn at mdunn@cacities.org for the online housing link to get the discounted League rate. This rate is not available by phone or at Hyatt.com. This venue is the Headquarter Hotel for the League's New Mayors & Council Members Academy from January 18 -20. **THE DISCOUNTED RATE WILL NOT BE AVAILABLE AFTER JANUARY 6, 2012.**

ENVIRONMENTAL QUALITY POLICY COMMITTEE

Thursday, January 19, 2012

10:00 a.m. – 3:00 p.m.

Sacramento Convention Center, Room 203, Sacramento

Note: For city officials arriving early, please join us from 9 – 9:45 a.m. for a continental breakfast at the League offices at 1400 K Street, 3rd floor (behind the convention center).

Individuals who wish to review the full text of bills included in this packet are encouraged to do so by visiting the League's website at www.cacities.org and clicking on "Bill Search" found at the left column. Be sure to review the most recent version of the bill.

A G E N D A

- I. SPECIAL ORDER: State Budget and Redevelopment Briefing for all policy committee members 10:00 – 10:45 a.m., Room 204, Sacramento Convention Center**
Upon adjournment, individual policy committee meetings will begin
- II. Welcome and Introductions**
- III. Public Comment**
- IV. Overview of Parliamentary Procedure and Roberts Rules (Handout) (Informational)**
- V. Committee Orientation (Attachment A) (Informational)**
- VI. League Strategic Goals for 2012 (Attachment B) (Informational)**
- VII. Review of Summary of Existing Policy & Guiding Principles (Attachment C) (Action Item)**
- VIII. Committee Work Program**
 - 2011 Work Program: Status (Attachment D) (Informational)
 - 2012 Draft Work Program (Attachment E) (Action Item)
- IX. State Budget and Legislative Update (Attachment F) (Action Item)**
 - Governor's Proposal on Regional Water Quality Control Board Consolidation
 - Martha Guzman-Aceves, Deputy Legislative Secretary, Office of Governor Jerry Brown, Speaker
 - Water Quality Permits and Fees Legislation.
 - Kelye McKinney, Council Member, City of Roseville, Speaker
 - The Year Ahead
 - Assembly Member Wes Chesbro- Invited
- X. Next Meeting: Thursday, March 29, 2012, Doubletree Hotel, Ontario**

Brown Act Reminder: The League of California Cities' Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:

- 1) Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or*
- 2) A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.*

A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.

NOTE: Policy committee members should be aware that lunch is usually served at these meetings. The state's Fair Political Practices Commission takes the position that the value of the lunch should be reported on city officials' statement of economic interests form. Because of the service you provide at these meetings, the League takes the position that the value of the lunch should be reported as income (in return for your service to the committee) as opposed to a gift (note that this is not income for state or federal income tax purposes—just Political Reform Act reporting purposes). The League has been persistent, but unsuccessful, in attempting to change the FPPC's mind about this interpretation. As such, we feel we need to let you know about the issue so you can determine your course of action.



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HOW LEAGUE POLICY COMMITTEES WORK

January 2012

Policy Committee Subject Matter

The League has eight (8) policy committees, each with its own subject matter jurisdiction. You may refer to the “*Summary of Existing Policy and Guiding Principles*” booklet (*Summary*) to find the subject matter for each committee. This document will be updated in January 2012 and again in January 2014. Policy in the *Summary* is used to determine League legislative and regulatory positions. The *Summary*, in its entirety, is located on the League’s Web site at www.cacities.org/summary. Individual sections are located on each policy committee’s Web page, which are available at www.cacities.org/polcomm.

Policy Committee Legislative Agenda Items

League policy committees review bills or regulatory proposals on issues for which the League does not have existing policy, or for which staff members feel a policy discussion needs to occur for greater clarity or background on an issue. Staff will lobby legislation, funding proposals, or regulatory changes where existing policy provides clear direction.

Role and Responsibility of Committee Members

The strength of the League’s policy process and ability to effectively engage in the legislative process is based on the active involvement of and the expertise of city officials. We rely on your technical and policy knowledge, thoughtfulness, strategic thinking, and political savvy. Your role is to engage in thoughtful discussions at the meeting. Members should review the agenda and background material prior to the meetings, attend each meeting, and stay for the entire duration of the meeting.

Committee Recommendations on Positions on Bills

The committee’s actions or positions are a recommendation to the League Board of Directors for a formal League position. Possible committee recommendations can be:

- Support
- Oppose
- Support-if-amended (as appropriate, specific amendments may be requested)
- Oppose-unless-amended (as appropriate, specific amendments may be requested)
- No position
- Neutral

There are nuanced differences between some of these positions. For example, “*support-if-amended*” sends a very different message than “*oppose-unless-amended*.” Both positions might seek the same change but the support-if-amended position means that the League would be listed with the “supporters”

of the bill in most legislative analysis. In addition, “*no position*” and “*neutral*” have different meanings and require different actions from staff. Selection of one or the other depends in part upon what type of message or political posture the League needs to take. Staff will advise the committee about the implications of each on a case-by-case basis.

Approval by League Board Needed for All Committee Recommendations

All committee actions are recommendations to the League Board, which has the final say on all positions. Under no circumstances are individual committee members nor the committee itself authorized to speak on behalf of the League. When a committee action is supported by a large majority (e.g., 32 to 3), the recommendation is placed on the Board’s consent calendar. When the committee vote is split (e.g., 15-13), the item will be presented as an action item for the Board’s discussion. Staff will also provide information about the reasons behind the committee’s recommendation to the Board.

Most of the time, the Board adopts the recommendation of the policy committee. When the Board adopts a different position, staff will notify the committee members of the reason for the different position. This likely will be done in the next regular communication with the committee.

Some issues cut across more than one committee. When this occurs, staff will coordinate and bring a bill to more than one committee for review and recommendation. The recommendations are then forwarded to the League Board and if there is a different recommendation, the League Board resolves the difference.

Role of the Committee Chair

The chair’s role is to balance the often competing needs of the membership to have a full and thoughtful discussion on the issues within the very real time constraint. The chair will often limit debate – either in the number of speakers or the amount of time each speaker has – in order to ensure that we can move ahead on our agenda and cover the items included. We ask that when you make comments on issues before the committee that you be brief and concise and that you not repeat what has already been stated. Also, if you have already spoken on an issue, the chair may ask you to hold your comments until after new speakers are able to share their comments.

Committee Schedule and Process

Committees generally meet three times a year (January and June in Sacramento, March in Ontario), plus an abbreviated meeting at the Annual Conference (September in San Diego) to review resolutions if any are assigned to it. (The September meeting schedule will be announced in mid-July). Meetings begin at 10:00 a.m. and conclude by 3:00 p.m., although some subcommittees may meet at 9:00 a.m. Please plan to be present for the full duration of the committee meetings.

Agendas/Disseminating Information

A meeting notice is mailed to committee members about a month to six weeks in advance of the meeting, containing travel and logistical information. An agenda packet is mailed at least one week before a meeting and also sent via e-mail. **(Note: Following the January meeting, agenda packets will only be sent via email and posted online. If you prefer a hard copy of the agendas and highlights, please contact Meg Desmond by email: mdesmond@cacities.org or phone: 916-658-8224)** Highlights that summarize committee actions are prepared by staff and provided to committee members about two to three weeks after the meetings. All materials are also available on the League’s Website: www.cacities.org/polcomm.

We encourage you to visit the League’s Web site: www.cacities.org. In addition to containing committee materials, the Website contains information on the League’s priorities and a link to track individual bills

and the League's position on them. You should also subscribe to the League's electronic newsletter *CA Cities Advocate*.

For meetings that are heavy in legislative review (generally in March/April and June), staff will try to find a balance between getting the agenda packet out early and the need to delay finalizing the agenda packet in order to include as many legislative items as possible and in their most current version. At some meetings, staff may use a supplemental agenda for last minute legislative issues. We will use e-mail as appropriate to send out late-breaking information or to gather committee input throughout the year. It is important that we have your preferred e-mail.

How to Get an Item on the Agenda

Because staff prepares background material in advance of the meeting, and prepares the agenda in consultation with the Chair and Vice Chair, it is difficult to add items at the last minute. In addition, the League tries to comply with the spirit of the Brown Act in its meetings. If you wish to have the committee discuss an item, you should contact staff well in advance of the meeting in order to determine the feasibility of including it on the agenda, and if so, allow staff time to prepare the appropriate background material. Because of time constraints and a full work program before the committee, it may not always be possible to respond to such requests.

Issues Should Have Statewide Impact

Although some of you may represent your division, your department, your affiliate organization, or simply yourself, we should all keep in mind that the League must address issues of statewide impact and interest. Thus, while an issue or bill may be of interest to your city or region, if it does not have broader, statewide implications, the League likely will not engage in that policy discussion or take a position. You should keep this in mind if you wish to suggest an item for discussion.

Brown Act and Roberts Rules of Order

The League tries to comply with the spirit of the Brown Act. Thus, when the committee discusses items not already on the agenda (e.g., supplemental legislative agenda), the Chair will ask for a vote of approval to add that item to the agenda. The League also follows Roberts Rules of Order and provides a brief overview of key procedural steps in Roberts Rules as they apply to committees.

Staffing for Committee

Each committee has a staff lobbyist assigned to it. This individual is your main point of contact for logistics or questions about the agenda. Generally, each lobbyist has a "main" committee and will remain with the committee throughout the meeting. Occasionally he/she may leave the meeting to make guest appearances in other committees to discuss issues or bills. Additional staff may also be present to support the committee's work.

League Partners and Other Guests

The League Partners have a non-voting representative assigned to each policy committee and are seated at the table with other committee members. In addition, city officials, other members of the League Partners Program, and interested members of the public are welcome to attend the meetings. We provide an opportunity for our League Partners and other members of the public to offer comment on items before the committee during the designated public comment period on the agenda.



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2012 LEAGUE STRATEGIC GOALS¹

Support Sustainable and Secure Public Employee Pensions and Benefits.

Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.

Promote Local Control for Strong Cities. Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.

Build Strong Partnerships for a Stronger Golden State. Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity and responsiveness of our state government and intergovernmental system.

¹ Adopted by the League Board of Directors in San Diego, November 18, 2011

SUMMARY OF EXISTING POLICIES AND GUIDING PRINCIPLES

Update – 2012 DRAFT

Every two years, the League updates its “summary of Existing Policies and Guiding Principles” to reflect new League policy adopted during the past two years. The purpose of this update is *not* to develop new League policy or revisit existing League policy. The document provided indicates new policy adopted during the past two years in **bold underlining** or ~~**bold strikeouts**~~. This is new policy that has been adopted through Annual Conference Resolutions, League positions on bills approved by the League Board of Directors, or broad League policy approved by the League Board of Directors over the last two years.

Committee members should review the proposed update and consider whether it accurately reflects the actions taken by the policy committee (and League Board) over the last two years, and whether there are any missing policy items or errors in describing policy. Committee members who wish to propose new League policy or to revisit existing League policy should suggest that the issue be placed on an agenda for a future policy committee meeting, as opposed to attempting to modify the policy through this update.

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Environmental Quality

Scope of Responsibility

The Committee on Environmental Quality reviews issues related to air, **water** and water quality, **climate change**, CEQA, integrated waste management, hazardous materials, coastal issues, and utilities.

Summary of Existing Policy and Guiding Principles

Air Quality

- The League supports inclusion of city officials on the governing boards of air districts and opposes efforts to delete such city representation.
- The League believes cities should have the authority to establish local air quality standards and programs that are stricter than state and federal standards. The League opposes efforts to restrict such authority.
- The League opposes legislation redirecting the funds authorized by Health and Safety Code Section 44223, which are currently used by local governments for locally based air quality programs.
- The League opposes air quality legislation that restricts the land use authority of cities.

- The League supports the requirement that both public and private diesel garbage trucks be retrofitted to reduce the amount of particulate matter pollution emitted from the trucks. (See also Integrated Waste Management Section below.)

Climate Change

- The League recognizes that climate change is both immediate and long term, with the potential for profound environmental, social and economic impacts to the planet and to California.
- Through the Global Warming Solutions Act of 2006 (AB 32 (Nuñez) Chapter 488, Statutes of 2006) California has embarked on a plan that requires the reduction of greenhouse gas emissions to 1990 levels by 2020. Although uncertainty remains about the pace, distribution and magnitude of the effects of climate change, the League recognizes the need for immediate actions to mitigate the sources of greenhouse gas emissions and has adopted the following principles:
 1. Action Plans for Mitigating Greenhouse Gas Emissions. Encourage local governments to complete an inventory of greenhouse gas emissions, set appropriate reduction targets, and create greenhouse gas emission reduction action plans.
 2. Smart Growth. Consistent with the League’s Smart Growth policies, encourage the adoption of land use policies designed to reduce sprawl, preserve open space, and create healthy, vibrant, and sustainable communities.
 3. Green Technology Investment Assistance. Support tax credits, grants, loans and other incentives to assist the public, businesses, and local agencies that invest in energy efficient equipment and technology, and fuel efficient, low emission vehicles.
 4. Energy and Water Conservation and Efficiency. Encourage energy efficiency, water efficiency, and sustainable building practices in new and existing public, residential and commercial buildings and facilities. This may include using the U.S. Green Building Council’s LEED program or similar systems.
 5. Increase the Use of Clean Alternative Energy. Promote the use and purchase of clean alternative energy through the development of renewable energy resources, recovery of landfill methane for energy production and waste-to-energy technologies.
 6. Reduction of Vehicle Emissions in Public Agency Fleets. Support the reduction of vehicle emissions through increased fuel efficiency, use of appropriate alternative fueled vehicles, and/or low emission vehicles in public agency fleets. Encourage the use of appropriate alternative fueled vehicles, and/or low emission vehicles in private fleets.
 7. Climate Change Impacts. Encourage all levels of government to share information to prepare for climate change impacts.
 8. Coordinated Planning. State policy should encourage and provide incentive for cities to coordinate and share planning information with neighboring cities, counties, and other governmental entities so that there are agreed upon regional blueprints and strategies for dealing with greenhouse gas emissions.
 9. Water Supply for New Development. Encourage exchange of water supply information between state and local agencies, including information on the impacts of climate

change on state and local water supplies.

10. Recycles Content and Green Purchasing Policies. Encourage the adoption and implementation of recycled content and green procurement policies, if fitness and quality are equal, including the adoption of an Environmental Management System and authorization of local agencies to consider criteria other than only cost in awarding contracts for services.

Hazardous Materials

- The League supports the ability of local governments to enact local standards or regulations that are stronger than those enacted at the state and federal level. To this end, where the city fire department is the lead agency for regulating and enforcing hazardous materials laws, the League supports the provisions of existing law that permit a local fire department to adopt stronger local requirements, as long as it complies with specified procedures to enact such stronger local standards. The League opposes legislation or regulations that restrict such authority.
- The League supports efforts to streamline and coordinate hazardous materials regulation among various levels of government, including city fire and county environmental health departments. The League supports the ability of city fire departments to be administrating agencies for any of the major hazardous materials laws or to be the lead agency (the Certified Unified Program Agency) under the SB 1082 program, and opposes legislation or regulations to restrict such authority.
- The League opposes any efforts to restrict the ability of cities to issue building or other permits it is now authorized to issue relative to hazardous materials laws.
- The League opposes any proposals that would preempt the ability of a city to deny a land use permit or restrict its ability to issue a conditional use permit for the siting of a hazardous waste facility.
- The League opposes legislation that mandates that cities post information on the Internet regarding adoption, amendment or repeal of hazardous materials ordinances. However, the League does not object to legislation that makes such posting voluntary.

The League supports the following principles related to Brownfields Revitalization:

1. The League supports state and federal legislation that would create additional fiscal resources and options to restore and develop urban and industrial brownfields contaminated by hazardous materials. The League also supports creative state and federal efforts to encourage revitalization and better use of abandoned urban and industrial brownfields, as long as local governments retain existing land use authority.
2. Cities should have the ultimate say on whether a proposed brownfield remediation project is consistent with local land use policy. The proposed use of a project (i.e., parking garage, business park, residential development) should be consistent with a city's general plan and land use authority.
3. The clean up level of a project should be based on its proposed use (i.e., parking garage, as oppose to residential development).
4. Mechanisms, such as restrictive covenants of deed restrictions, need to be in place to ensure

that if a future use for a property is different than that which was proposed when the site was cleaned up, that the clean up levels be re-evaluated and additional remediation be required before the new use can be approved.

5. Local agencies do not have the desire or generally the expertise to do the technical evaluation for site assessment and remediation plans. Appropriate state agencies should have that responsibility.
6. If a property owner plans to develop the site, then the owner should be required to do the necessary site assessment and clean up.

Integrated Waste Management

- The League supports continued efforts by local agencies to meet the 25% and 50% recycling and diversion provisions of the Integrated Waste Management Act of 1989 (AB 939) and believes that decisions on how to achieve those requirements are best determined at the local level, rather than by state agencies. The League believes that those jurisdictions that have made a good faith effort to comply with the requirements of AB 939 should not be subject to enforcement penalties. The League opposes the repeal of AB 939, but supports continued efforts to streamline its provisions and to assist in compliance.
- The League believes that green waste used as alternative daily cover (ADC) should be eligible for limited AB 939 credit, as long as the ADC meets performance and health and safety criteria established by the California Integrated Waste Management Board (CIWMB), now the California Department of Resources, Recovery & Recycling (Cal Recycle).
- The League opposes efforts to dismantle the CIWMB and transfer its functions to a department. This position is based upon the need to have public access to decision makers outside of the administrative process, similar to access that Waste Board members currently provide. The League supports inclusion of a designated local government representative on the CIWMB.
- The League continues to support legislation to provide changes to AB 939 (the California Integrated Waste Management Act) that will:
 - Place more emphasis on implementation of waste diversion programs and less strict mathematical accounting;
 - Require Cal Recycle to evaluate the level of accuracy of the existing system the board uses to measure jurisdictions' achievement of the waste diversion requirements of state law and develop appropriate policies, in consultation with local jurisdictions, to account for any inaccuracies in the system;
 - Encourage the development of non-burn transformation technologies by providing full diversion credit for the waste that jurisdictions send to non-burn transformation facilities;
 - Require the board to expand its market development activities, including providing more funding for research and development of markets for recyclable materials; and
 - Require Cal Recycle to staff its existing regional offices with personnel that can assist jurisdictions in carrying out the requirements of the act.

- The League supports legislation and other efforts to increase the markets for recycled materials, including advance disposal fees, minimum content laws, and recycling market development zones. The League opposes legislation that requires local governments to adopt refuse fees based upon variable can rates.
- The League supports efforts to strengthen curbside recycling programs and opposes efforts to weaken such programs. The League supports legislation to expand the container types included in the AB 2020-bottle bill program.
- The League supports the right of cities under existing law to be designated as Local Enforcement Agencies for solid waste facility permitting, inspection and enforcement, and opposes legislation to restrict this authority or transfer it to state agencies.
- The League opposes legislation that would preempt local land use authority over solid waste facilities, would restrict the ability of a city to issue a land use permit for a solid waste facility or would restrict the ability of a city to condition such facilities through the conditional use permit process.
- The League does not oppose legislation that assesses fees on solid waste that is disposed of out of state, as long as the fees reflect the pro-rata portion of in-state costs.
- The League opposes legislation that would authorize the Director of Cal Recycle to consider landfill capacity as a reason for denying concurrence of a solid waste facility permit and also opposes legislation that would prohibit a public agency from being certified as a Local Enforcement Agency if the public agency is also an operator of a solid waste facility.
- The League opposes legislation that would authorize the Director of Cal Recycle to consider environmental justice as a basis for concurring or denying a solid waste facility permit. The League has adopted the policy that issues of environmental justice are best addressed at the local level through the local land use and public hearing process and through existing federal and state policy.
- While the League supports the retrofit of public and private diesel fueled garbage trucks to reduce particulate matter air pollution (see Air Quality section), the League opposes funding such retrofits in a way that would either interfere with the existing franchise relationship between local governments and haulers or would impose a surcharge on landfills.

Electronic Waste

- The League supports legislation implementing the concept of manufacturer responsibility for electronic waste (e-waste). This includes, but is not limited to, encouraging or providing incentives for e-waste recycling, requiring manufacturers of computer, cathode -ray tube (CRT) and other electronic products considered universal wastes, to operate or fund comprehensive, extended producer responsibility programs. Such programs should require products to be sustainably designed and labeled, offer financial incentives to consumers to properly dispose e-wastes, encourage recycling, reuse and collection programs by manufacturers, incentives to consumers to redeem or recycle e-waste, and fund a convenient collection infrastructure.
- The League supports statewide and manufacturer education programs to educate consumers

about e-waste and recycling efforts.

- The League supports an advance disposal fee on computer and other electronic products in order to fund such manufacturer responsibility programs and local collection and recycling programs.
- The League supports national efforts to address the e-waste problem.

Extended Producer Responsibility (EPR)

- The League supports legislation implementing producer responsibility. This includes, but is not limited to, mandating or providing incentives including funding for comprehensive producer responsibility programs for hazardous and universal wastes and products and packaging for which disposal or recycling is problematic for local governments.

Single-Use Carryout Bags

- The League supports in concept legislation that charges a fee for all consumers for single-use carryout bags at the point of sale; however, the League does not have a position on the amount of the fee except that it should be set to modify consumer behavior.
- Cities should be eligible for moneys generated from any fee placed upon single-use carryout bags, provided those dollars are used by the city to mitigate the effects of single-use carryout bags on the storm water, solid waste diversion, visitor education and awareness, and water quality in the city. Any application for funding provided to cities by single-use carryout bag fees should be streamlined, simple and not overly burdensome.
- The League supports CEQA exemptions for single-use carryout bag bans or a programmatic EIR.
- The League opposes any bill that would preempt local governments from individually banning or placing a fee on single-use carryout bags distributed within the city.

Utilities

- The League supports the constitutional right of municipal utilities to operate outside the jurisdiction of the California Public Utilities Commission (PUC) and opposes any legislation that would erode the ability of municipal utilities to operate, or place them under PUC control.
- The League opposes legislation that dictates the mix of generating sources (i.e., hydro, coal, biomass, wind, etc.) used by municipal utilities.
- The League opposes any legislation that interferes with local utility rate setting authority and opposes any legislation that restricts the ability of a city to transfer revenue from a utility (or other enterprise activity) to the city's general fund.
- The League is neutral on legislation requiring municipal electric utilities to include a "renewable portfolio standard" (RPS) in their mix of sources of electricity, as long as the requirement is the same as that which applies to investor-owned utilities. The League opposes legislation that requires municipal electric utilities to meet an RPS that is stronger

than that applied to investor owned utilities.

- The following principles will guide the League’s position regarding exit fees to avoid cost shifting for newly formed municipal utilities or extensions of existing municipal utilities:
 1. A mechanism or venue other than the PUC should be used to determine and impose the exit fees in order to prevent PUC jurisdiction over municipal utilities. For example, exit fees might be best evaluated and incorporated by the courts as part of eminent domain and the condemnation proceeding used when a city wishes to take over the IOU’s distribution system.
 2. The League does not object to fair exit fees to avoid cost shifting for customers that were actually served by an investor-owned utility.
 3. Exit fees should consist of payments of a fair share of the DWR bond costs, a fair portion of the IOU under collections and a fair share of the remaining amount of the CTC (competition transition charge, left over from AB 1890).
 4. Exit fees should not be charged to newly annexed municipal utility territory that was never served by an IOU (so called “greenfields”).
 5. In addition, the League believes photovoltaic systems should be completely exempt from any type of exit fee.

Electric Industry Restructuring

- The League supports restructuring of the electricity services industry, provided it meets the following criteria:
 1. **Support the Concept.** The League of California Cities supports the concept of electric industry restructuring if it results in lower electricity rates that continue permanently into the future. The League does not support or oppose any specific form of restructuring and believes the program ultimately implemented must satisfactorily address the adopted criteria listed below. Any new industry restructure should be based on a thorough economic analysis of the full costs and potential benefits of the alternatives under consideration.
 2. **Equitable Benefits.** Any restructuring program should result in all ratepayers directly sharing in the benefits equitably.
 3. **Municipal Utilities.** Any restructuring program should maintain the concept of municipal utilities. No restructuring proposal should abridge the existing authority of municipal utilities to operate or abridge the ability of cities to form municipal utilities in the future.
 4. **Franchise Authority.** Cities should continue to have the authority to issue franchises and any program should be at least revenue neutral relative to revenue currently received from franchises.
 5. **Aggregation.** Under any restructuring program agreed upon by the PUC or the Legislature, cities should have the opportunity to become aggregators for municipal operations or the community at large. As an aggregator, a city would be able to combine the electric loads of various users and negotiate the purchase of electricity for those users.

6. Stranded Investments. The problem of stranded investments should be resolved in a way that keeps investors, ratepayers, and generators financially whole. Any policy to deal with stranded investments for large energy producers (i.e., nuclear power) should be applicable to all other producers (i.e., independent power producers).
 7. Wheeling. Any program should facilitate the wheeling of electricity between generators and users.
 8. Alternative Sources. Consistent with existing League policy that supports the development of alternative energy sources, any restructuring program should incorporate support for alternative energy in order to enhance the mix of energy sources available in California, both for environmental and strategic energy security reasons.
 9. Biomass. The unique problems of the biomass industry, as they relate to California's solid waste infrastructure, should be fairly resolved in any deregulation program.
 10. Social and Environmental Impacts. Consistent with existing League policy, California should not abandon its energy programs that provide social and environmental benefits.
- In addition to those policy guidelines, the League agrees that cities that are aggregators should be required to follow the same consumer protection standards as other aggregators, that participation in aggregation by an electricity user should be voluntary, and that cities should have the opportunity to serve as aggregators for their municipal operations or for those residential or commercial customers who wish to participate in a city-sponsored aggregation program.
 - Finally, the League believes that any federal action in the area of electricity restructuring must not preempt legislation and actions in states that choose to restructure their utility industry if such federal action relates to state and local government home rule authority. This includes authority related to regulation of rights-of-way, franchises, taxing utilities and services, or to aggregate.

In response to the energy crisis of 2001, the League adopted the following principles related to energy:

1. Land Use Control. Local control over land use should be inviolate. The League will oppose legislation that restricts local land use control beyond that which is already in existing law.
2. Municipal Utilities. The autonomy of municipal utilities should not be eroded. The League will oppose any legislation that harms municipal utilities.
3. Energy Prices and Rates. The League is concerned about the impacts of escalating energy prices on the overall economic health of our state, including city budgets. Although at this time the League will not get involved in individual bills dealing with technical aspects of pricing, the League believes that any solution to address the short and long term energy price situation should meet several key criteria.
 - o The League believes energy prices should encourage conservation and reward those who reduce energy use (i.e., tiered rates).
 - o The League is concerned about the impacts of escalating energy prices on low income residents and small businesses. The League supports energy pricing structures and other mechanisms to soften the impacts on this segment of our community.
 - o In designing rates, the state should be aware of the operational constraints of some

businesses and thus their potential inability to take advantage of conservation pricing. Thus, the state should provide other incentives to conserve to businesses that cannot take advantage of other options.

4. Conservation in City Facilities. Support legislation that provides direct funding for conservation and demand reduction projects in city facilities.
 - o Work to obtain the greatest level of funding for local governments, and work with all authors and the Administration in crafting legislation that will be most effective and beneficial to local governments.
5. Siting Energy Facilities– Incentives to Local Governments. Funding should be available to cities to streamline the siting process at the local level.
 - o Eligible projects to receive incentive payments would not only cover new electricity generating facilities, but also projects to expand existing generation facilities, to replace them with more efficient facilities, or to build renewable projects, including photovoltaics, fuel cells or cogeneration.
 - o In order to stimulate the development of these facilities, it will be necessary to provide additional long-term community benefits that the local government can demonstrate to its citizens.
 - o Any city or county that approves siting of a privately developed generating facility should receive 100% of the property tax of that facility. To stimulate development of projects such as cogeneration facilities, the standby charges for the facility should be waived.
 - o The state should provide additional financial assistance to cities and counties for such projects, which could include the cost of transmission line extension.
 - o The League will work to ensure that there are no negative impacts on municipal utilities from efforts to streamline energy facility siting.
6. Power Plant Siting – Other Issues. Support legislation that increases the threshold at which a city is the lead permitting agency for an energy facility from 50 to 100 MW (or above). Oppose legislation that decreases this threshold.
 - o Take no position on proposals to streamline the facility approval process, except to suggest appropriate revisions to reflect technical comments from city experts on local government review and comment-related provisions.
 - o Explore exempting cities with municipal utilities completely from the Energy Commission review process for all power plants proposed within their jurisdiction, regardless of the size of the facility (i.e., the municipal utility city would have lead agency authority, regardless of the size of the facility).
7. Environmental Regulation of Power Plants. The League should not get directly involved in legislative discussions and should not take a position on legislation to relax, suspend, or eliminate environmental regulation, with several exceptions.
 - o If environmental standards are relaxed, suspended, or eliminated, the League should seek legislation to ensure that cities do not bear the burden of meeting the shortfall in environmental protection. For example, suspended or reduced waste discharge requirements for a power plant may result in increased hot or salty cooling water discharged from a power plant into a bay or stream. Publicly owned treatment works should not be required to meet a higher discharge level to offset the power plant discharge

or fined as an indirect result of the increased water pollution that would result. Similar arguments can be made for air pollution burdens. There should be some sunset included for environmental waivers for re-powering of existing facilities and all new plants should be required to meet the BACT (best available control technology) standard.

8. Public Power Options. Support all bills that enhance the public power options available to cities and counties.
 - o Condition support and/or sponsorship upon the correct language being written. Work with municipal utilities and others to ensure the provisions are drafted properly.
 - o The League should not support legislation that would give up the existing, limited authority of cities to regulate cable and telecommunications companies as a trade-off to make it easier to form a municipal electric utility.
9. Interruptible Rates. The League should take no position on legislation dealing with changes to interruptible rates, but should watch the subject carefully.
 - o The League should comment on legislation, as appropriate, to express concern that resolution of the issue should seek equity in how it handles classes of ratepayers and communities. Legislation should take into consideration economic gains previously made by customers on interruptible rates and should provide assistance for those caught in extreme situations.
10. Rotating Outages – Exemptions. The League should not get directly involved in bills dealing with which type of customers are exempt from rotating block outages and should not take a position on these bills. However, the League should work with police and fire chiefs to ensure that police and fire facilities are appropriately protected either legislatively or administratively, if proposals move ahead to expand the range of exempted facilities.
 - o The League should seek legislative or administrative resolution giving advance notification to those businesses, such as some agricultural businesses, that use hazardous materials that could pose a danger if the plant is not shut down properly.
 - o The League should seek grant or loan funding for essential services (i.e., police/fire, water/waste water) to purchase new or replace existing backup generators that are more energy efficient and less polluting.
11. Wholesale Regional Price Caps – Federal Legislation. The League should not take a position on federal legislation to give the Secretary of Energy authority to impose regional wholesale price caps on electricity. This is a mixed bag and the League should stay out of the issue.
12. Price Gouging by Electricity Suppliers. The League should send a letter to the Governor and Attorney General supporting their ongoing efforts to determine whether wholesale market abuse occurred and asking that appropriate action be taken to remedy the problem if illegal activity occurred.

California Environmental Protection Act (CEQA)

Procedures and Notices

- Fair Argument Test. The League strongly opposes the elimination of the fair argument test as the threshold for determining whether to prepare an Environmental Impact Report (EIR).

There are a number of other reforms that will reduce CEQA's complexity while preserving the fair argument test's role as a planning tool. These include funding for Master EIRs and eliminating attorneys fees for petitioners.

- Master EIR Funding. The League strongly supports the development of a funding source for Master EIRs. Both of the proposals contained in the Little Hoover Commission report would meet the needs of cities.
- Exemption for Modified Project Renewals. The League opposes exempting the renewal or reissuance of a permit, license, or other entitlement where there is a change in the project.
- Centralized Responsible Agency Notification. The League opposes shifting the responsibility to notify responsible agencies from the lead agency to the State Clearing House.
- Centralized Responsible Agency Notification. The League opposes making identification of Responsible Agencies at the Notice of Preparation stage by other than the Lead Agency (e.g., the Office of Planning and Research) conclusive so that agencies not identified would be barred from later commenting on projects.
- Responsible Agency Documentation. The League supports requiring that Responsible Agency comments be supported by specific referenced documentation.
- Substitution of Environmental Impact Statements. The League opposes allowing an Environmental Impact Statement to be substituted for an Environmental Impact Report in any situation other than military base closures because the National Environmental Policy Act does not contain CEQA's duty to mitigate.
- Duty to Respond to Comments. The League opposes shielding lead agencies from responding to comments received more than 30 days after a Notice of Preparation (NOP) or received verbally.
- Timelines for CEQA Contracts. The League supports eliminating subdivision (b) of Public Resources Code Section 21151.5, which mandates the timeline for entering into CEQA contracts.
- Arbitration of Disputes. The League supports adding an arbitration option to the requirement that each county over 200,000 designate a "CEQA judge." Among the issues that will need further refinement are whether an alternative dispute resolution process should be a condition precedent to litigation, whether the alternative dispute resolution process would be binding on participants, and how to limit the alternative dispute resolution process to CEQA adequacy issues rather than community mitigation issues.
- Bounty Hunter Limitations. The League supports discouraging lawsuits that have little merit by eliminating the availability of section 1094.5 fee recovery to petitioners or by authorizing cities to collect their fees and costs where they prevail.
- Recirculation Standards. The League supports raising the threshold for recirculation of EIRs so that only new "significant unavoidable impacts" would necessitate recirculation.
- Basis for Statements of Overriding Considerations. The League supports clarifying that the basis for Statements of Overriding Considerations is information contained in the record.

- Compliance with Local Public Notice Requirements. The League supports legislation to require all projects proposed by state or local public agencies, including universities, community colleges, schools, counties, cities, and special districts, to comply with the identical local public notice requirements that would be applicable to projects sponsored by private developers in the jurisdiction where the project is located.

Definition of a Project

- Effect on the Environment. The League supports narrowing the definition of “project” to prevent CEQA lawsuits on non-environmental matters.
- School Operations Exemption. The League supports exempting any school closure or student transfers from CEQA.
- Categorical Exemption for Nonindustrial Infill Projects. The League supports expanding categorical exemptions to include development projects in urbanized areas that are consistent with general plans, zoning and cumulative impact projections analyzed in a Master EIR. Such projects should be limited infill and nonindustrial.

Significant Environmental Effect

- Significance Thresholds. The League opposes the creation of a new mandate requiring each city to develop boilerplate significance thresholds. The League also opposes a single statewide set of standards for determining significance at the local level. Instead, the League supports requiring that each EIR contain significance thresholds formally adopted by the lead agency for the project.
- Consideration of Socio-Economic Factors. The League opposes adding social, economic, recreational or other factors to be considered when analyzing the significance of environmental impacts.
- Indirect Effects. The League opposes amending the definition of effects to eliminate the analysis of indirect and cumulative environmental effects.
- Cumulative Effects. The League supports the elimination of EIRs for projects with solely cumulatively significant impacts where the impact has been addressed by a comprehensive plan that identifies specific mitigation measures.
- Cumulative Effects. The League opposes exempting projects that are subject to their own subsequent environmental review from consideration as a reasonably foreseeable future project when analyzing cumulative impacts.

Alternatives

- Alternative Site Requirement. The League supports eliminating the alternative site requirement for all private projects.
- Level of Detail. The League supports requiring that projects of statewide, regional or area-wide significance describe at least two feasible project alternatives with a level of detail equal to the proposed project.

- No Project Alternative. The League opposes the elimination of the “no project alternative.”
- Environmental Impact Report (EIR). The League opposes the elimination of the fair argument test as the threshold for determining whether to prepare an Environmental Impact Report (EIR). The League strongly supports the development of a funding source for Master EIRs. The League supports adding an arbitration option to the requirement that each county over 200,000 population designate a “CEQA judge.”

Coastal Issues

- The League opposes legislation that would permit the state to impose conditions on Local Coastal Plans developed by cities and counties.
- The League supports efforts to curb frivolous appeals to local coastal decisions.
- The League supports the Federal Coastal Protection Act, which prohibits additional offshore development through the year 2002. This position was based, in part, on concern about the impacts to on-shore support facilities and services by offshore development activities.
- The League opposes legislation that grants authority to the Coastal Commission that is inconsistent, duplicative and overlapping with the authority of other regulatory agencies, such as regional water quality control boards or other agencies, or that grants the Coastal Commission authority outside the coastal zone.
- The League affirms its commitment to local control by requesting the Coastal Commission to defer to the elected officials of a City with respect to choices in the implementation of a Local Coastal Plan that complies with the requirements of state law and regulation.

Miscellaneous

- The League encourages cities to consider the *Ahwahnee Water Principles for Resource-Efficient Land Use* when making future land use decisions.
(http://www.lgc.org/ahwahnee/h20_principles.html)
- The League encourages state agencies to provide leadership in developing voluntary, model statewide residential green building guidelines that will provide information to local jurisdictions on how to evaluate and use different green building strategies. Additionally, the League encourages cities to adopt voluntary residential green building guidelines as a reference guide, to evaluate available green building programs and adopt those best suited for their communities, and to explore incentives to encourage green building by private developers of residential construction projects.
- The League supports the right of cities to serve as lead agencies for the purposes of the Surface Mining and Reclamation Act (SMARA).
- Consistent with policy adopted by the National League of Cities, the League believes the appropriate venue for addressing the issue of “regulatory takings” is within the evolving judicial interpretations of the Fifth Amendment of the U.S. Constitution.
 - The League opposes any federal or state regulation, statute or constitutional amendment which would place restrictions on federal, state and local government actions regulating

private property or requiring additional compensation beyond the continually evolving judicial interpretation of the Fifth Amendment of the U.S. Constitution.

- The League will oppose any legislation that includes such a provision, regardless of what else is included in the legislation (i.e., legislation that designates a listing of an endangered species as a “regulatory taking”).
- The League supports flexibility for state and local governments to enact environmental and other standards or mandates that are stronger than the federal standards. However, the League reserves the right to question or oppose stronger standards on the merits. The League also opposes legislation that prohibits state and local governments from enacting stricter standards.
- The League supports the ability of local governments to voluntarily develop and approve species habitat plans for their communities, in conjunction with willing property owners. The League opposes requiring local governments to amend their general plans to include species habitat plans developed by others but not approved by the local government.
- The League supports legislation and regulation that authorizes the land application of biosolids that meet specified statewide health and safety standards. The League supports legislation that permits enactment of stronger local ordinances only if they are based upon protecting public health and safety and good science. The League opposes legislation that preempts outright stronger local ordinances, regardless if they are based on protecting public health and safety and good science.
- The League supports legislation that imposes “Sinclair”- type fees on products in order to fund the cost of prevention or mitigation of the pollution or environmental and health impacts of such products. The League opposes legislation that would restrict the imposition of such fees at the state or local levels.

Note: The League will review new legislation to determine how it relates to existing League policies and guiding principles. In addition, because this document is updated every two years to include policies and guiding principles adopted by the League during the previous two years, there may be new, evolving policies under consideration or adopted by the League that are not reflected in the current version of this document. However, all policies adopted by the League Board of Directors or the League’s General Assembly become League policy and are binding on the League, regardless of when they are adopted and whether they appear in the current version of “Summary of Existing Policies and Guiding Principles.”

League of California Cities
Water Policy Guidelines

February 2010

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Introduction

The *California Water Guidelines* were first adopted by the League of California Cities (The League) in 1988. The League and the County Supervisors Association of California (CSAC) developed the guidelines. Together, at the time, the two organizations represented 58 counties and 449 cities.

Much has changed in the realm of water policy in the more than 20 years that have passed since the Guidelines were first adopted. The number of counties has remained at 58, but California has gained an additional 31 cities and the population of the state has increased to more than 38 million people, creating increased demands on water supply. There is growing recognition that there are better ways of managing the flow of water within California's many watersheds and through the Delta, to prevent harmful environmental impacts while still ensuring a reliable supply of water to its citizens. Climate change is seen as having an increasingly important impact on water supply and water quality. Water shortages place renewed emphasis on the importance of water reclamation, water recycling and other means of nurturing and protecting an essential resource.

In 2003, the League Board created the League Water Quality Task Force to identify and evaluate waste water and storm water regulatory issues of concern to cities and to recommend steps that the League should take to address those concerns. The Task Force drafted new League policy on water quality and the League's Board of Directors adopted their report on July 18, 2003.

In 2008, the League formed a new Water Task Force to consider updates and revisions to the Water Guidelines the League drafted and adopted 20 years earlier. The League's 16 Regional Divisions designated voting members; but membership on the Task Force was open to all interested city officials, and meetings were open to all interested parties.

The Task Force first met in Sacramento in April 2009 and organized three working groups (Water Use, Water Supply and Water Discharges). Members of the working groups held numerous meetings by conference call over the next two months. Subsequent meetings of the full Task Force were held in June and September 2009 before the revised Guidelines were submitted to the League policy committees in January 2010, for review and approval. The Guidelines were formally approved by the League Board of Directors in February 2010.

The California Water Guidelines are designed to be used by policy makers at all levels of government in developing future water policy for the state of California. The League encourages city, county and state officials, as well as representatives from other organizations, to review the guidelines as water policies and programs are developed.

I. CALIFORNIA WATER: GENERAL PRINCIPLES

1. Water needs are projected to increase significantly in the future. While water is a renewable resource, it is also a finite one.
2. The League supports the development of additional groundwater and surface water storage, including proposed surface storage projects now under study if they are determined to be feasible, including but not limited to: environmentally, economically, and geographically relating to point of origin. Appropriate funding sources could include, but are not limited to user fees, bonds and federal funding.
3. Local, state and federal agencies should prepare plans for short-term water emergencies as well as long-term cooperative water management plans and policies, such as the Integrated Regional Water Management Plan (IRWMP) process.
4. All water development projects must be economically, environmentally and scientifically sound.
5. Critical California water issues cannot be solved without the cooperation of the state and federal governments. Communication and cooperation among policy groups with emphasis on finding statewide consensus is supported.
6. Adequate water quality requirements for wastewater discharge into surface water and groundwater to safeguard public health and protect beneficial uses should be supported. Beneficial water quality is fundamental to the health and welfare of California and all of its citizens.
7. The long-term viability of rivers and streams for instream uses such as fishery habitat, recreation and aesthetics must be protected.
8. The League encourages all cities to work with counties, water agencies, and special districts to facilitate water conservation, recycling and reuse efforts.
9. The League supports state water policy that allows undertaking aggressive water conservation and water use efficiency while preserving, and not diminishing, public and constitutional water rights.
10. The League supports land use as an important strategy for water supply and water quality benefits.

II. WATER CONSERVATION

1. **Statewide Goal.** The League supports the development of a statewide goal to reduce water use by 20% by 2020 through the implementation of fair and equitable measures consistent with these principles.
2. **Statewide Effort.** Accomplishing water conservation and water use efficiency goals will require statewide action by all water users, including residential, commercial, industrial and agricultural water users, local and regional planning agencies, state and federal agencies, chambers of commerce, and business, commercial and industrial professional and trade associations.
3. **Comprehensive Solutions.** Water conservation and water use efficiency must be part of a

comprehensive solution that includes local resource development and infrastructure improvements, including storage and conveyance, as part of a statewide system that promotes economic and environmental sustainability.

4. **Monitoring, Reporting, and Accountability.** The League supports the implementation of programs to assure prudent measurement and monitoring of water use to provide accountability and transparency toward the accomplishment of water conservation and water use efficiency goals.
5. **Protect Water Rights.** Implementation of water conservation and water use efficiency programs must be consistent with existing state law in that the act of conservation cannot be allowed to undermine the water rights of the entities implementing the water conservation or water use efficiency program, or interfere with existing water conservation or water use efficiency projects.
6. **One Size Does Not Fit All.** Water conservation and water use efficiency programs must have the flexibility to adjust to widely varying local circumstances recognizing that one size does not fit all. The League encourages each city to develop its own ordinance outlining its conservation plan.
7. **Urban Water Conservation and Water Use Efficiency.** In urban areas, the League advocates for the implementation of residential and commercial retrofit programs, innovative pricing strategies, water efficient landscaping, including implementation of urban Best Management Practices (BMPs).
8. **Agricultural Water Use Efficiency.** In agricultural areas, the League advocates incentive based programs.

III. WATER RECYCLING

1. Wherever feasible, water recycling should be practiced in urban, industrial and agricultural sectors. This includes increasing the use of recycled water over 2002 levels by at least one million acre-feet/year (afy) by 2020 and by at least two million afy by 2030.
2. Potable water should include as much use of reclaimed water and water conservation by 2030 as possible.
3. Increased recycling, reuse and other refinements in water management practices should be included in all water supply programs.

IV. WATER QUALITY

1. General

- a) The League supports the development of objectives and standards to assure high quality water throughout California. Surface and groundwater should be protected from contamination.
- b) The League supports the development of economic protocols and guidelines to assist local governments and water boards in determining reasonably achievable, cost effective and environmentally sound regulations.
- c) The League supports the ability of cities to enact discharge and water quality requirements or standards that are stricter than state or federal standards, and opposes efforts to restrict such authority.

- d) When addressing contamination in a water body, water boards should place priority emphasis on clean-up strategies targeting sources of pollution, rather than in stream or end-of-pipe treatment.
- e) The League encourages water boards to address cross-media pollution of water, including but not limited to the problems of atmospheric deposition of water pollutants.
- f) The League encourages all state offices, departments and boards to comply with state policy for water quality control, including compliance with the Basin Plans.

2. Water Board Reforms

- a) The League generally supports the concept of water board reform.
- b) Any water board reforms should recognize the inherent differences between cities and regions in California.
- c) Water board reform should recognize the symbiotic relationship between regional water quality control boards and local governments.
- d) The League supports the retention of designated local government representatives on the regional boards and inclusion of a designated local government representative on the State Water Board.
- e) The League supports streamlining the board process, including delegating permit authority to the executive officers, with rights of appeal, and giving greater authority to the State Water Board over regional board policies and decisions.

3. Basin Plan Updates

- a) The League supports the option of local agencies developing funding for basin plan updates.
- b) The League supports comprehensive updates to the basin plans that recognize the unique and varied nature of stormwater. Basin plans need to recognize the unique and varied nature of stormwater, both wet weather and dry weather runoff.
- c) Basin plan updates should comply with the Porter-Cologne requirements to recognize economic impacts, local drainage conditions and scientific consensus, including source control and atmospheric deposition strategies.

4. National Pollutant Discharge Elimination System (NPDES) Permits

- a) The League supports reform of the States Water Board's administration of the federal NPDES program.
- b) The League encourages the water boards to issue permits that are reasonably achievable, based on the unique conditions of a city or region.
- c) The League supports regulations and legislation that promotes watershed management, that appropriately spreads the responsibility for clean water beyond the requirements that apply to point-source dischargers, municipal storm drain systems and publically-owned treatment works.
- d) The League generally opposes legislation that requires the use of numeric limits in waste discharge permits, especially in storm water permits, because of the difficulties in meeting them, problems with exceeding them, and the cost and potential enforcement impacts.

- e) The League supports development of a standard definition of “maximum extent practicable.”

5. Total Maximum Daily Load (TMDL)

- a) The League supports development of reasonably achievable, environmentally sound and cost-effective TMDL’s based on monitoring and sound science and addressing local water conditions.
- b) Although the League is supportive of local agency development of TMDL funding, greater emphasis needs to be given to state and federal funding of the TMDL program, including providing increased funding to local government for implementation.
- c) The League supports implementation of TMDLs through alternatives to the NPDES permits, consistent with the Clean Water Act and policy, such as Memorandums of Agreement between local governments and the water boards.

6. Water Quality Recommended Legislation/ Policies

- a) Ex-Parte Communication
 - The League supports public access to decision makers, including during the time that new proposed permits and permit terms are being proposed. The League also supports access to pending permittees, outside of the administrative process.
- b) Maximum Extent Practicable (MEP)
 - The League supports legislation to define MEP.
- c) Safe Harbor
 - The League supports legislation that provides immunity from fines or third-party litigation for a local government that is in compliance with maximum extent practicable iterative best management practices requirements and NPDES stormwater permit conditions.
- d) Mandatory Minimum Penalty (MMP)
 - The League supports legislation to modify the MMP provision of the existing law to make them fair and equitable for local governments. This would include eliminating the provisions relied upon to compound penalties for single violations and providing economic hardship exemption for small cities (50,000 in population or less) where there has been no significant adverse impacts on the public or the environment from the alleged violation.
- e) Economic Analysis
 - The League supports legislation to develop economic protocols and guidelines to assist local government and the water boards in determining reasonably achievable, cost effective and environmentally sound regulations, as outlined in Porter-Cologne Sections 13000 and 13241.
- f) Basin Plans
 - The League supports legislation allowing local agencies to participate in funding basin plan updates.
- g) Water Softeners

- The League supports the right for cities to enact ordinances that restrict the use of water softeners.
- h) Local Discharge Prohibitions
- The League supports legislation that would enable cities to adopt ordinances that limit or regulate industrial discharges into local sewers and storm drains, based on limits in municipal discharge permits.

7. General Water Quality Guidelines

- a) Protection and maintenance of objectives and standards to assure high quality water throughout California is essential. Beneficial uses of surface and groundwater should be protected from contamination, even when treatment methods are available to meet drinking water standards.
- b) Local, state and federal governments and the private sector should provide for the safe management of hazardous materials, including mining leachates, to avoid pollution and degradation of both surface water and groundwater.
- c) Adequate research funding to determine appropriate public health standards for water should be supported.
- d) Additional research and education in the application and use of herbicides and pesticides and alternatives to their usage as well as research to reduce industrial and household hazardous wastes should be supported.
- e) The importance of water quality of bays, estuaries, groundwater, and other bodies of water important to municipalities, including the problem of salt water intrusion, should be recognized.

V. AREAS OF ORIGIN

1. Ultimate reasonable and beneficial water needs of all areas of origin should be assured. State law should continue to provide that only water surplus to the reasonable and beneficial needs of the areas of origin may be exported. The League supports preserving the principle of protecting the water rights of areas of origin.
2. Areas of origin protections should apply to all water sources, including groundwater.
3. Reasonable and beneficial water needs of the areas of origin should include instream needs or uses, including recreation and sediment flushing.
4. Areas of origin should be afforded financial assistance, such as the Davis-Grunsky type bonds, in developing new water facilities.
5. Projects that export water from areas of origin should not increase the cost of new local water development projects.
6. Those features of new projects that are required by state and/or federal agencies to enhance area of origin recreation, fish, wildlife, and water quality should be the financial responsibility of the state and/or federal government.
7. New policies and programs should not undermine or alter the water rights of the entities implementing the policies or programs.

VI. WATER STORAGE

1. The League believes that California needs to develop additional water storage and therefore believes that the construction and retention of economically feasible and environmentally sound flood control, storage and multi-use projects that will meet present and future needs should be supported.
2. The development of additional surface facilities and use of groundwater basins to store surface water that is surplus to that needed to maintain State Water Resource Control Board (SWRCB) Bay-Delta estuary water quality standards should be supported.
3. The League encourages project developers to mitigate the negative impacts of water storage projects on fishery and wildlife resources, adjacent lands, water quality and recreation.

VII. CONVEYANCE SYSTEMS

1. Statewide

- a) Conveyance facilities including, but not limited to, the Sacramento River, whether man-made or natural, should be constructed and/or operated to minimize seepage and erosion problems and, where practicable, to restore or maintain river functions and to protect previously existing riparian habitats. They should be constructed to mitigate these problems and other adverse impacts on adjacent lands.
- b) The owner or purveyor of the water conveyance system should be responsible for correcting adverse impacts, i.e., erosion, seepage and sediment problems upon waterways, either anthropogenic or natural.
- c) Environmentally-sound methods of erosion-control should be encouraged along river banks to protect adjacent lands from flood or other erosive flows provided any adverse impacts on fish and wildlife habitat are mitigated.
- d) Local distribution systems should be interconnected with regional systems, where feasible, to assist in maximizing the use of local ground and surface waters during droughts and emergencies.
- e) Solving the water quality, levee stability and fishery problems in the Sacramento-San Joaquin Delta is a primary step in developing any plan to meet the state's water needs.
- f) The League acknowledges that the use of the Sacramento River as a conveyance system presents problems of erosion and seepage which must be addressed in the operation of existing projects and the design of future projects.

2. Delta

- a) Conveyance of water across the Delta should be through existing channels wherever possible. Delta transfer system improvements should be constructed and operated so as to minimize or, if possible, eliminate reverse flows in the lower San Joaquin River.
- b) Construction of Delta transfer facilities should not proceed until the Department of Fish and Game and the Department of Water Resources have entered into an agreement to implement measures to offset the State Water Project's impacts on the Delta fisheries and other ecological concerns in the Bay-Delta estuary, which are shown to be adversely affected by the proposed transfer facilities.
- c) Implementation of an integrated program of rehabilitation and maintenance of Delta

levees involving federal, state, local and user interests for the purposes of protecting the islands, waterways and other features including, but not limited to, highways, railways, water conduits, natural gas storage, etc., should be supported. Costs and responsibilities should be fairly allocated among beneficiaries of such a program.

- d) Until an integrated Delta levee program is initiated, the Delta levee maintenance program, (by former California Sen. Howard Way), California Water Code Sections 12980-12991, should be funded and implemented.
- e) Any Delta governance and/or water management structure should include local government representation from the Delta region.
- f) When assessing conveyance projects, the League encourages cities to consider the guidelines outlined in other areas of this document.
- g) Protection, as well as enhancement where practicable, of Delta water quality, while providing adequate future supplies for all segments of the state, should be required.
- h) Standards balancing the protection of all beneficial uses of Bay-Delta waters, including water flowing into or exported from the Delta, must be adopted by the SWRCB and enforced to protect the environmental health of the Bay-Delta system. Pollution from point and non-point sources into the Bay and Delta shall be controlled as stringently as practicable.
- i) Programs and facilities to assure safe drinking water for importing regions dependent on the Delta should be supported.
- j) The SWRCB should assure the continued monitoring for contaminants in the Delta.

VIII. FLOOD MANAGEMENT

1. The League believes that our citizens have a reasonable expectation that their federal, state and local governments will work to protect them from flooding.
2. The League believes that flood protection and management is a statewide issue, involving flood infrastructure issues related to levees, urban/suburban/rural creeks, streams and rivers, and alluvial fans.
3. The League believes that it is important to recognize that levee failures in the Sacramento-San Joaquin River Delta have water quality, water supply and economic impacts that may have statewide effects beyond the local or regional levee break situation.
4. Flood control issues require cooperative planning, evaluation and solutions that utilize a regional and statewide perspective, such as the state IRWMP process.
5. In assessing problems and proposing solutions, it is important to consider the differences between infill development and new, greenfield development.
6. The public safety and health of California citizens and the economic health of California communities and our state depend upon good flood protection. This includes the potentially devastating impacts of floods on homes and businesses.
7. The League supports efforts to improve communication, cooperation and better coordinated planning between different government agencies involved in flood management. The League believes that there must be a genuine partnership between state and local agencies in addressing flood control issues.

8. The League believes cities must ask the right questions and have the means to obtain accurate information prior to approving development in floodplains. This involves educating elected officials and staff about whether their city is located in a floodplain, the local flood control infrastructure, the agencies that are responsible for providing flood protection, the status of levees and other structures that provide flood protection, emergency response and evacuation protocols, and how their city would be impacted by flooding.
9. The League believes that city officials should understand that a 100-year flood zone does not mean a low, once-in-100-years risk of flooding. The designation actually means that there is a 1 percent chance of flooding in any given year. This translates to a 26 percent chance of flooding over the life of a typical 30-year mortgage.
10. The League supports a 200-year flood standard for cities in the Sacramento-San Joaquin and Central Valleys.
11. The League generally endorses the recommendations of the State's Flood Control Task Force, especially those recommendations involved in updating the CEQA Checklist and General Plan Guidelines and building codes.
12. The State, Army Corps of Engineers (ACOE) and Federal Emergency Management Agency (FEMA) should work collaboratively with state and local governments regarding flood issues.

IX. GROUNDWATER

1. The SWRCB, through the regulatory process of its regional boards, should ensure the highest possible quality and safety of groundwater by preventing contamination from point and non-point sources, especially for usable water.
2. Local drilling, sealing and abandonment ordinances for water supply and monitoring wells for the protection of groundwater and public health should be supported.
3. The principle that local entities within groundwater basins (i.e., cities, counties, special districts, and the regional water quality control boards) working cooperatively should be responsible for and involved in developing and implementing basin wide groundwater, basin management plans should be supported. The plans should include, but not be limited to: a) protecting groundwater quality; b) identifying means to correct groundwater overdraft; c) implementing better irrigation techniques; d) increasing water reclamation and reuse; and e) refining water conservation and other management practices.
4. An active state and federal role in cleaning up contaminated groundwater basins should be supported.
5. State and federal involvement, if requested, in developing groundwater management plans should include technical assistance for defining the characteristics of groundwater resources.
6. Financial assistance from state and federal governments should be made available to requesting local agencies to develop and implement their groundwater management plans.
7. Planned, joint use of surface and groundwater and development of incentives for such conjunctive use for increased efficiency should be encouraged.
8. Early development of a cost-sharing formula among all beneficiaries to fund groundwater replenishment projects should be supported.

9. The importation of additional supplemental water, consistent with Section VI Conveyance Systems, as one means of eliminating groundwater overdraft in the critically overdrafted basins should be supported.

X. FISH AND WILDLIFE

1. Protection, maintenance, and restoration of fish and wildlife habitat and resources and their beneficial uses including recreational and commercial uses, should be supported. Where feasible, enhancement of fish and wildlife habitats should be provided.
2. Water projects shall mitigate for adverse impacts on fish and wildlife resources. Mitigation measure shall be on-site, if feasible; otherwise, as close as practicable to the area of adverse impact. Where practicable, such projects should incorporate programs designed to eliminate unnecessary barriers or impediments to fish migration, to stabilize areas of streambank erosion, to increase spawning and rearing habitat for fish, and to maintain riparian vegetation for cover and temperature control.
3. Protection and restoration of documented fish habitat should be supported.

XI. DRAINAGE

1. Agricultural Drainage

- a) Finding long-term, economically feasible and environmentally sustainable solutions to agricultural drainage problems is essential and in the public interest. Solutions must be safe and environmentally acceptable in order to protect:
 - Viability of agricultural lands;
 - Rivers, estuaries and groundwater from potential degradation from agricultural drainage; and
 - Water quality for public consumption. Drainage of agricultural lands must be part of current and future agricultural water project planning and implementation.
- b) Both state and federal funding should be provided to investigate: a) further improvement in irrigation and drainage management ‘practices and conservation; b) evaporation ponds; c) deep-well injection; and d) desalination and other treatment technologies. An equitable cost-sharing formula for implementing solutions to existing and future drainage problems shall include state and federal governments and irrigation project beneficiaries.

2. Other (Run-Off)

- a) Finding safe and environmentally acceptable solutions to problems caused by run-off from non-point sources is essential and in the public interest.
- b) Similarly, finding safe and environmentally acceptable solutions to other drainage and run-off problems, such as those caused by mining, dairying and forest practices, is essential and in the public interest.
- c) Equitable cost sharing among appropriate public and private bodies for implementing solutions to urban and other run-off problems should occur.

XII. RECREATION

1. Water development projects should minimize adverse impacts to existing recreational uses, and provide new recreational opportunities where feasible.
2. The state and federal governments and the recreational users should bear the recreational development costs of water projects.
3. Operation and maintenance costs of recreational facilities developed in conjunction with water projects should be provided from on-site user fees and other applicable sources. Other costs incurred as a result of these recreational activities, such as law enforcement and emergency rescue, should receive appropriate assistance from state and federal sources.

XIII. NEW TECHNOLOGY

Development of new technology in water use, reuse, desalination, detoxification and so forth is encouraged. This should be primarily funded by the federal and state governments. Public-private partnerships in this research also should be encouraged. A high priority should be given to the protection of public health. New technology should be evaluated based on sound science.

XIV. FINANCIAL CONSIDERATIONS

1. It is recognized that:
 - a) The development and operation of water supply, water conveyance, flood control and stormwater management, water storage, and wastewater treatment facilities is frequently beyond the capability of local areas to finance;
 - b) Since most facilities have widespread benefits, it has become traditional for federal, state, and local governments to share their costs; and
 - c) It is necessary that such sharing be continued and that different institutional arrangements including cost sharing formulas among all beneficiaries, public-private partnerships, and user fees should be explored.
2. The requiring agency (whether it be state, federal, or otherwise) should pay for the features of projects or programs that are required that agency.
3. The League supports legislation to provide funding for stormwater, water and wastewater programs, including a constitutional amendment which would place stormwater fees in the category of water and wastewater fees, for the purposes of Proposition 218 compliance.
4. Any agency that regulates water with regard to local governments needs to be involved in the appropriate city with regard to how the city will pay for the new regulatory burden imposed by the agency.

APPENDIX A

State Water Resources Control Board Water Quality Improvement Initiative (2008)

1. WQI 1: The League supports applying the 10% rule “One Per Region Basis”
2. WQI 2: The League supports staggering the regional water board terms
3. WQI 3: The League has no recommendation on reducing the size of the regional water board from nine members to seven, with the exception that at least one person on the regional board should have local government experience.
4. WQI 4: The League supports delegating permitting authority to the regional water board executive officer and that the executive officer should take his or her direction from the State Water Resources Control Board (SWRCB).
5. WQI 5: The League is opposed to regional water board’s having full time chairs.
6. WQI 6: The League is opposed to the creation of a statewide council of full-time regional water board chairs. (Note: Water Discharge Subcommittee members believe that it may be helpful to combine a number of regional boards into larger regional boards to address areas that are similar (ex: Los Angeles and Orange County). A large regional board could bring more consistency to basin plan management. Any inconsistencies between the regional boards should be addressed by the state Board.)
7. WQI 7: The League supports the implementation of biennial priority setting based on the Strategic Plan, with six month updates by the regional water boards.
8. WQI 8: The League is opposed to allowing the SWRCB to make the TMDL environmental process subject to NEPA instead of CEQA.
9. WQI 9: The League supports requiring a TMDL to be affirmatively approved by the State Water Board or upon petition.
10. WQI 10: The League supports requiring the regional water board to consider costs of TMDL compliance.
11. WQI 11: The League supports authorizing the SWRCB to make changes to TMDLs, rather than remanding these decisions back to the regional water boards (Note: Subcommittee members believe that this policy should be tied into WQI#9).
12. WQI 12: The League has no position on confirmation of regional water board conflict of interest rules with the Political Reform Act – (Note: the Subcommittee asked for a legal opinion. The question is: what are the current conflict of interest rules pursuant to AB 1234. Staff and members believe that this provision is similar to what already exists for other state boards [example: Waste Board].)
13. WQI 13: The League has no position on the establishment of civil penalties for fraudulent information with regard to reporting by permittees.
14. WQI 14: The League is generally opposed to any removal of notice and hearing requirements prior to the SWRCB referring a case to the State Attorney General for additional action.
15. WQI 15: The League has no recommendation on additional authorization of district and city attorneys to pursue civil violations (for cities over 750,000 in population).

16. WQI 16: The League believes the state should limit the number of mandatory minimum penalties (MMP) to one violation, and the population limit to qualify under the MMP law as a small, disadvantaged community for a single missing report should move from 10,000 to 50,000 (in accordance with federal law).
17. WQI 17: The League has no recommendation on early payment of MMP violations.
18. WQI 18: The League supports enhanced ability of the Regional Water Boards to administratively enforce state Underground Storage Tank (UST) Requirements.
19. WQI 19: The League supports enhanced oversight of UST testers.
20. WQI 20: The League supports moving the SWRCB Enforcement Report deadline to July 1.
21. WQI 21: The League supports the SWRCB developing and implementing performance measures
22. WQI 22: The League supports improved data management systems for the SWRCB.
23. WQI 23: The League generally has no recommendation on the standardization of NPDES permits and believes that this issue should be worked out with the individual regional water boards.
24. WQI 24: The League generally has no recommendation regarding the update of SWRCB Strategic Plan.
25. WQI 25: The League supports SWRCB conducted training of regional water boards, provided the SWRCB both conducts the training and sets consistent standards statewide.

APPENDIX B

GLOSSARY

Affordable: A word used increasingly to express concern whether recipients of water will be able to meet the cost. Whether people view water as affordable will depend on many factors.

Agricultural Drainage: Usually refers to installed drains to permit removal of water which accumulates within plant root zone. May be essential to maintain favorable salt balance for plant growth. May contain selenium, salinity, pesticides, herbicides, etc.

Area and County of Origin Protections: Refers to legislative provisions for protecting water rights of these areas.

Area of Origin Law: Applies to a watershed or area wherein water originates, or an area immediately adjacent thereto which can be conveniently supplied with water there from. Because this law was enacted as part of the Central Valley Project Act, it applies to the Sacramento River watershed. The Burns- Porter Act subsequently defined the Sacramento-San Joaquin Delta to be part of the watershed of the Sacramento River. Gives area of origin preferential rights regarding operation of federal Central Valley Project and to contract for State Water Project water and to certain rights to construct projects or make diversions, provided use is reasonable and beneficial. (California Water Code Sections 11128, 11460-11463).

County of Origin Law: Prohibits State Water Resources Control Board from assignment of rights which will deprive a county in which the water originates of such water necessary for the development of the county. (California Water Code Section 10505).

Delta Protection Act: Establishes that an adequate supply of water in the Delta is necessary

to the peace, health, safety and welfare of the people of the state, except that delivery of such water is subject to County of Origin and Area of Origin laws. (California Water Code Sections 12200-12220).

California Wild and Scenic Rivers Act and Federal Wild and Scenic Rivers Act: Establish certain rivers or sections of rivers are to be preserved in their free-flowing condition. The California law (California Public Resources Code Sections 5093.50-5093.65) allows domestic water diversion for residents of counties through which the river flows, provided there is no adverse effect upon the free-flowing character of the river. California law finds that the free-flowing state of such rivers is a reasonable and beneficial use within the meaning of the state constitution.

Atmospheric Deposition: The transfer of pollutants suspended in the air to the earth's surface. Pollutants move directly from the atmosphere into water bodies through precipitation, falling particles, or the absorption of gases into water. They also may be deposited over land and transported to water bodies via runoff. Atmospheric deposition is believed to be a significant source of various pollutants to many water bodies.

Basin Plan: The Regional Water Quality Control Plan adopted by a regional water quality control board for that board's area of responsibility in California. (See Cal. Water Code Section 13240). The basin plan establishes water quality standards, uses and other criteria for surface and ground waters.

Best Management Practices (BMPs): Methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges, including urban runoff. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

California Toxics Rule (CTR): A federal rule adopted by the U.S. EPA on May 19, 2000, which established numeric criteria for various priority pollutants for California. The rule can be found at 65 Federal Register 31682-31719, and was codified in the Code of Federal Regulations at 40 CFR 131.38.

Characteristics of Groundwater Resource: Include quality, quantity, rate of renewal and yield.

Clean Water Act (CWA): A comprehensive water quality statute (33 USC 1241 et seq.). The CWA was first adopted by Congress in 1972 and later amended in 1987 to apply to stormwater/urban runoff. The CWA was designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters to support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water."

Coliform: A group of related bacteria that are generally benign to humans. They are natural and common inhabitants of the soil and ambient waters (e.g., lakes, rivers, and estuaries), as well as the gastrointestinal tracts of animals.

Compensation: Full replacement for unavoidable fish and wildlife resource losses in terms of habitat area and long term renewability of the quality and quantity of such resources. In the interest of clarification, compensation does not mean monetary payment as a substitute for replacement of resources losses.'

Conjunctive Use of Surface and Groundwater: Planned joint use of surface and groundwater. This usually involves maximizing use of surface water in wet years (with minimum groundwater pumping) and using any surplus surface water to recharge groundwater, and in dry years

augmenting surface supplies by drawing on the stored groundwater.

Conservation: Fish and wildlife resource loss prevention, mitigation and compensation.

Conservation (of Water): Means efficient use of water. Also means reducing water losses, or eliminating waste; storing water for water use; preserving water quality.

Contamination: An impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. (California Water Code Section 13050) (See “Pollution”).

Contamination Sources:

Point Discharge: Source is identifiable, as from a pipe or drain ditch.

Non-Point Discharge: Sources are more diffuse and not easily identified with well defined outlets; includes runoff from agricultural or forested land, general urban runoff, except where collected in identifiable drains.

Cross-Media Pollution: The contribution or “flux” of pollution from one environmental medium to another. (For instance, the transfer of pollutants from the atmosphere to water.)

Davis-Grunsky Bond: This legislation established a bond fund to facilitate financing of projects in counties with limited financial resources.

Demand/Need: “Demand” usually refers to a statement of water requirements which may be projected on the basis of past water use practices. In contrast, “need” is intended to refer to water that is truly needed to satisfy purpose if water is efficiently utilized.

Delta: Refers to the Sacramento-San Joaquin Delta. 700,000 acres of islands, waterways, levees and lands into which the natural runoff flows from the Sacramento, San Joaquin, Mokelumne and Consumnes river systems before either being exported or entering the San Francisco Bay and, then, the Pacific Ocean.

Desalination: A process designed to treat brackish or sea water to make it useful for potable or non-potable use.

Enhancement: Development or improvement of fish and wildlife resource values of the area affected by a project beyond that which would occur without the project.

Enterococcus: A non-coliform bacteria group used as an indicator of the presence of fecal material in drinking and recreational waters. USEPA believes that enterococci have a better correlation with swimming-associated gastrointestinal illness in both marine and fresh waters than coliform organisms, and “die off” more slowly in saltwater.

Environmentally Safe: Not a precise technical term, but used to mean actions which have little or no adverse impact.

Economically Sound/Feasible: Not a precise technical term, but one that refers to a balance of costs and benefits. Formerly emphasis was placed on calculating benefit-cost ratios. Uncertainties and possible abuses in such calculations have raised questions concerning usefulness of such calculations. Problems include what types of benefits to involve as well as what costs to involve. Many, including environmentally related benefits and costs, cannot be adequately quantified.

Fish and Wildlife Issues: See Compensation, Conservation, Enhancement, Fish and Wildlife resources, Instream uses, Loss prevention measures, Mitigation, Preservation, Protection, and Restoration.

Fish and Wildlife Resources: Birds, mammals, fishes, amphibians, reptiles, invertebrate animals, endangered, threatened or rare native plants, their habitat area and all types of aquatic and land vegetation and other factors of the environment upon which resources are dependent. (See Fish and Game Code Section 45 for definition of fish).’

Flood Irrigation: Used to describe what is more appropriately called basin and border irrigation in which land prepared as basins or land bordered by small levees is irrigated with relatively large streams of water.

Groundwater Management: The process of controlling extraction of groundwater and/or planned recharge to manage the supply and/or quantity of groundwater. Objectives of groundwater management may include minimizing (or preventing) adverse effects such as groundwater overdraft or quality degradation. (Also see conjunctive use and water management practices).

Groundwater Overdraft: Where, over a period of time, groundwater extraction exceeds natural or artificial recharge.

Indicator Bacteria: Bacteria that are used to assess the microbiological quality of water because, although not typically disease causing themselves, they may indicate the presence of several waterborne disease-causing organisms. The concentration of indicator bacteria is used as a measure of water safety for body-contact and for consumption of water.

Instream Uses: Include fish, wildlife, recreation, aesthetics, hydro-power production, dilution of contamination, waste discharge, and sediment transport.

Local Entities: Includes cities, counties, water districts, joint powers, etc.

Lass Prevention Measures: Designing and implementing measures to avoid immediate and long term impacts to fish and wildlife resources.’

Maximum Extent Practicable (MEP): The vaguely defined standard set forth in the CWA to be included in Municipal NPDES Permits to be complied with by municipal dischargers in order to reduce the discharge of pollutants from their municipal separate storm sewer systems. CWA Section 1342 (p)(3)(B)(iii) requires that permits for discharges from municipal storm sewers “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.”

Mitigation: Measures to lessen or reduce adverse effects on fish and wildlife resources through use of structural and non-structural loss prevention measures in project design and operations. (See CEQA Guidelines Section 15370)¹ NEPA regulations have a functionally similar definition. NEPA definition includes restoration as a mitigation measure, however.

National Pollutant Discharge Elimination System (NPDES): The program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing wastewater and stormwater discharge permits, and imposing and enforcing pretreatment requirements, under CWA.

Non-Point Source Discharge: Pollution caused by rainfall or snowmelt moving over and through the ground. As the water moves, it picks up and conveys natural and human-made pollutants, depositing them into water bodies and groundwater. Atmospheric deposition and hydromodification are also nonpoint sources of pollution.

Numeric Limits: Numeric or numerically expressed narrative restrictions on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an NPDES permitted location or outfall.

Pathogens: Disease-causing bacteria, viruses, and protozoans that are transmitted to people when they consume contaminated water.

Pollution: An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects: (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses. Pollution may include contamination. (California Water Code Section 13050: Please see “Contamination”).

Porter-Cologne Water Quality Control Act (Porter-Cologne): The California equivalent of the federal Clean Water Act. This legislation established that the State Water Resources Control Board (State Water Board) has the ultimate authority over state water rights, water quality policy, and the nine regional water quality control boards (regional water boards) which oversee water quality on a day-to-day basis in their geographic regions.

Preservation: Maintenance and protection of fish and wildlife resources at levels that existed prior to the commencement of a (the current) project. Preservation is achieved through mitigation for avoidable resource losses and/or compensation for unavoidable resource losses and/or compensation for unavoidable resource losses. The term “preservation” is synonymous with “conservation” as used in the U.S. Fish and Wildlife Coordination Act. Preservation does not assume that restoration will occur, but it could.

Project Beneficiaries: Those who gain value in some fashion from any of the following: water supply, flood control, power generation, recreation, salinity repulsion, wildlife.

Protection: Department of Fish and Game appears to use this term when referring to legal enforcement by wardens. (See Preservation and Conservation).

Real Water Savings: Simply means there is an “actual” savings of water which could be put to other use.

Reasonable and Beneficial: Depends on facts and circumstances of each case. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time. (Tulare Irrigation District v. Lindsay-Strathmore Irrigation District). The courts have determined the law requires an evaluation of the ascertainable facts in view of the increasing need for water conservation within California.

Beneficial uses include: storing water underground if thereafter to be applied to beneficial purposes; use of water for recreation and preservation and enhancement of fish and wildlife resources.

Reclaimed Water: Wastewater that has been cleaned so that it can be used for most purposes except drinking.

Recycled Water: Municipal and/or industrial wastewater that has been treated to a sufficiently high level that it can be reused usually for non-potable purposes such as irrigating landscape and refilling aquifers.

Restoration: Means to return to “original” conditions. (Selection or “original” or base condition is often source of debate.)

Reverse Flows: Where direction of flow in a channel is reversed, as in the case of channels in South Delta which normally drain towards San Francisco Bay, but where pumping for export

may cause flow reversal, drawing more saline water further into the Delta.

Sediment Transport: Sediment of various particle sizes may be carried by moving water. The size of particles transported by water increases as velocity rises.

Stormwater: Water that accumulates on land as a result of storms, and can include runoff from urban areas such as roads and roofs.

Surplus Water: When used as a technical term in water contracts, this is the water that is available after entitlement water has been delivered. The amount of surplus water varies from year to year, generally according to amounts of runoff. Surplus water ordinarily is less expensive to the user than entitlement water. Reference is also made to water which is surplus to reasonable and beneficial uses of area of origin and Bay/Delta.

System Expansion: Extension of existing infrastructure exclusively to serve new customers in presently unserved areas and/or increase in water supply exclusively for the same purpose.

Total Maximum Daily Load (TMDL): A calculation of the maximum amount of a pollutant that an impaired water body can receive and still meet applicable water quality standards. A TMDL is to include allocations for the maximum load a particular source of a pollutant may discharge to the subject water body. TMDLs are required pursuant to Section 1313(d) of the CWA for water bodies that have first been listed as being impaired for the particular pollutant or pollutants at issue.

Triennial Review: A review of water quality standards in basin plans that is required at least once every three years by Section 1313(c) (1) of the CWA and periodically under Section 13240 of the Porter-Cologne Water Quality Control Act.

Ultimate: Imprecise meaning. Depends on time frame.

Usable Groundwater: Refers to groundwater which can be pumped within the cost and technical constraints appropriate to the situation.

Water Banking: Not a precise term. Generally refers to storing presently surplus water in groundwater basins or in surface storage facilities.

Water Management Practices: Relate to the varied objectives of irrigation, municipal and industrial use. These objectives may not be compatible. In general, management practices are developed to maximize economic returns and/or to minimize (or prevent) adverse environmental impacts including water quality degradation. Conservation of supply, reuse, treatment for use and waste disposal, and the planned conjunction use of surface and groundwater are all aspects of water management. (Also see Conjunctive use and Groundwater management).

Water Quality Standards and Objectives: The regional water quality boards set “objectives” in their basin planning process which are equivalent to what EPA calls “standards”. The “standards” include numerical narrative criteria and plans to implement these criteria.

Water Reclamation: Usually refers to removing contaminants in water so that the water can be discharged into a receiving water without creating problems for fish, wildlife and other aspects of environment. Also, refers to water which has been treated to remove contaminants as required to permit its reuse particularly for irrigation of landscaped or agricultural areas.

Way Bill (Program): Delta Levee Maintenance Program. Declares the Sacramento-San Joaquin Delta, characterized by islands and meandering waterways, as a unique resource of major statewide significance. Reasons are stated. Declares the system of levees is the key to preserving the physical characteristics of the Delta. Finds there is an urgent need for a higher degree of

levee maintenance and rehabilitation throughout the Delta and 'that the state has an interest in providing technical and financial assistance. Establishes that local agencies maintaining non-project (private) levees shall be eligible for reimbursement from the General Fund. Reimbursement shall be at 50% of cost. (California Water Code Sections 12980-12991).

303(d) List of Impaired Waterbodies: The State is required to prepare a list of water bodies that are polluted, under Section 303(d) of the CWA. Inclusion of a water body on the 303(d) list generally leads to the development of a total maximum daily load (TMDL) for the water body.

Prepared by Robert M. Hagan, Extension Water Specialist, Marcia Kreith, Program Representative, University of California Cooperative Extension, July 1987 and Ken Farfsing, City Manager, City of Signal Hill, October 2009.

Sources:

Some of the preceding definitions were derived from the following sources:

California Wetlands Information System Website: Porter-Cologne Act

Los Angeles MS4 Permit: Basin plan, best management practices, maximum extent practicable, NPDES permit

RWA: Cross-media pollution

Southern California Coastal Waters Research Project (SCCWRP) Website: Atmospheric deposition

State Water Board Website: Numeric Limits, Triennial Review,

U.S. EPA Website: California Toxics Rule, Clean Water Act, coliform, enterococcus, TMDLs

U.S. Geological Service (USGS) Website: Indicator bacteria, pathogen



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COMMITTEE ON ENVIRONMENTAL QUALITY 2011 Work Program Status Update

2011 LEAGUE OF CITIES STRATEGIC GOALS The Committee worked to support the 2011 strategic goals adopted by the League Board of Directors. The 2011 strategic goals included:

- **Strong Partnerships for a Stronger Golden State.** Collaborate and partner with other public and private groups and leaders to reform and revitalize the structure, governance, fiscal integrity and responsiveness of our state government and intergovernmental system.
- **Sustainable and Secure Public Pension Systems.** Work in partnership with other groups and stakeholders to promote sustainable and secure public pension systems to help ensure responsive and affordable public services for the people of our state and cities.
- **Responsive and Accessible League Services.** Implement distance learning, meeting and other cost-effective strategies to deliver even more responsive and accessible League educational, information and advocacy services to the city officials of California.

Additionally, the committee looked at the following issues during the 2011 year:

ENVIRONMENTAL QUALITY LEGISLATION The committee actively monitored legislation and regulatory actions within the committee's jurisdiction including air and water quality, energy, smart metering, climate change, CEQA, integrated waste management, hazardous materials, coastal issues, and solid waste. As needed, the committee discussed and took positions on bills and made recommendations to the League Board. More specifically, the committee looked at bills related to CEQA, solid waste landfills, electric vehicles, sea level rise, and recycled water pipelines.

EDUCATION OF COMMITTEE MEMBERS The committee received updates from state legislators or other state or local officials on topics of interest to the committee. Committee members were also tasked with presenting their positions and communicating local needs when they heard from guest speakers. The committee was visited by speakers on Proposition 26, electric vehicle infrastructure, state budget and redevelopment issues, Energy Upgrade California and climate change adaptation.

ENERGY EFFICIENCY and RENEWABLE ENERGY The committee continued its work on updating the existing League energy policies and guiding principles as well as received education on the statewide Renewable Energy Standard PACE programs, Upgrade California, electric vehicles and Smart Metering proposals. The committee discussed and approved the first round of League energy policy revisions and will hear the rest of the proposed changes (as a whole document) in 2012. Additionally, the committee was educated on the challenges of electric vehicle infrastructure and on state funding for local energy upgrades programs.

CEQA and SB 375 The committee asked to receive periodic updates on the implementation of SB 375 (including infrastructure and relationship to redevelopment), CEQA streamlining and CEQA and renewable resources. The looked at bills related to CEQA and CEQA and renewable resources.

WATER The committee was tasked with looking at water quality and recycled water, wastewater as future water supply, Delta issues, and water contract expirations that conflict with RHNA. The committee looked at the proposed State Water Quality Industrial Storm Water Permit.



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COMMITTEE ON ENVIRONMENTAL QUALITY
2012 Draft Work Program

2012 LEAGUE OF CITIES STRATEGIC GOALS The Committee will work to support the 2012 strategic goals adopted by the League Board of Directors. The 2012 strategic goals include:

- **Support Sustainable and Secure Public Employee Pensions and Benefits.** Work in partnership with state leaders and other stakeholders to promote sustainable and secure public pensions and other post-employment benefits (OPEBs) to help ensure responsive and affordable public services for the people of our state and cities.
- **Promote Local Control for Strong Cities.** Support or oppose legislation and proposed constitutional amendments based on whether they advance maximum local control by city governments over city revenues, land use, redevelopment and other private activities to advance the public health, safety and welfare of city residents.
- **Build Strong Partnerships for a Stronger Golden State.** Collaborate with other public and private groups and leaders to reform the structure and governance, and promote transparency, fiscal integrity and responsiveness of our state government and intergovernmental system.

Additionally, the committee will look at the following issues during the 2012 year:

ENVIRONMENTAL QUALITY LEGISLATION The committee will actively monitor legislation and regulatory actions within the committee's jurisdiction including air and water quality, energy, smart metering, climate change, CEQA, integrated waste management, hazardous materials, coastal issues, and solid waste. As needed, the committee will take discuss and take positions on bills and make recommendations to the League Board.

EDUCATION OF COMMITTEE MEMBERS The committee will, as appropriate, receive updates from state legislators or other state or local officials on topics of interest to the committee. When receiving updates from guest speakers, committee members will also be tasked with presenting their positions and communicating local needs.

ENERGY EFFICIENCY and RENEWABLE ENERGY The committee will continue its work on updating the existing League energy policies and guiding principles as well as receive education on energy efficiency and renewable energy issues.

CEQA and SB 375 The committee will receive periodic updates on the implementation of SB 375 and look at the streamlining of CEQA, and CEQA and renewable resources.

WATER and WATER QUALITY The committee will look at state and regional water board issues, water quality and recycled water, wastewater as future water supply, flood and Delta issues.

**Environmental Quality Policy Committee
Legislative Agenda- January 2012**

1. Regional Water Board Reorganization Proposal

Summary:

In early 2012, the Governor’s office will be introducing legislation to reorganize the state’s nine regional water quality control boards. Most of the suggested changes are in response to low quorums and lack of a quality pool of appointees for the regional boards. Specifically, the proposal would do the following:

1. Reduce from 9 to 7 Members, Remove Associational Requirements. Reduce the number of Regional Water Board members on each board from nine to seven. The proposal would eliminate the existing association requirements and instead use a modified version of the criteria that was proposed in SB 1001 (Perata, 2007) which would read:

Each member shall be appointed on the basis of his or her demonstrated interest and proven ability in the field of water quality, including water pollution prevention and related water resource management problems in their region or in the beneficial use of water by the region’s nonpublic economic sectors. Insofar as practicable, appointments shall be made in such a manner as to result in members of each regional board being drawn from diverse experiential backgrounds.

Each member shall be appointed on the basis of his or her ability to attend substantially all meetings of the regional board, and to actively discharge all duties and responsibilities of a member of the regional board.

2. Adjust the 10-percent NPDES Income Rule to Apply on a Per-Region Basis. Expand the pool of candidates eligible to serve on the Regional Water Boards by revising provisions of state law pertaining to the 10-percent rule so the rule applies on a per-region basis. The 10-percent rule excludes members who receive more than 10-percent of their gross personal incomes from NPDES permittees from serving on a Regional Water Board.
3. Conform Conflict of Interest Rules to the Political Reform Act. Allow the State to fully benefit from the expertise of Water Board members and conform the Water Code’s conflict of interest rules to the rules that apply to other state officials under the Political Reform Act.
4. Regional Water Board Chair Selected by Governor. Have the Governor select Chairpersons of the Regional Water Boards. Currently, the Regional Water Boards select their Chairpersons from among members serving on the board. This change will vest the selections of the Chairpersons of the Regional Water Boards in the Governor, and would consistent with the current process in statute for selecting the Chairperson of the State Water Board.
5. Increase Per Diem for Regional Board Members. Increase the per diem compensation from \$100 per day to \$500 per day, and increase the annual cap from \$13,500 to \$60,000 for each Regional

Water Board to better reflect the significant amount of time that Regional Water Board members must invest to understand and access the complex water quality issues facing each region.

Staff Recommendation:

Discussion and feedback for League staff on a position based on outline of bill.

Existing League Policy:

- The League supports applying the 10-percent rule on a per-region basis.
- The League has no recommendation on reducing the size of the regional water board from nine members to seven, with the exception that at least one person on the regional board should have local government experience.
- The League has no position on confirmation of regional water board conflict of interest rules with the Political Reform Act (*Note: The League's Water Task Force Subcommittee asked for a legal opinion on this issue. The question that was asked was: What are the current conflict of interest rules pursuant to AB 1234. Staff and members of the subcommittee understood this general idea to be similar to what already exists for other state boards*).

Comments:

- *What's Old is New Again.* All but the last two provisions of the proposal were sections of a water quality proposal by the State Water Resources Control Board Water Quality Improvement Initiative in 2008. In 2009 and 10, the League's Water Task Force was able to look at the provisions of the Initiative and recommend positions. Those positions were adopted in 2010.
- *SB 900 (Steinberg).* Last year, Senate Pro Tem Steinberg introduced SB 900 to modify the conflict of interest requirements for appointees to the Regional Water Boards including modifying the 10-percent income rule to apply on a per-region basis. That bill was supported by a coalition of agricultural, business and local agencies. The bill was opposed by a coalition of environmental groups who raised issue with the 10-percent rule being a federal requirement, as well as not believing that it is truly a barrier to finding farmers eligible to be appointed. They noted that they believe that the lack of available members of Regional Water Boards stems from low pay and statewide permit conflicts. The League did not take a position on this bill when it came up last spring.

2. Water Board Fees and Permits

Summary:

Over the last several years, cities have faced steep increases in water quality fees. They are currently facing substantial compliance and enforcement costs for proposed updated statewide stormwater permits. Much of the increase in statewide fees has come from shifting support for State programs from the General Fund to fee-based funding. In Fiscal Year 2011-12, cities will face fee increases as high as 44 percent for National Pollutant Discharge Elimination System (NPDES) fees. In addition, this year three existing general permits issued by the State Water Resources Control Board (“State Board”) are in the process of being updated. It will be exceedingly difficult for small cities to meet the estimated costs to comply with and enforce these permits.

While the League will continue to participate in legislative and regulatory discussions at the State Board hearings, legislative hearings and as budget negotiations begin for FY 2012-13, it is very likely that the League will be in a position early in 2012 to support, co-sponsor or sponsor legislation to address key water quality issues involving the State Board.

Staff Recommendation:

In order to position the League to take action, staff recommends discussion by the EQ and TCPW committees and authorization for staff to draft “spot bills” to give the League the option to sponsor legislation on this matter in early 2012.

Fiscal Impact:

Potentially significant fiscal impact to cities for increasing fees and permit compliance costs.

Existing League Policy:

Environmental Quality:

- Adequate water quality requirements for wastewater discharge into surface water and groundwater to safeguard public health and protect beneficial uses should be supported.
- The League supports the development of objectives and standards to assure high water quality throughout California.
- The League supports the development of economic protocols and guidelines to assist local governments and water boards in determining reasonably achievable, cost effective and environmentally sound regulations.
- The League encourages the water boards to issue permits that are reasonably achievable, based on the unique conditions of a city or region.
- The League supports public access to decision makers, including during the time that new proposed permits and permit terms are being proposed. The League also supports access to pending permittees, outside of the administrative process.

- The League supports legislation to develop economic protocols and guidelines to assist local government and the water boards in determining reasonably achievable, cost effective and environmentally sound regulations, as outlined in Porter-Cologne Sections 13000 and 13241
- The League supports legislation to provide funding for storm water, water and wastewater programs, including a constitutional amendment which would place storm water fees in the category of water and wastewater fees, for the purpose of Proposition 218 compliance.

Comments:

Background

Two federal and State laws-- the federal Clean Water Act (CWA) and the State's Porter-Cologne Water Quality Control Act (Porter-Cologne) provide the basic framework protecting California's water quality by regulating discharges to surface and ground water. Under authority of these acts, the State Board and nine semi-autonomous Regional Water Quality Control Boards ("regional boards") are responsible for protecting the water quality of 10,000 lakes, 200,000 miles of rivers and 1,100 miles of coastline.

The federal CWA seeks to restore and maintain the chemical, physical and biological integrity of the surface waters of the United States. A key provision of this federal law, the National Pollutant Discharge Elimination System (NPDES) prohibits discharge of pollutants from a point source into waters of the U.S. without a permit that complies with the CWA.

In California, both the State Board and regional boards ("boards") issue Waste Discharge Requirements (WDRs) to regulate discharges of waste to surface water and land; those that regulate point source discharges to waters of the U.S. serve as NPDES permits under the Clean Water Act and are issued, monitored and renewed every five years. The more than 50,000 discharge permits are a key enforcement mechanism as the boards regulate more than 100 contaminants.

Water quality regulation: Who does what? California enforces its clean water laws through the State and nine regional boards. Part of the California Environmental Protection Agency, these agencies are charged with assessing, managing, and regulating water quality. The State Board has five members, appointed by the Governor, with expertise in water quality. The State Board's main responsibilities are to set statewide policy, issue statewide permits, develop plans and standards, operate statewide monitoring programs and oversee regional boards as they use these standards to implement water quality programs. The State Board also determines rights to California's surface water.

The nine members of each regional board are also appointed by the Governor and have expertise in areas including water supply, irrigated agriculture, industrial water use, municipal government, county government, recreation, fish or wildlife. The boundaries of each regional board are defined by watersheds. Their main duties are to issue and enforce permits or waivers (NPDES/ Waste Discharge Permits mentioned above). While regional boards issue the majority of permits, in some cases the State Board may do so. Regional boards operate largely independent from one another, creating unique plans to protect water quality within their area. These water quality control or "basin plans" prescribe beneficial uses, water quality objectives and standards, and monitoring

programs in the regions. They are core regulatory documents and serve as the basis for each regional board's permitting and enforcement actions.

The Legislature intended for basin plans to be updated every three years. However as highlighted in the Little Hoover Commission's January 2009 report, *Clearer Structure, Cleaner Water*, the plans are woefully outdated and regional boards rarely have the resources to conduct a full review. Noting the importance of the documents and lamenting the lack of funding, the Commission's report includes this prophetic statement: "Given the state's budget deficit, it seems unlikely that the state will be able to pay for the work needed to update basin plans. Thus, water users and others with a stake in clean water will need to contribute." And beginning this budget year, those contributions have increased dramatically.

Permits: What are they? The boards carry out their required NPDES regulatory activities by issuing five types of permits: Phase 1 and 2 MS4 permits, Construction, Industrial General Permit (IGP) and CalTrans MS4. The Phase 1 MS4 permits are issued by the regional boards; all others are issued by the State Board on a statewide basis. Each permit is to be renewed every five years, however the State is behind in that schedule. Three stormwater permits currently are awaiting renewal: Phase 2 MS4, IGP and CalTrans MS4. At an October 6 hearing of the California Senate Select Committee on California Job Creation and Retention, the Committee heard about the requirements for, costs of, and problems with these new permits.

Since 1990 stormwater discharges in urban areas with populations greater than 100,000 have been regulated through a Phase 1 MS 4 permit issued by regional boards; as of 2003, operators of small municipal separate storm sewer systems are regulated by a State Board issued Phase II MS4 general permit. MS4 permits require dischargers to implement stormwater management programs using best management practices. Each permit must include minimum measures to detect and eliminate illicit discharges, to educate and engage the public, to ensure safe operations and to regulate construction sites.

The Phase II MS4 permit expired in 2008 and is now being reissued, and the draft includes new and costly State-required programs such as water quality monitoring, trash abatement, and business inspections. Of note, cities would be required to inventory a large and diverse number of commercial and industrial facilities for stormwater quality compliance.

The Industrial General Permit (IGP) expired in 2002. Reissuance began in 2003 but stalled as an expert panel was convened to examine the feasibility of numerical effluent limits. In 2006 the panel's report said such limits "may be feasible" and in 2011 a new IGP was finally released. It met with stiff opposition from business groups who argued that the new permit requirements for monitoring and inspection were excessive, the numeric effluent limits were not feasible, requirements for training were a burden to small companies and compliance costs were estimated to increase as much as 2000 percent. While a revised draft has not yet been released, it is expected that the Board will follow staff recommendations to delete the numeric effluent limitations and scale back the required inspections.

In terms of cost increases, the most dramatic are those associated with the new CalTrans MS4 permit which governs stormwater management for all CalTrans projects. Initially issued by regional boards, CalTrans requested a statewide approach and the permit has been so issued since 1999. CalTrans and the State Board have been discussing this permit since it expired in 2004. CalTrans

believes complying with the vague and complex new requirements would cost an annual \$900 Million on top of the \$200 Million it already spends. With no new funds available, these costs would be taken from its \$1.7 Billion budget for highway maintenance and construction. The State Board believes that CalTrans misunderstands the new permit's requirements but has no cost estimates of its own. It promises more discussions and a new draft by early 2012.

State Board Core Regulatory Fees

Not only are cities and businesses facing skyrocketing compliance costs for these new permits, but the costs of the permits themselves continue to climb as the State increases programs and requirements and shifts costs from the General Fund under a policy called "beneficiary pays".

Funding and fees: the "beneficiary pays" policy: State law requires the Board to assess fees to persons discharging waste to State waters. Fees are charged for the National Pollutant Discharge Elimination System (NPDES), the Waste Discharge Requirement (WDR), and the Stormwater and Land Disposal programs and deposited in the Waste Discharge Permit Fund (WDPF) to fund various State Board and regional board water quality activities. While the boards have the authority to raise fees to meet program costs, they cannot raise fees above the amount set in the budget every year by the Legislature and Governor. Historically these "core" programs have been funded through a combination of fees and General Fund revenues. However, as the State budget has been squeezed, the Administration and the Legislature have increasingly sought more non-General Fund revenues to cover core regulatory programs.

In its analysis of the FY 2008-09 budget, the Legislative Analyst's Office (LAO) recommended instituting "beneficiary pays" and "polluter pays" policies under which all core program costs would be funded through fees paid by those who directly benefit from or violate the terms of water quality requirements. As the report noted, "We think that shifting funding for the board's core water quality management activities to fees would provide greater funding stability to these activities that are the foundation of much of the board's work."

This expansive interpretation of "beneficiary pays" argues that all core water quality management activities should be funded by a broad-based fee on statewide water users because all users, in some way, impact water quality. Specifically the LAO recommended that the NPDES program and basin planning be fully fee supported; the Governor and the Legislature finally agreed. In the FY 2011-12 budget, over \$18 million in costs for two programs were shifted from General Fund to fee support, with costs allocated across water quality programs: \$6.6 million for basin planning and \$11.5 million for the Total Maximum Daily Load program that allocates among users a "share" of pollution that can be discharged to an impaired surface water. Generating revenues from fees to support these programs means that cities will face significantly higher fees in 2011-12.

How are fees established? Setting user fees is a lengthy process. The State Board must adjust fees each year to match the revenue levels in the Budget Act; because the State Board cannot act until the Budget is passed, the fee schedule is adopted in the late fall by emergency regulations. Therefore the regulated community does not know what it will have to pay until well into the fiscal year. In fiscal year 2010-11 for example, the fee schedule was adopted on October 19, 2010.

The fee setting process for FY 2011-12 was further complicated by past overpayment of stormwater program fees. Between 2004 and 2009, these fees generated \$22 million over actual expenditures;

the surplus was used to offset revenue shortfalls in other programs. For 2011-12 fees, the State Board adopted an average increase of 38 percent for all programs; however they also considered reducing the increases for the stormwater program, and requiring *even higher* fees for all other programs to cover the loss of fees from the stormwater program. With these lengthy deliberations, the final fee schedule for FY 2011-12 was not adopted until September 19, 2011.

This delay and unpredictability creates numerous problems for municipalities struggling to maintain their own balanced budgets. By the time the new fee schedule is available, the fiscal year is already underway, requiring even higher mid-year utility rate increases. And with stormwater program fees subject to the Proposition 218 requirement for two-thirds voter approval, increasing rates to cover escalating stormwater permit fees may not be an option even though it is as strictly regulated as wastewater. In addition, many in the regulated community argue that the State's current fee system provides little incentive for the State to control its own costs, or to prioritize its activities, leaving users at the mercy of ever-increasing fees.

The Little Hoover Commission report also noted this lack of priorities and focus, finding the boards concentrated on process rather than results. "It is difficult to determine if the boards' regulatory programs are effectively cleaning and protecting California's waters." At the October 6 hearing, Senator Dutton asked whether the additional regulatory burden was producing cleaner water, warning he did not support "bureaucracy without benefit." Chairman Wright echoed his concern, indicating that the Committee wants to examine the realities, costs and effectiveness of regulatory programs. As stakeholders articulate the problems of increasing regulation and ever-rising fees, it appears both Democrats and Republicans are listening. In fact, over the last several months more than a dozen legislative members have either testified before the State Board or signed letters indicating their concerns over economic impacts of permits and fees.

Stakeholders unite: the Legislature responds.

In response to concerns about the draft Phase II MS4 municipal stormwater permit, a group of over 60 local governments formed to advocate for a more realistic approach; as a member of this new Statewide Stormwater Coalition (SSC), the League is also advocating to protect clean water with a more feasible and cost-effective regulatory approach. And cities have powerful allies in the business community, which is also subject to the compliance costs and wildly-fluctuating fees. Recently a business group, the California Council for Environmental and Economic Balance, has joined the effort to lobby the Administration and the Governor on the impact of these permit fees and compliance costs.

The State Board seems to be responding to stakeholder criticism. Even as it raised fees at its September meeting, the Board also directed staff to prepare a report by March, 2012 that "aligns priorities with targets and details the resources necessary to fulfill its statutory obligations, including identifying any opportunities for cost savings." The goal of the report is to show how the fees collected reflect the boards' core program priorities, work conducted and outputs produced. This "Phase 1" report will evaluate funding sources and distribution of resources among State and regional boards and among all fee-funded programs, define the activities that constitute the NPDES and WDR programs and describe the resources for each. The report is also expected to establish methods to set performance targets for the NPDES and WDR programs for FY 2012-13 with a goal to implement management practices that ensure that work outputs are associated with workload standards and driven by established priorities. However cost factors and target-setting methods for

the Stormwater and WDR Land Disposal Programs will not be reviewed until the expanded “Phase 2” report which will also evaluate costs associated with program activities and identify possible cost savings.

The Legislature also appears ready to act. At the Senate’s October hearing, representatives of business, labor and local government had a sympathetic audience as they expressed serious concerns about implementation problems, unnecessarily exceeding federal requirements, and significantly increasing costs without documented evidence of significant improvement in water quality. At the hearing, State Board Executive Officer Tom Howard acknowledged that the new permits required too much change, too quickly and at too much expense. He testified that in assessing the comments received, the permits need “substantial amendments.” As noted earlier, the Board has pledged to revise the Phase II MS4, IGP and CalTrans MS4 permits and restart the public comment process.

However, in order that stakeholders can have meaningful input into the boards’ rulemaking process, the process itself needs substantial reform. The Administrative Procedure Act (APA) sets minimum procedural requirements for quasi-legislative and quasi-judicial actions; notably, each type of action has different rules governing communication between stakeholders and State agencies—called “ex parte” contacts. In quasi-legislative actions, the APA allows interested persons to consult with agency staff prior to regulatory action. In addition, quasi-legislative process requires that a proposed action must be publicly noticed and must include justification for the regulatory action and identification of alternatives to decrease any adverse impact on small business. If the agency rejects those alternatives, it must state its reasons. The agency must also summarize each objection raised and justify its original position or explain how its actions have been changed. In short, the quasi-legislative approach ensures a high degree of agency accountability to the regulated community.

The quasi-judicial process is intended to be simpler and quicker. Quasi-judicial rulemaking allows for an informal hearing procedure which does not require consideration of costs, discussion of alternatives or detailed response to comments. While in past years, the Board regarded NPDES permits and waste discharge requirements as quasi-legislative, they now regard them as being exempt from APA requirements; the Board’s decision to use the quasi-judicial process has resulted in strict limits on ex-parte contacts.

As both permit holders and regulators at the local level, cities’ expertise is a vital contribution to the rulemaking process. However once a regulatory proceeding begins, Government Code Section 11430.10(a) prohibits any communication, “direct or indirect regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.” In practice, the Board’s decision to use a quasi-judicial approach to statewide permits precludes a significant role for the regulated community; unfortunately, those with significant knowledge of the issues and challenges have little real opportunity to engage with the regulators.

In its 2009 report, the Little Hoover Commission called for reform of ex parte rules to allow more communication between decision-makers and stakeholders. “The regulated community should have greater opportunity to talk with board members who have such significant power to influence their activities.” The Legislature may have reached the same conclusion. At October’s Senate hearing, Chairman Rod Wright directed staff to ask Legislative Counsel to examine the Boards use of the

quasi-judicial approach. He seemed to share the Commission's belief that rulemaking should consider cost and encourage input.

FUTURE LEAGUE ACTION

As noted above, while the League will continue to participate in legislative and regulatory discussions at State Board hearings, at legislative hearings and at negotiations for the FY 2012-13 budget, it is very likely that the League will be in a position early in 2012 to support, co-sponsor or sponsor legislation to address key water quality issues involving the State Board. The League will examine any proposals available early in the year and will participate in these legislative efforts so that cities can help shape solutions to the State's complex water quality problems and mitigate unwieldy impacts on municipalities.

Resources:

- State Water Quality Control Board (www.swrcb.ca.gov)
- State Water Board Maps of Regions (http://www.waterboards.ca.gov/waterboards_map.shtml)
- Further information on Water Board Core Regulatory Fee 2011 Schedule (http://www.cacities.org/resource_files/29974.WDPFStakeholderMeeting8-15-11Handout.pdf)
- Link to October 6th Hearing of the Senate Select Committee on Job Creation and Retention (http://www.stormwatercosts.com/?page_id=13)
- Statewide Stormwater Coalition www.stormwatercosts.com
- Read the original proposed Phase II MS4 permit here.: [The draft permit](#)

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