

**TO:** CUWCC Members  
**FROM:** Gregory Weber, Council Staff  
**DATE:** November 30, 2016  
**SUBJECT:** Member Vote on Council Board proposal for organizational evolution

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**RECOMMENDATION:**

Adopt the Board's recommendation to refocus and restructure the Council through a combination of bylaws amendments, financial arrangements and other transition matters as more fully laid out below.

**SPECIAL NOTE:**

This is a single up-or-down vote on the entire package. All of the pieces are intertwined and are the result of two years of effort. Members who seek organizational changes beyond those laid out in the proposed bylaws amendments can seek those changes in 2017.

**BACKGROUND:**

Since November 2014, the Council has been engaged in a strategic planning process. Groups 1 and 2 have been unable to reach agreement on the future of the Council. Council members had substantially different visions of what the Council could or should be. As reflected in the minutes from the September 14, 2016 Board meeting, the Council Board reached an impasse over these differing directions for the Council's future. At that point, the Board was faced with three choices:

1. Seek an involuntary dissolution of the organization;
2. Agree to a voluntary dissolution; or
3. Agree to a series of bylaws changes and financial arrangements.

Each of these options posed its own challenges.

Involuntary dissolution is a legal remedy possible when a nonprofit's Board and members cannot agree on fundamental organizational matters. It requires a lengthy and expensive judicial process. In addition, under California law, and the Council's articles of incorporation, in the event of a dissolution, all of the Council's unrestricted<sup>1</sup> net assets--no matter where they came from--must go to another 501(c)(3) nonprofit organization whose specific purpose includes "environmental conservancy." Both the California Attorney General<sup>2</sup> and the courts would have to approve the disposition of these assets. And, as the Council's affairs were being wound up, the Council's staff would have to be let go. Council programs and projects would end. While a new organization could be created to take on work that Council members wanted continued, creation of such a new organization would take time and resources and require the recruitment of a new membership base.

Voluntary dissolution--avoids the lengthy and expensive judicial process. In all other ways, it is virtually identical to the involuntary dissolution. The principal difference is that instead of having a court supervise the disposition of all of the Council's assets, the Council's Board and members

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<sup>1</sup> Restricted assets, e.g., grants for specific purposes, would ordinarily be returned to the donor.

<sup>2</sup> The Attorney General must review the transfer of "substantially all" of a non-profit's assets. The review ensures that the assets are transferred to another public benefit corporation and further the purposes for which the transferring entity acquired them.



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would have to agree to that disposition. The California Attorney General would still have to approve the agreed-upon asset disposition.

Bylaws amendment combined with a financial arrangement--offers benefits not possible under either of the first two options. Most significantly, it allows the organization to refocus and restructure rather than dissolve and have to be re-created. Council staff and committees can remain working on Council programs and projects. In addition, it allows the Council to resolve the financial matters that would be required under dissolution in ways that do not trigger judicial or Attorney General review.

As both the minutes of the September 14, 2016 Board meeting and the cover memo to this ballot package indicate, almost all of the Council Board members from Group 2 did not support critical elements of the organizational changes sought by the Council Board's Group 1 members. These Group 2 Board members indicated their plans to leave the organization.

Further, the Group 2 members expressed their support for the Council's voluntary dissolution in recognition that Group 1 members demanded a fundamental change in the rules that guided the Council and how it governed itself, effectively dissolving the existing organization. In recognition that a voluntary dissolution would negatively impact Council staff members and their ongoing activities, however, Group 2 members agreed in principle to a set of bylaws changes sought by the Group 1 Board members. In addition, the Group 2 Board members proposed, in effect, to work out a financial arrangement to substitute for what would have been the complete disposition of all assets to other nonprofits required by a voluntary or involuntary dissolution. The Group 1 Board members accepted this proposal.

Between the September and November Board meetings, Board members developed an agreement that keeps the re-organized Council financially viable. At the same time, it makes Attorney General review unnecessary and meets the interests of those Group 2 members who are leaving the organization to ensure that Council assets developed to further environmental conservancy remain dedicated to projects, programs and approaches that directly further that purpose.

The rest of this memo explains in more detail the package of Board recommendations on bylaw amendments, the Financial Arrangement, and the Transition Plan. Additional information will be included in a separate "Frequently Asked Questions" (FAQs) document that will be available on the Council's website shortly after the December 6 webinar described below in the "Transition Plan".

## **BYLAWS AMENDMENTS**

Refocusing and restructuring the Council from its MOU/BMP focus requires a set of bylaws amendments. While many of the current bylaws will probably not prove necessary to the refocused and restructured organization, the Council's staff and attorney<sup>3</sup> identified a minimum set of bylaw amendments required to implement six key principles. These principles are:

1. A new name;
2. Change of the "Council's" principal purpose from MOU implementation and, by extension, BMP adoption, to engagement in a different set of water use efficiency-promotion activities;

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<sup>3</sup> Review by the Council's attorney also led to the proposal of a handful of additional changes solely designed to ensure clear compliance with the California Nonprofit Corporation Law.

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3. Elimination of separate member groups, i.e., Groups 1, 2 & 3. All members will simply be members and, if in good standing, entitled to vote on matters subject to member voting and to serve on the Board of Directors;
4. Inclusion of one-member, one-vote, and simple majority decision-making at both the Board and the member levels;
5. Requirement that members be “in good standing” (i.e., have paid the appropriate dues) before they are able to vote in any election or enjoy other Council privileges and benefits; and
6. Creation of a transition Board and transition Officers.

The proposed bylaws amendments are included in this packet. Attachment 3 contains a clean copy of all of the proposed changes. The key sections changed are highlighted. Attachment 4 contains a redlined copy of the principal changes.<sup>4</sup>

Most of the changes are relatively easy to understand. Changes to the Board composition are the most extensive. These changes are explained below, in the “Transition Plan” section.

The first principle--a new name--responds to Group 2’s request. Group 2 believes strongly that the refocused and restructured organization will not be the Council as it has come to be known over the last 25 years. Hence, even if it is legally going to be the same non-profit corporation after bylaws amendments are adopted, it needs a new name to reflect the new organizational structure and focus. The Group 1 Board members agreed. At the webinar scheduled for December 6, 2016, the Council Board will announce a process by which member input into the new name will be sought. There are only two agreed-upon limitations to any suggested new name. First, the new name cannot have “Council” in it. Second, its initials cannot be “CUWCC.” Other than that, members will be encouraged to be creative in their suggestions. The Council Board wishes to have the new name settled upon as early in the first quarter of 2017 as possible.

### **FINANCIAL ARRANGEMENT**

As noted above, the Board agreed to a financial arrangement involving a portion of Council assets. This arrangement was necessary to overcome impasse and allow the organization to refocus and restructure itself. It avoids the complete disposition of Council assets that would have to occur were the Council to dissolve voluntarily or involuntarily. The arrangement recognizes the reality that if the Board and Council members remained at impasse over the Council’s direction, under the Council’s articles of incorporation, all of the Council’s unrestricted net assets would be distributed to nonprofits engaged in environmental conservancy.

The principal terms of the arrangement are relatively straightforward. They are set out in two different versions. The first captures the Board’s intent; it is for members’ understanding of the thinking that lies behind the agreement. The second is a formal expression of the agreement articulated in simpler terms that acknowledge legal requirements.

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<sup>4</sup> To reduce visual clutter in the redlined document, it does not indicate over one hundred one-word changes needed to implement principle 3: all members (in good standing) will be voting members. (As members know, under the current MOU and Bylaws, only Group 1 and Group 2 members are voting members. Hence, the current Bylaws specify “voting” members from the non-voting Group 3 members in any context where a vote needs to occur.) In addition, the redlined document does not indicate minor, non-substantive changes. For example, almost all of the current Bylaws’ references to the “Board of Directors” would simply read “Board.” And all of the references to “members of the Board” will simply read “Directors.”

Version 1: For Member Understanding

During its November 16, 2016 meeting, the Council Board of Directors agreed to the following in order to implement the organizational changes agreed upon during its September 14 Board meeting:

1. The Council will divide its net cash assets as of 12/31/2016, as reported by the Council's accountant on approximately 1/15/2017, between Group 1 and Group 2 members, with each group receiving an equal share.<sup>5</sup>
2. Group 2 will dedicate \$30,000 of its share as a designated Council asset that will remain with the Council and be fully matched by Group 1 members from Group 1's share of the Council's net cash assets.
  - a) This \$60,000 pool of funds will go toward mutually agreed upon activities or projects, including Council program staff time, that will be approved by a committee that is a subset of the current Board of Directors.
  - b) Both Group 1 and Group 2 members will endeavor to leverage the \$60,000 to receive additional outside funding.
3. The remainder of Group 2's share will be granted by the Council, in a rapid fashion, to a third-party 501(c) (3) organization with a mission that aligns with the Council's current mission.
  - a) The third-party organization will then either re-grant the funds to other nonprofit organizations through a grant application process or undertake its own projects, provided that:
    - i) Any such grants or projects support activities that further the Council's current mission or the MOU;
    - ii) Any work product, tool, or other intellectual property that is developed with this funding will be publicly available, without charge; and
    - iii) All legal and Generally Accepted Accounting Principles requirements are met.
4. The capital assets of the Council will remain with the re-organized and promptly re-named organization.

Before setting out the formal version, several points deserve explanation.

First, the "net cash" described in Point 1 represents unrestricted assets that exist after accounting for all Council obligations. It does not include restricted assets, such as grants from third parties for a specific project or other purpose. It also does not include the Council's capital assets; those will remain with the Council per Point 4. As a result of these exclusions, the amount that will be granted by the Council is less than half of the Council's total assets. As a result, Attorney General review will not be necessary.

Second, the funds described in Point 2 represent a rather elegant solution. Point 1 responded to Group 2's interest in directing the disposition of an equal share of the net assets. Point 2 recognized both Groups' interest in ensuring the financial viability of the organization during 2017 while still ensuring that Group 2 members can help determine how its equal share of the net

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<sup>5</sup> The most recent financial statement prepared by the Council's accountant anticipated net cash of \$496,000. As a projection, this number is subject to change. The actual end-of-2016 figure is expected to be known by January 15, 2017.

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assets is put to use. In particular, the arrangement, in combination with expected members' dues, allows the refocused and restructured Council to maintain an average of 3 months of operating cash during 2017.

Point 3 simply addresses the due diligence and restrictions on the funds that will be granted.

The version below simplifies and formalizes the terms laid out in Version 1.

### Version 2: To Meet External Requirements

1. As soon after January 15, 2017, as practicable, the Council will grant half of its net cash, calculated as of 12/31/2016, and as reported by the Council's accountant on approximately January 15, 2017, minus \$30,000, to a 501(c)(3) organization with a mission compatible with the Council's specific purpose ("environmental conservancy.")
2. At the time that the grant referenced above is funded, the Council will designate \$60,000 for projects or activities, including Council program staff time. Those projects or activities will be agreed to by representatives from both Groups 1 and 2, through a committee that is a subset of the current Board of Directors.
  - a) Both Group 1 and Group 2 Board members will endeavor to leverage the \$60,000 to receive additional outside funding.
3. The third-party organization will then either re-grant the funds to other nonprofit organizations through a grant application process or undertake its own projects, provided that:
  - a) Any such grants or projects support activities that further the Council's current mission or the MOU;
  - b) Any work product, tool or other intellectual property that is developed with this funding will be publicly available, without charge; and
  - c) All legal and Generally Accepted Accounting Principles requirements are met.

### **TRANSITION PLAN**

The Transition Plan approved by the Board has two main elements: a) a Transition Board and Officers; and 2) a transition period.

#### - Transition Board and Officers

As noted above, the proposed changes to the Bylaws address the Board and the Officers. The changes are important enough to explain in detail here.

In contemplating the Board and Officers to guide the Council during its organizational transition, the current Council Board considered five factors. In particular, it sought:

1. Continuity of leadership by Board members, and Special Advisors to the Board, most familiar with all of the strategic planning and transition issues;
2. A proposal that was as simple as possible to understand;
3. The ability to quickly fill any vacant positions;
4. The elimination of staff time in conducting elections during the last quarter of 2016 and the first three quarters of 2017; and
5. The reduction of the potential for impasse on Board decisions.

Implicit in its considerations was a sixth factor: compliance with the California Nonprofit Corporation Law.

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The proposal contained in the Bylaws addresses each of those factors, although the second factor--simplicity--has had to give way to the other factors.

In broadest terms, collectively, the proposed Bylaws amendments on the Board and Officers have eight elements:

1. Board elections are suspended until December 2017;
2. Current Board members<sup>6</sup>, as they are willing and able, remain in office;
3. Elected Group 3 Special Advisors<sup>7</sup> become full voting Board members;
4. The total number of Board seats will be an odd (uneven) number;
5. Ex-Officio Special Advisors<sup>8</sup> to the Board remain in office and remain non-voting members;
6. The Transition Board appoints the organization's Officers (i.e., Chair, Vice-Chair, Secretary-Treasurer);
7. Once the transition period begins (see below – proposed as January 1, 2017), the then-sitting Board members can fill any vacancies that have occurred before the transition period, or that occur during the transition period; and
8. If, for whatever reason, Council members do not make changes to the Bylaws during 2017, the Bylaws include an election process to replace Board members whose terms expire.

The critical provisions are found in proposed Bylaw Sections 7.02, 7.03 and 9.03.

Before detailing those three sections, note that the Board intends these to be transition provisions, not (necessarily) permanent provisions. Council members will have multiple opportunities in 2017 to consider and decide what kind of Board they want, and how they wish their Board members to be selected or elected. In the event that, for whatever reason, members do not make additional Bylaws changes in 2017, Section 7.02 includes an annual election process.

Turning now to the specific provisions, Section 7.02(a) sets the number of Board positions at 21. Currently, there are 20 (voting) Board positions. Boards with an even number of members are more likely to end in impasse than Boards with an uneven number of members. Increasing the number to 21 will leave the Board with an uneven number of members.

Section 7.02(b) extends the terms of existing Board members by one year. This provision best allows for Board continuity during the transition period.

Moving to Section 7.03, subsection (d) allows the Board to appoint replacements for Board seats vacant because of resignation or removal from office. Currently, Council staff expects that five of the six Group 2 Board members will resign their seats effective 12.31.16. This provision will allow the remaining Board members to appoint five new members to replace them.

Moving back to Section 7.02, subsection(c) allows the Transition Board to appoint enough additional Board members to leave the Board with 21 members. Eleven<sup>9</sup> of those members will

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<sup>6</sup> Appendix A sets out a list of current Board members and their terms.

<sup>7</sup> Appendix A sets out a list of current Group 3 Special Advisors to the Board and their terms.

<sup>8</sup> There are four non-voting "ex-officio" members of the Board: the immediate past-Chair; a DWR representative and two Bureau of Reclamation representatives. The Transition Board would include the representatives of the two agencies, as they are willing and able. Under the proposal, there will be no need to reserve a non-voting space for the current Council chair.

come from the current Board members. That provision can be used to include the five current non-voting Group 3 Special Advisors to the Board as full voting Board members, if that is what the Transition Board decides.<sup>10</sup> Alternatively, if the Transition Board wished, they could be appointed under Section 7.03(d), and five additional Transition Board members can be designated under Section 7.02(c) from members not currently on the Transition Board. In short, there will be an opportunity for at least five new Transition Board members to bring new perspectives or experiences to the Transition Board during the transition period.

Proposed Section 9.03 has the Transition Board appoint Transition Officers. The current Bylaws have Officers elected by the members. The new provision will encourage organizational continuity and eliminate staff time holding elections in 2016. Again, this is intended to be a transition provision. Members who have different ideas on the composition or selection of officers will have numerous opportunities to provide their input during 2017.

- **TRANSITION PLAN**

The Board has recommended the following plan to implement its proposed organizational changes<sup>11</sup>:

1. Using the current Council voting rules<sup>12</sup>, members vote to approve the transition package by written ballot. The vote needs to be completed by December 31, 2016;
2. During the voting period, there will be both a webinar on December 6 and a plenary on December 13 where members can learn more about the Board's proposal. Members can submit their ballots at the plenary if they wish, but votes will be accepted by Council staff at any time during the 30-day voting period;
3. Assuming that members approve the package, the transition period begins on January 1, 2017;
4. During 2017 Quarter 1, the Transition Board will conduct a search for a new Executive Director.
5. During 2017 Quarter 1, the Transition Board, working with a new Executive Director once hired, and the Interim Executive Director in the meantime, should get initial member input on additional needed or desired organizational changes;
6. During 2017 Quarter 2, after considering member feedback, the Transition Board, working with a new Executive Director once hired, and the Interim Executive Director in the meantime, should continue its organizational development work by proposing additional needed or desired bylaws changes for member review by June 2017;
7. During 2017 Quarter 3, the Transition Board, working with a new Executive Director, should take member input and propose any needed revisions so that members can adopt a full set of "permanent" bylaws by September 2017;

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<sup>9</sup> The eleven members will include all 10 current Group 1 Board members and one current Group 2 Board member (Trathen Heckman, Daily Acts.)

<sup>10</sup> The current Group 1 Board members have indicated that it is their intent to appoint or designate the current Group 3 Special Advisors to the Board to full-voting seats on the Transition Board.

<sup>11</sup> The financial arrangement addressed above includes its own implementation plan and timeframe.

<sup>12</sup> E.g., majority approval needed by both Group 1 and Group 2 members; no voting by Group 3 members.

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8. During 2017 Quarter 4, members should nominate post-Transition Board members (and officers, if necessary) using either the provisions in Section 7.02 of the proposed bylaws, or whatever procedures were adopted in the Quarter 3 bylaws amendments; elections should be held no later than December 2017; and
9. Any new bylaws adopted during 2017 Quarter 3 would take effect on January 1, 2018. Any Board members elected in December 2017 would take office on January 1, 2018.

Council Board members and staff are available to answer any questions regarding the vote and the specific provisions of the proposal. In addition, you can visit the Council's website after the December 6 webinar for FAQs and responses.

Appendix

**Members of the Board of Directors in office on December 1, 2016**

**Terms Expiring December 31, 2016**

- Joe Berg (Municipal Water District of Orange County)
- Greg Bundesen (Sacramento Suburban Water District)
- Colin Close (City of Santa Rosa)
- Penny Falcon (Los Angeles Department of Water & Power)
- Jason Foster (San Diego County Water Authority)
- Richard Harris (East Bay Municipal Utility District)
- Bill McDonnell (Metropolitan Water District of Southern California)
- Ron Stork (Friends of the River)

**Terms Expiring December 31, 2017**

- Heather Cooley (Pacific Institute)
- Trathen Heckman (Daily Acts)
- Paul Herzog (Surfrider Foundation)
- Kyle Jones (Sierra Club)
- Lisa Morgan-Perales (Inland Empire Utilities Agency)
- Wendy Phillips (League of Women Voters of California)
- Carrie Pollard (Sonoma County Water Agency)
- Peter Vorster (Bay Institute)
- Rob Whipple (Western Municipal Water District)

**Group 3 Special Advisors to the Board (non-voting)**

**Terms Expiring December 31, 2016**

- Lisa Maddaus (Maddaus Water Management)
- Peter Yolles (WaterSmart Software)
- Paul Lierheimer (Rain Bird Corporation)

**Terms Expiring December 31, 2017**

- Jack Hawks (California Water Association)
- Amy Talbot (Regional Water Authority)

**Other Special Advisors to the Board (non-voting)**

- Diana Brooks (California Department of Water Resources)
- Deb Whitney (United States Bureau of Reclamation)
- Tom Hawes (United States Bureau of Reclamation)