

Comments of Michael Warburton, Executive Director of the Public Trust Alliance concerning the Resolution identifying activities the Water Boards will take to protect beneficial uses of the SF Bay-Delta Estuary. Agenda Item 18 of the December 4, 2007 Board Meeting.

The Public Trust Alliance works with communities to defend historic public rights in California's State waters and we collaborate with designated public trustees to remind them of ways that they can be better stewards of crucial ecological systems that will be needed to support future generations. Of all the various legal frameworks that apply to the management of public water systems, we have found the public trust doctrine to have particularly exciting potential to provide institutional flexibility for adapting to changing natural and social conditions, while at the same time keeping focus on particularly important long term public needs. That's exactly what California will be needing in the Delta in upcoming years and we would like to suggest that this important legal authority be more specifically included in the "whereas" part of this resolution, and be more generally applied in a range of activities on the action list, and not be limited to a single proceeding regarding State and Federal Project diversions. It's just as important for the general public as it is for the trustee agencies to remember the depth and breadth of this powerful legal framework, and its need for more general application by the Board.

Thanks for embracing such a wide variety of compelling challenges in the Delta system and seeing how responsible action can be taken toward solving these while at the same time keeping a balanced perspective. The basic strategy of placing a high value on protecting trust uses is not only consistent with other legal imperatives, it provides still another source of independent authority which is often more understandable to the public than a fractured statutory approach. Some actions and subsidies can easily be seen as inappropriate privatization of public property when public trust responsibilities and rights are adequately explained. This is especially true where historic public rights in water might be compromised in inappropriately recognized transfers and sales. For this reason, it might be very valuable to add an activity of defending public rights and protecting historic public assets in situations where water is bought, sold or transferred across the Delta.

Thanks for your consideration of these comments.

Sincerely,

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