



SMUD

SACRAMENTO MUNICIPAL UTILITY DISTRICT

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Via Email

LEG 2009-0011

January 13, 2010

Division of Water Rights
State Water Resources Control Board
Attention: Phillip Crader
P. O. Box 2000
Sacramento, CA 95812-2000
Bay-Delta@waterboards.ca.gov

Re: Delta Flow Criteria Informational Proceeding: SMUD Support for the January 5, 2010 Comments of the Sacramento Valley Water Users

Dear Mr. Crader:

By this letter the Sacramento Municipal Utility District (SMUD) registers its support for the basic propositions contained in the letter filed by the Sacramento Valley Water Users (SVWU) on January 5, 2010 relating to the scope of the Informational Proceeding currently scheduled to begin on March 22, 2010.

In particular SMUD notes that:

- The State Water Resources Control Board (SWRCB) should focus on the development of a list of key *relevant factors* to be considered in *future* regulatory proceedings for two reasons:
 1. This is an informational proceeding that will not have a regulatory or adjudicatory effect.
 2. The nine-month timeframe provided by newly enacted Water Code section 85085 (c) for development of “flow criteria” is not only very short, but requires the SWRCB to develop, “the flow criteria for the Delta ecosystem necessary to protect public trust resources” mandated by the legislature three months *prior* to the time the Department of Fish & Game (DFG), in consultation with the U. S. Fish & Wildlife Service and the National Marine Fisheries Service, will have developed and recommended to the SWRCB the, “Delta flow criteria and quantifiable biological objectives for aquatic and terrestrial species of concern dependent on the Delta” that the Legislature also mandated in section 85084.5. As the SVWU letter notes on page 4: “It would make little sense for the SWRCB to risk preempting these other scientific processes by

announcing new, numeric but non-binding Delta flow standards as a result of this informational proceeding before it receives the results of those processes.”

- The matrix concept set forth in the SVWU letter offers a logical and useful framework for guiding the Board’s inquiry and review of scientific information, and arraying the resulting data which, when coupled with information developed in other companion “early actions” mandated by the Legislature, can form the basis for answering the questions relevant to any subsequent regulatory proceeding, six of which are listed in the SVWU letter.
- As the SVWU letter notes in its extensive discussion of public trust values and protection, this informational proceeding is to develop Delta flow criteria relevant to public trust resources. However, any regulatory proceeding will need to consider and balance the public trust resources identified in this proceeding, other public trust resources upstream from the Delta, and, most important, the implications of public trust resource protection for other beneficial consumptive and non-consumptive uses of the relevant water bodies.

SMUD appreciates the complex task facing the SWRCB, and looks forward to participating in this very important proceeding.

Sincerely,



Leslie A. Dunsworth
Assistant General Counsel

/dm

cc: Arlen Orchard
Jim Shetler
Corporate Files