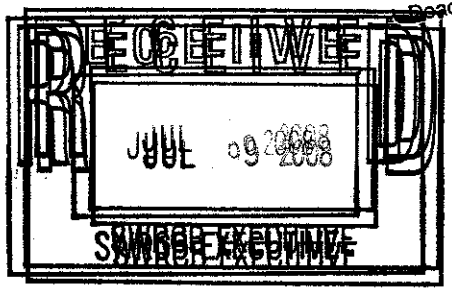
EAST BAY
MUNICIPAL UTILITY DISTRICT

July 9, 2008



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Re: Comments on the June 2008 Draft Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary

Dear Ms. Townsend:

The East Bay Municipal Utility District (EBMUD) appreciates this opportunity to provide the following comments on the State Water Resources Control Board's (Board) *June 2008 Draft Strategic Workplan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Draft Workplan).

The Draft Workplan covers a number of elements including: water quality-contaminants control; comprehensive monitoring; southern Delta salinity and San Joaquin River flows, Suisun Marsh, review of Bay-Delta Plan; SWP-CVP methods of diversion; water rights enforcement; water use efficiency and other related activities. The level of proposed Board effort varies by element, and coordination with programs and activities of other agencies is recommended in the Draft Workplan. EBMUD concurs that coordination with other efforts will be an efficient way to initiate Workplan activities. Specific EBMUD comments on the Draft Workplan are provided here to supplement EBMUD's comment letter of May 5, 2008, to Les Grober (attached), which included scoping level input to the Strategic Workplan.

Coordination with Ongoing Processes

The Draft Workplan recognizes the ongoing efforts to address Bay-Delta issues, including the Bay Delta Conservation Plan (BDCP) and the Delta Vision, and acknowledges the need to coordinate with these processes. As these two efforts address some of the same issues as addressed by the Draft Workplan, all interests will benefit from maximum cooperation between the involved agencies. At the same time, the Draft Workplan does not assume that these processes will be successful, and has appropriately planned its own work if the BDCP and Delta Vision processes do not achieve their intended goals. Coordination with existing monitoring and data analysis efforts will also be essential to address unanswered questions about the sources of environmental stressors. Finally, close cooperation with other agencies involved in water use efficiency is recommended to advance a comprehensive approach in achieving the State's goals.

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Acknowledge Existing Enhancements

Over a period of several years in the 1990s, EBMUD, in partnership with the California Department of Fish and Game and the U.S. Fish and Wildlife Service, developed a Joint Settlement Agreement (JSA) for the Mokelumne River ecosystem. The JSA contains both flow and non-flow measures to protect and enhance the Mokelumne River ecosystem. The efforts have been highly successful since implementation of the JSA, and have resulted in significant restoration of the Mokelumne River ecosystem. EBMUD suggests that, in implementing the Workplan, the Board recognize this program as an example that should be broadly replicated.

Conservation and Recycling

EBMUD strongly supports advancing conservation and water recycling, and we look forward to working cooperatively with the Board and other state agencies to develop a comprehensive state approach. The Board should recognize that a variety of factors distinguish regions in the state, and that "one-size fits all" goals may be too simplistic. The Board should take into account achievements already attained from successful conservation efforts, as well as other important factors such as climate and customer mix that influence urban water use.

In addition, the Board should recognize efforts already underway by the Department of Water Resources and the California Urban Water Conservation Council (CWUCC) to evaluate and update the Best Management Practices (BMPs), before engaging in a separate process to identify which of the existing BMPs should be "mandatory." Given the urgency of current water shortages, a comprehensive review of water conservation strategies is called for rather than a simple reassessment of the current BMPs.

The Draft Workplan also proposes that urban water suppliers be required to charge metered customers using a rate structure that incentivizes water conservation. Any such proposal should acknowledge the recent amendments to the CUWCC's BMP 11, which were negotiated among all its members and successfully resolved a number of outstanding issues.

As with water conservation, EBMUD has committed to aggressive targets for water recycling, which is an important element of the supply mix in its own integrated resources plan. The Draft Workplan recognizes that discharges from wastewater treatments and storm drains are among the sources being examined as Delta ecosystem stressors which could be addressed, in part, by enhanced recycling efforts. However, we are again concerned about the proposed uniform standard for water recycling, i.e. that 25% of all wastewater should be recycled by 2020. While laudable in its intent to stretch existing potable supplies, imposing that requirement on all wastewater agencies overlooks the significant energy costs of recycling, especially when balanced against an efficient gravity-flow source water aqueduct system such as EBMUD's. We agree that

encouraging recycling should be a priority, but each recycling project should be evaluated independently in light of its energy demands and net greenhouse gas emissions. More importantly, strict numeric goals are an inappropriate tool for advancing recycled water because they fail to take into account the numerous local factors that affect cost effectiveness and feasibility.

Overall, the Draft Workplan appears to be a well-rounded strategic plan, making the most of the limited resources of the Board and focusing on activities where the Board's jurisdiction and role is important. Thank you for providing us with this opportunity to provide comments. If you have any questions about these comments, please contact me at (510) 287-1663.

Sincerely,

Alexander R. Coate
Director of Water and Natural Resources

Attachment

EAST BAY
MUNICIPAL UTILITY DISTRICT

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Via Electronic & U.S. Mail

May 5, 2008

Mr. Les Grober
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Bay-Delta Strategic Workplan

Dear Mr. Grober:

I am writing in response to your invitation for comments on the State Water Resources Control Board's (State Board) proposed Bay-Delta Strategic Workplan. Representatives of the East Bay Municipal Utility District (EBMUD) attended your April 15, 2008 briefing to the Contra Costa Council's Water and Environmental Task Forces, which they found very helpful. At the conclusion of your presentation to the Council you invited comments on the State Board's concepts for the Strategic Plan. We appreciate the opportunity to provide our comments following your presentation, and present them below.

Public Trust Proceeding

Your April 15th briefing included a PowerPoint presentation, as well as an Attachment A (Actions Already Committed to in Resolution 2007-0079) and an Attachment B (Actions to Be Evaluated and Further Defined in the Strategic Workplan). The PowerPoint presentation included a slide on "New Actions" that lists as one of its elements "measures to address diversions in Delta watershed." This concept appears to link to the fourth numbered action on Attachment B, which provides that the State Board will consider a proceeding to "protect public trust resources and balance competing demands for water in and from the Bay-Delta...." Although it is not clear what the scope of such a Delta public trust proceeding would be, the concept raises concerns.

EBMUD was a party to the State Board's prior Bay-Delta proceeding that resulted in D-1641. That proceeding was inordinately complex, involving dozens of parties and a tremendous commitment of time, resources and energies on the part of the parties as well as State Board staff. It also took over a decade, from the development of the 1995 Water Quality Control Plan, the water rights hearing in 1998-99, through the subsequent litigation ending in the Court of Appeal's decision in 2006 upholding most of D-1641. EBMUD supported the SWRCB in the litigation following that proceeding, working with the California Attorney General's Office to coordinate the defense of the Mokelumne

River portions of D-1641 in both Sacramento Superior Court and the California Court of Appeal. We raise this to illustrate that a Delta public trust proceeding would be a massive undertaking. It would be measured in years, not months, and would consume scarce resources in an adversarial proceeding, diverting the parties' and agencies' time and effort away from developing long-term Delta solutions.

In the event the State Board continues to consider a new public trust proceeding on the Delta, we ask that it first fully consider and recognize areas/tributaries that have already developed approaches to river and ecosystem management that balance protection of public trust resources and demands for water. For example, in the 1990s, EBMUD spent several years working in partnership with the California Department of Fish and Game and the U.S. Fish and Wildlife Service to develop a comprehensive ecosystem program for the Mokelumne River. The Partnership was memorialized in a Joint Settlement Agreement (JSA) in 1998, which contained flow and non-flow measures to protect and enhance the Mokelumne River ecosystem. The JSA also provided additional flows to the Delta, a fact the State Board recognized in approving the JSA flows in D-1641.

In the JSA the parties agreed to a schedule of flow releases that vary by year type and time of year, tailored to the life stages of the anadromous fishery. These flows are significantly higher than prior fishery flow requirements pursuant to the previous 1961 Agreement between EBMUD and DFG. The JSA also includes a unique "gainsharing" provision which requires EBMUD to augment the JSA minimum Mokelumne flows by 20% (up to 20,000 acre-feet) from new supplies it develops. Finally, to provide continuing flexibility in light of changing scientific knowledge of the fishery, the JSA contains an adaptive management provision under which the Partnership of the resource agencies and EBMUD can work together to adjust flows as necessary within a year type to adapt to changing scientific understanding of the river and its needs.

The JSA also contains a variety of non-flow measures, including gravel enhancement projects that have successfully promoted natural spawning; a $2 million Partnership Fund established by EBMUD to fund Partnership activities; habitat enhancement projects such as the (a) Murphy Creek dam removal and habitat improvement project, and (b) construction of juvenile rearing side channels in the Mokelumne River corridor; and an extensive EBMUD ecosystem monitoring program. (For further information I am attaching a summary of the JSA entitled "Protecting the Mokelumne River.") And as noted above, the JSA flows help the Delta as well, a finding made by the State Board as part of its approval of the JSA flows in D-1641 (the JSA has also been approved by the Federal Energy Regulatory Commission (FERC)).

In summary, the JSA and its subsequent implementation are the result of years of effort; it represents a finely balanced agreement, balancing public trust interests with water demands; and it is working well, with implementation of numerous habitat enhancement projects benefiting the fishery and a pronounced increase in the long-term average salmon returns to the river. If a new State Board public trust proceeding were to consider upstream tributaries such as the Mokelumne River, such a proceeding would threaten to

upset the balanced resolution of issues reached on the Mokelumne and potentially undo years of successful effort. We do not believe doing so is reasonable or a wise use of limited public resources. We therefore ask the State Board that in the event it continues to weigh holding a Delta public trust proceeding and to include tributaries in such a proceeding, it fully consider those tributaries that have already reached a reasonable balancing of public trust issues, as distinguished from those tributaries that have not, and focus its efforts on those that have not.

Conservation

The April 15th PowerPoint presentation included a slide on "New Actions That Need To Be Evaluated And Defined," which included a bullet point on "Urban Water Conservation." We also note that Attachment A includes a point to "address the use of water efficiency." EBMUD has long been a leader in water conservation and strongly supports it. We also note that the topic has received recent attention given the Governor's goal of achieving an across the board 20% per capita water use reduction through conservation.

We support the State's goal to promote conservation and water recycling, but believe that a simple "one size fits all" approach ignores the real differences between agencies that have done little in conservation efforts – and who could therefore more easily achieve a specified conservation goal of 20% – and those who have been conserving for decades. For example, imposing such a uniform standard would not recognize or consider the significant investment and efforts EBMUD has undertaken since 1976 onward regarding conservation. Since the severe 1976 drought, EBMUD has voluntarily implemented aggressive conservation and recycling programs to manage demand and promote environmental stewardship. These programs have dramatically slowed the growth of water use in our service area from what it would have been otherwise, and have kept EBMUD's diversions from the Mokelumne River relatively flat since the 1970s despite substantial population growth in its service area. Since the early 1990's EBMUD has invested more than $50 million in water conservation programs.

We therefore believe an across the board approach that fails to account for the existing conservation and recycling efforts of individual agencies is misplaced. It would effectively punish those that have already substantially conserved. To the extent the SWRCB includes urban water conservation in the Strategic Plan, we would therefore urge it to use a more finely developed approach that considers and credits past conservation efforts. Such an approach would look at actual facts rather than treat all parties the same regardless of what they may or may not have previously accomplished in the water conservation and recycling area. To do otherwise would be inequitable and create disincentives to voluntary conservation, which cannot be sound public policy.

Finally, while the presentation mentions "urban" conservation, we wondered whether the Strategic Plan would similarly consider agricultural conservation. Agriculture uses the great bulk of the developed water supply in California; the figure commonly reported is

about 80%. If making more efficient use of the State's water resources is the underlying goal of the conservation concept, focusing exclusively on urban conservation seems insufficient, as it ignores approximately 80% of the water use in the State. Equal focus should be made to agricultural conservation so that the issue of water conservation is fully addressed statewide.

Thank you very much for your April 15 presentation and providing us the opportunity to comment on it. Please let me know should you have any questions.

Sincerely,

Alexander R. Coate
Director of Water & Natural Resources

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Attachment

cc: Dennis M. Diemer, General Manager

Protecting the Mokelumne River

EBMUD's instream flow releases into the Mokelumne River were developed in cooperation with state and federal resources agencies, and agreed to by numerous other users in the export and diverter community.

In partnership with the Department of Fish and Game (DFG) and the U.S. Fish and Wildlife Service (FWS), EBMUD developed a modern, comprehensive ecosystem package for the Mokelumne called the Joint Settlement Agreement (JSA). One component of this agreement was a schedule of flow releases that vary by year type and time of year, tailored to the life stages of the anadromous fishery. These JSA flows are five times higher under dry year conditions than the prior fishery flow requirement under the 1961 agreement EBMUD had with DFG.

As a comprehensive program, the JSA relies on prescribed flows as well as other parameters that affect the river ecosystem. It includes a provision for adaptive management, allowing the resource agencies to work with EBMUD to adjust flows as necessary to adapt to increased scientific understanding of the river and its needs. The JSA also includes a "gainsharing" provision whereby instream flows are increased by 20%, up to 20 TAF, from the yield of additional water supplies developed by EBMUD.

Under the JSA, EBMUD also created a $2 million Partnership Fund, with the interest on that account used to benefit the lower Mokelumne fishery and ecosystem. Both independently and in partnership with DFG and FWS, EBMUD has undertaken non-flow measures including annual gravel enhancement projects in the Mokelumne (successfully promoting natural spawning), riparian restoration, the Murphy Creek dam removal and habitat improvement project, and construction of juvenile rearing side channels.

EBMUD also conducts a detailed monitoring program of the anadromous fishery and the riparian ecosystem. This includes monitoring of anadromous fish in-migration, redds (salmon nests), and out-migration along with community fish surveys. This monitoring supports the adaptive management aspect of the JSA.

Managing a cold water pool in Camanche Reservoir is essential to the health of the anadromous fishery in the Mokelumne. There is a critical balancing act between maintaining this cold water pool and meeting the existing flow release requirements. Requirements for additional instream flow releases could impair EBMUD's ability to maintain the necessary temperatures in the Mokelumne (to sustain an anadromous fishery.

Since 1970, exports from the Delta have more than tripled, while EBMUD's diversions from the Mokelumne River have been relatively flat due to EBMUD's aggressive conservation and recycling efforts which have offset demand from what it would have been otherwise. EBMUD is implementing state-of-the-art water use efficiency measures (conservation and recycling), with a commitment to aggressive savings targets for 2020. These efforts have kept EBMUD's diversions from the Mokelumne River relatively flat since 1970, despite substantial population growth in its service area.

The Mokelumne River is a minor tributary to the Delta, comprising only 2.9% of the unimpaired inflow in an average year. This compares to 71% from the Sacramento River and 23% from the San Joaquin River. EBMUD diversions are less than 1% (0.7%) of the average unimpaired Delta inflow.

In addition, EBMUD is one of the few agencies that have built rationing into its dry-year supply mix, asking its customers to make sacrifices for the health of the Mokelumne River's habitat and ecosystem.

The JSA was designed to meet multiple objectives, and a single-issue focus on increasing Delta inflow from all its tributaries would imbalance this carefully crafted program, as well as the restoration efforts still underway for the Mokelumne salmonids. In fact, in a recent review of EBMUD's restoration efforts, FWS lauded EBMUD's implementation of the JSA provisions as a model program for other river systems to emulate.