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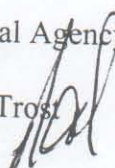
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APR 14 2006

MEMORANDUM

TO: Sacramento Local Agency Formation Commission

FROM: Miller Owen & Trost 

DATE: April 14, 2006

RE: Memorandum in Response to Issues Raised at the April 5, 2006, Hearing regarding the SMUD Annexation (SOI) Application

SACRAMENTO LOCAL AGENCY
FORMATION COMMISSION

This memorandum addresses two issues that arose during the hearing on April 5, 2006, on the certification of the Final EIR prepared for the Sacramento Municipal Utility District (SMUD) application.

The issues involve (1) the application of *Stanislaus Natural Heritage v. County of Stanislaus*, (1996) 48 CalApp.4th 182 to our environmental analysis and; (2) the method of calling the election on the application.

1. **The Final EIR is adequate in its discussion of tiering the project and the *Stanislaus Natural Heritage* case does not require a different analysis.** As you may recall, attorney Michael Zischke, appearing on behalf of PG&E, claimed both orally and in writing that the Final EIR inappropriately used a tiering analysis citing the *Stanislaus Natural Heritage* case.

Mr. Zischke further stated that LAFCo's decision must encompass the specifics of building the Woodland-Elverta transmission line and Willow Slough substation.

Stanislaus Natural Heritage is not applicable to our Program EIR. In *Stanislaus Natural Heritage*, the County approved a project without identifying a water source. The Court held that the EIR lacked "any analysis whatsoever" of the impacts of supplying water to a residential development with no on-site water source. As a result, the public agency could not make an informed decision on whether to adopt the project. *Id.* at 199.

Our Program EIR analyzed the environmental impacts of the transmission line and the substation at a program level basis. This is appropriate since LAFCo is not the agency that will site the transmission line or the substation. Such analysis will be subject to additional project level environmental analysis.

2. **The election on the proposed annexation is subject to a majority vote of the territory to be annexed.** Mr. Ray Jones appeared before the Commission and requested that the annexation election be called separately in West Sacramento and thus presumably separately in each affected jurisdiction, namely the cities of West Sacramento, Davis, Woodland, and the unincorporated portions of Yolo County. Under the Cortese-Knox-Hertzberg Local Government Reorganization Act, elections on annexations are called within the territory to be annexed.¹ (Gov. Code, §§ 56876, 56877; see also Gov. Code, § 56129.) There is no provision or authority for separating out each jurisdiction within the territory for an affirmative vote. Further, the Resolutions submitted by the Cities and the County contemplate the election being conducted within the combined territory.

¹ An election may also be called in the existing territory but that issue has been resolved. (Gov. Code, §§ 56876, 56877; see also Gov. Code, § 56129.)