EAST BAY
MUNICIPAL UTILITY DISTRICT

December 10, 2008

Mary Nichols, Chair
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Subject: Comments on AB 32 Proposed Scoping Plan

Dear Ms. Nichols:

Thank you for the opportunity to comment on the Air Resources Board's (ARB) Proposed Scoping Plan (Plan) for AB 32, the California Global Warming Solutions Act. The East Bay Municipal Utility District (EBMUD) applauds the ARB for soliciting input from a multitude of stakeholders, and for its responsiveness to comments we submitted on the Draft Scoping Plan on August 1, 2008. In addition, we thank the ARB staff for the time they have spent meeting with urban water agencies to come to a better understanding of the water sector's needs and challenges in responding to climate change.

As one of the few water agencies that took an active role in supporting the passage of AB 32, EBMUD made a number of early commitments to reducing its carbon footprint. Such actions include:

- Enrolling with the California Climate Action Registry as the first water/wastewater utility, and committing to ongoing monitoring and reduction of greenhouse gas (GHG) emissions;
- Adopting a strategic plan goal of reducing greenhouse gas emissions to 10 percent below 2000 (baseline) levels by 2015;
- Fully converting EBMUD's sedan fleet to hybrid vehicles; and
- Increasing biogas generation to meet 90 percent of the energy needs of its main wastewater treatment plant.

In addition, EBMUD was one of the early pioneers in water use efficiency in the state. Our water consumption has remained level since the mid-1970s despite significant population growth, and per capita consumption of water has steadily declined since then.

We are particularly pleased that the ARB decided to remove biogenic emissions from its cap and trade program, recognizing that the impact of GHG emissions on the climate is largely a function of its source.

We are offering specific comments on two issues to request modifications before the Plan is finalized.

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Public Goods Charge

The Plan continues to promote a "public goods charge" that, while offering more flexibility in how it might be implemented, is still burdened with some of the problems we identified in our previous comment letter. First, there is a fundamental flaw in attempting to "transplant" the public goods charge, as instituted in the electric investor-owned utility (IOU) sector, into the public water agency universe. In the electric IOU sector, the Public Utilities Commission (PUC) has the authority to set rates; a public goods charge authorized by the PUC is the only mechanism that IOUs have to offset revenue losses due to conservation programs. The funds are then collected by the local electric utility and expended by that same utility on programs within its own service territory, thus providing direct, one-for-one benefit to their ratepayers.

A critical difference for public water agencies is that they set their own rates through a public process conducted by their elected boards of directors. Consequently, water agencies can set their rates to offset investments in (and revenue losses from) conservation programs, and do not require authorization by a state regulatory body to do so. The Plan would instead require the collection of these funds, and then redirect the revenues to state agencies, private entities, and other organizations for expenditure in other areas of the state, effectively imposing a tax on water use. Under state law, such a tax requires a two-thirds majority vote by the Legislature (or the voters) and should not be misrepresented as a "fee" or "surcharge", which requires only a simple majority legislative vote.

In response to reduced water supplies, fisheries restoration requirements, and other factors, many water agencies have already invested in conservation programs, which provide benefits for both water supply reliability and greenhouse gas emissions reductions. A new tax is unnecessary to augment these activities. Creating subsidies to help some agencies "catch up" in water use efficiency and renewable energy investments effectively punishes those agencies that have already made significant investments of their ratepayers' funds in these areas. The state should find other means to provide incentives for improved performance by agencies with less developed programs.

The public goods charge for water use in the Plan would be used to fund a broad range of expenses that may not necessarily be legally authorized uses of water agency ratepayer funds under the California Water Code and Proposition 218. Prop 218 requires that water rates be based on the cost of service, which could be violated with the imposition of a public goods charge that directed revenues to other uses that do not benefit the customers paying the charge. EBMUD recommends that a full and complete legal analysis be conducted before any further conceptual development of a public goods charge on water use.

Water and wastewater agencies currently purchase a substantial portion of their energy from the IOUs, and thereby contribute millions of dollars for energy efficiency programs through the existing electricity surcharge. Greenhouse gas reductions from the water and wastewater sector will occur as a natural outcome of the forthcoming cap and trade program for energy-related emissions under AB 32.

In summary, there are numerous flaws with the public goods charge as proposed, and even more reasons not to institute it. We urge the ARB to recognize that the public goods charge may have the unintended consequence of diverting scarce resources, and adding unnecessary hurdles for greatly needed investments in conservation and renewable energy projects. EBMUD requests that the public goods charge not be considered any further in the Plan until there is more vetting of the potential issues, which from our analysis are significant.

Increasing Renewable Energy Production from Water

We are encouraged that the ARB supports expanding the production of renewable energy from the water sector. EBMUD recently approved proceeding with its third and largest photovoltaic system with a capacity close to one megawatt, which will provide approximately one-third of the electricity needs of its water treatment plant in Walnut Creek. The District is also revising its policy on renewable energy to accelerate its investments in such projects. And in November, the Governor called for a more aggressive target of 33 percent for the Renewable Portfolio Standard (RPS) by 2020 (Executive Order S-14-08). Nonetheless, a number of legal and institutional barriers remain that could unnecessarily impede the implementation of cost-effective projects that could help the state meets its new RPS goal.

The Plan appropriately sets a goal of increasing renewable energy production from the water sector, but it does not identify any specific means to achieving that goal. Further, the Plan states that revenues from a public goods charge could be used, in part, to finance renewable energy projects in the state. EBMUD suggests that it would be far more efficient to remove implementation barriers to make renewable energy projects more attractive to water utilities, in lieu of imposing a public goods charge to pay for such projects.

Two examples are offered below; however, other barriers exist and some or all of these may require legislative remedies beyond the regulatory authority of AB 32.

- In-conduit hydro projects are not eligible for the Self Generation Incentive Program (a state grant program for renewable projects). In addition, in-conduit hydropower projects cannot utilize the net metering tariff to sell back or credit generation against an existing retail electric account. Removing these two barriers would

provide a strong financial incentive to implement more in-conduit hydropower projects.

- The Feed-in Tariff currently offers two options: 1) sell generation directly to the IOU at a fixed price where there is no on-site load; or 2) sell the excess generation back to the IOU at a fixed price after all of the on-site load has been met. A third desirable option not currently available for in-conduit hydro projects would be to size a renewable generator below the on-site load and credit the generation back to the on-site electric account. Currently, such net metering is only available for select types of generation (such as photovoltaic, wind, and biomass).

EBMUD currently has a one-megawatt in-conduit project that could be implemented if these cost barriers were removed. Other projects that could be developed in our distribution system could yield an additional two megawatts, and the statewide potential for such projects in water systems approaches 250 megawatts. If fully developed, this one form of renewable energy could make a substantial contribution to meeting the new RPS standard.

Two of the water sector measures proposed in the Plan, including increased water recycling and the reuse of urban runoff, could result in increased energy demands. Meeting the parallel goals of improving our water supplies and reducing GHG emissions will be more achievable with an aggressive expansion of the renewable energy production in the water sector.

EBMUD looks forward to continued collaboration with the ARB, the Department of Water Resources, and the State Water Resources Control Board as the Plan and Appendices are finalized and work begins to implement some of the proposed water sector measures. If you have any questions, please contact me at (510) 287-1615.

Sincerely,

Michael J. Wallis
Director of Operations and Maintenance

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