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VIA E-MAIL

March 23, 2012

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA, 94105
blumenfeld.jared@epa.gov

Re: Potential Federal Advisory Committee Act Violation

Dear Regional Administrator Blumenfeld:

We are writing to you on behalf of our client, the Coalition for a Sustainable Delta (Coalition), regarding a meeting entitled Technical Workshop on Estuarine Habitat in the Bay Delta Estuary (Technical Workshop), scheduled to take place on Tuesday, March 27, 2012. The Coalition is a California nonprofit corporation comprised of agricultural, municipal, and industrial water users, as well as individuals in the San Joaquin Valley. The Coalition and its members depend on water from the Sacramento-San Joaquin Delta (Delta) for their continued livelihood. Individual Coalition members frequently use the Delta for environmental, aesthetic and recreational purposes; thus, the economic and non-economic interests of the Coalition and its members are dependent on a healthy and sustainable Delta ecosystem.

The Coalition is alarmed that the Technical Workshop is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, but the group of Workshop participants has not been established as an advisory committee, and the March 27, 2012 meeting has not been properly noticed, pursuant to FACA and its implementing regulations, 41 C.F.R. pt. 102-3. If EPA proceeds with the Workshop as planned, it will be doing so in violation of federal law. The agency will also be out of step with the President, who has made a clear commitment to open government. For this reason, ***the Coalition respectfully requests that you suspend the meeting until EPA is able to take the steps necessary to ensure that it is acting consistent with the requirements of FACA and its implementing regulations***. Doing so will also allow all parties with an interest in the Delta, which is the hub of California's economy, an opportunity to understand and engage in the process envisioned by EPA. Failure to do so will further erode public confidence in the ability of the federal agencies to function in a lawful, impartial manner in the Delta. It will also

contribute to a climate in which litigation is viewed as the only means to assure that the federal government is conforming to federal law.

FACA defines an advisory committee as "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . ., which is [inter alia] . . . established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration." 5 U.S.C. App. 2, § 3(2).

The Technical Workshop is being organized by EPA Region 9. According to the agenda for the meeting, which is attached as Exhibit A, the purposes of the Technical Workshop include improving "*our collective understanding* about what tools we have for protecting estuarine habitat and pelagic fishes in the Bay Delta Estuary," and generating "scientific information *that EPA can translate into findings and recommendations* to support the State's Comprehensive Review of the 2006 Water Quality Control Plan for the Bay Delta Estuary." In light of these facts, there can be no dispute that the group being convened has been established by, and is being utilized by, EPA.

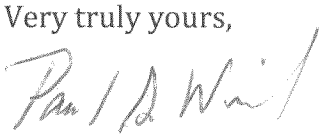
In addition, the Technical Workshop participants include personnel from a number of federal and state agencies, personnel from local agencies, employees of for-profit and not-for-profit organizations, and academics. And it is not created by the National Academy of Sciences or the National Academy of Public Administration; therefore, the group is not subject to either exclusion referenced in the definition.

EPA may contend that it is not the case that the Technical Workshop triggers the requirements of FACA, arguing, for example, that EPA is seeking the advice of individuals rather than groups. 41 C.F.R. § 102-3.40(e). But the materials attached as Exhibit A belie such an argument. They describe technical teams with leaders and reporters building "momentum toward enriching the answer to each question," and "*synthesizing ideas* to make conceptual breakthroughs . . ." They also indicate each "*team*" will respond to its respective assigned questions. Further, the materials indicate a facilitator will be involved in running the Workshop. In fact, the premise of the Workshop is a desire to "increase the amount of *direct interaction among participants*, accelerate the *refinement of ideas and products* through multiple rounds of review and revision, and ensure that participants have the opportunity to address all topics." None of this suggests that EPA is soliciting the advice of individuals; rather, the agency is seeking input from the working groups that are tasked with collaborating to refine and synthesize their views as described in the meeting materials.

FACA and its implementing regulations set forth a number of requirements for establishing advisory committees. They include filing an advisory committee charter and publishing notice in the Federal Register. 5 U.S.C. App. 2, § 9(a); 41 C.F.R. § 102-3.45. There are also notice requirements for advisory committee meetings. 5 U.S.C. App. 2, § 10; 41 C.F.R. § 102-3.150. As of this time, EPA has not fulfilled these requirements. We do not view these requirements as roadblocks to federal government action; rather, they reflect our nation's commitment to open government and due process. In this instance, they will allow Californians to understand EPA's action in establishing the Technical Workshop and to engage with EPA through advisory committee meetings or direct contact with EPA staff.

The Coalition deeply appreciates your service to the public and asks that you take action to ensure EPA is meeting its obligations under federal law by suspending the Technical Workshop until EPA is able to take the steps necessary to ensure that it is acting consistent with the requirements of FACA and its implementing regulations.

Very truly yours,



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encl.

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