

# **EL DORADO COUNTY GRAND JURY 2013-2014**

## ***WHERE IS THE IOWA HILL MONEY FROM SMUD?***

Case Number GJ-13-01

### **REASON FOR REPORT**

Many residents in the Camino area of El Dorado County have complained that their area did not receive the monetary proceeds it deserved under the 2005 El Dorado County-Sacramento Municipal Utility District (SMUD) Cooperation Agreement concerning the building of the Iowa Hill Development by SMUD.

### **BACKGROUND**

Since 1957, SMUD has operated a series of electricity-producing dams and reservoirs within El Dorado County. These facilities must be licensed by the Federal Energy Regulatory Commission (FERC). In 2004, SMUD applied to re-license its facilities, as well as propose a new project, the Iowa Hill Pumped Water Storage Facility, that would be located in the Camino area.

The Iowa Hill Facility would pump water from the SMUD-operated Slab Creek Reservoir to the top of Iowa Hill, located 1800 feet above the reservoir, store the water for brief periods of time, then release the water through pipes back down to Slab Creek Reservoir to produce electricity.

SMUD sought to have El Dorado County's approval for both the re-licensing of its current facilities and the Iowa Hill Project by paying certain sums of money on an installment basis to the County.

### **ACTIONS**

- The 61-page agreement and its exhibits between SMUD and the County were reviewed and pertinent provisions of the agreement were analyzed.
- County records were reviewed.
- Members of the past and present County Board of Supervisors were interviewed.
- An evaluation was made as to how monies in the agreement were to be distributed.

## FINDINGS

1. The agreement was entered into as a supplement to earlier agreements between SMUD and the County in 1957 and 1961 regarding the use and operation of the Upper American River Project (UARP) for electric power and water.
2. In 2005, SMUD had to be re-licensed by the Federal Energy Regulation Commission (FERC) to continue operating in the UARP. Under the agreement, SMUD obtained assurances that the County and certain water agencies and districts within the County would not object to the re-licensing. SMUD would continue to plan the building of the Iowa Hill Pumped Storage project.
3. The County was, and is, to receive from SMUD certain different amounts of money pursuant to the agreement. The monies agreed to are as follows:
  - \$2,600,000, payable in two installments; the second installment to be paid not later than August 1, 2012 (already paid)
  - \$590,000 per year after issuance of the new license (already paid).
  - \$250,000 upon SMUD issuing a "Notice of Intention to Proceed" with the Iowa Hill project.
  - \$50,000 per year after the issuance of the "Notice to Proceed."
  - An amount not to exceed \$2,000,000 for socioeconomic impacts of the building of the Iowa Hill project; such money not to be paid prior to construction.
4. The County has received payments under items 3a and 3b above, but as SMUD has not issued a Notice of Intention to Proceed with the Iowa Hill Development, no funds have been paid under items 3c, 3d, and 3e.
5. The agreement describes, relative to items 3 and 4 above, to whom and on what such monies should be spent. Section 4.4 of the contract addresses those issues with the following language: "SMUD's payment as described in Section 4.3 are to be utilized by the County in order to minimize, avoid, or mitigate socioeconomic impacts attributable to the construction of the Iowa Hill Development within those areas of the County affected by such construction. The determination of which specific uses of payments by SMUD under Article IV and consistent with the limitations of the Section are to be made by the County in its sole discretion."

## EVALUATION OF FINDINGS

Because the monies under items 3c and 3d have not yet been paid, but presumably will be paid, the Grand Jury believes it is important to render its opinion as to the meaning of the quoted contract language above to help avoid confusion after the project has been constructed and the socioeconomic impact monies are to be distributed.

The Grand Jury understands that all sentences within a contract have meaning and importance. This leads to the conclusion that the agreement does not simply call for the County to spend this money in any way it sees fit as some have suggested. This sole discretion language is clearly tempered by the sentence indicating that the money is to recompense for socioeconomic impacts within the affected area. Iowa Hill is within the Camino/Apple Hill area of El Dorado County.

The Grand Jury understands that no funds have been paid relative to item 3e above, and no funds will be paid until after completion of construction and assessment of socio economic impact pursuant to Exhibit I of the El Dorado-SMUD Cooperation Agreement. At that time an amount up to \$2,000,000 will be paid by SMUD to the County for the socioeconomic impacts of the construction of the Iowa Hill project.

## RECOMMENDATIONS

Residents of the Camino area should be notified by the Board of Supervisors of these findings. The County should also notify these residents when SMUD issues a Notice of Intent to Proceed with the Iowa Hill Development and continue to advise these residents of the County's receipt of funds under the contract. The County should take steps to ensure that residents have the opportunity to be advised of and participate in decisions about how funds received under this contract are to be spent.

## RESPONSES

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury, presiding judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This Report has been provided to the El Dorado County Board of Supervisors.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a "Word" file or "PDF" file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at:

[courtadmin@eldoradocourt.org](mailto:courtadmin@eldoradocourt.org)

## ATTACHMENTS [ Adobe Reader is required to view attachments ]

[El Dorado County Board of Supervisors Spreadsheet for Money Received from SMUD](#)

[El Dorado-SMUD Cooperation Agreement](#)