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and **PAUL LAU**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SACRAMENTO**

**ASIAN AMERICAN LIBERATION  
NETWORK**, a California non-profit  
public benefit association; **KHURSHID  
KHOJA**, an individual; **ALFONSO  
NGUYEN**, an individual,

Plaintiffs and Petitioners,

vs.

**SACRAMENTO MUNICIPAL UTILITY  
DISTRICT**; **PAUL LAU**, in his office capacity  
as the Chief Executive Officer of the  
Sacramento Municipal Utility District; **CITY  
OF SACRAMENTO**; **KATHERINE LESTER**,  
in her official capacity as Chief of Police of  
the City of Sacramento Police Department,

Defendants and Respondents.

Case No. 34-2022-80004019

**SACRAMENTO MUNICIPAL UTILITY  
DISTRICT and PAUL LAU's  
OPPOSITION TO PETITIONERS'  
VERIFIED WRIT OF MANDATE**

**Date: October 10, 2025**

**Time: 10:00 a.m.**

**Dept.: 21**

*Action Filed:*

*September 21, 2022*

*Trial Date:*

*None Set*

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1 **I. INTRODUCTION**

2 Plaintiffs and Petitioners (Petitioners ASIAN AMERICAN LIBERATION NETWORK  
3 (“AALN”), KHURSHID KHOJA (“Mr. Khoja”) and ALFONSO NGUYEN (“Mr. Nguyen”),  
4 collectively “Petitioners”) bring this action through their attorneys to allegedly stop the  
5 SACRAMENTO MUNICIPAL UTILITY DISTRICT’s (“SMUD”) “secret disclosure of customer  
6 electrical data used [by law enforcement] to target Asians” in SMUD’s service territory. The lawsuit  
7 although inflammatory and ready made for today’s media and click bait headlines is wholly without  
8 merit.

9 SMUD has a robust privacy policy designed to protect the interests of its ratepayers well  
10 beyond existing legal requirements. Even if SMUD customers had a “heightened” expectation of  
11 privacy in their power usage (which as discussed below they do not); current SMUD practices and  
12 data received by SMUD from ratepayers does not implicate any privacy concerns. Petitioners own  
13 expert confirms this. However, at counsel’s request, Dr. Stephan Wicker for the first time in a long  
14 career states that data measured in one-hour increments “could” implicate privacy concerns not  
15 withstanding the entire rest of his career he has opined the meter data measured in increments greater  
16 than half-hour intervals does not invade customer privacy. The data shared with law enforcement  
17 and the subject of this lawsuit is measured in one hour increments. There is not a single court in this  
18 country finding that such a program even raises privacy concerns. Moreover, Petitioners own expert  
19 concedes that race cannot be determined using smart meter data.

20 Worse still, neither AALN nor Mr. Nguyen are SMUD ratepayers entitled to challenge any  
21 SMUD policy. Mr. Khoja, himself a lawyer representing cannabis growers, is a SMUD customer  
22 but like all Petitioners, has not been subject to any search and seizure or data sharing of which  
23 Petitioners complain. Petitioners simply lack the standing to bring this Petition, and California’s tax  
24 payer standing laws do not save them. SMUD does not levy taxes on its ratepayers, it charges for  
25 electricity, that is all.

26 But even if Petitioners did have standing, which they do not, Petitioners’ claims fail. The  
27 first claim for violation of California’s constitutional protection against unreasonable searches and  
28 seizures only applies to law enforcement activity not applicable to SMUD. But even if SMUD was

1 a law enforcement agency, California law provides that there is no reasonable expectation of privacy  
2 against sharing with law enforcement and other government entities the aggregated quantity of  
3 electricity delivered to a particular location or residence. Likewise, Petitioners' claim that SMUD  
4 violates a non-disclosure law analogous those to those imposed on Public Utilities like PG&E and  
5 Southern California Edison (who are for profit entities with stockholders and have inherent  
6 motivation to generate revenue by selling or otherwise sharing personal data) is fatally flawed.  
7 California law requires that locally owed Public Utilities such as SMUD, which are not-for-profit  
8 organizations, share customer data "upon request" of any law enforcement agency. California law  
9 also mandates disclosure and/or permit disclosure of such information in a host of other  
10 circumstances. *See* Government Code 7927.410. The Legislature enacted this law and SMUD  
11 complies. Sharing of data is not something that SMUD wants to do, but is something the it must do  
12 if requested under circumstance set forth in the Government Code.

13         Dissatisfied with the legislature's distinction between rules applicable to Public Utilities and  
14 locally owned Public Utilities, Petitioners bring this matter to this Court. Notwithstanding that the  
15 law and the facts are against them, Petitioners "table pounding" under the false cover of racial  
16 injustice ignores another crucial fact: SMUD customers consent to the sharing of their usage data  
17 and any SMUD customer who wishes to protect their electrical data from electronic transmission,  
18 simply has to ask and pay a \$145 fee and a monthly charge to have an analog meter installed. No  
19 writ or order of this Court is necessary. Significantly, none of the Petitioners aver or contend that  
20 they requested an analog meter and were refused.

21         Smart meters are an undoubtedly valuable tool (even according to Petitioners' own expert)  
22 in load management and energy conservation. This lawsuit is the latest challenge to the program  
23 that has already been upheld by the Court of Appeal in *Graham v. Sacramento Municipal Utility*  
24 *District* CO83712 ("*Graham case*")<sup>1</sup>. This Court should likewise deny the relief Petitioners seek.  
25 Finally, SMUD has a First Amendment right to share information that it wishes with the  
26 government. Any attempt to infringe upon that right is subject to strict scrutiny and as applied to

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28 <sup>1</sup> The *Graham case* is unpublished, but is attached as Exhibit A to the Declaration of John S. Poulos in opposition to  
verified petition for writ of mandate.

1 this case any injunction or violation would be unconstitutional. If Petitioners want the law changed,  
2 their recourse is with the legislature, not this Court. The Petition should be denied.

3 **II. FACTS**

4 **A. SMUD**

5 SMUD is a not-for-profit municipal utility district headquartered in Sacramento, CA. Its  
6 mission and mandate is to provide the lowest possible cost power to Sacramento area residents.  
7 Although SMUD is a public entity, it is not a public utility as set forth in California’s Public Utilities  
8 Code. Rather, SMUD is a municipal utility district whose rate are not subject to regulation by the  
9 Federal Energy Regulatory Commission or the California Public Utility Commission. *See* the  
10 Declaration of Paul Lau in Opposition to Verified Petition for Writ of Mandate (Lau Decl. ¶ 6).  
11 SMUD is governed by an elected board of directors vested with broad legislative authority. (Cal.  
12 Pub. Util. Code §§ 11801, 11883.) SMUD has the power to provide “[a]ll matters and things  
13 necessary for the proper administration of the affairs of the district which are not provided in” the  
14 Municipal Utility District Act. (*Id.* § 11884.) It has the express authority to “engage in activities to  
15 reduce wasteful, uneconomical or unnecessary uses of energy, including, but not limited to ... the  
16 adoption of voluntary and mandatory load management programs ... and may do all things  
17 necessary or convenient to the full exercise of the powers herein granted.” (*Id.* § 12825.) SMUD’s  
18 Board of Directors is comprised of seven publicly elected members that determine policy and  
19 appoint the utility’s CEO and General Manager<sup>2</sup>. The CEO and General Manager is responsible for  
20 SMUD’s overall management and operation. The current CEO and General Manager, Paul Lau,  
21 himself of Chinese decent, reports to the SMUD Board of Directors and is responsible for carrying  
22 out the Board’s policies.<sup>3</sup>

23 SMUD’s service area covers approximately 900 square miles and includes parts of  
24

25 \_\_\_\_\_  
26 <sup>2</sup> The current SMUD Board of Directors is comprised Brandon Rose, Ward 1, Nancy Bui-Thompson, Ward 2, Gregg  
27 Fishman, Ward 3, Board President, Rosanna Herber, Ward 4, Rob Kerth, Ward 5, Dave Tamayo, Ward 6, Board Vice  
28 President, Heidi Sanborn, Ward 7.

<sup>3</sup> Petitioners’ decision to name Mr. Lau personally “in his official capacity” was unnecessary as he is not an elected  
official and serves at the discretion the SMUD Board.

1 Sacramento County, and small adjoining portions of Placer and Yolo Counties. SMUD has four  
2 distinct customer classes: residential, commercial & industrial (“commercial”), agricultural, and  
3 street lighting & traffic. (Lau Decl. ¶ 4).

4 **1. SMUD is not funded by taxes nor is it a law enforcement agency.**

5 While SMUD is a municipal utility district and therefore a public agency, it is not a law  
6 enforcement agency. (Lau Decl. ¶ 5). SMUD is not funded by taxing individuals. (Lau Decl. ¶ 6).  
7 SMUD does not levy taxes or receive tax revenue. Rather, it is funded by its customer ratepayers.  
8 *Id.* The default rate for all SMUD customers, with the exception of lighting and agricultural  
9 customers, are marginal cost-based time-dependent rates. SMUD’s Board is its rate-approving  
10 body. *Id.* at 6. The Board has authority to establish rates and charges for all SMUD services, and  
11 such rates are not subject to oversight by other governmental agencies – federal, state, or local. *Id.*  
12 at 6.

13 **2. SmartSacramento, SMUD’s smart grid initiative.**

14 SMUD engages in a comprehensive and robust public process prior to adopting new or  
15 revised rates and service regulations. There is a three-month public process that includes media and  
16 public outreach at various community events. The process kicks-off with notice published in the  
17 local papers and release of a report detailing the proposed rates or charges together with the  
18 expected impacts to customer bills. As part of the process, SMUD holds two public workshops, a  
19 public hearing, and conducts a final Board vote. (Lau Decl. ¶ 7).

20 Beginning in late 2009, SMUD began to implement its Advanced Metering Infrastructure  
21 project (“AMI”). The objectives of the project were to implement an AMI solution for all residential  
22 and Commercial customers that would improve customer service; enable the introduction of new  
23 energy efficiency, demand response, and pricing programs; and provide tools for SMUD and its  
24 customers to reduce their environmental impact. In addition, the AMI would (and has) reduced  
25 operational costs and established the foundation on which SMUD built its smart grid functionality.<sup>4</sup>

26  
27 <sup>4</sup> Significantly, Petitioners expert Dr. Wicker agrees that the benefits of AMI technology are significant. *See* Wicker  
28 report p. 1550, (Randle Decl. ¶¶ 2, 3). Petitioners chose to submit Dr. Wicker’s report to the Court en toto. Of course,  
expert reports are hearsay and should not be admitted. *See* California Evidence Code sections 1200, 1201; *People v.*  
(footnote continued)  
161980703.1

1 Pursuant to SMUD Resolution 07-08-10, SMUD approved the “Time-Based Metering and  
2 Communications Standard set forth in the Energy Policy Act of 2005,” and conducted a  
3 comprehensive Business Case, which determined that installation of an AMI network would create  
4 opportunities for effective load management. (Lau Decl.¶ 9). Load management is an objective  
5 expressly set forth in Public Utilities Code § 12825. Time-based metering and smart meter programs  
6 are aspects of a load management program allowing SMUD customers to reduce electricity usage.  
7 SMUD has the express statutory authority to adopt such voluntary and mandatory load management  
8 programs and to do all things necessary or convenient to carry out the powers. The California Court  
9 of Appeal affirmed this in the *Graham* case.

10 Part of the AMI project involved the deployment of smart meter technology. Between 2009  
11 and 2011, SMUD began and completed its initial smart meter roll out. Pursuant to the foregoing,  
12 SMUD rolled out smart meters between late 2009 and 2011. *See* the Declaration of Brandon Miller  
13 in Opposition to Verified Petition for Writ of Mandate (“B. Miller Decl.”) ¶¶ 3. SMUD customers  
14 are also entitled to opt out of the smart meter program. (B. Miller Decl. ¶ 10). In response to  
15 concerns from some customers, SMUD adopted resolution No. 12-03-09, permitting SMUD  
16 customers to have the previously installed smart meters removed and replaced with a “non-  
17 communicating digital meter” for an upfront charge of \$145 and a monthly service fee of \$14. *Id.*  
18 On March 21, 2013, SMUD adopted Resolution No. 13-03-08 which revised the opt-out policy to  
19 permit customers to receive an analog meter. SMUD further amended the smart meter opt-out  
20 policy when it adopted Resolution No. 13-08-11. Customers therefore have an option for opting out  
21 of the smart meter program if they wish to not have their usage information transmitted. *Id.*

22 At all relevant times, all SMUD Customers consent to SMUD’s Terms of Service and  
23 Information Management and Security Policy (“Privacy Policy”). *See* the Declaration of Jenna  
24 Lesch in Opposition to Verified Petition for Writ of Mandate (“Lesch Decl.”) ¶¶ 5. As the Privacy  
25 Policy provides, SMUD will “not release to a third party any [customer] information without your  
26 written consent. The only exception is for information that’s reasonably required to meet SMUD’s  
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 *Sanchez* (2016) 63 Cal.4<sup>th</sup> 665.

1 business needs, for example: [...] To maintain or operate SMUD’s electrical system or grid. [...] To comply with a law, regulation, legal process or governmental request, such as a request from law enforcement, or a government agency when necessary for the performance of official duties, or a court order.” [...] “It may be necessary — by law, legal process, litigation, or requests from public and governmental authorities — for SMUD to disclose your personal information. We may also disclose information about you if we determine that for purposes of national security, law enforcement, or other issues of public importance, disclosure is necessary or appropriate. We may also disclose information about you if we see that disclosure is reasonably necessary to enforce our terms and conditions or to protect our operations or users.” *Id.* SMUD customers are provided a link to the privacy policy both when they sign up online and on the back of their paper utility bills. (Lesch Decl. ¶¶ 6, 7). A copy of SMUD’s current Privacy Policy and archived versions of past policies are publicly accessible online at <https://www.smud.org/Corporate/Privacy-policy>.<sup>5</sup>

13 **B. SMUD’s electricity meters.**

14 **1. Smart meters.**

15 Smart meters contribute to a more reliable power source, as the meters can alert SMUD to abnormalities in the grid. For example, SMUD may receive a “last gasp” notification, where SMUD is alerted that a smart meter went offline. Meters may go offline because a power pole fell in heavy weather or fuses were blown, as further examples. (B. Miller Decl. ¶ 8).

19 SMUD offers multiple types of meters to its residential customers. These include smart meters and traditional, analog meters. (B. Miller Decl. ¶ 4). Smart meter models used by SMUD include the Landis+Gyr Focus AX, S4e, and the Itron Riva. There are approximately 750,000 smart meters currently in use by SMUD customers. *Id.* SMUD’s smart meters transmit residential electricity usage to SMUD every four hours. (See the Declaration of Robert Burkhalter in Opposition to Verified Petition for Writ of Mandate, “Burkhalter Decl.” ¶ 3) Smart meters may be

26 \_\_\_\_\_  
27 <sup>5</sup> Petitioners point out that roughly 40% of SMUD customers became customers before the law requiring disclosure was enacted and addressed in the privacy policy. However, all SMUD customers are provided a link to policy on their bills and are deemed to consent to the policies by continuing to use and pay for power. SMUD also sends annual privacy policy updates annually to all ratepayers. (Lesch Decl. ¶ 8.)

1 manually pinged, which provides awareness of whether the meter is working and a low profile data  
2 read can offer a snapshot of the current usage data. Manual pings allow technicians to know when  
3 to perform maintenance and troubleshooting of meters. A low profile data read might help an owner  
4 to know if electricity has been flowing when a customer complains of a high bill or power usage  
5 when they are not home. A manual ping and a low profile data read are distinct from real-time  
6 monitoring, because they are a manual “freeze” of usage data at a given time, and is not updated  
7 automatically. (B. Miller Decl. ¶ 6). Remote real-time monitoring is not possible with SMUD’s  
8 system; the only way to get instantaneous, live meter reads is to physically read the meter itself, in  
9 person.

10 The transmitted information for a particular meter is called profile data. A customer’s profile  
11 data is available for approximately thirty days. (Burkhalter Decl. ¶ 3).

12 Smart meters do not capture or transmit more information than electricity usage. Smart  
13 meters cannot identify specific devices or reasons why electricity usage data is the amount used by  
14 a customer.

## 15 **2. Traditional meters.**

16 SMUD’s residential customers are not required to use smart meters. They can opt out of  
17 smart meters and instead use traditional, analog meters. There are no restrictions on the option to  
18 opt-out; however, SMUD customers are responsible for providing and maintaining access to the  
19 meters via easements for installation, maintenance, and reading. Traditional meters carry a \$147.00  
20 set up fee (monthly payments available) and a \$14.00 monthly charge. (Lau Decl. ¶ 10). There are  
21 approximately seven hundred traditional meters in the field. Traditional meters do not allow  
22 customers to view daily electricity use or provide outage detection. They are non-communicating,  
23 do not transmit any data directly to SMUD, and do not allow remote connections. Rather than four-  
24 hour transmission, Traditional analog meters require a SMUD meter reader employee to physically  
25 visit the residence and read the meter. Meter readers read traditional meters every three months. (B.  
26 Miller Decl. ¶ 9).

## 27 **C. SMUD’s Revenue Protection Unit.**

28 SMUD’s Revenue Protection Unit employees, Revenue Protection Representatives, analyze

1 profile data for suspected power theft, looking for usage patterns indicative of such theft through  
2 proprietary software. (See the Declaration of Daniel Miller in Opposition to Petitioners’ Writ of  
3 Mandate, “Miller Decl.” ¶ 3) The Revenue Protection Unit does not monitor usage live, but is  
4 reviewed retroactively in one-hour interval reads sent every four hours. (Burkhalter Decl. ¶ 3).

5 While some people can interpret electricity usage patterns in profile data to guess at reasons  
6 why the patterns indicate what they do, there is no way to tell for certain without physically seeing  
7 the electrical devices causing an increase in voltage. Likewise, a spike in usage might indicate an  
8 electric vehicle (“EV”) charging, but determinations regarding what contributes to a usage pattern  
9 are all deductive guesses without more information that SMUD does not have. (Miller Decl. ¶ 7).

10 Revenue Protection Representatives are also responsible for responding to law enforcement  
11 requests for electricity usage data. (Miller Decl. ¶ 3). Law enforcement makes these requests  
12 pursuant to efforts to investigate and prosecute illegal activities (mostly illegal cannabis  
13 operations). As described below, SMUD provides this information because it is required by law to  
14 be provided upon request. Law enforcement may use the information to support an application for  
15 a search warrant, but SMUD is not involved in the determination to pursue a warrant for a person  
16 suspected of a crime, and has no decision-making authority with respect to criminal prosecutions.

17 Law enforcement makes two types of requests to SMUD. The first are requests for  
18 information about individual SMUD customers suspected of illegal activity. Law enforcement  
19 requests this information pursuant to a standardized request form submitted to SMUD. *Id.* at ¶¶ 7,  
20 7. The second type of request involve requests for high usage households in a given zip code (“Zip  
21 Code Lists”). Law enforcement provides the threshold for what they consider to be a high user, and  
22 these levels have changed over time. Law enforcement use the Zip Code Lists to narrow down  
23 suspects pursuant to campaigns to combat illegal marijuana grows, and will return the lists to  
24 SMUD with requests for more information about persons on the list, following the officers’ further  
25 independent investigation.

26 **D. Petitioners Verified Petition and Complaint for Declaratory Relief (“Petition”).**

27 The Petition purports to allege two causes of action against SMUD. Count one alleges a  
28 violation of Article I Section 13 of the California Constitution which provides: “The right of the



1 people to be secure in their persons, houses, papers and effects against unreasonable searches and  
2 seizers may not be violated; and a warrant may not issue except on probable cause, supported by  
3 oath or affirmation [particularly describing the place to be searched and the person and things to be  
4 seized.” Specifically, Petitioners allege that SMUD as a government agency must have a reasonable  
5 suspicion of a violation of law before conducting a search and seizure (FAC ¶ 67), that SMUD  
6 ratepayers have a reasonable expectation of privacy in their electrical usage data (FAC ¶ 68) and  
7 that SMUD and Sacramento Police Department have a pattern and practice of searching and seizing  
8 SMUD’s customer electricity data (FAC ¶ 69).

9 Count two of the Petition alleges that SMUD is a local publicly owned electric utility within  
10 the meaning of Public Utilities Code section 8.381, section 224.3 (FAC ¶ 72) and that SMUD  
11 violates Public Utility Code section 8381 by disclosing electricity usage to law enforcement without  
12 a warrant or court order.

13 The gravamen of the Petition is that “electricity usage data has always provided a right into  
14 what occurs with a home. Petitioners assert that with the adoption of smart utility meters, the  
15 gathered data provides a picture that is clearer and more detailed than was possible before.”  
16 According to the Petition, “SMUD’s ongoing dragnet of its customer’s utility usage and subsequent  
17 disclosure eviscerates their reasonable expectation of privacy and violates California law. SMUD’s  
18 secret disclosures also disproportionately harm Asian customers because SMUD’s lists are used to  
19 target Asian’s in particular.” As set forth below, both counts asserted against SMUD are without  
20 merit.

21 **E. Petitioners have all but abandoned their claims of Asian-American**  
22 **discrimination.**

23 Although heavily featured in petitioners’ media releases, Petitioners have all but abandoned  
24 the discrimination aspect of their suit. As the thousands of pages of documentation, written  
25 discovery responses, and hours of deposition testimony demonstrated, there is no evidence of an  
26 institutional bias or scheme effectuated against Sacramento’s Asian-American community. Rather,  
27 Petitioners latch on to two sets of communications between a SMUD Revenue Protection  
28 Representative and law enforcement: a 2017 email chain regarding tip about potential cannabis grow

1 houses and a single, undated, text message tipping a law enforcement officer to a suspected illegal  
2 grow and power theft.<sup>6</sup> The third assertion of “collusion” is a law enforcement request to SMUD  
3 for further information about customers appearing on a Zip Code List, with – using Petitioner’s  
4 words, non-“Asian sounding names” removed from the list.

5 Examination of the email chain demonstrates, the conversation originates from a tip to law  
6 enforcement, which describes persons suspected of a grow operation as “Asian.” Later in the email  
7 chain, the SMUD Representative responds, in part, “The house at 4060 just started growing recently  
8 and is Asian [...] 4054 looked like theft to me, I’ll have to check it later today of course and let you  
9 know. One thing interesting about the 4054 address is the multiple Asians that have reported there  
10 through *Experian* in 2017.” Describing suspects of a crime is not evidence of some discriminatory  
11 scheme, but is providing information to law enforcement corroborating a tip. Likewise, the isolated  
12 text message, the authenticity of which is highly questionable, does not help Petitioners. First, even  
13 assuming, in arguendo, that the message is a real message from a SMUD employee, Petitioners  
14 present no legal basis to attribute this message to SMUD as an organization. (*See Snider v. Superior*  
15 *Court* (2003) 113 Cal.App. 4th 1187, 1193.)

16 **F. SMUD did not revise Zip Code Lists to leave only “Asian sounding names.”**

17 Petitioners’ only other piece of “evidence” regarding the alleged Asian-American  
18 discrimination is an instance in 2018 of law enforcement returning a request for more information  
19 about certain high-users on a list provided by SMUD. *Law enforcement* provided the revised list,  
20 requesting further information about the individuals on the earlier list. As nebulous as the description  
21 is, this is the example Petitioners allege constitutes the revision of a list to only include “Asian  
22 sounding names.” (FAC ¶ 61.) There is no information to support that SMUD participated in the  
23 selection of “Asian sounding names.” There is no information to support the folks who were  
24

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25 <sup>6</sup> SMUD objects to the admission of the “text message” into evidence, and it should be excluded. As an initial matter,  
26 the message lacks foundation or any supporting information to confirm its authenticity. At deposition, while Petitioners  
27 repeatedly questioned the SMUD representative who is alleged to have sent the message, the Representative did not  
28 recognize the message, did not remember sending the message or ever communicating with the law enforcement officer  
who is allege to be the other party to the text conversation. The Representative, who produced text communications  
with law enforcement through SMUD, had no record of the communication, and there is no native format (or other)  
record establishing that the screenshot is authentic.

1 removed from the list were removed because they did not have “Asian sounding names.” Regardless  
2 of who is or is not on that list, SMUD has no discretion or control over how law enforcement narrows  
3 their lists or conducts their investigations. Here, too, the “collusion” fails. It is unclear how the Court  
4 can reasonably craft an order compelling conduct by SMUD when Petitioners base their allegations  
5 of discrimination on two documents (again, out of thousands), from rank-and-file SMUD employees  
6 that are nearly a decade old.<sup>7</sup>

### 7 **III. LEGAL STANDARD**

8 “A writ of mandate, or mandamus, is an extraordinary writ known at common law. The writ  
9 of mandate lies generally to compel performance of a legal duty when no plain, speedy, and adequate  
10 remedy at law is available.” (*TriCoast Builders, Inc. v. Fonnegra* (2024) 15 Cal. 5th 766, 785 [citing  
11 Cal. Code Civ. Proc. §§ 1085-1086].) Such a writ will lie to “‘compel the performance of an act  
12 which the law specifically enjoins, as a duty resulting from an office, trust, or station’ [citation]  
13 ‘upon the verified petition of the party beneficially interested,’ in cases ‘where there is not a plain,  
14 speedy, and adequate remedy, in the ordinary course of law. [citation]’” (*Physicians Committee for*  
15 *Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 43 Cal.App.5th 175, 184 [citing  
16 Cal. Code Civ. Proc. §§ 1085-1086, *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d  
17 480, 490-491].)

18 Mandamus will be denied if an applicant has a plain, speedy, and adequate remedy at law  
19 and the burden is on a petitioner to show they have no such remedy. (*See Physicians Committee for*  
20 *Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 256 Cal.Rptr. 3d 412; *see also*  
21 *Barnard v. Municipal Court of San Francisco* (1956) 142 Cal.App.2d 324; *see also Lohr v. Superior*  
22 *Court of Los Angeles County* (1952) 111 Cal.App.2d 231; *Hutchison v. Reclamation Dist. No. 1619*  
23 *(1927)* 81 Cal.App. 427; *Turney v. Morrissey* (1913) 22 Cal.App. 271.)

24 ///

25 ///

### 26 **IV. ARGUMENT**

27 \_\_\_\_\_  
28 <sup>7</sup> The Petition was filed on 09/21/2022. The above “evidence” is not admissible as beyond the applicable statute of  
limitations in any event. (*City of L.A. v. Superior Court* (1990) 217 Cal.App.3d 443, 445.)

1           A.     **Petitioners do not have standing to petition for a writ of mandate against**  
2                 **SMUD.**

3                 1.       **Petitioners have suffered no harm attributable to SMUD.**

4                 Petitioners cite to no tangible harm attributable to SMUD. Neither AALN<sup>8</sup> nor Mr. Khoja  
5                 cite to any SMUD conduct, but rely solely on the insufficient taxpayer standing, discussed below.  
6                 Neither AALN nor Mr. Nguyen are SMUD ratepayers, but Mr. Nguyen’s mother is. Mr. Nguyen  
7                 states that his mother’s home was searched in “2015-2017,” and attempted to search her home again  
8                 in 2020 but that Mr. Nguyen prevented the search by non-party Sacramento County Sherri’s  
9                 Department. (Record 143 ¶ 3,4.) Petitioners simply cannot show any harm attributable to SMUD,  
10                and therefore have no standing to sue SMUD or Mr. Lau. Sacramento County is not a party to this  
11                lawsuit, nor does Mr. Nguyen have standing to assert the claims herein based on bills he does not  
12                pay, for a home he does not own and for a search that did not occur.<sup>9</sup>

13                In order to state a cause of action, a petition for writ of mandate must set forth facts showing  
14                that plaintiff is entitled to the relief he seeks. (*Ward v. County of Riverside* (1969) 273 Cal.App.2d  
15                353.) Specifically, absent limited exceptions, petitions must demonstrate and prove a cognizable  
16                harm to prevail on the Petition. “As a general rule, a party must be ‘beneficially interested to seek a  
17                writ of mandate.’” (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4<sup>th</sup> 155,  
18                165 [citing § 1086].) Petitioners simply do not have the required beneficial interest.

19                2.       **The “public interest exception” to a mandamus petition beneficial**  
20                **interest requirement does not apply, here.**

21                “As a general rule, a party must be ‘beneficially interested to seek a writ of mandate.’” (*Save*  
22                *the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4<sup>th</sup> 155, 165 [citing § 1086].)  
23                “Nevertheless, “ ‘where the question is one of public right and the object of the mandamus is to  
24                procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or

25                <sup>8</sup> AALN is not a ratepayer thus it has no standing to assert any privacy interest. Likewise, AALN has not submitted any  
26                evidence for this Court to conclude that any of its members (if there are any), are ratepayers and if they are, that they  
                  have suffered any harm.

27                <sup>9</sup> Mr. Nguyen also references an alleged search of his mother’s house in 2015-2017 time period, however, such events,  
28                even if otherwise sufficient to confirm standing, cannot do so now as those events are clearly time-barred. (FAC ¶ 23.)  
                  *City of L.A. v. Superior Court* (1990) 217 Cal.App.3d 443, 445

1 special interest in the result, since it is sufficient that he is interested as a citizen in having the laws  
2 executed and the duty in question enforced.” (*Id.* at 166 [citing *Bd. Of Soc. Welfare v. County of*  
3 *L.A.* (1945) 27 Cal.2d 98, 100-101]; *see also Green v. Obledo* (1981) 29 Cal.3d 126, 145.) However,  
4 this exception is not absolute. (*See Dix v. Superior Court* (1991) 53 Cal.3d 442, 453-454 [Reversing  
5 Court of Appeal finding of “public interest standing to seek enforcement of a public duty” as a  
6 matter of law, where there was “no enforceable ‘duty’” to compel.] “Moreover, [Courts] have made  
7 clear that ‘public interest’ standing must yield to paramount considerations of public policy.” (*Dix*  
8 *v. Superior Court* (1991) 53 Cal.3d 442, 453 [citing *Casten v. Psychology Examining Com.* (1980)  
9 27 Cal.3d 793].)

10       Petitioners fail to specify any public duty attributable to SMUD or Mr. Lau, beyond vague  
11 assertions of a “ministerial duty.” (*See, e.g., FAC* ¶ 67.) And, as described herein, there is no such  
12 legal duty for the Court to compel, rendering the exception unavailable; the Court should deny  
13 “public interest” standing on the grounds that the legislature has deemed the sharing of electrical  
14 usage data from locally owned public utilities to certain governmental agencies and law enforcement  
15 agencies to be in the public interest.

### 16                   **3. Taxpayer standing does not authorize suit against SMUD.**

17       At common law, California’s taxpayer standing involved citizens’ rights to sue for waste or  
18 unlawful expenditure of state funds. (*Ahlgren v. Carr* (1962) 209 Cal.App.2d 248, 252; *see also*  
19 *Foster v. Coleman* (1858) 10 Cal.278.) California’s legislature codified a taxpayer’s right to sue  
20 government officials for the unlawful expenditures identified by *Foster*. (Cal. Code Civ. Proc. §  
21 526a.) Taxpayer standing requires a petitioner to have paid a tax to the defendant entity within the  
22 year prior to filing the suit. (*See Chiatello v. City and County of San Francisco* (2010) 189  
23 Cal.App.4<sup>th</sup> 472, modified (Cal.App. Nov. 16 2010), 2010 Cal.App. LEXIS 1946 [Taxpayer lacked  
24 standing to challenge a measure amending a municipal payroll tax, where the taxpayer was not  
25 subject to the tax. Because the taxpayer’s lack of standing was a jurisdictional defect and there was  
26 no suggestion that the taxpayer could amend around it, the dismissal of his complaint for declaratory  
27 relief was proper].) In an apparent concession that they cannot justify the “public interest exception”  
28 for a suit against SMUD, Petitioners attempt to satisfy section 1086’s “beneficial interest”

1 requirement on the basis of taxpayer standing. Here, too, Petitioners' suit is barred.

2                   **(a) Petitioners cannot show that they paid a tax funding SMUD,**  
3                   **because there are no such taxes.**

4           A taxpayer's action rests not on the payment of taxes by the taxpayer, but on the alleged  
5 illegal expenditure of public funds by the defending public entity. (*See Regents of Univ. of Cal. V.*  
6 *Superior Court of Los Angeles County* (1970) 3 Cal.3d 529.) Under section 526a, an action may be  
7 maintained by an individual or corporation "who is assessed for and liable to pay, or within one year  
8 before the commencement of the action, has paid, a tax that funds the defendant local agency[.]"  
9 (*Id.* at (a).) The statute enumerates four examples of such taxes. (*Id.* at (a)(1)-(4).) While the  
10 provision states it is "not limited to" such taxes, the four items all express the word "tax." (*Id.*) The  
11 purpose of section 526a is to enable a citizen-resident taxpayer to question a local government's  
12 public expenditures which might otherwise pass unchallenged. (*Bledsoe v. Watson* (1973) 30  
13 Cal.App.3d 105.)

14           In short, taxpayer standing requires a tax. But, as cited above, SMUD is a municipal utility  
15 district, which is not funded by taxes. It is funded by its customer ratepayers. (*See Citizens for Fair*  
16 *REU Rates v. City of Redding* (2018) 6 Cal.5<sup>th</sup> 1, 12 [Electricity usage rate transmitted to City "per  
17 se cannot be a tax. It is only the rate, not the [program] that is imposed on customers for electricity  
18 service." [emphasis in original]].) While SMUD receives government grants, including grants which  
19 might be funded by taxes, that is not the sort of direct funding contemplated for taxpayer standing.  
20 Likewise, Petitioners name SMUD CEO and General Manager Paul Lau as an "officer" under  
21 section 526a. Petitioners mistake Mr. Lau for the type of government official contemplated by the  
22 provision. While Mr. Lau is an officer of a "district" (*see* 526a(d)(1)) the insular nature of SMUD's  
23 funding as a municipal district precludes a taxpayer suit against him, as well. He is not a public  
24 official charged with directing expenditure of public funds, but an municipal district manager  
25 elected by the SMUD's Board of Directors. Petitioners provide *zero* evidence of any tax paid to  
26 SMUD, or any tax funding SMUD, because there is no such tax. In order to try and avoid the  
27 inescapable fact that SMUD does not tax California citizens, Petitioners rely upon the state  
28 surcharge that SMUD collects on behalf of the State of California. *See* (Record 151 ¶ 5, 144 ¶ 9,

1 194 ¶ 5.); *See also* (Records 304.) Petitioners do not cite a single case that confers taxpayer standing  
2 against an entity that collects a tax for another government entity. That is because that is not the law.  
3 While Petitioners may have taxpayer standing to assert these claims against the State of California  
4 or even the City of Sacramento, they do not have taxpayer standing to assert such claims against  
5 SMUD, which does not tax California citizens.

6 Even if the Court ignores the fact that SMUD does not tax, taxpayer funding cannot confer  
7 Petitioners' standing. As identified herein, the suit may not be maintained because the provision of  
8 customer information to law enforcement is legal.<sup>10</sup> (*See Lyons v. Santa Barbara County Sheriff's*  
9 *Office* (2014) 231 Cal.App.4<sup>th</sup> 1499 [Taxpayer's action may not be maintained where the challenged  
10 government conduct is legal. Conduct in accordance with regulatory or statutory standards is a  
11 perfectly legal activity and beyond the scope of this section.].) As detailed herein, SMUD is  
12 mandated to share information with law enforcement pursuant California's Government Code, and  
13 it is empowered to share information for purposes of reporting suspected crime or to enforce Its  
14 terms of service. As such taxpayer standing cannot exist.

15 **B. Petitioners have access to alternative remedies.**

16 The second prong of a mandamus determination requires that a petitioner have no plain,  
17 speedy, and adequate remedy at law. (*See Barnard v. Municipal Court of San Francisco* (1956) 142  
18 Cal.App.2d 324.) Here, Petitioners have an easy remedy, accessible at any time – all they need to  
19 do is contact SMUD and opt out of their smartmeter. SMUD customers are not required to use  
20 smartmeters.<sup>11</sup> They can opt out of smart meters and instead use traditional, analog meters. SMUD  
21 does not impose any restrictions or limitations on opt-outs for single family residential homes, and  
22 customers may opt out for any reason. If Petitioners – or any SMUD customer – is concerned about

23  
24 <sup>10</sup> Ostensibly, Petitioners bring suit to challenge the alleged conduct as money spent on an activity they claim is unlawful,  
25 rather than a waste. However, standing on the basis of waste also does not exist, here. A public expenditure is a waste  
26 of public funds, and thus subject to a taxpayer's suit under section 526a, if it is totally unnecessary or useless or provides  
27 no public benefit. (*See County of Ventura v. State Bar* (1995) 35 Cal.App.4<sup>th</sup> 1055.) An expenditure of public funds is  
28 not a waste merely because there is a cheaper way; if there is a public benefit, the expenditure is not actionable, even if  
there is an alternative that is not only less expensive but more efficient. (*Id.*)

<sup>11</sup> The propriety of the smart meters and SMUD's opt out program as a viable alternative was already adjudicated in  
the *Graham* case.

1 the transmission of their electricity usage data via smart meters, they can submit an opt out request  
2 at any time. This is an adequate alternative remedy to SMUD's collection, use, or sharing of  
3 electricity usage data.

4 Issuing a writ of mandate requires a justiciable controversy, meaning one that is actionable  
5 and has not been rendered moot. (*See, e.g., TransparentGov Novato v. City of Novato* (2019) 34  
6 Cal.App.5<sup>th</sup> 140, 149.) Because of the de-criminalization of marijuana, SMUD believes that law  
7 enforcement has stopped its campaign to investigate illegal cannabis grows using SMUD's  
8 electricity usage data, as SMUD has received no zip code requests so far in 2025 and only received  
9 five such requests in 2024. Moreover, the injunction sought does not solve Petitioners' concerns.  
10 (Miller Decl. ¶ 4).

11 **C. Petitioners claim (count one) that SMUD is violating Article I, Section 13 is**  
12 **without merit.**

13 **1. SMUD is not a law enforcement agency and does not conduct searches**  
14 **or seizures.**

15 On its face, Article I, Section 13 only applies to unreasonable seizures or searches and the  
16 requirements for issuance of a warrant. SMUD is not a law enforcement agency nor does it conduct  
17 searches or seizures. Every case cited by Petitioners involves a law enforcement agency. *See People*  
18 *v. Buza* (2018) 4 Cal.5<sup>th</sup> 658, 686; *People v. Mayoff* (1986) 42 Cal.3d 1302, 1312; *California v.*  
19 *Civaolo* (1986) 476 U.S. 207, 214; *People v. Krivada* (1973) 8 Cal.3d 623; *California v. Greenwood*  
20 (1988) 486 U.S. 35, 40; *U.S. v. Miller* (1976) 425 U.S. 435; *Smith v. Maylan* (1979) 442 U.S. 735;  
21 *Bernard v. Superior Court* (1974) 13 Cal.3d 238, 245 (bank statement); *People v. Blair* (1979) 25  
22 Cal.3d 640, 652; *People v. Chapman* (1984) 36 Cal.3d 98, 108; *People v. McKunes* (1975) 51  
23 Cal.App.3d 487, 490; *People v. Camacho* (2000) 23 Cal.4<sup>th</sup> 824, 830; *Katz v. United States* (1967)  
24 389 U.S. 347. Article I, Section 13 like its federal counterpart the Fourth Amendment restricts the  
25 government's ability to use information and evidence against individuals in the context of criminal  
26 proceedings where life, liberty or property interest are at stake. (*People v. Roehler* (1985) 167 Cal.  
27 App. 3d 353, 375.) None of the Petitioners can or have established that they suffered any harm, let  
28 alone any loss of liberty or property interest. SMUD has been unable to locate a single case where



1 a non-law enforcement entity was found to violate Article I, Section 13 of the California  
2 Constitution.

3                   **2. There is no “heightened” expectation of privacy in electricity usage data**  
4                   **and California courts have held there is no reasonable expectation of**  
5                   **privacy in the quantity of electricity delivered to a customer.**

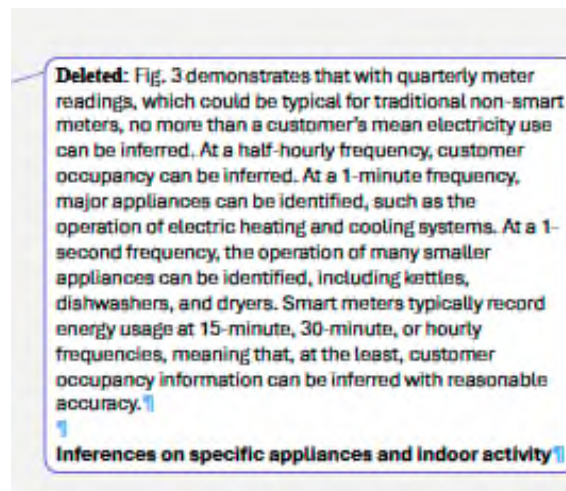
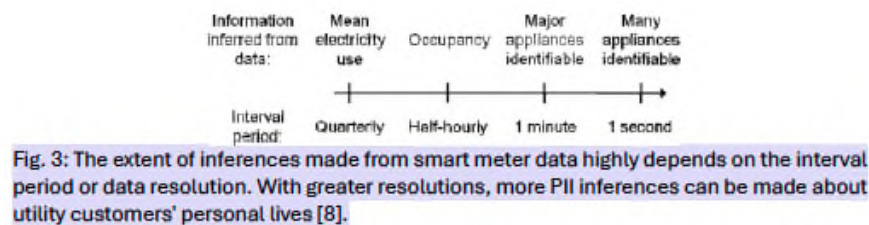
6                   Without authority, Petitioners hope the Court will declare a heightened expectation of  
7 privacy in electricity usage data. Indeed, their entire argument depends on such an invented right of  
8 privacy; however, there is no such right. History is not on Petitioners’ side. In fact, California courts  
9 have held that there is no reasonable expectation of privacy in the aggregate amount for electricity  
10 delivered to a customer. *People v. Stanley* (1999) 72 Cal.App. 4<sup>th</sup> 1547, 1554. With respect to  
11 electricity usage data, the *only* difference between a smart meter and a traditional meter is that a  
12 smart meter captures electricity usage more often. Traditionally, meters are placed outside of a  
13 residence, sometimes not even on a customer’s property. The information displayed by a traditional  
14 meter is visible with the naked eye and readable by any person who can physically lay eyes on the  
15 screen – neighbors, guests, customers, and SMUD employees. Like all electric utility providers,  
16 SMUD has easements onto customers’ properties to access meters, whether for meter reading or  
17 maintenance and troubleshooting. There is no historical privacy interest in electricity usage data  
18 derived from smart meters. (B. Miller Decl. ¶ 12). Even if there were a privacy expectation, the  
19 legislature has clearly spoken that the disclosure of such information is the circumstances set forth  
20 in Government Code 7927.410 outweigh any interest in non-disclosure.

21                   **3. SMUD’s SmartMeter Program does not implicate privacy concerns and**  
22                   **SMUD.**

23                   Petitioners’ claim that the electricity usage data collected by SMUD “gives intimate details  
24 about the home,” is a farce. In fact, their own expert, Dr. Stephen Wicker provides zero evidence to  
25 support that SMUD’s one-hour intervals of data resolution collected by its smart meters and  
26 provided to law enforcement invokes any privacy concerns whatsoever, let alone the “intimate”  
27 details of the home which Mr. Whicker’s over 15 years of research has collected data on. (See the  
28 Declaration of Matthew Randle in Opposition to Petitioners’ Writ of Mandate, “Randle Decl.” ¶¶ 2,  
3) Mr. Whicker did not consider or analyze a single piece of evidence or data related to SMUD’s

1 particular smart meter collection and there was not one single document or note in his extensive  
2 expert files related to SMUD in particular. *Id.* Not a single cited reference in his extensive paper  
3 indicated or even intimated that one hour data resolution implicates any privacy concern at all – let  
4 alone the “intimate details of the home” his paper focuses on, which requires much more granular  
5 and/or real time data monitoring. *Id.*

6 In fact, the culmination of Mr. Whicker’s extensive research on smart meter privacy – going  
7 Back to 2009 – culminated in the following findings in his report sent to the lawyers for final review  
8 just months prior to his deposition being taken:



24 Clearly, following extensive research conducted by Mr. Whicker since 2009 right up until  
25 the lawyers months before his deposition received his draft, the potentially privacy intrusions  
26 potentially implicated by smart meter data collection are on a sliding scale based upon the  
27 granularity and resolution of the data collected, and do not even begin until 30 minute collection  
28 intervals. Following the edits with the lawyers who hired him, Mr. Whicker’s final report magically

1 changed research conducted since 2009 to expand to 1 hour intervals, with precisely zero supporting  
2 evidence or support anywhere in Mr. Whicker’s expert file or extensive cited research publications.

3       Petitioners’ Brief quotes Dr. Wicker at best out of context, mischaracterizing his opinions,  
4 and at worst in a way to attempt to hide his true findings reached from over 15 years of research. In  
5 any event, Dr. Wicker concedes that one-hour intervals of electricity usage data that SMUD provides  
6 to law enforcement, *at most*, can confirm a residence’s occupancy. While SMUD does not agree  
7 with Dr. Wicker’s conclusions, it is clear Dr. Wicker said one thing for the duration of his career  
8 and now that he was hired in this case, (i.e. took a financial interest in Petitioners’ assertions) he has  
9 changed his opinion to meet the needs of his paying customer. His opinions therefore cannot be  
10 trusted and should be disregarded.<sup>12</sup> It doesn’t take an expert to realize that customer usage data that  
11 only shows the total amount on energy used across a period of one hour does not tell one what is  
12 going on in a home, and one need not look any further than the examples cited in plaintiff’s briefs  
13 about when the police went to homes based on data usage reads and were wrong about what was  
14 happening inside. If one cannot tell what is going on in a home from the total energy used over a set  
15 period of time, there is no invasion of privacy and the gathering of the total amount of energy used  
16 in a single time period does not create a reasonable expectation of privacy.

17       Finally, The data at issue is not comparable to thermal imaging in *Kyllo* (2001) 533 U.S. 27  
18 or the “inescapable and automatic” cell phone data at issue in *Carpenter v. United States* (2018) 585  
19 U.S. 296. Because SMUD’s program does not implicate any privacy concerns given the one hour  
20 interval for data transmitted to law enforcement, the court should enter judgment in favor of  
21 Defendants.

#### 22                   **4.       The Naperville smart meters case does not help Petitioners.**

23       The *Naperville Smart Meter Awareness* which is the centerpiece of Petitioners’ argument is  
24 easily distinguishable. In the *Naperville Smart Meter Awareness v. City of Naperville* (7th Cir. 2018)  
25 900 F.3d 521, the 7th Circuit did deem the collection of smart meter-derived information a “search.”  
26 However, the program at issue in *Naperville* did not involve a municipal utility district, but was a

27 \_\_\_\_\_  
28 <sup>12</sup> Again, SMUD objects to the admissibility of Dr. Wicker’s report as hearsay. *See* Evidence Code section 1200;  
*People v. Sanchez* (2016) 63 Cal.4<sup>th</sup> 665.

1 program directly established by the city of Naperville, Illinois which is a law enforcement agency.  
2 (*Naperville*, 900 F.3d at 525-526.) Second, Naperville citizens could not opt out of the smart meter  
3 program, unlike SMUD’s opt out policy, has already been litigated and approved by the Court of  
4 Appeal in the *Graham* decision. Further, the City of Naperville was monitoring data from its smart  
5 meters and reporting the results to law enforcement in fifteen-minute intervals. SMUD’s Revenue  
6 Protection Unit receives data in one hour intervals and four hour blocks for billing purposes.  
7 (Burkhalter Decl. ¶ 3). (*Naperville* 900 F.3d at 525-526.) In any event, while *Naperville* deemed the  
8 fifteen-minute interval data collection a search, the court deemed the search reasonable. (*Id.* at 526.)  
9 Thus the *Naperville* case actually supports denial of the instant writ.

10 **D. SMUD is obligated by existing state law to share electricity usage information**  
11 **with law enforcement “upon request” and Petitioners cannot prevail on Count**  
12 **2 of the Petition.**

13 Petitioners contention that SMUD violates Public Utilities section 8381 by sharing electrical  
14 usage information with the City of Sacramento is without merit. That provision provides “a local  
15 publicly owned electric utility shall not share, disclose or otherwise make accessible to any third  
16 party a customer’s electrical consumption data except as provided in subdivision (f) or upon the  
17 consent of the customer.”

18 At the outset, as previously stated above, neither AALN nor Mr. Nguyen are SMUD  
19 customers and thus cannot prevail in Count 2. Likewise, Mr. Koja presents exactly zero evidence  
20 that his electrical consumption data was shared, disclosed or otherwise made accessible to any third  
21 party. On this basis alone, SMUD is entitled to judgement as a matter of law on Count 2. Petitioners  
22 attempt to obfuscate the fact that none of them can or have proved that their customer data was  
23 misused by attempting to conflate the burden of proof. Each of the cases that Petitioners cite are  
24 inapposite. Unlike the wastewater exception for storm release in *Brentwood v. Central Valley Water*  
25 *Board* (2004) 123 Cal.App.4<sup>th</sup> 714, 725 or the warranty of merchantability in *Jones v. Auto Ctr*  
26 (2015) 237 Cal.App.4<sup>th</sup> supp. 1, 10-11; Public Utility Code section 8381 does not apply at all when  
27 the information is requested by any other government agency. *See* California Government Code  
28 Section 7927.410 which provides in pertinent part:

“disclosure of the name, utility usage data and the home address of a utility customer of a

1 local agency shall be made available upon request as follows:

2 (b) to an officer or employee of another governmental agency when necessary for the  
3 performance of its official duties

4 (c) upon court order or the request of a law enforcement agency relative to an ongoing  
5 investigation

6 (d) upon a determination by the local agency that the utility customer who is the subject  
7 of the request has sued utility services in a manner inconsistent with applicable local utility usage  
8 policies

9 (f) upon determination by the local agency that the public interest in disclosure of the  
10 information clearly out weights the public interest in the non-disclosure.”

11 **1. SMUD must share electricity usage data when requested by law**  
12 **enforcement.**

13 Cal. Pub. Util. Code does not preclude sharing customer data with the government. As the  
14 provision states: “this section shall not preclude a local publicly owned electric utility from  
15 disclosing electrical consumption data as required under state or federal law.” (Cal. Pub. Util. §  
16 8381(f)(3).) “[D]isclosure of the name, utility customer usage data, and the home address of a utility  
17 customer of a local agency shall be made available upon request as follows: [...] “(b) To an officer  
18 or employee of another governmental agency when necessary for the performance of its official  
19 duties. (c) Upon court order or the request of law enforcement relative to an ongoing investigation.  
20 (d) Upon determination by the local agency that the utility customer who is the subject of the request  
21 has used utility services in a manner inconsistent with applicable local utility usage policies. [...] (f) Upon determination by the local agency that the public interest in disclosure of the information  
22 clearly outweighs the public interest in nondisclosure.” (Cal. Gov. Code § 6254.16 (repealed 2021  
23 & replaced 2023 with identical Cal. Gov. Code § 7927.410, emphasis added.)

24 SMUD has no discretion with respect to requests pursuant to law enforcement investigation,  
25 given the statute’s “shall” language. SMUD does not have a duty to discern what is or is not a  
26 government investigation. The law does not differentiate between requests on a zip code-by-zip  
27 code basis or an individual customer request. The law does not impose limitations on what  
28

1 constitutes an investigation, let alone an “ongoing” investigation. For a writ to issue, here,  
2 Petitioners ask the Court to define, and impose limitations on these terms. Moreover, when it  
3 requests the data, law enforcement certifies that the request is part of an investigation. (Miller Decl.  
4 ¶ 7, Ex. A). It is not for Petitioners, SMUD or even this Court to define what an investigation is –  
5 that is the province of law enforcement.

6 Even still, Petitioners ignore the even wider latitude regarding third party information  
7 sharing: circumstances where SMUD determines a customer has used utility services in a manner  
8 inconsistent with its policies. That certainly includes instances of power theft or for suspected illegal  
9 activity. Petitioners also fail to recognize SMUD is also required to share with law enforcement and  
10 other governmental entities seeking information to fulfill their duties—See §7927.410(b). So even  
11 if for some reason law enforcement did not have an active investigation pursuant to §7927.410(c),  
12 SMUD is still required to share the same data pursuant to subsection (b) if it is to help the entity  
13 fulfill a duty.<sup>13</sup> Further, still, SMUD is empowered by the provision to share information upon its  
14 own determination that the public interest in disclosure outweighs public interest in nondisclosure.  
15 Petitioners cannot reasonably argue that illegal cannabis grows and power theft are not issues of  
16 public interest, but the law vests discretion to make that determination in SMUD, and mandates the  
17 sharing of electricity usage data upon such a conclusion.

18 (a) **The legislature makes clear that electricity usage data is not**  
19 **entirely private by virtue of identifying it in the Government**  
20 **Code.**

21 It is a basic and intrinsic maxim that laws are accessible to the public and ignorance of them  
22 will not justify a trial court granting relief. (*See, e.g., Diaz v. Grill Concepts Services, Inc.* (2018)  
23 23 Cal.App.5th 859, 869 [citing *Stark v. Superior Court* (2011) 52 Cal.4th 368, 396-397; *Brumagim*  
24 *v. Tillinghast* (1861) 18 Cal. 265, 271].) In fact, it is not only a given that laws are public knowledge,  
25 but “citizens have a ‘duty of inquiry to determine’” them. (*Id.* [citing *Personal Watercraft Coalition*  
26 *v. Marin County Bd. of Supervisors* (2002) 100 Cal.App.4th 129, 139; *Tammen v. County of San*

27 <sup>13</sup> Another frequent requestor of electrical usage data are building departments. The requested injunction here does not  
28 even seek to stop that sharing. This appears to be tacit recognition by Petitioners that electrical wage data is in fact *not*  
private.

1 *Diego* (1967) (66 Cal.2d 468, 476; *Security Truck Line v. Monterey* (1953) 117 Cal.App.2d 441,  
2 445; *Community Redevelopment Agency v. Superior Court* (1967) 248 Cal.App.2d 164, 174].)  
3 Statutory interpretation is an exercise in determining Legislative intent, being careful to give words  
4 their plain, commonsense meaning. (See *Kavanaugh v. West Sonoma County Union High School*  
5 *Dist.* (2003) 29 Cal.4th 911, 919 [citing *California Teachers Assn. v. Governing Bd of Rialto Unified*  
6 *School Dist.* (1997); *County of Santa Clara v. Perry* (1998) 18 Cal.4th 435, 442].)

7       Here, a literal reading of the Government Code section in question enumerates six situations  
8 where electricity usage data is to be provided to third parties, including law enforcement or others.  
9 (Cal. Gov. Code § 6254.16 (repealed 2021 & replaced 2023 with identical Cal. Gov. Code §  
10 7927.410.) The law imposes no limitation on what of the electricity usage data is to be shared. (*Id.*)  
11 A plain reading of the statute at issue here makes obvious that the Legislature determined there is  
12 no expectation of privacy in such data, and this is clear to any person who reads the Code. Petitioners  
13 cannot reasonably assert an expectation of privacy against law enforcement being able to receive  
14 their electricity usage data when the law provides that it be shared with them and others without  
15 limitation. See also *People v. Stanley*, *supra* 72 Cal.App 4th at 1554. (Individuals have no reasonable  
16 expectation in amount of power used at their homes.)

17                   **2. SMUD customers are not required to use smartmeters and can opt out**  
18                   **of them at any time.**

19       As cited above, despite the disproportionate benefits to customers and the grid as a whole,  
20 SMUD offers an opt-out program for customers who wish to use traditional, analog meters. SMUD  
21 provides publicly available resources about opting out, including the pros and cons for choosing to  
22 opt out and the procedure for doing the same. Petitioners seem to argue that this is not a viable  
23 alternative because of the nominal fees associated with analog meters; however, the propriety of  
24 smart meters and the opt-out program was adjudicated and confirmed in the 2016 case *Graham* case.  
25 As that case confirmed, pursuant to SMUD Resolution 07-08-10, SMUD approved the “Time-Based  
26 Metering and Communications Standard set forth in the Energy Policy Act of 2005,” and conducted  
27 a comprehensive Advanced Meeting Infrastructure (“AMI”) Business Case, which determined that  
28 installation of an AMI network would create opportunities for effective load management. Load

1 management is an objective expressly set forth in Public Utilities Code § 12825. As was further  
2 confirmed and approved in that matter, time-based metering and smart meter programs are aspects  
3 of a load management program allowing SMUD customers to reduce electricity usage. SMUD has  
4 the express statutory authority to adopt such voluntary and mandatory load management programs  
5 and to do all things necessary or convenient to carry out the powers. As the *Graham* Court identified,  
6 SMUD had the power and discretion to adopt a policy rolling out smart meters to all of its customers  
7 and to adopt its opt-out policy. Petitioners cannot argue that SMUD’s opt-out pricing operates as a  
8 barrier to its customers foregoing smart meters.

9 **3. Electricity usage data belongs to SMUD.**

10 The purpose of an electricity meter is to track the amount of energy distributed to a home  
11 (or reversed into the grid, i.e. via solar panels). This is because the power distributed by an electric  
12 utility belongs to the utility. Customers are paying for the service of having the electricity distributed  
13 to them via the utility’s grid. Meter data captures electricity distributed, for billing purposes, as well  
14 as for analysis intended to ensure a reliable grid. Because the data belongs to SMUD, there can be  
15 no heightened expectation of privacy against SMUD sharing that data with law enforcement as  
16 required by law.

17 **4. SMUD informs its customers regarding, and customers consent to,  
18 certain collection, use, and sharing of information about them.**

19 At all relevant times, and despite Petitioners’ claims to the contrary, all SMUD Customers  
20 consent to SMUD’s Terms of Service and Information Management and Security Policy (“Privacy  
21 Policy”). The Privacy Policy link is located at <https://www.smud.org/Corporate/Privacy-policy> and  
22 is clearly visible on all smud.org webpages. The Privacy Policy is also referenced in the annual  
23 mailings that go to all ratepayers. (Lau Decl. ¶ 11). Furthermore, each paper and electronic monthly  
24 bill provided to ratepayers clearly states that SMUD’s rules and rates are available in full at  
25 smud.org/rates, which has a clear link to the Privacy Policy as well. (*Id.*) See also (Lesch Decl. ¶¶  
26 6, 7).

27 The Privacy Policy provides, SMUD will “not release to a third party any [customer]  
28 information without your written consent. The only exception is for information that’s reasonably



1 required to meet SMUD’s business needs, for example: [...] To maintain or operate SMUD’s  
2 electrical system or grid. [...] To comply with a law, regulation, legal process or governmental  
3 request, such as a request from law enforcement, or a government agency when necessary for the  
4 performance of official duties, or a court order.” [...] “It may be necessary — by law, legal process,  
5 litigation, or requests from public and governmental authorities — for SMUD to disclose your  
6 personal information. We may also disclose information about you if we determine that for purposes  
7 of national security, law enforcement, or other issues of public importance, disclosure is necessary  
8 or appropriate. We may also disclose information about you if we see that disclosure is reasonably  
9 necessary to enforce our terms and conditions or to protect our operations or users.” (Lesch Decl.  
10 ¶ 5). By virtue of the foregoing, SMUD customers consent to the collection and sharing of  
11 information at issue, here. Petitioners cannot support an argument that there is an expectation of  
12 privacy in customers’ electricity usage data when SMUD may provide their information to third  
13 parties, including law enforcement.

14       **E.       SMUD and its employees actions are privileged as a matter of law pursuant to**  
15       **their First Amendment right to petition government and California’s litigation**  
16       **privilege.**

16                       **(a)       Right to Petition and *Noerr-Pennington***

17       The right to petition for redress of grievances is protected by both the California and United  
18 States Constitutions. (U.S. Constitution. Amend. 1; Cal. Const. Art. 1 § 3.) Organizations can only  
19 speak through their representatives, the First Amendment protects private citizens as well as  
20 governmental entities and their representatives. (*Nadel v. Regents of University of Cal.* (1994) 28  
21 Cal.App.4th 1251; *Zuhayr Nizam-Aldine v. City of Oakland* (1996) 47 Cal.App.4th 364.) Requests  
22 to law enforcement to investigate matters are in furtherance of the right to petition government for  
23 grievances. (*See Bradbury v. Superior Court* (1996) 49 Cal.App.4th 1108, 1117 [citing *Dove Audio,*  
24 *Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 783-784].) There is not an exception  
25 to this right, simply because the employees reporting suspected crime – including descriptions of a  
26 suspect – are employees of a municipal agency like SMUD. (*See id.* at 1119 [citing *In re IBP*  
27 *Confidential Bus. Documents Litigation* (8th Cir. 1986) 797 F.2d 632, 642].)  
28

1       The First Amendment right to petition the government is bolstered by the body of case law  
2 following the *Noerr-Pennington* doctrine. The doctrine, stemming from the First Amendment right  
3 to petition the government, including law enforcement, immunizes attempts to do so. While the  
4 doctrine originated in the antitrust context, courts have expanded the protections outside antitrust  
5 into communication with the government, generally. (*See Blank v. Kirwan* (1984) 30 Cal.3d 311,  
6 320; *Premier Med. Mgmt. Sys., Inc. v. Cal. Ins. Guarantee Ass’n* (2006) 136 Cal.App.4th 464, 478;  
7 ) Petitioning of the government includes any level of any branch of government: legislative,  
8 executive, or judicial. (*See, e.g., Cal. Motor Transp. Co. v. Trucking Unlimited* (1972) 404 U.S. 508,  
9 510; *Mariana v. Fisher* (3d. Cir. 2003) 383 F.3d 189, 199; *Kottle v. Nw. Kidney Ctrs.* (9th Cir.  
10 1998) 1056, 1060.) Conduct incidental to petitioning is also immunized. (*Allied Tube & Conduit*  
11 *Corp. v. Indian Head, Inc.* (1989) 486 U.S. 429, 499.)

12       Both the email chain and the (questionable) screenshot are simply instances of a citizen  
13 communicating a suspected crime to law enforcement, which is absolutely protected by the First  
14 Amendment. Likewise, SMUD can transmit data to fellow government agencies as it sees fit, and  
15 any information on that right is subject to strict scrutiny. Even if there were a reasonable expectation  
16 of privacy in the power usage of customers, SMUD’s First Amendment interest in reporting power  
17 usage to government agencies, whether building departments, or law enforcement, outweighs any  
18 privacy interest such that any restriction or regulation of SMUD’s interest cannot stand.

19                               **(b)     Litigation Privilege.**

20       Likewise, California’s litigation privilege provides that a “publication or broadcast” made  
21 as part of a legislative, judicial, other official proceeding authorized by law, or in the initiation or  
22 course of any other proceeding authorized by law. (*See Action Apartment Assn., Inc. v. City of Santa*  
23 *Monica* (2007) 41 Cal.4th 1232, 1241 [citing Cal. Civ. Code § 47(b).) In a communication without  
24 malice to a person interested therein by another person interested therein is also privileged. (Civ.  
25 Code § 47(c).) The litigation privilege is given broad interpretation. (*Action Apartment* at 1241.)  
26 This privilege extends to communications associated with criminal prosecutions. (*See id.* at 1245  
27 [citations omitted].) Both the subject communications are made in the scope of a criminal  
28 investigation leading to a potential prosecution, and are therefore not unlawful.

1 **V. CONCLUSION**

2 For all of the foregoing reasons, the Court should deny and dismiss Petitioners' writ  
3 petition against SMUD.

4 DATED: August 22, 2025

LEWIS BRISBOIS BISGAARD & SMITH LLP

6  
7 By: 

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Attorneys for Defendants,

SACRAMENTO MUNICIPAL UTILITY

DISTRICT and PAUL LAU

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**  
2 *Asian American Liberation Network, et al. v. Sacramento Municipal Utility District, et al.*  
3 Sacramento County Superior Court, Case No. 34-2022-80004019

4 STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

5 At the time of service, I was over 18 years of age and not a party to this action. My business  
6 address is 2020 West El Camino Avenue, Suite 700, Sacramento, CA 95833.

7 On **August 22, 2025**, I served true copies of the following document(s):

8 **SACRAMENTO MUNICIPAL UTILITY DISTRICT and PAUL LAU's OPPOSITION TO**  
9 **PETITIONERS' VERIFIED WRIT OF MANDATE**

10 I served the documents on the following persons at the following addresses (including fax  
11 numbers and e-mail addresses, if applicable):

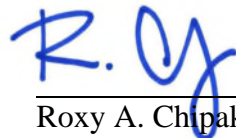
12 **SEE ATTACHED SERVICE LIST**

13 The documents were served by the following means:

14 ☒ **(BY E-MAIL OR ELECTRONIC TRANSMISSION)** Based on a court order or an  
15 agreement of the parties to accept service by e-mail or electronic transmission, I caused the  
16 documents to be sent from e-mail address roxy.chipak@lewisbrisbois.com to the persons at  
17 the e-mail addresses listed above. I did not receive, within a reasonable time after the  
18 transmission, any electronic message or other indication that the transmission was  
19 unsuccessful.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing  
21 is true and correct.

22 Executed on **August 22, 2025**, at Sacramento, California.

23   
24 \_\_\_\_\_  
25 Roxy A. Chipak

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**SERVICE LIST**

***Asian American Liberation Network, et al. v. Sacramento Municipal Utility District, et al.***  
**Sacramento County Superior Court, Case No. 34-2022-80004019**

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