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Congress of the United States  
Washington, DC 20515

December 7, 2011

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Secretary Ken Salazar  
Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

Dear Secretary Salazar:

I respectfully request the Department of Interior investigate what appears to be a violation of federal law by the City and County of San Francisco (hereafter "San Francisco" or "City"). The specific question to be addressed is whether the City's current municipal water practices, including those related to its use and disposal of water captured from the Tuolumne River, without first exhausting all local water resources, are in direct violation of the Raker Act. These Raker Act provisions pertain to San Francisco's use of Tuolumne river supplies diverted under their water rights but do not pertain to potential purchases from other users on the Tuolumne River or elsewhere.

The Raker Act, 38 Stat. 242 (1913), granted authorization to San Francisco to construct a series of dams, reservoirs and pipelines within the Yosemite National Park and the Stanislaus National Forest. This included authorizing the construction of the O'Shaughnessy Dam, which resulted in the ecological destruction of the Hetch Hetchy Valley and the submergence of 8-9 miles of the wild and scenic Tuolumne River. This authorization was intended to permit the City to then utilize the water captured in those reservoirs for domestic and other municipal purposes.

As part of the Raker Act grant, Congress predicated the City's use of Tuolumne River water on its satisfaction of conditions specifically imposed by the Act, ostensibly to ensure that water of the Tuolumne River was not unnecessarily exploited. **As part of the conditions imposed on San Francisco is a requirement that the City first fully develop and use other available water resources before it begins to export water it captures from the Tuolumne River.** Specifically, section 9 (h) provides:

*That the said grantee shall not divert beyond the limits of the San Joaquin Valley any more of the waters from the Tuolumne watershed than, together with the waters which it now has or may hereafter acquire, shall be necessary for its beneficial use for domestic and other municipal purposes. (emphasis added.)*

Thus, in order for the City to continue to enjoy the benefits of the grant enshrined in the Raker Act, the City must export no more water than is "necessary" to meet its domestic and other municipal purposes "together with the waters which it now has or may hereafter acquire." However, San Francisco currently engages in a variety of non-sustainable practices which

demonstrate a failure to satisfy that requirement. Specifically, it is my understanding the City of San Francisco ignores the terms of the Raker Act in the following manner:

**A. Lack of Water Recycling.** As water recycling technology has emerged over the last 25 years, the City has failed to adequately invest in systems to recycle the water extracted from the Tuolumne River. Currently, San Francisco does not use recycled water but does hope to use 4 MGD by 2035.<sup>1</sup> Comparatively, the City of Los Angeles currently uses 28 MGD of recycled water and projects to use 79 MGD by 2035<sup>2</sup>; Orange County uses 35 MGD<sup>3</sup> of recycled water and projects to use 53 MGD by 2035.

**B. Lack of Use of Groundwater.** Since the completion of the Hetch Hetchy system San Francisco has virtually abandoned use of all local groundwater supplies. In 1930 San Francisco utilized 14.5 MGD of local groundwater compared to just 2.2 MGD today. San Francisco's current plans to extract an additional 4MGD by the end of 2020 is still less than half of what San Francisco utilized prior to the diversion of Tuolumne River water in 1930.

**C. Lack of Rainwater Harvesting.** San Francisco receives on average 20 inches of rain each year, the equivalent of 55,000 acre feet of water or approximately 49MGD. Given the City has failed to invest in modern technologies that would capture this water and/or implement policies that would facilitate its absorption into the aquifer, virtually all of this water is discarded into the San Francisco Bay or Pacific Ocean.

It is my belief that by transporting and using the water captured from the Tuolumne River, without first fully utilizing these local resources, the City is failing to satisfy the clear mandate of the Raker Act that all local resources be exhausted before drawing water from the Tuolumne.

A review of the legislative history associated with the Raker Act shows that the plan was approved with an emphasis on the full utilization of the resources included as part of that grant. (See *Hetch Hetchy Dam Site: Hearing Before the House Committee on the Public Lands* 63rd Cong.(1913)).

In fact, Colonel Biddle from the Army Corps of Engineers stated that the development of the Hetch Hetchy plan, as well as other, ultimately rejected alternatives were developed with an understanding that San Francisco would develop their local water supplies:

“in all of our estimates here I have supposed that San Francisco will develop to a reasonable extent its present water supply.” (*Id.* at p. 67.)

That history likewise indicates that the Public Lands Committee was concerned not only with the situation at the time of the grant, but well into the future, as estimations used for determining water-usage amounts were based on estimations through the year 2000. (*Id.* at p.89.)

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<sup>1</sup> 2010 Urban Water Management Plan for the City and County of San Francisco.

<sup>2</sup> 2010 Urban Water Management Plan for the Los Angeles Department of Water and Power

<sup>3</sup> 2010 Urban Water Management Plan for the Municipal Water District of Orange County

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Given these facts, I request the Department of Interior take action to investigate and further address these issues. As you no doubt know, Congress specifically charged the Department of Interior with enforcement of the Raker Act's provisions. Specifically, the Raker Act states:

...in the exercise of the rights granted by this act the grantee shall at all times comply with the regulations herein authorized, and in the event of any material departure there from the Secretary of the Interior or the Secretary of Agriculture, respectively, may take such action as may be necessary in the courts or otherwise to enforce such regulations. (Raker Act, § 5.)

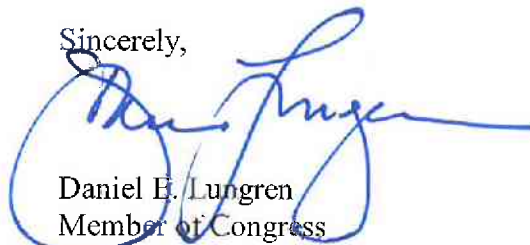
Likewise, the Act provides that the City is required to comply "at all times" with the conditions specified in the act, and where the City fails to satisfy those conditions, the Secretary of the Interior is to request action to be taken by the Attorney General of the United States. (Raker Act, § 9 (u).)

Based on that authority, I respectfully request that you undertake an investigation to evaluate the City's compliance with the Raker Act's provisions in light of the above-discussed issues. Likewise, I further respectfully request that any violations found by your department be addressed through expeditious action in order to bring San Francisco's water policies and practices into compliance with the Raker Act.

In the alternative, should the Department of Interior determine either that no investigation is necessary or that the City's current practices are not in violation of the Raker Act, I respectfully request a response to this letter indicating the reasons why no further action is required at this time.

I appreciate your prompt attention to this matter and thank you for your time.

Sincerely,



Daniel E. Lungren  
Member of Congress

*P.S. Great to see you at  
the White House Christmas  
Ball. I hope you  
appreciate my special  
fondness for Yosemite*