



THE SECRETARY OF THE INTERIOR
WASHINGTON

APR 12 2012

The Honorable Dan Lungren
House of Representatives
Washington, DC 20515

Dear Representative Lungren:

Thank you for your letter of December 7, 2011, concerning the use of water from the Tuolumne River in Yosemite National Park by the City and County of San Francisco pursuant to the Raker Act, 38 Stat. 242 (1913). Specifically, you requested that I investigate whether the City and County of San Francisco (the City) has violated the Raker Act by failing to first exhaust all local water resources before diverting water from the Tuolumne River for the City's domestic and municipal uses. On December 16, 2011, I received a letter from Senator Dianne Feinstein presenting a different perspective on the same issue.

In response to your and Senator Feinstein's requests, I asked the Office of the Solicitor to review the Raker Act and its legislative history. The Solicitor's Office has confirmed that the Raker Act did not require that the City develop and use other available water resources as a precondition to accessing water from the Tuolumne. Notably, Section 9(h) of the Act, which addresses the conditions associated with accessing Tuolumne water supplies, does not require that the City develop alternative water supplies before taking Tuolumne water. Instead, it focuses on the fact that Tuolumne water should be used only for domestic and other municipal purposes.¹ This lack of a precondition requiring the accessing of alternative water supplies contrasts with the language that Congress used in Section 9(g). In that subsection, Congress explicitly conditioned certain irrigation districts' access to Tuolumne water on the development of other water supplies.²

In light of the different language used in these two subsections, it would be inaccurate to conclude that Congress intended both provisions to have the identical effect of imposing a precondition for diversion from the Tuolumne watershed. Nevertheless, our lawyers also looked to the available legislative history for the Raker Act to determine whether Congress actually intended a different result in this regard. Our lawyers concluded that the legislative history of the Act was consistent with its plain language. More specifically, a House Committee Report from 1913 offered the following explanation of Section 9(h) of the Raker Act:

1 Section 9 states: ". . . [T]his grant is made to the said grantee subject to the observance on the part of the grantee of all the conditions hereinbefore and hereinafter enumerated: . . . (h) 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."

2 See Section 9(g) ("said grantee shall not be required to furnish more than the said minimum quantity of stored water hereinbefore provided for *until the said irrigation districts shall have first drawn upon their own stored water to the fullest practicable extent*)(emphasis added).

Paragraph (h), section 9, provides that the grantee shall not divert beyond the limits of the San Joaquin Valley any waters of the Tuolumne watershed in excess of the amount to be used for domestic and municipal purposes.

(The purpose of this provision is to make possible the use of surplus waters in the San Joaquin Valley and prevent the use of possible surplus for irrigation of lands remote from the Tuolumne River. John R. Freeman, consulting engineer for San Francisco, suggested that surplus water might be economically used for intensive farming in lands contiguous to San Francisco Bay. Inasmuch as San Francisco expects to purchase the local water supply, and thus acquire sufficient water for local irrigation purposes, it was deemed advisable and economical to provide that surplus from the Tuolumne should be used in the San Joaquin Valley. This is an economic use of water for the highest purpose of all concerned.)

63rd Congress, 1st Session, Report No. 41 at 13-14. (Parentheses in original.)

Consistent with the plain language of the statute, this discussion in the report indicates only an intention to distinguish water used by the City for “domestic and municipal purposes” from that used for irrigation. Thus, Section 9(h) appears to be intended to require only that any diversions from the Tuolumne watershed be used for domestic and municipal purposes of the City rather than for irrigating lands contiguous to San Francisco Bay.

In accordance with the views of our solicitors, I do not intend to investigate this matter further. If you have any additional questions about our legal interpretation of the Raker Act, please do not hesitate to call.

Sincerely,



Ken Salazar

cc: The Honorable Dianne Feinstein
Ms. Hilary Tompkins, Solicitor, Department of the Interior