

9.B-1

April 27, 2004

DRAFT LETTER to:

The Honorable Barbara Boxer
The Honorable Dianne Feinstein
The Honorable Anna Esho
The Honorable Tom Lantos

Subject: Oppose Arbitrary Increases in Hetch Hetchy Fees

Dear _____:

As mayor of Redwood City, I - along with my City Council colleagues - am responsible for setting policy for the city's water supply and ensuring that our nearly 80,000 customers have a reliable supply of high quality water at fair and reasonable prices. In that regard, I am writing about the proposed \$8,000,000 per year federal fee for the Hetch Hetchy Reservoir in Yosemite National Park. As you know, the Reservoir is a critical part of the Bay Area regional water system, which provides most of the water for 1.7 million residents and businesses in Alameda, San Mateo and Santa Clara counties, as well as the 750,000 residents of San Francisco.

The President's budget request for the next fiscal year raises the fee for the reservoir from \$30,000 to \$8,000,000. This fee increase will amount to 40 cents per month for households in your district and those in other Congressional districts in the three counties outside of San Francisco. While this amount may seem small, there is no guarantee that it will not be arbitrarily increased in the future.

San Francisco reports that the amount of \$8,000,000 came from the Office of Management and Budget and is not based on an established formula for such fees. The City also reports that such fees are not imposed on other municipalities or agencies, and that it does not reflect a reasonable estimate of costs for use of the Hetch Hetchy Valley.

There should be a rational basis for the increase, and it should have some relationship to the fees charged to other states, counties and cities for the use of federal land. In the absence of this information, we urge you to oppose the increased fee.

Sincerely Yours,

Jeff Ira, Mayor
City of Redwood City

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BAWSCA

Bay Area Water Supply & Conservation Agency

April 9, 2004

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The Honorable Tom Lantos
U.S. House of Representatives, District 12
2413 Rayburn House Office Building
Washington, DC 20515

Subject: Oppose Arbitrary Increases in Hetch Hetchy Fees

Dear Representative Lantos:

As chair of the Bay Area Water Supply and Conservation Agency (BAWSCA), I am writing about the proposed \$8,000,000 per year federal fee for the Hetch Hetchy Reservoir in Yosemite National Park. As you know, the Reservoir is a critical part of the Bay Area regional water system, which provides most of the water for 1.7 million residents and businesses in Alameda, San Mateo and Santa Clara counties, as well as the 750,000 residents of San Francisco.

BAWSCA is a regional government agency enabled by the California Legislature in 2002. It represents the interests of the customers outside of San Francisco, who use two-thirds of the water provided by the regional system and pay San Francisco two-thirds of the costs to operate, maintain, and improve the system.

The President's budget request for the next fiscal year raises the fee for the reservoir from \$30,000 to \$8,000,000. This fee increase will amount to 40 cents per month for households in your district and those in other Congressional districts in the three counties outside of San Francisco. While this amount may seem small, there is no guarantee that it will not be arbitrarily increased in the future.

San Francisco reports that the amount of \$8,000,000 came from the Office of Management and Budget and is not based on an established formula for such fees. The City also reports that such fees are not imposed on other municipalities or agencies, and that it does not reflect a reasonable estimate of costs for use of the Hetch Hetchy Valley.

There should be a rational basis for the increase, and it should have some relationship to the fees charged to other states, counties and cities for the use of federal land. In the absence of this information, BAWSCA requests that you oppose the increased fee.

We would appreciate your help,



Ira Ruskin, Chair

FOR IMMEDIATE RELEASE:
Wednesday, March 10, 2004

Contact: Howard Gantman
or Scott Gerber 202/224-9629
<http://feinstein.senate.gov>

Feinstein Urges Interior Secretary Norton to Explain High Proposed Fees for Hetch Hetchy Reservoir

Washington, DC – In a letter to Interior Secretary Gale Norton released today, U.S. Senator Dianne Feinstein (D-CA) requested an explanation for the dramatic increase in the proposed rental fee that San Francisco pays the Interior Department for the City's management of the Hetch Hetchy Reservoir.

Under the Raker Act, San Francisco is required to pay \$30,000 rent for the Yosemite National Park reservoir. However, President Bush's proposed Fiscal Year 2005 budget calls for a payment of \$8 million. Last year, San Francisco paid far more than its required payment – a total of \$1.9 million in fees for security and watershed protection and almost \$1 million in additional in-kind support.

The text of Senator Feinstein's letter on February 23 follows:

"I write to express my concern over the Department of the Interior's proposal in the President's Fiscal Year 2005 budget to impose an \$8 million annual "rental" payment on the City of San Francisco for Hetch Hetchy Reservoir in Yosemite National Park, and to ask that you personally evaluate the situation.

Despite repeated requests by my staff, we have been unable to date to obtain information on the dramatic increase in the proposed fee charged to the City.

I understand that the San Francisco Public Utility Commission, which manages Hetch Hetchy, paid the Park Service \$1.9 million last year for costs associated with Hetch Hetchy. Please see the attached letter to the President from San Francisco Mayor Gavin Newsom.

Also, the Public Utility Commission has offered the Park Service as much as \$2.8 million this year to cover additional security costs. The Commission was waiting for a budget justification from the Park fully detailing these funding needs.

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In addition, the City provides almost \$1 million per year to the Park Service in in-kind support, including housing, utilities, and road and trail maintenance.

I do not understand the basis for the \$5.2 million portion of the proposed fee that is above and beyond the Park's \$2.8 million costs. This \$5.2 million "rent" translates to \$757 per acre over the 6871 acres the City uses.

To the best of my knowledge, a per-acre fee of \$757 is considerably greater than what other municipalities are charged for the use of the public lands. The Federal Power Act specifically exempts municipalities from fees for the rights to put hydropower facilities on navigable waters, as long as the hydropower is used for municipal purposes. 16 U.S.C. 803(e).

Even if you compared San Francisco to private entities, the Federal Energy Regulatory Commission's Fiscal Year 2004 fee schedule sets the rate in Tuolumne County, the home of Hetch Hetchy Reservoir, at \$33.30 per acre. The highest rental fee charged to private Federal Power Act license holders in California is \$39.98 per acre. This is a fraction of \$757 per acre.

Thus, the Department of the Interior appears to be breaking new ground with its proposal to charge fees of this magnitude for municipal use of the public lands. I would like to ask if the Department propose to assess fees approaching \$757 per acre to other similarly situated municipalities, and if so, who else might be charged such fees.

I understand that your proposal will require legislation to amend the Raker Act in order to authorize the increased fees charged to San Francisco.

I appreciate your prompt response to these questions about your agency's proposed Fiscal Year 2005 budget."

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NANCY PELOSI
5TH DISTRICT, CALIFORNIA

Congress of the United States

DEMOCRATIC LEADER

House of Representatives

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March 8, 2004

The Honorable Jim Nussle
Chairman
House Budget Committee
309 Cannon House Office Building
Washington, DC 20515

The Honorable John Spratt
Ranking Member
House Budget Committee
B-71 Cannon House Office Building
Washington, DC 20515

Dear Chairman Nussle and Ranking Member Spratt:

Thank you for your leadership of the Budget Committee. I am writing to express my opposition to a provision in the President's fiscal year 2005 budget request that would allow the National Park Service to charge the City and County of San Francisco "rental payments" in the amount of \$8 million per year for the Hetch Hetchy Reservoir in Yosemite National Park.

This fee would place a large burden on San Francisco at a time when the City is already facing a budget deficit of up to \$300 million in the next fiscal year. The new fee would in all likelihood raise the cost of drinking water to the 2.4 million customers on the Hetch Hetchy system, which serves Santa Clara, San Mateo, and Alameda counties as well as San Francisco.

Justification for the proposed fee is lacking. No conversations were held with local or regional officials before it was inserted in the budget request. The budget documents do not provide any rationale for it. In response to inquiries, not a single Administration official has been able to provide the methodology employed to arrive at the \$8 million figure.

The fee cannot be explained by application of the Federal Power Act to the Hetch Hetchy system. The federal government has long followed a policy of exempting municipalities from annual licensing fees for power used for municipal purposes or sold without profit. Even if San Francisco were a private entity, the proposed \$8 million fee would be far in excess of a typical rental payment. Under the Act, the highest per acre figure charged to private parties in the most expensive county in California is just under \$80. San Francisco's Hetch Hetchy reservoir and associated facilities encompass 6,871 acres. If considered on a per acre basis, the President's budget request would suggest an annual rental payment of \$1164 per acre for Hetch Hetchy.

I request that you omit the Administration's proposed \$8 million fee from the FY05 Budget Resolution. San Francisco currently provides between two and three million dollars annually to Yosemite National Park. These funds support activities such as watershed protection and facility security. In addition, the City provides numerous in-kind services, including housing for park service employees, maintenance of roads and trails, small capital projects, and snow plowing.

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03/16/04 TUE 16:29 FAX 2023937772

DARYL OWEN

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Thank you for your assistance in this matter. I look forward to working with you to ensure that the proposed Hetch Hetchy fee is omitted from the FY05 Budget Resolution.

Sincerely,

Nancy

NANCY PELOSI
Democratic Leader

Thank you!

See "Fee Increase for Hetch Hetchy, page 2

MEMORANDUM

TO: SAN FRANCISCO PUBLIC UTILITIES COMMISSION

FR: DARYL OWEN

THROUGH: PATRICIA E. MARTEL

RE: LEGISLATIVE UPDATE MARCH 9, 2004

Following is a discussion of federal legislative and other issues of concern to the PUC.

Permitting Initiative

Late in the last session of Congress we succeeded in passing our initiative to streamline the permitting process for the Capital Improvement Program (CIP). Working closely with Congresswoman Pelosi and her staff we crafted legislative language to establish a joint permitting office headquartered in San Francisco. This office will house representatives of all federal agencies with permitting authority for the CIP, including the Corps of Engineers, US Fish and Wildlife, and the National Marine Fisheries Service. The office will also make space available to corresponding state agencies should the state choose to participate. The co-location of permitting officials will increase communication and efficiency in the permitting process. The language also permits the PUC to reimburse the agencies for the costs associated with permitting activities. This initiative will do much to ensure that the CIP is not delayed by lack of attention from federal agencies.

Congresswoman Pelosi submitted the legislative language to the House Transportation and Infrastructure Committee with a request that it be included in the Water Resources Development Act (WRDA) reauthorization under consideration in the Committee. The Committee agreed, and the bill, with our permitting initiative included, passed the House in October.

When it became apparent that the Senate was not going to consider the WRDA reauthorization in time to afford the PUC the opportunity to make use of the permitting authority in the early stages of design engineering, we began to consider alternatives. Ultimately, we were successful in getting the provision included as a rider in the FY 04 Appropriations bill for the Corps of Engineers. That bill was signed into law just prior to Thanksgiving.

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We have begun the process of working with the relevant agencies to structure this office. We have also met with policy makers in both Houses, both to express appreciation and to make them aware of our progress. The provision has been universally well received and is often mentioned as a model for the permitting of projects in other areas.

Fee Increase

The President's budget request included an item proposing to assess the City of San Francisco \$8 million annually in "rent" for the Hetch Hetchy system. This proposal is strikingly similar to one proposed in 1995 in the Contract with America.

We have been working with delegation members and staff, as well as the respective committees of jurisdiction to point out the absence of justification for this provision. For example, the current federal practice, as embodied in the Federal Power Act, is to exempt municipalities from fees for the production of power used for municipal purposes or sold without profit. There is no accompanying language which would indicate whether the President's proposal is designed to overturn that practice, and if so, why no language is included which would achieve that result for other municipalities.

The proposal also reflects a quantum leap in the level of fees charged for "rental". Under the Federal Power Act, private parties are charged a per acre fee for use of federal lands associated with a hydro facility. The highest fee charged to any private party in California is just under \$80. The fee proposed for the Hetch Hetchy project is in excess of \$1100. There is no accompanying justification for this massive increase, nor is there accompanying rationale for charging a municipality more than a private party.

Finally, there is no indication of whether the City would receive credit for those contributions which it now makes voluntarily to the park. Those contributions total more than \$2 million per year.

This is an issue which can be expected to play out over the course of this year, and perhaps into next. It will become intricately involved in the procedures surrounding the budget process. We will continue to work with all appropriate parties in an effort to defeat this proposal, and will keep the Commission regularly updated.

CALFED

There was some movement on CALFED legislation last session. Senator Feinstein was successful in securing a hearing on the subject. Her Republican colleagues on the committee were more supportive than they have been in the past, though they continued to express caution about program costs. Assistant Secretary Raley testified on behalf of the Administration and was generally supportive. However, he made clear that in light of current budget deficits, the Administration could not support the \$880 million authorization figure in the Senate bill. Raley also indicated the Administration would support adding recycling and reclamation projects to the CALFED portfolio—a position the PUC has advocated for some time. There has been little other than internal discussion of CALFED on the House side.

The annual appropriations bill for CALFED appropriated a mere \$9 million for the program this year. Optimists point to the continuity of federal funding as a reason to continue to push forward with CALFED. Pessimists point out that this is little more than life support. Realists tend to think this is further evidence that the CALFED notion is continuing to evolve into a far more limited program than was originally envisioned, and that federal funding will never materialize on anything like the levels set forth in the Record of Decision.

Senator Feinstein hopes to move the bill to markup later this spring. The House schedule for consideration of the bill remains unclear.

Energy Legislation

Late in the session last year the conference report on HR 6, the comprehensive energy legislation, fell two votes short of the number required to bring debate to a close and to pass the bill into law. The principal obstacles were a liability waiver for producers of MTBE, and the bill's cost, which exceeded \$31 billion. In the wake of the defeat of the conference report the Senate leadership has introduced a slimmed down version of the bill which omits the MTBE liability waiver and pares the cost of the bill down to \$14 billion. The future of this bill remains uncertain, but many observers are deeply skeptical of its chances. Nevertheless, we will continue to monitor its progress to ensure that nothing pernicious is attached.

Desalination

The WRDA legislation, referenced above, which was reported by the House Transportation and Infrastructure Committee, contains a provision requested by the PUC, Santa Clara and EBMUD calling for feasibility study on a Bay Area desalination project. It is anticipated that this provision will survive and become law with the WRDA bill itself sometime later this year. We are in

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discussions with EBMUD and Santa Clara with regards to securing appropriations for this project.
