



May 24, 2021

The Honorable London Breed, Mayor
City Hall, Room 200
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

Sophie Maxwell, President
San Francisco Public Utilities Commission
525 Golden Gate Avenue
San Francisco, CA 94102

Dear Mayor Breed and President Maxwell:

We are writing to express our opposition to the selection of Dennis Herrera to serve as the next General Manager of the San Francisco Public Utilities Commission (SFPUC). We are reluctantly taking this position as a result of claims made in the litigation Mr. Herrera filed on May 13 against the State Water Resources Control Board and his related statements to the media.

Our organizations have urged you to select an outside leader to move the SFPUC in the direction of modern, sustainable water management. The City must adopt science-based

positions to facilitate environmental protection. It must diversify its water supply to prepare for climate change. Upon Mayor Breed's announcement of Mr. Herrera as a candidate for General Manager, we sought to meet with him to discuss his views regarding these issues. Unfortunately, before we had that chance, Mr. Herrera made several inflammatory and false statements in the media and in the lawsuit filed last week that demonstrate his approach is to double down on irresponsible SFPUC positions of the past.

We offer the following specific concerns:

- The lawsuit filed on May 13 asserts that “there is little evidence that the flow conditions [required by the State Board] will, in fact materially protect native fish and wildlife.” This is false. There is extensive evidence – some of which we have presented to the Commission in recent workshops – that supports a dramatic increase in freshwater flows on the Tuolumne River to improve conditions in the River, the Bay-Delta ecosystem, and for endangered species and the California salmon fishing industry. That evidence, relied upon by the State Water Board, was independently peer reviewed by scientists and found to be credible.
- Mr. Herrera stated in a May 14 Courthouse News article¹ that the Water Board's certification “ignores the science.” As explained above, that assertion is inaccurate. In addition, Mr. Herrera's litigation ignores the independent peer review completed last August on behalf of the National Marine Fisheries Service that revealed that the SFPUC's position on flows is not supported by credible science.
- In the May 14 Courthouse News Service article, Mr. Herrera also stated that going to court “is our only option to protect San Francisco's water supply” and protect against “unprecedented levels of rationing” in the Bay Area. In fact, San Francisco and other areas on the Peninsula served by SFPUC have failed for years to diversify water supply sources, as virtually every other urban water agency around the State has done. Investing in sustainable, drought-proof water supplies such as water recycling, water reuse, and improved efficiency are far better options to protect San Francisco against drought than continuing to rely on unsustainable Tuolumne River diversions.
- The May 13th lawsuit relies on a Trump Administration environmental rollback to argue that the State cannot lawfully establish minimum instream flows as a condition of a federal license under section 401 of the Clean Water Act. This argument is contrary to the plain language of section 401(d) of the Clean Water Act, two decisions of the United States Supreme Court (*PUD No. 1 of Jefferson County v. Washington Department of Ecology*, 511 U.S. 700 (1994), *S.D. Warren Co. v. Maine Board of Environmental Protection*, 547 U.S. 370 (2006)), as well as the position of the Attorney General of the State of California, which is challenging the Trump Administration's regulation. We do not believe that San Francisco and Bay Area residents agree that the SFPUC should use a

¹ <https://www.courthousenews.com/san-francisco-sues-state-to-retain-access-to-vital-water-supply/>

Trump era rollback to muzzle efforts by the State Water Board to protect state rivers and the Bay-Delta ecosystem.

- The May 13th lawsuit claims that the State Water Board's requirement to leave 40% of the Tuolumne's flows in the River to protect fish and wildlife represents a "waste or unreasonable use" of water and is therefore a violation of the State constitution. We don't think San Francisco and Bay Area residents agree that river protection is wasteful or unreasonable, especially given that SFPUC and its partners would be allowed to continue to divert more than half of the River's flows.

The May 13th lawsuit filed by the SFPUC and Mr. Herrera does not reflect the environmental values of San Francisco and the Bay Area. These positions directly undermine needed reform of the SFPUC regarding environmental protections, use of credible science, and diversifying San Francisco's water supply. They reinforce, rather than reverse, the City's old-school sense of entitlement.

We urge you to reject Mr. Herrera and conduct a national search for a more qualified candidate to lead the SFPUC. We stand ready to work with you in that search.

Sincerely,



John McManus
Golden State Salmon Association



Kate Poole
Natural Resources Defense Council



Heinrich Albert
Sierra Club Bay Chapter



Jon Rosenfield
San Francisco Baykeeper



Peter Drekmeier
Tuolumne River Trust



Chris Shutes
California Sportfishing Protection Alliance



Kristina Pappas
San Francisco League of Conservation Voters



Mike Conroy
Pacific Coast Federation of Fishermen's Assns.



Rachel Zwillinger
Defenders of Wildlife



Cindy Charles
Golden West Women Flyfishers



Regina Chichizola
Save California Salmon