



**SAN FRANCISCO PUBLIC UTILITIES
COMMISSION**

City and County of San Francisco

London N. Breed
Mayor

SPECIAL MEETING
Monday, November 30, 2020
2:00 P.M.
(Approved December 22, 2020)

This meeting was being held by Teleconference Pursuant to the Governor's Executive Order N- 29-20 and the Twelfth Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency Dated February 25, 2020

Commissioners

Sophie Maxwell, President
Anson Moran, Vice President
Tim Paulson
Ed Harrington

Harlan L. Kelly, Jr.
General Manager

Donna Hood
Secretary



1. Call to Order

President Maxwell called the special meeting to order at 2:05 PM.

2. Roll Call

Present: Maxwell, Moran, Paulson, and Harrington

Attending presenters: Doug Obegi, Natural Resources Council, Jon Rosenfield, San Francisco Baykeeper, Jeanette Howard, The Nature Conservancy, and Barry Nelson, Golden State Salmon Association

President Maxwell turned the gavel over to Commissioner Harrington, who served as chair for the special meeting.

Commissioner Harrington thanked the attendees and discussed the reason for the workshop, which will focus on the Tuolumne River and Bay Delta. He indicated there would be future workshops. Commissioner Harrington thanked Deputy General Manager (DGM) Michael Carlin and Barry Nelson for their work on developing the agenda. He briefly reviewed the meeting structure and introduced Steve Ritchie, Assistant General Manager (AGM) for the first presentation.

3. Overview of the SFPUC's Tuolumne River Water Rights and its Legal Obligations Under the Raker Act, the Agreements with Modesto Irrigation District and Turlock Irrigation District, and the Water Supply Agreement with the Wholesale Customers

AGM Ritchie provided an overview of the Hetch Hetchy Regional Water System, basic contractual obligations, and water rights and indicated that the Bay Area is reliant on the Hetchy Regional Water System. He presented a chart showing the Hetch Hetchy service populations and their supply purchases. He presented of a map displaying the Sacramento and San Joaquin Rivers and the San Joaquin Tributaries.

AGM Ritchie reviewed San Francisco's water rights on the Tuolumne River, noting the first water rights filing was in 1901 (pre-1914). He indicated that San Francisco's diversion rights are generally junior to those of the Modesto and Turlock Irrigation Districts (MID and TID). He stated San Francisco diverts less than 1% of the water diverted in the Delta watershed. He continued with a review of the Raker Act, which was enacted in 1913 and he noted elements of the Act.

Commissioner Moran commented on flow limits and noted that in most years there is plenty of water, but that the rights are "wet year water rights" and during very dry years, if flows are under limits, the SFPUC gets nothing. He stated the SFPUC is unusually vulnerable to critically dry years in terms of water supply. AGM Ritchie responded to a question from Commissioner Moran as to what percentage of diversions are from Tuolumne River diversions. Brief discussion ensued on the percentage of diversion. AGM Ritchie noted San Francisco is considered a "storage-based system".

AGM Ritchie reviewed the SFPUC's relationship with the MID and TID and briefly reviewed: (1) 1934 Agreement, (2) 1940 First Agreement, (3) 1943 Second

Agreement, (4) 1949 Third Agreement, (5) 1966 Fourth Agreement, and (6) 1995 Federal Energy Regulatory Commission (FERC) Side Agreement.

Commissioner Moran indicated the New Don Pedro Reservoir is owned and operated by the MID and TID. He stated that once the SFPUC releases water into New Don Pedro, MID and TID take legal ownership of the water and the SFPUC has no control over what they do with the it.

AGM Ritchie responded to a question from Commissioner Harrington as to whether there is any history of the SFPUC asking the MID and TID to release water. AGM Ritchie noted that there is an annual agreement with the districts to put extra flow into the river.

AGM Ritchie continued with a brief historical review of the 2009 Water Supply Agreement (as amended).

Public Comment

- *Alison Cormack, Palo Alto City Council, BAWSCA Board, expressed support for the Tuolumne River Voluntary Agreement based on the science-based Tuolumne River Management Plan, which will provide more water for the fish in the river and protect the water supply for residents, business, and communities. She provided a full written comment for the record.*
- *Nicole Sandkulla, BAWSCA CEO, expressed support for a Tuolumne River Voluntary Agreement based on the science-based Tuolumne River Management Plan. She provided a full written comment for the record.*
- *Francisco DaCosta stated that the First People should be included in discussions and that a wholistic agreement is needed.*
- *Gustaf Larson, BAWSCA Vice Chair, expressed support for a Tuolumne River Voluntary Agreement based on the science-based Tuolumne River Management Plan designed to protect fish and the water system for BAWSCA's constituents. He provided a full written comment for the record.*
- *Dave Warner, Palo Alto, thanked the Commission for the workshop. He asked if there are any leverage points with the MID and TID regarding release.*
- *Ali Altaha spoke to an item not related to the agenda.*
- *Peter Drekmeier thanked the Commission for the workshop. He stated the first agenda item was not appropriate for the workshop which was intended to focus on science. He took exception with comments made by BAWSCA.*
- *Barry Nelson, Golden State Salmon Association, addressed the Fourth Agreement with the MID and TID and the 2000 Water Supply Agreement. He stated that they are important and are more focused on water supply than on science.*
- *Cheryl (inaudible), Los Altos, expressed interest in Tuolumne River and stated that SFPUC needs to listen to peer-reviewed science, stated voluntary agreements don't work, the flow is too low, and voluntary agreements that rely on in-stream flow don't bode well for baby salmon.*

Commissioner Paulson was excused from the meeting at 3:00 PM.

- Carol Steinfeld, San Mateo, stated that the science is clear that the Tuolumne River and Bay Delta need more water and that there is opportunity for less dependence on water.
- Martin Gothberg expressed appreciation for AGM Ritchie's presentation. He noted the importance of flow.
- Natalie (inaudible), thanked the Commission for the workshop. She discussed the need for science and adequate flow levels to support healthy fish. She expressed support for the Bay Delta Plan.
- Tonya (inaudible), Redwood City, expressed support for the Bay Delta Plan.

4. Legal Framework and Scientific Basis for the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) as amended December 2018

(a) Presentation by Doug Obegi, Natural Resources Defense Council; Jon Rosenfield, San Francisco Baykeeper; Jeanette Howard, The Nature Conservancy; Barry Nelson, Golden State Salmon Association

Commissioner Harrington welcomed Barry Nelson who introduced the panelists. Mr. Doug Obegi began his presentation with a timeline of the Bay Delta Water Quality Control Plan spanning from 1995 to 2018. He noted the State Water Resources Control Board's (SWRCB) desire to update the standards to reflect the needs of fish and wildlife and human uses of water from the Bay Delta Watershed. He indicated the Board split the update into two phases (1) SWRCB's December 2018 update and (2) Sacramento River inflow, Delta outflow, and in-Delta standards (in progress).

Mr. Obegi introduced unimpaired flows and stated it is the amount of water that would flow in a river or stream barring dams or water diversions that reduce the flow downstream. He discussed (1) unimpaired flows in the Tuolumne River in 2015 (unimpaired and actual), (2) discussion of a graph of Tuolumne River Flows from 1995 through 2019 (flow remaining in the river and diversions), (3) connecting the Tuolumne to the Delta: Delta outflow and diversion from the watershed (unimpaired outflow and actual outflow), (4) unimpaired flows vs. historic (actual) flows (median historic (actual) February to June flows from 1984 to 2009 for the Stanislaus, Tuolumne, and Merced Rivers).

Mr. Obegi stated that flows are important for salmon and noted in 1995 the SWRCB adopted the "Salmon Doubling Objective". He reviewed and discussed a graph showing the historic salmon decline in the Tuolumne River. He continued with a summary of the requirements of the SWRCB's 2018 update of the Bay Delta Standards for the Stanislaus, Tuolumne, and Merced Rivers followed by a review of the Tuolumne River minimum winter-spring flows (Tuolumne River Voluntary Agreement proposal).

Mr. Rosenfield's presentation focused on scientific basis for substantial increases in freshwater flow in, and from, the Tuolumne River. He reviewed Tuolumne River salmon returns and noted the change for a variety of creeks from 1967 to 1991 and from 1992 to 2011 time periods. He indicated that the Tuolumne River Flows affect

the Tuolumne and San Joaquin Valley Chinook Salmon returns, fish populations in the Bay and Delta, and invasive species and water quality in the Tuolumne, San Joaquin and Delta.

Mr. Rosenfield presented information on the following (1) San Joaquin Valley Salmon returns (strong correlation with spring-winter flow; river flow – Chinook Salmon productivity and diversity), (2) river flow and carrying capacity for salmon (mechanistic relationship – water temperature), (3) Tuolumne River (temperature impacts of different flow regimes), (4) river flow and carrying capacity for salmon (mechanistic relationship – rearing habitat), (5) flow and carrying capacity (comparison of habitat fixes with flow medication), (6) manual predator control (mechanistic relationships – predation). He stated that the Voluntary Agreement needs to also serve the needs of the Bay and Delta and that river flow rates are essential to controlling non-native species and toxic algae blooms and that bay inflows support numerous fish and wildlife species, including those in the San Francisco Bay.

Commissioner Paulson returned to the meeting at 4:00 PM.

(b) SFPUC Staff Comments: Michael Carlin, Steve Ritchie, Ellen Levin, Matt Moses, William Sears

DGM Carlin indicated that there were items presented that the SFPUC does not agree with and that SFPUC site-specific science on the Tuolumne should be evaluated, especially as related to temperature on the Tuolumne. He indicated the SFPUC worked with the California Department of Fish and Wildlife on the Voluntary Agreement process.

Commissioner Moran thanked Mr. Obegi and Mr. Rosenfeld for their presentations. He asked that staff, perhaps at a future workshop, present (1) elements of disagreement related to the Voluntary Agreement, including the issues of the removal of the temperature requirements, (2) any correlation between flow and production of habitat and explain why the SFPUC believes an alternative process can be equivalently effective at a lower cost in water, and (3) items of disagreement between the SFPUC analysis and what the panelists presented.

Doug Obegi provided response to a question from Commissioner Moran regarding the change in the river after 1991-92, in terms of flow and fishery production, and what may have happened to make those changes. He indicated he would provide additional information once obtained.

Commissioner Paulson thanked the panelists for their presentations. He discussed the issue of flow. Mr. Rosenfield provided brief response regarding flow and predation.

Mr. Rosenfield responded to a question from President Maxwell regarding where the differences in scientific conclusion come from and how it gets worked out. DGM Carlin responded to a follow-up question from President Maxwell regarding the status of the Voluntary Agreement and how conclusions are being made regarding differing

science and projections. She asked DGM Carlin and the panelists to provide information on the science that is agreed upon.

Mr. Rosenfield responded to a question from Commissioner Harrington regarding Mr. Rosenfield's slide: Flow and carrying capacity – mechanistic relationships – rearing capacity (functional inundated rearing habitat) “pulse flows approach” versus “flows needed”.

Mr. Obegi responded to a request from Commissioner Harrington for clarification to his presentation that the “Bay Delta standards have measures to ensure no directed impacts to storage”.

Mr. Nelson stated the scientific work presented is in collaboration with many organizations and entities, not just the Bay Institute. He noted that after SFPUC staff respond a discussion on where to proceed will follow as well as discussions on what the SFPUC's position will be on an on-going basis.

At the request of Commissioner Harrington, DGM Carlin provided an update as to the status of the Voluntary Agreement and if there are any impending deadlines.

President Maxwell thanked the panelists for their participation.

Public Comment

- Nicole Sandkulla, BAWSCA, stated that BAWSCA has been and continues to be active in the scientific work during the development of the Tuolumne River Management Plan. She reiterated BAWSCA's position and expressed support for the Voluntary Agreement.
- ~~Henrich Albert~~(inaudible) Elmer, Sierra Club Water Committee, expressed confusion as to the lack of presentation by SFPUC and BAWSCA regarding science, and stated that the science proposed for the Voluntary Agreement is invalid.
- Denise Louie stated that the fish population is declining, and they can't survive without increased unimpaired flows.
- Dave Warner expressed thanks for the workshop. He stated there was only one side of the scientific debate presented and he would like to hear other side. He stated the Voluntary Agreement does not have an adaptive management concept.
- Mark Rockwell, President, Northern California Council of Flyfishers International, stated that the problem with looking at science is that it creates inconvenient required actions. He discussed unimpaired flows and stated cold water fish temperature is critical at 68 degrees or lower.
- Peter Drekmeier, Tuolumne River Trust, thanked the Commission for the workshop. He noted the focus has been on fish but emphasized the need to look at the entire ecosystem. He indicated he would have liked to have seen an SFPUC presentation on science.
- John (inaudible) thanked the Commission for the workshop and discussion regarding science. He expressed disappointment that the SFPUC did not present on science for balance.

- *Cindy Charles, Tuolumne River Trust Board, thanked the Commission for the workshop. She noted her education in Zoology enables her to understand scientific principles. She discussed her experience fishing the Lower Tuolumne River and noted the reduced yield of fish. She stated she no longer fished at the site due to degradation.*
- *Mark Gonzales discussed a recent canoe trip from La Grange to Robert's Ferry and discussed degradation he saw and the need for habitat restoration. He expressed the need for higher flows.*
- *Carol Steinfeld thanked the Commission for the workshop. She stated there needs to be less dependent on water sources that are located many miles away. She stated money spent on a lawsuit could have been better spent on water management strategies.*

Commissioner Harrington expressed concern over the lack of a presentation regarding SFPUC scientific data and confirmed that presentation will happen in the future.

President Maxwell thanked everyone for their participation.

5. Adjournment

Chair Harrington adjourned the meeting at 4:55 PM.

