

## Ed Schmidt

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**From:** Lourdes Enriquez [mailto:LEnriquez@bawasca.org]

**Sent:** Tuesday, November 07, 2006 2:01 PM

**To:** claired@smccd.net; kj@fergusson.com; mayorandcouncil@ci.santa-clara.ca.us; Adrienne Tissier (E-mail); Bern Beecham (E-mail); bologoff@ci.brisbane.ca.us; crmickelsen@hotmail.com; JoAnne Whelen; Chris Reynolds (E-mail); Chuck Reed (E-mail); Daniel Seidel (E-mail); David Woods (E-mail); Irene O'Connell (E-mail); Joanne.Burkman (Email); John Weed (E-mail); Kelly Fergusson (Email); kleroux@hillsca.org; Louis Vella (E-mail 2); Louis Vella (E-mail); Lucy Xavier (Email); Marc Hershman (E-mail); Michael Sweeney; Mike Goff (E-mail); Mike Kasperzak (E-mail); Randy Breault (E-mail); Rick Wykoff (E-mail); Rob Guzzetta; Robert Craig (Email); Robert Livengood (E-mail); Rosalie O'Mahony (E-mail); Stanley Gage (E-mail); Tim Risch (Email); Tom Piccolotti (E-mail); ajames@cityofepa.org; alex.ameri@hayward-ca.gov; cathy.lazarus@ci.mtnview.ca.us; cchang@redwoodcity.org; cjackson@ci.sanbruno.ca.us; waterwwd@aol.com; Ed Schmidt; garmendariz@ci.milpitas.ca.gov; jane.ratchye@cityofpaloalto.org; john.stufflebean@sanjoseca.gov; koconnell@nccwd.com; ksteffens@menlopark.org; mrose@ci.sunnyvale.ca.us; mdebry@hillsca.org; mlawson@cityofepa.org; Patrick Sweetland; paul.piraino@acwd.com; paulr@midpeninsulawater.org; Robin G. Saunders; rpop@ci.millbrae.ca.us; rtowne@fostercity.org; smurtuza@burlingame.org; tamsky@aol.com  
**Cc:** ajensen@bawasca.org; Nicole Sandkulla; John Ummel; Benjamin Pink; Deborah Grimes; Christina Payne; Ray E. McDevitt; Budwendell@aol.com

**Subject:** Correspondence with SF Mayor Newsom, Commissioners of the SFPUC, and Ms. Susan Leal

Dear board members and agency designated agreement representatives,

Art had asked me to send this message out on Monday Oct 30.

I thought I had, but when I checked today, November 7<sup>th</sup>, I realized I had not.

Please accept my apology for the delay.

Lourdes Enriquez

**TO:** BAWSCA board members and agency designated agreement representatives,  
**FROM:** Arthur R. Jensen, General Manager  
**CC:** Ray McDevitt, Hanson Bridgett et al.  
Bud Wendell, Management Communications  
**DATE:** October 30, 2006  
**SUBJECT:** Correspondence with SF Mayor Newsom, Commissioners of the SFPUC, and Ms. Susan Leal

I am pleased to report that all 27 member agencies have designated BAWSCA as their authorized representative for negotiations of a new contract with San Francisco. Attached is a copy of a letter from BAWSCA Chair, Bern Beecham to San Francisco Mayor Gavin Newsom, and a letter from Arthur Jensen to President Richard Sklar, the commissioners and Ms. Susan Leal. The letters were delivered to the appropriate offices this morning.

*This communication, including any attachments and accompanying materials, has been prepared and is being sent to assist counsel and management staff for BAWSCA in the confidential pre-decisional negotiation process involving a possible water contract between BAWSCA, its member agencies and the City and County of San Francisco. As such, this communication and any attachments and accompanying materials are protected by the attorney-client, attorney work-product and deliberative process privileges. It is intended solely for use by BAWSCA, its counsel, and any individuals and firms employed or retained by BAWSCA for the confidential pre-decisional negotiation process.*

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# **BAWSCA**

**Bay Area Water Supply & Conservation Agency**

October 30, 2006

The Hon. Gavin Newsom, Mayor  
City and County of San Francisco  
City Hall, Room 200  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

Dear Mayor Newsom,

In 1984, the City and County of San Francisco signed agreements with all 27 cities, districts and private organizations that purchase water from the Hetch Hetchy regional water system for use by 1.7 million residents, businesses and community organizations in Alameda, San Mateo, and Santa Clara counties.

In three years, 2009, this contract will end, and it is in the best interests of both BAWSCA and San Francisco if a new, long-term agreement that reflects today's realities and tomorrow's needs is developed before the existing contract expires.

The 27 BAWSCA members, stretching from Daly City to Hayward, have, through actions of their public-agencies' governing bodies and senior executives of private water organizations, designated BAWSCA, which represents their water interests, to negotiate new agreements for them with the City and County of San Francisco.

Earlier this year, you provided strong leadership to ensure that San Francisco approved a Water System Improvement Program (WSIP) to rebuild the old, earthquake-vulnerable Hetch Hetchy system before it collapses following the next major earthquake. BAWSCA appreciated that assistance.

Now, BAWSCA requests your leadership again to make certain that San Francisco will meet another regional challenge -- a new, fair water agreement that serves the interests of BAWSCA's agencies and their customers in the three counties, as well as your customers in San Francisco.

While this negotiation will be conducted by the SFPUC, it may involve other San Francisco governmental entities as well. You, as the senior elected official in the city, can ensure that they negotiate constructively with us to create new agreements that are responsive to BAWSCA's member agencies, who are your customers. I know my board would appreciate receiving a letter from you saying that you will take on this leadership role.

During BAWSCA-sponsored meetings over the past several months, its member agencies identified three goals for a new agreement: a reliable supply of high quality water at a fair price to protect the health, safety and economic well-being of their customers. Within these goals are a number of specific requirements, which will be discussed in detail with the city's negotiating team. We look forward to learning what goals and objectives San Francisco will bring to the bargaining table.

We have informed the members of the Public Utilities Commission and General Manager Susan Leal, that we would like to begin negotiations with San Francisco before the end of the year in order to allow ample time to build a new contractual foundation assuring a reliable and sustainable supply of high-quality, fairly priced water to the region for decades to come.

Sincerely,



Bern Beecham, Chair  
BAWSCA Board of Directors

cc: President Richard Sklar and Commissioners  
San Francisco Public Utilities Commission  
Ms. Susan Leal, General Manager, San Francisco Public Utilities Commission  
BAWSCA Board of Directors

# **BAWSCA**

**Bay Area Water Supply & Conservation Agency**

October 30, 2006

President Richard Sklar and Commissioners  
General Manager Susan Leal  
San Francisco Public Utilities Commission  
1155 Market Street, 11th Floor  
San Francisco, CA 94103

Dear President Sklar, Commissioners and General Manager Leal:

As you know, the Settlement Agreement and Master Water Sales Contract signed in 1984 by San Francisco and its wholesale customers will end in June 2009. In most respects, the 1984 Contract has worked well for all parties over the past 22 years. At the same time, its expiration provides an opportunity to make improvements in some areas to better reflect today's realities and tomorrow's needs.

We have recognized that it will take time to negotiate a new agreement which all parties can endorse as fair, feasible and durable. For that reason, early this year, BAWSCA began a series of meetings with representatives of all its member agencies. The purpose of those meetings was to learn first hand the perspectives of member agencies on how the existing contract has worked and what they would like to see continued, or changed, in their relationship with San Francisco after 2009.

The goals expressed by member agencies throughout these discussions can be summarized, in the broadest and most descriptive terms, as seeking an agreement that will provide the agencies and their customers with a reliable supply of high-quality water at a fair price.

Reasonable people, we think, will embrace these goals. The SFPUC certainly seeks to achieve them on behalf of the residents, businesses and institutions located within San Francisco. Some of the specific elements that contribute to each of these goals may require complex discussions. However, most of the commitments that BAWSCA agencies seek for the benefit of their customers have already been agreed to in the 1984 Contract, are explicitly shared by the SFPUC itself, or were overwhelmingly endorsed by the State Legislature in enacting the Wholesale Regional Water System Security and Reliability Act of 2002 ("AB 1823").

For example:

- The 1984 Contract embodies the basic principle that the costs allocated to wholesale customers should be limited to facilities and services that actually benefit them;
- The SFPUC itself is on record as committed to completing the vital rebuilding of the Hetch Hetchy regional water system to withstand major earthquakes on the faults that lie beneath the system's dams, pipelines, tunnels and treatment plants "on time" (July 2014) and "on budget" (\$4.3 billion); and
- The Legislature has directed San Francisco to manage the system so that generation of hydroelectric power at Hetch Hetchy remains subordinate to providing a reliable water supply to the Bay Area. (Water Code Section 73504(b))

A slightly more detailed list of some of the major contractual elements that all BAWSCA members support is attached.

Our meetings also revealed a general expectation and desire for BAWSCA to take the lead in negotiating the successor to the 1984 Contract. That expectation has now been formally

confirmed. All 16 cities and 9 special districts, as well as Stanford University and California Water Service Company, have designated BAWSCA as their authorized representative in discussions and negotiations with San Francisco for the new water agreement. My role will be that of chief negotiator.

You will notice that the attached summary sheet does not include a commitment by San Francisco to deliver quantities of water that meet the increased demands of BAWSCA agencies projected through 2030. This is not because we anticipate engineering or financial obstacles to the City's doing so, but because important environmental analyses have yet to be completed. The Tuolumne River appears to be a logical choice for obtaining at least the majority of the additional water projected to be needed by BAWSCA agencies from the regional water system in 2030. San Francisco has the necessary water rights, the water is of extremely high quality, and the incremental cost (if any) of sizing facilities to allow for the wholesale customer demand to be met from the Tuolumne River is small in comparison to the cost of the \$4.3 billion Water System Improvement Program (WSIP) and in comparison to any alternatives, such as desalination. However, we recognize that the San Francisco Planning Department has been preparing a comprehensive Program Environmental Impact Report (PEIR) which will analyze in detail the direct and indirect environmental implications of meeting (or not meeting) the water demands of BAWSCA agencies' customers. We understand that the PEIR is expected to be released in draft form for public review and comment by the end of December.

We appreciate that the SFPUC will feel constrained from making commitments to deliver quantities of water above and beyond its existing contractual obligations until the PEIR has been certified. For our part, recognizing that there are important environmental values that need to be taken into full account, BAWSCA will also want to have the benefit of the PEIR's

analysis of impacts and alternatives before entering into detailed discussions with SFPUC on the specifics of obtaining additional supplies from the regional water system. There are plenty of other aspects of supply reliability (some of which are listed on the attachment) that we can productively discuss while the PEIR is being finalized.

Before closing, I would like to offer some general observations about the relationship between the City and the neighboring communities to which it serves water through the 27 BAWSCA agencies. First, these are longstanding relationships. Several of the older Bay Area cities, such as Burlingame, Hayward, Menlo Park, Palo Alto, and San Mateo, supported San Francisco's effort in Congress to secure access to the Hetch Hetchy Valley, ultimately attained through passage of the Raker Act in 1913. San Francisco has been the wholesale water supplier to many of these agencies for 60 years or more; in most cases, contracts have been in place since the early 1960s. So, we have a long history together.

Second, the foresight of San Francisco city leaders a century ago in designing the Hetch Hetchy project as a regional system has benefited all communities now in the four-county service area. The benefit to neighboring communities is obvious: they have been provided a supply of extremely high quality water that has allowed them to become intellectual, industrial and financial contributors to the economic prosperity of the entire Bay Area. The benefits to San Francisco from regional participation are also substantial. BAWSCA agencies currently pay San Francisco \$100 million annually for water, a contribution expected to ramp up to \$300 million once the WSIP is completed. San Francisco is "at the end of the pipe" and it would cost nearly as much to rehabilitate the system if it were limited in scale to serving San Francisco only as it will to rebuild the regional system to today's seismic safety standards. Because of our financial



October 30, 2006

Page 5

contribution, San Francisco retail ratepayers pay only 30 cents on the dollar for all of the costs associated with the regional water system.

Finally, San Francisco and all other Bay Area communities enjoy the benefits of the regional water system. A harmonious accord among us on the mechanics and economics of water distribution in the Bay Area will be important to the region's ability to continue to do so.

I believe it is wise for all of us to keep these broader perspectives in mind as we turn to discussing the details of a new agreement.

In his letter to Mayor Newsom, Bern Beecham, Chair of BAWSCA's Board of Directors, expressed the desire that discussions of the new agreement get underway before the end of December. I will make myself, and relevant members of BAWSCA's team of staff and consultants, available to begin those discussions within that timeframe. I anticipate that we will both want to address a variety of procedural matters before tackling specific content of the new agreement. BAWSCA would be pleased to host the initial meeting. Please let me know when you would like to meet.

Very sincerely,



Arthur R. Jensen  
General Manager

cc: BAWSCA Board of Directors  
The Hon. Gavin Newsom, Mayor, City and County of San Francisco

Enclosure

## SUMMARY OF BAY AREA WATER SUPPLY AND CONSERVATION AGENCY GOALS FOR NEW WATER AGREEMENT

Overall, BAWSCA agencies seek an agreement with San Francisco that will provide them a reliable supply of high quality water at a fair price. More specifically, they envision these three major elements being secured by contractual provisions and commitments along the following lines:

### 1. RELIABLE SUPPLY

- Complete the Water Supply Improvement Program adopted by the SFPUC on November 29, 2005 on time (by 2014) and on budget (\$4.3 billion).
- Fund and implement good system maintenance and repair practices in the future. These practices should incorporate the recommendations contained in several audits of the SFPUC, including those conducted by the California Department of Finance in November 2003, the California Department of Health Services in April 2005, and the San Francisco Board of Supervisors Budget Analyst in March 2005.
- Treat customers inside and outside of San Francisco equally in terms of water delivery in the event of a major system disruption caused by an earthquake or other catastrophic event.
- Operate the Hetch Hetchy system so that providing a reliable water supply to the Bay Area takes priority over generation of hydroelectric power.
- Specify firm, quantified water delivery entitlements for each agency, other than Hayward which is satisfied with its 1961 contract. Allow BAWSCA agencies to freely transfer these entitlements (or portions thereof) among themselves -- subject only to reasonable, operationally-related limitations.
- Allow BAWSCA to "wheel" water purchased from outside sources through the San Francisco regional system during droughts, when San Francisco is unable to supply the water needs of BAWSCA agencies. This is an important feature since San Francisco has not added any storage to its system since 1971, even though there are now nearly 500,000 more people dependent on the system. In fact the San Francisco regional system has less storage now than in 1971 because the Department of Safety of Dams has directed that Calaveras Reservoir be kept more than half empty for safety reasons.
- Take advantage of BAWSCA's formation as a three-county governmental agency representative of all 27 wholesale customers and actively utilize it to achieve mutually established regional water conservation goals.

## 2. HIGH QUALITY

- Specify that the water delivered meets the standards of the Safe Drinking Water Act, without additional treatment by wholesale customers (except for Coastside County Water district, which operates its own water treatment plant).
- Provide wholesale customer agencies prompt notice of potential or actual violations of SDWA standards (concurrently with notice to the Manager of the CDD responsible for delivering water to in-City customers) as well as of potential or actual changes in water chemistry to those agencies with industrial customers which require uniform water quality.

## 3. FAIR PRICE

- In general, BAWSCA agencies want to retain the basic architecture of the 1984 Contract, including:
  - Cost of water to be limited to facilities and services that benefit wholesale customers (i.e., in-City retail costs are excluded, Hetch Hetchy power costs are excluded unless power revenues are also shared, and a portion of the costs of Hetch Hetchy joint facilities are distributed to power, as currently provided).
  - Costs of regional facilities are allocated between San Francisco retail and wholesale customers on the basis of relative usage. (It may be possible to simplify the formulas and calculations used in the 1984 Contract to measure and classify water usage.)
  - Annual accountings should be continued, with wholesale customer overpayments or underpayments being tracked and carried into a balancing account. (We would like to explore ways to simplify the accounting involved in these annual calculations, strengthen and simplify the audit process, and provide more flexibility in how the balancing account impacts water rates in order to avoid artificially steep rate fluctuations from year to year.)
- Limit the City's ability to pass through costs of false starts and abandoned capital projects through the expedient of "expensing" these mistakes, similar to the rules which apply to investor-owned utilities.

This list is not comprehensive, but we hope it provides San Francisco a useful summary of BAWSCA agencies' positions on some important contractual topics.