

1 [Urging to Resolve a San Francisco Public Utilities Commission Lawsuit with the United
2 States Environmental Protection Agency]

3 **Resolution urging the City Attorney and the San Francisco Public Utilities Commission**
4 **to immediately resolve its lawsuit regarding the Clean Water Act with the United States**
5 **Environmental Protection agency.**

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7 WHEREAS, The Clean Water Act exists to “restore and maintain the chemical,
8 physical, and biological integrity of the Nation’s waters;” and

9 WHEREAS, The Clean Water Act prohibits the “discharge of any pollutant by any
10 person;” and

11 WHEREAS, This prohibition does not apply if a permit issued under the National
12 Pollutant Discharge Elimination System program authorizes the discharge; and

13 WHEREAS, The City and County of San Francisco challenged the Environmental
14 Protection Agency’s (EPA) authority under the Clean Water Act in the Ninth Circuit Court of
15 Appeals in connection with certain wastewater facilities; and

16 WHEREAS, The challenge focused on the inclusion of general narrative prohibitions in
17 the National Pollutant Discharge Elimination System (NPDES) permit, which governs San
18 Francisco's combined sewer system and wastewater treatment facility; and

19 WHEREAS, The City and County of San Francisco argued that the EPA’s permit
20 conditions were overly broad, particularly as they imposed general prohibitions without
21 establishing specific numeric limits for discharges; and

22 WHEREAS, The Ninth Circuit ruled against San Francisco, determining that the EPA
23 acted within its legal authority by enforcing general prohibitions in the permit to ensure
24 compliance with water quality standards; and

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1 WHEREAS, The court held that such prohibitions are permissible even in the absence
2 of specific numeric limits, as they are necessary to protect water quality; and

3 WHEREAS, Narrative permits such as those at issue in the litigation are extremely
4 common across the country, such that a ruling that invalidates or undermines them could
5 greatly harm water quality nationwide - and provide new grounds for polluters to challenge
6 water quality standards; and

7 WHEREAS, Particularly since the advent of a 6-3 conservative Supermajority on the
8 Supreme Court, the Court has reduced the regulatory and enforcement powers of the EPA,
9 include decisions blocking critically important climate protections; overturning longstanding
10 precedents supporting environmental regulatory authority, and overturned fundamental Clean
11 Water Act protections that have been in place for decades, thereby potentially stripping over
12 half of the wetlands in the entire country without federal protection; and

13 WHEREAS, These actions have already gravely harmed the EPA's ability to enforce
14 environmental laws and protect public health; and

15 WHEREAS, The lawsuit has the potential to seriously destabilize Clean Water Act
16 protections at a time when environmental protections are already under serious threat; and

17 WHEREAS, The litigation has placed San Francisco in the position of championing the
18 views and interests of the National Mining Association, American Gas Association, American
19 Petroleum Institute, American Chemistry Council (all of whom have filed briefs supporting the
20 City) and other representatives of the nation's biggest polluters; and

21 WHEREAS, The City and County of San Francisco is being represented in the
22 Supreme Court by private counsel from a corporate law firm that regularly represents
23 companies that seek less stringent regulation of their discharges into waters of the United
24 States, and that is currently urging the Court to block EPA regulations limiting emissions and
25 mercury and other toxic air pollutants emitted by coal-burning power plants; and

1 WHEREAS, The State of California, the State of Washington, the Commonwealth of
2 Massachusetts, along with the states of Connecticut, Illinois, Maine, Maryland, Michigan,
3 Minnesota, New Jersey, Oregon, Wisconsin, the Commonwealth of Pennsylvania, and the
4 District of Columbia have filed amicus curiae briefs of the Environmental Protection Agency;
5 now, therefore, be it

6 RESOLVED, That the San Francisco Board of Supervisors of the City and County of
7 San Francisco urges the General Manager of the San Francisco Public Utilities Commission,
8 the Commission of the San Francisco Public Utilities Commission, and the City Attorney's
9 Office of the City and County of San Francisco to resolve the litigation promptly without
10 provoking a decision from the Supreme Court.

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