

Lenzi, Chelsea

From: Carolee Krieger <caroleekrieger7@gmail.com>
Sent: Friday, February 1, 2019 3:12 PM
To: sbcob
Cc: 'Aaron Budgor'; Gretchen Lieff; jhwmon@cox.net; 'Christina Speed'
Subject: SWP contract issues coming up at your Tuesday meeting
Attachments: 2019 Roger Moore Response to BHFS 2-1-19.pdf; 2018 1 BOS letter re SWP contract C-WIN_BoS_4-3-18 (002) final.pdf; Evergreen Clause SWP contracts Pages from Santa Barbara SWP Master Contract with amend (3).pdf; 2019 Roger Moore Letter re contract extension 12-11-18.pdf

Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.

Dear Clerk of the Board,

We understand that the BOS will be considering reassignment of the State Water Project contract from the SBCFCWCD to the CCWA at your upcoming meeting on Tuesday. Here is the packet of material we have sent to each of the Supervisors and at the request of supervisor Hartmann, we are also sending to you.

We will be there on Tuesday at 1:30.

Thank you,
Carolee

LAW OFFICE OF ROGER B. MOORE

LAND, WATER AND ENVIRONMENTAL LAW

337 17TH STREET, SUITE 211
OAKLAND, CALIFORNIA, 94612
LANDWATER.COM, RBM@LANDWATER.COM, 510-548-1401
ADMITTED IN CALIFORNIA

February 1, 2019

To: Carolee Krieger, California Water Impact Network

From: Roger Moore

Re: Failure of BHFS Letter to Address Major Risks from CCWA's Efforts to Pressure Santa Barbara County to Relinquish its Role as State Water Project Contractor

Overview

In a letter to Ray Stokes dated August 1, 2018 (BHFS Letter), the law firm serving as general counsel to the Central Coast Water Authority, Brownstein Hyatt Farber Schreck, took issue with some of the conclusions in my April 5, 2018 legal analysis entitled *Counting on the County: Legal and Practical Concerns About the Proposal for Santa Barbara County to Relinquish Its Role as State Water Project Contractor*. *Counting on the County* identifies major legal, institutional and financial risks that would follow if the county were to accede to CCWA's pressure to have the county relinquish its decision-making role as State Water Project (SWP) contractor.

Although the BHFS letter congratulates its client for "expert" management (page 5) and devises colorful adjectives for its critics (e.g., "false, confused, irrelevant, and misleading," page 3), the letter fails to overcome serious legal problems addressed in *Counting on the County*. The letter is replete with flawed assumptions that a controversial assignment impacting the county's public role in the SWP can be resolved as routine contract interpretation. Due to crucial near-term decisions the county will face as SWP contractor—for example, whether to accede to a mislabeled SWP "extension" amendments that would open the door to new facilities debt and appear chiefly designed to facilitate indebtedness for the proposed Delta tunnels—it would be hard to imagine a worse time for the county to voluntarily abandon its independent voice as a SWP contractor, and thereby weaken public accountability over the SWP's consequences in Santa Barbara County. The risks from losing the county's critical independent role must be measured against the high likelihood, analyzed in detail in *Counting on the County*, that assigning the contractor role to CCWA will fail, as a matter of law, to shield the county from contingent liability any more effectively than current agreements.

Existing Agreements Make CCWA Fully Responsible for State Water Project Costs and Protect Against the County's Contingent Liability

Counting on the County pointed out (page 3) that existing agreements already make CCWA entirely responsible for State Water Project costs, and contain provisions designed to prevent the Santa Barbara County Flood Control and Water Conservation District (County FCD) from being held responsible for contingent costs. Those agreements include the 1991 Transfer of Financial Responsibility Agreement (TOFR) and Water Supply Agreements (WSAs) between CCWA and its contractors. Under these agreements, CCWA must “fully and completely” reimburse the County FCD, and honor specific provisions intended to avoid default and minimize the risk of contingent liability (TOFR, Recital F.) If CCWA fails to prevent default, the County FCD may bring an enforcement action against CCWA or defaulting contractors. (TOFR, section 3, subdivisions A, B.)

These protections exist already, and will continue without the County FCD having to weaken public accountability by abandoning its role as SWP contractor. Despite its veneer of disagreement, the BHFS letter (page 1) concedes it is “[a]greed” that “[s]ince 1991, CCWA has been fully responsible for all costs associated with the State Water Contract.” CCWA acknowledges that “CCWA’s contracts with its members and other project participants include numerous safety mechanisms to guard against any default, including the so-called ‘step-up’ provisions that require other contractors to assume the obligations of any defaulting contracting party.” (*Id.* at 4, fn. 1.)

Retaining the County's Contractor Role is Needed to Protect the Public Against Efforts to Make Risky Changes in the State Water Project and Force Payment for Costly New Projects, Including the Delta Tunnels.

The BHFS letter misleadingly suggests (page 1) that abandoning the County's contractor role is needed to prevent taxes or assessments from being levied on “all property owners within Santa Barbara County,” including “property owners who do not receive State Water Project water.” This suggestion is doubly wrong. First, it overplays a speculative and hypothetical threat within the existing contracts that fails to explain or account for existing safeguards protecting the County. Second, it ignores the immediate risk that without the County asserting its independent voice as State Water Contractor, CCWA will quickly acquiesce to contract amendments and project decisions that will make the SWP, and taxpayers and ratepayers' obligations under it, immensely more costly and risky. These changes are intended to facilitate irrevocable debt obligations for the Delta tunnels, currently branded as California WaterFix.

The superficial discussion of taxes and levies in the BHFS letter is a selective reference to article 34(a) of the County FCD's long-term water supply contract with DWR, which provides that if the Agency is “unable to raise sufficient funds by other means,” its governing body shall levy “a tax or assessment sufficient to provide for all payments under this contract then due, or to become due within that year.” Water Code section 11652 also specifies that “[t]he governing body shall, whenever necessary, levy

upon all property in the state agency not exempt from taxation, a tax or assessment sufficient to provide for all payments under the contract then due or to become due within the then current fiscal year or within the following fiscal year before the time when money will be available from the next general tax levy.” Contractors can only levy a tax when unable to make payment by other means. See 61 Ops. Cal. Atty. Gen. 373, •6 (1978).

Neither Water Code section 11652 nor article 34(a) would, or could, change as the result of an assignment agreement between the County FCD and CCWA. Accordingly, the argument that the County’s obligations would be avoided is entirely derivative of the flawed argument, criticized in *Counting on the County* and further below, that an assignment to CCWA can succeed in reducing any residual contingent liability left to the County if CCWA defaults on its obligations. The BHFS letter deems CCWA default to be unlikely. Even if default occurred under the current agreements, despite the TOFR’s provisions aimed at preventing it, the County could sue CCWA or defaulting contractors to recover costs before such liability would even potentially come into play. (TOFR, section 3, subdivisions A, B.)

In contrast to these highly speculative risks, there is a clear and immediate danger that if the County voluntarily abandons its role as SWP contractor, and thereby deprives its constituents of an independent voice, CCWA will take actions greatly compounding the SWP’s problems for taxpayers and ratepayers, including those in the county. With the county out of the picture, CCWA is poised to accede to enormous new indebtedness to fund the Delta tunnels, and sign contract “extension” amendments approved by DWR in December that are designed to facilitate them. In the current WaterFix coordinated proceedings in Sacramento County Superior Court, DWR is already seeking to aggressively use the code and contract provisions on SWP taxing authority to impose potential billions in WaterFix-related costs on taxpayers. In short, the BHFS letter’s premise that assignment to CCWA will result in “no different or new obligations,” or new contract amendments (page 4) could not be more wrong.

In light of the immediate and irreversible risk that CCWA, if allowed to become SWP contractor, will acquiesce to the imposition of major new SWP-related debt, the BHFS letter’s claim that “the proposed assignment, if approved, will be invisible to Santa Barbara County residents and businesses” (page 5) is hollow and false. DWR is separately pursuing, and has filed a separate legal action seeking to validate, contract “extension” amendments that would facilitate indebtedness for the Delta tunnels. Testimony at the September 11, 2018 Joint Legislative Budget Committee hearing undermined the premise of independence from WaterFix upon which DWR’s separate Contract Extension is founded. That includes the testimony of DWR director Karla Nemeth that DWR plans to “use these amendments to finance WaterFix,” and the testimony of Rachel Ehlers of the Legislative Accounting Office that the contract extension amendments would “affect and facilitate” WaterFix.

DWR’s contract “extension” amendments are poorly named. The proposed amendments would not simply extend the length of the SWP contracts, currently set to

expire in 2035-2042, for another half-century until 2085. Instead, they would make the SWP significantly more costly and risky by taking away an important safeguard in the current contracts. DWR's extension amendments would eliminate limitations on covered "facilities" under article 1(hh)(8) of current SWP contracts that would otherwise render WaterFix ineligible for revenue bond financing. Through the "extension" amendments, DWR proposes new authorization for "SWP revenue bonds to be issued to: (1) finance repairs, additions, and betterments to most facilities of the SWP without regard to whether the facilities were in existence prior to January 1, 1987, which is the current Contract requirement in Article 1(hh)(8); and (2) finance other capital projects (not already in the list in Article 1(hh) for which revenue bonds could be sold) when mutually agreed to by DWR and at least 80 percent of the affected Contractors."

The first of these changes would remove a major current contractual obstacle to financing the Delta tunnels. The second would make it easier for the most powerful SWP contractors to impose new revenue bond debt for other costly and risky new projects. Under the "extended" contract provisions proposed by DWR, that would be the case even if Santa Barbara County, and its taxpayers and ratepayers, oppose the imposition of debt for these new facilities.

The "Evergreen Clause" in Santa Barbara County's State Water Contract Provides a Better Way to Protect the County's Interests, Without the Risky Changes Proposed by DWR and CCWA.

CCWA has misleadingly suggested that the "extension" amendments proposed by DWR are needed to ensure continued county access to SWP water supplies and to avoid compression problems.

That is simply not true. Article 4 of the current SWP contracts contains what is commonly known as the Evergreen Clause. That clause enables any SWP contractor, at least six months before SWP contracts are set to expire, to elect to receive continued service for an extended period, and sets forth the procedure in which DWR is to honor the request, including specific conditions noted "unless otherwise agreed to." The conditions, unless "otherwise agreed to," are:

- (1) Service of water in annual amounts up to and including the Agency's maximum annual entitlement hereunder.
- (2) Service of water at no greater cost to the Agency than would have been the case had this contract continued in effect.
- (3) Service of water under the same physical conditions of service, including time, place, amount and rate of delivery, as are provided for hereunder.
- (4) Retention of the same chemical quality objective provision as is set forth herein.
- (5) Retention of the same options to utilize the project transportation facilities as are provided for in Articles 18(c) and 55, to the extent such options are then applicable.

The Evergreen Clause provides that "[o]ther terms and conditions of the continued service shall be reasonable and equitable and shall be mutually agreed upon. In the event that said terms and conditions provide for continued service for a limited number of years only, the Agency shall have the same option to receive continued service

here provided for upon the expiration of that and each succeeding period of continued service.” This provision helps establish that to receive continued water service or ensure workable periods to cover expenditures for SWP operation and maintenance, SWP contractors—and the Legislature—need not hastily accede to DWR’s proposed extension provisions, including those that could make the SWP more costly and risky.

The argument that the contract “extension” proposed by DWR—with potentially risky escalation of debt burdens bundled in—is needed to address legitimate operation and maintenance needs of the existing SWP is also untrue. Those could be more responsibly addressed consistently with the Evergreen Clause, rather than acquiescing to finance major new facilities debt. The recent Oroville dam crisis underscores the importance of listening to independent voices willing to ask difficult questions of DWR and other state water contractors needed to improve economic and environmental sustainability. See, e.g., Independent Forensic Team report, *Oroville Dam Spillway Incident* (2018), https://drive.google.com/file/d/15fmj836-EnyYgPgf7_a_JIoK0N8J-mZE/view; R. Stork, et al., *The Oroville Dam 2017 Spillway Incident* (2017), https://drive.google.com/file/d/15fmj836-EnyYgPgf7_a_JIoK0N8J-mZE/view.

As recently noted, “[l]arge scale water management systems in general, and California’s water management system in particular, provide a good analogue to the financial system.” J. Viers and D. Nover, *Too Big to Fail: Limiting Public Risk in Hydropower Licensing*, 24 *Hastings Environmental L.J.* 143, 144 (2018). As was the case when financial systems appeared to some “too big to fail,” a prudent system manager should not respond to crises by making it easier to add indebtedness on expensive new facilities, potentially at the expense of constructive steps to better manage existing ones. By contrast DWR will, with CCWA’s acquiescence, force a risky escalation of indebtedness under the guise of risk reduction.

Assignment to CCWA Will Be Ineffective in Reducing the Risk of the County’s Contingent Liability and Avoiding the Need for Taxpayer Voting

Despite extensive discussion of extraneous issues, the BHFS letter is almost entirely unresponsive to the detailed analysis in *Counting on the County* (pages 3-9) explaining why the proposed assignment agreement to CCWA would be ineffective in reducing any remaining county risk of contingent liability beyond the level provided in existing agreements. The core error in the BHFS letter (pages 3-5) is that it assumes the reduction in contingent liability will be effective as a matter of contract law, because the proposed assignment agreement says that the county will have no role. But that is not the law, which will turn on whether the underlying assurances codified in the Burns-Porter Act have been met. Whether the contracts would allow for *some* assignment to occur is inapposite; the issue is whether, under governing law, the requisites that underlay the county’s existing SWP commitments can be fully assumed by an entity that has inferior taxing authority—even if its constituent entities have some ability to tax.

The point analyzed in *Counting on the County* is that regardless of what the contracts’ attempt to assign, elimination of the contingent role will be ineffective unless CCWA is legally capable of meeting the Governor’s contracting principles and Burns-

Porter Act requirements, as approved by California’s voters in 1960 and later codified in the original SWP contracts. (See *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, 904-910.) *Goodman* also clarifies the important distinction between the original agreements and CCWA and DWR’s proposed new agreements for purposes of determining whether the latter are exempt from constitutional provisions limiting property taxes and requiring voter approval. The original SWP contracts survived that scrutiny and were grandfathered in, but that would not be the case for new agreements. Although CCWA asserts that it has some taxing authority, notably absent from its analysis is any claim that this authority is commensurate with that of the county. Without such a showing, attempts to assign away the contingent liability not already assumed by CCWA are likely to be ineffective, and at best would still threaten to immerse the county in complex and costly litigation.

Almost half a decade ago, Santa Barbara County Public Works requested DWR to “include in the EIR” for the SWP contract extension an analysis of the economic and legal impacts and implications relative to the continued pre-Prop 13 taxing authority with the Contract Extension Project; i.e., what are the impacts of assuming an extension of pre-Prop 13 taxing authority. The county is concerned that if a contractor default should occur, the County would be liable for covering the default without taxation ability that exists under the current contract because of its pre-Prop 13 legal status.” DWR declined to provide that analysis in its Contract Extension EIR, and still has not done so.

The Assignment of the Contractor Role to CCWA Would Require CEQA Compliance.

The BHFS letter (page 6) incorrectly assumes no environmental review will be necessary under CEQA if it takes over for the county as SWP contractor, on the apparent premise that it is environmentally inconsequential. That assumption is specious. As analyzed above, that change is likely to weaken environmental accountability for much, if not all, of the county. (See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 (“The EIR process protects not only the environment but also informed self government”; *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 910-920 (CEQA compliance required prior to making environmentally consequential changes in SWP contracts).)



Board of Directors:

April 3, 2018

Carolee K. Krieger
Co-founder
President
Executive Director

Santa Barbara County Board of Supervisors
105 E. Anapamu Street
Santa Barbara, CA 93101

Michael Jackson
Co-founder
Secretary

Re: Negotiations with the Central Coast Water Authority

Joshua Green
Treasurer

Dear Supervisors:

Yvon Chouinard
Co-founder

The Central Coast Water Authority (CCWA) is requesting the Board of Supervisors transfer to CCWA the State Water Project (SWP) contract between the County and the California Department of Water Resources (DWR), thereby ceding State Water Project (SWP) decisions to CCWA.

Malinda Chouinard

Dan Bacher

C-WIN believes that there are legal and practical concerns about the proposal, relating to contingent liability, Santa Barbara County governance and participation in the SWP, and weakening of environmental protections that would be extremely detrimental to residents of Santa Barbara County.

Aaron "Beno" Budgor

Conner Everts

Attached are two documents supporting C-WIN concerns: 1. a legal analysis from attorney Roger B. Moore and 2. a C-WIN background summary describing the relationship between the State, the County of Santa Barbara and CCWA. These concerns are summarized here:

In Memorium
Dorothy Green
Co-founder
Secretary

Bill Jennings

Gretchen Lieff

Tom Stokely
Trinity Rivers
Poisoned Lands

- An agreement assigning the county's SWP contractor status to CCWA is legally likely to fail its ostensible purpose of shielding the county from contingent liability.
- Even if effective as an assignment, relinquishing the county's contractor role to CCWA would produce defective governance due to CCWA's weighted voting process.
- Prejudice to the county and the public may result from making CCWA the SWP contractor by limiting future cost and benefit discussions and decision making to a small group (CCWA) rather than before the County as a whole (BOS).
- The proposed elimination of the County's contractual role would weaken environmental protection and informed self-government, requiring review under CEQA.

Barbara Vlamis

Advisors:
Maude Barlow
Gary Brechin
Nick Di Croce
Jim Edmondson
Larry Farwell
Huey Johnson
Arve Sjovold
Joan Wells

For the reasons articulated above C-WIN strongly encourages each County Supervisor to deny CCWA request for transfer of the State Water Project (SWP) contract between the County and the California Department of Water Resources (DWR) to CCWA.

Staff:
Christina Speed
Georgia Strickland

Attachments:

1. "Legal and Practical Concerns About the Proposal for Santa Barbara County to Relinquish Its Role as State Water Project Contractor"
2. "Why Santa Barbara County Must Not Cede Control Over the State Water Project to the Central Coast Water Authority (CCWA)"

www.c-win.org

Sincerely,
Carolee Krieger, Aaron Budgor, Joan Wells, Arve Sjovold, Gretchen Lieff

LAW OFFICE OF ROGER B. MOORE

LAND, WATER AND ENVIRONMENTAL LAW

337 17TH STREET, SUITE 211
OAKLAND, CALIFORNIA, 94612
LANDWATER.COM, RBM@LANDWATER.COM, 510-548-1401
ADMITTED IN CALIFORNIA

**Counting on the County:
Legal and Practical Concerns About the Proposal for Santa Barbara County to
Relinquish Its Role as State Water Project Contractor**

Synopsis

This memorandum identifies formidable legal and practical problems if Santa Barbara County relinquishes to Central Coast Water Authority (CCWA) the decision-making role it has retained as State Water Project (SWP) contractor for more than half a century. My analysis disputes the effectiveness of having CCWA fully displace the county's role by piecing together a patchwork of powers assigned from its contractors. Even if effective as an assignment, this approach would produce defective governance, including the foreseeable risk that CCWA in the future will be dominated by a single entity, the City of Santa Maria. Substantial weakening of county and public accountability is likely to follow from ceding the SWP contractor role to CCWA. With important decisions looming on such matters as the proposed multi-decade extension of SWP contracts and the Delta tunnels, changing contracts to allow CCWA to displace the county's independent role as decision-maker would amount to the wrong decision at the worst possible time, and likely require CEQA review.

My analysis, prepared at the request of the California Water Impact Network (CWIN), reflects my independent review of primary documents, legal research, and experience reviewing SWP contracts statewide and in the county. I have closely followed and studied the county's SWP role since 1995, when my co-counsel and I represented Citizens Planning Association of Santa Barbara County and its two co-petitioners in their successful challenge to the environmental review of the Monterey Amendments. (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892) (*PCL v. DWR*.)

The analysis addresses four principal themes. First, an agreement assigning the county's SWP contractor status to CCWA is likely to fail its ostensible purpose of shielding the county from contingent liability. The county, whose board of supervisors acts *ex officio* as the Santa Barbara County Flood Control and Water Conservation District (County FCD), Wat. Code Appendix, § 6, could not have qualified as a state water contractor under the Burns-Porter Act (Wat. Code, § 12930, *et seq.*) had it not pledged, in Article 34 of its SWP contract, to impose taxes or assessments when other

means are insufficient to meet SWP payment obligations due then or within the year. The commitment of all SWP contractors to cover default with taxing power was a central part of the contracting principles ratified by California's voters and later codified in the Burns-Porter Act. CCWA has failed to demonstrate that substituting itself for the county as SWP contractor can feasibly reduce the county's risk of contingent liability beyond safeguards already in place. That premise is not supported by 2014 joint powers legislation (AB 2170, codified at Gov. Code, § 6502), which clarified rather than changed existing law and did not alter the limitation of JPAs to common powers. Displacing the county would invite discord over complex issues, such as the scope of common powers assigned to CCWA, the role of private entities and non-member contractors, and whether assignments to CCWA can proceed in the absence of a popular vote.

Second, even if effective as an assignment, relinquishing the county's contractor role to CCWA would produce defective governance. Unlike the county, which must continue to represent all its constituents, CCWA is highly likely to be dominated by one entity, the City of Santa Maria. The city controls nearly half of the underlying contract allotments among CCWA's contractors, and could acquire an effective majority if it acquires previously retired Table A amounts. If this occurs after the county ends its role as SWP contractor, it may be too late to ensure decisions on SWP participation remain accountable in the south coast, or to ratepayers and taxpayers throughout the county.

Third, prejudice to the county and the public may result from making CCWA the SWP contractor. C-WIN has elsewhere documented its concerns that the SWP has not delivered water to Santa Barbara County's South Coast water districts and cities "in a cost-effective and reliable manner," and that new SWP indebtedness for the Delta tunnels "could result in vast economic hardship and financial turmoil" for the county's agencies and ratepayers" while diverting resources that could be better spent on local efforts to improve water supply reliability (See, e.g., C-WIN, *The Unaffordable and Unsustainable Twin Tunnels: Why The Santa Barbara Experience Matters* 7, 9, 18 (July 2016); ECONorthwest, *California WaterFix: Potential Costs to Santa Barbara County* (July 2016).) As state and local decision-makers consider the proposed extension of SWP contracts, proposed construction of Delta tunnels, and other major water and infrastructure decisions, the county's decision-making role will grow in importance.

Finally, because the governance problems noted above would weaken environmental accountability for much, if not all, of the county, eliminating the county's role as SWP contractor is likely to require CEQA review. This is hardly the first time CCWA has sought to overstep its authority and underplayed the importance of contractual changes. In *PCL v. DWR*, the Court of Appeal rejected CCWA's attempt, with DWR's acquiescence, to stand in for DWR in reviewing the Monterey Amendments. The court criticized CCWA for neglecting water contractors and members of the public "not invited to the table" (*Id.* at 905), and for failing to analyze elimination of a safeguard against reliance on "paper water" contract entitlements "worth little more than a wish and prayer." (*Id.* at 914-915.) A generation later, the county's independent role as contractor remains an important safeguard against future SWP decisions that are similarly detached from reality. It will disserve the county, the public, and the environment for the county to declare that within the county, CCWA controls the table and decides who is invited.

Why Santa Barbara County Must Not Cede Control Over the State Water Project to the Central Coast Water Authority (CCWA)

Request Before the Board of Supervisors

Central Coast Water Authority (CCWA) is requesting the Board of Supervisors transfer to CCWA the State Water Project (SWP) contract between the County and the California Dept. of Water Resources (DWR), thereby ceding State Water Project (SWP) decisions to CCWA.

Two Major Concerns about the CCWA Proposal

1. How will contingent liability be addressed?
2. Who will make future decisions with regard to Santa Barbara County's participation in the SWP?

Status of Santa Barbara State Water Project (SWP) Contractors.

The contract to bring State Water to Santa Barbara County is between the DWR and the County of Santa Barbara. The Board of Supervisors (BOS), sitting as the Board of the Santa Barbara County Flood Control and Water Conservation District (SBCFCWCD), is the authorized signatory for the contract importing State Water to the County. As such it has ultimate responsibility on legal and fiscal matters, is responsible for contingent liabilities, and makes decisions about future participation.

In 1991, a Joint Powers Agency (JPA) was formed with a consortium of local water purveyors and private parties that had voted to participate in the State Water Project. This consortium, CCWA, was formed to construct and manage the local facilities for state water within Santa Barbara County. The Board of Supervisors did not abrogate its authority as the ultimate contractor with the State.

Contingent Liability and Taxing Authority

In essence the contract with the SWP requires that the County must make up any defaults in payments to the SWP. This is the contingent liability and the County has pledged the County tax base to secure the timely payments in case of default. The defaults that may be anticipated are those entities in the County which have elected to participate in bringing SWP water to the County pursuant to Water Supply Retention Agreements negotiated with the County. The terms of the County's SWP contract require that payments against invoices from DWR must be paid within the year of the invoice. The County has the requisite authority and means to make these payments either out of the general fund or with an *ad valorem* tax on the County's tax base. There should be no question that the County can satisfy the payments in cases of default.

If CCWA is assigned the contract it is assumed they will be responsible for the contingent liability. Presently CCWA does not have taxing authority. It has been negotiating agreements with some of its member entities to have rights under the Water Supply Agreements assigned to the CCWA. CCWA hopes thereby to secure sufficient access to tax bases that they can satisfy the contingent liability conditions demanded by the Burns-Porter Act, the initiative that launched the SWP. There is also a question as to how much access to the tax bases of public member entities CCWA will have. Some of these public member entities are created under the provisions of special service districts whose taxing powers are not on the

same level of the County. In such districts, before a tax can be levied, a majority vote of the district's residents must be secured. It is also difficult to see how a vote in one of these special service districts could be used to levy taxes to provide payment occasioned by the default of any other member entity. From this argument it is difficult to understand how the CCWA proposal can offer a contingent liability agreement with the SWP as robust as that now in hand with the County's contract SWP contract. How all of this would play out under Proposition 217, restricting levies on property without a vote of the people, is yet to be determined.

Major Concerns with CCWA Controlling the SWP Contract

Another reason the SWP contract should remain within the purview of the BOS is that CCWA is likely to make decisions based on the controlling interest of Santa Maria, which may not be in the best interest of the community as a whole.

Voting on issues before CCWA is weighted according to each agency's percentage of SWP participation. Currently the City of Santa Maria holds 42% of the voting power. Santa Maria is seeking an additional 12,000 acre-feet of SW that could bring its voting participation to well over 50%. Looking forward, there are decisions that must be made, which should be reviewed in a wider public context under the BOS rather than one water agency's board of weighted votes.

Fiscal Uncertainty

Every dollar spent on State Water by DWR in Sacramento is passed down to the ratepayers in our County who receive water from the Project. The costs are allocated on a participation percentage basis. These costs are in addition to the bond money owed for the construction of the Coastal Aqueduct facilities. South Coast water agencies, especially, have been hard hit as SWP costs take an increasing percentage of their budgets. We have little control over much of what is spent in Sacramento, but there are areas where we do, which is why the BOS needs to continue its role as the representative contractor for the SWP. An example: The Twin Tunnels.

- The Twin/Single Tunnel Project -

Twin Tunnel costs have spun out of control. Completion of the Twin Tunnels construction is estimated to be \$17 Billion not including financing costs. To date this project has cost \$500 million in planning with project engineering only 10% complete. CCWA is responsible for its *pro rata* share of this planning cost. State authorities acknowledge that no new water will result from their completion. No project funding has been specified and DWR is attempting to fund the project by extending our current bonded indebtedness out into the future. The intent at the State level is to find a mechanism to fund the Tunnels without a vote of the ratepayers who will ultimately pay. Other counties have held hearings and questioned where all of this is heading. Santa Barbara's Board of Supervisors should do the same, but a County-wide forum can't happen if total authority is given to CCWA. The financial burdens of the Twin Tunnels should be a countywide discussion as to whether we choose to participate, as it is ultimately the County's fiscal responsibility.

- Oroville Dam -

The dam was built and is maintained by the Bureau of Reclamation and DWR in its capacity of administering it as a source for the SWP. Expenses associated with its administration and maintenance are pro-rated among SWP participating contractors. Because of

the recent failure of the dam spillway and associated damages, DWR is responsible for a large portion of its repair. In addition, the District Attorney of Butte County is suing DWR for negligence and damages. These lawsuits are just beginning and the final invoices for all of these expenses will be sent to the SWP contractors.

There is no good rationale for CCWA to be the sole and final arbiter on these matters, especially with the weighted voting scenario. The BOS is more directly representative of the people of Santa Barbara and should remain the final authority on the important State Water issues.

(r) Project Interest Rate

"Project interest rate" shall mean the weighted average of the interest rates paid by the State on bonds issued under the Bond Act without regard to any premiums received on the sale thereof. Until bonds are issued and sold under the Bond Act, the project interest rate shall be four percent (4%) per annum, and after said bonds have been issued said rate shall be computed as a decimal fraction to five places.

(s) Capital Costs

"Capital costs" shall mean all costs incurred subsequent to authorization of a facility for construction by the Legislature or by administrative action pursuant to Section 11290 of the Water Code and to the Bond Act, including those so incurred prior to the beginning of the project repayment period as herein defined and any accrued unpaid interest charges thereon at the rates specified herein, which are properly chargeable to the construction of and the furnishing of equipment for the facilities of the System, including the costs of surveys, engineering studies, exploratory work, designs, preparation of construction plans and specifications, acquisition of lands, easements and rights-of-way, relocation work, and essential administrative work in connection therewith, all as shown upon the official records of the Department of Water Resources.

(t) Project Repayment Period

"Project repayment period" shall mean that period of years commencing on January 1, 1961, and extending until all bonds secured by the pledge of revenues provided for by the Bond Act have been repaid.

(u) Municipal Use

"Municipal use" shall mean all those uses of water common to the municipal water supply of a city, town, or other similar population group, including uses for domestic purposes, uses for the purposes of commerce, trade or industry, and any other use incidental thereto for any beneficial purpose.

(v) Manufacturing Use

"Manufacturing use" shall mean any use of water primarily in the production of finished goods for market.

(w) Agricultural Use

"Agricultural use" shall mean any use of water primarily in the production of plant crops or livestock for market, including any use incidental thereto for domestic or stock-watering purposes.

(x) Subject to Approval by the State

"Subject to approval by the State" shall mean subject to the determination and judgment of the State as to acceptability.

(y) Area of Origin Statutes

"Area of origin statutes" shall mean Sections 10505 and 11460 through 11463 of the Water Code as now existing or hereafter amended.

2. TERM OF CONTRACT

This contract shall become effective on the date first above written and shall remain in effect throughout the project repayment period, or for seventy-five (75) years, whichever period is longer.

3. VALIDATION

Within one (1) year after the effective date of this contract, the Agency shall submit this contract to a court of competent jurisdiction for determination of its validity by a proceeding in mandamus or other appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment. In the event that this contract is determined to be invalid by such final decree or judgment, the State shall make all reasonable efforts to obtain validating legislation at the next session of the Legislature empowered to consider such legislation, and within six (6) months after the close of such session, if such legislation shall have been enacted, the Agency shall submit this contract to a court of competent jurisdiction for redetermination of its validity by appropriate proceeding or action, which proceeding or action shall be diligently prosecuted to final decree or judgment.

4. OPTION FOR CONTINUED SERVICE

By written notice to the State at least six (6) months prior to the expiration of the term of this contract, the Agency may elect to receive continued service after expiration of said term under the following conditions unless otherwise agreed to:

- (1) Service of water in annual amounts up to and including the Agency's maximum annual entitlement hereunder.
- (2) Service of water at no greater cost to the Agency than would have been the case had this contract continued in effect.
- (3) Service of water under the same physical conditions of service, including time, place, amount and rate of delivery, as are provided for hereunder.
- (4) Retention of the same chemical quality objective provision as is set forth herein.
- (5) Retention of the same options to utilize the project transportation facilities as are provided for in Articles 18(b) and 18(c), to the extent such options are then applicable.

Other terms and conditions of the continued service shall be reasonable and equitable and shall be mutually agreed upon. In the event that said terms and condi-

Art. 5

tions provide for continued service for a limited number of years only, the Agency shall have the same option to receive continued service here provided for upon the expiration of that and each succeeding period of continued service.

5. PLEDGE OF REVENUES

This contract is entered into for the direct benefit of the holders and owners of all general obligation bonds issued under the Bond Act, and the income and revenues derived from this contract are pledged to the purposes and in the priority set forth in that act.

B. WATER SERVICE PROVISIONS

6. ANNUAL ENTITLEMENTS

(a) Year of Initial Water Delivery

The year of initial water delivery to the Agency is presently estimated to be 1980. To the extent practicable, the State shall notify the Agency of any change in this estimate.

(b) Agency's Annual Entitlements to Water

Commencing with the year of initial water delivery to the Agency, the State each year shall make available for delivery to the Agency the amounts of project water designated in Table A of this contract, which amounts are referred to in this contract as the Agency's annual entitlements.

(c) Obligation of State to Complete Facilities

Subject to the availability of funds, the State shall make all reasonable efforts consistent with sound fiscal policies, reasonable construction schedules, and proper operating procedures to complete the project facilities necessary for delivery of project water to the Agency in such manner and at such times that said delivery can commence in or before the year specified in subdivision (a) of this article, and continue in the amounts designated in Table A of this contract.

7. CHANGES IN ANNUAL ENTITLEMENTS; MAXIMUM ANNUAL ENTITLEMENT

(a) Changes in Annual Entitlements

The Agency may, at any time or times during the term of this contract, by timely written notice furnished to the State, request that project water be made available to it thereafter in annual amounts greater or less than the annual entitlements designated in Table A of this contract. Subject to approval by the State of any such request, the State's construction schedule shall be adjusted to the extent necessary to satisfy the request, and the requested increases or decreases in said annual entitlements shall be incorporated in said Table A by amendment thereof: *Provided*, That no such

change shall be approved if in the judgment of the State it would impair the financial feasibility of the project facilities.

(b) Maximum Annual Entitlement of Agency

The maximum amount of project water to be made available to the Agency in any one year under this contract shall be that specified in Table A of this contract and in said table designated as the Agency's "Maximum Annual Entitlement." In no event shall such maximum amount of project water to be made available to the Agency be increased over this amount, except as is otherwise provided in this contract.

8. OPTION TO INCREASE MAXIMUM ANNUAL ENTITLEMENT

In the event that the maximum annual entitlements under all contracts executed by the State on or before December 31, 1963, do not aggregate the amount of the minimum project yield as herein defined, the State shall immediately notify the Agency and all other contractors, and the Agency may elect to become entitled to the uncontracted for portion of the minimum project yield in or up to an amount which bears the same ratio to such uncontracted for portion as the Agency's maximum annual entitlement bears to the total of the maximum annual entitlements of all contractors as of that date: *Provided*, That such option may be exercised only to the extent that the water involved can be put to beneficial use within a reasonable period of time. Such option shall become effective on the date that the Agency receives said notice from the State and shall remain in effect through September 30, 1964. If the full amount of such uncontracted for portion of the minimum project yield is not preempted by the Agency under this option and by other contractors through the exercise of similar options on or before September 30, 1964, the Agency may request that it become entitled to any amount of such water not so preempted. Such request shall be subject to approval by the State and shall be considered in the light of all similar requests from other contractors. The State shall approve such request only to the extent that the water involved can be put to beneficial use within a reasonable period of time. Upon the exercise of such option or upon the approval of such request the Agency's maximum annual entitlement in Table A of this contract shall be increased by the amount of the additional entitlement thereby obtained by amendment of that table, and the Agency shall become obligated and hereby agrees to pay to the State a proportionate share of the costs attributable to such increase in accordance with cost allocation principles and procedures set forth in this contract. The service of and payment for said increased entitlement shall in all respects be subject to the terms and conditions of this contract.

LAW OFFICE OF ROGER B. MOORE

LAND, WATER AND ENVIRONMENTAL LAW

337 17TH STREET, SUITE 211
OAKLAND, CALIFORNIA, 94612
LANDWATER.COM, RBM@LANDWATER.COM, 510-548-1401
ADMITTED IN CALIFORNIA

December 11, 2018

Karla Nemeth, Director
California Department of Water Resources
1416 9th Street, Room 1115
Sacramento, CA 9581

via email (Janiene.Friend@water.ca.gov)

Re: Prematurity of Final Decision By Lead or Responsible Agencies to Authorize
DWR's Proposed "Contract Extension" Amendments

Dear Ms. Nemeth:

We represent counties and other agencies from the Delta region and northern Sacramento Valley in the coordinated proceeding in Sacramento County Superior Court on DWR's proposed California WaterFix project (JCCP 4942), including the Counties of San Joaquin, Contra Costa, Solano, Yolo, Butte, and Plumas, as well as Central Delta Water Agency, Contra Costa County Water Agency, Plumas County Flood Control and Water Conservation District, and Local Agencies of the North Delta. In DWR's pending WaterFix validation action in JCCP 4942, these public agencies, among others, dispute DWR's authority to impose billions of dollars in revenue bond debt for California WaterFix under the State Water Project (SWP) contracts and other laws.

DWR's efforts to impose binding debt for the Delta Tunnels project (a.k.a. "WaterFix") also relate closely to its proposed "contract extension" amendments to SWP contracts set to expire starting in 2035. The beleaguered and massively expensive Delta Tunnels project is and remains, the proverbial elephant in the room. The amendments not only extend the contracts through 2085; they also propose to remove existing constraints on covered "facilities" that would otherwise prevent imposing revenue bond debt for WaterFix, and potentially other costly projects opposed by some contractors and the public. Four members of Congress, noting that "it is clear that DWR's request for a contract extension is rooted in its desire to bond the cost of WaterFix," recently warned that making "such a significant and costly decision" would be premature and risky prior to determination of the validation action (Exhibit 1). Moreover, proceeding to final approval

Karla Nemeth, Director
California Department of Water Resources
December 11, 2018
Page 2

would piecemeal consideration of the extension amendments from a second set of “water supply” contract amendments facilitating WaterFix, for which Draft EIR comments are not due until January 9, 2019.

When DWR certified its Contract Extension Final EIR on November 13, 2018, it did not make a final project decision, and instead indicated that the State Water Project Analysis Office and Office of Chief Counsel would first issue a “follow-on” memorandum and recommendation. Metropolitan Water District of Southern California (MWD) and Santa Clara Valley Water District (SCVWD) appear to have improperly calendared the contract extension for consideration as responsible agencies without even waiting for the lead agency’s evaluation and project decision, much less any opportunity for public review and discussion. To avoid a high potential for confusion, uncertainty, and prejudice, decisions must clearly inform the public of the timing of any Notices of Determination under CEQA, and any final authorizations subject to the requirements of the validation statute (Code Civ. Proc., §§ 860, et seq.).

As detailed below, it is both premature and risky for DWR as lead agency, or any responsible agencies, to finally authorize DWR’s proposed contract extension amendments at this time. First, deficiencies in the record preclude final determination by both lead and responsible agencies under CEQA. Absent from the documents referenced in DWR’s November 13, 2018 certification memorandum and the responsible agency agenda items are the complete hearings, oral and written testimony (including testimony from one of the undersigned counsel attached in written form as Exhibit 2), and correspondence from closely related legislative hearings on DWR’s proposed contract extension. Hearings before the Senate Natural Resources and Water Committee (SNRWC) on July 3, 2018 and the Joint Legislative and Budget Committee (JLBC) on September 11, 2018, bear directly on the environmental review for the contract extension.¹ This includes the foundational issue of the extension project’s relationship to the Delta Tunnels and the separately reviewed Water Supply Contract Amendments—yet this critically important relationship is not analyzed in DWR’s Final EIR and certification.²

¹ See, e.g., DWR’s Water Supply Contract Extension web page, including all linked documents (<https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>); SNRWC’s web page, including all linked documents for July 3, 2018 hearing and web link to video recording of hearing (<https://sntr.senate.ca.gov/content/2018-informationaloversight-hearings>); JLBC’s web page, including all linked documents for September 11, 2018 hearing and cancelled August 30, 2018 hearing (<https://www.senate.ca.gov/legislativebudget>); video link to September 11, 2018 JLBC hearing on proposed SWP contract extension (http://calchannel.granicus.com/MediaPlayer.php?view_id=2&clip_id=5820).

² See, e.g., SNRWC Background Brief to July 3, 2018 hearing, p. 17 (referencing the recognition of SWP contractors and DWR that the proposed contract extension amendments are “a necessary, but not sufficient condition to incorporate WaterFix into

Second, 2018 comments, mainly referenced to legislative hearings, underscore the prematurity of final approval. Public agency critics throughout California, from Plumas County and the Delta Counties Coalition to San Diego County, criticized DWR's efforts to finalize the contract extension without integrated review of all DWR's proposed amendments related to the Delta Tunnels, including the Water Supply Contract Amendments still awaiting public comment and completion of review. (Exhibit 3.) The Legislative Delta Caucus observed that these "poorly defined" amendments would have "potential adverse impacts far beyond their apparent scope. There is much that remains unknown regarding the extensive changes to the SWP contracts that are being proposed and how the changes will impact property taxes, water rates, the fiscal integrity of the SWP and General Fund." (Exhibit 4.) Following the 2018 legislative hearings, more than a dozen organizations identified numerous changed circumstances requiring additional environmental review since public comment closed in October 2016, only to have DWR, in its November 13, 2018 certification memo, respond with the *non-sequitur* that the general issue areas were discussed in 2016 (Exhibit 5). Commentary in major newspapers criticized the defective process and lack of transparency surrounding the contract extension, as well as DWR's attempts to leverage WaterFix indebtedness without adequate review and debate (Exhibit 6).

Third, testimony at the September 11, 2018 JLBC hearing undermines the premise of independence from WaterFix upon which DWR's separate Contract Extension Final EIR is founded. That includes your own testimony on DWR's behalf, following questioning from Senator Richard Pan, that DWR plans to "use these amendments to finance WaterFix," and the testimony of Rachel Ehlers of the Legislative Accounting Office that the contract extension amendments would "affect and facilitate" WaterFix.³ Facilitation of WaterFix through the contract extension amendments is also addressed in the testimony of Congressman McNerney and of Roger Moore at the same hearing.

Fourth, DWR sidesteps meaningful analysis of a major project element. (See, e.g., *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 904-920 (requiring CEQA analysis prior to amending contract provision).) As addressed in the legislative testimony of Roger Moore, echoing commenters on the Draft EIR (Exhibit 2), DWR's extension amendments would eliminate limitations on covered "facilities" under article 1(hh)(8) of current SWP contracts that would otherwise render WaterFix ineligible for revenue bond financing. The Final EIR fails to address public comments on impacts that would reasonably result from such a change in language. (See, e.g., PCL, et al.'s October 16, 2016 EIR Comments, p. 6, and Ex. A, p. 4.) By contrast, DWR's assurance that projects facilitated by the contract

the SWP," and the contention of many organizations that contract amendments remain premature while WaterFix issues are unresolved).

³ Video link to September 11, 2018 JLBC hearing, *op cit.*; see also Exhibit 5, pp. 2, 5, fn. 2, 16-17 (quoting DWR Director's testimony) and p. 13, fn. 46 (referencing testimony of Roger Moore).

Karla Nemeth, Director
California Department of Water Resources
December 11, 2018
Page 4

extension will be covered by separate CEQA review (e.g., FEIR 2-10, 134) ring hollow. DWR's Delta Tunnels EIR and project approval neither admitted nor analyzed dependence on a subsequent SWP contract amendment. Critically, CEQA review of later-approved projects would come too late to address the consequences of redefining covered "facilities," because the current contract language would already be eliminated.

Fifth, the FEIR undermines its premise that the contract extension amendments proposed by DWR have independent utility as a "separate, independent project" addressing debt compression problems. (FEIR, 2-9.) Debt compression is based on the comparatively short maturity dates of existing SWP contracts. (*id.*) And the FEIR recognizes that the Evergreen Clause in Article 4 of the SWP contracts already provides a way to extend these dates. (E.g., FEIR, 2-3 to 2-5, 2-33.) DWR has not shown its version of the amendments, including the proposed facilities redefinition, to be necessary to ensure continued water deliveries or responsibly address operation and maintenance needs. By facilitating the issuance of potentially billions of dollars to construct the Delta Tunnels project, and perhaps other projects not currently eligible, DWR may under the guise of risk reduction force a risky escalation of indebtedness.

Sixth, as addressed in the written testimony of Roger Moore and the comments of the Delta Counties Coalition (Exhibits 2, 3), Water Code prerequisites for proceeding to finality on the extension amendments (Wat. Code, §§ 147, 147.5) still have not been met.

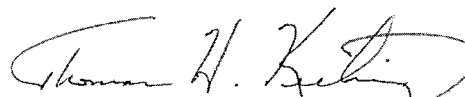
Lastly, to avoid the piecemealing problem discussed in Plumas County's letter (Exhibit 3), all DWR's proposed amendments must be reviewed and considered together prior to finality, including the proposed extension amendments and Water Supply Contract Amendments.

Respectfully,

Roger B. Moore
Law Office of Roger B. Moore



Thomas H. Keeling
Freeman Firm, a PLC



Attorneys for Public Agencies County of
San Joaquin, Central Delta Water Agency,
County of Contra Costa, Contra Costa
County Water Agency, County of Solano,

Karla Nemeth, Director
California Department of Water Resources
December 11, 2018
Page 5

County of Yolo, County of Butte, County of
Plumas, and Plumas County Flood Control
and Water Conservation District

Osha Meserve
Soluri Meserve, a Law Corporation

A handwritten signature in cursive script, appearing to read "Osha Meserve", with a horizontal line extending to the right.

Attorney for Local Agencies of the North
Delta

cc: Metropolitan Water District of Southern California
Santa Clara Valley Water District
State Water Contractors, Inc.

EXHIBIT 1

Congress of the United States
Washington, DC 20515

September 10, 2018

The Honorable Toni Atkins
California Senate President pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Holly Mitchell
Chair, Joint Legislative Budget Committee
State Capitol, Room 5080
Sacramento, CA 95814

The Honorable Anthony Rendon
California Assembly Speaker
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Phil Ting
Vice Chair, Joint Legislative Budget Committee
State Capitol, Room 6026
Sacramento, CA 95814

RE: Hearing on Department of Water Resources: Proposed Water Supply Contract Extensions & Amendments

Dear Pro Tem Atkins, Speaker Rendon, Chair Mitchell, and Vice Chair Ting:

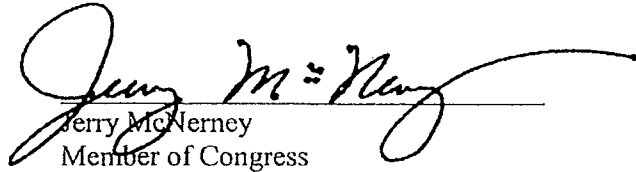
As Californians and Members of Congress, we are writing to request that the Joint Legislative Budget Committee (“Committee”) hearing, which was originally scheduled for August 30th and postponed until September 11th, be canceled pending a ruling by the Sacramento County Superior Court on the Department of Water Resources’ (DWR) validation action for the California WaterFix project. In its validation action, DWR is asking the court to affirm that it has the legal authority to issue bonds to pay for the \$17 billion twin tunnels project.

By holding this hearing, the Committee would take the first step towards extending the State Water Project (SWP) contract through 2085. It is our view that this step is premature, as the current SWP contract does not expire for an additional seventeen years. It is clear that DWR’s request for a contract extension is rooted in its desire to bond for the cost of WaterFix as it is unlikely that DWR will find lenders to issue bonds that will mature beyond the life of its contract, which in this case, is seventeen years. Such a bond would have higher financing costs than a thirty-year bond. Until there is a determination on DWR’s validation action, the Committee lacks the information needed to make such a significant and costly decision.

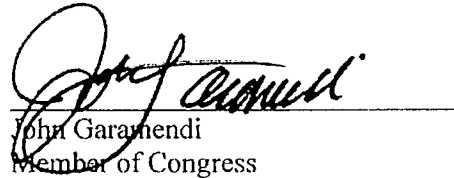
Additionally, we are deeply concerned about the exorbitant cost of this project and the lack of transparency throughout this process. Should the hearing be held, and the project move forward, Californians would be saddled with billions of dollars in debt without further input from the state legislature or the public.

Until the court rules on the validity of DWR's claim, the Committee is pushing this project forward with insufficient information, and we strongly urge the cancellation of this hearing.

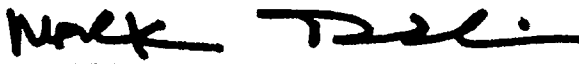
Sincerely,



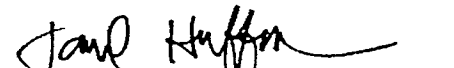
Jerry McNerney
Member of Congress



John Garamendi
Member of Congress



Mark DeSaulnier
Member of Congress



Jared Huffman
Member of Congress

CC: Senator Patricia Bates
Senator Jean Fuller
Senator Ricardo Lara
Senator William W. Monning
Senator Jim Nielsen
Senator Richard Pan
Senator Nancy Skinner
Assemblymember Dr. Joaquin Arambula
Assemblymember Richard Bloom
Assemblymember Rocky J. Chavez
Assemblymember Kevin McCarty
Assemblymember Melissa Melendez
Assemblymember Jay Obernolte
Assemblymember Dr. Shirley Weber

Reps. McNerney, Garamendi, DeSaulnier & Huffman Urge California State Legislature to Cancel WaterFix Hearing

Sep 10, 2018 | Press Release

Holding Tomorrow's Joint Legislative Budget Committee Hearing Would Move the Tunnels One Step Closer

Washington, DC – Today, California Congressmen Jerry McNerney (CA-09), John Garamendi (CA-03), Mark DeSaulnier (CA-11) and Jared Huffman (CA-02) sent a letter to members of the California State Legislature, urging the cancellation of the Joint Legislative Budget Committee's informational hearing on the Department of Water Resources' proposed contract extension and amendments (https://www.senate.ca.gov/sites/senate.ca.gov/files/jlbc_background_9_11_18.pdf) – which includes provisions to push forward with the controversial California WaterFix project.

In their letter, the Congressmen argue that the Committee lacks sufficient information to make such a costly decision, citing the pending legal decision in the Department of Water Resources (DWR) validation action. They write:

"As Californians and Members of Congress, we are writing to request that the Joint Legislative Budget Committee ("Committee") hearing, which was originally scheduled for August 30th and postponed until September 11th, be canceled pending a ruling by the Sacramento County Superior Court on the Department of Water Resources' (DWR) validation action for the California WaterFix project. In its validation action, DWR is asking the court to affirm that it has the legal authority to issue bonds to pay for the \$17 billion twin tunnel project."

By holding this hearing – which is scheduled for September 11th at 10 AM – the Committee would take the first step towards extending the State Water Project (SWP) contracts through 2085, folding in the WaterFix proposal as part of the long-ago approved SWP.

"This is a backroom tactic to force through Governor Brown's controversial and wildly unpopular twin tunnels proposal," said **Congressman McNerney**. "Californians have already made it known that they do not want this project to move forward, but the state legislature is determined to push this through, despite lacking essential information regarding the validity of DWR's claim. This short-sighted water grab would saddle Californians with billions of dollars of debt for generations, and holding this hearing would prevent further input from the state legislature or the public."

"The Budget Committee doesn't have any reason to renew the State Water Project contract right now, except to try to allow cheaper financing for an exorbitant project that doesn't even have the authority to receive any yet. That's putting the cart before the horse," said **Congressman Garamendi**. "The disastrous Twin Tunnels project is the death knell for the Delta, and the Budget Committee shouldn't be helping it at all. But if they're going to, the least it can do is wait until the courts can validate its authority to issue bonds in the first place."

"Tomorrow's hearing is not in the best interest of California taxpayers. Any action by the Committee without resolution on the validation action is premature and presumptuous. Anything else is both financially and environmentally irresponsible, just like the WaterFix project itself," said **Congressman DeSaulnier**.

"Holding a hearing on the controversial Waterfix proposal is part of a deliberate attempt to approve financing for the project before its full cost and impact can be evaluated by the public," said **Congressman Huffman**. "From the get go, the tunnels plan was a grossly oversized, overreaching proposal that would cost too much, violate state and federal law, and threaten to do great harm to Northern California's fishing and farming industries, as well as to tribal communities. Now, the Joint Legislative Budget Committee is trying to jam this project through without even obtaining legal authority to issue bonds to pay for the tunnels. This project needs a reality check and the Committee should cancel this hearing until the courts have affirmed its legality."

The letter was sent to the Joint Legislative Budget Committee Chair, Senator Holly Mitchell, and Vice Chair, Assemblymember Phil Ting, as well as California Senate President pro Tempore Toni Atkins, California Assembly Speaker Anthony Rendon, and all members of the Joint Legislative Budget Committee.

The full letter can be read here (</sites/mcnerney.house.gov/files/JLBC%209.11%20Hearing%20Letter.pdf>).

#

Rep. Jerry McNerney proudly serves the constituents of California's 9th Congressional District that includes portions of San Joaquin, Contra Costa, and Sacramento Counties. For more information on Rep. McNerney's work, [follow him on Facebook \(https://www.facebook.com/jerrymcnerney\)](https://www.facebook.com/jerrymcnerney) and on Twitter [@RepMcNerney \(https://twitter.com/RepMcNerney\)](https://twitter.com/RepMcNerney).

EXHIBIT 2

LAW OFFICE OF ROGER B. MOORE

LAND, WATER AND ENVIRONMENTAL LAW

337 17TH STREET, SUITE 211
OAKLAND, CALIFORNIA, 94612
LANDWATER.COM, RBM@LANDWATER.COM, 510-548-1401
ADMITTED IN CALIFORNIA

September 10, 2018

The Honorable Holly Mitchell
Chair, Joint Legislative Budget Committee
California State Senate
State Capitol, Room 5080
Sacramento, CA 95814

**Re: The Joint Legislative Budget Committee Hearing Set for September 11, 2018,
Cannot Lawfully Serve as the Legislative Hearing Required Before DWR
Finally Approves Amendments Extending its Water Supply Contracts**

Dear Senator Mitchell:

Critics throughout California have wisely called for postponement of the prematurely rescheduled Joint Legislative Budget Committee hearing set for September 11. To the Department of Water Resources, this hearing will tripwire an end to legislative oversight over its misnamed “contract extension” amendments, which propose risky redefinition of the State Water Project facilities eligible for bond financing. These amendments are structured to include financing of the Delta tunnels and make it easier to impose debt for other risky projects through 2085. They would bundle major new risks and costs into the State Water Project under the misleading rubric of an “extension,” making it harder, not easier, to address problems of debt compression and responsibly cover operation, maintenance and repairs of the existing project.

This letter focuses on an even more basic problem. DWR is including the Committee in a risky gamble that the draft amendments DWR furnished to the Committee on May 10, 2018 meet DWR’s duty under Water Code 147.5 to present to the Legislature “the details of the terms and conditions of the contract and how they serve as a template for the remaining long-term water supply contracts.” Nothing in the history of section 147.5 suggests anything other than what these terms say. The “terms and conditions” must be the operative ones providing this template, not drafts subject to modification after responding to comments and completing review of related terms. But DWR’s draft extension amendments, which failed consensus even among the state water contractors and have garnered an outpouring of still-unanswered public criticism across the state, are far from ready for prime time.

To borrow a soccer analogy, if DWR relies on the Committee's scheduled September 11 hearing, even if held, to fulfill its duties under Water Code section 147.5, it would amount to the legal equivalent of scoring an own goal. As confirmed in the Committee's background paper for the September 11 hearing (page 3), DWR has no plans to complete the final EIR "until after the hearing has taken place"—an event DWR understands as ending Legislative oversight over any of its proposed amendments related to the Delta tunnels. But DWR's own actions belie the urgency it attributes to completing "extension" of contracts that start to expire in 2035. Although DWR closed the public comment period on its Contract Extension Draft EIR in October 2016, DWR has yet to respond to these comments, and omitted them from its website and background documents for the legislative hearings. (<https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.)¹

Nothing in Water Code section 147.5, or any other law entitles DWR to schedule the required hearing without responding to comments and completing required review. Indeed, to suggest otherwise would stand the CEQA process on its head. As DWR has conceded, the still-unreleased Final EIR must "serve as the basis for DWR and the individual contractors to determine whether to approve the Extension Amendment." (<https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.)

No extension amendments can be adopted until after DWR later completes this process under CEQA and other requirements. Basing the Committee's required hearing on the current draft would serve no purpose, other than to foment an avoidable legal dispute over whether any eventual "terms and conditions" match current ones. Relying on a premature hearing could also prejudice CEQA review, creating a disincentive to make constructive changes reducing environmental and financial risks in response to public comments. As DWR has learned the hard way after approving earlier contract amendments, the EIR must serve as the "heart and soul" of CEQA's "meticulous process designed to ensure the environment is protected." (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911.)

Other requirements of law also must be met before holding the required Legislative hearing. As outlined in the Delta Counties Coalition's June 11, 2018 letter requesting hearing postponement, DWR has failed to complete disclosures and financial analysis required under Water Code 147, and piecemealed assessment of its two related sets of contract amendments. (http://www.delta.saccounty.net/content/Documents/2018-06-11%20Letter%20to%20Joint%20Legislative%20Committee%20Re%20DWR.PDF_)

¹ For examples of significant comments with extensive supporting documents, see, e.g., Comments of Planning and Conservation League, PCFFA and Environmental Water Caucus, dated October 17, 2016, <http://www.deltatunnelsboondoggle.com/wp-content/uploads/2017/01/SWP-contract-extension-PCL-DEIR-comments-10-17-16.pdf>; Comments of Center for Food Safety, dated October 17, 2016; https://www.centerforfoodsafety.org/files/2016-10-17-water-supply-contract-extension-project-comments--final--reduced-1_70236.pdf.

DWR seeks to rush through the contract extension without confronting the elephant in the room, already challenged in pending litigation by water contractors, counties and cities, and environmental critics: whether DWR lacked authority to impose the costs of the WaterFix tunnel project without reaching agreement to modify the water supply contracts. (See Delta Counties Coalition letter, *op cit.*) The Committee's background paper (page 3) reports DWR's latest attempt to avoid the elephant: "[t]he department believes that Article 1(ap) of the existing contracts, which defines 'Water System Facilities' for which revenue bonds may be sold, already authorizes the sale of bonds to finance construction of Water Fix facilities."

This statement needs deciphering. In the current contracts, Article 1(ap) does not exist. "Water system facilities" are defined in Article 1(hh).² The importance of this would have been clearer if DWR had disclosed and addressed comments on the 2016 Contract Extension Draft EIR. Commenters warned that DWR's "extension" amendments would remove Article 1(hh)'s major obstacle to covering revenue bonds for the Delta tunnels. (See, e.g., PCL, et al.'s October 17, 2016 comments on Contract Extension Draft EIR, p. 6.)³ DWR knew what this meant. The March 19, 2014 STIFEL memo, Exhibit A to PCL's comments, page 4, noted that "DWR's legal counsel has concluded that BDCP is not on the list of approved projects that are eligible for funding, including through bond financing."

DWR did not simply conjure Article 1(ap). That is where the expanded definition of "water system facilities" appears in DWR's markup of the SWP contract to include its proposed extension amendments.⁴ The provision describes the authority DWR wished it already had. In short, rather than providing a sounder financial footing, DWR's proposed amendments weaken accountability, offering contractual cover to make the State Water Project more risky and costly for taxpayers and ratepayers. We should only be at the beginning, not the end, of legislative oversight.

Respectfully,


Roger B. Moore

² <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/SWP-Water-Contractors/The-Metropolitan-Water-District-of-Southern-California/Files/MWDSC-CC.pdf?la=en&hash=94D08E5487EED0E12E0119EA2D5C2EC0365C1FEF>.

³ <http://www.deltatunnelsboondoggle.com/wp-content/uploads/2017/01/SWP-contract-extension-PCL-DEIR-comments-10-17-16.pdf>.

⁴ <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/CalWaterFix-contract-amendment/Files/Cont-Ext---Model-ConsolidatedContract-Final-for-Leg-4-10-18.pdf?la=en&hash=C90B58FD840FE055F7ADD5F9E3DBC9223B3827DF>.

LAW OFFICE OF ROGER B. MOORE

LAND, WATER AND ENVIRONMENTAL LAW

337 17TH STREET, SUITE 211
OAKLAND, CALIFORNIA, 94612
LANDWATER.COM, RBM@LANDWATER.COM, 510-548-1401
ADMITTED IN CALIFORNIA

July 1, 2018

The Honorable Hannah-Beth Jackson
California State Senate
State Capitol, Room 2032
Sacramento, CA 95814

Re: Memorandum for July 3, 2018 Informational Hearing: Opposing Premature Curtailment of Legislative Oversight Over DWR's Risky Proposal to Redefine the State Water Project Under the Premise of "Contract Extension"

Dear Senator Jackson:

As background for the informational hearing scheduled for the Senate Natural Resources and Water Committee on July 3, 2018, this memorandum, prepared at the request of the California Water Impact Network (CWIN), analyzes the need for careful and probing legislative oversight over proposals of the Department of Water Resources (DWR) to amend and redefine key elements of the State Water Project (SWP) applying through 2085 under the benign-sounding premise of a "contract extension." The full scope of proposed changes to long-term SWP contracts remains unknown, and environmental and fiscal reviews remain far from complete. Nonetheless, DWR abruptly requested on May 10, 2018 that the Joint Legislative Budget Committee (JLBC) schedule the *final* legislative hearing required under Water Code section 147.5 prior to approving renewal or extension of SWP contracts.¹ This analysis, focusing on several legal and practical problems, should be reviewed along with the attached June 26, 2018 letter submitted jointly by CWIN and 16 other organizations opposing DWR's request, which explains the fiscal and policy risks in greater detail.

A contrived sense of urgency accompanies DWR's request, which in essence asks the Legislature to exercise oversight over major changes meant to govern the SWP for more than six decades by ending it just as it begins. A child born this week will reach adulthood before the SWP contract held by the Santa Barbara Flood Control and Water

¹ DWR's request is at <https://www.water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.

Conservation District (Santa Barbara FCD) expires on February 26, 2038. All of the 29 SWP contracts are not scheduled to expire until 2035 to 2042.² All SWP contractors long before then may choose whether to seek renewal of contracts on current terms or agree to revisions. Any proposed changes demand careful consideration of long-term needs and risks. Despite reaching a non-binding “agreement in principle” (AIP) with most, but not all, of the SWP contractors in 2014, and releasing a 2016 Draft EIR, DWR has neither reached consensus on binding contract terms nor completed environmental review.

Far from ensuring responsible legislative oversight, moving quickly to the JLBC hearing under Water Code section 147.5 will more likely end it, emboldening DWR after a minimum of only sixty days to move, without further legislative review, toward “final approval of the renewal or extension” of water supply contracts with SWP contractors.³ Curtailing legislative oversight over DWR’s proposed changes would shortchange legal, environmental and fiscal accountability over some of the foremost changes proposed in the SWP’s history. This review highlights several problems:

- **Incompleteness and Prematurity:** DWR has not released a Final EIR or responses to comments, despite major criticisms before DWR closed public comment on the Draft EIR in October 2016, and lacks consensus on complete and final amendments.
- **Facilitation of Delta Tunnels and Other Risky Projects:** DWR’s contract extension amendments, despite their label, would remove timing and facilities limitations on revenue bond debt for the Delta tunnels (CaliforniaWaterFix), and would make it easier for DWR and the largest SWP contractors to impose further debt for other costly and risky projects.
- **Piecemealing of Proposed Contract Terms:** Oversight of the proposed contract extension must include integrated consideration of all DWR’s proposed SWP amendments, including additional pending WaterFix SWP amendments lacking an EIR.
- **Compounding the SWP’s “Too Big to Fail” Problem:** DWR’s proposed extension amendments, including the redefinition of SWP facilities, are neither necessary nor helpful to ensure continued SWP water deliveries, extend the contract maturity dates, or responsibly address operation and maintenance needs. On the contrary, the

² See the list of execution and termination dates posted on DWR’s website: http://wdl.water.ca.gov/swpao/watercontractextension/docs/00024-Copy%20of%20Water_Supply_Contracts_Termination_Dates.pdf.

³ Wat. Code, § 147.5 provides, in pertinent part, that “[a]t least 60 days prior to the final approval of the renewal or extension of a long-term water supply contract between the department and a state water project contractor, the department shall present at an informational hearing before the Legislature the details of the terms and conditions of the contract and how they serve as a template for the remaining long-term water supply contracts.”

amendments could result in costly escalation of SWP indebtedness, belying their ostensible purpose to make costs for repairs and retrofits of SWP facilities more manageable.

- **Continuing Use of “Paper Water” and Unsustainable Delta Exports:** DWR’s extension amendments avoid chronic problems still facing the SWP, which climate change will likely worsen in the decades ahead: inability to deliver all but half or less of the “paper” amounts referenced in Table A of the SWP contracts, and unsustainable exports of water out of the Delta despite legal mandates to reduce that reliance.

These concerns reflect my independent review of primary documents, legal research, and experience reviewing SWP contracts for more than two decades. I have closely followed and studied the roles and responsibilities of DWR and SWP contractors since 1995, when I represented petitioners in their successful challenge to environmental review of the Monterey Amendments.⁴

The points raised here, however, are not simply tied to concerns of critics of those earlier amendments, or of the Delta tunnels. The SWP ultimately serves the people of California rather than any individual contractor.⁵ Supporters as well as detractors of California WaterFix and other projects are united by the need to ensure that over next 67 years, SWP operation proceeds consistently with other laws, including those protecting other water users, areas of origin, the Delta, and the environment, and that any revised SWP contract terms realistically address the needs of the 21st century rather than an “aura of unreality.”⁶ Legislative oversight over DWR’s proposed contract extension, and avoiding premature termination of that oversight, can assist in ensuring that any changes in SWP contract terms, as well as other laws, match with these modern needs.⁷

Incompleteness and Prematurity

Water Code section 147.5 requires disclosure of the “terms and conditions” of DWR’s proposed amendments. Here, those terms remain incomplete and subject to substantial revisions or additions. DWR has still not finished the environmental review it recognizes as required for the contract extension. Although DWR released its Water Supply Contract Extension Draft EIR in August 2016, it has yet to release its Final EIR. DWR’s Executive Summary supporting its request for legislative hearing recognizes that

⁴ See *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892 (*PCL v. DWR*).

⁵ See, e.g., Wat. Code, § 12931.

⁶ *PCL v. DWR*, 83 Cal.App.4th at 912.

⁷ See, e.g., A. Rossmann, *Bring Us Laws to Match Our Rivers*, California Law and Policy Reporter 18:4 (January 2008), <http://landwater.org/wp-content/uploads/2014/02/Bring-Us-Law-To-Match-Our-Rivers.pdf>.

the Final EIR is the document that will “serve as the basis for DWR and the individual contractors to determine whether to approve the Extension Amendment,” and that DWR does not plan to release the Final EIR until after the JLBC holds its statutory hearing.⁸

Holding the final hearing before DWR has even completed its operative EIR would undercut the very point of Water Code section 147.5, making it impossible to know whether DWR’s “terms and conditions” will match what may eventually govern the contract extension. The eventual terms cannot be deemed a foregone conclusion in the absence of that EIR, which must serve as the “heart and soul” of CEQA’s “meticulous process designed to ensure the environment is protected.”⁹ CEQA requires an “interactive process of assessment and responsive project modification that must be genuine.”¹⁰

Here, the “terms and conditions” DWR proposes for the SWP contracts will not only affect the environment in a narrow sense, but also the public accountability and financial integrity of a water project serving millions of Californians. Moreover, CEQA is just one of numerous laws and legal precedents that did not yet exist when the original SWP contracts were executed. In any extended contract period, DWR and the SWP contractors must also exercise caution to ensure that contracts meet the requirements of other laws, including the foundational doctrines of public trust and reasonable use and the statutory mandate to “reduce reliance on the Delta.”¹¹ Accordingly, it also matters that the still-incomplete EIR process protects “informed self-government” as well as the environment.¹²

DWR’s hearing request and supporting documents fail to address comments on the contract extension amendments. Missing from DWR’s supporting materials are detailed comments, some with hundreds of pages of exhibits, which should be posted on

⁸ DWR, March 9, 2018, Executive Summary, p. 4, posted at <https://water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.

⁹ *PCL v. DWR*, 83 Cal.App.4th at 911.

¹⁰ *County of Inyo v. City of Los Angeles* (VI) (1984) 160 Cal.App.3d 1178, 1185.

¹¹ Wat. Code, § 85021 (“The policy of the State of California is to reduce reliance on the Delta in meeting California’s future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency”); Wat. Code, § 85023 (the constitutional principle of reasonable use and the public trust doctrine are “foundations of state water management policy” that are “particularly important and applicable to the Delta”).

¹² *Laurel Heights Improvement Assn. v. Regents* (1988) 47 Cal.3d 376, 392.

DWR's website and made available to committee members before any further hearings are held. Commenters identified still-unstudied project impacts and alternatives, and criticized DWR's continuing failure to ensure that its approach to the SWP contracts realistically conforms to the physical, environmental and legal constraints the SWP will face in the decades ahead.¹³ They also noted how the amendments proposed by DWR, including its expanded definition of facilities, could negatively affect the financial integrity of the SWP, increasing the likelihood of subjecting taxpayers and ratepayers to costly new debt obligations for projects such as the Delta tunnels.

DWR has also failed to address other major concerns about the proposed contract extension predating these 2016 EIR comments. For example, during the scoping process for the contract extension nearly four years ago, Santa Barbara County Public Works requested DWR to "include in the EIR an analysis of the economic and legal impacts and implications relative to the continued pre-Prop 13 taxing authority with the Contract Extension Project; i.e., what are the impacts of assuming an extension of pre-Prop 13 taxing authority. The county is concerned that if a contractor default should occur, the County would be liable for covering the default without taxation ability that exists under the current contract because of its pre-Prop 13 legal status."¹⁴ DWR has yet to provide the economic and legal analysis requested, and has also still not addressed other substantial criticisms raised in scoping comments.¹⁵

Facilitation of Delta Tunnels and Other Risky Projects

DWR's effort to portray its proposed contract extension amendments as a prudent attempt to keep SWP costs reasonable largely hinges on its often-repeated claim that "the proposed project is separate and independent from the California WaterFix project."¹⁶ In DWR's portrayal, the contract extension amendments are unrelated to the Delta tunnels,

¹³ For examples of significant comments with extensive supporting documents, see, e.g., Comments of Planning and Conservation League, PCFFA and Environmental Water Caucus, dated October 17, 2016, <http://www.deltatunnelsboondoggle.com/wp-content/uploads/2017/01/SWP-contract-extension-PCL-DEIR-comments-10-17-16.pdf>; Comments of Center for Food Safety, dated October 17, 2016; https://www.centerforfoodsafety.org/files/2016-10-17-water-supply-contract-extension-project-comments--final--reduced-1_70236.pdf.

¹⁴ Santa Barbara County's comments are among the scoping comments posted at <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension/Files/Appendix-BNotice-of-Preparation-and-Comment-Letters-Received.pdf>.

¹⁵ *Id.* (see, e.g., scoping comments of Central Delta Water Agency, PCL, and NRDC, among others).

¹⁶ Contract Extension Draft EIR, p. 6-3.

and can be considered and acted on without waiting for a separate bundle of contract amendments that are expected, when completed, to reflect DWR's ongoing negotiations with SWP contractors on California WaterFix issues.

However, DWR's claim that its contract extension amendments are independent of California WaterFix is misleading and demonstrably wrong. In fact, DWR has long been aware that revenue bonds could not be issued covering expenditures for the Delta tunnels without enacting contract amendments. That is partly because financing for this multibillion-dollar tunnels project could not realistically fit within the current expiration dates of 2035 to 2042.

Beyond the time frame for repayment, facilities limitations in the existing SWP contracts would otherwise prevent the coverage of the Delta tunnels project, including California WaterFix or earlier variants such as BDCP. That existing contractual limitation on covered facilities, included in article 1(hh)(8) of the SWP contracts,¹⁷ is specifically proposed for removal in DWR's contract extension amendments. Through the "extension" amendments, DWR proposes new authorization for "SWP revenue bonds to be issued to: (1) finance repairs, additions, and betterments to most facilities of the SWP without regard to whether the facilities were in existence prior to January 1, 1987, which is the current Contract requirement in Article 1(hh)(8); and (2) finance other capital projects (not already in the list in Article 1(hh) for which revenue bonds could be sold) when mutually agreed to by DWR and at least 80 percent of the affected Contractors."¹⁸ When discussing revenue bonds in connection with the proposed Delta tunnels project, then called BDCP, "DWR's legal counsel" concluded that "BDCP is not on the list of approved projects that are eligible for funding, including through bond financing."¹⁹

Put another way, by enabling the financing and addition of new SWP facilities not meeting this earlier facilities limitation, the contract extension amendments would tangibly facilitate addition of the Delta tunnels to the SWP, and also make it easier for DWR and the most powerful SWP contractors to add further debt to finance other costly new facilities of their choosing. The prospect of enabling approximately additional \$17 billion in initial capital costs and \$47 billion in further financing costs for the Delta

¹⁷ See, e.g., Santa Barbara County Flood Control and Water Conservation District's SWP contract (Santa Barbara SWP Contract), art. 1(hh)(8), <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/SWP-Water-Contractors/Santa-Barbara-County-Flood-Control-and-Water-Conservation-District/Files/Santa-Barbara-CC.pdf?la=en&hash=50978D6A89B5D21854ECA6CC160E3CAB9B9BFFAE>.

¹⁸ Contract Extension Draft EIR, p. 4-5.

¹⁹ See, e.g., Letter from Jake Campos, STIFEL, to Mary Lou Cotton, SWPCA at 4 (March 19, 2014, included as Exhibit A to PCL's EIR comments, *supra* fn. 13).

tunnels alone²⁰ belies DWR’s claim of fiscal prudence, and is likely to come at odds with more responsible and productive investments in 21st century water reliability and sustainability. Functioning as a wolf in sheep’s clothing, the neutral sounding “contract extension” amendments, as currently proposed, add to rather than reduce the costs and risks associated with the SWP, and SWP contractors will foreseeably seek to have taxpayers absorb those costs.²¹ Rather than placing the SWP on “sounder financial footing going forward,” as DWR claims,²² these amendments weaken accountability, offering contractual cover to make the SWP even more risky and costly for taxpayers and ratepayers.

Piecemealing of Proposed Contract Terms

Rushing forward to the final legislative hearing would also facilitate piecemealed decision-making, at odds with CEQA and prudent planning. Doing so would frustrate integrated consideration of the Delta tunnels in the context of further California WaterFix-specific contract amendments under negotiation lacking even draft environmental review. These further proposed amendments, tied to ongoing efforts to revive the foundering financing for the troubled Delta tunnels project, are likely to propose new transfer provisions, among others, compounding the cumulative risks of proceeding with the contract extension. Legislative oversight over the contract extension should continue to allow for an integrated understanding of all the related contract amendments proposed to govern SWP contracts in the decades ahead.

Compounding the SWP’s “Too Big to Fail” Problem

The statewide concern about DWR’s contract amendments redefining project facilities to enable indebtedness for the Delta tunnels and other projects raises particular concerns in Santa Barbara County. C-WIN has elsewhere documented its concerns that the SWP has not delivered water to Santa Barbara County’s South Coast water districts and cities “in a cost-effective and reliable manner,” and that new SWP indebtedness for the Delta tunnels “could result in vast economic hardship and financial turmoil” for the county’s agencies and ratepayers while diverting resources that could be better spent on

²⁰ Goldman and Sachs, Water Fix Financing Strategies, p. 5 (March 17, 2017).

²¹ See, e.g., Wat. Code, § 11652 (SWP contractors “shall, whenever necessary, levy upon all property in the state agency not exempt from taxation, a tax or assessment sufficient to provide for all payments under the contract”); article 34 of SWP Water Supply Contracts.

²² DWR, Executive Summary (March 9, 2018), p. 2, posted at <https://www.water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension>.

local efforts to improve water supply reliability.²³ As other letters have discussed as well, the Delta tunnels project remains seriously deficient in project definition and in its lack of a viable financing plan in compliance with laws.

DWR nonetheless argues that its proposed contract amendment extension is needed to spread payments past 2035 to 2042, and thereby avoid higher annual costs, for repairs and improvements in dams and other existing project facilities. This argument, however, is untenable on several grounds. First, the argument does not justify the broad amendments facilitating the Delta tunnels that DWR has actually proposed. Had DWR's priority been stabilizing expenses for operation and maintenance, it could have proposed narrower extension language, but did not.

Second, the claim that any of the SWP contractors, the Legislature or the public need to uncritically accept DWR's proposed extension language is not supported by the facts or by the language of the existing SWP project contracts. Article 4 of the current SWP contracts contains what is commonly known as the Evergreen Clause. That clause enables any SWP contractor, at least six months before SWP contracts are set to expire, to elect to receive continued service for an extended period, and sets forth the procedure in which DWR is to honor the request, including specific conditions noted "unless otherwise agreed to."²⁴

The Evergreen Clause provides that "[o]ther terms and conditions of the continued service shall be reasonable and equitable and shall be mutually agreed upon. In the event that said terms and conditions provide for continued service for a limited number of years only, the Agency shall have the same option to receive continued service here provided for upon the expiration of that and each succeeding period of continued service."²⁵ This provision helps establish that to receive continued water service or ensure workable periods to cover expenditures for SWP operation and maintenance, SWP contractors—and the Legislature—need not hastily accede to DWR's proposed extension

²³ See, e.g., C-WIN, *The Unaffordable and Unsustainable Twin Tunnels: Why The Santa Barbara Experience Matters* 7, 9, 18 (July 2016); ECONorthwest, *California WaterFix: Potential Costs to Santa Barbara County* (July 2016).

²⁴ See, e.g., Santa Barbara SWP contract, *supra*, article 4, at p. 12. The conditions, unless "otherwise agreed to," are:

(1) Service of water in annual amounts up to and including the Agency's maximum annual entitlement hereunder. (2) Service of water at no greater cost to the Agency than would have been the case had this contract continued in effect. (3) Service of water under the same physical conditions of service, including time, place, amount and rate of delivery, as are provided for hereunder. (4) Retention of the same chemical quality objective provision as is set forth herein. (5) Retention of the same options to utilize the project transportation facilities as are provided for in Articles 18(c) and 55, to the extent such options are then applicable.

²⁵ *Id.*

provisions, including those that could make the SWP more costly and risky. And although SWP contracts are substantially uniform, it is notable that two of the SWP contracts have retained pre-Monterey Amendments contract language.

Lastly, DWR's argument that costly improvements are needed for repairs, seismic retrofitting and the like is poorly matched with an extension proposal that, as discussed above, may end up weakening accountability over DWR and others seeking costly expansion of new facilities within the SWP. Although DWR mentions repairs needed at Oroville, the recent dam crisis at Oroville hardly seems like a sound basis to weaken oversight over DWR, as well as other contractors, when they wish to add costly new facilities that may even crowd out available resources for operation and maintenance. Rather, the Oroville crisis underscores the importance of listening to independent voices willing to ask difficult questions of DWR and other state water contractors needed to improve economic and environmental sustainability.²⁶ In a recent article focusing on hydropower issues and water projects, Professor Joshua Viers noted that "[l]arge scale water management systems in general, and California's water management system in particular, provide a good analogue to the financial system."²⁷ As was the case when financial systems appeared to some "too big to fail," a prudent system manager should not respond to crises by making it easier to add indebtedness on expensive new facilities, potentially at the expense of constructive steps to better manage existing ones.

Notably, the Delta tunnels project has prompted major criticisms and rethinking of "water reliability" paradigms from unexpected sources. In a recent op-ed piece, the mayor of Los Angeles warned that "we cannot rely solely on 20th century engineering for our 21st century water needs." Mayor Garcetti called for a new "Mulholland moment" focused upon local supplies and sustainability.²⁸

"Paper Water" and Unsustainable Delta Exports

In *PCL v. DWR*, the Court of Appeal rejected CCWA's attempt, with DWR's acquiescence, to stand in for DWR in reviewing the Monterey Amendments. The court criticized CCWA for neglecting water contractors and members of the public "not invited

²⁶ See, e.g., Independent Forensic Team report, *Oroville Dam Spillway Incident* (2018), https://drive.google.com/file/d/15fmj836-EnyYgPgf7_a_JIoK0N8J-mZE/view; R. Stork, et al., *The Oroville Dam 2017 Spillway Incident* (2017), https://drive.google.com/file/d/15fmj836-EnyYgPgf7_a_JIoK0N8J-mZE/view.

²⁷ J. Viers and D. Nover, *Too Big to Fail: Limiting Public Risk in Hydropower Licensing*, 24 *Hastings Environmental L.J.* 143, 144 (2018).

²⁸ <https://www.dailynews.com/2018/03/03/los-angeles-new-mulholland-moment-for-safe-and-adequate-water-eric-garcetti/>.

to the table” and for failing to analyze elimination of a safeguard against reliance on “paper water” contract entitlements “worth little more than a wish and prayer.”²⁹

Effective legislative oversight, rather than a hasty final hearing, should assist in ensuring that through any extended contract period, DWR finally, if belatedly, addresses seriously two continuing and systemic problems within the SWP. The first is the wide gap that continues to exist between Table A amounts in the SWP contracts and reliable water deliveries.³⁰ The second is that California has thus far failed, and in many respects barely begun, to fulfill the mandate of the 2009 Delta Reform Act and other laws requiring reliance on reduced water supplies from the Delta. When the California Supreme Court narrowly upheld the 2000 CALFED EIR, it candidly observed that the CALFED program was premised on the “unproven” theory that it was “possible to restore the Bay-Delta's ecological health while maintaining and perhaps increasing Bay-Delta water exports through the CVP and SWP. If practical experience demonstrates that the theory is unsound, Bay-Delta water exports may need to be capped or reduced.”³¹

Respectfully,

/s./

Roger B. Moore

²⁹ *PCL v. DWR*, 83 Cal.App.4th at 905, 914-915.

³⁰ See, e.g., DWR, SWP Delivery Capacity Report, p. 21 (Dec. 15, 2017).

³¹ Wat. Code, § 85021 (state policy of reducing Delta exports); see also *In Re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2000) 43 Cal.4th 1143, 1168.

EXHIBIT 3



**PLUMAS COUNTY
FLOOD CONTROL & WATER CONSERVATION DISTRICT**

c/o PLUMAS COUNTY DEPARTMENT OF PUBLIC WORKS
1834 EAST MAIN STREET • QUINCY, CA 95971 • (530) 283-6268 • FAX (530) 283-6135

Jeff Engel, Chair, Governing Board

Robert A. Perreault, Jr., P.E., Director of Public Works and Manager, District

E-mailed on August 9, 2018 to ContractAmendment_comments@water.ca.gov

**RE: Notice of Preparation (NOP) Environmental Impact Report for the
Proposed State Water Project (SWP) Water Supply Contract Amendment for
Water Management and California Water Fix (CWF)**

August 7, 2018

The Plumas County Flood Control and Water Conservation District (Plumas) appreciates the opportunity to comment on the above-referenced NOP. Plumas is a State Water Project (SWP) Contractor and a Public Water Agency (PWA).

Plumas has been actively involved in both Agreements in Principle (AIPs) for the proposed projects. Plumas is one of four SWP PWAs that have not signed the 2014 Contract Extension Agreement in Principle (CE AIP). Plumas is prepared to bring the California Water Fix Agreement in Principle (CWF AIP) to the Governing Board for the Plumas Flood Control and Water Conservation District, pending some further clarification of assignments of power costs to Plumas for the proposed CWF project.

General Comments:

Plumas previously submitted comments on the 2016 SWP Contract Extension Draft Environmental Impact Report (DEIR). In those comments, Plumas provides an alternative that decouples existing debt from new debt for undefined future SWP storage and conveyance projects, suggests alternatives for allocating debt for future SWP capital facilities projects that were not in existence prior to January 1, 1987, and for financing other capital projects not already listed in the contract for which water system facilities revenue bonds could be sold. Plumas also proposes an "opt out" provision for Contractors that are not beneficiaries of new SWP projects and that represent only a fraction of 80% of Table A, or 80% of "participating Contractors." After the DEIR comment period closed, DWR suspended the CEQA process until July, 2018. The Plumas DEIR comments are incorporated herein by reference since DWR has not yet posted DEIR comments on the DWR website.

From the NOP:

- The proposed project has been identified as the California Water Fix.
- The proposed geographic scope is displayed in Figures 1 and 2 in the NOP. The Figure 1 map of California displays the Primary State Water Project Delivery Facilities and the rivers and conveyance that connects them. The Figure 2 map of California displays the service areas for the 29 SWP PWAs.
- Water management actions and approval processes have been proposed in the CWF AIP for South of Delta (SOD) Public Water Agencies (PWAs) (a/k/a SOD Contractors).
- North of Delta (NOD) PWAs are exempt from costs for CWF unless NOD PWAs transfer their Table A water through CWF facilities to SOD PWAs.
- The CWF AIP proposes that PWAs take responsibility for complying with CEQA below SLR.
- A CEQA checklist has been provided for commenters to frame environmental effects associated with the proposed CWF AIP.
- Both the Contract Extension AIP and the California Water Fix AIP enable the development and financing of new SWP projects “when mutually agreed to by Department of Water Resources (DWR) and at least 80% of the affected Contractors provided the approving affected Contractors’ Table A amounts also exceed 80% of all affected Contractors”.
- Neither the CE AIP nor the CWF AIP nor the NOP address NOD water management issues upstream of San Luis Reservoir (SLR).

Plumas recommends that the DWR now begin the disclosure and environmental analysis for water management of NOD SWP storage and conveyance facilities above the SLR and how changes in the management of those NOD facilities could affect SWP deliveries to SOD PWAs and the environments in their service areas.

The NOP scope of analysis for water management above SLR, based on NOP Figures 1 and 2, includes diversions of SWP water from the Bay-Delta upstream to the releases of stored water in SWP facilities located within in the Sacramento and San Juaquin subwatersheds of the Bay-Delta watershed.

Plumas appreciates that this NOP does describe the California Water Fix (CWF) as the proposed project and that the AIP for the CWF includes the exemption of the five (5) North of Delta (NOD) Contractors, including Plumas, from apparently all costs associated with the design, permitting, implementation, mitigation, and operation (including variable power costs) for the CWF. Plumas appreciates the enhanced level of transparency about the proposed CWF project and the genuine effort by DWR and the PWAs to engage in publicly negotiating the cost allocation and water management process for the CWF as stipulated in the Settlement Agreement for the Monterey SWP Contract Amendments.

The Project Objectives proposed for the NOP include improving water management within the SWP service area and providing a fair and equitable approach to cost of CWF. Absent a stated objective for the proposed project about inputs to the SLR, the NOP appears to assume that inputs to the SLR will be unchanged by the proposed project or other factors.

Plumas recommends that the NOP expand the proposed project objectives to include the disclosure and analysis of “default” Bay Delta inflows and outflows that are proposed in the State Water Resources Control Board’s (Water Board) July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan. The Water Board Framework clearly states that absent

collaborative water management agreements with upstream and senior water rights holders in the Bay Delta watershed, the Water Board will mandate that higher “default” inflows be released from upstream SWP reservoirs and that SWP diversions in the Bay-Delta will be reduced for higher outflows from the Bay Delta to the ocean. Assumption of unchanged inputs to SLR no longer appears to be a reasonable CEQA baseline for analyzing the proposed project. DWR’s assumption of unchanged inputs to SLR no longer appears to be a reasonable CEQA baseline for analyzing the proposed project now that the Water Board has initiated a water rights proceeding in order to revise flows in the Bay Delta watershed. DWR is the Lead Agency for CEQA compliance for SWP water management. Now that the State Water Resources Control Board has released the July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan, DWR must now undertake its “upstream of SLR” water management responsibilities and integrate an analysis of changes proposed by the Water Board to existing SWP reservoir operations NOD and for SWP diversions from the Bay Delta to comply with the Water Board’ proposed mandatory default flows. The CEQA for the CWF is the appropriate venue for this analysis because the cost-effectiveness and the environmental effects of the CWF will be affected by the new flow regime mandated by the Water Board for the Bay Delta watershed. The Water Board proposes to begin mandating new flows in late 2018 which makes this CEQA a timely process for analyzing costs and environmental effects of the CWF over a 50 year future period from an appropriate CEQA baseline for future SWP water management above and below the San Luis Reservoir.

DWR’s “Statement for the July 3, 2018 Informational Hearing on this NOP before the California Legislature” includes a discussion of the CEQA baseline for the CWF. DWR proposes to rely on the “July 2017 certification for the Final EIR, including Findings of Fact, a Statement of Overriding Considerations, a MMRP and issued a Notice of Determination approving the California Water Fix as an updated version of the Bay-Delta Conservation Plan (BDCP)” as the CEQA baseline for this NOP. Parties legally challenging the Validation of the now certified BDCP/CWF EIR note that the BDCP/Delta tunnels/CWF are already the subject of numerous pending legal actions challenging compliance with CEQA, state laws protecting the Delta, the public trust doctrine, federal and state laws protecting endangered species, and the existing system of water rights in California whereby the SWP is a junior water rights holder to water rights users upstream and tributary to the Bay-Delta, including the areas of origin, tribes with unexercised but reserved water rights, and water necessary to secure the viability of Bay-Delta watershed-dependent fish and wildlife species and their habitats. The Water Board proposes to significantly change existing water management in the Bay Delta watershed this year to begin addressing issues brought forward by the parties litigating the BDCP/CWF EIR.

For example, the Water Board’s July 2018 Framework for the Sacramento/Delta Update to the Bay-Delta Plan states:

“Existing regulatory minimum Delta outflows are too low to protect the ecosystem and without additional regulatory protections, existing flows will likely be reduced in the future as new storage and diversion facilities are constructed, and as population growth continues.” (P.6.)

“Under the current requirements, flows are completely eliminated or significantly at certain times in some streams in the Sacramento/Delta watershed, and a significant portion of the inflows that are provided to the Delta are exported without contributing to Delta outflows.” (Ibid.) “The information summarized in the Science Report specifically establishes the need for new and modified inflow and cold water habitat, Delta outflow, and interior Delta flow requirements that work together in a comprehensive framework with other complimentary actions to protect the Bay-Delta ecosystem.” (P.7)

“Implementation of the cold water habitat objective would require reservoir owners/operators to develop and implement a long term strategy and annual plans for maintaining downstream temperatures. The strategies and plans would be developed in coordination with the State Water Board, fisheries agencies, and other appropriate entities.” (P.26) “In the absence of voluntary tributary plans, reservoir operators would be immediately subject to the narrative and be required to comply with the implementation provisions described above.” (P.27)

And finally, “The Projects would bear a significant portion of that responsibility since they are the largest, most junior diverters in the watershed and have diversions at the end of the watershed that significantly affect outflows. However, they would not bear the entire responsibility because flows are necessary on all of the tributaries to achieve ecological benefits.” (P.27)

Plumas County joined the Validation litigation with other NOD Counties and Districts to ensure that the CEQA analysis is not piecemealed, that senior water rights holders in the Bay-Delta watershed are protected from unmitigated and non-voluntary diversions of water supplies upstream of the Bay-Delta for new SWP Projects that benefit of 80% of Contractors where the Metropolitan Water District (MWD) and Kern County Water Agency KCWA, both SOD SWP Contractors, account for 72% of SWP Contractors/Table A Contract Allocations. The ongoing confusion among some SWP Contractors and other parties about the Constitutional supremacy of executed Contracts over CEQA, the California water rights priority system, the California Public Trust Doctrine, and California Water Code’s prevention of wasteful and unreasonable uses of water, and ongoing legislative oversight and review is of great concern to Plumas. The timing of executed SWP Contracts in relation to these other aforementioned authorities and including ongoing legislative oversight over SWP financing and regulatory compliance, is already being discussed in some SWP PWA public meetings as a way to circumvent the changes to SWP water management that the Water Board is proposing in the 2018 Framework.

Without disclosure and analysis by DWR as the Lead Agency for this EIR about the relationship of the new SWP contracts to the Water Board’s Framework, this EIR may be infected with fatal omissions related to DWR using the wrong baseline for the CWF EIR. Based on the Plumas experience with the Monterey Amendments litigation, the new “Monterey Plus” EIR and the Monterey Settlement Agreement; the new SWP contracts should not be executed and proceed while legal challenges to this EIR languish for over a decade awaiting resolution by the Courts. The CWF AIP appears to Plumas to rely heavily on the assumption that Kern Fan litigation over the Monterey “Plus” EIR will be unsuccessful or delayed so long that it becomes irrelevant once the new SWP contracts are executed. This approach to be sued and proceed for years and years down the new SWP contract water management path risks real harms to NOD SWP PWAs and the environments in their service areas. This EIR is timely and the timing of the EIR in relation to the execution of new SWP contracts is a crucial part of the EIR analysis.

Comments and Recommendations:

Plumas submits comments and recommendations with the hope and expectation that DWR will define the scope of this EIR broadly enough to address the analysis of the following alternatives:

1. Develop an alternative in this EIR that describes how DWR will comply with the Water Boards' Framework for the Sacramento/Delta Update for the Bay-Delta Plan as a junior water rights holder **before** the new SWP Contracts are executed.
2. Develop an alternative in this EIR that utilizes the successful public negotiation framework for the CWF AIP as a framework for proposing a process for DWR to identify voluntary Water Board compliance opportunities with NOD PWAs and other upstream tributary diverters in the Bay Delta watershed to meet proposed mandatory SWP inflow and outflow flow requirements **before** the new SWP Contracts are executed.
3. Develop an alternative in the this EIR that enhances the financial soundness of the SWP by prioritizing, decoupling, and committing SWP financing for the estimated over 1.9 billion dollars in repairs needed for existing SWP storage and conveyance infrastructure **after** the SWP Capital Facilities Plan is released and **before** the new SWP Contracts are executed.
4. Develop an alternative in this EIR that allows small NOD and SOD SWP Contractors to "opt out" of new SWP projects that provide no direct benefits to their service areas and that may even indirectly harm senior water rights holders and disadvantaged communities and tribes **before** the public transparency and accountability for negotiating cost allocations for new SWP projects expires with the certification of the CEQA for the Proposed SWP Water Supply Contract for Water Management and California Water Fix.
5. Develop a schedule for the release of this EIR that includes delaying DWR's current request for the final Joint Legislative Budget hearing required under Water Code section 147.5 until **after** EIR alternatives have been developed and analyzed in this EIR and the draft EIR is circulated to the public, the SWP PWAs, and the Bay Delta watershed's water rights holders and diverters for review and comment for at least 60 days. DWR can thereby, or alternatively, by a clear statement from DWR legal counsel that executing new SWP Contracts before the EIR is circulated for review does not undermine CEQA or legislative and agency authorities. This avoids the perception by many parties that DWR is preempting existing water management laws and authorities by prematurely executing new SWP Contracts

Specific Comments on the scope and substance of the EIR for the Proposed SWP Water Supply Contract for Water Management and California Water Fix (CWF):

Plumas requests that DWR include explanatory language in the EIR to address the following issues of importance to Plumas and some of the other PWAs:

Describe how existing Monterey Settlement Agreement obligations such as the final payment to the Monterey Plaintiffs and the Plumas Contract Amendment will be addressed before the new SWP Contracts are executed.

Describe how the Evergreen clause in the existing contracts will be addressed in the new contracts and describe how PWAs that extend their existing SWP contract under the Evergreen clause will be exempted from new SWP debt for new SWP projects and including being exempted from new project mitigation costs and power costs being assigned to the Delta Water Charge or the Delta Transportation Charge or the Variable and/or Embedded Power charge for new SWP projects that currently all Contractors pay through their existing contracts.

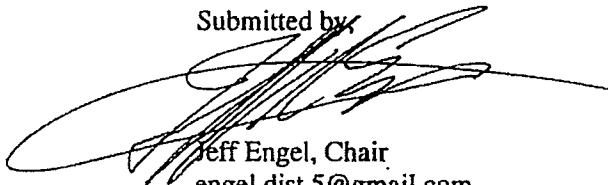
Or stated differently, how will existing debt for the SWP and new debt for new SWP projects, including unforeseen environmental mitigation costs or project development and O&M cost overruns for new SWP projects be allocated for PWAs who extend their existing contracts and who also are not participating PWAs for new SWP projects?

Describe how costs related to the design and development of the CWF and other new SWP projects will be refunded to non-participating PWAs once the participating PWAs have been identified.

Identify and distinguish the PWAs in the new SWP contract that are exempt from being required to obtain majority votes from customers in their service areas from PWAs that must obtain majority votes from customers to raise fees for new water projects serving their service areas. This taxing authority distinction is important for disclosing how the SWP maintains fiscal integrity if the PWAs without "blank check" taxing authority are unsuccessful in securing the financing needed to pay for new SWP projects. DWR's assurances that the participating PWAs will fully cover the costs of defaulting PWAs are unsupported unless the "blank check" PWAs are identified and unless they commit to financing defaults by other PWAs, even in the face of declining SWP water reliability and rising SWP water costs.

Thank you for the opportunity to provide comments on the Notice of Preparation (NOP) Environmental Impact Report for the Proposed State Water Project (SWP) Water Supply Contract Amendment for Water Management and California Water Fix (CWF). Plumas looks forward to the draft EIR and the opportunity to work closely with DWR and the other SWP PWAs on an environmentally sustainable and fiscally sound future for the SWP.

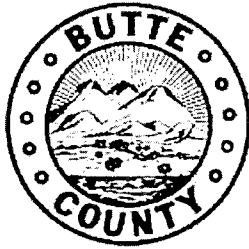
Submitted by:



Jeff Engel, Chair
engel.dist.5@gmail.com

Governing Board
Plumas County Flood Control and Water Conservation District
and
Plumas County Board of Supervisors

- cc. Board of Supervisors, County of Plumas – pcbs@countyofplumas.com
- cc. Governing Board, Plumas County Flood Control and Water Conservation District – pcbs@countyofplumas.com
- cc. Bob Perreault, Manager, Plumas County Flood Control and Water Conservation District – bobperreault@countyofplumas.com
- cc. Randy Wilson, Director, Plumas County Planning Department – randywilson@countyofplumas.com
- cc. Craig Settlemyre, County Counsel, County of Plumas – csettlemyre@countyofplumas.com
- cc. Honorable Ted Gaines, Senator, District 1 – senator.gaines@senate.ca.gov
- cc. Honorable Brian Dahle, Assembly District 1 – cherri.west@asm.ca.gov
- cc. Bruce Alpert, County Counsel, County of Butte – BAIpert@buttecounty.net
- cc. Paul Gosselin, Director, Department of Water and Resource Conservation, County of Butte – PGosselin@buttecounty.net



WATER AND RESOURCE CONSERVATION

308 Nelson Avenue, Oroville, CA 95965

Telephone: (530) 538-4343

Fax: (530) 538-3807

www.buttecounty.net/waterandresource

bwwater@buttecounty.net

Paul Gosselin, Director

July 9, 2013

Revised BDCP Objective

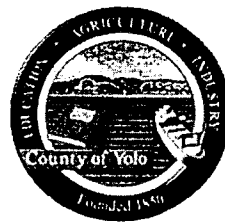
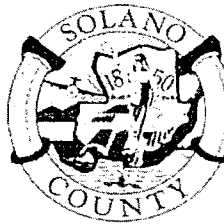
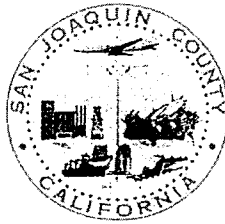
Original Objective

Butte/Plumas Objective (4/29/13): To ensure that contractors shall have the option and right to opt out of the cost and burdens and benefits of the Bay Delta Conservation Plan and any implementing and related projects.

Revised Objective

Objective 4: BDCP and DHCCP Participation

The Department and some State Water Project contractors are directly participating in the development of the Bay Delta Conservation Plan (BDCP) and the associated Delta Habitat Conservation and Conveyance Program (DHCCP). The details of the financing and repayment, specifically how the Department will charge each SWP contractor for future costs for implementation of the BDCP and DHCCP, has not been determined. Each contractor's participation in the implementation and financing of the BDCP and DHCCP should be voluntary. The Agreement in Principle and subsequent contract amendments should limit each contractor's obligation to fund any implementing and related BDCP and DHCCP projects to only to those contractors that agree to participate in those projects. Butte and Plumas shall not be responsible for any costs incurred by the Department for the BDCP and DHCCP unless each of them agrees to pay for such costs in the Agreement in Principle and subsequent contract amendments to the Statement of Charges.



Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County
"Working together on water and Delta issues"

June 11, 2018

The Honorable Holly Mitchell, Chairwoman
Joint Legislative Budget Committee
State Capitol, Room 5019
Sacramento, CA 95814

The Honorable Phil Ting, Vice Chairman
Joint Legislative Budget Committee
State Capitol, Room 5019
Sacramento, CA 95814

Re: Request to Postpone Joint Legislative Budget Committee Hearing on State Water Project Contract Extension

Dear Chairwoman Mitchell and Vice Chairman Ting,

The Delta Counties Coalition (comprised of the Counties of Contra Costa, Sacramento, San Joaquin, Solano and Yolo) requests that the Joint Legislative Budget Committee ("Committee") postpone scheduling a hearing regarding the California Department of Water Resources' ("DWR") proposed extension of the State Water Project ("SWP") contracts. This ensures appropriate Legislative oversight of the proposed extension of the SWP contracts, particularly given their relation to the California WaterFix project ("WaterFix").

On May 11, 2018, DWR requested that the Committee schedule a hearing regarding the proposed SWP contract extension, which would extend the terms of the existing SWP contracts by 50 years, until the year 2085. According to DWR's website, the purpose of the contract extension is to lower borrowing costs by providing a longer term over which to "finance SWP capital expenditures."

There is little question that the primary impetus for this contract extension is the California WaterFix project, which is estimated to cost SWP contractors tens of billions of dollars in the coming decades.

DWR claimed that the contract amendment is unrelated to the California WaterFix project, but WaterFix is plainly the largest capital improvement to the SWP under consideration. Indeed, some SWP contractors asserted that under the current SWP contracts, SWP contractors must either pay for the California WaterFix project, forfeit their SWP contract, or find another SWP contractor willing to pay their share of the costs of constructing and operating WaterFix. Several SWP contractors, including the Kern County Water Agency, filed answers in DWR's WaterFix bond validation lawsuit (Sacramento Superior Court Case No. JCCP 4942) challenging DWR's authority to impose the costs of WaterFix without their agreement to modifications of SWP contracts.

Specifically, we request that DWR provide the information required by Section 147 of the Water Code, which is provided here for your reference:

- (a) On or before January 10, 2010, and annually thereafter, the department shall prepare and submit to the chairpersons of the fiscal committees of the Legislature a report with regard to the budget for the State Water Resources Development System.
- (b) The department shall include in the report all of the following information:
 - (1) A description of the expenditures made, or projected to be made, as applicable, on behalf of the State Water Resources Development System, by program and fund, and of the total revenues expended, or projected to be expended, as applicable, for that system, including each fund source.
 - (2) A description of the positions within the department that carry out functions related to the State Water Resources Development System, and the total number of those positions.
 - (3) A description of any funds, other than funds generated by the State Water Resources Development System, that are expended, or projected to be expended, as applicable, for the State Water Resources Development System, including those funds used for cost-sharing purposes.
 - (4) An itemization of all contracts related to the Bay-Delta Conservation Plan financed, or projected to be financed, as applicable, in full or in part with funds generated by the State Water Resources Development System, including the dollar amount of those contracts and a brief description of the purposes of those contracts.
- (c) The department shall include in each report information relating to three fiscal years that include the two completed fiscal years that immediately precede the year in which the report is due, along with applicable information for the fiscal year in which the report is due. The department shall prepare the first report required under subdivision (a) for the 2007–08, 2008–09, and 2009–10 fiscal years.
(Added by Stats. 2009, 4th Ex. Sess., Ch. 11, Sec. 27. Effective July 28, 2009.)

Equally important, DWR is currently negotiating additional amendments to the SWP contracts regarding the WaterFix. Those amendments would allow permanent transfers of water between SWP contractors, to allow urban SWP contractors like the Metropolitan Water District of Southern California to permanently purchase water from agricultural SWP contracts like the Kern County Water Agency in exchange for paying more of the costs of WaterFix. Piecemeal analysis of these contract amendments is inefficient and undermines appropriate Legislative oversight.

Once the Committee's oversight hearing is held, DWR is legally authorized to finalize the SWP contract extension, potentially foreclosing additional legislative oversight regarding the terms of these contracts. (See Cal. Water Code § 147.5.) We, therefore, request that the Committee seek additional written information from DWR in advance of holding a hearing on the SWP Contract extension, and delay holding this hearing until the completion of the DWR contract amendments relating to WaterFix, in order to ensure adequate legislative oversight of the SWP and WaterFix.

On May 30, 2018, Assembly Members Eggman and Frazier, as a follow-up to the recent oversight hearing regarding WaterFix, sent a letter to DWR Director Karla Nemeth requesting specific information regarding WaterFix and related matters (attached). It is imperative that the Committee oversight hearing regarding the contract extensions take place after the information requested in

June 11, 2018

Page 3

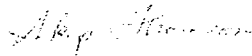
that letter is received and reviewed by Assembly Members Eggman and Frazier and to their satisfaction.

The DCC concurs with the points made by the Natural Resources Defense Council and others in their May 18, 2018 letter to the Joint Legislative Budget Committee (attached). Thank you for your attention to this matter.

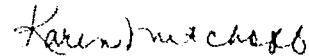
Sincerely,




Don Nottoli
Supervisor, Sacramento County



Skip Thomson
Supervisor, Solano County



Karen Mitchoff
Supervisor, Contra Costa
County



Oscar Villegas
Supervisor, Yolo County



Chuck Winn
Supervisor, San Joaquin County

Attachments

cc: Assembly Member Eggman
Assembly Member Frazier



San Diego County Water Authority

4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

July 31, 2018

Honorable Toni Atkins
President pro Tempore
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

Honorable Anthony Rendon
Assembly Speaker
California State Assembly
State Capitol, Room 219
Sacramento, CA 95814

MEMBER AGENCIES

- Carlsbad Municipal Water District
- City of Del Mar
- City of Escondido
- City of National City
- City of Oceanside
- City of Poway
- City of San Diego
- Fairbrook Public Utility District
- WaterFix Water District
- Oliverholm Municipal Water District
- City Water District
- Padre Dam Municipal Water District
- Camp Pendleton Marine Corps Base
- Rainbow Municipal Water District
- Ranoma Municipal Water District
- Rincon de Diablo Municipal Water District
- San Diego Water District
- Santa Fe Irrigation District
- South Bay Irrigation District
- Vallejo Water District
- Valley Center Municipal Water District
- Water Irrigation District
- Yuma Municipal Water District

SUBJECT: California WaterFix – Deferral of Joint Legislative Budget Committee Hearing

Dear President pro Tempore Atkins and Speaker Rendon:

On behalf of the San Diego County Water Authority, I urge you to defer any hearing by the Joint Legislative Budget Committee regarding the State Water Project (SWP) contract amendments prior to the end of the 2017-18 legislative session. Given that there remains substantial information that must be publicly disclosed and shared with interested parties relative to financing, financial arrangements, and cost allocation associated with the WaterFix project that must be built-in to the SWP contract amendments, a hearing of the Joint Legislative Budget Committee required by Water Code Section 147.5 is premature at this time and should be deferred until at least early in 2019 to allow adequate time for the full scope of SWP contract amendments to be vetted by the Legislature.

The Water Authority Board of Directors has directed staff to develop a policy statement and policy principles that clearly communicate the Water Authority’s support for the WaterFix project, as currently proposed, conditioned upon the Department of Water Resources (DWR) and Metropolitan Water District (MWD) allocating the costs of the WaterFix project as conservation or supply charges, as similar facilities historically have been defined in MWD’s SWP contract with DWR. The Water Authority Board will be considering adoption of a policy statement and policy principles on this matter at its August 9, 2018 special Board meeting.

The manner in which DWR and MWD allocate WaterFix project costs matters to San Diegans. DWR’s Bulletin 132 – *Management of the California State Water Project* – was first issued in 1963. These annual series of reports describe, among other things, SWP project costs and financing. The Peripheral Canal (which is the predecessor of the WaterFix project) was first referenced in Bulletin 132 in 1964, and it was incorporated in the cost estimates for the SWP beginning in 1965. For the purposes of cost allocation, DWR defined the Peripheral Canal as part of the “project conservation facilities” because it would belong to a group of facilities that “serve the purposes of water conservation in the Delta, water supply in the Delta, and transfer of water across the Delta.” DWR charges “conservation facilities” as a water supply cost and it allocates the costs to individual SWP contractors according to their proportional share of “Table A” supply allocation. In contrast, DWR defines the California Aqueduct as a transportation cost and it allocates costs associated with the California Aqueduct to SWP contractors by the actual “reaches” of the Aqueduct that they use.

OTHER REPRESENTATIVE

County of San Diego

President pro Tempore Toni Atkins
Assembly Speaker Anthony Rendon
July 31, 2018
Page 2

While WaterFix is being implemented to restore and stabilize export water supplies – similar to the objectives of the Peripheral Canal – the Water Authority has recently learned that DWR and the SWP contractors have reached agreement to redefine WaterFix cost allocation as a stand-alone cost category – leaving each individual SWP contractor to characterize the purpose of the facility in its rates and charges. While it is unclear how this recharacterization of the project purpose may impact every SWP contractor, it could have substantially different impacts on San Diego ratepayers. Because of the Water Authority’s reliance on MWD to transport a significant amount of its independently-obtained Colorado River water supply, the manner in which MWD allocates WaterFix costs could have a significant and unique impact to San Diego ratepayers. These impacts range from fairly modest impacts on monthly household water rates, to a water rate impact as much as \$21/month per household.

Even though DWR and SWP contractors are finalizing the Agreement in Principle on WaterFix cost allocation (including the identification of WaterFix as a stand-alone category), these important contract amendments on WaterFix financing and cost allocation are not part of the current SWP contract extension package and therefore will not be presented to the Legislature for its review – unless the Joint Legislative Budget Committee postpones the hearing until *all* contract amendments can be presented together.

The Water Authority’s objectives in seeking deferral of the Joint Legislative Budget Committee hearing regarding the SWP contract amendments is solely to ensure adequate time and opportunity is provided for a full public disclosure and dialogue related to the entire scope of SWP contract amendments that will be necessary to understand the financing, operations, and cost allocation considerations related to the WaterFix project. This request is consistent with the Water Authority’s proposed conditional support for the WaterFix project.

Existing law – Water Code Section 147.5 – requires, “*prior to the final approval of the renewal or extension of a long-term water supply contract*” between the Department of Water Resources (DWR) and the SWP contractors, that DWR shall present “*the details of the terms and conditions of the contract and how they serve as a template for the remaining long-term water supply contracts to the Joint Legislative Budget Committee and relevant policy and fiscal committees of both houses, as determined by the Speaker of the Assembly and the Senate Committee on Rules.*” DWR and the state water contractors have been in negotiations over a number of substantive and material changes to the SWP long-term water supply contracts, including:

- Extension of the term of the contracts to 2085
- Financial compression that has affected ability of contractors to incur debt
- WaterFix-related amendments addressing facilities, operations, and cost-allocation

While only the extension of contract term (length) and amendments to address the financial compression issue have been presented as being within the purview of the Legislature at this time, the state water contractors and DWR have reached an Agreement in Principle relative to **additional contract amendments** that will be necessary to address WaterFix issues. Those amendments are not presently before the Legislature, and yet they will address the allocation to California taxpayers and water ratepayers of nearly \$17 billion in capital costs for the twin tunnels project. While there are 29 state water contractors throughout the state, there are actually

President pro Tempore Toni Atkins
Assembly Speaker Anthony Rendon
July 31, 2018
Page 3

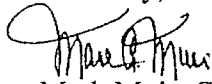
hundreds of water agencies and millions of California water ratepayers and taxpayers receiving water from those state water contractors – none of whom have a direct seat at the table to negotiate contract amendments nor have an understanding of the financing and cost allocation features of the contract amendments.

With respect to the manner in which the state water contracts address WaterFix, there is concern regarding the lack of clarity associated with the financial arrangements, fiscal impacts on ratepayers and taxpayers, and cost allocation issues. Additionally, there should be a comprehensive evaluation related to the effect on local water resources development as a result of any costs that will be obligated on state water contractors, and their member agencies, through the term of the state water contracts (2085). There has not been a thorough or rigorous analysis undertaken under the purview of the Legislature regarding the effect on local water supply investment as a result of the financial obligations and commitments that will soon be passed through by the state water contract amendments.

At this time, there is no urgency for the Legislature to proceed with the examination of the contract extension without considering the full scope of contract amendments. We encourage the Legislature to postpone the SWP contract amendment review to allow DWR more time to present a complete package of proposed contract amendments for the Legislature to comprehensively assess and review. Once the Joint Legislative Budget Committee holds the Water Code Section 147.5 hearing, the Legislature will lose oversight of additional amendments to the state water contracts. If adopted, the proposed state water contract amendments relating to WaterFix will impose far-reaching financial impacts on water ratepayers and property taxpayers. Those policy implications should be appropriately reviewed by the Legislature.

Please don't hesitate to contact me at (858) 522-6781, or Glenn Farrel, the Water Authority's Government Relations Manager, at (916) 216-1747, if you have any questions regarding this request.

Sincerely,



Mark Muir, Chair
Water Authority Board of Directors

cc: Senator Holly Mitchell, Chair – Joint Legislative Budget Committee
Assemblymember Phil Ting, Vice Chair – Joint Legislative Budget Committee
Members, Joint Legislative Budget Committee
San Diego Legislative Delegation
Water Authority Board of Directors

EXHIBIT 4



Jim Frazier

CHAIR, ASSEMBLY TRANSPORTATION COMMITTEE
ASSEMBLYMEMBER, ELEVENTH DISTRICT

COMMITTEES
CHAIR: TRANSPORTATION
ACCOUNTABILITY AND ADMINISTRATIVE REVIEW
INSURANCE
VETERANS AFFAIRS

California Legislature

September 7th, 2018

The Honorable Toni Atkins
California Senate President pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Holly Mitchell
Chair, Joint Legislative Budget Committee
State Capitol, 5080
Sacramento, CA 95814

The Honorable Anthony Rendon
California Assembly Speaker
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Phil Ting
Vice Chair, joint Legislative Budget
Committee
State Capitol, Room 6026
Sacramento, CA 95814

RE: Hearing on Department of Water Resources: Proposed Water Supply Contract Extension & Amendments

Dear Pro Tem Atkins, Speaker Rendon, Chair Mitchell, and Vice Chair Ting:

We, the undersigned members of the Legislative Delta Caucus, are writing to urgently request the Joint Legislative Budget Committee postpone scheduling a hearing of the Committee regarding the California Department of Water Resources' (DWR) proposed extension and amendments to the State Water Project contracts. It is much too early to take this step. It is imperative and in the best interests of the state as a whole that these decisions be made at a future time when we can ensure appropriate Legislative oversight of these proposed extensions, particularly given their relation to the California WaterFix project.

At present, the proposed amendments are poorly defined and explained and have potential adverse impacts far beyond their apparent scope. There is much that remains unknown regarding the extensive changes to the SWP contracts that are being proposed and how the changes will impact property taxes, water rates, the fiscal integrity of the SWP and General Fund. Neither the proposed SWP Contract Extension amendments nor the WaterFix Contract amendments have fully completed the California Environmental Quality Act (CEQA) requirements. The lack of analysis and transparency of these amendments creates a fog of complexity for the public and the Legislature to conduct appropriate Legislative oversight.


Equally important, DWR is currently negotiating additional amendments to the SWP contracts regarding the California WaterFix project. Those amendments would allow permanent transfers of water between SWP contractors, in order to allow urban SWP contractors, such as the Metropolitan Water District of Southern California, to permanently purchase water from agricultural SWP contracts, such as the Kern County Water Agency, in exchange for paying more of the costs of the WaterFix project.



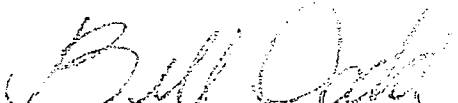
Once the required Water Code § 147.5 hearing is held, the Legislature will lose oversight of additional amendments to SWP contracts. If adopted, the proposed SWP Contract amendments will impose far-reaching financial impacts on ratepayers and property taxpayers, and devastating impacts to the environment.

We respectfully request that the Committee seek additional written information from DWR in advance of holding a hearing on the SWP Contract extension and amendments, and postpone this hearing until the completion of the DWR contract amendments relating to WaterFix.

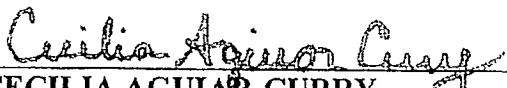
Sincerely,




JIM BRAZIER, Co-Chair
Assemblymember, 11th District



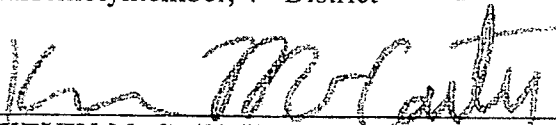
BILL DODD, Co-Chair
Senator, 3rd District



CECILIA AGUIAR-CURRY
Assemblymember, 4th District



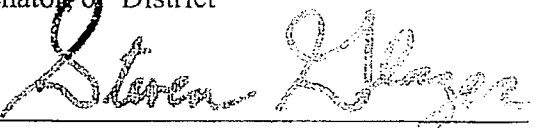
CATHLEEN GALGIANI
Senator, 5th District



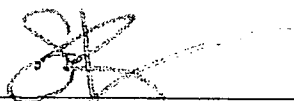
KEVIN McCARTY
Assemblymember, 7th District

RICHARD PAN
Senator, 6th District

JIM COOPER
Assemblymember, 9th District

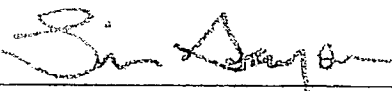


STEVEN GLAZER
Senator, 7th District

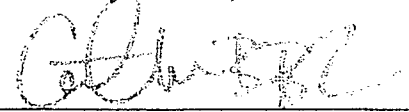


SUSAN TALAMANTES EGGMAN
Assemblymember, 13th District

HEATH FLORA
Assemblymember, 12th District

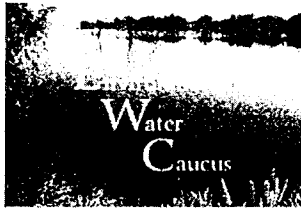
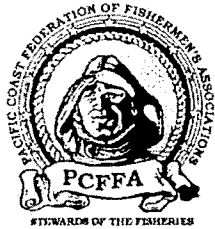
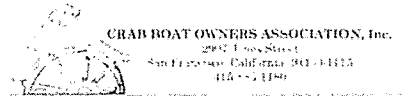


TIMOTHY GRAYSON
Assemblymember, 14th District

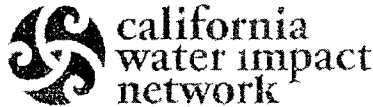


CATHERINE BAKER
Assemblymember, 16th District

EXHIBIT 5



CENTER FOR FOOD SAFETY



CA Save Our Streams Council



September 25, 2018

Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236
watercontractextension@water.ca.gov

Cassandra Enos-Nobriga
Executive Advisor, State Water Project
Department of Water Resources
1416 Ninth Street, Room 1148-3
Sacramento, California 95814
ContractAmendment_comments@water.ca.gov

Cc: ted.alvarez@water.ca.gov; cwf_amendment@water.ca.gov & hand delivered.

Re: Additional Comments Regarding the DEIR SWP Contraction Extension Amendments¹ and the Need for a Subsequent EIR to Disclose and Assess Substantial New Information.

¹ <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/Water-Supply-Contract-Extension/Files/Draft-Environmental-Impact-Report.pdf> Draft Environmental Impact Statement, Natural Resources Agency, Department of Water Resources, August 2016

Dear Mr. Alvarez and Ms. Enos-Nobriga,

Since the close of public comment on the Draft EIR (DEIR) for the SWP Contract Extension on October 17, 2016, significant changes and new information regarding the SWP Contract Extension project have come to light. As a result, CEQA requires that DWR issue a revised and updated subsequent DEIR for public review and comment. This is required because of the substantial changes in the project, the substantial changes with respect to the circumstances under which the project is being undertaken, and because of new information that was not known and could not have been known at the time the original Draft EIR was completed on August 17, 2016, or before DWR closed the public comment period on October 17, 2016. Proceeding to certify the EIR and make a final project decision after reviewing only long-closed comments on the outmoded 2016 DEIR would violate the California Environmental Quality Act (CEQA), Public Resources Code § 21000 et seq. Following, we summarize specific events related to changes in project conditions and new information, and highlight several fundamental shortcomings of the current DEIR in light of both the new events and previously identified short-comings of the current DEIR.

Changes in Project Conditions and New Information Since the 2016 DEIR

Significant and substantive changes over the last two years include, but are not limited to:

1. **September 11, 2018**, DWR Director Nemeth testified before the Joint Legislative Budget Committee and stated that the contract extension amendments project is necessary and will be used to finance the WaterFix project² [referred to at various times as the Delta Tunnels, Cal WaterFix, Bay Delta Conservation Plan (BDCP), and/or the Delta Habitat Conservation Conveyance Program (DHCCP)]. Since 2013, the Planning and Conservation League along with numerous other conservation, Native American and fishing groups have requested that the environmental impacts of the Delta Tunnels project and other projects to be financed with the contract extensions be disclosed.³ To date DWR has ignored these requests and suggested that the 50-year extensions to financing would not be used to fund the Delta Tunnels project, despite the direct statement to the contrary by Director Nemeth. Now it is time to fully disclose the projects that will be enabled by this 50-year extension of contract terms and address them a subsequent DEIR.
2. **September 5, 2018**, DWR reported that the cost for the SWP 2017 Oroville Spillway Disaster and Recovery project soared to \$1.1 billion from the original estimated price tag for repair of damage to the dam's spillway of between \$100 million and \$200 million, the second time in a year that the reported cost of the spillway incident had jumped by 25 percent or more. These are major costs to be added to the SWP contracts along with as yet

² September 11, 2018 the Joint Legislative Budget Committee held an information hearing regarding the State Water Project Contract Extension Amendments. See the exchange between Senator Pan and DWR Director Karla Nemeth starting 1:10:27 to 1:13:43: *Senator Pan: "I do not hear an answer to my question." Director Nemeth, "Yes, we will use these amendments to finance WaterFix...We have a category in our existing contracts that describes the ability of the Department to fund projects in the Delta including delta facilities and that would include WaterFix."*

<https://www.senate.ca.gov/mediarchive/default?title=&startdate=09%2F11%2F2018&enddate=&Search>

³ <http://www.deltatunnelsboondoggle.com/wp-content/uploads/2017/01/SWP-contract-extension-PCL-DEIR-comments-10-17-16.pdf>

undisclosed financial liabilities and mitigation costs.⁴ None of the costs associated with fixing the spillway or associated environmental damages are disclosed in the DEIR documents. SWP contractors and their ratepayers and taxpayers could be on the hook to pay for the damages that keep rising. As DWR Director Bill Croyle testified at a 2017 legislative hearing, FEMA could reject reimbursement if the agency believed the crisis was caused by poor maintenance.⁵ The Oroville Spillway Disaster and Recovery project is one key example of a major cost that has not been factored into the balance to be funded by the proposed contract extensions.

3. **August 17, 2018**, the Bureau of Reclamation ("Reclamation") served DWR its Notice of Negotiation, instigating a renegotiation of the Coordinated Operation Agreement (COA) contract through which they jointly operate the State Water Project ("SWP") and the federal Central Valley Project ("CVP").⁶ A probable outcome of the renegotiation of the COA will be that the SWP will see further limitations on water available for export from the Delta. Reductions in availability of water for export to the SWP caused by changes to the COA will have impacts on long-term financial stability of the SWP and the viability of specific projects, and thus are reasonably foreseeable impacts related to extending the contracts for fifty years. And yet, DWR has failed to consider these impacts, or to propose and analyze alternatives that include reasonably foreseeable changes to the SWP contracts that may result from changes to the COA in its Contract Extension DEIR. DWR must evaluate the impacts of renegotiation of the COA in its Contract Extension DEIR because the COA contract influences revenue, financial viability of the SWP and how it is operated to meet legal requirements including water quality requirements.
4. **July 27, 2018**, the Delta Conveyance Finance Authority, in a letter to EPA to advance financing for the WaterFix, noted the critical importance of the COA federal-state contract to the operations of both the federal and state water projects.⁷ The Letter of Intent (LOI) describes the organizational structure as consisting of DWR and certain SWP contractors. (LOI, pp. 4-6.) And yet the project also proposes to divert federal Central Valley Project ("CVP") water permitted for diversion by the Bureau of Reclamation ("Reclamation") in the Delta. In addition to the uncertainty surrounding the COA, no information has been provided about the agreement referenced between DWR and Reclamation concerning how

⁴ Oroville Suits Against DWR Move to Court <https://www.chicoer.com/2018/09/14/oroville-dam-lawsuits-against-dwr-moving-along-in-court/> September 14, 2018; Oroville Suit Against DWR alleges discrimination and corruption <https://www.chicoer.com/2018/01/17/city-of-oroville-suit-against-dwr-alleges-discrimination-corrupt-culture/> Oroville Dam: Butte County files suit against DWR over road repairs, other damages <https://www.mercurynews.com/2018/08/30/oroville-dam-butte-county-files-suit-against-dwr-over-road-repairs-other-damages/> August 30, 2018.

⁵ May 11, 2017 Assembly Oversight Hearing: The Assembly Water, Parks, And Wildlife Committee and the Accountability And Administrative Review and Budget Subcommittee No. 3 On Resources And Transportation held a joint informational and oversight hearing on Oroville Dam. <https://aar.assembly.ca.gov/sites/aar.assembly.ca.gov/files/Oroville%20Dam%20AAR%20Background.pdf>

⁶ *Western water honchos secretly huddle on tunnels, fish* <https://www.eenews.net/stories/1060095217> & https://www.eenews.net/assets/2018/08/24/document_gw_03.pdf

⁷ Delta Conveyance Finance Authority (Finance Authority) July 27, 2018 letter to EPA Andrew Wheeler, Letter of Interest for Water Infrastructure Finance and Innovation Act (WI FIA) program. <http://www.restorethedelta.org/wp-content/uploads/IPA.pdf> pg 23.

possible impacts to CVP operations will be avoided. (LOI, p. 23.) For example, MWD General Manager Kightlinger testified that under the WaterFix, " *If one set of contractors are entirely pumping from the South Delta and one set of contractors are having dual conveyance both south and north, and making the COA, the Consolidated Operating Agreement, effective and working, we think, we think we'd just be, it become a real nightmare.*"⁸

The LOI glosses over possible effects on operational viability (LOI, p. 23), given the complexity of CVP and SWP interoperation, as well as the differing service areas and water demands. One would be hard pressed to imagine a world in which there are no such effects. These impacts need to be fully disclosed by the updated subsequent DEIR.

5. **July 13, 2018**, DWR released a Notice of Preparation (NOP)⁹, notifying the public of DWR's intent to prepare an Environmental Impact Report (EIR) on the proposed WaterFix contract amendments. PCL et. al. on May 7, 2018, adopted here by reference, requested that DWR analyze all the contract amendments to avoid a segmented and piecemeal approach to the CEQA analysis.¹⁰ Plumas County Flood Control and Water Conservation District (Plumas County) issued comments on August 7, 2018 adopted here by reference.¹¹ Plumas County provides an alternative to the proposed contract amendments that decouples existing debt from new debt for undefined future SWP storage and conveyance projects, suggests alternatives for allocating debt for future SWP capital facilities projects that were not in existence prior to January 1, 1987, and provides alternatives for financing other capital projects not already listed in the contract for which water system facilities revenue bonds could be sold. These project alternatives need to be analyzed along with the associated environmental impacts to ensure the various contract amendments and the contract amendment extension project are not segmented and the impacts piecemealed.
6. **March 27, 2018**, Metropolitan Water District of Southern California (MWD) announced, but did not disclose to the public, a new contract with DWR, called a "master agreement", seeking to give MWD the exclusive right to an additional 33% of the capacity of WaterFix above their allotted Table A amounts.¹² MWD also passed resolutions at its July 10, 2018 meeting adding to its potential role and financial stake in WaterFix, addressed in a pending legal challenge.¹³ The potential ripple effects of MWD's majority control of WaterFix

⁸Op.Cit.https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/CDWA%20et%20al/part2rebuttal/sdwa_316.pdf pg 25

⁹ <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/CalWaterFix-contract-amendment/Files/Final-NOP-071318.pdf?ja=en&hash=993C33E4D237F45E35DD65178449A89C0A4517B7>

¹⁰ <http://www.deltatunnelsboondoggle.com/wp-content/uploads/2018/09/2-PCL-et-al-Cmts-SWP-Contract-Amendments-5-7-18-Updated-5-8-18.pdf> & <http://www.deltatunnelsboondoggle.com/overview-of-the-proposed-contract-amendments-between-the-department-of-water-resources-and-state-water-project-contractors/>

¹¹<http://www.deltatunnelsboondoggle.com/plumas-county-flood-control-water-conservation-district/>

¹² http://mwdh2o.granicus.com/MediaPlayer.php?view_id=12&clip_id=6670 for the video and pg 9 of the transcript.https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/CDWA%20et%20al/part2rebuttal/sdwa_316.pdf

¹³ https://www.centerforfoodsafety.org/files/2018-9-10-mwd-waterfix-validation-complaint-final_04832.pdf.

capacity on extended contract terms and expanded scope (not only SWP projects) must be addressed in an updated subsequent EIR.

7. **July 21, 2017**, DWR authorized the sale of \$11 billion in revenue bonds to pay for WaterFix¹⁴, but the general bond resolution for its authorization relies on repayments from the SWP contractors over the next 70 years. That assumption is incompatible with the repayment periods in the existing SWP contracts, which expire between 2035 to 2042. Nonetheless, DWR's general bond resolution attempts to finesse the ineligibility of WaterFix for revenue bonds by prospectively defining "water supply contracts" to include subsequent amendments. Numerous challenges to the validity of DWR's revenue bonds are pending in DWR's validation action, including challenges to DWR's misuse of its authorizations to circumvent restrictions in the existing SWP water contracts. Since DWR is presently attempting to proceed with validating its revenue bond resolutions without the contract extension amendment, it, and other alternatives to the extension amendment, need to be assessed in an updated subsequent DEIR.
8. **September 21, 2017**, DWR notified State Water Contractors that it had issued Project Order No. 40, adopted on July 21, 2017, which summarily attempted to redefine project facilities known as the California WaterFix to be considered as units of the State's Central Valley Project referenced in California Water Code Sections 11100.¹⁵ Although Project Order No. 40 was not included in the WaterFix CEQA review or its Notice of Determination, and was not disclosed in advance, DWR's notice to SWP contractors confirmed that it was signed by DWR's director "immediately after" signing the Notice of Determination. The lawfulness of DWR's actions with respect to Project Order No. 40, which DWR relied on its general bond resolution, has been disputed by answering parties in DWR's pending validation action. Nonetheless, as Director Nemeth testified¹⁶, undoubtedly this "Project Order" was designed to define the WaterFix water export tunnels under a category in the existing DWR SWP contracts so those funds could help finance the proposed \$19.8 billion tunnel project.¹⁷ This is another major change in financing conditions enabled by the proposed contract extensions, which must be addressed in an updated (subsequent) DEIR.
9. **January 17, 2017**, EPA rated the Federal EIS for the tunnel project (Cal Water Fix, BDCP, DHCCP) inadequate because analyses of the project continued to predict significant adverse

¹⁴ http://www.californiawaterfix.com/wp-content/uploads/2017/10/CWF_Validation_Complaint_.pdf

¹⁵ See: <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/SWP-Water-Contractors/Files/17-07-P-Project-Order-No-40.pdf> 'Pursuant to Water Code § 11260 and 11500, the Sacramento-Sa Joaquin Delta features of the Central Valley Project, as authorized by Water Code § 11260 and 11500 and as described in the publications referenced in Water Code §11260, are hereby further modified to include the following facilities, as they may be designed and revised as the project proceeds (collectively, the "California WaterFix")'

¹⁶ See September 11, 2018 Joint Legislative Budget Committee Informational hearing -DWR Proposed Water Supply Extension Contract --DWR Director Nemeth and Senator Pan @ 1:12:13 to 1:13:09 <https://www.senate.ca.gov/mediaarchive/default?title=Joint+Legislative+Budget+Committee&startdate=09%2F11%2F2018&enddate=09%2F11%2F2018&=Search>

¹⁷ See JBLC Hearing September 11, 2018 @ 1:11:39 to 1:13:55 & <https://mavensnotebook.com/2018/09/20/news-worth-noting-congressman-garamendi-sends-letter-to-epa-regarding-wifia-letter-of-interest-submitted-by-the-delta-conveyance-finance-authority-report-integrating-water-efficiency-into-long-term/> Congressman Garamendi Letter to EPA Wheeler Re WaterFix WIFIA Loan, September 19, 2018.

impacts to the Delta and the factual information and background materials provided as part of the EIS were not adequate for a complete evaluation of environmental impacts. Such impacts must be addressed for the adoption of contract changes that will fund and enable a major project that EPA has found will degrade water quality for municipal, agricultural, and aquatic life beneficial uses. The project will cause violation of water-quality standards as the western Delta becomes more saline. Documents also show there will be substantial declines in quantity and quality of aquatic habitat for 15 of 18 fishes evaluated under WaterFix.¹⁸

10. **October 21, 2016**, the 2013 Delta Plan was set aside as “invalid” by the Sacramento Superior Court¹⁹ because WaterFix was found to be inconsistent with the Delta Plan and because it violated the Delta Reform Act. The impacts of these proposed contract amendments, which would enable financing of the WaterFix water export tunnels along with other undisclosed projects over the next 50 years, must be assessed and disclosed. The subsequent DEIR must address the environmental impacts of failing to achieve state policy that requires meeting the coequal goals of restoring the Delta’s ecosystem along with water supply reliability.

These events since the review period for the 2016 DEIR are significant changes in conditions of the project and related matters that substantially impact the financial and physical health of the State Water Project. DWR, in effect, is retroactively seeking to use the contract extension amendments to enable funding of WaterFix and other projects outside the original scope of the SWP and also to change project operations in order to increase water exports and avoid complying with the existing requirements for protecting the already impaired Delta. Moreover, these DWR-driven changes are in addition to Reclamation’s new policy to maximize exports regardless of the consequences for the Bay-Delta environment.

Regarding effects on environmental conditions in the Bay-Delta, DWR has repeatedly failed to disclose or analyze the environmental impacts of the proposed contractual changes on the State Water Project operations, maintenance, and long-term cumulative impacts that likely will result in less investment in conservation, fish and wildlife mitigation and recreation and other beneficial uses and users. These conservation and mitigation projects are needed to meet existing legal requirements and to protect endangered species and areas where additional surface and groundwater supplies will be taken like the fragile San Francisco Bay-Delta Estuary and northern rivers.²⁰

The fiscal changes associated with the contract extensions will cause significant physical impacts. For example, while the existing DEIR fails to disclose or analyze a single project that necessitates the extension of the SWP contracts for fifty years on top of the existing 75 year term, documents

¹⁸ <https://www.epa.gov/sites/production/files/2017-01/documents/waterfix-feis-2017-01-18.pdf> EPA comments on FEIS January 18, 2017.

¹⁹ *North Coast Rivers Alliance v. Delta Stewardship Council*, JCCP No. 4758 at 2, ¶ 2. See also Superior Court, County of Sacramento, Judicial Council Coordination Proceeding No. 4758, Dept. 31, Judge Michael Kenny, on November 23, 2016, Granting Peremptory Writ of Mandate against the DSC.

²⁰ See also Fish and Game Code Section 5937, that provides protection to fisheries by requiring that the owner of any dam allow sufficient water to pass downstream to keep in good condition any fisheries that may be planted or exist below the dam.

show, in contrast, that the costs of the WaterFix project will require this extension²¹ and will more than double the entire SWP project costs to date.²²

CEQA Guideline § 15378(b) sets forth a list of what the term “project” does *not* include. Guideline § 15378(b)(4) in the list exempts from being a “project,” The creation of government funding mechanisms or other government fiscal activities, which do *not* involve *any* commitment to *any specific project* which may result in a potentially significant physical impact on the environment. (Emphasis added.)

The government's fiscal activities involved here do involve commitment to a specific project, in fact a number of projects. It is clear under the CEQA Guidelines including § 15378(b)(4) that “the creation of government funding mechanisms or other government fiscal activities” which involve commitment to a specific project or projects which may result in a potentially significant physical impact on the environment, is an activity, a “project,” which must be preceded by preparation of a legally sufficient EIR. CEQA must “be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”

The economic impacts of the WaterFix tunnels project in the heart of the San Francisco Bay Delta Estuary on the communities in and surrounding the affected areas also are not included in analysis in the current Draft EIR for the contract extensions or the FEIR for the tunnels project. Furthermore, the reasonably foreseeable environmental impacts indirectly caused by the economic changes and potentially excessive ratepayer debt needed to fund this project, such as the lack of funds to invest in local solutions and conservation mitigation, are necessarily subject to CEQA analysis. The Draft EIR has failed to analyze or disclose these impacts.²³ For example, even the positive economic changes predicted by DWR from continuing to fund the massive spillway rehabilitation and expenditures to remove sediment and erosion debris from downstream of Oroville Dam must be analyzed.²⁴

CEQA also requires agencies to ‘consider qualitative factors as well as economic and technical factors and long-term benefits and costs’ when evaluating projects²⁵ and it requires a general description of the project's ‘technical, economic, and environmental’ characteristics.²⁶

²¹ Bond underwriters have acknowledged that SWP contract extension is required before DWR can issue the WaterFix bonds: Morgan Stanley: “We understand that DWR’s water supply contracts are in the process of being extended, likely to 2085, or 50 years from 2035 when most expire. Clearly, in order to finance the substantial costs associated with CM1 in the BDCP [now, WaterFix], the extension of these contracts is essential to allow for the amortization of financing payments over a long period of time.” Stifle: “DWR’s legal counsel has concluded that BDCP [now, WaterFix] is not on the list of approved projects that are eligible for funding, including through bond financing.” <https://mavensnotebook.com/wp-content/uploads/2018/07/PCL-et-al.-SWP-Contract-Amnds.-July-3rd-Senate-Nat.-Res.-Info-Hearing.pdf>

²² See pgs 34-35 Series AW Bonds October 20, 2016 <https://emma.msrb.org/EP554312-EP370213-EP831557.pdf>

²³ [Bakersfield Citizens for Local Control v. City of Bakersfield \(2004\) 124 Cal. App. 4th 1184, 1204](#)

²⁴ CEQA Guidelines § 15126.2(d)

²⁵ [Pub. Res. Code § 21001\(g\)](#)

DWR's DEIR has failed to consider a range of direct environmental impacts, indirect impacts, and cumulative impacts of the proposed contract extension amendments, including a failure to consider the indirect impact of the growth-inducing effects of the contract extension amendments. Omission of these indirect impacts is especially important since delivery of maximum water supplies under the proposed contract amendments is the proposed goal of the project.

Truth in Lending--DWR does not disclose all the costs and finance charges under the proposed Contract Extension--Just like buying a house, consumers have a right to know.

SWP contractors are required to repay DWR's costs of building and operating facilities for collecting, storing, and distributing water, and those facilities by law must be paid for regardless of whether contractors receive water in any given year.²⁷ Just like a mortgage, ratepayers and property taxpayers have been on the hook for decades, paying off this mortgage under a specified term and definition. Ratepayers bought a well-defined "house" (SWP)--one in existence prior to 1987--and they have been paying off over a 75-year term. They did not agree to finance an undefined "mansion" as set out under the proposed new 50-year term SWP contract extension amendments, which enables funding of the WaterFix and other major projects that were not part of the original SWP.²⁸

Terms, Conditions And Debt Are Not Disclosed, Including Resulting Physical Environmental Impacts.

Under the proposed SWP contract amendments, DWR and the SWP contractors want to extend the term of required payments for another 50 years, but the existing definition of the "house" and its "mortgage" is changed. All these changes are scheduled to occur without a vote of the ratepayers and property taxpayers who will be required pay. To date, the DEIR and CEQA analysis has failed to disclose the physical impacts of the projects proposed to be financed, nor has the analysis considered alternatives that would avoid such huge financial investments in previously undisclosed projects. And yet the debt that ratepayers will be forced to pay to cover the costs are extended another 50 years under terms that are not disclosed. Currently the definition of the SWP is limited

²⁶ Guidelines § 15124(c) As stated earlier, CEQA requires a subsequent EIR if substantial changes are proposed in the project or substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions of the EIR, or new information which was not known and could not have been known at the time the EIR was certified, becomes available. See Public Resources Code §21166(a), (b), and (c). The CEQA Guidelines are codified at 14 Code Cal Regs §15000 et seq.

²⁷ The California Water Resources Development Bond Act directs the Department of Water Resources to enter into contracts for the sale, delivery or use of water made available by the system. Changes in the water delivery contracts also contemplate changes to the bondholder's contract because of the anticipated changes in water delivery payments diminishing the revenues which would be used to fund the existing SWP project that by current definition include only those projects in existence prior to 1987. To the extent the SWP contract loosens the purse strings and expands the scope of the SWP project, existing bondholders' security interest is diminished. The impacts of altering this contract also need to be addressed.

²⁸ On the parallels between risks in the housing-driven financial crisis and those associated with complex water infrastructure, see J. Viers and D. Nover, *Too Big to Fail: Limiting Public Risk in Hydropower Licensing*, 24 Hastings Env'tl L.J. 142 (2018).

to the scope that existed prior to 1987. Now this new contract would delete that limitation and make it a virtual blank check for new projects outside the original definition of the SWP. DWR in the DEIR does not list even one project to be funded for the added 50 years, despite their recent statements that the \$19.6 billion WaterFix tunnel project will be funded through the amended contracts.

In yet another undisclosed impact that raises serious legal questions, MWD claims they would be given exclusive control over the 33% of "unsubscribed" capacity of the WaterFix tunnels.²⁹ MWD now controls 47% of the SWP Table A capacity. Under the proposed, as yet undisclosed, master agreement MWD would also control an additional 33% of the CWF capacity.³⁰ The so-called 'master agreement' contract has not been publicly disclosed, including its environmental impacts, such as water quality impacts on the California Aqueduct from selenium and other contaminants discharged or industrial and municipal use if sold to Westlands Water District.³¹ There would also be impacts on housing developments if the additional capacity was sold, for example, to Tejon Ranch.³² This agreement would provide MWD's physical control over an additional 33% of the

²⁹ March 27, 2018 Metropolitan Water District of Southern California WaterFix Workshop pg 9 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/CDWA%20et%20al/part2rebuttal/sdwa_316.pdf

Patterson, "First and foremost, we believe, and DWR is agreeable, that if we purchased and financed the unsubscribed 33% of the project, we would have a new separate agreement with the Department of Water Resources here. We're calling it the Master Agreement. But the objectives of this contract would be to cover that acquisition, lay out the terms on what we can do with it, be very clear that DWR has assigned to us, Metropolitan, and any other investors the interest in the capacity at the 33% level. So that's ours to manage and make decisions on. And DWR would also agree to utilize that part of the project to maximize the benefits, so they wouldn't arbitrarily go, "Oh, we're going to leave. We have water there we could legally divert under the rules, but we're just not going to do it." No, if you can follow the rules, you got to divert it, because that's what generates the revenue associated with it."

³⁰*Ibid*, pg 30: "Dake: As a little follow-up, Roger described purchase and finance of the unsubscribed portion. I suspect it's more, it's not legal for the state to sell us that. Right? So it's not really a purchase. It's a contracting for, is that

Kightlinger: It would be an ownership interest conveyed to a contract, not actually having fee title to the tunnel, the 33% of the tunnel.

Dake: But what's your characterization of the risk if a governor came to office who was not interested in us having those contractual rights? How would that be managed?

Kightlinger: There's a constitutional provision about interference with contracts that, but perhaps our counsel might opine on that. Our actual practicing counsel.

Dake: We'd be vulnerable

Scully: Yeah. It depends of course on when the contracts were entered into, if the contracts were entered into before the administration changes. If the administration changes before there is a contract and the governor is directing resources to do something else, that's something we'd have to contend with."

³¹ See DWR data for Non-Project Water Pump-ins to the California Aqueduct. <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Water-Quality/Documents/Water-Quality-Assessment-of-NonProject-Turnins-to-the-California-Aqueduct-2013.pdf?la=en&hash=6D3E873C7F4B30D871240B15C4449FB0312543E3> & <https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Water-Quality/Documents/Water-Quality-Assessment-of-NonProject-Turnins-to-the-California-Aqueduct-2015.pdf?la=en&hash=DF0AAD3515C7170683E17A4D5893207B66D44130>

³² <http://www.latimes.com/local/lanow/la-me-ln-tejon-ranch-planning-commission-20180829-story.html>
August 29, 2018 L.A. County planners recommend approval of Tejon Ranch development.

WaterFix capacity and the ability to manage the water and sell it to others, who in turn could use it to construct major housing and utility corridors.³³ No environmental analysis of this potential is provided and the impacts are not disclosed.

Some SWP contractors have asserted that under the current SWP contracts, SWP contractors must either pay for the California WaterFix project, forfeit their SWP contract, or find another SWP contractor willing to pay their share of the costs of constructing and operating WaterFix.³⁴ Several SWP contractors, including the Kern County Water Agency, have filed answers in DWR's WaterFix bond validation lawsuit (Sac. Superior Court Case No. JCCP 4942), challenging DWR's authority to impose the costs of WaterFix without their agreement to modifications of SWP contracts. DWR has publicly acknowledged that it is negotiating a second set of amendments to the SWP contracts to include terms that apportion the WaterFix costs and authorize permanent water transfers for those SWP contractors who decide not to pay for WaterFix.³⁵ Extending the contracts and amending the definition of facilities that can be funded segments and piece-meals the project. This would allow DWR to issue bonds for WaterFix without contract amendments that confirm how SWP contractors will repay the costs of WaterFix. This segmentation also allows DWR to proceed without analyzing the environmental impacts of the projects which, by definition, need the contract extension amendment to proceed.

The impacts of this virtual blank check contract extension will mine the property taxes and ratepayers who do not even receive water service from the project such as Los Angeles, San Fernando, and Palo Alto communities including areas of Compton, South Los Angeles and East Palo Alto will fall on the poor and lower income residents. None of these impacts have been analyzed or disclosed. Recent reports³⁶ also show the impacts of the proposed newly funded projects such as the WaterFix tunnels will also disproportionately impact lower income and the poor in communities from where the water will be exported from the Delta estuary.³⁷ Additionally the impacts on these same populations including the Tribes and others north of the Delta estuary will also bear the brunt of the environmental, economic and depletion of water supplies to serve other richer developments south of the Delta.

³³ For example Westlands Water District is creating "Solar Farms"

<https://efiling.energy.ca.gov/GetDocument.aspx?tn=210742>

³⁴ See, e.g., Metropolitan Water District of Southern California, Modernizing the System: California WaterFix Finance and Cost Allocation, available online at:

http://www.mwdh2o.com/DOCSVCS/Pubs/WaterFix/assets/cawaterfix_finance_costallocation_whitepaper_factsheet.pdf at 7-8, 20-21

³⁵ <https://www.water.ca.gov/Programs/State-Water-Project/Management/California-WaterFix-contractamendment>

³⁶ <https://www.restorethedelta.org/2018/09/18/icymi-highlights-from-rtlds-ej-report-press-conference/>

³⁷ <https://www.restorethedelta.org/thefateofthedelta/>

The potential effects of climate change on the viability of extended contracts with greatly increased balances needs to be addressed.

Assumptions regarding the availability of water and the capability of the SWP to deliver that water have changed dramatically since the contracts were executed in the 1960s. By ignoring these changed circumstances, as it has currently done in the SWP Contract Extension DEIR, DWR has failed to analyze new and significant environmental impacts of changes in SWP operations that will be necessary during the term of the proposed fifty-year contract extension. It is irresponsible and inadequate under CEQA for DWR to fail to account for these changed circumstances (and associated foreseeable changes to the SWP Contracts) in its analysis of the impacts of extending the SWP Contracts.

The findings from the Fourth Climate Change Assessment indicate that water supplies will continue to decline over the life of the proposed term of the extended SWP Contracts. Declining SWP water supplies has several implications that must be assessed in an adequate CEQA review, including, for example: how reduced net revenues will impact the ability to finance SWP facility construction and maintenance; how reduced net revenues will impact the financial stability of the SWP by limiting the ability to repay bonds; and how limited SWP water supplies would likely be shifted from one use to another, causing changes to the landscape in both the areas receiving water and those not receiving water. This will increase the likelihood that areas that can reliably charge more for water (and thus increase net revenues to pay for SWP infrastructure and operations) will receive more SWP water than they have historically. The findings from the Fourth Climate Change Assessment provide significant new information that DWR must consider and incorporate into its analysis of these likely impacts associated with extending the SWP Contracts for fifty years. The need to do so before extending the SWP Contracts is even more acute because DWR has had a long history of circumventing climate-adjusted analysis in addressing the future operation of the State Water Project's keystone Oroville Facilities, whose long-term operating license expired in 2007. More than a decade ago, PCL, and counties in and near the facilities called on DWR to perform that analysis in its Oroville Facilities Relicensing EIR, noting the strong scientific consensus supporting that request. Butte County's comments on the Draft EIR noted the failure to confront flood risks from the Oroville project, including the risk of "catastrophic flooding in and downstream of Oroville" from a "failure or uncontrolled spill" at Oroville dam, and other commenters also noted both the failure of DWR to account for climate change and its understatement of flood risks. Ignoring those recommendations, DWR refused to perform any climate change-adjusted analysis in its EIR for the proposed new 50-year license term, based on a premise its own scientists had already rejected—that the selective range of water conditions experienced in the twentieth century was "expected to continue for the foreseeable future."³⁸ Making matters worse, in still-pending CEQA litigation challenging its refusal to account for climate change, DWR recently shifted course and has joined in the State Water Contractors' attempts to deprive California courts of jurisdiction to review the EIR.

Under current contracts, debt can be issued only for projects and the operation and maintenance for those projects in existence prior to 1987. The new 50 year extension removes this limitation and would open ratepayers and property tax payers to charges for an undisclosed range of facilities

³⁸ http://www.water.ca.gov/orovillereLICensing/FEIR_080722.cfm; see also <https://www.scientificamerican.com/article/california-dam-crisis-could-have-been-averted/>; <http://www.friendsoftheriver.org/wp-content/uploads/2017/09/The-Oroville-Dam-2017-Spillway-Incident-Lessons-from-the-Feather-River-Basin-Final.pdf>

that are likely to deliver even less water while more than doubling the principal costs paid from 1986-2016.³⁹

Spending billions to pour more concrete and build a massive tunnels project ignores climate changes, clings to out of date solutions, and steals funding needed to address looming shortages through conservation and local investments, which have already demonstrated they work and use less energy and cause less environmental damage. Adopting contract changes that launch building tunnels, more diversions, and dams will not address looming shortages. The inevitable impact of climate changes will result in even less water and higher costs to ratepayers and property tax payers who will be on the hook for these massive undisclosed projects, as well as potentially higher costs to safely operate Oroville Dam and other existing facilities.

No Public Access to DWR & Newly Created SWP Contractors' Finance Committee

The actual physical projects that will be funded through the contract extension amendment will be determined in part through a non-public process. The amendments set up a secret finance committee where SWP contractors have direct access to the DWR Director to determine how SWP revenues are to be spent. No public access or ratepayer representatives are provided for in the proposed Contract extension amendment changes. There is no Legislative oversight or transparency because all funding is off budget.

Shifting Recreation and Wildlife Operation and Maintenance Costs to the General Fund Jeopardizes Required Mitigation.

An aspect of the contract extension changes that has received little attention and yet has far reaching environmental and fiscal impacts has not been analyzed under the DEIR. As noted in the PCL et. al. comments on SWP contract extension amendments⁴⁰ the SWP contractors succeeded in getting the adoption of the existing Davis-Dolwig Act language⁴¹ into 50 year water supply contracts. Furthermore, SWP contractors also obtained additional provisions so that there would be no water supply contract charges for required regulatory permit costs along with operation and maintenance charges for these required fish and wildlife facilities and recreation facilities be charged to the contractors. The California State Legislative Analyst Office (LAO) has issued a series of reports indicating that approximately 10% of costs of the SWP are allocated to fish, wildlife and recreation.⁴² Many times, there are no such benefits. These costs are substantial. In addition,

³⁹ See pgs 34-35 Series AW Bonds October 20, 2016 <https://emma.msrb.org/EP554312-EP370213-EP831557.pdf>

⁴⁰ March 4, 2013 PCL et. al. Comment Letter <https://mavensnotebook.com/wp-content/uploads/2014/04/March-4th-PCL-et-al-SWP-Water-Supply-Contract-Extension-Comment-2.pdf>

⁴¹ California Water Code § 11900-11925

⁴² *LAO Policy Concerns and Recommendations Made in Past Years*. We have raised concerns in the past (again, see "[Funding Recreation at the State Water Project](#)," as well as our [analyses of the 2009-10 and 2010-2011 Governor's budgets](#)) over DWR's practice of using SCRBS to calculate the state's share of SWP costs. Most importantly, the practical implication of the use of this methodology (as implemented by DWR) is that DWR assigns cost responsibility to the state for aspects of SWP that lack any direct recreational component.

See <http://www.lao.ca.gov/laoapp/budgetlist/PublicSearch.aspx?Yr=2011&KeyCol=401>

under the Governor's proposed WaterFix, such fish and wildlife costs along with operation and maintenance are likely to total billions of dollars. Adopting contract language that would shift these types of costs from the water supply contract charges to the taxpayers or General Fund would have serious consequences. The LAO has indicated, "*This allocation of costs without Legislative approval conflicts with the Legislature's exclusive constitutional authority to set its expenditure priorities by making appropriations.*"⁴³ Originally only "enhancements" to fish and wildlife were to be funded by the taxpayer and the General Fund.⁴⁴ Governor Ronald Reagan's DWR Director Gianelli explained the cost allocation this way, "*The mitigation of damages to fish and wildlife resources should be mentioned because it differs greatly from recreation and fish and wildlife enhancement. Requirements for preserving existing, or pre-project fish and wildlife resources, or for mitigation of damages to them, produce no new benefits. Water project funds are used for fish and wildlife mitigation facilities and operations. These costs are project costs and are reimbursable*" [emphasis added]⁴⁵

Compliance with Water Code 147.5 Has Not Been Achieved--Pre-Judging CEQA is not Legal.

From DWR's May 10, 2018, hearing request, DWR contends holding the JLBC hearing on September 11, 2018, triggers a 60-day countdown under Water Code 147.5 so DWR can approve the proposed amendments. New terms would last through 2085, decades beyond current expiration dates (2035-2042). DWR has yet to release its Final EIR, or even to respond to major criticisms about the amendments' costs, risks and environmental impacts made during the public comment on the Draft EIR, which closed in late 2016. Key aspects of the amendments' financial consequences remain unstudied. Extensive analysis that DWR is required to provide under Water Code section 147 remains undone. In effect, DWR proposes a significant redefinition of the State Water Project under the label of a contract "extension." As attorney Roger Moore testified at the September 11, 2018 JLBC hearing⁴⁶, the contract extension amendments as currently proposed seek to remove a limitation on coverage of "water system facilities" in Article 1(hh) of the current contracts that would otherwise pose a major obstacle to covering revenue bonds for the Delta tunnels; moreover, the provision DWR cited to the JLBC as its source of authority, "Article 1(ap)," is a proposed provision not in the existing contracts. Without mentioning the Delta tunnels by name, the extension amendments are designed to overcome specific obstacles to including them in financing under the existing contracts. They seek to do that even without adding the separate set of tunnel-specific amendments DWR has been negotiating, which DWR doesn't believe require any legislative oversight, yet they pose additional environmental impacts.

⁴³ See <http://www.lao.ca.gov/laoapp/budgetlist/PublicSearch.aspx?Yr=2011&KeyCol=401>

⁴⁴ http://www.c-win.org/webfm_send/13. Originally, the General Fund paid the costs assigned to recreation, and fish and wildlife purposes. Since 1989, those costs not reimbursed by the General Fund offset an equal amount the SWP owes the California Water Fund. Recreation and fish and wildlife enhancement costs are non-reimbursable by SWP contractors. (However, contractors are responsible for reimbursing mitigation costs related to recreation, fish and wildlife.)

⁴⁵ DWR Bulletin 117 pg 8

⁴⁶ See Roger Moore's 9-11-18 testimony <https://www.restorethedelta.org/wp-content/uploads/RBM-letter-re-JLBC-9-10-18.pdf> and JBLC Hearing September 11, 2018 oral testimony starting at 2:13:30.

As we have described, DWR proposes to redefine “facilities” covered in the SWP contracts to create the illusion that financing the Delta tunnels, or other risky future projects favored by the largest contractors, can get bundled into the State Water Project approved in 1960. That’s why critics have aptly compared the proposed contract extension to a time machine. By changing the definition of covered facilities, they seek to transport the tunnels to an era before the California Constitution expressly required voter approval of property taxes for projects of this magnitude.

The unsubstantiated claim that the amendments proposed are necessary or helpful to ensure continued water deliveries or to address the State Water Project’s operation and maintenance needs without excessive financial burdens has not been analyzed nor the environmental impacts disclosed. As noted in our previous comments, the alternative of utilizing provisions under the existing current contracts, including the Evergreen Clause, has not been addressed. This viable alternative, exploring ways of addressing debt compression problems without including the risky redefinition of project facilities, needs to be analyzed. That will enable decision makers can see the financial issues going forward at the end of the existing 2035 debt term, such that they can be responsibly addressed without forcing ratepayers to accept the risky changes DWR proposes, which could result in a costly escalation of indebtedness. Alternatively, the debt term could be extended without giving DWR a blank check to issue debt for new projects.

It is doubtful DWR can lawfully represent it knows yet what the operative terms and conditions will be. DWR’s May 2018⁴⁷, hearing request admits it has no plans to release the final EIR for the contract extension amendments until after the JLBC holds its hearing—i.e., until after legislative oversight ends. And DWR’s legislative package on the contract extension doesn’t link to, or mention, critical comments still left unanswered on the Contract Extension Draft EIR. DWR provides some older scoping comments, but not the ones referred to above, and JLBC’s legislative staff didn’t know of anywhere they’ve been made available, to the committee or to the public.

Despite the urgency DWR is currently claiming about expediting the contract extension, DWR conspicuously did not respond to letters received before closing public comment in late 2016. Nor can those letters be considered off-point—they identify major, and still unanswered, concerns about legal, environmental and financial risks from the proposed amendments. For example, the October 17, 2016 comment letter from PCL et al.⁴⁸ makes many of the points. The comments challenge DWR’s EIR assertions that the contract extension amendments are “separate and independent” from WaterFix, and that they wouldn’t change SWP operations and facilities. The comments also challenge DWR’s dubious decision to piecemeal the “extension” amendments from the second set of water supply contract amendments (For those, DWR still has yet to prepare even a Draft EIR). Other comment letters on the Draft EIR, such as those from the Center for Food Safety and NRDC, also make a forceful case for the significant risks from the so-called “extension” amendments—and the implausibility of the notion that these amendments aren’t about WaterFix.

Currently there is an incomplete CEQA review. Thus, the language provided to the Legislature could not have contained “*the details of the terms and conditions of the contract and how they serve as a template for the remaining long-term water supply contracts*” and complied with Water Code section 147.5. It is simply not legally possible because DWR has not reached a legal decision pursuant to CEQA as to the final project and final long term contract unless, it was prejudging the

⁴⁷ https://www.senate.ca.gov/sites/senate.ca.gov/files/083018_hearingagenda.pdf

⁴⁸ [October 17, 2016 comment letter from PCL et al.](#)

analysis. Such pre-judgment would be a classic CEQA error⁴⁹--a project definition that doesn't allow for CEQA's "interactive process" of comment and responsive modification. For the Legislature to accept DWR's submission as "*the details of the terms and conditions of the contract and how they serve as a template for the remaining long-term water supply contracts*" would amount to DWR's CEQA review being a sham. DWR can't assume now that it knows what the contract extension amendment language will be after it completes CEQA review.

Conclusion: The DSEIR Must Be Set Aside, Substantially Redrafted And Re-Circulated To Address These Impacts.

All of these events will have significant impacts on the operations of the State Water Project, its contract revenues and associated construction and environmental mitigation. Further these events also have significant impacts on the existing mitigation of adverse impacts from the SWP operations and, hence, "will require major revisions in the environmental impact report." (Pub. Resources Code, § 21166.) Because the DEIR fails to address any of these events and any of these impacts, the DEIR must be set aside and substantially redrafted and re-circulated to address them.


Thank you for the opportunity to provide comment.



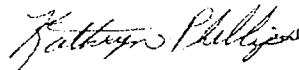
Jonas Minton
Senior Water Policy Advisor
Planning and Conservation League
jminton@pcl.org



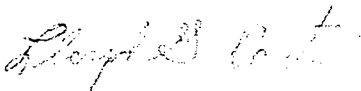
Noah Oppenheim
Executive Director
Pacific Coast Federation of Fishermen's Asso.
Institute for Fisheries Resources
noah@ifrfish.org



Stephen Green
President
Save the American River Association
gsg444@sbcglobal.net



Kathryn Phillips
Director
Sierra Club California
kathryn.phillips@sierraclub.org



Lloyd G. Carter
President, Board of Directors
California Save Our Streams Council
lcarter0i@comcast.net




Adam Keats
Senior Attorney
Center for Food Safety
akeats@centerforfoodsafety.org

⁴⁹ County of Inyo v. City of Los Angeles (II) (1976) 61 Cal.App.3d 91 (appellate jurisdiction and relief); (III) (1977) 71 Cal.App.3d 185 (Owens Valley groundwater management); (V) (1980) 124 Cal.App.3d 1 (groundwater management); (VI) (1984) 160 Cal.App.3d 1178 (dispute resolution); (VII) (1993) Cal. App. unpublished (appellate jurisdiction); (VIII) (1997) (final resolution and dismissal)



Carolee Krieger
Executive Director
California Water Impact Network
caroleekrieger7@gmail.com



Barbara Barrigan-Parrilla
Executive Director
Restore the Delta
Barbara@restorethedelta.org



Conner Everts
Executive Director
Southern California Watershed Alliance
Environmental Water Caucus
connere@gmail.com



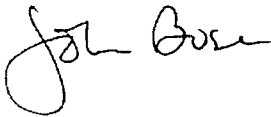
Eric Wesselman
Executive Director
Friends of the River
caleenwintu@gmail.com



Bill Jennings
Chairman Executive Director
California Sportfishing Protection
deltakeep@me.com



Barbara Vlamis,
Executive Director
AquAlliance
barbarav@aqualliance.net



John Buse
Senior Counsel
Center for Biological Diversity
jbuse@biologicaldiversity.org



Eric Wesselman
Executive Director
Friends of the River
Eric@friendsoftheriver.org

Frank Egger
President
North Coast Rivers Alliance
fegger@pacbell.net



Larry Collins
President
Crab Boat Owners Association
papaduck8@gmail.com

Exhibit 1: CDs 1 & 2: September 11, 2018 Joint Legislative Budget Committee Informational Hearing DWR Proposed Water Supply Contract Amendments.

Exhibit 2

Recent Comment Letters

The following comment letters were received after the DEIR was circulated for public review:

- Natural Resources Defense Council, Institute for Fisheries Resources & Pacific Coast Federation of Fishermen's Associations, Defenders of Wildlife received by DWR on August 13, 2018
- Natural Resources Defense Council received by DWR on August 29, 2018
- Natural Resources Defense Council received by DWR on September 18, 2018
- Planning and Conservation League, Institute for Fisheries Resources, Save the American River Association, Sierra Club California, California Save Our Streams Council, Center for Food Safety, California Water Impact Network, Restore the Delta, Southern California Watershed Alliance, Friends of the River, California Sportfishing Protection, AquAlliance, Center for Biological Diversity, North Coast Rivers Alliance, Crab Boat Owners Association received by DWR on September 25, 2018

Under CEQA, a lead agency is required to consider comments on the DEIR and to prepare written responses, if a comment is received within the public comment period. (Pub. Resources Code, § 21091, subdivision (d); CEQA Guidelines, § 15088.) When a comment letter is received after the close of the public comment period, however, a lead agency does not have an obligation to respond. (Public Resources Code, § 21091, subdivision (d)(1); Pub. Resources Code, § 21092.5, subdivision (c) ("Nothing in this section requires the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a negative declaration or environmental impact report.)) Nevertheless, DWR reviewed the comment letters received after the DEIR was circulated for public review and determined that the comments contained in the letters do not result in any new impact or in a change in the significance level of impacts disclosed in the DEIR; or require new mitigation, consideration of new alternatives, or any other substantial change to the DEIR. Therefore, recirculation of the DEIR or release of a supplemental DEIR is not required. In addition, the comment letters make comments that are similar to comments made within the comment period and addressed by DWR in the FEIR.

- August 13, 2018 letter. This letter makes a comment about the project description and alternatives analysis. The FIER considers these on pages 2-2 to 2-22.
- August 29, 2018 letter. This letter makes a comment about climate change and the coordinated operations between DWR and the Bureau of Reclamation. The FEIR considers climate change on pages 2-7 to 2-8, 2-116, 2-119, 2-177, and 2-233 to 234, and the coordinated operations between DWR and the Bureau of Reclamation on pages 2-21 to 2-22, 2-98, and 2-123.
- September 18, 2018 letter. This letter makes a comment about the materials that it believes should be part of the record and did not make a comment about the impacts of the project.
- September 25, 2018 letter. This letter makes a comment about the impacts of the project's financial changes and climate change. The FEIR considers the project's financial changes on pages 2-3 to 2-8, 2-14, 2-41 to 2-42, 2-95, 2-102, 2-106, 2-109, 2-162, 2-178, 2-225, and 2-233, and climate change impacts on pages 2-7 to 2-8, 2-116, 2-119, 2-177, and 2-233 to 2-234.

EXHIBIT 6



EDITORIALS

If this meeting isn't about financing Delta tunnels, then put it in writing

BY THE SACRAMENTO BEE EDITORIAL BOARD

September 10, 2018 01:50 PM

Updated September 10, 2018 05:08 PM

Clearly, Gov. Jerry Brown wants to cement the Delta tunnels as part of his legacy before leaving office.

But his administration shouldn't try to shove through this monumental, \$20 billion project without adequate review and debate.

Critics say that's precisely what is happening at a hearing Tuesday of the Joint Legislative Budget Committee. They say that a proposal to extend long-term contracts for the State Water Project for another 50 years will pave the way to financing the tunnels under the Sacramento-San Joaquin Delta.

This is the same meeting that was scheduled for the next-to-last day of the legislative session, and then canceled at the last minute after howls of protest. Now it's on again while the Legislature is in recess. It's a procedural hearing where the budget committee doesn't have to actually vote, only listen to the department's plan.

Opponents of the tunnels point to a proposed contract amendment that removes a restriction that bonds that get financed through the contracts cannot be used for any project built after 1987. They also cite a clause that deletes a requirement for consensus among water contractors to approve contracts, which they say could allow a majority to force others to pay for the tunnels. And they say the new contracts could obligate water districts and their ratepayers to raise property taxes if water rates don't bring in enough.

Not so, says the Department of Water Resources. It insists that extending the contracts does not obligate the state to pay for the tunnels and has "little to do" with the project at all.

If that's the case, then the department should put it in writing and erase any doubt.

That reassurance would not get in the way of what the department says is the actual purpose of the contract extensions: To lower the cost of issuing revenue bonds to upgrade, repair and maintain aging infrastructure in the State Water Project, the 700-mile network of reservoirs, aqueducts and pumping plants that supplies water to more than 27 million Californians and irrigates about 750,000 acres of farmland. The repairs include rebuilding the damaged spillway at Oroville Dam.

The current contracts start expiring in 2035, and DWR says extending them will make borrowing less expensive – just like a monthly payment is lower on a 30-year mortgage than a 15-year home loan. Though the department says the current contracts already authorize bonds to build the tunnels if the project moves forward, that interpretation is also in dispute.

The contract extensions are supported by a coalition of more than 40 groups, including Southern California water districts, the California Chamber and Silicon Valley Leadership Group.

Critics, however, say a lot of questions need to be answered before moving ahead, including an environmental review of the contract amendments.

They also want Tuesday's hearing delayed until after a study is done on the impact of a proposed new allocation plan for water in the San Joaquin River, and one about to be released for the Sacramento River watershed, on water flows through the Delta and through the tunnels. And they want a new economic analysis based on that information to see whether the tunnels, known officially as California WaterFix, pencil out.

That certainly seems like information that is necessary before deciding how to proceed with the tunnels, even if those decisions must be made by the next governor and Legislature. As DWR points out, the project still requires state and federal permits — a lengthy process that will likely also be tied up in the courts.

As we've said, despite all the controversy surrounding the tunnels, there needs to be a much broader debate on how to secure California's water future in an era of climate change.

But unnecessary maneuvers like Tuesday's hearing only deepen distrust, harden opposition to the tunnels and get in the way of that needed discussion.

 **COMMENTS** 

SUGGESTED FOR YOU

TAKE US WITH YOU

Real-time updates and all local stories you want right in the palm of your hand.

 **THE SACRAMENTO BEE APP** →

 **VIEW NEWSLETTERS** →



SUBSCRIPTIONS

Start a Subscription

Customer Service

eEdition

Vacation Hold

Pay Your Bill

Rewards

LEARN MORE

About Us

Contact Us

Newsletters

News in Education

Opinion

San Jose Mercury Editorial: Block outrageous effort to lock in Delta tunnels water grab

If an Aug. 14 hearing is held, the fix will be in for Gov. Brown's massive, \$17 billion twin-tunnels project

By MERCURY NEWS & EAST BAY TIMES EDITORIAL BOARDS |

PUBLISHED: August 8, 2018 at 6:15 am | UPDATED: August 8, 2018 at 6:28 am

<https://www.mercurynews.com/2018/08/08/editorial-water-2/>

Gov. Jerry Brown's administration is now trying to jam through a political deal that would enable construction of his \$17 billion Delta twin-tunnels project, the biggest public works project in state history, without the approval of the state Legislature, the voters or ratepayers who would be footing the bill.

Brown's state Department of Water Resources suddenly plans to extend State Water Project contracts, with amendments, for another 50 years. Fifty years! That would allow water contractors backing the twin-tunnels project to lock in water contracts for the Delta tunnels project before Brown leaves office at the end of this year.

The only way to stop it is if the Assembly's and state Senate's Joint Legislative Budget Committee refuses to hold a procedural hearing on the contracts that is currently scheduled for Aug. 14. Mind you, the joint committee has no approval authority, but its refusal to hold the required hearing could delay the process until after the November gubernatorial election. That's what the committee must do.

The future of California water and a project of this magnitude demands maximum transparency and public input. The hearing must be postponed until the Legislature, the next governor and the public have the opportunity to fully vet the proposal and its impact.

Otherwise, the fix will be in for Brown's so-called California WaterFix. Even if Gavin Newsom, Gov. Jerry Brown's likely successor, wanted to later kill the water grab that would send more Northern California water to Central Valley farmers and Southern California cities.

Without a public vote. Without complete information on the financing and cost allocation of the twin-tunnels project. Without sufficient analysis of how much water would be available to contractors.

Once the hearing has been held, state water experts say, the Department of Water Resources can execute the contract amendments. Period. Under existing law, the Legislature would have no oversight under future State Water Project contract amendments.

This is outrageous.

Twin-tunnel proponents are ignoring the July recommendations of the State Water Resources Control Board for significant increases in the water flowing through the Delta in order to preserve its long-term health. The recommendations raised significant questions about the viability of the twin-tunnel project, which won't pencil out unless it results in increased water flows from the Delta to Southern California.

It's essential that Californians let the committee know that this project should not move forward until the state has a clear understanding of its impact.

Cancel the hearing now

OPINION

The bullet train has (almost) nothing on Brown's twin tunnels



FILE – In this Feb. 23, 2016 file photo, people try to catch fish along the Sacramento River in the San Joaquin-Sacramento River Delta, near Courtland, Calif. (AP Photo/Rich Pedroncelli, File)

By SUSAN SHELLEY | letters@ocregister.com | Orange County Register

PUBLISHED: August 7, 2018 at 5:30 pm | UPDATED: August 8, 2018 at 6:31 am

If you thought the bullet train was a boondoggle designed to lift money from your wallet while

That's how Gov. Jerry Brown and the Department of Water Resources intend to pay part of the cost of the \$17 billion twin-tunnel project known as WaterFix. They have to get voters to approve the costly undertaking so property taxes can be raised to pay for it.

Here's the catch: The voters have to approve it in 1960.

That's because Proposition 13 was passed in 1978, when voters were so outraged over skyrocketing property taxes that they took control away from the Legislature and cut the property tax rate statewide to 1 percent. However, Prop. 13 allowed for the tax rate to be higher than 1 percent if needed to pay for debt that the voters had approved in prior years.

Voters approved the debt for the State Water Project in 1960. There's still an extra charge for the State Water Project on property tax bills today.

So the question that teams of government boondogglers are wrestling with now is how to make the proposed WaterFix project go back in time to 1960. Then they can say the voters already approved the debt for building the twin tunnels, and property taxes can be raised if needed to pay the WaterFix debt.

To do this, they're redefining WaterFix as part of the State Water Project. Under state law, specifically Water Code 147.5, the Department of Water Resources can finalize a long-term water contract 60 days after the Joint Legislative Budget Committee holds an informational hearing. The committee doesn't have to vote. The Legislature doesn't have to vote. All that's needed is the hearing.

The hearing has now been scheduled for Aug. 14.

Sixty days later, the new long-term contract will be finalized, extending the term through 2085 and setting the stage for WaterFix debt to be issued. The financing will be committed before the next governor takes office.

The full details of how much WaterFix will cost and who will pay are still to be determined, and the Department of Water Resources says more amendments to the contract will be finalized sometime in the future, after the CEQA requirements are met.

On July 3, following a hearing by the Senate Committee on Natural Resources and Water, the Delta Counties Coalition called for a halt to the contract extension process. The group cited the lack of basic planning and financial feasibility analyses, among other concerns.

For what it will cost, you'd think the WaterFix project would solve California's water problems. But it won't. WaterFix doesn't guarantee even one drop of additional water. It's an elaborate workaround for the environmental restrictions on pumping water from the California delta. WaterFix will transport water through two giant tunnels under the delta to new pumps, and then south.

But just as pumping from the delta has been throttled by lawsuits over species protection, the water from WaterFix could be shut down the same way.

We could end up with all the debt and none of the water.

This is why many of the State Water Project contractors have declined to participate in financing WaterFix, and why pressure tactics and tricks are being employed to push the huge cost onto taxpayers as well as ratepayers, who are, after all, the same people.

It's part of the contract that if the water agencies can't make their payments to the State Water Project, they are required to raise property taxes in their service area in order to come up with the money.

And that's how you'll end up paying for the boondoggle known as WaterFix. Your water rates will go up, and if that's not enough money, your property taxes will go up. And you'll still have to pay for other projects needed to increase the water supply.

Call Assembly Speaker Anthony Rendon and Senate President Pro Tem Toni Atkins and urge them to postpone the Joint Legislative Budget Committee Hearing until they can explain how much the WaterFix project is going to cost and how the state expects to pay for it.

Then set the time machine to "Time for a new governor."

Susan Shelley is a columnist for the Southern California News Group. Reach her at Susan@SusanShelley.com. Twitter: @Susan_Shelley.

Get out of your bubble.

Sign up for our **Opinionist** newsletter to get informed commentary.

Enter your email to subscribe

SUBSCRIBE

Tags: [Opinion Columns](#)



Susan Shelley

Susan Shelley is an editorial writer and columnist for the Southern California News Group, writing on local, state and national issues.

OPINION

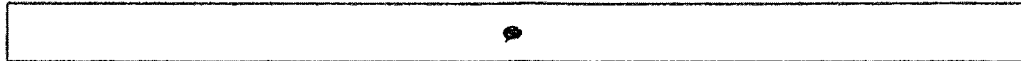
How you can stop Sacramento from raising your water rates and property taxes



The dome of the state Capitol glows in the early evening Wednesday, Aug. 31, 2016, in Sacramento. (AP Photo/Rich Pedroncelli)

By **SUSAN SHELLEY** | I

PUBLISHED: August 29, 2018 at 11:26 am | UPDATED: August 29, 2018 at 4:05 pm



Editor's note: Breaking views are thoughts from individual members of the editorial board on today's headlines.

On Thursday, August 30, at 8:00 a.m., an obscure committee in Sacramento will hold an

Under state law, the Department of Water Resources can finalize a long-term contract for water from the State Water Project through a unique process that doesn't require a vote of the Legislature or any legislative committee. The DWR simply sends over a copy of the contract, the Joint Legislative Budget Committee holds an informational hearing, and 60 days later, the contract can be finalized.

In this case, the DWR wants to extend contracts for water from the State Water Project all the way to the year 2085.

Why? Because a massive capital investment is needed to pay for the WaterFix twin-tunnel project, estimated to cost \$17 billion. The money will be borrowed from Wall Street investors by selling long-term bonds, and the state's contract for supplying water has to be extended far enough into the future so that the rates paid by water customers can be promised as security. The higher the level of borrowing, the longer the contract has to run to make the math work.

Unless that hearing on Thursday is postponed, the 2085 contract extension will be finalized before Gov. Jerry Brown leaves office, committing the next governor and the next three generations of Californians to pay the debt.

And the proponents of WaterFix have a trick up their sleeve that will commit taxpayers as well as ratepayers to cover any cost overruns that plague the twin tunnels. They're calling this future project an investment in "ongoing operations and maintenance" of the State Water Project.

That bit of verbal sleight-of-hand makes the debt for this future project part of the commitment taken on by voters in 1960, when the debt for the State Water Project was approved.

You see, there's a tiny little loophole in Proposition 13 that allows the property tax rate to be raised above 1 percent in order to pay for any debt approved by voters prior to the initiative's passage in 1978.

By calling the \$17 billion WaterFix "maintenance" of the State Water Project, the proponents are contending that the debt to build the new tunnels was approved by voters in 1960. The entire massive boondoggle squeezes through the loophole.

Harry Houdini would have paid a lot of money for that trick.

At one time, state water officials expected the cost of building WaterFix to be shared by all the contractors who receive water from the Delta, but then most of them refused, citing the high cost and the lack of a guarantee that they would actually receive water. However, the board of the Metropolitan Water District of Southern California voted to pick up the lion's share of the cost by itself. The MWD has explained that water rates will go up for customers in its service area to pay for WaterFix. But what they haven't explained is that they are required to raise property taxes if necessary to pay their commitments to the State Water Project.

From the website of the Department of Water Resources, here's the language in the contract, under "Obligation of District to Levy Taxes and Assessments":

"If in any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year."

What this means is that if water rates don't produce enough revenue to pay what the MWD owes the state, property taxes must be raised to pay for the water agency's financial obligation under its State Water Project contract.

And this is all going to happen on auto-pilot if that informational hearing is held by the Joint Legislative Budget Committee on Thursday morning. The DWR will finalize the extended water contracts. The long-term bonds will be sold to finance WaterFix. The principal and interest payments will be the obligation of ratepayers and taxpayers all the way out to 2085.

Adding to the foul smell is a gutted-and-amended bill by Assemblyman Richard Bloom. AB 2649 would change the process of approving State Water Project contracts, specifically "any potential amendment of a long-term water supply contract that is of projectwide significance with substantially similar terms intended to be offered to all contractors, or that would permanently transfer a contractual water amount between contractors."

What this means is that WaterFix-related amendments to the water contracts are planned but not yet written. The Joint Legislative Budget Committee is going to hold a hearing on Thursday morning that will commit all of us to higher water rates and higher property taxes to pay for WaterFix and they don't even know what's going to be in the final contract.

Can this be stopped?

Call Assembly Speaker Anthony Rendon at 916-319-2063. Call Senate Pro Tem Toni Atkins at 916-651-4039. Call Committee Chair Holly Mitchell at 916-651-4030. Tell them the extension of the State Water Project contracts to finance WaterFix must wait until the next governor takes office, or at least until the contracts are completely written. Urge them to call off the Thursday morning hearing of the Joint Legislative Budget Committee.

You can find the names and contact information for your own state representatives at findyourrep.legislature.ca.gov. Call them, too.

Susan Shelley is a columnist for the Southern California News Group. Susan@SusanShelley.com.
Twitter: @Susan_Shelley

Get out of your bubble.

Sign up for our Opinionist newsletter to get informed commentary.

Enter your email to subscribe

SUBSCRIBE

Tags: Editorials



Susan Shelley