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de la Guerra, Sheila

From: Carolee Krieger <caroleekrieger7@gmail.com>
Sent: Tuesday, February 5, 2019 11:12 AM
To: sbcob
Subject: SWP contract issues coming up at your Tuesday meeting
Attachments: 2019 Roger Moore Letter - SBC SWP.pdf

LATE DIST

Dear Clerk of the Board,

I have sent this to all of the Supervisors and wanted to make sure you hve it for your records.

I wanted to make sure you have the full version of the letter Roger Moore did for us for your meeting on the SWP contract issues last April (attached.) Also, some last thoughts from Roger:

CCWA makes a big deal out of "aligning" decision-making with financial responsibility. That is a nice way of saying that CCWA thinks it serves its own interest to have the county supervisors with no influence over SWP decision-making.

An assignment of the contractor role to CCWA is likely to be very effective in getting rid of the county's decision-making role and political influence over SWP decisions. That move, even if it proves to be a huge mistake, would be irreversible once made. Eliminating the county's voice now would come just in time for CCWA to agree to contract amendments and related actions that would likely make the SWP more costly and risky for ratepayers and taxpayers in the county.

By contrast, an attempted assignment is far less likely to do anything helpful to reduce the county's contingent responsibility below its already-minimal level in current agreements. Through the agreements made long ago and agreed to by CCWA, CCWA is financially responsible for SWP costs, and most contingent costs. CCWA has agreements in place to recover costs from its members. Under current agreements, the county can even sue CCWA to recover SWP costs if needed. But if CCWA defaults and the county is unable to recover, the county would ultimately be responsible for covering the deficit.

If the county signs new agreements attempting to assign the SWP contractor role to CCWA, the unanswered question on contingent liability is, would anything different happen if CCWA eventually defaults? And the answer is, probably not. The crucial role of taxing authority for SWP contractors is addressed in the *Goodman* case discussed in my reports. Even though CCWA has some ability to tax, it can't fully "stand in the shoes" of the county, an entity with superior taxing authority. Even if DWR says now that's it's OK with the assignment, DWR hasn't volunteered to cover the costs in the event CCWA defaults. In the WaterFix validation case, DWR has signaled a willingness to aggressively apply Water Code section 11652 if needed to force payment of project costs.

The other unanswered question is whether new amendments or other commitments made by CCWA would be subject to the constitutional tax provisions requiring a popular vote. The original SWP contracts would be grandfathered in under the *Goodman* case, but that wouldn't be so for new agreements or commitments.

I will be there at 1:30.

Thank you,

Carolee

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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 (C-WIN), 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, ch. 386 (Stats. 2014) 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.

II. Existing Agreements Already Make CCWA Fully Responsible for Project Costs and Limit the County's Exposure to Contingent Liability

Assessing whether it is in the county's interest to eliminate its role as SWP contractor requires awareness of the safeguards already in place in existing agreements protecting against the county's exposure to contingent liability for SWP costs. The 1991 Transfer of Financial Responsibility Agreement (TOFR) between the County FCD and CCWA provides that "[a] principal purpose of this agreement is to ensure that the district's financial obligations under the SWP attributable to a CCWA contractor will be "completely and fully assumed and satisfied by CCWA, and that the District will be completely and fully reimbursed by CCWA" for all costs, liabilities and obligations "in connection with implementation of the SWP contract as to each CCWA contractor." (TOFR, Recital J.) Whenever interpretation is required, it shall be interpreted "in order to achieve that purpose." (*Id.*)

Provisions in the Water Supply Agreements (WSAs) between CCWA and its contractors, referenced in the TOFR, are "intended to ensure that the District will be fully and completely reimbursed by the CCWA for all of its costs, liabilities and obligations in connection with the implementation of the SWP Contract as to the CCWA contractors." (TOFR, Recital F.) These WSA provisions operate to limit the circumstances that would result in the County FCD's contingent liability. For example, CCWA contractors' "cross guarantees," also known as "step up" provisions, require each contractor to "stand behind the promises of the other contractors either in the North County or the South Coast," providing that "if a contractor defaults, the other contractors in the region are obligated to take an increased level of water deliveries and to pay for the additional water, up to a limit of 125% of the payments otherwise made by the stepping-up contractor." (TOFR, Recital F, section 2 (citing WSA section 16(a).) The enforcement remedies available to CCWA include stopping deliveries to the defaulting contractor, transferring the defaulting contractors' entitlement and obligation to pay to another CCWA contractor, and bringing a lawsuit to require payment. (TOFR, Recital F, section 5 (citing WSA, section 16).)

Should a default nonetheless occur, the TOFR empowers the County FCD to bring an action for damages or in equity against CCWA for specific enforcement of its payment obligations. (TOFR, section 3.A.) The County FCD may also directly bring a third party beneficiary enforcement action against defaulting CCWA contractors, or bring that action in the name of CCWA if any court deems that County FCD unable to bring the action in its own name." (TOFR, section 3.B.)

IIII. Assigning SWP Contractor Status to CCWA Would Be Ineffective in Reducing the County's Risk of Contingent Liability.

A. CCWA Acquired No New Authority Through AB 2170 (2014), Which is Merely Declarative of Existing JPA Law.

CCWA incorrectly assumes that California's 2014 legislation authorizing Joint Powers Authorities to impose fees, taxes and assessments (AB No. 2170 (ch. 366),

codified at Gov. Code, § 6502) removes a legal barrier to CCWA serving directly as the state water contractor, enabling CCWA to honor financial obligations as SWP contractor originally assumed by the county. That expansive reading of the 2014 legislative change is mistaken. The revisions approved "do not constitute a change in, but are declaratory of existing law." (AB 2170, Ch. 386, section 1.) The new language added in AB 2170 mentions "the authority to levy a fee, assessment or tax," not to revise or expand JPA authority, but to identify these as examples of common powers available under section 6502 prior to the 2014 amendment. At most, the clarifying reference to fees, assessments and taxes in AB 2170 would rule out a categorical argument based on the premise that these powers are categorically unavailable to a JPA. It would not assist in determining the scope and limits of the powers available to the JPA, or whether the JPA could collectively take the place of the county.

AB 2170 did not change in the simple but central limitation placed on exercise of joint powers under section 6502: the exercise of power by the public agencies entering the agreement, must be "*common to the contracting parties.*" (Emphasis added.) Likewise, AB 2170 did not and could not change constitutional principles relating to voter approval and participation, such as Proposition 13's requirement of two-thirds voter approval for a special tax, or Proposition 218's notice, protest and hearing procedures required of local agencies before imposing property related fees or charges.

Documents from AB 2170's legislative history also assist in corroborating what should be clear from its plain language—that the 2014 joint powers legislation only clarified and did not change the law or remove existing limitations on JPA power. For instance:

- Staff analysis prepared in connection with the assembly's concurrence in Senate amendments (August 11, 2014) observed that a JPA "may only exercise the powers expressly provided in the agreement," is limited to the entering agencies' existing powers, and requires compliance with procedural requirements applying to one of the contracting public agencies. The staff analysis describes the California Constitution's requirements relating to property related fees, and notes that "Counties and other local agencies" may impose such fees on property owners "after completing the Proposition 218 process. Special districts created by statute, however, must have specific authority for each of these revenue sources." As recounted in this staff report, both supporters and opponents of AB 2170 recognized that it was meant only to "clarify" existing law.

- Senate floor analysis of AB 2170 for the Senate Rules Committee (July 11, 2014) and for the Third Reading (June 18, 2014) noted that "[b]ecause a JPA only allows public agencies to exercise their existing powers, the bill does not grant any new revenue powers to local governments. This bill also does not change any of the voter approval thresholds or other procedural requirements that state law imposes on local taxes, assessments and fees."

- Legislative analysis prepared for the Senate Governance and Finance Committee (February 20, 2014) describes existing law under the Joint Exercise of Powers Act (Gov. Code, § 6500, *et seq.*), and notes that "[e]ach public agency must independently possess

the authority to perform the activity that is to be performed jointly pursuant to a joint powers agreement. The courts have found that the Act grants no new powers to public agencies, but merely sets up a new procedure for the exercise of existing powers."

- The same legislative analysis, in a comments section, references the concern that, separately from the question of whether public agencies can jointly exercise revenue powers through a JPA, it "leaves significant unanswered questions about how public agencies should jointly exercise those powers. In particular, AB 2170 doesn't specify how a JPA should comply with many of the Constitutional requirements that apply to local government revenues. It is unclear how a JPA should comply with the constitutional requirement that a local agency must adopt an appropriations limit if it receives proceeds of taxes or how a JPA's appropriations limit would relate to the appropriations limit adopted by its member public agencies. AB 2170 is silent about the manner in which local agencies must jointly seek approval for taxes, fees, or assessments. Can a JPA seek voter approval from among all qualified votes within the JPA's entire territory? Or must each public agency member independently obtain the approval of its respective residents before it is entitled to exercise revenue power jointly with other agencies? By providing no statutory guidance to local officials, and in the absence of relevant case law on these questions, AB 2170 may still leave public agencies vulnerable to legal challenges if they exercise their common revenue powers in a manner that is inconsistent with state law." *(Id.)*

B. CCWA Cannot Fully "Step In" for the County in the SWP Contract, Because Its Patchwork of Assigned Powers are Not Commensurate With the County's Powers.

CCWA assumes that through a patchwork of assigned powers from its contracting agencies, it can fully take over for the County FCD as SWP contractor, consistently with the JPA "common powers" limitation in Government Code 6502 and other requirements of law. This assumption underlies the hope that the county, which has long been wary of SWP costs, might be able to remove risks of bearing contingent liability by agreeing to have CCWA to proceed as SWP contractor. Unfortunately, the argument that CCWA can simply step into the county's decision-making role as SWP contractor appears to be no more credible than its announcement a generation ago that the Monterey Agreement would serve the "primary objective" to "avoid litigation." (*PCL v. DWR*, 83 Cal.App.4th at 901.)

Rather than resolving contingent liability concerns beyond the protections in existing agreements outlined in section II, *infra*, CCWA's displacing the county as SWP contractor would likely invite discord over complex issues testing the limits of CCWA's exercise of authority. For example, even when the powers of CCWA's individual contractors are generously construed, it does not appear that their scope of common powers that could be assigned to CCWA are commensurate with the county powers relating to taxes, fees and assessments. CCWA holds water delivery contracts with a varied set of entities that includes four cites (Santa Barbara, Buellton, Guadalupe and Santa Maria), four water districts (Carpinteria Water District, Montecito Water District, Goleta Water District, Santa Ynez Water Conservation District/Improvement District No.

1), a mutual water company (La Cumbre), and three private entities (SCWC, Morehart Land Co. and Raytheon Co.) CCWA also holds a utility agreement with Vandenburg Air Force Base.

The county's authority appears to be broader than the sum of those parts, not simply in its jurisdiction extending throughout Santa Barbara County, but also in governance and public accountability. As the Third District Court of Appeal observed in a different setting, "[l]ocal districts established by statute inherently differ in kind from municipal corporations....They draw their authority from the enactments which create them. They are created for limited purposes, exercise limited powers, are far less visible and significant in the political scheme of things than municipal corporations, and are less likely to accurately reflect the will of the populace. The fact that the Legislature limits the power assigned to them suggests little or nothing about the exercise of power by municipalities, which draw their powers from the California Constitution." (*Baldwin v. County of Tehama* (1994) 31 Cal.App.4 th 166, 177.)

Moreover, reliance on the county's tax and assessment authority in article 34 of the SWP contract cannot be marginalized as an incidental provision easily filled by another willing replacement agency such as CCWA. SWP contractors "shall, whenever necessary, levy upon all property not exempt from taxation, a tax or assessment sufficient to provide for all payments under the contract." (Wat. Code, § 11652.) The SWP history described in *Goodman v. County of Riverside* (1983) 140 Cal.App.3d 900, underscores the centrality of SWP contractors' article 34 commitments to the effective operation—and indeed, the very existence—of the SWP approved by California's voters in 1960 and codified in the Burns Porter Act:

- "The Legislature's Joint Committee on Water Problems reported in 1958 that 'A firm tax base is required to support any general obligation bond issue', (Twelfth Partial Rep. by the J. Com. on Water Problems, 'Economic and Financial Policies for State Water Projects', (Mar. 24, 1958) p. 23) and Bulletin 78 of the Department of Water Resources, published in 1959, stated that if the Project were to be self-liquidating it would be necessary to obtain money for costs not met by water sale revenues, and that such money could be obtained from 'taxes in service areas, in some such manner as has been employed by The Metropolitan Water District to provide funds for the Colorado River Aquedect. ...' (Dept. Water Resources, Bull. No. 78, 'Investigation of Alternative Aqueduct Systems to Serve Southern California', (Dec. 1959) p. 27.)." (140 Cal.App.3d at 904.)

- "[T]he Senate Factfinding Committee on Water Resources recommended that the water delivery contracts required under the Act be made 'only with public agencies with taxing powers'. (Partial Rep. of the Factfinding Com. on Water Resources, 'Contracts, Cost Allocations, Financing for State Water Development', (Mar. 1960) p. 10.)" (*Id.*)

- "The Report of the Senate Committee concluded: 'Legislation should require that rates for services from the facilities be set so as to return with interest the reimbursable expenditures on the facilities, whether made from bond funds or the California Water Fund'. (*Id* at p. 9.)" (*Id.*)

- "About nine months before the election at which the Act was approved, the Department published the 'Governor's Contracting Principles for Water Service Contracts'." The contracting principles were precisely that, i.e., rules for implementing the water contracts required under the Act." *(Id.)*

- "The Department was the administrative agency responsible for negotiating the contracts required by the Act. The contracting principles represent the Department's construction of that portion of the Act dealing with the contract requirements. The Governor's Contracting Principles not only carried out the Senate Committee on Water Resources' recommendation that water contracts be made only with public agencies with taxing power, but also specifically required that the contracts provide for the mandatory use of local taxes:

> 'Each contracting agency will agree that, in the event in any year it is unable or fails through other means to raise the funds necessary in any year to pay the state the sum required under the contract [i.e., enough to pay all costs of the system], it will use its taxing or assessment power to raise such sum'.
>
> The contracting principles also indicated that contract rates should be set so as to return to the state: '... all costs of project operation, maintenance and replacement, all principal and interest on (1) bonds, (2) expenditures from the California Water Fund, and (3) other monies used in the construction of the project works'"

(140 Cal.App.3d at 905.)

- "Consistent with the requirements of the Act and the contracting principles, article 5 of the [Metropolitan Water District contract [prototype for other SWP contracts] provided: 'This contract is entered into for the direct benefit of the holders and owners of all general obligation bonds issued under the [Burns-Porter] Act, and the income and revenues derived from this contract are pledged to the purposes and in the priorities set forth in that Act'." (*Id.* at 905.)

- "Also consistent with the contracting principles, the contract further provided in article 34(a): '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'." (*Id.*)

This history underscores the concern that substituting an entity with lesser authority over taxing and assessment may not prove to be effective in reducing the county's risk of contingent liability more than in CCWA's existing agreements with the County FCD and CCWA's contractors. It remains to be seen how, or whether, CCWA contractors with limits to their own jurisdiction can assign powers robust enough to offer more protection against defaults than the existing contracts' step-up and default remedy provisions. Another procedurally untested area that may precipitate future conflict involves the rights and duties of an "associate member" mutual water company, as well

as several private entities that are CCWA contractors. (See 1998 Ops. Cal. Atty. Gen. 362, 372-373 (rejecting the notion that the Joint Exercise of Powers Act (Gov. Code, §§ 6500-6599) recognizes "different classes of membership" such as "limited" or "associate" members).)

C. CCWA's Exercise of Authority, Unlike the County's, May Be Subject to Constitutional Voting Requirements.

The contract terms proposed by CCWA to acquire rights from contracting entities and stand in for CCWA as SWP contractor must also be reviewed for compliance with constitutional provisions addressing the imposition of taxing and related obligations without a popular vote, as required by Propositions 13, 218, and 26 (Cal. Const., art. XIIIA, § 1(a); Cal. Const., art. XIIIC, § 2(d); Cal. Const., art. XIIID, § 3.) Individual CCWA contractors must also consider when their own determinations require a vote of the constituents within their service areas.

The County FCD has access to its taxing authority grandfathered in without submitting to these voting requirements where needed to cover SWP contracting obligations, based upon the role of that authority within the contracting principles approved by voters in 1960, and then incorporated into the Burns-Porter Act and SWP contracts. "[W]hen the state's voters approved the Act, that they approved an indebtedness in the amount necessary for building, operating, maintaining, and replacing the Project, and that they intended that the costs were to be met by payments from local agencies with water contracts." (*Goodman*, 140 Cal.App.3d at 910.)

CCWA assumes that the grandfathering in of the county's already established taxing authority will also apply to its new proposed arrangements relating to taxing authority and its intended role to replace the County FCD as the ultimate SWP contractor. However, that assumption is problematic. *Goodman* upheld the grandfathering of *ad valorem* taxes of an original SWP contractor, rejecting a broad objection that would have limited SWP expenditures beyond the originally referenced $1.75 billion in general obligation bonds. The court drew heavily on their necessity to the Governor's contracting principles ratified and approved by voters in 1960, codified in the Burns-Porter Act. (*Goodman*, 140 Cal.App.3d at 907-910.) By contrast, CCWA's proposed action would arguably run contrary to those same contracting principles, enabling CCWA, an agency with narrower and arguably weaker taxing authority, to serve as contractor in the county's place.

D. Assignments to CCWA May Be Limited by WSRA Requirements.

CCWA's founding agencies entered into the authority's JPA Agreement "for the purpose of exercising their rights under their respective" Water Supply Retention Agreements (WSRA), which are also extensively discussed in the TFRA. The County FCD had earlier entered into these agreements between 1983 and 1986, receiving DWR approval in 1991. One of the WSPA provisions stated that no revenue bond financing for project facilities could be issued unless authorized by a vote of the people within

the jurisdiction of each participating purveyor. Each WSRA also assigned a maximum entitlement to the entity at issue. In their references to entitlements and their requirement of a popular vote, the WSRA do not appear to have been updated or revised.

IV. Assigning SWP Contractor Status to CCWA Would Weaken County and Public Accountability at a Critical Juncture for the SWP.

A. CCWA Control Would Foreseeably Allow a Single City to Dominate the County's SWP Contract.

Even if CCWA could be legally effective in obtaining and asserting powers assigned to from its contractors, notwithstanding the analysis above, CCWA's proposal to replace the county with itself as the decision-making SWP contractor should be rejected because of the risks it proposes to future governance on county SWP matters. The looming reality within CCWA is the high likelihood of dominance, if not outright control, by a single entity, the City of Santa Maria. Santa Maria's current voting share, based on allocation of water entitlement at CCWA's formation, is 43.19 percent of the total. If that city follows through on plans to acquire all or most of the 12,214 acre-feet of additional entitlement that the county long ago requested and DWR agreed to suspend, it may turn its likely institutional dominance of CCWA into outright control.

If that occurs following a decision by the county to end its decision-making role as SWP contractor, the result is likely to prove prejudicial to the county and its constituents in the south coast and elsewhere, as well as to the county's ratepayers and taxpayers. An October 17, 2017 city manager's memorandum to the Santa Maria City Council, prepared by that city's Director of Utilities, recognizes that the County Board of Supervisors "exercises significant authority over State Water decisions because approval of the County, as contractor, is required." (*Id.*, p. 3.) Ominously, the memorandum presents the county's substantial influence as a drawback to be overcome, asserting that "the composition of the County Board of Supervisors changes over time, causing uncertainty in long-term water planning." (*Id.*) Another way of putting this, however, is that control by CCWA—particularly if it is dominated by a single city—can be counted on to be less democratically accountable to communities throughout the county, and less likely to ask hard questions of DWR and other contractors as it relates to future SWP participation.

B. CCWA Control Would Weaken the County's Independent Voice in Addressing the Proposed SWP Contract Extension.

There could hardly be a worse time than the present for the county to abandon its longstanding, if sometimes reluctant, role as SWP contractor. Discussions remain pending between DWR and SWP contractors over the proposed multi-decade extension of SWP water supply contracts, presently set to expire in 2035 and several years following. During earlier discussions of the proposed contract extension several years ago, Santa Barbara County occasionally used its independent role as SWP contractor to ask prescient questions. For example, a September 30, 2014 memorandum from County Public Works requested that as part of its water contract extension proposal, "DWR

should 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."

Research for this letter identified no document in which DWR thoroughly analyzed the economic and legal impacts of this important issue as requested by County FCD. The county's independent role as SWP contact is likely to become even more crucial in the future, as decision-makers get closer to making a decision on the proposed SWP contract extension

C. CCWA Control Would Weaken the County's Independent Voice in Addressing the Proposed Delta Tunnels.

This year and in the foreseeable future, the county's continuation of its decision-making role as SWP contractor will be crucial to preserve the county's crucial independent voice in review and decision-making on the proposed Delta tunnels. That subject is closely related to the proposed SWP contract extension, since the notoriously troubled financing arrangements for the proposed tunnels, to the extent they are known, would likely be flatly infeasible if the SWP contracts were allowed to expire starting in 2035.

On occasion, the County FCD has already used its SWP contractor role to raise tough questions about the proposed tunnels and their relationship to the contract extension. For example, in a December 15, 2014 letter to DWR's project manager for the SWP contract amendment, County Public Works noted DWR's unsatisfactory response to the "many occasions" the county had raised inquiries related to its taxing authority, and raised concern about the County FCD's "financial responsibilities" if the then-current BDCP were implemented "as part of the District's contract" with DWR. The potentially devastating impacts of the tunnel project for the environment, and the county's agencies and ratepayers, makes it crucial to preserve the county's ability to act independently from CCWA on SWP matters. (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).)

D. CCWA Control Would Weaken the Opportunity for Independent Discussion of Critical Water and Infrastructure Choices.

Last year's Oroville Dam crisis provided another sobering reminder of the significant costs and risks the SWP will face in the years ahead, as well as 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.) More recently, the foundering but still-pursued 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. https://www.dailynews.com/2018/03/03/los-angeles-new-mulholland-moment-for-safe-and-adequate-water-eric-garcetti/. At this crucial moment for local and statewide water future, the county should be wary of needlessly curtailing its own influence on SWP projects. The county should especially be wary of handing over its authority to CCWA, the very agency that has kept Santa Barbara County closely associated with "paper water" planning and obsolete 20th century engineering.

V. The Proposed Elimination of the County's Contractual Role Would Weaken Environmental Protection and Informed Self-Government, Requiring Review Under CEQA.

CCWA 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 to substitute one public agency for another in this capacity. That assumption is specious. As analyzed above, that change is likely to weaken environmental accountability for much, if not all, of the county. Moreover, CCWA's benign account of its latest attempt at overreaching misses the importance of CEQA's interactive process to informed self-government. (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"); *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986) 42 Cal.3d 929, 936 (members of the public have a "privileged position" in the CEQA process).) As an environmentally consequential change that would prejudicially eliminate the county's independent role as SWP contractor, the proposed takeover by CCWA as contractor is likely to require CEQA review.