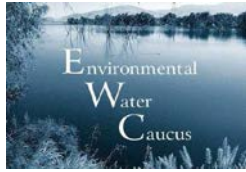




CRAB BOAT OWNERS ASSOCIATION, Inc.  
2907 Jones Street  
San Francisco, California 94133-1115  
415-885-1180



*CA Save Our Streams Council*



May 7, 2018

Karla Nemeth  
Director  
California Department of Water Resources  
P.O. Box 942836, Room 1115-1  
Sacramento, CA 94236-0001

By email and US Mail  
[cwf\\_amendment@water.ca.gov](mailto:cwf_amendment@water.ca.gov)

**Re: Comments Regarding the State Water Project (SWP) Contract Amendment for the California WaterFix (CWF): Flaws in the SWP Contract Amendment and Process**

Negotiations now underway on a SWP Contract Amendment for CWF do not comply with Water Code § 147.5 requirements for public disclosure and hearings, California Environmental Quality Act (CEQA) requirements for analysis of substantial environmental impacts, or Legislative oversight recommended by the Legislative Analyst Office. These concerns are expanded below, along with a summary of previous comments submitted for a related proposed SWP Contract extension that has not yet been completed.

### **Non-Compliance with Water Code § 147.5**

As part of the the current negotiations of the SWP Contract Amendment for the Delta Tunnels [CWF], there has been no mention of the requirement of Water Code §147.5 for a public hearing at least 60 days prior to the final approval of either the SWP Contract Extension Amendments or on-going SWP Contract Amendment for the Delta Tunnels (CWF). The current negotiations contemplate substantial changes, including relaxing water transfer, exchange and storage rules that would have significant impacts on the environment, downstream uses, groundwater aquifers and other water rights holders. The existing environmental analysis for the SWP Contract Extension Amendments and the proposed financial changes does not include these types of amendments in the stated goals or purpose of the State Water Project Contract Extension amendment project.

Twenty-three negotiating sessions during 2013-2014 resulted in a SWP contract extension amendment Agreement in Principle (AIP) that has yet to be approved by all contractors. The AIP does not mention or address these new proposed amendment changes that would enlarge the water selling market and are likely designed to fund Kern County and other agricultural users' participation in the Delta Tunnels (CWF). There are substantial impacts from transfers, exchanges and sales of water both to the environment and downstream users. As our verbal comments at the May 2, 2018 reflected this includes groundwater substitution, subsidence problems by pump-ins to various state and federal canals along with arsenic and selenium contamination of these conveyance facilities.<sup>1</sup> Even with limited monitoring, arsenic levels from these pump-ins have reached maximum contaminant levels in drinking water canals and the selenium-tainted farm runoff in the San Joaquin Valley that deformed wildlife in horrific ways has found the toxin is still showing up in bird eggs.<sup>2</sup>

An updated environmental impact analysis is legally required for the substantive changes contemplated under the present contract amendment negotiations because they would have a substantially greater impact on downstream users, endangered species and other water rights.

These new proposed SWP amendment changes are taking place after the close of public comment on the SWP Contract Extension amendments and for which: (1) the required Legislative hearing still has not occurred, (2) the final contract language has not been produced, (3) the analysis of the environmental impacts from the proposed contract changes have not been fully addressed, and (4) there has been insufficient disclosure of the financial impacts to ratepayers and property taxpayers. Once these omissions are corrected, a public hearing is required,

**Without Ample Oversight the Legislative Analyst Office has Warned of DWR's & the SWP Contractors' Overreach into the Legislature's Authority.**

---

<sup>1</sup> See <http://www.restorethedelta.org/wp-content/uploads/Environmental-Advocate-Cmts-WWD-SLC-Pump-in-Monitoring-2018-Cal-Aqueduct...pdf> & <http://www.restorethedelta.org/wp-content/uploads/PCL-et-al-Cmts-Re-WWD-30-K-GW-Discharge-Aqueduct-Pumpin-Warren-Act-EA-March-2015.pdf> & <http://www.restorethedelta.org/wp-content/uploads/Final-Cmt-Ltr-Delta-Mendota-Canal-Groundwater-Pump-in-DEA-18-007-and-FON...-1.pdf> & <http://www.restorethedelta.org/wp-content/uploads/Att-A-SWC-Cmt-ltr-Re-USBW-WWD-Aqueduct-Pump-in-ltr-4-10-15-3.pdf>

<sup>2</sup> **Ibid.** & <https://www.newsdeeply.com/water/articles/2018/05/02/pressure-mounts-to-solve-californias-toxic-farmland-drainage-problem>

The Legislative Analyst Office has pointed out that, without oversight, “DWR has been able to pursue development of SWP projects without expressed legislative consent, later retroactively billing the Legislature and the state's purse for its estimate of the state's share of the costs of those projects. This runs up against, and potentially conflicts with, the Legislature's exclusive constitutional authority to set its expenditure priorities by making appropriations.”<sup>3</sup>

We urge the SWP Contractors and DWR to seek this Legislative oversight hearing to avoid costly mistakes while spending time and expending ratepayer resources on amendments. Here are some examples of DWR and SWP contractor overreach that need Legislative oversight and modification before proceeding:

1. Expenditures, both direct and indirect, that will rely on the General Fund as a result of the negotiated language in the proposed SWP contract extension amendments.
2. Expenditures that obligate general fund costs by extending the term of the State Water Project repayment contract. Adding another 50 years to the existing 75 years for repayment of debt. The water tunnel costs are estimated to more than triple the current total debt of the SWP, pledging ratepayer and property taxpayer funds as payment. Ratepayers originally agreed to fund a project that was estimated to cost \$1.75 Billion. Liabilities and long-term debt for the SWP has ballooned to roughly \$7 billion.<sup>4</sup> Now ratepayers and taxpayers who will use the tunnels will need to fund an additional \$17 billion.
3. Compliance with Water code section 85089(a) ...*that requires mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility.*
4. Compliance with Water code § 12937 (b) and § 12934 (d). In response to the State Auditor's questions regarding DWR's use of a projected surplus of \$293 million in SWP revenue for the Delta Tunnels (CWF), DWR claimed that such surplus funds may be spent on new SWP facilities such as the Delta Tunnels (CWF).<sup>5</sup> The Delta Tunnels (CWF) are not listed in Water Code § 12934 (d) nor in the existing SWP Contracts. Further given the extensive maintenance costs ignored at the Oroville Dam for example, and other facilities, there are serious questions regarding the use of these funds for such purposes instead of facilities' operations and maintenance costs.<sup>6</sup>

---

<sup>3</sup> [http://www.lao.ca.gov/analysis\\_2009/resources/res\\_anl09004003.aspx](http://www.lao.ca.gov/analysis_2009/resources/res_anl09004003.aspx)

<sup>4</sup> <https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/About/Financials/Files/SWRDS-CAFR-Final-FY-2017.pdf> Financials 2017

<sup>5</sup> <http://www.auditor.ca.gov/pdfs/reports/2016-132.pdf> See pages 20-21

<sup>6</sup> <https://www.mercurynews.com/2018/02/07/oroville-dam-feds-unsure-whether-they-will-pay-for-spillway-repairs/> See also <https://garamendi.house.gov/media/press-releases/congressmembers-garamendi-and-lamalfa-seeks-clarity-fema-authority-fund-repairs>

**Summary of original written comments submitted to DWR regarding the SWP Contract Extension amendment, for which the final environmental report and required compliance with Water Code § 147.5 has not occurred:**

**A. Failure to accurately identify and account for existing required maintenance and proposed future capital SWP costs necessary just to maintain existing facilities:**

1. Reconstructing the Oroville Spillway & the Thermalito pump-generating plant;
2. Reinforcing facilities against seismic failure;
3. Correcting subsidence damage;
4. Implementing a drainage solution on the Westside of the San Joaquin Valley and resulting pollution and downstream damages to existing users caused in part by groundwater substitution, exchanges, transfers and irrigation of toxic soils;
5. Implementing the Oroville hydroelectric FERC license project conditions; and
6. Obtaining a renewed Federal Energy Regulatory Commission (FERC) license for the SWP's southern hydroelectric plants.

**B. The costs in A, above, are substantial costs that the property taxpayers and ratepayers need to know before indenturing their communities with an additional \$17 billion in new project capital costs such as required for the Delta Tunnels (CWF).**

**C. The SWP contract extension amendment gives DWR and SWP contractors a 50 year blank check with ratepayers and property taxpayers on the hook for these unknown amounts and costly bills and also allows riskier financing tools even as the SWP faces the uncertainty of climate changes and deferred maintenance. The proposed SWP Contract Extension amendments from 2014 include 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); [The Delta tunnels (CWF) are not on the current list so this change appears to open the door to add the additional \$17 billion in debt needed to fund this tunnel conveyance addition, new water right and diversion. There is substantial public interest in the environmental impacts of this project and any hidden financing mechanisms. ]<sup>7</sup> and
2. "Finance other capital projects (not already in the list in the SWP Contract 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." MWD and Kern County Water Agency control roughly 72% of the project so this reduced approval for debt issuance would require only a few additional contractors and concentrates even greater control of the State Water Project with a few contractors.
3. Debt reserves are reduced further despite unforeseen hydrological, geological and climate change events. The amendments allow for the purchase of riskier investments, including purchase letters of credit and surety bonds. The governing bond resolution was changed so the debt service reserve requirement is also weaker than for the typical municipal water enterprise at only 50% of maximum annual debt service.

---

<sup>7</sup> There are twenty separate challenges to DWR's Delta Tunnels approvals under state law, including the California Environmental Quality Act, the California Endangered Species Act, the 2009 Delta Reform Act, among other claims, were filed in August 2017. This litigation includes 82 public agencies, nonprofit groups, and landowners, including water districts, reclamation districts, utilities, environmentalists, and farmers.

## Conclusion

We are hopeful the change in leadership at DWR can bring in a new era of transparency and accountability to the ratepayers and taxpayers who have contributed more than \$257 million dollars, including some \$84.8 million in public funding<sup>8</sup> towards the Delta Tunnels (CWF) and yet, still has not produced an economic or financial analysis to demonstrate the financial viability of the tunnels.<sup>9</sup> However, we note there is much left to do to achieve this goal of transparency and accountability.

1. Despite repeated promises there is no off-ramp for those contractors who do not want to pay any part of the Delta tunnels' estimated \$17 billion dollars in costs.
2. Skyrocketing costs and shaky legislative and administrative oversight plague this contentious conveyance project. It still lacks a proper system of governance. According to audits the project has failed to keep important documents and follow state required competitive bidding processes, thereby inflating costs through expensive consultants without proper credentials. Without strengthened oversight, California can look forward to more of the same, including project cost overruns.
3. It appears that abuses identified by the Legislative Analyst Office continue.<sup>10</sup> These include
  - An over-allocation of total SWP costs to recreation;
  - Recreation costs are incurred without Legislative review, thus obligating taxpayers without legislative approval.
  - Regulatory compliance costs are being allocated by DWR to Davis-Dolwig, thus obligating taxpayers and the general fund.

Despite the thousands of dollars represented by all the contractors, bond lawyers and consultants in the SWP contract amendment negotiations (whose annual salaries likely eclipse that of the Governor) the required financing plan for this tunneling project remains elusive.<sup>11</sup> Metropolitan Water District has voted to put up some \$10.8 billion dollars, provided they have more control over this state project and greater authority to make substantive political decisions concerning water supply and water rights. It appears from the limited public view of the proposed contract amendment negotiations that relaxing existing contract rules for buying and selling water is the likely vehicle for further subsidizing the water purchases of the agricultural water contractors and their financial participation in the tunnel project. However, the cost of relaxing rules on water trades to the environment, water quality, existing water rights and downstream uses do not appear at the forefront of these negotiations and by law must be considered and mitigated.<sup>12</sup> These include

---

<sup>8</sup> Misuse of Taxpayer Funds found by Federal Audit see <https://apnews.com/3bd4ba28a69448cebff3dbdd15a8c5d1> & [https://www.doioig.gov/sites/doioig.gov/files/FinalAudit\\_BayDeltaPlan\\_Public.pdf](https://www.doioig.gov/sites/doioig.gov/files/FinalAudit_BayDeltaPlan_Public.pdf)

<sup>9</sup> See the State Auditor Report <http://www.auditor.ca.gov/pdfs/reports/2016-132.pdf>

<sup>10</sup> [http://www.lao.ca.gov/analysis\\_2009/resources/res\\_anl09004003.aspx](http://www.lao.ca.gov/analysis_2009/resources/res_anl09004003.aspx)

<sup>11</sup> Water Code §85089 and Op.Cit. See the State Auditor Report.

<sup>12</sup> See Pub. Resources Code, § 21166; CEQA Guidelines, § 15162

discharges of arsenic laden groundwater into drinking water canals<sup>13</sup> and discharges of toxic selenium laden groundwater into canals that serve endangered species and livestock uses that likely would be impacted by the accumulation of this contaminant downstream.<sup>14</sup>

Thank you for the opportunity to comment.



Jonas Minton  
Senior Water Policy Advisor  
[Planning and Conservation League](http://PlanningandConservationLeague.org)  
[jminton@pcl.org](mailto:jminton@pcl.org)



Noah Oppenheim  
Executive Director  
[Pacific Coast Federation of Fishermen's Asso.](http://PacificCoastFederationofFishermen'sAsso.org)  
[noah@ifrfish.org](mailto:noah@ifrfish.org)




John Buse  
Senior Counsel  
Center for Biological Diversity  
[jbuse@biologicaldiversity.org](mailto:jbuse@biologicaldiversity.org)



Ronald Stork  
Senior Policy Advocate  
Friends of the River  
[RStork@friendsoftheriver.org](mailto:RStork@friendsoftheriver.org)



Conner Everts  
Executive Director  
Southern California Watershed Alliance  
[Environmental Water Caucus](http://EnvironmentalWaterCaucus.org)  
[connere@gmail.com](mailto:connere@gmail.com)



Caleen Sisk  
Chief and Spiritual Leader of the  
[Winnemem Wintu Tribe](http://WinnememWintuTribe.org)  
[caleenwintu@gmail.com](mailto:caleenwintu@gmail.com)



Lloyd G. Carter  
President, Board of Directors  
California Save Our Streams Council  
[lcarter01@comcast.net](mailto:lcarter01@comcast.net)



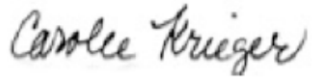
Adam Keats  
Senior Attorney  
Center for Food Safety  
[akeats@centerforfoodsafety.org](mailto:akeats@centerforfoodsafety.org)

---

<sup>13</sup><http://www.restorethedelta.org/wp-content/uploads/Environmental-Advocate-Cmts-WWD-SLC-Pump-in-Monitoring-2018-Cal-Aqueduct....pdf>

<sup>14</sup> ibid.





Carolee Krieger  
Executive Director  
California Water Impact Network  
[caroleekrieger7@gmail.com](mailto:caroleekrieger7@gmail.com)



Barbara Barrigan-Parrilla  
Executive Director  
Restore the Delta  
[Barbara@restorethedelta.org](mailto:Barbara@restorethedelta.org)



Bill Jennings  
Chairman Executive Director  
California Sportfishing Protection  
[deltakeep@me.com](mailto:deltakeep@me.com)



Larry Collins,  
President  
Crab Boat Owners Association  
[papaduck8@gmail.com](mailto:papaduck8@gmail.com)