



June 27, 2018

The Honorable Robert Hertzberg  
Chair, Senate Natural Resources and Water  
Committee  
State Capitol, Room 5046  
Sacramento, CA 95814

The Honorable Jeff Stone  
Vice-Chair, Senate Natural Resources and  
Water Committee  
State Capitol, Room 5046  
Sacramento, CA 95814

**RE: Informational Hearing on State Water Project Contract Extension**

Dear Chair Hertzberg, Vice-Chair Stone, and Members of the Committee:

On behalf of the Natural Resources Defense Council, Defenders of Wildlife, The Bay Institute, and Golden Gate Salmon Association, we are writing to express our opposition to the California Department of Water Resources' ("DWR") extension of State Water Project ("SWP") contracts to 2085, without making other necessary changes to the contract terms to protect the environment, ratepayers and taxpayers. DWR is currently undertaking several separate processes to amend the SWP contracts, but under existing law, the Legislature only has oversight over the current set of proposed amendments to extend the duration of the SWP contracts. Other amendments to the SWP contracts, which relate to paying for the California WaterFix project, and which involve the permanent transfer of water from agricultural contractors to urban contractors like the Metropolitan Water District of Southern California, are exempt from legislative oversight. The Legislature should not allow DWR to extend the duration of these contracts until DWR presents a complete package of proposed contract amendments.

First, DWR's proposed contract extension fails to include needed amendments to reduce total contract amounts or require minimum water conservation requirements. The SWP contracts that DWR seeks to extend to 2085 were originally authorized in the 1960s and fail to reflect modern realities, such as altered hydrology due to climate change, overallocation of water and the ecological crisis in the Bay-Delta estuary, and state policy to reduce demand for SWP supplies from the Delta through investments in local and regional water supplies. As DWR recognizes, these factors have reduced estimated SWP deliveries from the 4.1 million acre-feet of annual Table A deliveries authorized in the contracts to an annual average of about 2.5 million acre-feet today, or 62% of the Table A amounts.<sup>1</sup> But DWR does not propose to modify the Table A contract quantity terms to reflect this reality. Some of these factors, such as the impact of climate change, will only intensify between now and 2085, with climate scientists anticipating changes in the amount and timing of

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<sup>1</sup> See DWR, SWP Delivery Capability Report, at 21 (Dec. 15, 2017) (avail. at <https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/Library/Modeling-And-Analysis/CalSim2/DCR2017/Files/State-Water-Project-Delivery-Capability-Report-12-15-17.pdf>).

runoff, more frequent droughts, and far less Sierra snowpack over the next 50 years.<sup>2</sup> Others, such as the undeniably negative impacts that SWP operations have had on the Bay-Delta estuary, its public trust resources, and the State's 150-year old salmon fishery, painfully illustrate the need for reducing freshwater diversions from the Delta.<sup>3</sup> These impacts will continue to reduce the amount and reliability of water diversions from the Bay-Delta via the State Water Project.

The Legislature recognized these realities in the Delta Reform Act, when it adopted a policy to reduce reliance on water supplies from the Bay-Delta by investing in local and regional water supplies like conservation, recycling, and stormwater capture. Cal. Water Code § 85021. DWR must amend the contracts to comply with this policy and plan for changing realities *before* extending the SWP contracts, and should adjust the terms of the SWP contracts, especially Table A quantity terms, to reflect the reduced availability of SWP supplies now and in the future. Only then will SWP contractors and the municipalities, businesses, and residents within SWP service areas be able to plan for a reliable water future based on a clear-eyed estimate of SWP deliveries.

Second, DWR's proposed contract extension is directly connected to the environmentally destructive California WaterFix project and threatens to impose the enormous costs of that project on property taxpayers unless a different payment provision is included in the contracts. The current contract amendments would extend the contract duration in order to lower the financing costs for paying for WaterFix. WaterFix is estimated to cost \$17 billion in initial capital costs, and with the costs of financing is estimated to cost approximately \$47 billion over the next 50 years.<sup>4</sup> It is proposed to be an addition to the State Water Project, subject to reimbursement by the SWP contractors for construction, operation and maintenance, and associated costs.<sup>5</sup> Under the terms of DWR's proposed extension of the SWP contracts, the costs of financing WaterFix are required to be recovered through property tax increases in a contractor's service area if the contractor fails to raise sufficient revenue through water sales to reimburse DWR.<sup>6</sup> In fact, some SWP contractors are already imposing WaterFix costs on property taxpayers in their service area.<sup>7</sup>

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<sup>2</sup> See, e.g., DWR, California Climate Science and Data (June 2015) (avail. at [https://www.water.ca.gov/LegacyFiles/climatechange/docs/CA\\_Climate\\_Science\\_and\\_Data\\_Final\\_Release\\_June\\_2\\_015.pdf](https://www.water.ca.gov/LegacyFiles/climatechange/docs/CA_Climate_Science_and_Data_Final_Release_June_2_015.pdf)).

<sup>3</sup> See, e.g., SWRCB, Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem (Aug. 3, 2010) (avail. at [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/final\\_rpt.shtml](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/final_rpt.shtml)).

<sup>4</sup> Goldman Sachs & Co., California WaterFix Financing Strategies, at 5 (March 17, 2017).

<sup>5</sup> See, e.g., DWR's Complaint for Validation of WaterFix Revenue Bonds, ¶¶ 18, 32 (July 21, 2017) (avail. at [http://www.californiawaterfix.com/wp-content/uploads/2017/10/CWF\\_Validation\\_Complaint\\_.pdf](http://www.californiawaterfix.com/wp-content/uploads/2017/10/CWF_Validation_Complaint_.pdf)).

<sup>6</sup> See, e.g., DWR, Model Consolidated Contract, at ¶ 34 (March 20, 2018) ("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") (available at <https://www.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>); Cal. Water 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").

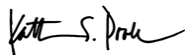
<sup>7</sup> See, e.g., Desert Water Agency, Board Meeting Agenda packet, at 38-39 (June 19, 2018) (avail at <https://dwa.org/board-meeting-agenda/board-of-directors-agendas-packets/2018/329-june-19-2018-agenda-packet/file>) (DWA Board of Directors resolution establishing a specific reserve fund for WaterFix, stating that

To avoid imposing this new multi-billion dollar liability on the State’s property taxpayers, DWR, and the Legislature, should not extend the existing SWP contracts until the question of who will pay for WaterFix is settled and that financing agreement is formalized through additional SWP contract amendments. DWR and the SWP contractors are currently in the midst of negotiating SWP contract terms that would determine the percentage cost-share and cost recovery mechanisms for WaterFix.<sup>8</sup> One current proposal, according to the Metropolitan Water District of Southern California, would be for agricultural water districts for whom WaterFix is economically infeasible to either pay for the tunnels or permanently transfer an average of 15% of their SWP water supplies to Metropolitan or other SWP contractors who would pay the agricultural contractors’ share of costs. DWR and the Legislature cannot determine the full impacts of these proposals before new contract terms are finalized and included in the contracts that DWR seeks to extend. Until then, DWR and its contractors are not only authorized to seek reimbursement of WaterFix costs from property taxpayers, but are *required* to do so when water sales are insufficient to cover WaterFix reimbursement, an eventuality that is likely given the high cost and low yield of WaterFix.

We urge the Committee to address these issues at the informational hearing scheduled for July 3, 2018, and defer scheduling the Joint Legislative Budget Committee hearing on the contract extension until DWR has completed all necessary amendments to the SWP contracts. Once that hearing is held, the Legislature will lose oversight of additional amendments to SWP contracts, and the ability to determine whether those amendments adequately protect the State’s people and its resources.

Thank you for consideration of our views. We would be happy to answer any questions regarding this matter.

Sincerely,



Katherine Poole  
NRDC



Rachel Zwillinger  
Defenders of Wildlife



Gary Bobker  
The Bay Institute



John McManus  
Golden Gate Salmon Association

Cc: Members of the Joint Legislative Budget Committee

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“Revenue collected from taxes levied on real property within the Agency’s boundaries will be utilized to pay amounts due and owing to DWR per the State Water Contract (see State Water Contract Fund).”

<sup>8</sup> See DWR, SWP Water Supply Contract Amendment, California WaterFix (<https://www.water.ca.gov/Programs/State-Water-Project/Management/Water-Supply-Contract-Amendment>).