



Friends of the River
1418 20th Street, Suite 100
Sacramento, CA 95811

July 29, 2019

Brian.Heiland@water.ca.gov
Department of Water Resources
Sacramento, CA

via email

Re: Comments on State Water Project Contract Amendment for Delta Conveyance

Dear Mr. Heiland and Department of Water Resources:

By this letter, our public interest organizations comment on the State Water Project Contract Amendment for Delta Conveyance.¹ These comments follow Negotiation Meeting No. 1 that took place on July 24, 2019, and precede Negotiation Meeting No. 2 scheduled for August 31, 2019. We appreciate that the Department of Water Resources (DWR) has created a webpage for the posting of written comments.

¹ AquAlliance, California Water Impact Network, California Sportfishing Protection Alliance, Center for Biological Diversity, Environmental Water Caucus, Friends of the River, Planning and Conservation League, Restore the Delta, and Sierra Club California join in this letter.

We also appreciate that the “First Offer” from the State Water Contractors was posted on the webpage.

Early in the July 24 meeting, DWR announced that the negotiation process with the State Water Contractors has a narrow focus on cost allocation. DWR said the negotiation process is separate from the inventory and assessment, water resilience portfolio process (Water Portfolio.) The Water Portfolio must be developed pursuant to Governor Newsom’s *Executive Order N-10-19* on water issued on April 29, 2019. California needs a comprehensive and progressive statewide water plan for sustainable water use, as required by the *Executive Order*. The negotiation process should be suspended until after the Water Portfolio has been completed. Carrying out the negotiation process before, rather than after, completing the Water Portfolio puts the cart before the horse.

The “First Offer” submitted by the State Water Contractors to DWR on July 24, 2019, calls for the negotiation process to result in an Agreement-in-Principle (AIP.) The Contractors propose that the AIP include a definition of the proposed new conveyance project, meaning Delta Water Tunnel(s), to include (First Offer, p. 5),

Project objectives

Capacity

General configuration (alignment, number of intakes, tunnels, pump stations, etc.) (First Offer, p. 5.)

A copy of the *Executive Order* is attached to this letter. Paragraph 1 of the *Executive Order* requires that the State agencies,

shall together prepare a water resilience portfolio that meets the needs of California’s communities, economy, and environment through the 21st century. These agencies will reassess priorities contained within the 2016 California Water Action Plan, update projected climate change impacts to our water systems, identify key priorities for the Administration’s water portfolio moving forward, and identify how to prepare integration across state agencies to implement these priorities.

Paragraph 2 of the *Executive Order* requires the agencies to, “*first inventory and assess:*” eight subjects, including, “Existing demand for water on a statewide and regional basis and available water supply to address this demand” (§ 2a); “Existing water quality of our aquifers, rivers, lakes and beaches” (§ 2b); “Projected water needs in coming decades for communities, economy and environment” (§ 2c); “anticipated impacts of climate change to our water systems, including growing drought and flood risks, and other challenges to water supply reliability”(§ 2d); “Current planning to modernize conveyance through the Bay Delta with a new single tunnel project (§ 2f); “Expansion of the state’s drinking water program to ensure all communities have access to clean, safe and affordable drinking water” (§ 2g), and “Existing water

policies, programs, and investments within state government.” (§ 2h.) (Emphasis added.)

Paragraph 3 of the *Executive Order* requires that the “water resilience portfolio” established by the agencies embody seven principles including, “Utilize natural infrastructure such as forests and floodplains” (§ 3(b)); “Embrace innovation and new technologies” (§ 3(c)); and “Incorporate successful approaches from other parts of the world.” (§ 3 (e).)

The *Executive Order* establishes a goal of restoring and maintaining the health of our watersheds. Our organizations have for years been pointing out the need to stop making decisions on long-term SWP operations based upon “paper” water as opposed to real water which is about five or six times less than the “paper” water. The required Water Portfolio embracing innovation and new technologies, and incorporating successful approaches from countries such as Israel and Australia, should reduce the need for SWP exports in the future. That should also reduce any claimed need for a Delta Water Tunnel.

It will be necessary for the agencies to complete the required inventory and assessment and then establish the required Water Portfolio *before* it can be determined if there is any arguable need for a new large upstream conveyance. A new conveyance would cost billions of dollars and reduce rather than increase freshwater flows through the already impaired San Francisco Bay Delta Estuary.

The Delta Reform Act establishes the policy of the State of California “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.” Water Code § 85021. The Water Portfolio is made to order for complying with the Delta Reform Act. Embracing innovation and new technologies as required by the *Executive Order* will reduce reliance on the Delta.

There are also the requirements of the California Environmental Quality Act (CEQA) codified at Public Resources Code § 21000 et seq. “Evaluation of project alternatives and mitigation measures is ‘the core of an EIR [environmental impact report].’” *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937. At this time, there is no EIR, not even a draft, and DWR has not developed the CEQA-required range of reasonable alternatives. The Contractors, however, have jumped ahead in their First Offer to seek establishment of the tunnel capacity, and configuration including alignment, number of intakes, tunnels, and pump stations. Moreover, CEQA’s policy is to conduct integrated review. *Banning Ranch Conservancy*, 2 Cal.5th 918, 939, 942. DWR instead appears to be engaged in a process where project decisions will in reality be made prior to and in the absence of rational planning based upon a completed Water Portfolio, and compliance with the requirements of the Delta Reform Act to reduce reliance on the Delta and CEQA including CEQA’s focus on consideration of alternatives. Finally, an agency cannot commit itself to a project, “so as to effectively preclude any alternatives or mitigation

measures" prior to complying with CEQA. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139.

CONCLUSION

The single biggest, most expensive, and most threatening to our environment public works water decision to be made; is whether to build and operate a Delta Water Tunnel. Proceeding down the path to enter into an agreement-in-principle for such a project, before rather than after, completing the Water Portfolio puts the cart before the horse. The negotiation process should be suspended until DWR, the Contractors, and the public have the benefit of a completed Water Portfolio.

Contacts for this comment letter are Conner Everts, Facilitator, Environmental Water Caucus, (310) 804-6615 or connere@gmail.com, or Robert Wright, Senior Counsel, Friends of the River, (916) 442-3155x 207, bwright@friendsoftheriver.org or at the mailing address on the first page of this letter. We appreciate the opportunity to submit these written comments, and would do our best to answer any questions you may have.

Sincerely,



E. Robert Wright, Senior Counsel
Friends of the River



Bill Jennings, Executive Director
California Sportfishing Protection
Alliance



Barbara Barrigan-Parrilla, Executive
Director
Restore the Delta



Conner Everts, Facilitator
Environmental Water Caucus



John Buse, Senior Counsel
Center for Biological Diversity



Carolee Krieger, Executive Director
California Water Impact Network



Barbara Vlamis, Executive Director
AquAlliance



Kathryn Phillips, Director
Sierra Club California



Jonas Minton, Senior Water Policy
Advisor
Planning and Conservation League

Attachment: Executive Order N-10-19 on Water