



September 12, 2017

The Honorable Senator Feinstein:  
 SH-331 Senate Hart Office Building  
 Washington, DC 20510

We seek your assistance in obtaining presently unavailable and undisclosed data and financial information from Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) regarding how Central Valley Project (CVP) water contractors will pay the proposed 45% share (approximately \$8 Billion) of the approximately \$17 billion dollars (currently estimated) that will be required for the planning, engineering and construction of the Delta tunnel project currently called Cal Water Fix .

Over many years, we have diligently participated in the public process of evaluating costs and benefits of the water export tunnel project. Throughout this time we have repeatedly sought financial data, fiscal information and legal pledges that would detail project commitment and project funding. This information is critical to public review and understanding of the project.

To date, however, the requested data and financial information has been withheld by Reclamation and DWR, apparently with the intent of preventing the public from understanding the shaky financial underpinnings of the project.

In the next three days, and notwithstanding the absence of this basic data, the deadline looms to challenge DWR's request of the Courts to legally sanction the project financing, including access to State bond financing and exemption from Proposition 13. State bond financing could put the public on the hook for project debt rather than the water contractors and the Prop 13 exemption would allow taxation without voter approval.

**In light of this situation, we turn to you – and request your intervention with the Department of the Interior and Bureau of Reclamation and the State DWR to obtain all relevant financial, fiscal and economic data and information and immediately release it to public so that it can be evaluated before imminent critical decisions are made.**

As you know, according to law, policy, and in this case federal contract, the first step in a project of this magnitude, is for the agency, prior to proceeding, is to produce a Feasibility Study, submit it to Congress and release it to the public. Such a Study identifies and details project planning and construction costs and, further, details how the contractors would repay for these costs. The federal contract with the State of California required such a feasibility study, but Reclamation inexplicably waived the requirement and it was not done.

Thus, even at this late date, after almost 10 years of planning and \$257 million (according to the Inspector General), project costs and repayment strategy are not disclosed.

Recent audit findings have highlighted the urgency of obtaining reliable financial information before it is too late. Friday, September 8, the Office of the Inspector General, US Department of the Interior, released an audit entitled, *The Bureau of Reclamation Not Transparent in Its Participation in the Bay Delta Conservation Plan*. The Interior Department's Inspector General concluded that \$84.8 million in taxpayer dollars was improperly directed by Bureau of Reclamation to subsidize the federal water contractor's share of costs so far.

According to this IG Audit, roughly \$50 million was double counted to the private benefit of water contractors in the Westlands Water District, San Luis Water District, Panoche Water District and others. According to an Associated Press story published by the Los Angeles Times, Thomas Birmingham, general manager of Westlands, which received one of the largest shares of the federal money, *said he knew of nothing about the arrangement that was "inconsistent with either state or federal law." "The state was aware of it," Birmingham said of the federal payments. "No one indicated this was somehow a violation of the letter or spirit of the agreement" guiding the costs of the project. Birmingham indicated water districts might never repay those funds.*  
<http://www.latimes.com/nation/sns-bc-us--giant-california-tunnels-20170908-story.html>

These statements by Mr. Birmingham further shake confidence that project participants at all levels have accurately disclosed, and indeed themselves understand, the legality and feasibility of project financing—including whether water contractors will repay their fair share of costs to date and in the future as required.

Reclamation's hidden and undisclosed maneuvers to apply unapproved public funds deepens concerns about the financial integrity of the proposed project.

As you can see from the attached Public Records Requests, our most recent request for financial information was denied last week. The Client-Attorney privilege in the Public Records Act cannot and should not be allowed to hide misconduct, mislead the public, and deny critical information to ratepayers and taxpayers.

Fairness dictates that the public and decision makers should have the requested financial information before critical decisions are made and property taxes obligated to pay for questionable and expensive projects such as these water export tunnels. At this point, this project does not even have regulatory approvals or water rights to take this water before it reaches the Delta Estuary that

feeds essential flows serving the San Francisco Bay and drinking water supplies. Contra Costa Water District, along with other federal contractors that represent 78% of CVP water supplies, have warned Reclamation they do not intend to pay for these tunnels because the export tunnels benefit primarily four federal water contractors – the same contractors that Reclamation provided with \$50 million without authority, approval or disclosure. If water contractors are not prepared to pay, Congress and the public need to know how the project will be financed and whether or not it is feasible.

In addition to the public, and even key Water District Board members don't have adequate information. As the San Jose Mercury recently editorialized regarding the upcoming deadline for water districts to vote yes or no on their participation:

*"It is an arbitrary, outrageous and irresponsible deadline. There is no formal agreement on how the project will be financed, how it will be governed or how the water will be allocated: none of the information a responsible water board needs to know for an informed decision.*

*Santa Clara's water district has to refuse. It can at a minimum delay a vote until it gets enough information, but it should reject the project outright. This is an open-ended boondoggle that could stick generations of ratepayers with unfathomable costs. Brown wants approval now because he knows that the more information comes in, the worse the plan will look."*

<http://www.mercurynews.com/2017/09/10/editorial-delta-tunnel-waterfix-vote-now-no-way-santa-clara-valley-should-say/>

Thank you in advance for your assistance in obtaining this essential information before this project proceeds to saddle California ratepayers and property taxpayers with billions of dollars. Agency decisions and court rulings are pressing over the next few days and weeks, making it vital that the requested information is provided as soon as possible, ideally within days or at most weeks. We also urge you to ensure that the improperly redirected federal funds, as found by the IG Audit, are reimbursed to the U.S. Treasury.



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**Attachments:** PCL et. al August 8, 2017 PRA request & response.



September 11, 2017

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California Department of Water Resources  
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Dear Ms. Heather C. Baugh & Mr. Spencer Kenner:

Thank you for your reply of September 1, 2017, regarding the Planning and Conservation League, Pacific Coast Federation of Fishermen's Associations, Sierra Club California and Institute for Fishery Resources' Public Records Request of August 8, 2017, seeking financing documents for the BDCP-Cal Water Fix. However, your complete denial of any "responsive records" that are "not protected by the attorney-client privilege" is surprising and unexpected, given the great breadth of policy changes, analysis and records that must underpin the Natural Resources Agency and Department of Water Resources recent request of the court to validate BDCP-Cal Water Fix on an expedited basis. If the court approves and validates the use of state bonds, the public impacts are extreme in that such approval would sanction:

1. Seventy years of bond financing debt in the billions of dollars, subjecting ratepayers and property tax pay back without a vote;
2. Contracts with private interests in a project that here-to-fore has been a project contracting with public water agencies;
3. The inclusion of a collection of facilities identified as Project Order No. 40, dated July 21, 2017, including tunnels, forebays, and new diversions and "*such further modification as the Department in its discretion may adopt.*"
4. Contracts "*for the sale or disposal of water, water flow, the use of water, water storage, electric power, or other resources and facilities to be made available by the California WaterFix*"
5. The eligibility of these purposes and uses of state bond financing with associated exemption from Proposition 13 property tax protections and Proposition 26 voter right protections.

Despite this exceptionally broad scope, few financial details are provided in the validation request and thus we are seeking further details so that the public interest can be adequately evaluated.

The August 8, 2017 PRA request seeks essential financial documents to fully understand the debt obligation being promoted by Resources and its Department of Water Resources. Like buying a house, mortgage lenders must disclose the interest and fees. Why the silence? Why hide these costs? Why not disclose the operation and maintenance costs? Why hide documents pertaining to the eligibility of this collection of new projects meets eligibility rules for State Water Project bond financing?

You cite privilege as a rationale not to allow inspection of these documents. How many records are being withheld? The documents sought for inspection are made under subsection § 6252 (a) and it is designed to avoid exactly this sort of delay:

*"Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law."*

Further, in 2014, DWR's legal counsel waived privileged provided information to various bond houses regarding "projects that are eligible for funding" under the State Water Project. We are seeking this information provided to the State Water Project Contractors and various bond houses in 2014 and any documents in 2017 pertaining to the eligibility of projects to use the State Water Project funding including bond financing. Jake Campos (STIFEL) refers to the DWR list of approved projects that are eligible for funding in correspondence to Mary Lou Cotton on March 19, 2014—see the highlighted section:

*Letter from Jake Campos, STIFEL, to Mary Lou Cotton, SWPCA at (March 19, 2014): "More specifically, 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".*

Despite these cautions, Resources and DWR are asking the court to validate this "new collection" of facilities described roughly in Project Order No. 40 as justified in using State Water Project bond financing authority absent a water right under the existing SWP to divert water at this location and to areas outside of the existing SWP contract service area.

Refusing to provide our members along with ratepayers who likely will be burdened with billions in financing costs, including roughly ten years of previous planning dollars, is unconscionable. Recent findings by the Inspector General of Interior in a report entitled, *The Bureau of Reclamation Not Transparent in Its Participation in the Bay Delta Conservation Plan*, found, despite federal and state law to the contrary, roughly \$84.8 million dollars in planning costs were covered by federal taxpayers instead of Westlands and three other federal contractors as required by state law. Will ratepayers and property taxpayers be on the hook to repay these costs in their water bills and property tax bills? Will ratepayers repay the Treasury or will the phantom payments go back to the federal contractors who masquerading in making the payments?

Clearly the contractors who are promoting this use of State bond financing have these documents. Fairness dictates that the documents be released so that these groups and their members can be fully informed.

Public officials have a duty to provide citizens with their “honest services.” The California Department of Resources response was less than candid and instead appears to knowingly withhold important information.

Please provide us the opportunity to inspect these documents as requested. Absent granting this request please identify the documents being withheld and rationale for the exemption. A copy of our request and previous correspondence is attached. If you have any follow up questions please contact Patricia Schifferle at 530 550 0219.

Regards,



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Attachments: PRA Request August 8, 2017 & CNRA Reply of 9-1-2017



**From:** Baugh, Heather@CNRA [mailto:heather.baugh@resources.ca.gov]  
**Sent:** Friday, September 01, 2017 12:24 PM  
**To:** Patricia Schifferle  
**Cc:** Kenner, Spencer@DWR; Calfee, Christopher@CNRA  
**Subject:** RE: Public Records Request for Cal Water Fix Financing Documents

Dear Ms. Schifferle,

My client does not maintain any responsive records that not protected by the attorney-client privilege. (See, Government Code section 6254K, and Evidence Code 912, 952).

If you have any questions, please feel free to contact me.

Sincerely,

Heather Baugh

Heather C. Baugh, Assistant General Counsel  
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**From:** Patricia Schifferle [mailto:pacificadvocates@hotmail.com]  
**Sent:** Tuesday, August 08, 2017 7:40 PM  
**To:** Dunnigan, John@DWR; Baugh, Heather@CNRA  
**Cc:** DWR Pubrec  
**Subject:** Public Records Request for Cal Water Fix Financing Documents



August 8, 2017

**Public Records Act Request**

**SENT VIA EMAIL (heather.baugh@resources.ca.gov) and (pubrec@water.ca.gov) and John.Dunnigan@water.ca.gov**

Ms. Heather Baugh  
Office of the General Counsel  
California Natural Resources Agency  
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Department of Water Resources  
Records Management Office  
Attention: Deanne Campagna  
1416 Ninth Street, Room 354  
Sacramento, California 95814

Attention: John Dunnigan, Senior Staff Counsel  
Office of the Chief Counsel  
California Department of Water Resources

August 8, 2017

**RE: Public Records Act Request**

Dear Ms. Baugh, Mr.Dunnigan and Ms. Campagna:

On behalf of the Institute for Fisheries Resources [IFR] and the Pacific Coast Federation of Fisheremen's Associations [PCFFA], the Planning and Conservation League and the Sierra Club these nonprofit groups request pursuant to the provisions of the California Public Records Act (Gov. Code, §§ 6250 et seq.), please make the following documents available for immediate inspection:

1. Any documents including emails, texts or other documents or communications regarding the proposed financing for the Cal Water Fix Delta Water export tunnels from January 2017 to present.
2. A copy of the proposed financing of the Cal Water Fix project referred to in the Orrick Harrington et. al. "*Final Notice of Validation of Proposed Financing for California Water Fix*" emailed 8-1-2017 4 pm.

3. Any documents regarding the near term or long term list of the projects DWR intends to apply this WRDA agreement or where DWR would seek permitting under this agreement regarding [SPK 2016-00149, Decision to Accept and Expend Funds - Division of Environmental Services WRDA - 8/2/2017](#)
4. Any documents emails, texts or other documents regarding a list of eligible projects under the State Water Project prior to 2014 and for 2017.

I look forward to hearing from you regarding this request within 10 days of your receipt of it. If possible electronic copies would be permissible and would avoid copying costs. If you have any questions please call me at (530) 550 0219.

Regards,



Patricia Schifferle  
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