



Tuesday, 18 May 2021

To: All Member of the California Water Commission

From: Patrick Porgans, Government Regulatory Analyst – Public Records Forensic Accountant

Attn: Laura Jensen and Paul Cambra

Re: Comments Pertaining to the CWC White Paper-Assessing a State Role in Financing Conveyance Projects

My name is Patrick Porgans, serving as a de facto Public Trustee, submits the following comments on behalf of Planetary Solutionaries, a nonprofit organization. www.planetarysolutionaries.org

FYI: I have spent the previous five-decades conducting Fact-Finding Forensic Assessments of state and federal water projects from the Front Range (100th Meridian-Denver) to the Canadian and Mexican borders). In all, I completed more than 100 reports, assessing every aspect of federal and state water projects. In particular, I have completed the most extensive assessment of the California State Water Project and the Federal Central Valley Project. A synopsis of the reports that I have completed on the *State of the State Water Project* are listed herein.

To begin, the Commission is to be commended for pursuing the daunting and challenging task at hand. While there is no doubt that in light of the climate change, increasing demands for water, aging infrastructure, and the historical lack of a comprehensive interactive surface and groundwater program requires such an effort, to wit, I offer the following preliminary concerns, suggestions and recommendations.

The people of California and U.S. taxpayers have expended more than \$50 billion on a myriad of projects to ensure water supply reliability, clean water, and to protect invaluable public trust resources such as the San Francisco Bay and Sacramento-San Joaquin Delta-Estuary. However, as was pointed out by Felicia Marcus, former chair of the State Water Resources Control Board the Bay-Delta ecosystem is on the verge of an ecological collapse. Her comment was made during the course of the so-called California Water Fix proceedings, which, essential came to another dead end, back in November 2018.

Ironically, the major factor contributing to the demise of the impending collapse is the direct result of the conveyance of SWP and CVP water across the delta to their respective pumping plants in the southern portion of the delta. It is important to note, that the enabling legislation for the SWP, authorized by California voters, back in November 1960, under section 12934 of the CA Water Code, provided funds for the construction of Master Levees to convey water across the delta. However, do to the fact that the SWP was knowingly underfinanced and contracted to provide more water than the project could supply,

it failed to provide the conveyance system and used the funds earmarked for the conveyance of water to make up for other underfunded SWP facilities. This was the case for the construction of Oroville Dam and the California Aqueduct, wherein the construction plans were modified (scaled down) to accommodate the inherent financing shortcomings of the SWP. The long-term socioeconomic impacts of said decisions surfaced with the partial collapse of the SWP Oroville Dam Flood Control Spillway Outlet Chute in February 2017 and the subsidence of the California Aqueduct.

Since 1970, the SWP has conveyed more than 200 million acre-feet of water across the delta to its export pumping plants at Clifton Court Forebay. I was a participant in the California Water Fix proceeding, and provided data, obtained from government files, that the Department of Water Resources and the U.S. Bureau of Reclamation's coordinated operation of the SWP and CVP were responsible for the killing of hundreds-of-millions of aquatic species listed on the federal Endangered Species Act. The State and Federal governments joined forces to establish the CALFED authority specifically to restore the Bay-Delta Estuary, after nearly a decade of studies, and more than \$6.5 billion later, the project manager declare that CALFED was a failure.

Bear in mind, that unlike the CVP, a heavily subsidized project, the SWP was "sold" to the people of California as a project that would "pay-for-itself". Simply stated, the beneficiaries of the project power and water contractors would pay all of the reimbursable costs associated with the construction, management and operation of the SWP. Unfortunately, that has not been the case as confirmed by the following facts:

Please refer to the enabling legislation of the California Water Resources Development Bond Act, also referred to as the [Burns-Porter Act](#).¹

The State Water Project was knowingly underfinanced and contractually overcommitted since its inception. In November 1960, Governor Edmund "Pat" Brown, Sr., falsely told the voters that the SWP would cost \$1.75 billion, and that it "would pay-for-itself"; i.e., the recipients of the water and power would pay, which was never true.² Porgans completed a series of fact-finding reports, forensic assessments,³ of the SWP financing and repayment obligations, which served as the basis for a series of Senate hearings⁴ that substantiated the fact that the SWP has not, nor will it ever pay for itself as promised.⁵ Furthermore, the facts revealed that although DWR officials and Governor Edmund "Pat" Brown, Sr. assured the public the

¹ **State Water Resource Development Bond Act (Burns-Porter-Act of November 1960: WATER CODE – DIVISION 6. CONSERVATION, DEVELOPMENT, AND UTILIZATION OF STATE WATER RESOURCES [10000 - 12999]** (*Heading of Division 6 amended by Stats. 1957, Ch. 1932.*) **PART 6. WATER DEVELOPMENT PROJECTS [12570 - 12949.6]** (*Part 6 added by Stats. 1953, Ch. 196.*) **CHAPTER 8. Water Resources Development Bonds [12930 - 12944]** (*Chapter 8, added by Stats. 1959, Ch. 1762.*)

http://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=WAT&division=6.&title=&part=6.&chapter=8.&article

² Patrick Porgans, Red Tape Abatement, *The State of The State Water Project, Report No. 1: Who's Financing It? Is it Paying- for --Itself as Promised?* March 1980.

³ Patrick Porgans, Regulatory Specialist, *State of the State Water Project, Report No. 2: The State Water Project has been Underfinanced Since its Inception; The Project is Unable to Meet its Contractual Obligations; The Peripheral Canal and other Facilities in Senate Bill 200 were Approved and Funded in the 1960s; the Money was Spent, and the Delta Facilities were never Built*, March 1982.

⁴ Patrick Porgans, Regulatory Specialist, *State of the State Water Project, Supply, Demand, Financing and Management*, Prepared for the California Senate Committee on Agriculture and Water Resources, (pro bono) 1994.

⁵ Patrick Porgans, Red-Tape Abatement, *State of the State Water Project, Taped-Recorded and Transcribed Interviews with Mr. Donald Sandison, Comptroller, California Department of Water Resources*, 26 March 1982, and 23 April 1982.

SWP would cost \$1.75 billion that was never true, which former Governor Ronald Reagan acknowledge during his term in office.⁶ The capital cost on the SWP has exceeded \$6.5 billion. Although there is no definitive cost estimate to “complete” the SWP, estimates exceed \$50 billion (includes principal and interest). Then, as now, the government misinformed the public of the real cost of the SWP. In 2010, Porgans completed a forensic assessment and a report, entitled *Cracking California’s Water Code*, which provided the public with a comprehensive review of the real costs of water development and who really pays and who really benefits.

Essentially, the SWP is a closed system; it provides water to 29 contracting agencies, on average the project provides less than six (6) percent of the State’s annual surface water needs. Historically, DWR claimed it provides water for more than 23 million Californians. Porgans challenged DWR’s assertions, thereafter, DWR clarified that it provides drinking water to that many Californians; as the record indicate, drinking water only accounts for a fraction of the water use per household.

SWP contractors have made tens-of-billions of dollars over the years from the water they receive from the project. According to the Kern County Water Agency, the second largest recipient of SWP water provides billions of dollars in revenue to the State annually. Ironically, all the SWP contractors pay certain required reimbursable costs, but they pay absolutely nothing for the water itself – it is free!

The enabling legislation and the provisions contained in the SWP Water Supply Contracts specifically list what costs are to be repaid by the contractors. It would be a disservice and an unacceptable burden to borrow money in the name of all Californians to subsidize any reimbursable costs to fund a conveyance system or any other component of the SWP.

CONCLUSION: The aforementioned comments are preliminary, and to address this subject in more detail will require more time and effort. Notwithstanding, it is with all due respects, I suggest that the Commission refrain from advocating any expenditures of public funds to support either the SWP or the CVP facilities, such an action may be in conflict with the enabling legislation and other applicable laws.

SUGGESTION: It would be a great service to the people of California for the Commission to request an independent audit of the SWP, since its inception, so they we would have a better understanding of the true costs and benefits of the project. Thank you for providing the opportunity to comment on this very important subject. **If you have questions regarding the content of this communication, please advise me accordingly.**

Respectfully,

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SUPPLEMENTAL INFORMATION:

⁶ California Senate Committee on Agriculture and Water Resources, *State Water Project Financing*: Progress Report to the Legislature, 1958, Regular Session, Report No. 2.

FYI: Financial shortcoming of the knowingly underfinanced SWP facilities altered the level of flood protection and safety that would have otherwise been provided.

- a. The initial Federal energy Regulatory Commission (FERC) license, issued to the Department of Water Resources (DWR), in 1957, FERC Project No. 2100, included the construction of a concrete gravity dam, which was later modified, at DWR's request, to be an earthen (zone-filled) structure.
- b. Public records confirm the SWP was underfinanced since its inception, in order to make up for the financial shortcoming, DWR cut-corners, which reduced the level of protection and safety that would have otherwise been provided.
- c. *"In October 1960, Charles T. Main, Inc., declared the project to be engineering feasible, but gave qualified answers to the questions of economic and financial feasibility. It pointed out the probability that construction costs would escalate, questioned the ability of agricultural water users to repay their share of the costs, and declared that the state must be prepared to assume the risk that it might not be completely reimbursed during the bond repayment period. Specifically, it stated that the Burns-Porter Act [enabling legislation authorizing the state Water Project facilities] fell slightly short of providing construction funds on the basis of 1960 costs."*⁷
- d. Governor Edmund "Pat" Brown, Sr., the architect of the State Water Project conceded that the SWP was underfinanced since its inception. ***"We had to scrape and pull to put the project over. I mean don't kid felt we could get a bond act. We were afraid to make it \$2 billion. It was like a \$1.99 rather than \$2.00. We thought that sounded better to the people."***⁸
- e. *We recognized that the [SWP] water project was going to be short in 1963 and that's why we [the Department of Water Resources] issued revenue bonds for the Oroville Dam.*⁹
- f. *"Recognizing the shortages inherent in financing of the State Water Project, the department in 1963 proposed to issue revenue bonds under the authorization contained in the Central Valley Project Act and based upon the sale of Oroville-Thermalito power. The authorization to issue such bonds was upheld by the California Supreme Court in the same year."*¹⁰
- g. ***"The [SWP] was underfinanced since the very start. It is not my intention to dwell on this, but the people were allowed to believe that the original bond issue would cover the cost. This was never true."*** –Gov. Ronald Reagan.¹¹
- h. Porgans spent 15-years, at his own expense, conducting an exhaustive review of the history, planning, operation, maintenance, and financing of the SWP. He completed a series of fact-finding forensic report that focused on the ***"State of the State Water Project."***¹²

⁷ Senate Committee on Water Resources, Progress Report to the Legislature, 1968, Regular Session, **Report No. 2, State Water Project Financing**, p. 12.

⁸ Malca Chall, Regional Oral History Office, the Bancroft Library, University of Berkeley, California, Governmental History Documentation Project, Goodwin Knight/Edmund Brown, Sr., Era, Edmund G. Brown, Sr., **The California Water Project, Personal Interest and Development in the Legislation, Public Support, and Construction, 1950-1966**. Interview conducted by Malca Chall in 1979, published in 1981, p. 45.

⁹ Patrick Porgans Taped-recorded Interview with Donald Sandison, Comptroller, Department of Water Resources, **Financing of the State Water Project**, March 26, 1982, and April 23, 1982.

¹⁰ Patrick Porgans, Government Regulatory Specialist, Red-Tape Abatement, Ltd., **The State of the State Water Project, Transcript – Interview between Patrick Porgans and Lawrence Swenson, Chief, State Water Project Analysis Office and Donald A. Sandison, Fiscal Advisor, Comptroller, Division of Fiscal Services, California Department of Water Resources**: Reported by, Juli Price Jackson, Certified Shorthand Reporter, CSR No. 5214, 1981.

¹¹ San Francisco Chronicle, 15 November, 1969.

¹² Patrick Porgans Taped-recorded Interview with Donald Sandison, Comptroller, Department of Water Resources, **Financing of the State Water Project**, March 26, 1982, and April 23, 1982.

- i. The inherent financial shortcomings of the underfinanced and contractually over committed State Water Project came to a crescendo in 1994 when a report Porgans prepared for the California State Legislature's Senate Agricultural and Water Committee held a series of hearings, based on Porgans' report. During those Senate hearing, both the DWR and the SWP contractors conceded the Project was facing a financial crisis. The crisis stemmed from the fact that major agricultural contractors could not pay for the water. Default on the repayment of the General Obligation Bonds, used to finance the SWP, was imminent danger of going into default, which would adversely affect the credit rating of the State of California.¹³
- j. The State water Project is faced with major problems and challenges. "The project is in a financial crisis and if it was a private business, it would be bankrupt," according to Tom Clark, general manager of the Kern County Water Agency, the second largest SWP contractor, provide the majority of water to agricultural clients.¹⁴
- k. Porgans completed a series of Fact-Finding Reports pertaining to the DWR's mismanagement and failure to comply with federal and state flood control rules and regulations at the SWP Oroville facilities that contributed to the 1980, 1986, 1997, and 2017 floods that caused significant damages and loss of lives, downstream from the Oroville Dam. These reports were prepared for clients and law firms.¹⁵

¹² Patrick Porgans, Government Regulatory Specialist, *State of the State Water Project, Report No. 1, Who's Financing It? Is it Paying-for-Itself?* 1980.

Patrick Porgans, Government Regulatory Specialist, Red-Tape Abatement, Ltd., *The State of the State Water Project, Transcript – Interview between Patrick Porgans and Lawrence Swenson, Chief, State Water Project Analysis Office and Donald A. Sandison, Fiscal Advisor, Comptroller, Division of Fiscal Services, California Department of Water Resources*: Reported by, Juli Price Jackson, Certified Shorthand Reporter, CSR No. 5214, 1981.

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Patrick Porgans and Associates, *Draft: State of the State Water Project, Supply, Demand, Financing and Management, Independent (Pro Bono) Report, Prepared for the California senate Committee on Agriculture and Water Resources*, 1994.

¹³ Patrick Porgans, Solutionist, *Summary Report, California Department of Water Resources Relicensing of the State Water Project's Oroville Facilities – Federal Energy Regulatory Commission Project No. 2100, Subject: Notification to Plenary Group of P&A's Decision to suspend Participation in the Alternative Licensing Procedure and of Our Intent to Inform FERC and the Public of the ALP's Inherent Shortcomings which are Diametric to Meaningful Public Input, Government's Trust Responsibilities and the Department of Water Resources' Written Assurances*, 2004.

¹⁴ Statement made by Tom Clark, general manager, Kern County Water Agency, before the Senate Committee on Agriculture and Water Resources' Hearing on the *State Water Project: Supply, Demand and Financing, as recorded by the California State Senate Television Program*, Tape #1. 31 January 1994.

¹⁵ Patrick Porgans, Government Regulatory Specialist, *Flood Storage and Water Releases at Oroville Dam, State Water Project, between 1969 through 1980*, February 1980.

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