Wed Jul 22 11:56:23 EDT 2015
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FW: Request for real BDCP alternatives
To: CMS.OEX@epamail.epa.gov

From: Bob Wright [mailto:BWright@friendsoftheriver.org]
Sent: Wednesday, July 22, 2015 11:50 AM
To: Mccarthy, Gina
Subject: Request for real BDCP alternatives

Dear Administrator McCarthy:

Our attached joint letter, requests your help in requiring the Bureau of Reclamation to finally develop and consider real alternatives to the Delta Water Tunnels that would increase freshwater flows through the Delta by reducing exports. We seek intervention on this matter from the EPA because the Bureau has continued to ignore calls for development of real alternatives in the NEPA process and ignored Clean Water Act obligations to improve, not worsen, Delta water quality.

The proposed Water Tunnels are the most controversial proposed public works project in California History. We would be happy to do our best to answer any questions that you or other EPA officials may have.

Sincerely,

Bob Wright

Senior Counsel

Friends of the River

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July 22, 2015

Via Email and U.S. Mail

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Re: Request for BDCP Agencies to Issue a New Draft EIR/EIS to Finally Develop and Consider a Reasonable Range of Alternatives Increasing Delta Flows by Reducing Exports/RDEIR/SDEIS Comments

Dear Secretary Jewell, Secretary Pritzker, Administrator McCarthy, Secretary Laird, Director Cowin, Regional Director Murillo, and Federal and California Agencies, Officers, and Staff Members Carrying out and Reviewing the BDCP/California Water Fix:

Summary

Friends of the River (FOR), Restore the Delta, the Center for Biological Diversity, the California Water Impact Network, the California Sportfishing Protection Alliance, and the Environmental Water Caucus (EWC) (a coalition of over 30 nonprofit environmental and community organizations and California Indian Tribes) object to approval of the Bay Delta Conservation Plan (BDCP)/California Water Fix project including the Delta Water Tunnels. We also object to approval of a Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Water Tunnels. The lead agencies for the project are the U.S. Bureau of Reclamation and the California Department of Water Resources (DWR).

Development of alternatives increasing flows through the Delta has always been a direct and obvious first step to complying with California's public trust doctrine protecting Delta water quantity and quality. Instead of complying with the Delta Reform Act, the Endangered Species Act (ESA), the Clean Water Act and applying the public trust doctrine, all of the so-called BDCP alternatives involve new conveyance as opposed to consideration of any through-Delta conveyance alternatives reducing exports.

The alternatives section (Chapter 3) of the Draft EIR/EIS and the ESA-required Alternatives to Take section (Chapter 9) of the BDCP Draft Plan failed to include even one alternative that would increase water flows through the San Francisco Bay-Delta by reducing exports, let alone the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), and ESA required range of reasonable alternatives. Instead, all BDCP alternatives including new Recirculated Draft EIR (RDEIR)/ Supplemental Draft EIS (SDEIS) alternatives 4 modified, 4A, 2D and 5A would do the opposite of increasing flows, by reducing flows through the Delta by way of new upstream diversion of enormous quantities of water for the proposed Water Tunnels. These intentional violations of law require going back to the drawing board to prepare a new Draft EIR/EIS that would include a range of real alternatives, instead of just replicating the same conveyance project dressed up in different outfits. To be clear, 14 of the so-called 15 "alternatives" in the Draft EIR/EIS, 10 of the so-called 11 "take alternatives" in the Draft Plan (Chapter 9) and the 4 "alternatives" in the new RDEIR/SDEIS are all peas out of the same pod. They would create different variants of new upstream conveyance to divert enormous quantities of freshwater away from the lower Sacramento River, sloughs, and San Francisco Bay-Delta for export south.

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Our organizations have already communicated several times over the years with BDCP officials about the failure to develop a range of reasonable alternatives in the BDCP process.[1]

The direct and obvious way to increase flows through the Delta is to take less water out. The broad policy alternatives that should be highlighted in the BDCP NEPA and CEQA documents are to: 1) reduce existing export levels and thereby increase Delta flows; 2) maintain existing export levels and Delta flows; and 3) further reduce Delta flows by establishing a massive new diversion, the Delta Water Tunnels, upstream from the Delta.[2] The BDCP agencies and the new RDEIR/SDEIS continue *to ignore* the direct and obvious broad policy alternative of reducing existing export levels to thereby increase Delta flows—which is mandated by section 85021 of the California Water Code.

Reclamation and DWR have ignored our repeated calls over the past several years to develop and consider alternatives increasing freshwater flows though the Delta by reducing exports. They do so to stack the deck making it easier for them to adopt the Water Tunnels alternative because they do not consider any alternatives other than new, upstream conveyance. This deficient BDCP California Water Fix alternatives analysis is not something that can be "fixed" by responses to comments in a Final EIR/EIS. Instead, Reclamation and DWR need to prepare and circulate a new Draft EIR/EIS that will include alternatives increasing Delta flows for consideration by the public and decision-makers.

Deliberate BDCP Refusal to Consider Alternatives Increasing Delta Flows

The BDCP's omission of alternatives reducing exports to increase flows has been deliberate. A claimed purpose of the BDCP is "Reducing the adverse effects on certain listed [fish] species due to diverting water." (BDCP Draft EIR/EIS Executive Summary, p. ES-10). "[H]igher water exports" are among the factors the RDEIR/SDEIS admits "have stressed the natural system and led to a decline in ecological productivity." (RDEIR/SDEIS 1-10). "There is an urgent need to improve the conditions for threatened and endangered fish species within the Delta." (Draft EIR/EIS ES-10; RDEIR/SDEIS ES-6). The new RDEIR/SDEIS admits that "the Delta is in a state of crisis" and that "Several threatened and endangered fish species . . . have recently experienced the lowest population numbers in their recorded history." (RDEIR/SDEIS

[1] This letter follows previous comments including our Friends of the River comment letter of May 21, 2014, our joint May 28, 2014 and joint September 4, 2014 comment letters focused on the failure of the BDCP Draft plan and Draft EIR/EIS to identify and evaluate a range of reasonable alternatives that are the declared "heart" of both the NEPA and CEQA required EISs and EIRs. A detailed evaluation of the Draft EIR/EIS's inadequate alternatives analysis was provided by the EWC in its comment letter of June 11, 2014, accessible online at http://ewccalifornia.org/reports/bdcpcomments6-11-2014-3.pdf.

[2] Though the Delta Water Tunnels alternative is a broad policy alternative, the Tunnels alternative is infeasible in terms of being actually adopted because it is not permissible under the ESA, Clean Water Act, Delta Reform Act and the public trust doctrine. Consequently, Alternative 4, DWR's original preferred alternative, and new Alternative 4A, Reclamation and DWR's new preferred alternative, are not actually feasible because they are not lawful. What is puzzling at this Draft EIR/EIS stage of the NEPA and CEQA process is why would the BDCP agencies refuse to consider lawful alternatives increasing Delta flows while both considering and giving preferred alternative status to alternatives that are at least arguably unlawful? As the RDEIR/SDEIS admits, " Many commenters argued that because the proposed project would lead to significant, unavoidable water quality effects, DWR could not obtain various approvals needed for the project to succeed (e.g., approval by the State Water Resources Control Board of new points of diversion for North Delta intakes)." (RDEIR/SDEIS ES-2).

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ES-1). Alternatives reducing exports are the obvious direct response to claimed BDCP purposes of "reducing the adverse effects on certain listed [fish] species due to diverting water" and "to improve the conditions for threatened and endangered fish species within the Delta." The way to increase Delta flows is to take less water out.

Reclamation and DWR must develop and consider an alternative that would increase flows by reducing exports in order to satisfy federal and California law. The Delta Reform Act establishes that "The policy of the State of California is 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." Cal. Water Code § 85021 (emphasis added). The Act also mandates that the BDCP include a comprehensive review and analysis of "A reasonable range of flow criteria, rates of diversion, and other operational criteria . . . necessary for recovering the Delta ecosystem and restoring fisheries under a reasonable range of hydrologic conditions, which will identify the remaining water available for export and other beneficial uses." Cal. Water Code § 85320(b)(2)(A). And, the Act requires: "A reasonable range of Delta conveyance alternatives, including through-Delta," as well as new dual or isolated conveyance alternatives. Cal. Water Code § 85320(b)(2)(B). In addition, the Act mandates that "The long-standing constitutional principle of reasonable use and the public trust doctrine shall be the foundation of state water management policy and are particularly important and applicable to the Delta." Cal. Water Code § 85023.

Reclamation and DWR [3] have now marched along for over four years in the face of "red flags flying" deliberately refusing to develop and evaluate a range of reasonable alternatives, or indeed, any real alternatives at all, that would increase flows by reducing exports. Four years ago the National Academy of Sciences declared in reviewing the then-current version of the draft BDCP that: "[c]hoosing the alternative project before evaluating alternative ways to reach a preferred outcome would be post hoc rationalization—in other words, putting the cart before the horse. Scientific reasons for not considering alternative actions are not presented in the plan." (National Academy of Sciences, Report in Brief at p. 2, May 5, 2011).

More than three years ago, on April 16, 2012, the Co-Facilitators of the EWC transmitted a letter to then-Deputy Secretary of the California Natural Resources Agency Gerald Meral. The letter stated EWC's concerns with BDCP's current approach and direction of the [BDCP] project. (Letter, p. 1). Most of the letter dealt with the consideration of alternatives. The penultimate paragraph of the letter specifically states:

> *The absence of a full range of alternatives,* including an alternative which would reduce exports from the Delta. It is understandable that the exporters, who are driving the project, are not interested in this kind of alternative; however, in order to be a truly permissible project, an examination of a full range of alternatives, including ones that would reduce exports, needs to be included and needs to incorporate a public trust balancing of alternatives. (Letter, p. 2).

[3] BDCP Applicants include San Luis Delta Mendota Water Authority, Westlands Water District, Kern County Water Agency, Zone 7 Water Agency, Metropolitan Water District of Southern California, and Santa Clara Valley Water District.

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The EWC provided its "Reduced Exports Plan" to BDCP agency officers back in December 2012 and again in person on February 20, 2013. EWC Co-Facilitator Nick DiCroce stated in his December 2012 message to Deputy Secretary Meral that:

> Now that the project is nearing its EIR/EIS stage, we feel it is important to formally present it [Reduced Exports Plan] to you and request that you get it on the record as an alternative to be evaluated. . . . As you know, CEQA and NEPA both require a full range of reasonable alternatives to be evaluated. (December 15, 2012 email DiCroce to Meral).

On November 18, 2013, FOR submitted a comment letter in the BDCP process urging those carrying out the BDCP to review the "Responsible Exports Plan," an update of the previous "Reduced Exports Plan" proposed by the EWC:

> as an alternative to the preferred tunnel project. This Plan calls for reducing exports from the Delta, implementing stringent conservation measures but no new upstream conveyance. This Plan additionally prioritizes the need for a water availability analysis and protection of public trust resources rather than a mere continuation of the status quo that has led the Delta into these dire circumstances. Only that alternative is consistent with the EPA statements indicating that more outflow is needed to protect aquatic resources and fish populations. The EWC Responsible Exports Plan is feasible and accomplishes project objectives and therefore should be fully analyzed in a Draft EIS/EIR. (FOR November 18, 2013 comment letter at p. 3, Attachment 4 to FOR January 14, 2014 comment letter).

All of the so-called project alternatives set forth in the Draft Plan, Draft EIR/EIS, and new RDEIR/SDEIS create a capacity to divert more water from the Delta far upstream from the present diversion, which will undoubtedly decimate Delta-reliant species already on the brink of extinction, including the Delta smelt, chinook salmon, steelhead, San Joaquin kit fox, and tricolored blackbird, among dozens of others. The Draft EIR/EIS itself describes differences among the alternatives as "slight." Yet the Water Tunnels would divert enormous quantities of water from the Sacramento River near Clarksburg, California--waters that presently flow through designated critical habitats for the host of imperiled species in the Sacramento River and sloughs to and through the Bay-Delta. Should the Tunnels be completed, these waters would instead be exported through the northern intakes upstream from the Delta. And they would do so contrary to ESA Section 10 (prohibiting reduction of the likelihood of survival and recovery of listed species), ESA Section 7 (prohibiting federal agency actions that are likely to jeopardize the continued existence of any endangered species or that "result in the destruction or adverse modification of [critical] habitat of [listed] species" 16 U.S.C. § 1536 (a)(2)), and California Water Code Section 85021 (requiring that exporters reduce reliance on the Delta for water supply).

BDCP Agencies Must Consider Alternatives That Will Increase Delta Flows As Proposed Under the Responsible Exports Plan

We yet again request development of a range of reasonable alternatives increasing Delta flows and reducing exports. The BDCP agencies must take this opportunity as part of preparing a

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new, legally sufficient, Draft EIR/EIS that incorporates actions called for by the Responsible Exports Plan (attached to our previous comment letters and also posted at http://www.ewccalifornia.org/reports/responsibleexportsplanmay2013.pdf). These actions include: reducing exports to no more than 3,000,000 acre-feet in all years in keeping with State Water Resources Control Board (SWRCB) Delta flow criteria (for inflow as well as outflow); water efficiency and demand reduction programs including urban and agricultural water conservation, recycling, storm water recapture and reuse; reinforced levees above PL 84-99 standards; installation of improved fish screens at existing Delta pumps; elimination of irrigation water applied on up to 1.3 million acres of drainage-impaired farmlands south of the Bay-Delta; return the Kern Water Bank to State control; restore Article 18 urban preference; restore the original intent of Article 21 surplus water in SWP contracts; conduct feasibility study for Tulare Basin water storage; provide fish passage above and below Central Valley rim dams for species of concern; and retain cold water for fish in reservoirs. We also request that the range of reasonable alternatives include reducing exports both more and less than the 3,000,000 acre feet limit called for by the Responsible Exports Plan. [4]

Responsible Exports Plan Alternatives could vary by how much time is allotted to phase in export reductions over time. For instance, they could range from 10 to 40 years, which would comparatively span the same range of timelines provided for Tunnels construction.

The RDEIR/SDEIS admits the existence of paper water, "quantities totaling several times the average annual unimpaired flows in the Delta watershed could be available to users based on the face value of water permits already issued." (RDEIR/SDEIS 1-11). The BDCP agencies misuse the Delta Reform Act's definition of the coequal goals: "' Coequal goals' means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem . . ." Cal. Water Code § 85054. Providing "a more reliable water supply" means real water actually available, not paper water, and reflecting water available for export while meeting the needs for Delta water quantity, quality, freshwater flows, fisheries, public trust obligations, the ESA, the Clean Water Act, and senior water rights holders. It does not mean moving the exporters who are junior water rights holders-- including 1.3 million acres of drainage impaired lands-- to the front of the line ahead of everyone and everything else. It also does not mean putting the exporters in the front of the line during a lengthy extreme drought, crashing fish populations, and reductions in water use being made by millions of Californians.

The estimated $15 billion cost of the Water Tunnels--which in reality will amount to $30 billion or more including capital cost (and costs normally being greater than when under estimated by self-interested project consultants)--represents an "opportunity cost." The enormous sums spent on the Water Tunnels would be opportunity lost to making modern water quality and quantity improvements including recycling, conservation, and technical improvements such as drip -irrigation. In other words, the sums spent on outdated concepts – the Water Tunnels--would be lost to effective modern measures actually increasing water availability. The only true benefit cost study prepared on the Water Tunnels concluded that the costs are 2 to 3 times higher than

[4] We attach for the BDCPComments@icfi.com addressee a pre-publication copy of EWC's new *A Sustainable Water Plan for California* (May 2015) as an updated EWC alternative to the BDCP California Water Fix Delta Tunnels. The features of the new plan are similar in pertinent part to the previous Responsible Exports Plan recommendations and features set forth above.

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the benefits. Dr. Jeffrey Michael, *Benefit-Cost Analysis of Delta Water Conveyance Tunnels* (Eberhardt School of Business, University of the Pacific, July 12, 2012). Now that the project has dropped the features of habitat conservation while keeping only the Water Tunnels the exporters would not have the benefit of 50 year permits and virtually guaranteed water deliveries. That change, in addition to worsening the adverse environmental impacts of the Water Tunnels, also increases the already negative cost benefit ratio. The change also leaves the taxpaying public to be stuck with all costs to mitigate the adverse impacts of the Water Tunnels.

BDCP Agencies Must Meaningfully Present and Evaluate Alternatives that will Increase Delta Flows in order to Comply with NEPA and CEQA

Under NEPA Regulations, "This [alternatives] section is the heart of the environmental impact statement." The alternatives section should "sharply" define the issues and provide a clear basis for choice among options by the decision-maker and the public. 40 C.F.R. § 1502.14. Moreover, if "a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action." § 1502.9(a). The Responsible Exports Plan and variants on it must be among those alternatives in a new Draft EIR/EIS for BDCP that helps to disclose, sharpen and clarify the issues.[5]

Reclamation and DWR have failed to produce an alternatives section that "sharply" defines the issues and provides a clear basis for choice among options as required by the NEPA Regulations, 40 C.F.R. § 1502.14. Again, those issues must include producing more Delta inflow and outflow through the estuary as habitat for listed fish species, and documenting the impacts on Delta ecosystems as called for in Water Code § 85021. The choice presented must include increasing flows by reducing exports, not just reducing flows by increasing the capacity for exports as is called for by ***all*** of the so-called "alternatives" presented in the BDCP Draft Plan, Draft EIR/EIS, and RDEIR/SDEIS. [6]

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[5] The EIS alternatives section is to "Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." § 1502.14(a).

[6] In *California v. Block,* 690 F.2 753, 765-769 (9th Cir. 1982), the project at issue involved allocating to wilderness, non-wilderness or future planning, remaining roadless areas in national forests throughout the United States. The court held that the EIS failed to pass muster under NEPA because of failure to consider the alternative of increasing timber production on federally owned lands currently open to development; and also because of failure to allocate to wilderness a share of the subject acreage "at an intermediate percentage between 34% and 100%." 690 F.2d at 766. Like the situation here where the BDCP agencies claim a trade-off involved between water exports and Delta restoration (RDEIR/SDEIS ES 4-6), the Forest Service program involved "a trade-off between wilderness use and development. This trade-off however, cannot be intelligently made without examining whether it can be softened or eliminated by increasing resource extraction and use from already developed areas." 690 F.2d at 767. Here, likewise, trade-offs cannot be intelligently analyzed without examining whether the impacts of alternatives reducing exports can be softened or eliminated by increasing water conservation, recycling, and eventually retiring drainage-impaired agricultural lands in the areas of the exporters from production. *Accord, Oregon Natural Desert Assn. v. Bureau of Land Management*, 625 F.3d 1092, 1122-1124 (9th Cir. 2010) (EIS uncritical alternatives analysis privileging of one form of use over another violated NEPA). Here, the BDCP alternatives analysis has unlawfully privileged water exports over protection of Delta water quality, water quantity, public trust values, and ESA values.

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Instead of sharply defining the issues and providing a clear basis for choice among options, the BDCP consultants have now produced 48,000 pages of conclusory Water Tunnels advocacy.

The failure to include a range of reasonable alternatives also violates CEQA. An EIR must "describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." 14 Code Cal. Regs (CEQA Guidelines) § 15126.6(a). "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." § 15126.6(b). Recirculation of a new Draft EIR/EIS will be required by CEQA Guidelines section 15088.5(a)(3) because the Responsible Exports Plan alternative and other alternatives that would reduce rather than increase exports have not been previously analyzed but must be analyzed as part of a range of reasonable alternatives.

With respect to the ESA, we have repeated several times in 2013 and 2014 that the failure of the federal agencies to prepare the ESA required Biological Assessments and Opinions concerning the US Bureau of Reclamation's activities with the BDCP violates both the ESA Regulations (50 C.F.R. § 402.14(a) "at the earliest possible time" requirement and the NEPA Regulations (40 C.F.R. § 1502.25(a) "concurrently with" and "integrated with" requirements. (FOR January 14, 2014 comment letter and its four attachments). The Biological Assessments and Biological Opinions, still missing (RDEIR/SDEIS 1-15), are essential to any meaningful public review and comment on a project claimed to be responsive to declining fish populations.

As conceded by BDCP Chapter 9, Alternatives to Take, the analysis of take alternatives must explain "why the take alternatives [that would cause no incidental take or result in take levels below those anticipated for the proposed actions] were not adopted." (BDCP Plan, Chapter 9, pp. 9-1, 9-2). Here, the lead agencies failed to even develop let alone adopt alternatives reducing exports and increasing flows to eliminate or reduce take. Reclamation and DWR have ignored the EWC's alternative that was handed to them on a silver platter back in December 2012, two and one half years ago.

In short, the fundamental flaws in the alternatives sections in the BDCP Draft EIR/EIS, Chapter 9 of the BDCP plan and the RDEIR/SDEIS have led to NEPA and CEQA documents "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded."40 C.F.R. § 1502.9(a).

Expert Federal and California Agencies have also Found the Current BDCP Alternatives Analysis Deficient

There is more. On August 26, 2014, the U.S. Environmental Protection Agency (EPA) issued its 40-page review of the Draft BDCP EIS finding in BDCP's case that:

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> operating any of the proposed conveyance facilities . . . would contribute to increased and persistent violations of water quality standards in the Delta, set under the Clean Water Act, measured by electrical conductivity (EC) and chloride concentrations. We recommend that the Supplemental Draft EIS include one or more alternatives that would, instead, facilitate attainment of all water quality standards in the Delta. Specifically, we recommend that an alternative be developed that would, at minimum, not contribute to an increase in the magnitude or frequency of exceedances of water quality objectives, and that would address the need for water availability and greater freshwater flow through the Delta. Such an alternative should result in a decrease in the state and federal water projects' contributions to the exceedance of any water quality objectives in the Delta. (*Id.*, p.2).

EPA further stated that "Data and other information provided in the Draft EIS indicate that all CM1 [Tunnels project] alternatives may contribute to declining populations of Delta smelt, Longfin smelt, green sturgeon, and winter-run, spring-run, fall-run and late-fall run Chinook salmon." (p. 10). "We recommend that the Supplemental Draft EIS consider measures to insure freshwater flow that can meet the needs of those [declining fish] populations and ecosystem as a whole, and is supported by the best available science. We recommend that this analysis recognize the demonstrated significant correlations between freshwater flow and fish species abundance." (*Id.*). "Other reasonable alternatives could be developed by incorporating a suite of measures, including Integrated Water Management, water conservation, levee maintenance, and decreased reliance on the Delta." (*Id.* p. 3). In addition, EPA concluded that "The Draft EIS does not address how changes in the Delta can affect resources in downstream waters, such as San Francisco Bay, and require changes in upstream operations, which may result in indirect environmental impacts that must also be evaluated. We recommend that the Supplemental Draft EIS include an analysis of upstream and downstream impacts." (*Id.*).

On July 29, 2014, the State Water Resources Control Board (SWRCB) issued its 38 page review of the Draft BDCP EIS/EIR. The SWRCB declared that the "environmental documentation prepared for the project must disclose the significant effects of the proposed project and identify a reasonable range of interim and long-term alternatives that would reduce or avoid the potential significant environmental effects." (Letter, comment 9 pp. 11-12). Further, "The justification for this limited range of Delta outflow scenarios is not clear given that there is significant information supporting the need for more Delta outflow for the protection of aquatic resources and the substantial uncertainty that other conservation measures will be effective in reducing the need for Delta outflow. For this reason a broader range of Delta outflows should be considered for the preferred project." (*Id.* comment 10 p. 12).

On July 16, 2014, the U.S. Army Corps of Engineers found that: "the EIS/EIR is not sufficient at this time in meeting the Corps' needs under the National Environmental Policy Act (NEPA) . . . in particular with regard to the incomplete description of the proposed actions, alternatives analysis . . . and impacts to waters of the United States and navigable waters, as well as the avoidance and minimization of, and compensatory mitigation for, impacts to waters of the United States." (Letter p. 1). Additional Corps comments include the absence in the EIR/EIS of "an acceptable alternatives analysis" (comment 4), no showing on which alternative may contain the Least Environmentally Damaging Practicable Alternative (LEDPA) for section 404, Clean

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Water Act purposes (Comment 5), "the document needs a clear explanation of a reasonable range o f alternatives and a comparison of such, including a concise description of the environmental consequences of each" (comment 19), and "new conveyance was not a part of the preferred alternative for CalFed. Does this EIS/EIR describe why the reasons for rej ecting new conveyance in CalFed are no longer valid?" (Comment 22).

Finally, Reclamation and DWR had to drop the attempt to deceive the public that the Water Tunnels are part of a habitat conservation plan because of the refusal of U.S Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) scientists to falsely find that the Water Tunnels would not be harmful to endangered species of fish and their habitat. The RDEIR/SDEIS calls this "difficulties in assessing species status and is suing assurances over a 50 year period . . ." (RDEIR/SDEIS 1 -2). In fact, the federal scientists have been issuing "red flag" warnings that the Water Tunnels threaten the "potential extirpation of mainstem Sacramento River populations of winter-run and spring-run Chinook salmon over the term of the permit" for more than three years.

Reclamation and DWR in their RDEIR/SDEIS have ignored what the EPA, SWRCB, Army Corps, USFWS and NMFS had to say, just as they have ignored the National Academy of Sciences and the EWC for the past four years.

Conclusion

EWC's Plan, completely ignored so far by Reclamation and DWR, fits the EPA's and the SWRCB's calls for alternatives that would increase freshwater flow through the Delta, as well as the Army Corps' call for an acceptable alternatives analysis. It is time to include among the range of reasonable alternatives required by law, and presented to the public for comment, increasing freshwater flows through the Delta by reducing exports. This is imperative. Extinction is forever.

Should you have any questions, please contact Conner Everts, Co-Facilitator, Environmental Water Caucus at (310) 394-6162 ext. 111 or Robert Wright, Senior Counsel, Friends of the River at (916) 442-3155 ext. 207 or bwright@friendsoftheriver.org.

Sincerely,

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Environmental Water Caucus

/s/ E. Robert Wright
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Friends of the River

/s/ Carolee Krieger
Executive Director
California Water Impact Network

/s/ Bill Jennings
Executive Director
California Sportfishing Protection Alliance

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/s/ Barbara Barrigan-Parilla
Executive Director
Restore the Delta

/s/ Chelsea Tu
Staff Attorney
Center for Biological Diversity

Additional Addressees, all via email:

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