

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

November 28, 2016

The Honorable Sally Jewell
Secretary of the Interior

Christina Goldfuss, Managing Director
Council on Environmental Quality

The Honorable Penny Pritzker
Secretary of Commerce

John Laird, Secretary
California Natural Resources Agency

The Honorable Gina McCarthy, Administrator
U.S. Environmental Protection Agency

David Murillo, Regional Director
U.S. Bureau of Reclamation

Additional Addressees at end of Letter

Re: URGENT Request for Termination of the California Water Fix project

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

Summary

This letter from our public interest organizations follows up our letters of September 22, 2016 and August 18, 2016 to each of you.¹ Our letters requested that you require the Bureau of Reclamation and Department of Water Resources (DWR) to issue a new California Water Fix Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the California Water Fix proposed project if the project is not dropped.

The Water Fix Delta Water Tunnels would divert enormous quantities of freshwater that presently flow through the Sacramento River, sloughs, and the San Francisco Bay-Delta estuary before being diverted for export from the south Delta. Due to the new points of diversion north of the Delta, freshwater that presently contributes to water quality, water quantity, fish, fish habitat, Delta agriculture and public health by flowing through the already impaired Delta would instead flow through massive Tunnels no longer providing benefits within the lower river, sloughs, and the Delta.

It is time now to make the right decision. The California Water Fix-- Delta Water Tunnels-- represent a financial as well as an environmental nightmare. This administration should terminate this project. Otherwise, down the road, when the obvious financial and environmental catastrophe is recognized by all, the blame will be placed on this administration. The excuse can be foreseen now. "We inherited the Water Fix from the previous administration and presumed that they knew what they were doing and had fully evaluated the project in good faith when they determined it should go forward."

First, DWR and Reclamation have consistently represented to the public over the years that the beneficiaries of the project would pay all project costs. It turns out that is a lie and DWR's own secret *Cal WaterFix Economic Analysis* shows that a substantial public subsidy would be necessary. *Second*, the only benefit cost study done for the project shows that the costs would exceed the benefits by four to one. The project makes no economic sense. *Third*, given the usual enormous cost overruns for megaprojects, the project if carried out will be a fiscal catastrophe for ratepayers and taxpayers. *Fourth*, the project will cost at least *3 or 4 times* the absurdly low \$17 billion dollar estimate. That will drastically magnify the amount of the necessary public subsidy.

The WaterFix is an absurdly expensive project as well as an environmental nightmare that needs to be terminated right now before it is too late.

This Project would be a Classic Corporate Welfare Public Subsidy

Reclamation and DWR have always represented that the users of water conveyed by the project would pay all project costs. It turns out that in November of 2015, the economic consultant for the project, David Sunding of The Brattle Group, prepared a draft *CalWater Fix Economic Analysis* for the California Natural Resources Agency. (November 15, 2015). That

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

Economic Analysis, purporting to justify the economic feasibility of the project, assumed that the federal government or some other entity would need to provide a subsidy of \$6.5 billion to make the Water Tunnels a breakeven proposition for agricultural users of the water. (*Economic Analysis* pp. 2-4).² That is more than one third of the projected \$17 billion in construction and mitigation costs. Honest project proponents would have made that *Economic Analysis* immediately available to the public. Instead, there was a cover up. The *Economic Analysis* was concealed from the public. It took many months including demands under California's Public Records Act (the State equivalent of the Federal Freedom of Information Act) to obtain the suppressed *Analysis*. Concealment of material facts is the essence of fraud. The continuing representations to the public that the project's beneficiary water users would pay all project costs at the same time that the State's own Draft *Economic Analysis* to the contrary was being concealed, instead of disclosed, constituted continuing misrepresentation of material facts and, consequently, fraud on the public.

That the Water Fix project would require a public subsidy was set forth in our letter to you of September 22, 2016. Our letter went to all of the same cabinet officers and other officials that are addressees of this letter. *No one in either the federal government or California state government, has explained who would or could pay the billions of dollars financial hole, equal to one third of the total costs, other than taxpayers.*

This project would be a classic corporate welfare subsidy. Every day people would be forking over their hard-earned tax dollars to very wealthy special interests to subsidize the Water Tunnels. And, there will be a disparate impact on low-income communities, both rural and urban, that will bear a disproportional burden through higher water costs for this project.

The Costs Exceed the Benefits by Four to One

It gets worse. A far greater public subsidy would be required for the project than is admitted in DWR's secret *Economic Analysis*. The first comprehensive benefit-cost analysis of the Water Fix shows that the project would only provide \$.23 of benefits for each dollar of cost. *Benefit-Cost Analysis of the California WaterFix*.³

This analysis is based on data and assumptions in the revised environmental documents produced by DWR to support the proposal's environmental review. The results show the WaterFix costs are four times larger than its benefits, and thus the project is not economically justified.⁴

² Dr. Jeffrey Michael, Director of the Center for Business and Policy Research at the University of the Pacific has explained (Comments, September 12, 2016) that "The report actually refers to the subsidy as \$3.9 billion, but this figure is in present value terms including a 3% real discount rate. This is equivalent to \$4.6 billion in actual costs, which is the appropriate figure to compare to the nearly \$16 billion in construction and mitigation costs." He also explained that "the report finds an additional \$1.9 billion subsidy would be needed to make the tunnels a break-even proposition for agriculture."

³ By Dr. Jeffrey Michael, Executive Director, Center for Business and Policy Research, Eberhardt School of Business and McGeorge School of Law, University of the Pacific (August 2016).

⁴ *Benefit-Cost Analysis of The California WaterFix* at 2.

It makes no sense to proceed with a massive public works boondoggle where the costs exceed the benefits by a factor of four. As the *Benefit-Cost Analysis* points out (at p. 2):

The Water Fix is the most costly water proposal in California history, so it is unusual that the California Department of Water Resources (DWR) has not followed its own planning guidelines and issued a benefit-cost analysis of the proposal.

That is part of the fraud. Reclamation and DWR know that any honest benefit-cost analysis of the project would show that it makes no financial sense because the costs would exceed any benefits. Thus they continue to seek approval of the project without performing and releasing to the public the normally required benefit-cost analysis. They kept the *Economic Analysis* they did have performed secret because it showed a public subsidy would be required because no matter how they twisted the data, the benefits did not add up for the agricultural exporters.

In addition to blaming this administration for the future Water Tunnels financial and environmental catastrophe, the new administration will also be able to accuse this administration of fraud in concealing the terrible benefit cost truth and the need for a public subsidy. Finger-pointing and blame-shifting are favorite games in Washington, DC.

The Estimated \$17 billion Cost of the project is an Absurdly Low Estimate

It gets still worse. Reclamation and DWR as part of their fraud on the public continue to give the absurdly low estimate of \$17 billion as the cost of the Delta Water Tunnels project. The construction process for the Water Tunnels would be about 15 years. There would be two giant Tunnels each 35 miles long, each having an internal diameter of 40 feet and being about 150 feet underground. They would go through sensitive areas below the water table. Draft environmental documents for the project have recognized that because of the high groundwater level throughout the proposed Tunnel alignment area, extensive dewatering and groundwater control in the tunneling operation and shaft construction would be required. This is obvious. The Tunnels would be going through the Delta. Also, Tunnel muck would have to be removed, treated, and disposed of. The Tunnel muck generated by the boring process is a plastic mix consisting of soil cuttings and soil conditioning agents (water, air, bentonite, foaming agents, and polymers/biopolymers). Before the muck could be reused or returned to the environment, it would have to be managed and at minimum go through a drying-water solid separation process and physical or chemical treatment. The daily volume of muck withdrawn from the tunneling operations has been estimated at about 7000 cubic yards per day.

As another instance of attempting to defraud the public there is no honest disclosure of likely cost-overruns magnifying enormously the absurdly low estimate of the Water Tunnels cost. The Tunnels would be a “megaproject,” a term commonly understood as projects that cost at least \$1 billion. “The ‘iron law of megaprojects,’ . . . is that they are ‘over budget, over time, over and over again.’ Nine out of ten megaprojects experience cost overruns, and most take much longer to build than expected.” Jacques Leslie, *The Trouble with Megaprojects* (The New Yorker, p. 2, April 11, 2015). “[B]ecause such projects take so long to build—more than eight and a half years for the average large dam—they are vulnerable to a kind of entropy, in which even unrelated events produce huge setbacks.” (*Id.*). Megaprojects “are ‘the Vietnams of policy and management: easy to begin and difficult and expensive to stop.’” (*Id.*, p. 3.). “[M]egaproject planners are often outright dishonest, systematically overestimating benefits and underestimating

costs.” (*Id.*, p. 4).⁵ “Unfortunately, false cost-benefit estimates have a way of elevating big projects over more cost-efficient, less environmentally disruptive ones.” (*Id.*, p. 4).

Tunnels projects have been classic megaproject fiascoes. Boston’s Big Dig had a cost overrun of about 190% as of 2006 but with since discovered defects will rise to far more than that. The Chunnel (English Channel Tunnel) was 80% over its predicted budget. The breakdown of Bertha, the Tunnel-boring machine for the Seattle highway Tunnel project, has led to cost overruns and a long delay of years in opening. Professor Bent Flyvberg, Oxford University’s Said Business School, “reviewed 52 Tunnel projects that cost at least a billion dollars and found that their average cost overrun was 33%. Even more worrisome, more than a quarter of the projects experienced cost overruns that at least doubled initial projections.” Jacques Leslie, Op-Ed, *The delta tunnels-a project only engineers can love*, Los Angeles Times (November 20, 2016).

California has proven to be an impressive offender in inflicting megaproject fiascoes on taxpayers. The recent Oakland-San Francisco Bay Bridge reconstruction exploded from a projected \$1 billion project to a project costing over \$6 billion riddled with defects. And there have been huge cost overruns during the construction of the \$4 ½ billion Trans Bay Transit Center in San Francisco. Willie Brown, former San Francisco mayor and speaker of the California State Assembly has written about that project: “We always knew the initial estimate was way under the real cost. . . The idea is to get going. Start digging a hole and make it so big, there’s no alternative to coming up with the money to fill it in.” *The Trouble with Megaprojects*, p. 4.

Presently, the proposed project, which is 70 tunnel miles, is budgeted at about \$500 million per mile. Only 10% of the needed geotechnical work to arrive at an accurate cost estimate has been completed. Planners believe that tunneling firms will pay for the 10-12 tunnel boring machines needed, helping the state to avoid cost overruns. However, private firms are not willing to absorb such significant risk. Moreover, in sworn testimony at the California State Water Resources Control Board, project planners stated that only a 10% contingency was built into the \$17 billion price tag for the project, yet Metropolitan Water District officials are telling their member water districts that a 36% contingency has been built into the budget. Officials leading the project are not being honest with the public about the real costs of the proposed Tunnels.

It gets still worse. The recent Op-Ed in the Los Angeles Times cited above, *The delta tunnels-a project only engineers can love*, reminds us all of what The Mercury News reported back in December 2013:

Most notably, the number [\$17 billion cost estimate] doesn’t include financing costs which given the tunnels’ decade-long projected construction time and probable reliance on interest-bearing bonds, are expected to be enormous.

The Mercury News reported in December 2013 that a staff member of the wealthy Westlands Water District, which was an early project advocate, and a Citigroup bond

⁵ A leading article on megaproject dishonesty is: Bent Flyvberg, *Delusion and Deception in Large Infrastructure Projects*, 51 California Management Review 170 (Winter 2009).

consultant told the Westlands board that including long-term financing, the project would cost between \$51 billion and \$67 billion. The reporter checked the figures with Water Resources Director Mark Cowin, who ‘confirmed the estimates are accurate.’

As shown above, the State’s own economic consultant concluded in the hidden Economic Analysis that it only makes economic sense for ratepayers to pay about \$10 billion for the Delta Water Tunnels. That means that in the real world the taxpayers would be fraudulently inflicted with providing a \$50 or \$60 billion subsidy for the project. Reclamation and DWR are following Willie Brown’s playbook, cited above, perfectly: “The idea is to get going. Start digging a hole and make it so big, there’s no alternative to coming up with the money to fill it in.”

It is Time to be Honest and to Terminate the Project

For all the reasons we set forth in our August and September letters, it would constitute failure to proceed in the manner required by law to issue a Final EIR/EIS on the Water Fix Delta Water Tunnels proposed project. Those reasons include new developments including: new court decisions; *Final Guidance* from the Council on Environmental Quality (CEQ) on consideration of the effects of climate change in National Environmental Policy Act (NEPA) reviews; recent issuance by Reclamation of a Biological Assessment including determinations of “likely to adversely affect” several endangered and threatened fish species and their designated critical habitats contrary to the false denials of such impacts in Reclamation’s earlier draft NEPA documents; and refusals by Reclamation and DWR to correct the deficiencies found by the Environmental Protection Agency (EPA) in its review of the Draft environmental documents for the project.

A major focus of our August 18, 2016 letter to each of you was the persistent refusal by Reclamation and DWR to develop and consider a reasonable range of alternatives to the Water Tunnels project that would restore the San Francisco Bay-Delta estuary instead of furthering its destruction by taking yet more freshwater flows away from the Delta upstream for the Water Tunnels. There is a pattern of misconduct here within Reclamation and DWR to falsely represent that public subsidies will not be sought for the Water Tunnels and to understate in public NEPA and California Environmental Quality Act (CEQA) documents the amount of freshwater flows that would be taken away from the Delta for the project. This is part of an effort to unlawfully confine alternatives to the one arbitrarily favored by Reclamation and DWR -- the Delta Water Tunnels-- while misrepresenting who would pay for the project and understating its adverse environmental impacts.

It gets still worse. With reduced watershed runoff and increasing salinity—a double whammy resulting from worsening climate change projections—seeking approval of the Water Tunnels is now beyond folly. This is the domestic equivalent of the fools’ errands self-inflicted on our nation with our wars in Vietnam and later on in Iraq. This project is economic and environmental madness.

The alternatives section "is the heart" of an EIS. NEPA Regulations, 40 C.F.R. § 1502.14. “[I]t should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.” (*Id.*). The alternatives section should "Devote substantial treatment to each alternative considered in detail including the proposed action so that

reviewers may evaluate their comparative merits.” § 1502.14(b). Instead, in addition to the foundational deficiencies set forth in our August 18 letter, the draft NEPA and CEQA documents issued to the public have concealed from the public who would pay for the project and the quantities of water taken for the project thus concealing the severity of the project’s adverse environmental impacts.

The recent Op-Ed in the Los Angeles Times cited above, *The delta tunnels-a project only engineers can love*, makes clear what is at stake:

The imbalance of costs and benefits is only one reason to object to WaterFix. The tunnels represent a failure of imagination. . . The tunnels would not only exacerbate the environmental crisis [in the Delta], they would divert funding and attention from other better, cheaper sources of water.

Los Angeles, Santa Monica and many other of the state’s communities are pioneers in 21st century ‘soft path’ approaches that mimic or reinforce natural resource processes instead of trying to overcome them: storm water recapture, wastewater recycling and plain old conservation. These strategies-not an absurdly expensive project that serves chiefly to perpetuate the existence of the bureaucracies that support it-would reduce pressure on the Delta while showing the way to California’s water future.

In *Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 811 (9th Cir. 2005), the Ninth Circuit held that “Inaccurate economic information may defeat the purpose of an EIS by ‘impairing the agency’s consideration of the adverse environmental effects’ and by ‘skewing the public’s evaluation’ of the proposed agency action.” The Court found that “the market-demand error was sufficiently significant that it subverted NEPA’s purpose of providing decision makers and the public with an accurate assessment of the information relevant to evaluate the Tongass Plan.” 421 F.3d at 812. The Court concluded that:

the Forest Service presented misleading economic effects of the Plan significant to its evaluation of alternatives considered by the Plan, and the public was similarly misled in its opportunity for comment. We hold that the Forest Service violated NEPA’s procedural requirement to present complete and accurate information to decision-makers and to the public to allow an informed comparison of the alternatives considered in the EIS. 421 F.3d at 813.

Here also, the misleading economic information is significant to the evaluation of alternatives and unlawfully misled the public in its opportunity to comment on the Draft Water Fix NEPA and CEQA documents. Behind closed doors Reclamation and DWR know from the *Economic Analysis* that the Water Tunnels alternative is not even beneficial enough to agricultural users to make the project worthwhile to them without a public subsidy. Unless the smart decision is made now to terminate this terrible project, the public would need to be informed of these material facts prior to a new comment period on a new, honest Draft EIR/EIS.⁶

⁶ The NEPA Regulations require that: “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.” 40 C.F.R § 1502.9(a). Given these NEPA and CEQA requirements it will constitute failure to proceed in the manner required by both federal and California law if Reclamation and DWR proceed to issue a Final EIR/EIS on the Water Fix project. Unless they do

Most importantly, the Water Fix project would be such an environmental disaster for the Delta and financial disaster for ratepayers and taxpayers, that the sensible thing to do is to terminate the project. When it takes fraud, cover-ups, hiding your own *Economic Analysis*, and absurdly low cost estimates to keep a project proposal afloat, that is a red flag that the project is a bad one that should not go forward.

It is not possible to be honest about this project and keep a straight face while continuing to try to inflict it on the public. It is time to terminate this project. If, then, a future administration tries to go forward with it, they will not be able to shift the blame for the resulting disaster to the Obama administration.

Conclusion

As we said before, President Obama has established a legacy of honesty, scientific integrity and commitment to conservation and protection of our natural resources. The Water Fix project needs to be terminated at this time. It is neither right nor fair that President Obama's legacy and administration be tarnished in the future with blame for fraudulently inflicting this financial and environmental nightmare on the honest and hard-working taxpayers and ratepayers of America and California. Should you have any questions, please contact Conner Everts, Facilitator, Environmental Water Caucus at (310) 804-6615 or connere@gmail.com, or Robert Wright, Senior Counsel, Friends of the River at (916) 442-3155 ext. 207 or bwright@friendsoftheriver.org.

Sincerely,



E. Robert Wright, Senior Counsel
Friends of the River



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

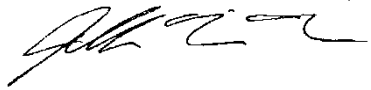
the smart thing and terminate the project, they must be required to first prepare and circulate for public review and comment a new Draft EIR/EIS accurately and honestly disclosing and analyzing the true plans for how much water they plan to take away from the Delta for the Water Tunnels. The same is true with respect to whether the public will be expected to subsidize the project, the truth that the costs far exceed the benefits of the project, and the truth of the megaproject cost overruns. Moreover, agencies must prepare supplements to a draft EIS when "There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c)(ii). The CEQA Guidelines section requiring recirculation of a new Draft EIR, 14 Cal. Code Regulations § 15088.5(a)(1), (2), (3), and (4), is similar to the NEPA requirement.



Barbara Barrigan-Parrilla, Executive Director
Restore the Delta



Conner Everts, Facilitator
Environmental Water Caucus



Jeff Miller, Conservation Advocate
Center for Biological Diversity



Carolee Krieger, Executive Director
California Water Impact Network



Barbara Vlamis, Executive Director
AquAlliance



Kyle Jones, Policy Advocate
Sierra Club California



Colin Bailey, Executive Director
Environmental Justice Coalition for Water



Jonas Minton, Senior Water Policy Advisor
Planning and Conservation League

Additional Addressees, all via email:

Council on Environmental Quality
Ted Boling, General Counsel

Mark Cowin, Director
California Department of Water Resources

Charles H. Bonham, Director
California Department of Fish and Wildlife

National Marine Fisheries Service:
Eileen Sobek, Assistant Administrator for Fisheries
Barry Thom, Regional Administrator for Fisheries
Maria Rea, Assistant Regional Administrator

Deanna Harwood, Office of General Counsel
Garwin Yip, Water Operations and Delta Consultation Branch
Cathy Marcinkevage, BDCP Branch
Michael Tucker, Delta Policy and Restoration Branch

U.S. Fish and Wildlife Service:

Dan Ashe, Director
Dan Castleberry, Assistant Regional Director, Fish and Aquatic Conservation
Larry Rabin, Assistant Regional Director, Science Applications and Claimant Change

Environmental Protection Agency:

Jared Blumenfeld, Regional Administrator, Region IX
Tom Hagler, General Counsel Office
Erin Foresman, Bay Delta Coordinator

U.S. Army Corps of Engineers:

Lisa Clay, Assistant District Counsel
Michael Nepstad, Deputy Chief, Regulatory Division
Zachary M. Simmons, Senior Regulatory Project Manager