



November 30, 2017

California Water Fix Hearing Part 2
FTP website
State Water Resources Control Board

**Re: California Water Fix Hearing Part 2: JOINT OPENING STATEMENT by protestants
Friends of the River and Sierra Club California**

Dear Water Fix Hearing Team:

This is the Part 2 Opening Statement of protestants Friends of the River and Sierra Club
California.

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SUMMARY

The primary purposes of an Environmental Impact Report (EIR) prepared under the California Environmental Quality Act (CEQA) and an Environmental Impact Statement (EIS) prepared under the National Environmental Policy Act (NEPA) are not to generate large volumes of paper. Instead, as most recently explained by the California Supreme Court, “*Evaluation of project alternatives and mitigation measures is ‘the core of an EIR.’*” *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937 (Emphasis added). Moreover, “The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account.” *Banning Ranch Conservancy*, 2 Cal.5th 918, 941 (Internal citations and quotations deleted).

“The San Francisco Bay Delta watershed covers more than 75,000 square miles and includes the largest estuary on the West coasts of North and South America. It also contains the only inland Delta in the world.” (EPA website). Most people who have thought about it recognize that the Delta needs more freshwater flowing through it, not less. Presently, water for export is diverted from the south Delta. As a result, Delta public health, agriculture, water quantity, water quality and fisheries benefit by the fact that freshwater flows through the Delta before being diverted. This is called “through-Delta conveyance.” But the proposed California Water Fix Delta Water Tunnels project would worsen the existing crisis in the Delta by diverting massive quantities of freshwater upstream, from the north Delta. The flows diverted upstream would no longer provide any benefits by first flowing through the already impaired Delta.

The Testimony of Dr. Lawrence Kolb and former DWR Deputy Director Jonas Minton show that the Tunnels would magnify pollutant impacts on the Delta. (Exhibits FOR-4, pp. 3-4; FOR-6, pp. 6-7). The Testimony of Ron Stork shows that the Tunnels would lead to operational changes “with adverse implications to north-state reservoir cold-water pools, downstream fishery conditions, and recreation and rivers in reservoirs” and public trust resources. (Exhibit FOR-2, pp. 5-9) The Testimony of Deirdre Des Jardins establishes that for decades the plans for a new diversion from the North Delta for the State Water Project are based on the resulting need for augmentation of Sacramento River flows from North Coast rivers and streams of 2 million or

more acre-feet per year. (Exhibit FOR-8, pp. 2-8). The Testimony of Jonas Minton and Ron Stork shows that proposed beneficiaries of the project are unwilling to pay for it. (FOR-6, p. 8; FOR-2, pp. 20-22) That further shows that the project is not in the public interest.

It is important to not miss the forest for the trees. There are at least two obvious foundational alternatives. The first would be to maintain the existing through-Delta conveyance thereby maintaining the environmental benefits provided by freshwater flows before they are diverted after flowing through the Delta. Coupled with that would be finally considering the alternative of beginning to increase freshwater flows through the Delta by reducing exports. The second foundational alternative would be to benefit the exporters but not the Delta by diverting enormous quantities of freshwater for the exporters from the north Delta. The Water Fix Tunnels are one variant of such dual or isolated new conveyance alternatives.

Despite the requirements of laws including the Delta Reform Act (DRA), CEQA and NEPA, the earlier Bay Delta Conservation Plan (BDCP) Draft EIR/EIS's and present Water Fix Final EIR/EIS have persistently, we would say also deliberately, avoided seeing the forest for the trees. These documents have always put the cart before the horse by simply producing a range of various new upstream conveyance alternatives. Peas out of the same pod; a similar conveyance project dressed up in different outfits. The obvious foundational alternatives of maintaining through-Delta conveyance and increasing through Delta freshwater flows by reducing exports has been ignored.

First, we explain that the required range of reasonable alternatives has not been presented in the subject environmental documents prepared by the Water Fix proponent public agencies. Those agencies are the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation.

Second, we summarize the requirements for inclusion of alternatives that would maintain through-Delta conveyance and finally begin to increase freshwater flows through the Delta by reducing exports. This includes requirements set forth in the DRA, CEQA and NEPA, and also made even more obvious by recent developments.

Finally, the violations of CEQA and the DRA have been magnified by major changes and glaring omissions since the preparation of the Water Fix EIR/EIS. Three of these changes and omissions are as follows: though the EPA gave the most recent Draft EIR/EIS a failing grade expecting that the State Water Board would provide the missing analyses, the Board has refused

over repeated requests to prepare or require DWR to prepare a legally sufficient EIR for the project.

Next, NEPA and common sense require that “agencies shall prepare draft environmental impact statements *concurrently with and integrated with* environmental impact analyses and related surveys and studies required by the . . . Endangered Species Act . . .” 40 C.F.R. § 1502.25(a) (emphasis added). That requirement has been violated. Worse, when the Biological Opinions were finally issued on June 26, 2017, analyses of the impacts of actual operations of the project were deferred to the future. Consequently, there are still no required Biological Opinions on the impacts of actually operating the project by diverting the substantial quantities of freshwater away from the lower Sacramento River and the Bay-Delta estuary.

Last but not least, DWR and Reclamation modified the project in September of 2017 to seek total exemption of the proposed north Delta diversion from any of the flow restrictions set forth in D - 1641. What we have now in effect from DWR and Reclamation is an application for revision of the Bay-Delta Plan. The State Water Board by law is the lead agency for plans and revisions and, consequently, this Hearing cannot lawfully proceed until the Board prepares the required draft Substitute Environmental Documentation (SED) on a proposed plan. 23 Cal. Code Regs § 3776(a). Returning to the subject of the missing alternatives analyses, the Board’s own regulations require an analysis of reasonable alternatives to the project when adopting or revising its plans. 23 Cal. Code Regs § 3777(b)(3). Thus the Board is in the process of violating CEQA, the DRA, and its own regulations.

The Petition should be dismissed or the Hearing suspended until the Board prepares the required legally sufficient EIR or SED including analyses of a reasonable range of broad policy alternatives including maintaining through-Delta conveyance and increasing freshwater flows through the Delta by reducing exports. To be clear, the Board is continuing to engage in act first think later disregard for the thoughtful analyses required by CEQA, the DRA, and responsible planning.

THE REQUIRED RANGE OF REASONABLE ALTERNATIVES INCLUDING MAINTAINING THROUGH DELTA CONVEYANCE AND INCREASING THROUGH DELTA FLOWS BY REDUCING EXPORTS REMAIN ABSENT

DWR and Reclamation have now marched along for more than six 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. The National Academy of Sciences declared in reviewing the then-current version of the draft BDCP back in 2011 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). Expert Federal and State agencies have also commented on the deficiencies of the alternatives analyses over the past few years. Examples include the August 26, 2014, review by the EPA; the July 29, 2014, review by the State Water Resources Control Board; and the July 16, 2014, comment letter by the U.S. Army Corps of Engineers.¹

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 NEPA, CEQA, and Endangered Species Act required range of reasonable alternatives. Instead, all Water Fix alternatives including 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 north Delta 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 RDEIR/SDEIS were 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.

The differences among the alternatives are slight. “The 15 action alternatives are variations of conservation plans that differ primarily in the location of intake structures and

¹ Organizations including ours have commented repeatedly to DWR and Reclamation over the years on the failure to include the required range of reasonable alternatives including alternatives that would increase freshwater flows through the Delta by reducing exports. These efforts include presentations in May and December 2012 and February 2013; letter of November 18, 2013; letters of May 21, May 28, June 11, and September 4, 2014, letters of July 22 and October 29, 2015; letter of August 18, 2016; and letter of January 27, 2017.

conveyance alignment, design, diversion capacities (ranging from 3,000 to 15,000 cfs), and operational scenarios of water conveyance facilities that would be implemented under CM1.” (Draft EIR/EIS, ES p. 26).

The Final Water Fix EIR/EIS (December 2016) did nothing to cure the failure to include the required range of reasonable alternatives in the previous Drafts that had been issued for public and decision-maker review and comment. As explained by the Final EIR/S:

The 18 action alternatives are variations of alternative water conveyance plans and restoration actions or Environmental Commitments that differ primarily in the location, design, conveyance capacity, and rules that would determine the operation of water conveyance facilities. For instance, the alternatives range from the proposed construction of one 3000-cubic feet per second (cfs) intake to five such intake facilities, representing a range of north Delta conveyance capacities from 3000 cfs to 15,000 cfs. (Water Fix Final EIR/S, Vol. I, Chapter 3, Alternatives, p. 3-2).

It is as if there were no DRA, CEQA, or NEPA establishing legal requirements governing the process. Analyses were limited to what the project proponents want as opposed to what the law and common sense require before embarking upon this enormous project having profound environmental and economic consequences for our future.

ALTERNATIVES THAT WOULD MAINTAIN THROUGH-DELTA CONVEYANCE AND BEGIN TO INCREASE FRESHWATER FLOWS THROUGH THE DELTA BY REDUCING EXPORTS ARE REQUIRED BY LAW

The Delta Reform Act requires Alternatives that would maintain through-Delta conveyance and begin to increase freshwater flows through the Delta by reducing exports

The Superior Court Ruling determining the Delta Plan to be invalid (May 18, 2016, pp. 26, 38) includes ordering the DSC to revise the Delta Plan and any applicable regulations to:

Include quantified or otherwise measurable targets associated with achieving reduced Delta reliance, reduced environmental harm from invasive species, restoring more natural flows, and increased water supply reliability, in accordance with the Delta Reform Act.²

Having lost the case, the DSC appealed. The appeal lacks merit. The DRA requires that the Delta Plan “*Include quantified or otherwise measurable targets* associated with achieving the objectives of the Delta Plan.” DRA § 85308(b).³ (Emphasis added). The DRA establishes State

² The Ruling was attached previously to our joint Motion and Objections submitted July 11, 2016.

³ The Delta Reform Act is codified in the California Water Code. The section numbers provided here are the Water Code section numbers.

policy to: “Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.” § 85020(c). Moreover, “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. . .” § 85021. (Emphasis added). “The Delta Plan shall include measures that promote all of the following characteristics of a healthy Delta ecosystem” including: “viable populations of native resident and migratory species” “reduced threats and stressors on the Delta ecosystem” and “conditions conducive to meeting or exceeding the goals in existing species recovery plans and state and federal goals with respect to doubling salmon populations.” § 85302(c)(1), (4), and (5). “[S]ubgoals and strategies for restoring a healthy ecosystem shall be included in the Delta Plan” including “*restore Delta flows* and channels to support a healthy estuary and other ecosystems” and “improve water quality to meet drinking water, agriculture, and ecosystem long-term goals.” § 85302(e)(4) and (5). (Emphasis added).

The Trial Court carefully read the DRA and handed down Rulings enforcing that law. As shown by the above paragraph, *the language in the Court ruling* requiring “quantified or otherwise measurable targets associated with achieving reduced reliance on the Delta” and “restoring more natural flows” *comes right out of the express language of the DRA*.

In other words, consideration of alternatives that would reduce reliance on the Delta and restore more natural flows is required by the DRA. One readily apparent way that alternatives could do that is by maintaining through-Delta conveyance and increasing through-Delta freshwater flows by reducing exports, as opposed to adding new upstream conveyance in the form of the Water Fix Tunnels.

The Delta Reform Act declared in Water Code § 85086(b):

It is the intent of the Legislature to establish an accelerated process to determine instream flow needs of the Delta for the purposes of facilitating the planning decisions that are required to achieve the objectives of the Delta Plan.

The Water Quality Control Plan for the San Francisco Bay/San Joaquin -Sacramento Delta Estuary (WQCP) (Water Rights Decision 1641, D-1641) was adopted in 1995, and amended without substantive changes in 2006. “The state Water Board is in the process of a periodic update of the WQCP, which is occurring in phases.” (Reference, DWR-51, Jennifer Pierre Part 1 testimony p.4, fn.4). The statement in the State Water Board February 11, 2016 Ruling (p.4)

reflecting reality is that: “The appropriate Delta flow criteria will be more stringent than petitioners’ current obligations and may well be more stringent than petitioners’ preferred project.” The State Water Board has acknowledged “that the WaterFix, if approved, would be a significant component of Delta operations, and it would be preferable to have Phase 2 [of the Plan update] completed prior to acting on the change petition.” (February 11, 2016 Ruling, pp. 4-5).

The Bay-Delta Plan was 15 years out of date when the DRA was enacted. The Plan is now 20 years out of date. The Act is being ignored by the State Water Board in the course of rejecting the numerous requests over the past two years by these and other protestants for the Board to update the Bay-Delta Plan before holding a Hearing to consider the change Petition. The DRA required the State Water Board to develop new flow criteria for the Delta ecosystem necessary to protect public trust resources “for the purpose of informing planning decisions for the Delta Plan and the Bay Delta Conservation Plan.” Water Code § 85086(c)(1).

The DRA includes very specific requirements for comprehensive review of specific subjects for the BDCP in § 85320 (b)(2):

(A) A reasonable range of flow criteria, rates of diversion, and other operational criteria required to satisfy the criteria for approval of a natural community conservation plan as provided in [subdivision \(a\) of Section 2820 of the Fish and Game Code](#), and other operational requirements and flows 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.

(B) A reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options of a lined canal, an unlined canal, and pipelines.

(C) The potential effects of climate change, possible sea level rise up to 55 inches, and possible changes in total precipitation and runoff patterns on the conveyance alternatives and habitat restoration activities considered in the environmental impact report.

(D) The potential effects on migratory fish and aquatic resources.

[deletions]

(G) The potential effects of each Delta conveyance alternative on Delta water quality.

(Emphasis added).

Maintaining through-Delta conveyance is thus a mandatory alternative under the DRA as set forth in subsection B, above. Under subsection A, above, the required task is to determine “the flows necessary for recovering the Delta ecosystem and restoring fisheries.” That in turn “will identify the remaining water available for export and other beneficial uses.” Those are the

required tasks established by the governing DRA. Instead of simply proceeding to take more freshwater flows away from the north Delta the required task is to start by identifying the remaining water available for export after determining the flows necessary to recover the Delta ecosystem and restore fisheries.

Pursuant to DRA § 85054:

‘Coequal goals’ means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

Providing a more reliable water supply means ceasing to base export goals on the “paper water” that far exceeds real water available, factoring in future reductions because of climate change including declining snowpack and runoff, and meeting the needs for fisheries, Delta agriculture, and other human uses of Bay-Delta water. Protecting, restoring, and enhancing the Delta ecosystem, means what it says. The only way to do that is to reduce exports and increase freshwater flows through the Bay-Delta. That is the opposite of creating new conveyance--a massive new diversion upstream from the Delta-- taking away freshwater flows before they can perform essential benefits for the Delta ecosystem. This view of the “*coequal goals*” is also consistent with DRA § 85320(b)(2), discussed above, providing that water available for export means water remaining *after* determining the flows necessary to recover the Delta ecosystem and restore fisheries.

The Testimony of Dr. Lawrence Kolb and former DWR Deputy Director Jonas Minton establishes that measurable numerical limits are essential to protection and improvement of Delta water quality. (Exhibits FOR – 4, pp. 1-3; FOR – 6, pp. 5-6). Moreover, Dr. Kolb explains that it is the State Water Board, and no one else, that must adopt Delta standards. (Exhibit FOR – 4, p. 5). And the Testimony of former Deputy Director Minton demonstrates the correct, collaborative way in which to achieve the coequal goals. (Exhibit FOR – 6, pp. 7-11).

What is clear is that nothing has changed from the National Academy of Sciences review six years ago. The FEIR/S continues to put the cart before the horse by jumping to the conclusion to further reduce freshwater flows through the Delta by developing massive new upstream conveyance in the form of the Water Fix Tunnels. There has not been the required development

and consideration of alternatives that would instead maintain through-Delta conveyance and finally began to increase freshwater flows through the Delta by reducing exports.

Thus it not only is bad planning, illogical, and violating the Clean Water Act to continue with this Hearing before rather than after updating the Bay-Delta Plan. The Plan is 20 years out of date and blind to the worsened plight of the Delta and the worsening projections of diminished runoff and increased sea level rise caused by climate change. This process is also violating the DRA which clearly calls for doing the planning first to facilitate the planning decisions, rather than making planning decisions and then doing the planning analyses after the horse is out of the barn.

The Water Fix FEIR/S fails to include the Range of Reasonable Alternatives required by CEQA and NEPA

“Evaluation of project alternatives and mitigation measures is ‘the core of an EIR.’” *Banning Ranch Conservancy*, 2 Cal.5th 918, 937. State policy declared by the Legislature in CEQA is that: “Environmental impact reports omit unnecessary descriptions of projects and emphasize feasible mitigation measures and feasible alternatives to projects.” Public Resources Code § 21003(c). 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). The failure to include a range of reasonable alternatives violates CEQA.

The NEPA Regulations require that an EIS “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.” 40 C.F.R. 1502.14. (Emphasis added). Instead of emphasizing and presenting alternatives to the Water Fix and “sharply defining the issues”, the public is supposed to wade through more than 80,000 pages of environmental documents that do not include any, let alone the required range of,

reasonable alternatives to the Water Fix Tunnels project. That basic, foundational alternative discussed above of maintaining through-Delta conveyance while finally beginning to increase freshwater flows through the Delta by reducing exports, is ignored.

The alternative of increasing flows through the imperiled Delta by reducing exports is so obvious that the Ninth Circuit Court of Appeals in July of 2016 reversed in part a district court decision denying environmental plaintiffs summary judgment because the challenged environmental document issued by Reclamation under NEPA “did not give full and meaningful consideration to the alternative of a reduction in maximum water quantities.” *Pacific Coast Federation of Fishermen’s Assn’s v. U.S. Dept. of the Interior*, __Fed.Appx.__, 2016 WL 3974183 *3 (9th Cir., No. 14-15514, July 25, 2016)(Not certified for publication).⁴ “Reclamation’s decision not to give full and meaningful consideration to the alternative of a reduction in maximum interim contract water quantities was an abuse of discretion, and the agency did not adequately explain why it eliminated this alternative from detailed study.” *Id.* at *2. Reclamation’s “reasoning in large part reflects a policy decision to promote the economic security of agricultural users, rather than an explanation of why reducing maximum contract quantities was so infeasible as to preclude study of its environmental impacts.” *Id.* at *3.

The requirement under NEPA for Reclamation to consider the obvious alternative of reducing exports to increase flows through the Delta is so obvious that the Ninth Circuit’s decision was not certified for publication because no new legal analysis was required to reach the decision.⁵ The decision pertained to interim two-year contract renewals. If the alternative of reducing exports must be considered *during renewal of two-year interim contracts* it most

⁴ Copy of decision attached to our Opening Statement submitted August 31, 2016.

⁵ 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 involving a trade-off between water exports and Delta restoration, 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 Water Fix FEIR/S alternatives unlawfully privilege water exports over protection of Delta water quality, water quantity, public trust values, and Endangered Species Act values.

assuredly must be considered *during the course of deciding whether to spend billions of dollars and 15 years building the Water Tunnels having the capacity to divert 15,000 cfs of freshwater flows away from the Delta that presently first flow through the Delta before being diverted.*

There could be myriad examples of the adverse consequences of the failure here to have an alternatives section “sharply” defining the issues as required by law. One such example of the results of failing to include alternatives maintaining through-Delta conveyance and increasing freshwater flows through the Delta by reducing exports, is the failure to focus on whether freshwater flows lost to the Water Fix Tunnels would or could somehow be replaced and if so what the environmental consequences of such replacement would be. If the Water Fix Tunnels with the capacity to take 15,000cfs from the Sacramento River are developed and operated, that would establish the capacity to drain almost 2/3 of the Sacramento River’s average annual flow of 23,490 cfs at Freeport. Internal communication from the Department of the Interior indicates that the purchase of approximately 1.3 MAF was being contemplated as one means to try to partially make up for some of the flows that would be removed from the Sacramento River by the Tunnels.⁶ It would be essential to disclose the source of any such replacement waters and the environmental consequences of making such replacement whether from Sacramento Valley groundwater or other source.

The Testimony of Ron Stork establishes that the Tunnels would increase pressures to dam and divert waters from north-State rivers, the American River, and rivers presently designated Wild and Scenic Rivers. (Exhibit FOR-2, pp. 10-20) The Testimony of Deirdre Des Jardins establishes that for decades DWR has understood that new North Delta diversion for the State Water Project would require augmentation of Sacramento River flows from North Coast rivers and streams to the extent of 2 million or more acre-feet per year. (Exhibit, FOR-8, pp. 2-8).

If the FEIR/S included the alternative of maintaining through-Delta conveyance and beginning to increase freshwater flows through the Delta by reducing exports, the fact that no such replacement and resulting environmental consequences and increased pressure on northern California rivers would result would be one of many important subjects in comparing the

⁶ Email from Letty Belin, Counselor to the Deputy Secretary, Department of the Interior, to Jim Waldo, David Zippin, Mark Cowin [then Director, DWR], Bonham, Chuck@wildlife [Director, Calif. Dept. of Fish and Wildlife], William Stelle, King Laura Moon (February 25, 2014)(including “Establish and fund an effort to acquire 1.3MAF for environmental benefit not to exceed \$3.5B).

alternatives. But no such comparisons are made because alternatives increasing freshwater flows by reducing exports are not included in the FEIR/S and were not included in the previous Drafts.

The RDEIR/SDEIS conceded that the project would have a number of significant and unavoidable adverse environmental impacts. (RDEIR/SDEIS Table ES-9, ES-41 through ES-105; Appendix A, Ch. 31, Table 31-1, 31-3 through 31-8). The same is true of the Final EIR/EIS. (Executive Summary, Table ES – 8, pp. ES 57 – 146; Ch. 31, Table 31 – 1, pp. 31 – 9 – 15). When the project would have significant adverse environmental effects, agencies are “required to consider project alternatives that might eliminate or reduce the project’s significant adverse environmental effects.” *Friends of the Eel River v. Sonoma County Water Agency*, 108 Cal.App.4th 859, 873 (2003). Instead of complying with CEQA by considering such alternatives, the claimed lead agencies have refused to do so and the State Water Board has likewise refused to comply with CEQA.

What has been demonstrated so far is an unlawful privileging of one form of use— water exports, over other forms of use--protecting Delta water quality and quantity and in-Delta uses. This is as true under CEQA as the Ninth Circuit found it to be under NEPA.

The Collapsing Delta Ecosystem further Evidences the Need for Alternatives increasing freshwater flows through the Delta

In September 2016 the Water Board determined that under its new flow proposal for the San Joaquin River and its tributaries it would be necessary to “decrease the quantity of surface water available for diversion for other uses compared to the current condition (water supply effect).” (Evaluation of San Joaquin River Flow and Southern Delta Water Quality Objectives and implementation, Executive Summary at (ES) -21). As the Water Board pointed out: “The Bay-Delta is in ecological crisis. Fish species have not shown signs of recovery since adoption of the 1995 Bay-Delta Plan objectives intended to protect fish and wildlife.” (*Id.* at ES -1).⁷

In October 2017 the Water Board found that: “it is widely recognized that the Bay-Delta ecosystem is in a state of crisis.” (Final Scientific Basis Report in Support of New and Modified Requirements for Inflows from the Sacramento River and its Tributaries and Eastside Tributaries to the Delta, Delta Outflows, Cold Water Habitat, and Interior Delta Flows, at 1-4). The water

⁷ Also in September 2016, The Bay Institute published its report, *San Francisco Bay: The Freshwater-Starved Estuary*. Basically, water taken from the rivers is reducing water flowing from the rivers feeding the estuary so that the estuary--the Sacramento-San Joaquin River Delta, Suisun Marsh, and the bay-- ecosystem is collapsing.

management infrastructure including the Central Valley Project (CVP) and State Water Project (SWP) “have been accompanied by significant declines in nearly all species of native fish, as well as other native and non-native species dependent on the aquatic ecosystem. Fish species have continued to experience precipitous declines since last major update and implementation of the Bay-Delta Plan in 1995 that was intended to halt and reverse the aquatic species declines occurring at that time. In the early 2000s, scientists noted a steep and lasting decline in population abundance of several native estuarine fish species that has continued and worsened during the recent drought. Simultaneously, natural production of all runs of Central Valley salmon and steelhead remains near all-time low levels.” (*Id.*). According to the Water Board, the best available science indicates that existing “requirements are insufficient to protect fish and wildlife.” (*Id.* at 1 – 5).

On January 18, 2017, the EPA issued its review of the Water Fix FEIS.⁸ EPA explained: “To date, none of the regulatory processes mentioned in our SDEIS letter have been completed.” The EPA also concluded that:

. . . the FEIS continues to predict that water quality for municipal, agricultural, and aquatic life beneficial uses will be degraded and exceeds standards as the western Delta becomes more saline. Significantly, the FEIS’ conclusions regarding impacts to aquatic life remain unchanged from those in the SDEIS, predicting substantial declines in quantity and quality of aquatic habitat for 15 of 18 fishes evaluated under Water Fix preferred operations.

There are reasonable alternatives that have been ignored

We presented A *Sustainable Water Plan for California* (Environmental Water Caucus, May 2015) during the RDEIR/SDEIS public review period as a reasonable alternative to the Water Tunnels.⁹ The plan is at: <http://ewccalifornia.org/reports/ewcwaterplan9-1-2015.pdf>. The actions called for by this alternative include: reducing exports to no more than 3,000,000 acre-feet in all years in keeping with State Water Board Delta flow criteria (for inflow as well as outflow); water efficiency and demand reduction programs including urban and agricultural

⁸ Letter, Kathleen H. Johnson, Director, Enforcement Division, EPA Region IX to David Murillo, Regional Director, Bureau of Reclamation (January 18, 2017).

⁹ We have repeatedly presented earlier versions of this alternative since May 2012. DWR and Reclamation continue to ignore such alternatives. We attached a copy of the Plan to our January 21, 2016, Written Comments for the January 28, 2016, Pre-Hearing Conference.

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 requested that the range of reasonable alternatives include reducing exports both more and less than the 3,000,000 acre feet limit called for by this alternative.

A Sustainable Water Plan for California is a carefully conceived modern, 21st-century Plan B. It should be Plan A. DRA § 85021 calls for reducing reliance on the Delta by such measures as “improved regional supplies, conservation, and water use efficiency” as well as “water recycling” and “advanced water technologies.”

The Testimony of former DWR Deputy Director Jonas Minton shows how water users such as Los Angeles, MWD, and Orange County Water District have been continuing to make progress in water recycling that reduces the demands for water from the Bay-Delta. (Exhibit FOR-6 at pp. 2-5). The Testimony of Jonas Minton and Dr. Kolb also shows the desirability of the alternative of eliminating or reducing irrigation of drainage-impaired farmlands which “is to do harm twice.” (Exhibits FOR-6, pp.6-7; FOR-4, p.4).

What is clear is that reasonable alternatives based on CEQA, the DRA and common sense have been handed to DWR and the Board on a silver platter but such alternatives have been ignored.

A new Draft EIR/EIS including the required Range of Reasonable Alternatives must be Prepared and Circulated for Public Review

CEQA Guideline section 15088.5 (14 Cal. Code Regs. § 15088.5)¹⁰ requires that a new Draft EIR will have to be prepared both to develop a range of reasonable alternatives to increase Delta flows by reducing exports and to accurately analyze the changes to the project, increases in severity of impacts, and failure to have Biological Opinions addressing the impacts of operating

¹⁰ All citations to Guidelines sections are to the CEQA Guidelines codified in Title 14, Cal. Code Regs., §§ 15000 et seq.

the project.¹¹ The courts have explained the need for an adequate *Draft* environmental document which cannot be cured by subsequent preparation of an adequate *Final* Environmental document:

Especially given the sensitivity and listed status of the resident salmon species, the County's failure to address loss of Cosumnes River stream flows in the Draft EIR deprived the public . . . of meaningful participation in the CEQA discussion." *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412, 447-448 (2007) (recirculation of a Draft EIR required)(Internal citations and quotation marks deleted).

As explained in *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052, only when the draft environmental document is circulated do the public and outside agencies have the opportunity to analyze a proposal and submit comment. To evaluate the draft environmental document in conjunction with the final environmental document would only countenance the practice of releasing a report for public consumption that hedges on important environmental issues while deferring a more detailed analysis to the final environmental document that is insulated from public review. (*Id.*).¹²

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." 14 Code Cal. Regs § 15088.5(a)(1), (3), and (4); 40 C.F.R. § 1502.9(a).

¹¹ Guideline § 15088.5(a) requires recirculation: (a)(1) when a new significant environmental impact would result from the project; (a)(2) where a substantial increase in the severity of an environmental impact would result; (a)(3) when a feasible project alternative considerably different from others previously analyzed would lessen the significant environmental impacts of the project but the project's proponents decline to adopt it; and (a)(5) when the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

¹² See *Gray v. County of Madera* (2008) 167 Cl.App.4th 1099, 1120 ("Given that there was no analysis done on whether the option to build a water system is a feasible mitigation measure, we conclude that the portion of the EIR addressing water concerns should have been recirculated.")

The Responsible Agency Excuse does not justify the Failure to prepare and circulate the Adequate Draft or Subsequent EIR required by CEQA

The State Water Board August 31, 2017, Ruling, stated under the subheading “Scope of Part 2” that: “In particular we would like to remind the parties that, consistent with the State Water Board’s more limited role as responsible agency under CEQA, the issue of whether the FEIR/EIS for the Water Fix Project satisfies CEQA or NEPA requirements is not a key hearing issue, and testimony on that issue will not be admitted.” (Ruling, p. 12).¹³

The Ruling contradicts itself by stating that “Parties to Part 2 of the hearing should submit exhibits and testimony responsive to the following issues that will be considered during this portion of the hearing:

3. . .

4. . .

5. Should the Final Environmental Impact Report be entered into the administrative record for the Petition? (Ruling, pp. 12-13).

In fact, this is one of the most critical hearing issues of all and we do submit additional argument on this issue. This issue is never going away and if the Board approves the Petition, the inadequacy of the EIR *and the nullity of all State Water Board proceedings based on the inadequate Draft EIR and any future Final EIR* will be one of, if not the first, issues presented to a reviewing court. And, this issue is predominantly one of improper procedure rather than a dispute over the facts. Consequently, judicial review will be de novo. *Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 215.

The Hearing Officers recognized in the February 11, 2016 Ruling (p. 9) that “ultimately the final EIR must be adequate to support the State Water Board’s decision in this proceeding.” They also stated that:

¹³ The State Water Board has consistently refused to perform any additional environmental review under CEQA with respect to the Petition for change in points of diversion to accommodate the proposed Delta Water Tunnels. Instead, the Board announced its intention to do nothing further in this regard in its Ruling of February 11, 2016: CEQA Compliance

In our January 15, 2016 letter regarding the issues to be discussed at the pre-hearing conference, we explained that the State Water Board’s role as a responsible agency under CEQA is limited, and for that reason the adequacy of the CEQA documentation for the Water Fix for purposes of CEQA is not a key hearing issue. (Ruling, pp. 8-9).

If during the course of this proceeding, the State Water Board determines that the range of alternatives evaluated by DWR is not adequate to support the Board's decision, then either DWR for the Board will need to prepare subsequent or supplemental documentation. (See, *id.*, §§ 15096, subd. (e), 15162, 15163.) At this point, however, it is uncertain whether any subsequent or supplemental documentation will be required.

It is crystal clear that the range of alternatives evaluated by DWR is not adequate to support a Board decision approving the diversion change regardless of whatever conditions might be imposed.

Moreover, the State Water Board is the correct lead agency in this situation because it has the principal responsibility for the broad policy issues involved here. These issues include: whether to change the point of diversion, restoration of the Delta, applying the public trust doctrine, complying with the Delta Reform Act and updating the Bay-Delta Plan including quantification of flow criteria. See, *Planning and conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 903-907 (incorrect lead agency designation); *City of Sacramento v. State Water Resources Control Bd.* (1992) 2 Cal.App.4th 960, 973 (incorrect lead agency designation).

In their September 8, 2017, letter to the Board about the August 31, 2017 Ruling, petitioners DWR and Reclamation modify the project to seek total exemption of the proposed north Delta diversion from any of the flow restrictions set forth in D- 1641. The letter recites complete exclusion of the north Delta diversion from the export component, export to inflow ratio, of the criteria:

The D-1641 Ratio calculation was designed to protect fish from south Delta entrainment. *For Alternative 4A, Reclamation and DWR propose that the north Delta diversion be excluded from the export/inflow ratio calculation. In other words, Sacramento River inflow is defined as flows downstream of the north Delta diversion and only south Delta exports are included for the export component of the criteria.* (Emphasis added) (Last table entry, unnumbered p. 4 of attachment September 8, 2017 letter).

The Board's regulations require that "The state board shall be the lead agency with respect to its adoption or revision of any state policy for water quality control or other plans, policies, or regulations that it adopts or revises." 23 Cal. Code Regs § 3776(a). What we have, then, is an application by DWR and Reclamation in essence to revise the Bay-Delta Plan. The Board under its own regulations must be the lead agency. In addition, what is now in effect an application to revise the Bay-Delta Plan cannot proceed until the Board prepares a draft

Substitute Environmental Documentation (SED) that must be prepared and circulated on the proposed plan. 23 Cal. Code Regs § 3777(a). Among the required informational content must be “An analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts;” 23 Cal. Code Regs § 3777(b)(3).

Another short answer is that the Board can refuse to consider the Petition unless and until an adequate Draft or Subsequent EIR has been prepared and circulated for public review and comment.

Even presuming for the sake of argument that the Board is a responsible agency rather than a lead agency, “Before approving or carrying out part of a project under CEQA, a responsible agency . . .’ must . . . issue its own findings regarding the feasibility of relevant mitigation measures or project alternatives that can substantially lessen or avoid significant environmental effects.” *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal.App.4th 1186, 1207. CEQA itself provides in Public Resources Code § 21092.1 that:

When significant new information is added to an environmental impact report after notice has been given pursuant to [Section 21092](#) and consultation has occurred pursuant to [Sections 21104](#) and [21153](#), but prior to certification, the public agency shall give notice again pursuant to [Section 21092](#), and consult again pursuant to [Sections 21104](#) and [21153](#) before certifying the environmental impact report.

The comments of the EPA constitute significant new information that constitutes part of the EIR. That information has been added after notice of preparation of the Draft environmental documents was given and prior to certification. Again, the EPA in its formal review required by federal law determined the Draft environmental documents inadequate and explained it is expected that “[P]ending actions by the State Water Resources Control Board” “will supply the missing pieces necessary to determine the environmental impacts of the entire project.” (EPA October 30, 2015 Letter, p.4)¹⁴ It would seem impossible for information to be more significant than the EPA’s determination that the existing Draft environmental documents are inadequate and that the State Water Board processes are expected to supply the missing pieces of information necessary to determine the environmental impacts of the project. Under Public

¹⁴ The failing grade given the Draft EIR/EIS was explained in detail in and a copy attached to our Letter (pp. 4-5) of November 24, 2015 and our Opening Statement submitted August 31, 2016. We also explained the failing grade in our Protest (p.4) submitted January 4, 2016, our prehearing conference written comments (p.6) submitted January 21, 2016, and our Joint Motion and Objections (pp. 12-13) submitted July 11, 2016.

Resources Code § 21092.1, notice must be given again and the other actions such as providing for a comment period under § 21092 must be afforded.

The Water Fix is a public project. Guideline § 15004 establishes requirements that must be met before any lead agency *or responsible agency* grants any approval of a public project subject to CEQA. A public agency “shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance.” Guideline §15004(b)(2). A public agency shall not: “Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.” Guideline § 15004(b)(2)(B). That is exactly what the State Water Board current schedule is doing. By holding either part or both parts of the evidentiary hearing in the absence of an adequate Draft or Subsequent EIR including a range of reasonable alternatives, the Board is stacking the deck giving impetus to the Water Fix Tunnels while foreclosing alternatives that would ordinarily be part of CEQA review of that public project. The alternatives issue is so important and the absence of any true alternatives, let alone the required range of reasonable alternatives, to the Water Tunnels, is so prejudicial that it is incomprehensible that the State Water Board is continuing to march down the path of refusing to proceed in the manner required by CEQA.

In addition, CEQA in Public Resources Code § 21166 authorizes, indeed requires, preparation of subsequent EIR’s by responsible, as well as lead, agencies if substantial changes are proposed in the project which will require major revisions of the EIR or substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR, or new information becomes available. ¹⁵Again, the

¹⁵ Guideline § 15096(e)(6) provides that even if a responsible agency believes that a *final* EIR is not adequate for use by the responsible agency, the responsible agency may “Prepare a subsequent EIR if permissible under Section 15162; . . .” Guideline § 15162(c) provides for preparation of a subsequent EIR “by the public agency which grants the next discretionary approval for the project” if any of the conditions described in § 15162(a) occurs. Here, virtually all of the conditions set forth in § 15162(a) are present. The reviews of the Draft environmental documents by the EPA establish that the project is not even presently defined so that there needs to be revisions addressing significant environmental effects and substantial increase in the severity of previously identified effects. § 15162(a)(1). In addition, substantial changes have occurred with respect to the circumstances under which the project is being undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects and the substantial increase in the severity of previously identified effects. § 15162(a)(2).

circumstances have changed. *First*, the EPA has determined the Draft environmental documents to be inadequate but stated an expectation that the missing pieces of environmental information necessary to determine the environmental impacts of the project will be provided by other processes including the State Water Board process. Despite that, the Board has refused to prepare or require DWR to prepare a legally sufficient EIR. *Second*, not only have the agencies failed to comply with law by preparing the Biological Opinions concurrently with and integrated with the EIS/EIR, they have failed to prepare any Biological Opinion at all on the impacts of actually operating the project. *Third*, DWR and Reclamation have now substantially changed the project by seeking exemption of the proposed north Delta diversion from the flow restrictions set forth in D – 1641.

Coming up with “conditions” on project operations does nothing of value here. It is not possible to “condition” reality. The Water Tunnels would cost many billions of dollars to construct. Their capacity is about equal to the normal entire summer flow of the Sacramento River at the diversion point. The only decision that could be made in the public interest is whether or not to approve the diversion change. Approving the diversion change subject to “conditioning” it on not operating to the injury of the fish and their designated critical habitat would be nonsensical. If it operates, it will injure. If enforced, such condition would result in a stranded asset wasting billions of dollars of public funds. The courts will not approve or defer to agency findings that “conditioning” measures will be effective that “are not supported by substantial evidence or defy common sense.” *Gray v County of Madera*, 167 Cal.App.4th 1099, 1116-7 (finding mitigation measures ineffective).

THE EIR/S IS ALSO FATALLY FLAWED BECAUSE OF THE FAILURES TO HAVE AN ACCURATE, STABLE AND FINITE PROJECT DESCRIPTION, IDENTIFY FUTURE WATER SUPPLIES, SEGMENTATION OF THE ANALYSES, AND FAILURE TO DISCLOSE AND ANALYZE FUTURE USE AND EXPANSION

There been many changes to the project including conversion from the BDCP into the WaterFix. Most recently, there has been the September 8, 2017, letter from DWR and Reclamation modifying the project to seek exemption of the North Delta diversion from D-1641 flow restrictions. There have been the recent refusals by beneficiary entities to pay for the project. Pursuant to CEQA,

[a]n accurate, stable and finite project description is the *sine qua non* [absolutely indispensable requirement] of an informative and legally sufficient EIR. However, a curtailed, and enigmatic or unstable project description draws a red herring across the path of public input. Only through an accurate view of the project may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 [bracket internal citations omitted].”

What we have instead here is a curtailed, and enigmatic and unstable project description that has drawn a red herring across the path of public input for the past six years and remains uncorrected by the Board.

The Testimony of Ron Stork shows that the Tunnels would lead to operational changes “with adverse implications to north-state reservoir cold-water pools, downstream fishery conditions, and recreation and rivers in reservoirs” and public trust resources. (Exhibit FOR-2, pp. 5-9) The Testimony of Deirdre Des Jardins establishes that for decades the plans for a new diversion from the North Delta for the State Water Project are based on the resulting need for augmentation of Sacramento River flows from North Coast rivers and streams of 2 million or more acre-feet per year. (Exhibit FOR-8, pp. 2-8). Pursuant to CEQA an EIR:

must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431.

And:

The future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations (“paper water”) are insufficient bases for decision-making under CEQA. *Vineyard Area Citizens*, 40 Cal.4th 412, 432.

Here we have flagrant violations of CEQA with the EIR/S completely failing to identify the available water for the project and failing to identify and analyze the impacts of providing that water for the project. The Board violates CEQA by failing to correct these deficiencies by preparing a legally sufficient EIR.

The EIR/S and Biological Opinions are essentially confined to construction impacts. Unlike a statue or a pyramid the purpose here of DWR and Reclamation is not to just construct

something. Construction is only a means to an end. The purpose of the project and the reason for the construction is to take large quantities of freshwater flows away from the north Delta. As Deirdre Des Jardins points out in her Testimony, the “Board’s decision on the Water Fix Change Petition will be one of the biggest water rights decisions in 50 years, and the decision will likely govern how the State Water Project and Central Valley Project water rights are exercised for the next 50 to 100 years.” (FOR-8, p. 1). But CEQA prohibits the piecemealing or segmentation of environmental analysis. A lead agency must not piecemeal the analysis of several smaller projects that are part of a larger project, in order to ensure “that environmental considerations not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences.” *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592. Constructing the project now while deferring and evading thorough CEQA analysis of actual operations and resulting far ranging consequences of operations is unlawful piecemealing of environmental analysis and flagrant violation of CEQA’s environmental full disclosure, accurate project description, and water supply analyses requirements.

CONCLUSION

In order to proceed in the manner required by CEQA, the DRA, and common sense, the State Water Board must first update the Bay-Delta Plan, adopting measurable, stricter standards determining how much water is actually available for export given the requirements of the Delta, the public trust doctrine, the DRA, the Endangered Species Act, and the Clean Water Act. The Board must also finally proceed to prepare or require DWR to prepare an adequate Draft EIR/EIS complying with CEQA and the DRA including a range of reasonable alternatives such as maintaining through-Delta conveyance and increasing Delta freshwater flows by reducing exports. The most basic questions of where will the water come from and what will be the impacts of providing it if that is possible, have not been answered. The Petition must be dismissed or the Hearing suspended until such time as the Board has proceeded in the manner required by law providing a rational basis for determining whether the Petition can even be accepted and considered, let alone approved.

Respectfully submitted,

A handwritten signature in black ink that reads "E. Robert Wright". The signature is written in a cursive style with a large initial "E".

E. Robert Wright, Senior Counsel
Friends of the River

A handwritten signature in blue ink that reads "KJ". The signature is written in a cursive style with a large initial "K".

Kyle Jones, Policy Advocate
Sierra Club California