

Letter	Comment #	Comment	Relation to Final EIR/EIS
Friends of the River	1	<p>By this comment letter our public interest organizations object to approval of the Bay Delta Conservation Plan/California Water Fix (BDCP/CWF) and its Final Environmental Impact Report/Final Environmental Impact Statement (EIR/EIS) of December 22, 2016, including preferred alternative 4A, all other variants of the Delta Water Tunnels and any new upstream conveyance for exporting water south. We set forth in this letter additional grounds for noncompliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). These grounds for noncompliance with NEPA, CEQA, the Delta Reform Act and other laws, are presented during the review period for the 80,000 plus page Final EIR/EIS pursuant to the notice posted December 30, 2016, by the U.S. Environmental Protection Agency (EPA). We reiterate our objection to the Department of Water Resources claimed January 30, 2017, close of the public review period as set forth in our earlier letter to you of January 19, 2017. We have not had the courtesy of the requested timely response to that letter. We thus submit these objections at this time out of an abundance of caution. Many, many additional issues lurk in the 80,000 page FEIR/EIS released virtually on Christmas Eve, as well as in the scientific peer review and biological opinions that will not be completed or available to the public before April 2017 at the earliest. Though reservation is not necessary, we expressly reserve the right on behalf of our organizations and the public to raise any and all such issues in the future in appropriate forums.</p> <p>The organizations joining in this letter and these objections are: 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.</p>	This letter section provides background information and intent of the commenter. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Friends of the River	2	<p>INTRODUCTION</p> <p>This is the latest of many efforts by our organizations to finally obtain compliance by the Bureau of Reclamation and the California Department of Water Resources (DWR) with the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) during the environmental review process for the BDCP/Water Fix proposed project. Our many prior comment letters range from as early as: June 4, August 13, September 25, and November 18, 2013 (attached again to our comment letter of January 14, 2014); many letters in 2014 and 2015, and then our later letters of August 18, September 22, and November 28, 2016, (by our coalition 10 organizations). To a degree, all of this has been a complete waste of time because Reclamation and DWR have simply ignored all significant comments pointing out alternatives to the Tunnels and the adverse impacts the Tunnels would have on water quantity, flows, water quality, fish and fish habitat throughout the Sacramento and San Joaquin River water sheds.</p> <p>On the one hand, the about 90,000 pages of EIR/EIS violate the NEPA Regulation, 40 C.F.R. §1502.7, and CEQA Regulation, 14 Cal. Code Regs § 15141 specifying that: The text of final environmental impact statements . . . shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.</p> <p>On the one hand, the volume of the Drafts and now the Final EIR/EIS was calculated to overwhelm the public while evading or obscuring the real issues.</p>	This section describes prior comments by the commenter and comments on the document's length. For information on the document's length, please see the Final EIR/EIS, Volume 2, Master Response #38, Length and Complexity of the EIR/EIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Friends of the River	3	<p>On the other hand, there was silence on the profound issue of whether to increase the capacity to divert more water from the Sacramento River, sloughs, and the San Francisco Bay Delta and take the water before rather than after it flows through the Delta, or instead,</p>	The comment questions whether the proposed project has adequately demonstrated that it would not result in any "take" of greater sandhill crane. Although this issue relates to a regulatory prohibition that is different than CEQA's requirement to address potentially

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Friends of the River	4	<p>SUMMARY</p> <p>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 flows that presently contribute 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. This undeniable truth is obvious. And this undeniable truth has been ignored for years by the EIR/EIS.</p> <p>Extinction is forever. The San Francisco Bay-Delta estuary is the most important estuary in the Western Hemisphere. Given the destruction threatened by the Water Tunnels, it is astonishing that the Bureau and DWR issued the Final EIR/EIS on December 22, 2016 instead of finally issuing an adequate and honest Draft EIR/EIS to allow the opportunity for</p>	<p>This section describes the commenter’s opinion on potential effects of the proposed project and demand that DWR provide a revised draft of the EIR/EIS. The Final EIR/EIS adequately and correctly discloses the potential impacts as required under NEPA and CEQA. For responses to prior comments made by the commenter for the Draft EIR/EIS and RDEIR/SDEIS, please refer to Volume II: Response to Comments of the Final EIR/EIS.</p>

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		<p>informed public and decision-maker review and comment. Reclamation and DWR must instead now proceed in the manner required by law by issuing a new Draft EIR/EIS for public review and comment unless they terminate the proposed project.</p> <p>In this Comment Letter we focus on events that have occurred since the close of the RDEIR/SDEIS public review period in October 2015. All prior comments apply to the Final EIR/EIS because none of the significant NEPA and CEQA deficiencies have been corrected.</p>	
Friends of the River	5	To briefly summarize, the EPA gave the most recent Draft NEPA and CEQA environmental review documents-- the Recirculated Draft EIR/Supplemental Draft EIS (RDEIR/SDEIS)--for the project its failing grade in October 2015. The EPA expected that the essential but missing environmental information and analyses would be supplied by other agencies, in particular, the California State Water Resources Control Board (State Water Board) during their review processes. That did not happen.	This section provides background information. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Friends of the River	6	<p>In addition, the July 2015 RDEIR/SDEIS Drafts contained false denials by Reclamation that the project would have significant adverse impacts on Delta water quality, water quantity, fish and fish habitat. But in August of 2016, the Biological Assessment (BA) issued by the same agency, Reclamation, under the Endangered Species Act (ESA) made contrary determinations of "likely to adversely affect" several endangered and threatened fish species and their designated critical habitats.</p> <p>The new Final Guidance issued in August of 2016 by the Executive Office of the President, Council on Environmental Quality (CEQ) on consideration of the effects of climate change in NEPA reviews graphically demonstrates the inadequacy of the NEPA process for this project.</p> <p>The Drafts have at all times also failed to include the heart of such documents under both NEPA and CEQA -- the required range of reasonable alternatives. In this case, an obvious alternative that Reclamation and DWR have consistently refused to include and consider is to increase rather than decrease freshwater flows through the Delta by reducing exports. A Ninth Circuit Court of Appeals decision issued in July of 2016 makes it crystal clear that this persistent refusal by Reclamation to consider alternatives reducing exports violates NEPA. Since the CEQA alternatives requirement is virtually identical, that same decision makes it crystal clear that the refusal by DWR to consider alternatives reducing exports also violates CEQA.</p> <p>What makes this omission of such alternatives all the more flagrant violation of NEPA and CEQA are the September 2016 Evaluation from the State Water Board and October 2016 Report from the Board. Those Board actions establish that the crisis in the Delta and the inadequacy of current regulatory standards requires greater through-Delta flows and thus reduction in exports.</p>	<p>Regarding BA findings compared to EIR/EIS findings, the two documents are under entirely different regulations and the standards for "significant" or "adverse" are not the same as "likely to adversely affect". As a result, a one-for-one comparison of findings in the two documents is inappropriate.</p> <p>Regarding final climate change guidance issued in August of 2016, see Master Response 19, Climate Change and Greenhouse Gas Emissions, Volume 2, in the Final EIR/EIS.</p> <p>Regarding alternatives included in the EIR/EIS process, the alternatives evaluated are sufficient to meet all NEPA and CEQA requirements. For more information on alternatives development, including the process for selection and screening of alternatives, please see Final EIR/EIS, Volume 2, Master Response #4, Alternatives Development.</p>
Friends of the River	7	In addition to there not having been the NEPA and CEQA required environmental full disclosure there has not been economic disclosure of costs of the proposed project and who would bear those costs. 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	<p>This section describes the commenter's view that economic disclosures provided in the Final EIR/EIS was incomplete. Economic disclosures were adequate and correct. For more information about costs, please see Master Response 5, BDCP, Volume 2, in the Final EIR/EIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>This section also describes background information on taking official notice of any facts which can be judicially noticed by courts.</p>

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		<p>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.</p> <p>As a result, the public review and comment time periods afforded for the Draft NEPA and CEQA documents were worthless in terms of allowing informed and meaningful public review and comment. Issuance of a Final EIR/EIS for the Water Fix project without having first prepared and circulated for public review and comment a new Draft EIR/EIS correcting these deficiencies constituted failure to proceed in the manner required by law, violating NEPA and CEQA. There are many, many deficiencies in Reclamation's and DWR's NEPA and CEQA documents and processes to date during the BDCP/Water Fix review process. In confining this letter to only several of the elementary NEPA and CEQA violations, we do not in any way withdraw or modify any of the comments we have made previously during these processes.</p> <p>Finally, agencies including DWR and Reclamation may take official notice of any facts which can be judicially noticed by courts. Government Code § 11515. Evidence Code § 452(c) authorizes judicial notice of official acts of the executive departments of the State of California and the United States. Courts take judicial notice of the obvious and the undeniable. Judicial notice of undeniable facts, conditions, and requirements is appropriate pursuant to Evidence Code § 452(g), facts of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute, and § 452(h), facts that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. Judicial and thus official notice of the decisional, constitutional, and public statutory law of this State and of the United States is mandatory under Evidence Code § 451(a). In addition, judicial notice is mandatory under Evidence Code § 453 of all items subject to judicial notice under § 452 if requested by a party and the party gives sufficient notice of the request and furnishes sufficient information with respect to the request. Official notice is therefore requested of the above undeniable facts.</p>	
Friends of the River	8	<p>THE MISSING ENVIRONMENTAL INFORMATION AND ANALYSES EXPECTED BY THE EPA AND REQUIRED BY LAW HAVE NOT BEEN PROVIDED</p> <p>On October 30, 2015, the EPA gave the Supplemental Draft EIS for the BDCP/California Water Fix (CEQ# 20150196) its failing grade of "3" (Inadequate)" (p. 4). EPA review was required by Section 309 of the Clean Air Act. EPA's Policy and Procedures for the Review of Federal Actions Impacting the Environment (10/3/84) explains what its failing grade means in section 4(b) of that document entitled "Adequacy of the Impact statement:"</p> <p>(3) '3' (Inadequate). The draft EIS does not adequately assess the potentially significant environmental impacts of the proposal, or the reviewer has identified new, reasonably available, alternatives, that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. This rating indicates EPA's belief that the draft EIS does not meet the purposes of NEPA and/or the Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. (p. 4-6).</p> <p>Judicial notice of official acts of the executive departments of the United States is</p>	<p>This section describes the history of reviews of the California WaterFix by the EPA and the State Water Board. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>A failing grade from EPA does not per se translate into violations of NEPA or CEQA. Rather, the courts must still weigh the evidence and find specific inadequacies based on violations of specific requirements of NEPA found in statute, regulation or case law. The failing grade is also not, by itself, grounds for recirculation under CEQA or NEPA.</p> <p>The Final EIR also contains a master response on water quality.</p> <p>Regarding requests for official notice, neither DWR nor Reclamation make determination based on requests under Evidence Code sections 452 or 453. However the attachment referenced in this comment was received during a previous comment period and is part of the public record.</p> <p>Commenter's comment does not raise any substantive new environmental issues that were not previously addressed in Volume 2, response to comment letter 2577, Volume 2, of the</p>

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Friends of the River	9	<p>Far from providing “the needed supplemental information to allow a full review of the environmental impacts” expected by EPA (EPA Letter p. 4), the State Water Board refused to even acknowledge or admit that the EPA found the environmental documentation inadequate.</p> <p>The EPA also noted that the State Water Board: is in the midst of comprehensively updating water quality standards through the Bay Delta Water Quality Control Plan (Bay Delta WQCP). The updated standards could result in freshwater flow management provisions and corresponding changes to water supply diversions throughout the watershed that have not been analyzed in the SDEIS. The Delta is listed as impaired for several water quality parameters under Section 303(d) of the CWA [Clean Water Act]. EPA is working closely with the State Water Board to ensure that the revised standards are sufficient to address impaired water quality standards in the Delta and reverse the declines in the fish species.</p>	<p>This comment refers to the State Water Board CPOD process and not on the Final EIR/EIS. The State Water Board is not a lead agency and did not write the environmental documents for CA WaterFix.</p> <p>Regarding the Bay Delta Plan Update, as described in Master Response 17, Biological Resources, Final EIR/EIS, Volume 2:</p> <p>“The criteria proposed for Alternative 4A focus directly on SWP and CVP facilities while designed to not affect other criteria that are not within the SWP and CVP authority or obligation. To the extent new criteria are adopted in the updated Bay-Delta Plan that become an obligation of the SWP and CVP, the California WaterFix will need to comply with those criteria.”</p>

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Friends of the River	10	<p>On December 16, 2016, Public Law 114-322 including §4001 et seq pertaining to California water was signed into law. Maximizing water exports from the Delta appears to be a cornerstone of the new law on federal water policy. As a result, there needs to be a new Draft EIR/EIS prepared and circulated for public review and comment disclosing and assessing the impacts of maximizing water exports as a reasonably foreseeable consequence of approving and developing the Delta Water Tunnels.</p> <p>On January 18, 2017, the EPA issued its review of the FEIS. 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.</p> <p>In September 2016 the State 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 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). We request official notice of the Evaluation. (Evaluation attached).</p> <p>In October 2016 the State Water Board again noted that: “it is widely recognized that the Bay-Delta ecosystem is in a state of crisis.” (Working Draft Scientific Basis Report for New and Revised Flow Requirements on the Sacramento River and Tributaries, Eastside Tributaries to the Delta, Delta Outflow, and Interior Delta Operations, at 1-3). The water management infrastructure including the Central Valley Project (CVP) and State Water Project (SWP) “have been accompanied by declines in nearly all species of native fish. Fish species have not shown signs of recovery since adoption and implementation of the 1995 Bay-Delta Plan intended to protect fish and wildlife. 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. Likewise, Central Valley salmon and steelhead have not recovered, and natural production of all runs remains near all-time lows.” (Id.). According to the Board, the best available science indicates that existing “requirements are insufficient to protect fish and wildlife.” (Id. at 1 – 4). The Report includes recommendations “for increased Delta outflow requirements” to protect native estuarine and anadromous fish species.” (Id. at 1 – 13). We request official notice of the Report. (Copy attached).</p>	<p>This section describes recent events in California water. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>Regarding requests for official notice, the attachment referenced in this comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
Friends of the River	11	<p>There is more. It gets still worse. On August 2, 2016, Reclamation issued the Biological Assessment (BA) (July 2016) for the California Water Fix and requested formal consultation</p>	<p>This section describes recent events in California water.</p>

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		<p>the information provided by the BA just issued and the BiOp which may be issued in April of 2017. The choices are to either proceed in the manner required by law now, or do so months or years down the road following judicial review, having wasted time and public funds in the course of trying to evade elementary NEPA, CEQA, and ESA requirements.</p>	
Friends of the River	12	<p>THE REFUSAL OF RECLAMATION AND DWR TO DISCLOSE IN THE BDCP/WATER FIX DRAFTS OBVIOUS SIGNIFICANT ADVERSE ENVIRONMENTAL IMPACTS ON WATER QUALITY, WATER QUANTITY, FISH, AND FISH HABITAT RENDERED THE DRAFTS USELESS FOR INFORMING THE PUBLIC ABOUT THE ADVERSE IMPACTS OF THE PROJECT</p> <p>Facts The RDEIR/SDEIS issued in July of 2015 actually claimed there would be no adverse impacts under NEPA or CEQA from the Delta losing all that freshwater flow on water supply or water quality (with almost no exceptions), or on fish and aquatic resources. (RDEIR/SDEIS Table ES-9, pp. ES-41-60; Appendix A, ch. 31, Table 31-1, pp. 31-3 through 31-8). The BDCP/Water Fix Drafts are supposed to be environmental full disclosure documents. It was arbitrary and unreasonable to falsely claim that taking significant quantities of freshwater flows away from the Delta does not have significant adverse environmental impacts on Delta water supply, water quality, fish, and fish habitat. The freshwater is the water supply for the Delta and is the habitat for the endangered and threatened species of salmon and other fish.</p> <p>The sole exceptions to the blanket denial of numerous and obvious adverse environmental impacts on water quality from the operation of the preferred Alternative 4A Water Tunnels were WQ-11 “effects on electrical conductivity concentrations resulting from facilities operations and maintenance,” and WQ-32 “effects on Microcystis Bloom Formation Resulting from Facilities Operations and Maintenance.” (RDEIR/SDEIS Appendix A, ch. 31, Table 31-1, pp. 31-3, 31-4). However, in the Executive Summary, even these two water quality impacts were not admitted to be adverse. (RDEIR/SDEIS Table ES-9, pp. ES-44, 45). Two tiny bits of truth survived in the Appendix but were eliminated from the Executive Summary. In any event, the Draft EIR/EIS and RDEIR/SDEIS were completely worthless in terms of providing truthful information and analyses for informed public and decision-maker review.</p>	<p>This section describes the findings of the RDEIR/SDEIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>See Section 5, Endangered Species Compliance, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on the BiOp and 2081(b) process.</p>
Friends of the River	13	<p>Later, there was some truth from Reclamation. Reclamation’s BA, referenced above, issued August 2, 2016, made determinations that the proposed action is “likely to adversely affect” a number of endangered or threatened species and their designated critical habitats. The likely to be adversely affected listed species, along with their designated critical habitats, include: Chinook salmon, Sacramento River winter-run ESU; Chinook salmon, Central Valley spring-run ESU; Steelhead, California Central Valley DPS; Green Sturgeon, southern DPS; and Delta Smelt. (BA, California Water Fix, chapter 7, Effects Determination, Table 7-1, p. 7-36). A copy of Chapter 7 of the BA is attached. Official notice is requested of these determinations in the BA.</p> <p>This amounts to prejudicial delay in finally admitting some truth. Despite the belated admission of some truth in the BA, the Final EIR/EIS repeats the false denials of adverse effects on the listed fish species and their habitat. (EIR/EIS, table, Executive Summary, pp. ES -67 – 93; Ch. 31, pp. 31 – 9 – 15, Table 31 – 1). This flip-flopping back and forth between false denials and admitting some truth by the same agency -- Reclamation -- graphically demonstrates the bad result from violating the “concurrently with and integrated with” requirement of the NEPA regulation and the “at the earliest possible time” requirement of</p>	<p>The BA and EIR/EIS documents are written to meet two different regulations. The standards for “adverse” and “significant” under NEPA and CEQA, respectively, are not the same as “likely to adversely affect” under the ESA. As a result, a one-for-one comparison of findings in the two documents is inappropriate. Simply put, “likely to adversely affect” does not mandate a “significant” or “adverse” determination.</p> <p>Regarding requests for official notice, the attachment referenced in this comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S</p>

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		the ESA regulation set forth above.	
Friends of the River	14	<p>Of course taking away significant freshwater flows from the designated habitats for these endangered and threatened species of fish will adversely affect the species and their designated critical habitats. Here are a few examples of adverse environmental impacts of the Water Fix on fish and fish habitat as set forth in the California Department of Fish and Wildlife October 30, 2015 Supplemental Document comments on the Water Fix SDEIS. The new diversion “could substantially reduce suitable spawning habitat and substantially reduce the number of Winter-run as a result of egg mortality” with respect to the endangered Winter-run Chinook salmon. Moreover “there would be reductions in flow and increased temperatures in the Sacramento River that could lead to biologically meaningful reductions in juvenile migration conditions, thereby reducing survival relative to Existing Conditions.” Similarly, “there are flow and storage reductions, as well as temperature increases in the Sacramento River that would lead to biologically meaningful increases in egg mortality and overall reduced habitat conditions for spawning spring-run and egg incubation, as compared to Existing Conditions.” The Water Fix “could substantially reduce rearing habitat and substantially reduce the number of spring-run Chinook salmon as a result of fry and juvenile mortality.” With the Water Fix, “there would be moderate to substantial flow reductions and substantial increases in temperatures and temperature exceedances above thresholds in the Sacramento, Feather, and American Rivers, which would interfere with fall-/late fall -run Chinook salmon spawning and egg incubation. There would be cold water pool availability reductions in the Feather, American, and Stanislaus Rivers, as well as temperature increases in the Feather and American Rivers that would lead to biologically meaningful increases in egg mortality and overall reduced habitat conditions for spawning steelhead and egg incubation as compared to Existing Conditions.” With the diversion change, there would be flow reductions in five watershed Rivers “and temperature increases in the Sacramento, Feather, American, and Stanislaus Rivers that would lead to reductions in quantity and quality of fry and juvenile steelhead rearing habitat relative to Existing Conditions.” The difference between Existing Conditions and the Water Fix “could substantially reduce suitable spawning habitat and substantially reduce the number of green sturgeon as a result of elevated exceedances above temperature thresholds.” Under the Water Fix, “there would be frequent small to large reductions in flows in the Sacramento and Feather Rivers upstream of the Delta that would reduce the ability of all three life stages of green sturgeon to migrate successfully.”</p> <p>That is simply a longer way of saying that the fish need the freshwater flows and that Reclamation’s denial in the Draft EIR/EIS documents of the adverse impacts of taking yet more water away from their habitat was both false and absurd.</p>	This section describes CDFW’s comment letter dated October 30, 2015 on the RDEIR/SDEIS (Letter #2762). Each of these comments has been responded to by the as part of the Final EIR/S, Volume II, Part 2-2.
Friends of the River	15	<p>The Draft EIR/EIS and RDEIR/SDEIS were so Inadequate and Conclusory in Nature that Meaningful Public Review and Comment were Precluded requiring preparation and circulation of a New Draft EIR/EIS for Public Review and Comment</p> <p>The NEPA Regulations provide help in determining whether an impact “significantly” affects the environment. “Significantly as used in NEPA requires considerations of both context and intensity . . .” 40 C.F.R. § 1508.27. Considerations of context include “the affected region, the affected interests, and the locality.” § 1508.27(a). The Delta is recognized already as being threatened by reductions in freshwater flows through the Delta and the Delta includes at least five listed endangered or threatened fish species and designated critical habitats for each of these crashing fish populations.</p>	This section describes the commenter’s view that the DEIR/S and RDEIR/SDEIS were inadequate and requests recirculation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS. The BA was incorporated by reference into the Final EIR/EIS.

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		<p>Considerations of intensity refer to the “severity of impact.” § 1508.27(b). Each of the ten subsections in § 1508.27(b) cry out that the impacts falsely denied by the lead agencies are significant, severe, and adverse. One example is the subsection providing that: "The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973." § 1508.27(b)(9).</p> <p>In <i>Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova</i>, 40 Cal. 412, 449 (2007), the California Supreme Court determined that “We do not consider this response [similar to the denials of the obvious here] substantial evidence that the loss of stream flows would have no substantial effect on salmon migration. 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 [citation omitted] in the CEQA discussion.” The Court required recirculation of the Draft EIR. Of course reductions in freshwater flows would be significant adverse impacts. Yet the Executive Summary falsely concluded in all cases that they are not. (RDEIR/SDEIS Table ES-9, pp. ES-47 through 60, Aqua-NAA-1 through 16, Aqua-1 through 217). Until about April 2015, the claim being made in the Draft EIR/EIS had been that while there would be adverse impacts of Water Tunnels operations on the fish and their habitat, much of that would be mitigated by the provision of wetland restoration. Now however, the "65,000 acres of tidal wetland restoration" has been eviscerated down to “59 acres” (RDEIR/SDEIS p. ES-17) as a result of the project no longer being a Habitat Conservation Plan. Yet impacts previously either determined to be adverse or undetermined are now determined to not be significant or adverse.</p> <p>The NEPA Regulations require that: The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. 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. 40 C.F.R. § 1502.9(a).</p> <p>The Draft EIR/EIS and RDEIR/SDEIS with their arbitrary, unreasonable, and false denials of numerous, severe adverse environmental impacts resulting from Water Tunnels operations on the Delta were so inadequate as to preclude meaningful analysis. A new Draft and recirculation are required by CEQA and NEPA. 14 Cal.Code Regs § 15088.5(a)(3); 40 C.F.R. § 1502.9(a).</p> <p>To comply with NEPA and CEQA the lead agencies must either drop the Water Tunnels project or provide an informative and honest Draft EIS/EIR including the “likely to adversely affect” determinations set forth recently in the BA. That would afford a basis for meaningful public review and comment and decision-maker review.</p>	
Friends of the River	16	<p>RECLAMATION AND DWR CONTINUE TO REFUSE TO CONSIDER THE REQUIRED RANGE OF REASONABLE ALTERNATIVES</p> <p>Alternatives Increasing Delta Flows are Obvious and Required</p>	This section describes the commenter’s view that the Final EIR/EIS did not include the required range of reasonable alternatives. Please refer to Master Response 4, Alternatives Development, Final EIR/EIS, Volume 2, for more information about how alternatives were developed and screened. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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		<p>“The foremost principle under CEQA is that the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 564 (1990). “The core of an EIR is the mitigation and alternatives sections.” Id. 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). Instead of emphasizing alternatives to the Water Fix, the public is supposed to wade through 90,000 pages of environmental documents that do not include any, let alone the required range of, reasonable alternatives to the Water Tunnels project.</p> <p>The direct and obvious way to increase flows through the Delta is to take less water out. A broad policy alternative that should have been included in the Drafts and Final EIR/EIS would be to reduce existing export goals thereby increasing Delta flows and not taking additional flows away from the Delta by developing new upstream conveyance.</p> <p>Development of alternatives increasing flows through the Delta by reducing exports has always been a direct and obvious first step to complying with NEPA and CEQA in the course of accomplishing the co-equal goals established by the Delta Reform Act, California Water Code § 85054:</p> <p>‘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.</p> <p>Reclamation and DWR must develop and consider a range of reasonable alternatives 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.</p> <p>The failure of the Draft Water Fix environmental documents to include through-Delta alternatives reducing exports violates the Delta Reform Act as well as CEQA. The change of the BDCP into the Water Fix and the dropping of the Habitat Conservation Plan and National Community Conservation Plan means that the Water Fix has no force of law behind it.</p>	
Friends of the River	17	The alternative of increasing flows through the imperiled Delta by reducing exports is so obvious that the Ninth Circuit recently reversed in part a district court decision denying	This section continues discussion of the commenter’s opinion that the Final EIR/EIS did not include the required range of reasonable alternatives. Please refer to Master Response 4,

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		<p>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 selected for publication). "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. A copy of the Ruling is attached. Official Notice of the Ruling is requested. The decisional law of the United States is subject to mandatory judicial notice. (Ev. Code § 451(a).</p> <p>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 selected for publication because no new legal analysis was required to reach the decision. 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 assuredly must be considered during the course of the epic decision involved here.</p> <p>On May 18, 2016, the Superior Court, County of Sacramento, issued its 73 page ruling in the Delta Stewardship Council Cases (Judicial Council Coordination Proceeding No. 4758) that invalidated the Delta Plan adopted by the Delta Stewardship Council pursuant to the Delta Reform Act. Without even reaching CEQA issues, the court found the adopted Plan violated the Delta Reform Act because it failed to include quantified or otherwise measurable targets associated with achieving reduced Delta reliance (Ruling p. 12), failed to include quantified or otherwise measurable targets associated with restoring more natural flows (Ruling p. 36), and failed to promote options for water conveyance and storage systems. (Ruling pp. 38, 72). Copies of the Rulings are attached. Official notice is requested of the Rulings.</p> <p>All of the so-called BDCP/Water Fix alternatives involve new conveyance as opposed to consideration of any alternatives/options reducing exports and not including new upstream conveyance.</p> <p>The Delta Reform Act declared in Water Code § 85086(b):</p> <p>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.</p>	<p>Alternatives Development, Volume 2, Final EIR/EIS, for more information about how alternatives were developed and screened. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>For more information about the relationship between CWF and the Delta Reform Act, please refer to Master Response 31, Volume 2, Final EIR/EIS.</p> <p>Regarding requests for official notice, the attachment referenced in this comment does not raise any raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S</p>
Friends of the River	18	<p>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. 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</p>	<p>Please see comment #17. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>

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		<p>than petitioners' preferred project."</p> <p>The Bay-Delta Plan was 15 years out of date when the Delta Reform Act was enacted. The Plan is now 20 years out of date. The Delta Reform Act 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 Delta Reform Act includes very specific requirements for comprehensive review of specific subjects for the BDCP in Water Code § 85320 (b)(2):</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(D) The potential effects on migratory fish and aquatic resources. [deletions]</p> <p>(G) The potential effects of each Delta conveyance alternative on Delta water quality.</p> <p>The Delta Reform Act (Water Code § 85021) provides 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. . . .</p> <p>Delta Reform Act policies also include (Water Code § 85020 (c): Restore the Delta ecosystem, including its fisheries and wildlife, as the heart of a healthy estuary and wetland ecosystem.</p> <p>Reclamation and DWR have violated the Delta Reform Act in the process of violating NEPA and CEQA. They have done so by limiting alternatives in the EIR/EIS to their desired new upstream conveyance instead of doing the work and considering a reasonable range of the alternatives expressly required by the Delta Reform Act including Water Code § 85320 and carrying out the policies in sections such as Water Code §§ 85020(c) and 85021. These violations were clear before. They are even clearer now given the September 2016 Evaluation and October 2016 Report by the State Water Board demonstrating that more through-Delta flows are necessary thus requiring reduction in exports.</p>	
Friends of the River	19	<p>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 ESA required range of reasonable alternatives. Instead, all Water Fix 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,</p>	Please see comment #17. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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		<p>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 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.</p> <p>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 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).</p> <p>Our organizations have communicated repeatedly over the years with BDCP/Water Fix officials about the failure to develop a range of reasonable alternatives in the environmental review process.</p> <p>Reclamation and DWR have ignored our repeated calls over the past several years to develop and consider alternatives increasing freshwater flows through 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 has been “fixed” by responses to comments in the 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.</p>	
Friends of the River	20	<p>Deliberate Refusal to Consider Alternatives Increasing Delta Flows</p> <p>The Final EIR/EIS responses to comments tacitly admit violating the Delta Reform Act mandates by arbitrarily stating project purposes and objectives that do not comply with requirements of the Act including developing real alternatives, reducing reliance on the Delta and restoring more natural flows.</p> <p>Reclamation and DWR have now marched along for more than five 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. Over five 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).</p>	Please see Comment #17. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Friends of the River	21	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. The plan is at: http://ewccalifornia.org/reports/ewcwaterplan9-1-2015.pdf . A copy of A Sustainable Water Plan for California is also attached hereto. The	This section discusses a September 2015 proposal submitted as part of the Environmental Water Caucus’s comments to the RDEIR/SDEIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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		<p>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 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.</p> <p>A Sustainable Water Plan for California is a carefully conceived modern, 21st-century Plan B. It should be Plan A.</p>	
Friends of the River	22	<p>There is more. On August 1, 2016, the CEQ issued a Memorandum for Heads of Federal Departments and Agencies: Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews. The Final Guidance fits this situation perfectly:</p> <p>The analysis of climate change impacts should focus on those aspects of the human environment that are impacted by both the proposed action and climate change. Climate change can make a resource, ecosystem, human community, or structure more susceptible to many types of impacts and lessen its resilience to other environmental impacts apart from climate change. This increase in vulnerability can exacerbate the effects of the proposed action. For example, a proposed action may require water from a stream that has diminishing quantities of available water because of decreased snow pack in the mountains, or add heat to a water body that is already warming due to increasing atmospheric temperatures. Such considerations are squarely within the scope of NEPA and can inform decisions on whether to proceed with, and how to design, the proposed action to eliminate or mitigate impacts exacerbated by climate change. (Final Guidance, p.21)(Emphasis added).</p> <p>We attach a copy of the Final Guidance. We request that official notice be taken of the Final Guidance. The Final Guidance is an official act of the executive department of the United States. Judicial notice of official acts of the executive departments of the United States is authorized by Ev. Code § 452(c).</p> <p>Here, climate change will be reducing, in the long-term, mountain snowpack and mountain stream runoff thereby reducing freshwater flows in the San Francisco Bay-Delta watershed and in the Delta itself. Among other things, reduction in flows will add heat to the water exacerbating impacts to fish, fish habitat, and human health. At the same time, climate change induced rising sea levels will exacerbate the salinity intrusion in the Delta. But the RDEIR/SDEIS-- directly contrary to the Final Guidance-- effectively ignored the effects of climate change in making determinations of significant impacts because those effects were already included in the baseline used for comparison.</p> <p>The Final Guidance states that:</p>	<p>This section discusses the commenter’s view that the Final EIR/EIS did not include adequate consideration of climate change and greenhouse gas emissions. For more information, please see Master Response #19, Climate Change and Greenhouse Gas Emissions, Volume 2, Final EIR/EIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>Regarding requests for official notice, the attachment referenced in this comment does not raise any raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S</p>

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		<p>Agencies should consider applying this guidance to projects in the EIS or EA preparation stage if this would inform the consideration of differences between alternatives or address comments raised through the public comment process with sufficient scientific basis that suggest the environmental analysis would be incomplete without application of the guidance, and the additional time and resources needed would be proportionate to the value of the information included. (Final Guidance, p. 34)(Emphasis added).</p> <p>The projections of long-term reduced San Francisco Bay Delta watershed runoff and rising sea levels inducing greater salinity intrusion continue to worsen. This will be reducing available water supply making the Water Tunnels alternative all the more infeasible as well as exacerbating the adverse environmental impacts if nevertheless the alternative is developed. This made the persistent refusal of Reclamation and DWR to develop and consider alternatives increasing freshwater flows through the Delta by reducing exports in the Draft Water Fix NEPA and CEQA documents all the more prejudicial to any kind of meaningful, informed public review. The failure to properly assess climate change impacts here is extremely serious.</p>	
Friends of the River	23	<p>Reclamation and DWR Must Present and Evaluate Alternatives that will Increase Delta Flows in order to Comply with NEPA and CEQA</p> <p>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). A Sustainable Water Plan for California and variants on it must be among those alternatives in a new Draft EIR/EIS for the Water Fix that helps to disclose, sharpen and clarify the issues.</p> <p>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. Instead of sharply defining the issues and providing a clear basis for choice among options, the BDCP consultants have now produced about 90,000 pages of conclusory Water Tunnels advocacy.</p> <p>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</p>	<p>This section discusses the commenter’s view that the Final EIR/EIS did not include an adequate range of alternatives, including one that increases Delta flows. For more information, please see Master Response #4, Alternatives Development, Volume 2, Final EIR/EIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>

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		<p>alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” § 15126.6(b).</p> <p>The court explained in <i>Watsonville Pilot’s Ass’n v. City of Watsonville</i> (2010) 183 Cal.App.4th 1059, 1087 that: “It is virtually a given that the alternatives to a project will not attain all of the project’s objectives. [citations] Nevertheless, an EIR is required to consider those alternatives that will ‘attain most of the basic objectives’ while avoiding or substantially reducing the environmental impacts of the project. (CEQA Guidelines, § 15126.6(a).)”</p>	
Friends of the River	24	<p>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.” <i>Friends of the Eel River v. Sonoma County Water Agency</i>, 108 Cal.App.4th 859, 873 (2003). Instead of complying with CEQA by considering such alternatives, the lead agencies have refused to do so.</p> <p>It is obvious that alternatives not including new upstream conveyance while increasing Delta flows by reducing exports would avoid or reduce the significant adverse impacts of taking substantial freshwater flows away from the Delta for the Water Fix Tunnels. A city violated CEQA when the draft and final EIR’s failed to consider feasible alternatives that would have reduced the significant impact of the project on the City’s water supply. <i>Habitat and Watershed Caretakers v. City of Santa Cruz</i>, 213 Cal.App.4th 1277, 1300-1305 (2013). “By failing to mention, discuss, or analyze any feasible alternatives, the draft EIR and the final EIR failed to satisfy the informational purpose of CEQA, which included providing [responsible agency] LAFCO with relevant information.” 213 Cal.App.4th at 1305. The CEQA documents here likewise fail to satisfy the informational purpose of CEQA.</p> <p>Alternatives reducing exports and not including new upstream conveyance are obvious alternatives to the Water Fix Tunnels project. Such alternatives, including A Sustainable Water Plan for California must be developed, considered and circulated for public review and comment in the EIR/EIS. Unless and until the CEQA mandate to develop and present a reasonable range of alternatives is complied with the decision-making stage of selecting an alternative and rejecting the alternatives not selected is not lawfully reached.</p> <p>Recirculation of a new Draft EIR/EIS will be required by CEQA Guidelines section 15088.5(a)(3) because the A Sustainable Water Plan for California 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.</p>	<p>This section discusses the commenter’s view that the Final EIR/EIS did not include an adequate range of alternatives, including one that increases Delta flows. For more information, please see Master Response #4, Alternatives Development, Volume 2, Final EIR/EIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>Alternative 8 consists of increasing Delta outflow and reducing exports. This alternative has several significant and adverse effects on upstream fish species due to changes in reservoir releases and instream flows.</p>
Friends of the River	25	<p>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.</p> <p>CEQA Guideline section 15088.5 (14 Cal. Code Regs. § 15088.5) requires that a new Draft EIR will have to be prepared both to develop a range of reasonable alternatives to increase</p>	<p>This section discusses the commenter’s view that the Final EIR/EIS did not include an adequate range of alternatives, including one that increases Delta flows. For more information, please see Master Response #4, Alternatives Development, Volume 2, Final EIR/EIS. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p> <p>Alternative 8 consists of increasing Delta outflow and reducing exports. This alternative has several significant and adverse effects on upstream fish species due to changes in reservoir</p>

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		<p>Delta flows by reducing exports and to accurately disclose and analyze water supply, water flow, and water quality degradation issues. 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) (Internal citations and quotation marks deleted).</p> <p>As explained in Mountain Lion Coalition v. Fish & Game Com., 214 Cal.App.3d 1043, 1052 (1989), 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.).</p> <p>As the EPA explained, it 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 Letter, p. 4; Our prior Letter, p. 4). The EPA concluded that deferral of water flow management decisions means "that any attempt to describe the environmental impacts of the project is necessarily incomplete." (EPA Letter, p. 2). It must be remembered that: "The fundamental goal of an EIR is to inform decision-makers and the public of any significant adverse effects the project is likely to have on the physical environment." Neighbors for Smart Rail v. Exposition Metro Line Construction Auth., 57 Cal.4th 439, 447 (2013). "[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA." Communities for a Better Environment v. City of Richmond, 184 Cal.App.4th 70, 88 (2010).</p> <p>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); 14 Code Cal. Regs § 15088.5(a)(1), (3), and (4).</p> <p>Alternatives Conclusion</p> <p>Reclamation and DWR must either drop the Water Tunnels project or finally prepare and issue for public review and comment and decision-maker review a new Draft EIR/EIS that includes the required range of reasonable alternatives. Alternatives including through-Delta conveyance and increasing Delta flows by reducing exports must be included</p>	<p>releases and instream flows.</p>
Friends of the River	26	<p>THERE MUST BE FULL OPERATIONS AND FINANCIAL DISCLOSURE IN THE NEW DRAFT EIR/EIS IF THE PROJECT IS NOT TERMINATED</p> <p>The proponent public agencies – Reclamation and DWR-- of what was first the BDCP and now the Water Fix project have always represented that the users of water conveyed by</p>	<p>This section discusses the commenter's view that full financial disclosure was not provided in the Final EIR/EIS. As a part of the public records act request, DWR released a draft version of the economic analysis as referenced by the comment. The draft has not been finalized and because this is not an environmental issue under CEQA further discussion of the issues raised in this report is not required to be included in the Final EIR. This comment</p>

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		<p>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). A copy of the Economic Analysis is attached. That 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). That is more than one third of the projected \$16 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.</p>	<p>does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Friends of the River	27	<p>Now, finally, the truth is out there for the world to see in the news article California water tunnels would need US funding, analyst says (Associated Press, by Ellen Knickmeyer, September 14, 2016):</p> <p>Giant tunnels that Gov. Jerry Brown wants to build to haul water across California are economically feasible only if the federal government bears a third of the nearly \$16 billion cost because local water districts may not benefit as expected, according to an analysis that the state commissioned last year but never released. The findings run counter to longstanding state pledges that the districts that would get water from the tunnels would pay the full cost. . .</p>	<p>Please see comment #26. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Friends of the River	28	<p>There is an additional element of misrepresentation involved here. As explained by Dr. Jeffrey Michael, Director of the Center for Business and Policy Research at the University of the Pacific (Comments, September 12, 2016) the subject Analysis "assumes water yields (the difference in export water delivery with and without the tunnels) are 4 times higher than in official Water Fix documents including its RDEIR/SDEIS (Recirculated Draft EIR/Supplemental Draft EIS) and petition [for change in point of diversion] to the State Water Resources Control Board." The NEPA and CEQA (California Environmental Quality Act) documents for the project are supposed to be environmental full disclosure documents. Instead, DWR has a secret Economic Analysis showing far greater water yields for the project beneficiaries and thus more severe adverse impacts on water quantity, quality, and designated critical habitat than have been set forth in the NEPA/CEQA documents provided to the public.</p> <p>This project reeks of misrepresentation. The public is told the beneficiary users will pay all costs of the project. In secret, the lead agencies have received information from their own economic consultant that a substantial public subsidy would be necessary for the project. The public is told one thing in public about water yields and corresponding impacts on the Delta and fisheries. In secret, the lead agencies base financial feasibility decision-making on assuming far higher water yields than disclosed to the public.</p>	<p>Please see comment #26. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Friends of the River	29	<p>These most recent concealments are part of a pattern of misconduct by the lead agencies. It was learned in April 2016 as a result of a whistleblower complaint by a Bureau of Reclamation employee that:</p>	<p>This section discusses an ongoing investigation of a whistleblower complaint by a Bureau of Reclamation employee. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>

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		<p>How the State of California spent millions of dollars of federal aid meant for improving fish habitat on preparing the Environmental Impact Statement for its controversial Delta Tunnel Project is under new legal scrutiny, according to documents posted today by Public Employees for Environmental Responsibility (PEER). Representing a U.S. Bureau of Reclamation employee, PEER filed a complaint detailing how a funding agreement with the California Water Resources Department [DWR] is illegally siphoning off funds that are supposed to benefit fish and wildlife to a project that will principally benefit irrigators. (Feds to Probe Delta Tunnel Misuse of Grant Funds, Inspector General to Audit California Water Resources Handling of Federal Aid, PEER Release, April 11, 2016).</p> <p>In addition, according to PEER Senior Counsel Paula Dinerstein: California is improperly diverting federal grants to a giant slush fund for the California Water Fix, . . . In this case, the Bureau of Reclamation is abetting the State of California in breaking laws designed to ensure that federal investments to benefit wildlife are not used to their detriment. (Id.).</p> <p>The Office of Inspector General, U.S. Department of the Interior, responded to PEER's complaint: "Based on this information we have decided to conduct a review into the issues raised in your letter and we expect to commence our work on this matter this month." (Letter, Mary L. Kendall, Deputy Inspector General to Paula Dinerstein, April 8, 2016). The investigation is ongoing.</p>	
Friends of the River	30	<p>On August 10, 2016, "The [California] Legislature's Joint Audit Committee voted to direct State Auditor Elaine Howle to delve into how the project, dubbed California Water Fix, has spent an estimated quarter-billion dollars on planning and how the state plans to finance its multi-billion-dollar cost." (Legislators approve audit of Gov. Jerry Brown's water tunnels plan, Dan Walters, Sacramento Bee, August 11, 2016).</p> <p>A major focus of our comments has always been 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 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.</p> <p>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 decisionmaker 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, 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.</p>	Please see comment #26. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Friends of the	31	In Natural Resources Defense Council v. U.S. Forest Service, 421 F.3d 797, 811 (9th Cir.	This comment brings up legal arguments related to adequacy of the EIR/EIS but doesn't

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River		<p>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.</p> <p>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. The public needs to be informed of these material facts prior to a new comment period on a new, honest Draft EIR/EIS.</p> <p>The California courts have repeatedly held that: An accurate, stable and finite project description is the sine qua non [absolutely indispensable requirement] of an informative and legally sufficient EIR. [citation deleted]. However, a curtailed, and enigmatic or unstable project description draws a red herring across the path of public input. [citation deleted]. 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. E.g., San Joaquin Raptor Rescue Center v. County of Merced, 149 Cal.App.4th 645, 654 (2007) (project description held unstable and misleading) (internal quotation marks deleted).</p> <p>Here, we have the opposite of an accurate, stable, and finite project description. Instead, we have an inaccurate, unstable, and misleading project description provided to the public while internally there are secret plans to make the public subsidize the project and to take more water away from the Delta than is disclosed to the public.</p> <p>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 constituted failure to proceed in the manner required by both NEPA and CEQA when Reclamation and DWR proceeded to issue the Final EIR/EIS on the Water Fix 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.</p>	<p>raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
Friends of the River	32	THIS PROJECT MAKES NO ECONOMIC SENSE	This section discusses the commenter’s view the California WaterFix does not make sense. It does not raise any new environmental issues that weren’t raised in the Final EIR/S. For

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		<p>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. It is time to terminate this project.</p> <p>First, as set forth above, 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.</p>	<p>more information, please see Master Response #5, BDCP, Volume 2, Final EIR/EIS, which includes a section on BDCP funding sources.</p>
Friends of the River	33	<p>This Project would be a Classic Corporate Welfare Public Subsidy</p> <p>Again, the Water Fix project would require a public subsidy. The secret is out. We addressed our discovery of this in our letters of September 22 and November 28, 2016 to the previous Administration and to California state government. No one in either the federal government or California state government, has explained who would or could pay the billions of dollars financial hole..</p> <p>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.</p>	<p>Please see comment #26. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Friends of the River	34	<p>The Costs Exceed the Benefits by Four to One</p> <p>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.</p> <p>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. 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."</p> <p>That is part of a 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</p>	<p>Please see comment #26. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>

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		required because no matter how they twisted the data, the benefits did not add up for the agricultural exporters.	
Friends of the River	35	<p>The Estimated \$17 billion Cost of the project is an Absurdly Low Estimate</p> <p>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 take 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.</p>	<p>This section describes the commenter’s view that the project cost estimate provided in the Final EIR/EIS is low. It does not raise any new issues that weren’t raised in the Final EIR/S. For more information about costing, please see Master Response #5, BDCP.</p>
Friends of the River	36	<p>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, <i>The Trouble with Megaprojects</i> (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). “Unfortunately, false cost-benefit estimates have a way of elevating big projects over more cost-efficient, less environmentally disruptive ones.” (Id., p. 4).</p> <p>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, <i>The delta tunnels-a project only engineers can love</i>, Los Angeles Times (November 20, 2016).</p>	<p>This section describes the commenter’s view that the project cost estimate provided in the Final EIR/EIS is low due to cost overruns. It does not raise any new environmental issues that weren’t raised in the Final EIR/S. For more information, please see Master Response #5, BDCP, Volume 2, Final EIR/EIS, which includes a section on BDCP funding sources.</p>
Friends of the River	37	<p>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</p>	<p>This section describes the commenter’s view that the project cost estimate provided in the Final EIR/EIS is low. It does not raise any new environmental issues that weren’t raised in the Final EIR/S. For more information, please see Master Response #5, BDCP, Volume 2, Final EIR/EIS, which includes a section on BDCP funding sources.</p>

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		<p>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.</p> <p>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.</p>	
Friends of the River	38	<p>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 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.’</p> <p>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.”</p>	This section describes the commenter’s view that the project cost estimate provided in the Final EIR/EIS is low. It does not raise any new environmental issues that weren’t raised in the Final EIR/S. For more information, please see Master Response #5, BDCP, Volume 2, Final EIR/EIS, which includes a section on BDCP funding sources.
Friends of the River	39	<p>It is Time to Terminate this Project or at least be Honest about it</p> <p>For numerous reasons it was failure to proceed in the manner required by law to issue the Final EIR/EIS on the Water Fix Delta Water Tunnels proposed project.</p> <p>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.</p> <p>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</p>	This section describes the commenter’s view that the project is a failure. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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		<p>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.</p> <p>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.</p> <p>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.</p>	
Friends of the River	40	NEW DEVELOPMENTS, CHANGED CIRCUMSTANCES, AND NEW INFORMATION REQUIRE PREPARATION AND CIRCULATION OF A NEW DRAFT, SUBSEQUENT, OR SUPPLEMENTAL EIR/EIS FOR PUBLIC REVIEW AND COMMENT, PRIOR TO CONSIDERING APPROVAL OF THIS PROJECT	This section is a header. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Friends of the River	41	<p>Much of significance has happened, or as the case may be, not happened since the close of the public review period for the RDEIR/SDEIS in October 2015.</p> <p>The EPA during its formal review gave the RDEIR/SDEIS it’s failing grade but allowed the process to proceed expecting that the missing information and analyses would be performed. That did not happen. That in itself is sufficient to render any approval of the project and its EIR/EIS unlawful under NEPA and CEQA in the absence of preparation and circulation of a new Draft EIR/EIS supplying the missing information and analyses, for informed public and decision-maker review and comment.</p> <p>The false denials of significant adverse impacts on Delta water quality, water quantity, fish and fish habitat in the RDEIR/SDEIS were proven false by the admissions of “likely to adversely affect” endangered and threatened fish species and their designated critical habitats by Reclamation in its BA issued in August 2016.</p> <p>The new Final Guidance issued in August 2016 by CEQ on consideration of the effects of climate change in NEPA reviews proves the inadequacy of the NEPA process for this project.</p>	This comment summarizes issues raised by the commenter earlier in the comment letter. Please refer to those comments. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.
Friends of the River	42	<p>The Draft NEPA and CEQA documents have at all times failed to include the heart of such documents; that being the required range of reasonable alternatives including real alternatives that would increase Delta flows, reduce exports, and not developing new upstream conveyance. That has always been clear. This fundamental and foundational violation of both NEPA and CEQA has since been made clearer by the Ninth Circuit Court of Appeals decision ruling against Reclamation. It has been made clearer still by the Superior Court, County of Sacramento decision in June 2016 determining that the Delta Reform Acts requires quantified or otherwise measurable targets associated with achieving reduced Delta reliance and quantified or otherwise measurable targets associated with restoring more natural flows.</p> <p>These violations of NEPA and CEQA are even clearer now given the September 2016 Evaluation and October 2016 Report by the State Water Board demonstrating that more through-Delta flows are necessary thus requiring reduction in exports.</p> <p>Last, but not least, it has been discovered that contrary to all public representations, a</p>	This comment summarizes issues raised by the commenter earlier in the comment letter. Please refer to those comments. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.

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		<p>public subsidy would be necessary for this project and that DWR has a secret plan to take far more water than what has been represented to be the case in what were supposed to be environmental full disclosure documents. It is also been discovered that DWR has misrepresented the true costs of the project which will in turn drastically magnify the amount of the necessary public subsidy.</p>	
Friends of the River	43	<p>All of this amounts to new developments, changed circumstances, and new information since the close of the public review period on the RDEIR/SDEIS in October 2015. All this, as set forth throughout this letter, requires preparation and circulation of a new Draft EIR/EIS for public review and comment before considering whether to approve this project and its EIR/EIS. In addition to the NEPA and CEQA regulations that have already been cited requiring a new Draft EIR/EIS and recirculation, there are additional pertinent regulations.</p> <p>CEQA itself requires new notice and new consultation when significant new information is added to an EIR. Public Resources Code § 21092.1. The failing grade issued by the EPA is significant new information that constitutes part of the EIS/EIR. That information was added after notice of preparation of the Draft environmental documents was given and prior to certification. Under CEQA, § 21092.1, notice must be given again and other actions such as providing for a comment period under § 21092 must be afforded.</p> <p>CEQA in Public Resources Code § 21166 requires preparation of subsequent EIR's by 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. Again, the circumstances have changed. The EPA has determined the Draft environmental documents to be inadequate. The expected fixing of the inadequacies did not happen. There are the other recent developments and changes in circumstances set forth above as well. Consequently, if a new Draft EIR/EIS is not prepared and circulated for public review, it will be necessary to prepare a subsequent EIS/EIR prior to considering approval of the project. Moreover, under NEPA, 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). What could be more significant than learning that the costs of the project exceed the benefits requiring a public subsidy and that there is a secret plan to take more water than was disclosed to the public in the Draft EIR/EIS and RDEIR/SDEIS? What could be more significant than the other recent developments and changes in circumstances set forth above?</p>	<p>This comment summarizes issues raised by the commenter earlier in the comment letter. Please refer to those comments. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>
Friends of the River	44	<p>CONCLUSION</p> <p>Extinction is forever. It is time to cure the deficiencies found by the EPA in October of 2015. It is time to finally stop hiding the ball from the public. Reclamation and DWR falsely denied in the Draft NEPA and CEQA documents issued in July 2015 that there would be significant adverse impacts resulting from taking large quantities of water upstream from the Delta. That was what they had told the public in opening the public review and comment period. Later, when there was no public review and comment period, Reclamation issued a BA admitting that indeed, the project is "likely to adversely affect" endangered and threatened fish species and their designated critical habitats. The only way this trick on the public can be prevented is by either dropping the project or issuing a new, honest Draft EIR/EIS for public review and comment. And the required range of reasonable alternatives including ones increasing Delta flows by reducing exports must be included in the new Draft.</p>	<p>This comment summarizes issues raised by the commenter earlier in the comment letter. Please refer to those comments. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/EIS.</p>

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		Finally, the new Draft EIR/EIS must not only include environmental full disclosure. It must also include economic full disclosure and honesty. The public needs the opportunity to review and comment on the project after the public has been told the truth-- a large public subsidy would be necessary for this project.	
Friends of the River	ATT 1	Benefit-Cost Analysis of the California Water Fix (August 2016)	This attachment is a cost-benefit analysis of the proposed project and does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 2	January 19, 2017 OBJECTION TO 1/30/17 CLOSE OF WATERFIX REVIEW	This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S. Please see Federal Register Notice Period for the California WaterFix Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS) letter regarding requests for extending NEPA review period.
Friends of the River	ATT 3	October 30, 2015 letter from Jared Blumenfeld, EPA Region IX Administrator to David Murillo, Regional Director, Reclamation, Mid-Pacific Region.	This attachment was received during a previous comment period and does not raise any substantive new environmental issues that were not previously addressed in Volume 2, response to comment letter 2577 of the Final EIR/S.
Friends of the River	ATT 4	The EPA and State Water Board were hardly alone in their findings. The Delta Independent Science Board (DISB) Review found "the Current Draft sufficiently incomplete and opaque to deter its evaluation and use by decision-makers, resource managers, scientists, and the broader public." (DISB Review, September 30, 2015, at 1, attached to Delta Stewardship Council October 27, 2015 comment letter).	This attachment was received during a previous comment period and does not raise any substantive new environmental issues that were not previously addressed in Volume 2, response to comment letter 2546 of the Final EIR/S.
Friends of the River	ATT 5	California Water Fix Project Pre-Hearing Conference Ruling, State Water Board, pp. 8-9, February 11, 2016	This attachment is a 2016 WaterFix project pre-hearing ruling that relates to the hearing proceedings regarding petition filed by the Department of Water Resources and U.S. Bureau of Reclamation requesting change in point of diversion for the California WaterFix. This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
Friends of the River	ATT 6	Letter, Kathleen H. Johnson, Director, Enforcement Division, EPA Region IX to David Murillo, Regional Director, Bureau of Reclamation (January 18, 2017).	Please see the comment table for; Letter, Kathleen H. Johnson, Director, Enforcement Division, EPA Region IX to David Murillo, Regional Director, Bureau of Reclamation (January 18, 2017).
Friends of the River	ATT 7	Reclamation has been ignoring the "at the earliest possible time" and "concurrently with and integrated with" duties under NEPA and the ESA for more than three years now despite repeated requests for compliance with these laws starting with Friends of the River comment letters to federal and State officials of June 29, 2013, p. 6; and November 18, 2013, p. 4	This attachment is not a reference and does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 8	Our organizations have commented repeatedly over the years that expert federal and State agencies have also found the alternatives analyses deficient as shown by the August 26, 2014 EPA 40-page review; July 29, 2014 State Water Board 38-page review; and July 16, 2014 U.S. Army Corps of Engineers comment letter	This attachment was received during a previous comment period and does not raise any substantive new environmental issues that were not previously addressed in Volume 2, response to comment letter 2006, comment letter 1741 and comment letter 2014 of the Final EIR/S.
Friends of the River	ATT 9	Bent Flyvberg, Delusion and Deception in Large Infrastructure Projects, 51 California Management Review 170 (Winter 2009).	This attachment is a report on large infrastructure report and does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 10	August 2, 2016, Biological Assessment, California Water Fix, chapter 7, Effects Determination	This attachment relates to the Section 7 and Biological Opinion process and associated analyses, which are separate from the CEQA/NEPA process. See Section 5, Endangered Species Compliance, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on the BiOp and 2081(b) process.
Friends of the River	ATT 11	A Sustainable Water Plan for California (Environmental Water Caucus, May 2015)	This attachment is a EWC report does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 12	August 1, 2016, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews	This attachment is a Federal report does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 13	November 15, 2015, CalWater Fix Economic Analysis	This attachment is an economic analysis and does not raise any new substantive

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River			environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 14	September, 2016, Evaluation of San Joaquin River Flow and Southern Delta Water Quality Objectives and implementation, Executive Summary, SWRCB	This attachment is a SWRCB report and does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 15	October, 2016, Working Draft Scientific Basis Report for New and Revised Flow Requirements on the Sacramento River and Tributaries, Eastside Tributaries to the Delta, Delta Outflow, and Interior Delta Operations, SWRCB	This attachment is a SWRCB report and does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 16	September, 2016, San Francisco Bay: The Freshwater-Starved Estuary, The Bay Institute	This attachment is a Bay Institute report and does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 17	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)	This attachment is a court ruling and does not raise any new substantive environmental issues related to the Final EIR/EIS.
Friends of the River	ATT 18	Delta Stewardship Council Cases (Judicial Council Coordination Proceeding No. 4758) Rulings of May 18 and June 24, 2016	This attachment is a court ruling and does not raise any new substantive environmental issues related to the Final EIR/EIS.