



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

February 17, 2016

State Water Resources Control Board Members, Chief Counsel and Staff **via Email**

Re: Written Comments Responding to CEQA Procedural Ruling in California Water Fix State Water Board hearing process

Dear State Water Resources Control Board Members, Chief Counsel and Staff:

On February 11, 2016, the State Water Board Hearing Officers issued a procedural ruling in the California Water Fix hearing process. The ruling includes the astonishing statement that:

Despite this admonition [“the adequacy of the CEQA documentation for the Water Fix for purposes of CEQA is not a key hearing issue”], several parties argued the draft Environmental Impact Report (EIR) that DWR has prepared for the project is inadequate, and that an adequate document must be prepared before the State Water Board may hold a hearing on the change petition. (Ruling, p. 8).

The State Water Board still declines to candidly disclose that the Environmental Protection Agency (EPA) October 30, 2015, formal review of the Water Fix Draft environmental documents gave them the failing grade of “3, *inadequate*.” The State Water Board still tries to mount a “we are only a responsible agency” defense instead of candidly admitting to all of the parties to this proceeding that the EPA explained it expects 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). Instead of doing what the EPA expected and the law requires the State Water Board still proposes to commence the hearing with the protestants and the public deprived of the adequate Draft or Subsequent EIR they are entitled to under the California Environmental Quality Act (CEQA).

Our organizations are protestants in the Water Fix hearing process.¹ In our joint letter of January 21, 2016 we (Friends of the River, Sierra Club California, and Planning and Conservation League) requested that the State Water Board comply with CEQA by requiring the preparation of an adequate Draft or Subsequent EIR.²

We address this to the full State Water Board as the full Board is both subject to the requirements of CEQA and is also involved in the Water Fix hearing process. On February 2, 2016 the full Board met in Closed Session about the Water Fix hearing process with Legal Counsel as reflected in the Board agenda for that meeting.

In our prior correspondence we specifically pointed out the continued failure of the lead BDCP/Water Fix agencies to develop, consider, and circulate for public and decision-maker review and comment the CEQA required range of reasonable alternatives to the Delta Water Tunnels Water Fix proposed project.³ We specifically requested development and consideration of the Environmental Water Caucus (EWC) alternative, *A Sustainable Water Plan for California* (May 2015) and attached a copy of that alternative to our January 21, 2016 letter. The State Water Board in its Ruling recognizes that we argued “that the draft EIR does not include a reasonable range of alternatives that is adequate for purposes of the State Water Board’s decision-making process.” (Ruling, p. 9). Instead of conducting further pre-hearing proceedings on this issue, the Board simply concludes “at this point, however, it is uncertain whether any subsequent or supplemental documentation will be required.” (Ruling, p. 9). We repeat our request for development and consideration of the EWC alternative along with good faith variants of that alternative. By way of brief summary, the *Sustainable Water Plan* alternative includes reducing exports out of the Delta to 3,000,000 acre-feet. Also included are: spending funds on such modern water measures as water conservation, water recycling, groundwater treatment and desalination and agricultural water conservation including conversion to drip irrigation in export areas, annual crops in export areas that can be fallowed in drought years, and staged removal from production of drainage-impaired lands in export areas that worsen water quality by such consequences as selenium discharge.⁴

¹ Our organizations are Friends of the River, Sierra Club California, Planning and Conservation League, Environmental Water Caucus, Restore the Delta, California Water Impact Network, California Sportfishing Protection Alliance, and Save the California Delta Alliance.

² As referenced in that letter, we had also requested CEQA compliance in the earlier joint letter of November 24, 2015 to the full Board submitted by FOR and several other public interest organizations.

³ The requirement is sometimes stated as range of reasonable alternatives, and other times stated as reasonable range of alternatives.

⁴ We note that we are not the only ones to request development and consideration of alternatives to the Water Fix Tunnels. For examples, Congressman John Garamendi’s *A Water Plan for All of California, Little Sip Big Gulp* alternative was proposed to the Board in his letters of December 15, 2015 and January 19, 2016 and NRDC’s *Portfolio alternative* was first proposed but ignored by the lead agencies three years ago.

The court explained in *Watsonville Pilot's Ass'n v. City of Watsonville* (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).)" This is a procedural point. 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. 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.

As we said before, an ultimate decision to approve the Water Fix project will be a nullity in the absence of CEQA compliance. We therefore request the full State Water Board to require suspension of, instead of expediting, the Water Fix hearing process until such time as an adequate Draft or Subsequent EIR has been prepared, considered, and circulated for public and decision-maker review and comment including presentation of a reasonable range of alternatives including but not limited to the *A Sustainable Water Plan for California* alternative.⁵

Finally, our use of the word "*astonishing*" at the outset of this letter is reflective of the fact that the Board's admonishments to protestants and attempts to suppress CEQA comments and arguments during this process fly in the face of the informational purposes of CEQA. CEQA requires that "an agency must use its best efforts to find out and disclose all that it reasonably can" about the project being considered and its environmental impacts. *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 412, 428 (2007); 14 Cal. Code Regs 15144.⁶ The State Water Board needs to turn around and embrace CEQA instead of trying to silence parties trying to raise CEQA issues.

In conclusion, the only thing "transparent" here is the effort to prejudice protestants and the public interest by presenting and expediting the sole alternative of the Water Fix Tunnels. Of course that can make it easier to approve the Change Petition if the State Water Board refuses to even consider reasonable and feasible alternatives like *A Sustainable Water Plan for California*. But of course also, the absence of the required range of reasonable alternatives and disclosure of significant adverse environmental impacts are failures to proceed in the manner required by CEQA. And these environmental disclosure failures under CEQA are compounded by the Board's refusal to update the Bay-Delta Plan before holding the hearing. (Ruling, pp. 3-5).

If you have any questions, please contact Robert Wright, Senior Counsel, Friends of the River, at (916) 442-3155 ext. 207 or bwright@friendsoftheriver.org.

⁵ This short letter focusing on the CEQA alternatives analysis requirement does not waive, withdraw or modify any of the CEQA or other issues raised previously by us.

⁶ "CEQA requires full environmental disclosure." *Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70, 88 (2010). A primary goal of CEQA is "transparency in environmental decision-making." *Save Tara v. City of West Hollywood*, 45 Cal.4th 116, 136 (2008).

Sincerely,

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All Party Representatives on SWRCB February 10, 2016 Service List