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September 16, 2015

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
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Re: Reject California's Proposed Delta Tunnels Project--Too Risky and Not Justified.

Dear Madam Secretary:

The State of California is accelerating a water tunnels project to divert Sacramento River flows under the San Francisco Bay Delta Estuary. At stake is destruction of the West Coast's largest estuary, a nursery for fish and wildlife that feeds the Pacific Flyway (from Mexico to Alaska), commercial fishing operations in three states, a thriving tourist economy and vibrant farm community, drinking water for 5 million people in the San Francisco Bay Area, and essential natural water hub for recreation and community enjoyment.

Taking this water for export before it reaches the estuary and bay, will lead to decades of pubic dissension and box the federal government into a corner replete with huge costs and obstacles to meeting its statutory and legal obligations. Independent state scientists recently testified that the project is legally deficient and not justifiable.[i] The proposed Delta Water Tunnels will not solve current or future droughts because they create no new water supply.[ii] Moreover, they are so large they could easily drain the Delta Estuary of essential freshwater. Before saddling taxpayers with a multi-billion dollar mortgage, years of confusion and a legacy of conflict, more cost effective water supply alternatives must be considered and implemented. This multibillion-dollar tunnels plan hinders real statewide water solutions for California. Policy analysis of the proposed project fails to consider more cost-effective water conservation alternatives that produce more water now in comparison to waiting the decades it will take to construct these experimental tunnels before determining if the investment was worth it.[iii]

By the end of 2015, state and federal officials plan to have the Delta Water Tunnels project record of decision on your desk for approval. This may be one of the most important decisions you make as Interior Secretary and we, along with our representative citizen members, strongly urge you to make this decision your highest priority, give it thoughtful consideration, and reject the Delta Water Tunnels project. For decades freshwater diversions from the San Francisco Bay Delta estuary have been a highly contentious issue within the electorate, courts and regulatory agencies because of the potential damage to one of the largest estuaries on the west coast of North America and the impacts to surrounding watersheds, communities and water dependent industries. Past efforts to build similar water export projects were rejected by voters, and with good reason.

As currently proposed, the State of California's water tunnels project does not comply with Federal law and it will prevent the Department of Interior and other agencies from meeting

their collective responsibilities to protect the San Francisco Bay Delta ecosystem. The water tunnels would serve both the federal Central Valley Project (CVP) and the California State Water Project (SWP). The CVP and SWP currently pump freshwater from the Bay-Delta after it has flowed through the estuary from the Sacramento and San Joaquin Rivers. The State of California and USBR have now unilaterally proposed that the new tunnels would take much of the freshwater flow of the Sacramento River before it reaches the Bay-Delta and divert it underneath the estuary through two massive tunnels to CVP pumps near Tracy.[iv] An engineering undertaking of this magnitude has never been attempted. More importantly, it would have devastating impacts on the Delta ecosystem, and inhibit your agency's ability to comply with the Clean Water Act, Endangered Species Act, Fish and Wildlife Coordination Act and to meet your trust obligations to Native Americans, especially those on the North Coast that depend on waters from the Trinity River Division. The resulting federal confusion will lead to decades of legal and political conflict, not a good legacy for the Department of Interior. All of this can be avoided if you show bold leadership and foresight by rejecting this project.

Diverting the highest quality freshwater inflow from the Bay-Delta system would lead to unprecedented change in the ecosystem character and sustainability. As for habitat and endangered species, they will be permanently, detrimentally affected. Impact studies on flow restrictions to San Francisco Bay have been largely excluded from public review and the resulting effect of years of flow restrictions omitted. Impacts to water dependent industries that count on a healthy bay and estuary have been ignored or brushed aside. Drinking and recreational contact water quality impacts, including flow related toxic harmful algae blooms will impact millions of people who depend on a healthy estuary to live, play, work, farm and fish. The public comment review for this multi-billion-dollar Delta Water Tunnels Project ends October 30, 2015.

Madame Secretary, the Department of the Interior needs to speak with one voice in clear opposition to this project. Please listen to <u>all</u> your experts. Serious and potentially catastrophic issues have been raised by Fish and Wildlife Services' red flag memos,[v] USGS has expressed concerns about pollution emanating from exporting more Delta water to irrigate toxic San Joaquin Valley west side soils,[vi] and an Interior commissioned National Academy of Sciences (NRC Report) report concluded the water tunnels approach "contains critical scientific gaps."[vii] These experts, along with National Marine Fisheries and the U.S. Environmental Protection Agency have rung alarm bells, informing you that if approved, you won't be able to meet your legal duties.[viii] USBR has failed to look at alternative operations that will not have such devastating impacts on fish and wildlife.[ix]

Just recently, prior to your decision to proceed, USBR jumped the gun to file a water rights application for new points of diversion for the tunnels with the State Water Resources Control Board, assuming that the project complies with all applicable federal laws and regulations.[x] On the contrary, compliance is highly doubtful. We have a classic case in which different agencies within the Department go in different directions BEFORE you, Madam Secretary, have given unambiguous policy direction, let alone approved any Record of Decision (ROD) on the water tunnels project. In addition to the water rights filing, USBR petitioned the Army Corps of Engineers for permission to perform dredge and fill construction activities for the water tunnels long before the project has received other necessary approvals. This heightens the

public's fears that USBR and the State are trying to force the project through administrative channels without proper review. On the other hand, their inaction with regard to Section 7 consultation with the fisheries agencies compounds the public's fears that realistic and prudent alternatives are being ignored and avoided. Their actions with the State Water Board and the Corps of Engineers are premature given their inaction on Section 7 consultation, and should be withdrawn. Embedded in this rush to act before safeguards are approved and analysis is completed, is the notion of building a project without operating plans. Building it now and learning to operate it later is not a recipe for success.

Madam Secretary, the Delta Water Tunnels Project is a massive experiment that has not been adequately thought through and presents unprecedented environmental and economic risks. The CVP and SWP already have a lengthy history of not meeting conservation objectives. For almost a decade, the projects' coordinated operations have made little or no progress in meeting required mitigation measures including the required purchase of 27,000 acres of endangered species habitat.[xi] Populations of listed fish species have declined to dangerous levels in this period. There should be no rush to make decisions that would hasten their extinction.

Prior to any decision on this contentious, expensive and risky project, please meet with us. Such a meeting is essential to understanding the impacts from the proposed tunnels project as it proposes to pick one region of the state over another, creating needless dissension and destruction of the one of the United States' most vibrant estuaries. The San Francisco Sacramento-San Joaquin River Delta and San Francisco Bay serve as a nursery and breeding grounds for iconic species on the brink of becoming extinct, such as salmon that, if lost, will set in motion an ecological chain reaction extinguishing orcas (*Orcinus orca)* and along with support for over 750 species. Please protect this national treasure and stand firm in the defense of our legal and environmental protections, put in place to defend the economic viability and natural resources owned by the people, of the United States of America.

Respectfully submitted, with regard,

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***Endnotes***

[i] See: Delta Independent Science Board testimony: http://deltacouncil.ca.gov/docs/delta-isb-s-review-rdeirsdeis-bdcpcalifornia-waterfix

[ii] See: http://baydeltaconservationplan.com/Home.aspx

[iii] See: http://www.ewccalifornia.org/reports/ewcwaterplan9-1-2015.pdf

[iv] The legal authorization for this unilateral federal action is not clear, especially given Congressional limitations imposed on the CVP coordinating operations with the State Water Project and mandated compliance with provisions of the San Luis Act CVP operations. The San Luis Act (P.L. 86-488) requires USBR to construct and operate the CVP's San Luis Unit in accordance with the 1956 Feasibility Report where US Fish and Wildlife indicated the San Luis Project is "risky" for fish and wildlife. And thus, they retained jurisdiction under the Fish and Wildlife Coordination Act.
http://cdm15911.contentdm.oclc.org/cdm/ref/collection/p15911coll10/id/2106

[v] See: http://www.allonewater.com/WM/WMArticles/Letter_From_Friends_of_the_River_About_Fatal_Flaws_21910.aspx
http://www.epa.gov/region9/nepa/letters/ca/bay-delta-conservation-plan-deis.pdf

[vi] See: http://pubs.usgs.gov/fs/2004/3091/ and
http://water.usgs.gov/nrp/publications.php?pID=528d1de3e4b0c629af455a32&sciName=Theresa%20S%20Presser

[vii] See: http://dels.nas.edu/resources/static-assets/materials-based-on-reports/reports-in-brief/bay-delta-report-brief-final.pdf

[viii] See: http://www.friendsoftheriver.org/site/DocServer/8-26-14_EPA_Cmmnt_on_BDCP.pdf?docID=9539;
http://www.friendsoftheriver.org/site/DocServer/7_16_14_Corps_cmts.pdf?docID=9701
http://www.friendsoftheriver.org/site/DocServer/9_9_15_BDCP_final_ltr_pdf.pdf?docID=10384

[ix] See http://www.essexpartnership.com/bdcp/summary-of-fish-scenario-modeling/

[x] http://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/petitions/2007/20245usbr_petition.pdf
http://restorethedelta.org/blog/delta-tunnel-news-ca-water-board-gets-fixed-application-to-take-water/
See also the permit application to the Army Corps:
https://s3.amazonaws.com/californiawater/pdfs/5n2mg_Complete_Final_CA_Water_Fix_USACE_404_Permit_Application.pdf

[xi] http://deltacouncil.ca.gov/sites/default/files/documents/files/Final_RPA_Matrix_for_Annual-Review_10_1_13.pdf
http://www.water.ca.gov/environmentalservices/frpa.cfm
http://www.fws.gov/sfbaydelta/documents/delta_smelt_water_projects_bo_briefing_jan_23-24-2013.pdf