THE TUNNELS AND ENDANGERED SPECIES 9/29/15

Good morning, I'm Bob Wright and I represent Friends of the River

We can never forget that while profit is for today, Extinction is forever. That is why, in the words of the Supreme Court the ESA requires federal agencies "to afford first priority to the declared national policy of saving endangered species." [*Tennessee Valley Authority v. Hill,* 437 U.S. 153, 185 (1978)]

The Delta Water Tunnels would instead destroy endangered and threatened fish species. The Tunnels would divert for the Central Valley and State Water Projects vast quantities of freshwater from the Sacramento River near Clarksburg that would no longer flow through the lower Sacramento River, sloughs, and Delta. This would jeopardize the continued existence of endangered and threatened species of fish and adversely modify their designated critical habitat by taking away freshwater flows for Winter Run Chinook salmon, spring-run Chinook salmon, Central Valley steelhead, green Sturgeon, and Delta smelt.

The populations of these fish species have already declined from 100,000 winter run Chinook salmon, 600,000 spring-run Chinook salmon, and over 1 million steelhead to 10,000 or fewer wild fish in each case. The southern population of green Sturgeon has been reduced to about 300 fish and recent surveys have failed to detect any Delta smelt.

This is the massively expensive public works boondoggle equivalent of pouring gasoline on a building that is already on fire.

FIRST, the BDCP/Water Fix federal agency, the Bureau of Reclamation evades disclosing this ESA extinction issue in the EIS/EIR documents by having ignored for the past nine years the ESA procedural obligation to review its actions "at the earliest possible time" to determine whether any action may affect endangered species or their critical habitat and if so to initiate formal consultation with the NMFS and USFWS. [ESA §7, 16 U.S.C. 1536(a)(4); 50 C.F.R. § 402.14]

As a result, Reclamation has evaded the ESA-required formal consultation required if the project would have "Any possible effect, whether beneficial, benign, adverse or of an undetermined character, triggers the formal consultation requirement."[*Karuk Tribe v. of California v. U.S. Forest Service*, 681 F.3d 1006, 1027 (9th Cir. 2012)(en banc) cert. denied, 133 S.Ct. 1579 (2013).

Thus, Reclamation has not prepared the required BA or obtained the required BO which is what consultation involves. By this, Reclamation has violated the NEPA requirement that "To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the . . . Endangered Species Act . . ." [40 C.F.R. § 1502.25(a)]

Because of these violations the public is left with 48,000 pages of Tunnels advocacy prepared by the self-interested project consultants to review instead of the missing, expert BO's prepared by the NMFS and US FWS scientists.

SECOND, the reason Reclamation continues to evade the ESA is because as explained by the federal courts, "ESA section 7 prohibits a federal agency from taking any action that is 'likely to

jeopardize the continued existence' of any listed or threatened species or 'result in the destruction or adverse modification' of those species critical habitat." [*San Luis & Delta-Mendota Water Auth. v. Locke*, 776 F.3d 971, 987 (9th Cir. 2015); 16 U.S.C. § 1536(a)(2)]

Reclamation and DWR continue to try to avoid facing the reality that the Water Tunnels cannot be permitted under the ESA because taking enormous quantities of freshwater flows away from the designated critical habitat for the endangered fish species would adversely modify their habitat and is thus prohibited by law.

I close by saying once more that while profit is for today, extinction is forever.