

Letter	Comment #	Comments	Relation to Final EIR/EIS
San Joaquin Agencies	1	<p>1. Summary and Overview: California Water Fix, Like BDCP, Would Undermine Protections Under the Delta Reform Act and Other Laws</p> <p>This letter, jointly submitted on behalf of San Joaquin County, Central Delta Water Agency, and South Delta Water Agency (collectively the “San Joaquin Agencies”), provides joint comments on the Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS) for the Bay Delta Conservation Plan/California WaterFix (“the project” or “Delta tunnels”). These agencies incorporate by reference, and reaffirm the continued relevance, of all their joint and individual comments on draft EIR/EIS documents circulated in 2013 and 2015. San Joaquin County joins in comments on the FEIR/FEIS submitted independently by Central Delta Water Agency, and South Delta Water Agency. The United States Bureau of Reclamation (USBR), acting as federal lead agency, has issued notice of availability (NOA) for the project’s FEIR/FEIS, published in the Federal Register on December 30, 2016, after coordinating with the state lead agency, the Department of Water Resources (DWR).</p> <p>The San Joaquin Agencies identify major errors and omissions in the FEIR/FEIS, and more broadly, a presently-missed opportunity for state and federal lead agencies to reconsider making a phenomenally costly and dangerous gamble with the future of the county, the Delta region, and California’s most precious natural resource. The proposed Delta tunnels are one of the most complex and controversial projects in California history, with enormous consequences statewide and for the Delta’s resources and people. Almost two-thirds of the legally-defined Delta is located in San Joaquin County, which would bear the brunt of many of the project’s unavoidable adverse impacts: both those acknowledged in the FEIR/FEIS (Vol. I, ES-57 to ES-147; Ch. 31, Table 31-1), and others whose extent and severity remain unacknowledged, unstudied, or finessed through references to incomplete and separate proceedings, or to vague or unenforceable mitigation measures.</p>	<p>This section summarizes the comments of San Joaquin County, Central Delta Water Agency and South Delta Water Agency provided in detail below. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
San Joaquin Agencies	2	<p>At the outset, the San Joaquin Agencies reaffirm their strong objection to treating January 30, 2017 as a cutoff point to identify grounds for noncompliance with CEQA, NEPA and other laws. On January 17, 2017, the San Joaquin Agencies submitted a letter jointly objecting to the proposed cutoff, addressing language in the NOA that appeared to impose such a limitation on presenting grounds for CEQA objection. (Exhibit 1.) The letter noted that the late-December release of the FEIR/FEIS and supporting documents exceeded 80,000 pages, making a 30-day period arbitrarily and unreasonably short.</p> <p>Furthermore, the San Joaquin Agencies’ letter relied on the recognition of DWR and USBR that they would not be able to complete their review and make final decisions on the project until after examining scientific peer review and final biological opinions on the California WaterFix project, which the lead agencies did not expect to be complete until April 2017. The San Joaquin Agencies argued, and still maintain, that the public’s ability to identify grounds for objection under CEQA and other laws cannot be curtailed before having any meaningful opportunity to address yet-to-be-released information, including studies that DWR and USBR themselves deem indispensable to their own review and decisions. Based on this impending breach of CEQA’s core duties to ensure accountable and informed decision-making prior to the lead agency’s final decision, the San Joaquin Agencies also called for prompt scheduling of a public hearing preceding any certification and final decision-making.</p>	<p>This comment is an opinion that the NEPA Federal Register period of 30 days was inadequate for the purpose of providing substantive comments on the Final EIR/EIS. This section does not raise any substantive new environmental issues that weren’t raised 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.</p>

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		<p>The San Joaquin Agencies requested a response by January 20, but DWR and USBR did not provide one to the San Joaquin Agencies until January 26 (Exhibit 2.) That response letter not only refused any relief from DWR’s January 30 cutoff, but made it worse, seeking without foundation to apply it also to USBR. Relying on this premature cutoff to curtail public objections under CEQA, NEPA, or other laws to the project as finally configured and supported would be unlawful and prejudicial. Amplifying the prejudice imposed on the Delta agencies, members of the Delta Independent Science Board (DISB) at their January 13, 2017 meeting similarly objected to the present FEIR/FEIS’s failures to address their earlier criticisms, including the misuse of adaptive management, and noted that they did not expect to complete their analysis of the document until a March 2017 meeting, well after the arbitrary January 30 cutoff. See http://cal-span.org/unipage/index.php?site=cal-span&owner=DISB&date=2017-01-13.</p> <p>Although reserving the opportunity for further objections is not legally necessary, the San Joaquin Agencies in an abundance of caution do so here, while also making a good-faith attempt to identify at least some of the foundational problems within the requested January 30, 2017 response time. Rarely has environmental review of a major infrastructure project labored so mightily and so long to avoid directly addressing its most damaging consequences. Several years have passed since “red flag” reviews from other agencies on the Bay Delta Conservation Plan (BDCP) finally signaled to DWR and USBR what should have been clear already: that construction of a massive twin tunnel project, which would greatly reduce the natural flow of water through the Delta below its already-unsustainable levels, cannot qualify as a Habitat Conservation Plan (HCP) and Natural Community Conservation Plan (NCCP) under the respective requirements of federal and state laws. Failing as a HCP and NCCP also undermined BDCP’s tenuous financing, which largely rested on obtaining fifty-year assurances for water contractors based on those plans.</p>	
San Joaquin Agencies	3	<p>Faced with the hard but historic opportunity to work together with Delta counties and communities in developing workable governance and a more sustainable path forward, DWR and USBR chose instead in 2015 to virtually eliminate the “conservation plan” as part of the Bay Delta Conservation Plan, and after revision to repackage the original plan’s worst feature—the twin tunnel conveyance—as a new “preferred” alternative, California WaterFix (Alternative 4A). Despite overwhelming evidence of BDCP’s scientific and legal infeasibility, the lead agencies did not even completely recirculate the draft plan and EIR/EIS. Although allowing new comments, they did little to reopen earlier efforts, however compromised, at engaging affected communities in new project planning and heeding their concerns.</p> <p>Despite its length and density, the December 2016 FEIR/FEIS does little to fix major problems identified in comments on earlier drafts. It also sidesteps major criticisms from other agencies and the public, ignores changed circumstances and new evidence arising since public comment last closed, and strains to make benign assumptions about project operations and avoidance of conflict with other uses that also depend the outcome of other pending proceedings, including the State Water Resources Control Board’s review of the project’s change petition and on its consideration of flow and salinity criteria as part of the planned updates to the Bay-Delta Water Quality Control Plan.</p>	<p>This comment is about alternatives development, SWRCB change petition, Bay-Delta Water Quality Control Plan, recreation, agriculture, and aquatic and terrestrial biological resources.</p> <p>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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		<p>Approval of the Delta tunnels project based on this review would threaten Delta farms and communities as well as its fisheries and protected species, abrogating commitments under more than half a century of Delta legislation and other legal requirements. (See, e.g., Wat. Code, §§ 12200-12205 (Delta Reform Act of 1959, establishing the priority of Delta beneficial uses over exports); Wat. Code, § 85023 (identifying “the constitutional principle of reasonable use and the public trust doctrine” as foundations of state water management policy that are “particularly important and applicable to the Delta”).) Yet like the embattled knight in an old Monty Python skit, BDCP/California Water Fix soldiers on with little to stand on, other than the determination to expand conveyance capacity even though the latest “BDCP” project cannot either protect the Bay-Delta or qualify as a conservation plan.</p>	
San Joaquin Agencies	4	<p>The 2009 Delta Protection Act’s goal of providing California a “more reliable water supply” cannot be lawfully achieved by subordinating the other “coequal” goal of “protecting, enhancing and restoring the Delta ecosystem” (Wat. Code, § 85054), or by allowing DWR to evade its duty under the Act’s statewide policy to reduce reliance on Delta water (Wat. Code, § 85021). As the Legislature made clear, when close calls need to be made, “permanent protection of the Delta’s natural and scenic resources” remains “the paramount concern to present and future residents of the state and nation. (Wat. Code, § 85022, subd. (c)(2) (emphasis added); accord, In Re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings (2000) 43 Cal.4th 1143, 1168 (infra, page 5.) Reversing that required course, Master Response 31 in the FEIR/FEIS disingenuously adopts a crabbed reading abandoning any pretense of “achieving” the coequal goals, proposing that “furthering” them, whatever that means, is enough. (Vol. 1, 1-276.) California WaterFix, in any event, would do neither.</p> <p>These substantive mandates, like the interactive process of project definition and responsive modification inherent in CEQA and NEPA, do not allow predisposition or tilting of environmental review in favor of a twin tunnel conveyance project predicted by authoritative agencies to contribute to the Delta ecosystem’s decline, and detract from the Delta’s protection or restoration.</p> <p>In short, despite repackaging of what remains an unsustainable water conveyance project, BDCP/California WaterFix is now apparently nearing final project decisions without heeding the basic concern expressed in the National Academies of Sciences’ National Research Council, in a prescient 2011 review of the then-current version of BDCP, that favoring a conveyance option detached from the science informing the selection would place “the cart before the horse.” NAS, A Review of the Use of Science and Adaptive Management in California’s Draft Bay Delta Conservation Plan (2011); https://www.nap.edu/catalog/13148/a-review-of-the-use-of-science-and-adaptive-management-in-californias-draft-bay-delta-conservation-plan. (Id., p. 3.) The NAS report warned that “much of the BDCP appears to be a post-hoc rationalization of the water supply elements of the BDCP.” (Id. at p. 23.) It still is.</p> <p>That policy-driven, science-avoiding approach continues in the FEIR/FEIS. Even the abandoned BDCP lingers in the FEIR/FEIS both as Project Alternative 4 and as a reference point for much of the flawed modeling and analysis. The FEIR/FEIS’s responses to comments provide more detail addressing comments on BDCP, where</p>	<p>This comment is about the coequal goals, National Academy of Science comments, project definition, water quality, aquatic and terrestrial biological resources, and water supply.</p> <p>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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		<p>they offer the excuse that BDCP is no longer the preferred project. Left without a clear and consistent project definition, the FEIR/FEIS persists in placing a disingenuous conservation gloss around a tunnel construction project that expands the capacity of DWR and USBR, as managers of the State Water Project and Central Valley Project, to “reliably” remove freshwater from the Delta beyond its already-unsustainable levels.</p> <p>Left without a legally defensible conservation plan, or any current financing plan, supporting tunnel construction, the FEIR/FEIS offers confusing rationalization of the project’s environmental damage that understates some project impacts and ignores others, facilitating diversions of already-impaired freshwater flows from the Delta. Contrary to the 2009 Delta Reform Act and other state and federal laws, the Delta tunnels project would damage agriculture, fisheries and protected species, impair water quality, compound salinity problems, add to conflicts over water supply, and increase dangers from human exposure to harmful algal blooms. In separate comments submitted on the FEIR/FEIS, the City of Stockton documents that the FEIR/FEIS fails to acknowledge or redress the project’s potential to substantially degrade the quality of that city’s water supply. This is precisely the wrong course for the Sacramento-San Joaquin Delta, which the FEIR/FEIS recognizes as a “vitaly important ecosystem” that is in a “state of crisis.” (Vol. I, ES-1.)</p>	
San Joaquin Agencies	5	<p>Finally, left without support of the best available science following devastating criticisms from the EPA, federal fisheries agencies, the National Academy of Sciences, and California’s own Delta Independent Science Board (DISB), among others, the FEIR/FEIS largely attempts to shift responsibility to pending or future actions, including the vague and segmented Eco-Restore program and an elusive “adaptive management” plan that mostly awaits further development. Rightly criticized by DISB, this misuse of adaptive management to avoid hard issues is better described as maladaptive and unlawfully deferred mitigation.</p> <p>Nearly a decade ago, when the California Supreme Court narrowly upheld the 2000 CALFED EIR, it candidly observed that the CALFED program was premised on the “unproven” theory that it was “possible to restore the Bay-Delta’s ecological health while maintaining and perhaps increasing Bay-Delta water exports through the CVP and SWP. If practical experience demonstrates that the theory is unsound, Bay-Delta water exports may need to be capped or reduced.” (In Re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, supra, page 4, 43 Cal.4th at p. 1168.) Yet the FEIR/FEIS summarily rejects alternatives that do not expand export capacity. The project decision on the proposed tunnels must instead take account of recent scientific and legal developments strengthening the case for protection and restoration of the Delta. By contrast, pushing forward with a project driven by a preference to facilitate further exports out of the Delta would follow an outmoded and discredited approach for achieving water supply reliability at the worst possible time.</p>	<p>This comment is about EcoRestore, adaptive management, and alternatives development.</p> <p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
San Joaquin Agencies	6	<p>2. Curtailing Opportunities to Present Grounds for Objection Would Undermine Public Accountability of Decision-Makers for the Delta Tunnels Project’s Consequences.</p> <p>A. Federal and State Lead Agencies Concede that Still-Nonexistent Analysis Must Be Reviewed Before Rendering their Final Decisions.</p>	<p>This comment is about review of future analysis. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
San Joaquin Agencies	7	<p>The DWR/USBR letter rejecting relief from the 30-day cutoff of grounds for objection</p>	<p>This comment is about the public review period and review of future analysis.</p>

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		<p>(Exhibit 2, “response letter”) generically responds to those seeking to extend the Federal Register “notice” period. The lead agencies congratulate themselves for allowing an “optional” new CEQA public comment period, but use inscrutable logic to justify the 30-day cutoff on grounds for legal objections. They assert that a “sufficient opportunity” for objection has already been provided, and more ominously, that the agencies’ need to proceed in an “orderly fashion to finality.” The response letter does not explain, much less justify, how reviewing over 80,000 pages in 30 days is even remotely “sufficient.”</p> <p>The need for “order” or “finality” under CEQA or NEPA cannot justify curtailment of public objection months before the agencies can make a decision, and before the release of still-nonexistent analysis (scientific peer review and final biological opinions) that DWR and USBR recognize they must review before making final decisions on the FEIR/FEIS and the project. Excluding from the public a meaningful opportunity to review and challenge information the decision-makers consider indispensable would undermine the FEIR/FEIS’s ability to serve as a document of accountability under NEPA and CEQA.</p> <p>DWR/USBR’s benign portrayal of the 30-day cutoff misconstrues the difference between something “optional” (a voluntary period for formal new comment on the FEIR/FEIS) and something highly prejudicial here: depriving the public of any meaningful opportunity to address needed new information. The San Joaquin Agencies’ opposition to the 30-day cutoff was prompted by a paragraph on page 5 of the Department of Interior/United States Bureau of Reclamation (DOI/USBR) notice of availability for the FEIR/FEIS, published 30 December 2016. This notice asserts that the end of the Federal Register notice period (30 January) is “intended by DWR to close the period by which any person may submit to DWR any grounds for noncompliance with CEQA,” citing Public Resources Code, § 21177, subd. (a). As CEQA practitioners are well aware, the cited provision relates, not simply to “notice,” but to exhaustion of administrative remedies before bringing a lawsuit.</p> <p>A 30-day cutoff on federal or state law objections would fatally compromise public opportunities to ensure accountable decision-making on all relevant information. Applying it to USBR would also undermine Interior’s own commitment in a recent order. Interior Secretary Jewell’s Order No. 3343 issued Jan. 3, 2017 (Exhibit 4) reports that no federal ROD on the joint project will be approved prior to considering final biological opinions from USFWS and NOAA, which are “expected to be completed by April 2017” following independent peer review of the still-unissued draft opinions. (Id., p. 4.) This order verifies that the Department of Interior, “working with the State and NMFS,” will “review and consider any information received after publication of the Final EIR/EIS and upon receipt of the necessary Biological Opinions (timing set forth below), and after considering all relevant information, will be prepared to sign a ROD for CWF.” (Id. at pp. 6-7 (emphasis added).) Interior’s Order No. 3343 also reports (on page 4) that, as is the case with Interior and its anticipated ROD, DWR “intends to issue its Notice of Determination” only after receiving the forthcoming final biological opinions from USFWS and NOAA.</p>	<p>This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
San Joaquin Agencies	8	<p>Concurrently with publication of the FEIR/FEIS, the Resources Agency posted on the California Water Fix website a brochure entitled California Water Fix: Moving</p>	<p>This comment is about the public review period, previously submitted EPA and Delta ISB comments. This comment does not raise any substantive new environmental</p>

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		<p>Toward Environmental Review Process Completion (Exhibit 5.) Its description of the steps following FEIR/FEIS completion indicated that DWR expected to complete its decision-making in Spring 2017. (Id., p. 6.) This document also represented that DWR would make its final decisions on EIR certification and the project, adopt any CEQA findings and mitigation monitoring, and issue any NOD only after issuance of both the final biological opinions and Reclamation’s final ROD.</p> <p>Black-letter CEQA and NEPA law requires that the just-released FEIR/FEIS, and the to-be-released information noted above, remain amenable to public review and comment until the time of final state (CEQA) and federal (NEPA) decisions. Opportunities for public comment on earlier drafts must not be conflated with the separate issue addressed here: prospectively creating an exhaustion trap for those with CEQA objections just one month after releasing these “final” NEPA and CEQA documents of truly extraordinary length and complexity. (Compare 14 Cal. Code Regs., § 15141; 40 CFR § 1502.7 (even for proposals of “unusual” scope and complexity, EIR and EIS “normally” should be less than 300 pages).)</p> <p>Notably, earlier comment periods preceded EPA’s October 30, 2015 review assigning a failing grade of 3 (inadequate) to the 2015 RDEIR/SDEIS, and recognition of “missing pieces” precluding meaningful evaluation of project impacts in that draft to be addressed in related proceedings (e.g., the still-pending biological opinions and State Board proceedings on points of diversion and delta flow). EPA has the same concerns about the FEIR/FEIS (Section 4.A, supra.) Had any doubt remained that the opportunity to object must remain open, it should be resolved by the fact that the members of DISB, which has reviewed both earlier draft EIR/EISs and found major scientific deficiencies, expressed concern about errors in the FEIR/FEIS at its but does not plan to complete its review until March 2017.</p> <p>Nothing arising from NEPA requirements or procedure requires this arbitrary cutoff two or three months before relevant information becomes available. The 30-day period merely provides a minimum period between publication of the Federal Register notice and issuance of the final ROD. NEPA regulations “allow agencies and members of the public to submit comment on a final EIS at any time” before the final agency decision. (Center for Biological Diversity v. Department of Fish & Wildlife (2015) 62 Cal. 4th 204, 237 (citing 40 CFR §§ 1503.1(b), 1506.10(b)(2)).) Likewise, even where CEQA decision-makers have not formally reopened comment periods, they have not been allowed to use the mantle of exhaustion to deprive the public of the opportunity to hold them accountable in final decision-making. (Id. at 239.)</p>	<p>information or analysis that was not previously addressed in the Final EIR/S.</p>
San Joaquin Agencies	9	<p>B. The Scale and Significance of New Information Requires a Public Hearing and Renders the Proposed Cutoff Arbitrary and Unreasonable.</p> <p>After rushing to release over 80,000 pages in late December, despite continuing state and federal proceedings still generating information relevant to the project, DWR and USBR must also schedule a hearing prior to final decision-making. Failure to do so for this project would preclude application of exhaustion requirements. (See Pub. Res. Code, § 21177(e).) Nor can DWR justify that avoidance by resting on its own internal procedures, which also require full compliance with CEQA. With the high volume of new material and the proposed project generating grave concerns about the health and</p>	<p>This comment is about a new public hearing and the public review period. 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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		<p>future of the Delta, the fate of protected species, the protection of public trust resources and the achievement of the 2009 Delta Reform Act’s coequal goals, the proposed 30-day cutoff for CEQA objections and supporting documentation is far removed from any meaningful “opportunity” for the public to raise and register objections. (Id.) Without a “clearly defined administrative procedure” providing a genuine opportunity to address and resolve major public concerns about the “project as finally configured,” CEQA exhaustion would not even apply, and cannot be used to prematurely curtail meaningful objections. (Santa Teresa Citizen Action Group v. City of San Jose (2003) 114 Cal.App.4th 689, 702.)</p>	
San Joaquin Agencies	10	<p>C. Prematurely Curtailing Public Objections Would Fatally Compromise the Informed Decision-Making Required Under NEPA and CEQA.</p> <p>Depriving the public of the opportunity to engage analysis that DWR and USBR recognize as necessary to final decision-making would undermine the most basic objectives of environmental review. The need for informed and accountable decision-making, necessary for both CEQA compliance and sound public policy, also compels the granting of the request. (See, e.g., Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412, 449-450.) Prematurely curtailing the opportunity to register and document CEQA objections under the circumstances here would undermine public awareness, review, and comment, on vital information governing a project that to both its supporters and detractors is clearly of transcendent importance. Our concern with the proposed premature cutoff of CEQA objections is narrowly the threat of a State claim that we failed to exhaust remedies, but more broadly the State's denial of those remedies: insulating the Delta Tunnels project from meaningful input from California agencies and citizens, and denying their opportunity to affect the proposed project’s outcome.</p>	<p>This comment is about the public review period. This comment 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.</p>
San Joaquin Agencies	11	<p>3. The FEIR-FEIS Fails to Fairly Account for New Developments and Significant New Information of Critical Importance to the Delta Tunnels Project.</p> <p>A. Overview</p> <p>BDCP/California WaterFix could not be more different from garden-variety projects subject to CEQA or NEPA that follow a clear path toward finality once the lead agency has addressed public comments and issued the final environmental review. Major assumptions behind the BDCP project—for example, that it could protect the Delta or include a conservation plan—could not survive the weight of scientific and agency criticism. Numerous changed circumstances and significant new information arising since the 2015 “partial” recirculation of the EIR/EIS for public review lack clear acknowledgement and analysis in the FEIR/FEIS. The complete impacts of California WaterFix also depends on operational assumptions that remain unusually mired in doubt for a project review lasting this long, due to related but still-incomplete reviews whose outcome could dramatically affect how the project might actually operate (to name just two, completion of USFWS and NMFS biological opinions and State Board action on Bay-Delta flow criteria.</p> <p>This section identifies changed circumstances and significant new information arising since the last public review with important implications for BDCP/California WaterFix, keeping in mind well-established CEQA and NEPA standards. Environmental review</p>	<p>This comment is about project operations with new circumstances; Biological Opinion and flow criteria report.</p> <p>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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		<p>must address the “whole” of an action potentially resulting in direct or reasonably foreseeable indirect changes in the environment (14 Cal. Code Regs., § 15368, rather than resorting to piecemealed or segmented analysis. NEPA regulations also provide that where “[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).) Agencies must prepare supplements to a draft EIS when “[t]here 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). The CEQA Guidelines also require recirculation of a new draft EIR under similar circumstances. (14 Cal. Code Regs, §§ 15088.5(a)(1), (2), (3), and (4).)</p>	
San Joaquin Agencies	12	<p>B. EPA’s Failing Grade of “Inadequate” for the Revised Supplemental Draft EIR-EIS, and Similar Criticism of the FEIR/FEIS.</p> <p>In an October 30, 2015 letter to USBR from Jared Blumenfeld, EPA Region IX Director, the EPA assigned to the BDCP/California Water Fix SDEIS a failing grade of 3 (“inadequate”) (Exhibit 6) The letter noted the “fundamental” nature of the shift in the federal project, since it removed the Habitat Conservation Plan and focused instead on the “construction and operation of new water export intakes” and “modifying operations of the federal Central Valley Project (CVP) in order to accommodate new water conveyance infrastructure.” (Id., p. 2.) Despite the project changes, EPA continued to predict significant adverse impacts to the Delta and its resources.</p> <p>EPA noted that the SDEIS relied on modeling results that were “completed for the BDCP alternatives” and were “not necessarily representative” for California WaterFix. (Id. at 3.) EPA criticized the SDEIS for improperly deferring “actions necessary to protect water quality and aquatic life to the future, “as well as the “key decision” of “how freshwater flows through the Delta will be managed.” Deferring these decisions meant that that “the impacts of the Water Fix project on the Delta ecosystem cannot be fully evaluated at this time, and that any attempt to describe the environmental impacts of the project is necessarily incomplete.” (Id.)</p> <p>EPA found that several pending regulatory actions could affect the “overall impacts” of the project—the State Board’s proceedings on the California WaterFix change petition, State Board updates to water quality standards in the Bay-Delta Water Quality Control Plan, USFWS and NMFS action on the project’s biological opinions, and United States Army Corps of Engineers authorization under section 404 of the Clean Water Act” (Id., p. 4.) “Because these subsequent regulatory processes are likely to generate real world operational scenarios that are significantly different from the operations proposed in the SDEIS, the information is not yet available to reach definitive conclusions concerning the environmental impacts of the proposed project.” (Id.) EPA expected that pending actions at the State Board and elsewhere “will supply the missing pieces necessary to determine the environmental impacts of the entire project.” (Id.)</p> <p>On January 18, 2017, EPA again sent USBR a letter, through Kathleen Johnson, the Region IX Enforcement Director. letter observed that the California WaterFix FEIS failed to correct the major problems EPA had noted in its 2015 letter, and that none of the regulatory processes mentioned had been completed, leaving the real scope of the project’s impacts unresolved. (Exhibit 7.)</p>	<p>This comment summarizes previous findings made by the EPA. The Final EIR/S was updated to address comments made by the EPA. 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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San Joaquin Agencies	13	<p>C. State Board’s Proceedings on DWR/USBR Petition for Change in Points of Diversion, and Related Presentation of Evidence.</p> <p>The WaterFix Project involves the construction and operation of new water diversion facilities near Courtland to convey water from the Sacramento River through two tunnels to the existing State and federal pumping facilities near Tracy. In addition to other federal, State and local approvals, the WaterFix Project requires changes to the water right permits for the State Water Project and federal Central Valley Project to authorize the proposed new points of water diversion. On August 26, 2015, DWR and USBR submitted a joint petition for change in water right permit conditions to the State Board and Central Valley Project to add points of diversion of water on the Sacramento River associated with the California WaterFix Project.</p> <p>The State Board divided the hearing schedule in two parts, and despite protests, allowed hearings to proceed while DWR and USBR completed the FEIR/FEIS, and sought still-pending approvals required by federal and state laws protecting endangered species. Part 1 involves the effects of the project on agricultural and municipal uses and associated legal users of water and is further subdivided into Parts 1A (case-in-chief) and 1B (other parties’ cases and rebuttal). Part 1A addresses the petitioners’ case-in-chief and Part 1B addresses other parties’ cases-in-chief and rebuttal for Part 1 of the hearing. These detailed records, while not reproduced here, are available at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml. The San Joaquin agencies reference herein their cases-in-chief and testimony at the State Board, some contents of which are referenced below. Part 2, which has not yet begun, will address the effects of the project on fish and wildlife, including what appropriate Delta flow criteria should be included in any approval of the change petition. Part 2 will also address inclusion of the final CEQA document in the hearing record.</p> <p>Although both phases of the State Board proceedings focus on legal requirements other than NEPA and CEQA, the cases-in-chief, extensive testimony and detailed exhibits already presented in Part 1 and forthcoming exhibits in Part 2 have (or will have) an important intersection with environmental review issues, since they constitute an extensive source of new evidence not previously available during public review of the EIS potentially bearing on such issues as modeling, project definition, project impacts, alternatives, and mitigation. As noted above, EPA, after noting major deficiencies in the environmental review, anticipated the State Board proceedings as a useful source of information to supply “missing pieces.” The State Board has, however, chosen not to take on a formal environmental review role in these proceedings. Before completing its environmental review and making its final decision on the project, DWR and USBR should ensure that any relevant materials from the State Board proceedings that are germane to its review of the project’s environmental consequences have been reviewed and addressed.</p>	<p>This comment is about the Water Board hearings regarding the change in point of diversion.</p> <p>See Section 4, State Water Board Change Petition Process, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on State Water Recourses Control Board hearing materials.</p>
San Joaquin Agencies	14	<p>D. State Board’s Proceedings on Bay-Delta Water Quality Control Plan, Delta Flow Criteria, and Proposed Reduction of Salinity Standards.</p> <p>In September 2016 the State Board determined that under its new flow proposal for the San Joaquin River and its tributaries it would be necessary to “decrease the</p>	<p>This comment is regarding the SWRCB Bay-Delta WQCP process which is still not finalized at this point. 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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		<p>quantity of surface water available for diversion for other uses compared to the current condition (water supply effect).” (FEIR/FEIS, ES-21). On September 15, 2016, the State Water Board released the draft revised Substitute Environmental Document (SED) in support of potential changes to San Joaquin River flow and southern Delta water quality objectives and program of implementation included in the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan).</p> <p>Proposed changes to the Bay-Delta Plan include:</p> <ol style="list-style-type: none"> 1. New narrative February through June Lower San Joaquin River (LSJR) flow objective applicable to the San Joaquin River and its salmon-bearing tributaries – the Stanislaus, Tuolumne, and Merced rivers – and an associated program of implementation to support and maintain the natural production of viable native LSJR Watershed fish populations migrating through the Delta; and 2. Revised numeric southern Delta salinity objectives and an associated program of implementation to protect agricultural beneficial uses in the southern Delta. <p>Comments are due on the Draft SED on March 17, 2017. Expediting final decision-making on DWR and USBR’s environmental review and project as the lead agencies have announced will produce a major anomaly. EPA has identified “how freshwater flows through the Delta will be managed” as the “key” factor affecting the environmental impacts, but that factor will still remain to be determined when DWR and USBR make their project decision.</p>	
San Joaquin Agencies	15	<p>E. DWR/USBR Biological Assessment</p> <p>In August 2016, USBR and DWR released their Biological Assessment for CaliforniaWaterFix, http://cms.capitoltechsolutions.com/ClientData/CaliforniaWaterFix/uploads/FIX_BA_TOC_Rev.pdf. This document is part of the consultation process with USBR and NMFS under section 7 of the Endangered Species Act. This biological assessment found that California WaterFix is “likely to adversely affect” a number of endangered or threatened species and their designated critical habitats. The listed species identified as likely to be adversely affected 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. (Id., chapter 7, Effects Determination, Table 7-1, p. 7-36). The habitat for these species would be adversely affected as well. These conclusions contrast with analysis in the FEIR/FEIS, denying adverse effects on listed fish species and their habitat. (EIR/EIS, table ES-8, Executive Summary, pp. ES -67 – 93; Ch. 31, pp. 31 – 9 – 15, Table 31 – 1).</p>	<p>The standard for “likely to adversely affect” under Section 7 is different from those for “significant” and “adverse” under CEQA and NEPA, respectively. Therefore, a literal comparison of findings in the BA and the EIR/S is not valid. Nevertheless the Final EIR/EIS was drafted to be consistent with the BA conclusions. Subsequent to publication of the proposed publication of the proposed Final EIR/EIS the services issues the BiOps for the proposed project</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>
San Joaquin Agencies	16	<p>F. Preliminary Criticism of FEIR/FEIS by the Delta Independent Science Board, and Forthcoming Completion of Review.</p> <p>In their previous comment letters, the San Joaquin Agencies detailed DISB far-reaching criticisms of the draft environmental reviews. Videotape of DISB’s meeting on January 13, 2017 confirms that Science Board’s expectation of completing review and comment on the FEIR/FEIS at a March 2017 meeting. See http://cal-span.org/unipage/index.php?site=cal-span&owner=DISB&date=2017-01-13.</p>	<p>This comment is about Delta ISB review of the Final EIR/EIS regarding adaptive management.</p> <p>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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		<p>At the January meeting, members of DISB offered substantial criticisms in describing their initial evaluations of the FEIR/FEIS. Deficiencies discussed included continued problems in the assessment of baseline and climate, such as reliance on outdated analysis. The Board’s scientists raised particular concerns about misuse of “adaptive management” to explain away deferral of difficult decisions. Chair Jay Lund stated that “this is an area where they have promised repeatedly it would be in the final,” creating a need to “tell them what we think about the job they’ve done.” John Weins noted that the FEIR/FEIS’s treatment of adaptive management amounted to “kicking the can down the road again.” He stated: “Their response is we’ll work out an approach to adaptive management once we start doing things—and that’s simply not adaptive management.”</p>	
San Joaquin Agencies	17	<p>G. Judicial Invalidation of Delta Plan, and Direction to Develop Measurable Targets for Reduced Delta Reliance and Other Elements</p> <p>On May 18, 2016, the Sacramento County Superior Court issued its 73-page ruling in seven coordinated proceedings comprising the Delta Stewardship Council Cases (Judicial Council Coordination Proceeding No. 4758). (Exhibit 8.) The Court invalidated the Delta Plan adopted by the Delta Stewardship Council pursuant to the Delta Reform Act, finding that it failed to include quantified or otherwise measurable targets associated with achieving reduced Delta reliance (Id., 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.</p> <p>In the FEIR/FEIS, Master Response 45 references the Delta Plan ruling, but understates its importance by failing to explain the Court’s reasoning. Criticizing DSC’s failure to include measurable targets, the Court stated that Water Code section 85308(b) “provides that the Delta Plan shall ‘include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan’” including a numeric or otherwise specific and identifiable standard. (Id., p. 8-9. Contrary to this mandate, “the Delta Plan fails to ‘include quantified or otherwise measurable targets associated with’ restoring more natural flows as required by the Delta Reform Act.” Id. at emphasized that the Delta Plan must be “legally enforceable.” (Id. p. 8-9.)</p> <p>In a followup ruling on June 24, 2016, the court held that “[t]o be clear, the Delta Plan is invalid and must be set aside until proper revisions are completed.” (Id.) Final judgments were entered on November 23, 2016. The Delta Stewardship Council has appealed.</p>	<p>This comment is about the Delta Plan ruling. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
San Joaquin Agencies	18	<p>H. DWR’s Proposed Extension and Restructuring of Long-Term Water Supply Contracts</p> <p>The FEIR/FEIS, in discussing DWR’s lead agency responsibilities, mentions cryptically that DWR “may also have other actions related to contract amendments to fund the selected actions.” (Vol. I, 1-20.)</p> <p>That is a vast understatement. The largest urban and agricultural state water contractors have suggested that a “separate” project of DWR relating to proposed SWP contract amendments is a necessary condition to finance California WaterFix. The SWP State Water Contractors have recognized that the proposed project is necessary to enable financing and implementation of WaterFix.</p>	<p>This comment is about financing the project and contracts. 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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		<p>For example, in September 2014, staff at the Metropolitan Water District of Southern California acknowledged that the proposed SWP contract amendments are a necessary step in financing what was then called the Bay Delta Conservation Plan, now known as WaterFix. See MWD, Special Committee on Bay-Delta Presentation Re. Review Status of BDCP Cost Allocation Discussions (September 23, 2014) (available at http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003735248-1.pdf) Similarly, Kern County Water Agency staff explained in September 2013 that “DWR and SWP Contractors need to come to agreement on a contract extension that matches the term of the BDCP and provides the SWP Contractors with a more appropriate role in managing SWP expenses.” Kern County Water Agency, “Resolution of Issues Necessary to Inform a Development of a Business Case to Support a Decision on Continued Funding for the Bay Delta Conservation Plan and the Delta Habitat Conservation and Conveyance Program,” at 1 (Sept. 23, 2013) Financing agencies have similarly reiterated the need to extend the contracts to enable WaterFix. DWR and the Contractors have indicated that they will make financing decisions on WaterFix by the end of this year. Those pending, near-term decisions are likely to have a significant impact on the scope of amendments needed to SWP contracts, but also the range of impacts associated with those impacts.</p>	
San Joaquin Agencies	19	<p>I. MWD’s Purchase and Proposed Uses of Delta Islands</p> <p>The FEIR/FEIS does not, and must, analyze the potential direct and cumulative impacts arising from Metropolitan’s challenged purchase of five Delta islands in 2016 in the proposed path of California WaterFix, relying on a notice of exemption rather than conducting CEQA review. A challenge to that action is pending in San Joaquin Superior Court. (Exhibit 9.) Metropolitan has grounded its claims of CEQA exemption on the incredulous assertion that its purposes are wildlife preservation and agricultural conservation; only as an afterthought Metropolitan added to it list, "to facilitate the WaterFix." The Delta Agencies maintain that these purchases reflect Metropolitan's attempt to preempt the State's responsibility and authority to decide WaterFix in its own independent judgment, by presenting to the WaterFix decisionmakers a perfected “mitigation package” that is designed to and in fact does place a weight on the scale in favor of that project.</p> <p>Within the past week, additional information on Metropolitan's Delta Islands ambitions has come to light: competent evidence that Metropolitan is pursuing purchase of two more Delta islands that also lie in the proposed tunnels’ path. Metropolitan has revealed, without formal disclosure to the public, a program that appears aimed at acquiring as much private ownership as possible in the Delta. Metropolitan's actions emerge as a replication of Los Angeles' land-grab of Owens Valley ranches in the 1905-1930 period, creating a colony of the city in the remote area of water origin. A Metropolitan Delta Colony over time would likely produce the same disastrous economic and environmental harms that characterized the Owens Valley for the first ¾ of the twentieth century.</p> <p>Metropolitan’s actions have become a component of WaterFix, with the district acting in collusion with WaterFix proponents to produce that product on its terms. Since Metropolitan has refused to assess the impacts of its program of Delta Island</p>	<p>The Delta Wetlands project is considered in the cumulative impacts of the Final EIR/S. No concrete actions have been proposed for these islands at this time following Metropolitan’s purchase, and therefore, any differing analysis than what was included in the Final EIR/S would be highly speculative. 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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		acquisition, WaterFix itself must fulfill this to-date-unassessed program.	
San Joaquin Agencies	20	<p>J. CEQ Final Guidance Document on Climate Change in NEPA Review</p> <p>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 document provided as follows:</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. (CEQ Final Guidance, p. 21.)</p>	The analysis in the Final EIR/S makes climate change assumptions which have been modeled along with impacts from project construction and operation. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	21	<p>K. Undisclosed Draft Economic Analysis of Delta Tunnels Project</p> <p>In November 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, 2015d.) It 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. The findings run counter to longstanding state pledges that the districts that would get water from the tunnels would pay the full cost. See California water tunnels would need US funding, analyst says (Associated Press, by Ellen Knickmeyer, September 14, 2016): "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."</p> <p>Dr. Jeffrey Michael, Director of the Center for Business and Policy Research at the University of the Pacific has explained that this report actually refers to the subsidy as \$3.9 billion, but this figure is in present value terms including a 3 percent real discount rate. This is equivalent to \$4.6 billion in actual costs, which is the appropriate figure to compare to the nearly \$16 billion in construction and mitigation costs." He also explained that the report finds an additional \$1.9 billion subsidy would be needed to make the tunnels a break-even proposition for agriculture.</p>	This comment is about cost and funding. CEQA and NEPA only require analysis of physical impacts on the environment resulting from the proposed project alternatives. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	22	<p>L. Independent Cost-Benefit Analysis of Delta Tunnels Project</p> <p>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. Dr. Jeffrey Michael, Executive Director, Center for Business and Policy Research, Eberhardt School of Business and McGeorge School of Law, University</p>	This comment is about cost-benefit analysis.. CEQA and NEPA only require analysis of physical impacts on the environment resulting from the proposed project alternatives. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.

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		of the Pacific (August 2016). WaterFix proponents propose 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." (Exhibit 10.)	
San Joaquin Agencies	23	<p>M. Office of Inspector General Investigation of Use of Funds for Delta Tunnels Project</p> <p>In April 2016 a whistleblower complaint by a Bureau of Reclamation employee produced this information:</p> <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:</p> <p>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>	This comment is about funding. CEQA and NEPA only require analysis of physical impacts on the environment resulting from the proposed project alternatives. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	24	<p>N. California State Auditor Review of Delta Tunnels Project</p> <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>	This comment is about cost and funding. CEQA and NEPA only require analysis of physical impacts on the environment resulting from the proposed project alternatives. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	25	<p>O. DWR/USBR Settlement with Contra Costa Water District</p> <p>In March 2016, DWR and USBR reached a settlement with Contra Costa Water District, intended to mitigate impacts to that district from construction of BDCP/California Water Fix. (DWR exhibit 334 in State Board change petition proceedings.) This settlement was reached after CCWD expressed concern in comments on the RDEIR/SDEIR that construction of the BDCP/CWF could damage CCWD Facilities on and</p>	Appendix 31B of the Final EIR/EIS is dedicated to examining any impacts of implementing the settlement agreement with CCWD. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.

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		near Victoria Island; and that operation of the BDCP/CWF could cause salinity, algae and other contaminants to increase at CCWD's intakes. The settlement anticipates a number of other related agreements. The FEIR/FEIS does not, and must, fully analyze and disclose how the environmental consequences of BDCP/California WaterFix are affected by the settlement with Contra Costa Water District.	
San Joaquin Agencies	26	<p>P. 2016 Federal Water Legislation</p> <p>In December 2016, Congress passed complex new legislation (S. 612), the Water Infrastructure Improvements for the Nation Act. Title III, subtitle J of the law includes short and long-term provisions addressing approaches to drought in California. (https://www.congress.gov/bill/114th-congress/senate-bill/612/text.)</p> <p>A Presidential signing statement construed subtitle J to "require continued application and implementation of the Endangered Species Act, consistent with the close and cooperative work of federal agencies with the State of California to ensure that state water quality standards are met." (https://obamawhitehouse.archives.gov/the-press-office/2016/12/16/statement-president-water-infrastructure-improvements-nation-wiin-act.) Several provisions in the new law, however, raise the prospect that project operation may differ from existing law and from the operational assumptions used in the FEIR/FEIS, leading in some circumstances, to implementation of flows less protective for fisheries. (See, e.g., S. 612, §§ 4002(a); 4003(a)(23); 4001(b)(7).)</p>	This comment relates to the WIIN Act. Please refer to Section 3.2, Other Relevant Information after Publication of the Final EIR/EIS, of the Developments after Publication of the Proposed FEIR document, Final EIR/S, for information on this Act's relationship to CA WaterFix. This comment does not raise any substantive new environmental information or analysis that would result in a new significant environmental impact.
San Joaquin Agencies	27	<p>Q. USFWS and NMFS Draft Biological Opinions</p> <p>The draft biological opinions of USFWS and NMFS are posted online at http://www.westcoast.fisheries.noaa.gov/central_valley/WaterFix/WaterFixPeerReview2BMaterials.html and are hereby incorporated by reference. The draft biological opinions disclose additional adverse environmental effects of Alternative 4A that were not disclosed in the Final EIS/EIR, including adverse effects of upstream operations on spring run Chinook salmon and fall run Chinook salmon. The final biological opinions anticipated in April 2017 are therefore likely to provide substantial evidence that Alternative 4A results in additional adverse environmental impacts that were not disclosed in the Final EIS/EIR. The draft and final biological opinions and CESA permits must be included in the administrative record under CEQA, and the FEIR/FEIS must disclose the adverse environmental impacts identified in biological opinions and any CESA permits.</p>	<p>The Biological Opinions were issued subsequent to publication of the proposed Final EIR/EIS. In addition, the standard for "likely to adversely affect" under Section 7 is different from those for "significant" and "adverse" under CEQA and NEPA, respectively. Therefore, a literal comparison of findings in a draft BiOp and the EIR/S is not valid. This section does not raise any substantive new issues that weren't raised in the Final EIR/S.</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>
San Joaquin Agencies	28	<p>4. The FEIR-FEIS Fails to Overcome the EPA's Grounds for Assigning the Environmental Review a Failing Grade.</p> <p>As introduced in section III.B, <i>infra</i>, EPA's January 18, 2017 letter (Exhibit 7) removes any doubt about whether the new analysis in the FEIR/FEIS overcame the basis for EPA's "failing grade" assigned earlier to the RDEIR/RDEIS. The letter noted that none of the "regulatory processes" that EPA though might make the assessment of operations less ambiguous has been completed. From the information available, EPA expects the project to degrade water quality for "municipal, agricultural, and aquatic life beneficial uses." Moreover, the operations described in the FEIS "do not reflect the real world operational scenarios" likely to become clearer after the pending regulatory processes are completed.</p>	The Final EIR/S was updated to address comments made by the EPA. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.

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San Joaquin Agencies	29	<p>5. The FEIR-FEIS Perpetuates Reliance on a Shifting, Inconsistent and Inaccurate Project Definition.</p> <p>Master Response 3 (Vol. 1, 1-25 to 1-33) fails on several levels to overcome this project’s long legacy of shifting and inconsistent project definition, exemplified by continuing to apply the term “Bay Delta Conservation Plan” to a tunnel project which can achieve neither “conservation” nor “planning.” First, the claim that the Delta is in “crisis,” while accurate, proves too much, because the core of that crisis is a lack of freshwater (See, e.g., Bay Institute, San Francisco Bay: The Freshwater-Starved Estuary (2016) iv; State Board, Strategic Workplan for Activities in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (July 2008).) That crisis is likely to worsen with an expansion in export capacity, particularly during dry periods. Second, the response exaggerates the preference for new capacity in old reports preceding BDCP; the 2008 Delta Vision strategic plan, for example, only referenced “conveyance” as part of a path that would “achieve” the co-equal goals (Vol. 1, 1-32.) Delta Vision also considered conditions seven years ago, and evaluated storage as well as conservation concepts that are not part of the “fix.” By contrast, the FEIR/FEIS all but concedes defeat on the Delta front, cynically denying that “achievement” of the goals is even necessary (Vol. 1-176.) Third, the response recycles the crabbed reading of the Delta Reform Act addressed and discredited in section 1 above. Section 85020, for example, refers to ways to “improve” conveyance, which may not be synonymous with expanding capacity when paired with the need to protect and restore the Delta.</p> <p>The FEIR/FEIS project definition improperly favors export capacity over Delta protection, since despite criticism it did not remove a misleading reference to delivering “up to full contract amounts.” (Vol. 1, 1-28.) That reference misrepresents the capacity of the SWP to reliably meet “full” contract deliveries, and worse, perpetuates “paper water” export assumptions that can only add to water conflicts in times of scarcity. (See Planning and Conservation League v. Department of Water Resources (2000) 83 Cal.App.4th 892.)</p>	<p>This comment is about project description and water deliveries. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p>
San Joaquin Agencies	30	<p>6. The FEIR-FEIS Perpetuates Reliance on Multiple and Inconsistent Project Baselines.</p> <p>In Master Response 1, the FEIR/FEIS invokes the California Supreme Court’s decision in <i>Neighbors for Smart Rail v. Exposition Metro Line Const. Authority</i> (2013) 57 Cal. 4th 439, 505 to rationalize its continued use of multiple and contradictory baselines. (Vol. I, 1-40.) That reliance cannot survive the clarification in <i>Neighbors</i> that the baseline must be “realistic” and give the “most accurate picture possible” of the project’s likely impacts. (Id. at p. 507.)</p> <p>Here the baseline cannot come close to that standard of realism and accuracy. The analysis repeatedly assumes and finesses the meeting of regulatory standards, from water quality to salinity that are frequently violated or avoided, particularly during drought. But any assessment of baseline conditions “must be based on accurate information and defensible reasoning.” (<i>Great Basin Res. Watch v. BLM</i> (2016) 844 F.3d 1095, *9.) Without clearly establishing baseline conditions which exist before a project begins there is simply no way to determine what effect this project will have on the environment and, consequently, no way to comply with NEPA. Moreover, once the environmental review is completed, a “post-EIS” analysis conducted without input from</p>	<p>This comment is about baselines and potential new regulations. 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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		<p>the public “cannot cure deficiencies in an EIS.” (Id., p. *16.)</p> <p>As the EPA understood in assigning a continuing “failing” grade to this environmental review, much of the “impact” assessment consists chiefly of abstractions from modeling results that do not resemble reality. (Exhibits 6, 7.) These results could become far more disconnected in the future if the lead agencies, contrary to EPA’s advice, proceed with the plan to complete environmental review and decision-making before currently pending regulatory proceedings, are completed, particularly State Board proceedings on flow criteria.</p> <p>A further danger also arises from pursuing this “cart before the horse” approach criticized by the NAS, yet pursued still in the FEIR/FEIS. In a response to comment RECIRC 2502, comment 7, the FEIR/FEIS conceded that the range of potential outcomes from the State Board’s update of the Water Quality Control Plan were “not included in the analysis.” Following completion of the plan update, the response conceded, operations under the state and federal projects “would need to be reviewed to determine if operations continue to comply with the new regulation.” (Id.) That response succinctly captures the irrationality of rushing toward completion on the tunnel decision without first establishing needed clarity about operating assumptions. For example, it is possible that the lead agencies could approve and construct the new Delta tunnels, only to have their use prohibited unless specific flow objectives are met. In that case, staggering amounts could be spent developing the project, only to have it become a stranded facility, adding “ghost tunnels” to our Western legacy of ghost towns and ghost malls.</p>	
San Joaquin Agencies	31	<p>7. The FEIR-FEIS Deficiently Addresses Project Impacts, Including Harmful Algal Blooms, Growing Problems with Salinity, and Impaired Access to Safe Drinking Water.</p> <p>Although the FEIR/FEIS understates the significance of numerous project-related impacts, several examples here are illustrative. Master Response 14 (Volume I, 136) includes the far-fetched claim that California WaterFix would “not be expected to substantially increase” the frequency or geographic extent of harmful algal blooms, offering an opaque description of how management in “real time” operations might avoid the problem that is entirely abstracted from the practical difficulties any conceivable “balancing” of north and south diversions would produce. In fact, algal blooms are a major danger of California Water Fix, risking injuries to swimmers and other recreational water users. These dangers stem directly from the project’s substantial reductions in the Sacramento River’s freshwater flows through the Delta.</p> <p>The San Joaquin Agencies incorporate by reference testimony introduced by San Joaquin County in the State Board change petition proceedings addressing harmful algal blooms, including Erik Ringelberg, an expert in watershed ecology and microbiology, and Linda Turkatte, San Joaquin County’s Director of Environmental Health. (Exhibit 11.) The San Joaquin Agencies also incorporate by reference the comments of South Delta Water Agency on the FEIR/FEIS, analyzing how the project compounds problems with salinity; and the FEIR/FEIS comments of the City of Stockton, documenting how the project impairs access to safe drinking water in Stockton.</p>	<p>This comment is about water quality. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.</p> <p>See Section 4, State Water Board Change Petition Process, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on State Water Recourses Control Board hearing materials</p>
San Joaquin Agencies	32	8. The FEIR-FEIS Deficiently Analyzes Project Alternatives and Mitigation.	This comment is about alternatives development and adaptive management. This comment does not raise any substantive new environmental information or analysis

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		<p>When the project would have significant adverse environmental effects, agencies are “required to consider project alternatives that might eliminate or reduce the project’s significant adverse environmental effects.” Friends of the Eel River v. Sonoma County Water Agency, (108 Cal.App.4th 859, 873 (2003).) Here, by limiting alternatives to options that could not feasibly achieve the Delta protection and restoration objective of the co-equal goals, and by summarily rejecting alternatives not grounded in increasing conveyance capacity, the FEIR/FEIS effectively eliminated the ability to consider any reasonable range of alternatives. Master Response 4 also disingenuously rejects alternatives focusing on reduced reliance on the Delta, even though the Delta Reform Act requires it, on the premise that DWR lacks sufficient statewide responsibility. (Vol. I, 1- 45.) DWR, as operator and manager of the State Water Project, clearly has the requisite responsibility to follow the Act’s statewide policy. (See PCL v. DWR, 83 Cal.App.4th at p. 920.) CEQA does not permit a lead agency to dismiss from consideration “any alternatives that feasibly might reduce the environmental impact of a project on the unanalyzed theory that such an alternative might not prove to be environmentally superior to the project.” (Habitat & Watershed Caretakers v. City of Santa Cruz (2013) 213 Cal.App.4th 1277, 1305.)</p> <p>As rightly pointed out by DISB and discussed above, the FEIR/FEIS approach to mitigation is marked by an “adaptive management” approach that is more accurately described as maladaptive avoidance and unlawfully deferred mitigation. Master Response 33 is replete with glittering generalities that unwittingly support DISB’s concern that this approach is really “kicking the can down the road.” The master response even concedes that the Adaptive Management and Monitoring Plan framework is not yet complete, and may not exist at least until the final biological opinions are available. Notably, Secretary Jewell’s recent order (Exhibit 4), like the Delta Reform Act, requires use of genuine adaptive management, not an excuse for evasion.</p>	<p>that was not previously addressed in the Final EIR/S.</p>
San Joaquin Agencies	33	<p>9. The FEIR-FEIS Inconsistently and Evasively Utilizes Modeling, Failing to Anticipate and Analyze Foreseeable Attempts to Avoid Strict Compliance.</p> <p>The FEIR/FEIS continues the legacy of major modeling problems that has long hampered the review of both BDCP and California WaterFix. The San Joaquin Agencies reference the case-in-chief and testimony of California Water Research in the State Board change petition proceedings. As is evident from Master Response 47, Calsim II does not reflect “emergency operational criteria”, such as the State Board approving relaxation of standards case-by-case under a Temporary Urgency Change Petition (TUCP). (Vol. 1- 351.) This is a major loophole, since it underscores that the modeling does not account for the likelihood that regulatory standards will be lowered in practice during water-short years.</p> <p>10. Conclusion.</p> <p>The FEIR/FEIS should be withdrawn. BDCP and California WaterFix should be deemed infeasible as project alternatives based upon their conflict with the 2009 Delta Reform Act and other laws.</p>	<p>This comment is about modeling, TUCP’s, and Delta Reform Act. 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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San Joaquin Agencies	ATT 1	Exhibit 1	This comment 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.
San Joaquin Agencies	ATT 1	This letter is written on behalf of the County of San Joaquin, Central Delta Water Agency, and South Delta Water Agency (collectively the “San Joaquin Agencies”). These three public entities presented detailed comments on the drafts preceding the Final Environmental Impact Report/Final Environmental Impact Statement (FEIR/FEIS) for the Bay Delta Conservation Plan/California Water Fix (Delta Tunnels). The San Joaquin Agencies jointly object to the proposed closure on January 30, 2017 of the period to submit any grounds for noncompliance with the California Environmental Quality Act (CEQA, Pub. Res. Code, § 21000, <i>et seq.</i>) to the Department of Water Resources (DWR).	This comment objects to the period to submit any grounds for noncompliance with CEQA to DWR. This comment 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.
San Joaquin Agencies	ATT 1	As detailed below, imposing this proposed premature cutoff on submissions documenting CEQA claims would be both unreasonable and unlawful under the circumstances. The late-December release of the FEIR/FEIS, virtually on Christmas Eve, included more than 80,000 pages of supporting documents. Both the state and federal agencies recognize that completion of scientific peer review and biological opinions for the Delta Tunnels will not be completed until April 2017, months after the proposed January 30 cutoff. More importantly, both the federal and state agencies represent that until this new information is available to them and the public, they will not be in a position to issue final decisions (NOD and ROD). The public’s ability to undertake CEQA review and comment cannot be denied, given that the agencies deem this yet-to-be-released information indispensable to their own decisions. In addition to imposing these prejudicial limitations on the public, including the most affected San Joaquin Agencies and their constituents, the lead agencies have not ensured our constituents of a public hearing preceding any certification and final decision-making. The Delta Tunnels are one of the most complex and controversial projects in California history with enormous potential consequences for the Delta’s resources and people, and denial of a public hearing also deserves prompt correction. The number of prior public meetings, the majority of which related to a significantly different proposed project, cannot substitute for a hearing prior to DWR’s decision on the currently-proposed project. The San Joaquin agencies therefore request immediate removal of the proposed 30-day cutoff, the scheduling of a public hearing, and further clarifications of DWR’s remaining review and decision-making procedure.	This comment objects to the period to submit any grounds for noncompliance with CEQA to DWR. This comment 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.
San Joaquin Agencies	ATT 1	The San Joaquin Agencies’ present comment and request is prompted by a paragraph on page 5 of the Department of Interior/United States Bureau of Reclamation (DOI/USBR) notice of availability for the FEIR/FEIS, published 30 December 2016. This notice asserts that the end of the Federal Register notice period (30 January) is “intended by DWR to close the period by which any person may submit to DWR any grounds for noncompliance with CEQA,” citing Public Resources Code, § 21177(a). The	This comment objects to the period to submit any grounds for noncompliance with CEQA to DWR. This comment 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.

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		<p>paragraph purports to describe DWR’s California process and legal compliance, which DOI/USBR, the federal lead agency, is neither competent nor legally responsible to define. The same statement was also posted on the state and federal lead agencies’ BDCP website and repeated in a January 11, 2017, letter accompanying a USB drive with the FEIR/FEIS that was sent to interested parties. Nonetheless, DWR as state lead agency <i>alone</i> can and must clearly identify the process and responsibility for certification and final decision-making.</p> <p>Curtailing the opportunity for CEQA-based objection on January 30 would prospectively and prejudicially exclude submissions of relevant information months before final decisions of state and federal lead agencies on both the FEIR/FEIS and the project. Under the circumstances here, imposing that cutoff on either federal or state law comments would fatally compromise the opportunity to ensure accountable decision-making on all relevant information. Interior Secretary Jewell’s Order No. 3343 (Jan. 3, 2017) reports that no federal ROD on the joint project will be approved prior to considering final biological opinions from USFWS and NOAA, which are “expected to be completed by April 2017” following independent peer review of the still-unissued draft opinions. (Order, p. 4.) This order verifies that the Department of Interior, “working with the State and NMFS,” will “review and consider any information received after publication of the Final EIR/EIS and upon receipt of the necessary Biological Opinions (timing set forth below), and after considering all relevant information, will be prepared to sign a ROD for CWF.” (<i>Id.</i> at pp. 6-7 (emphasis added).) Interior’s Order No. 3343 also reports (on page 4) that, as is the case with Interior and its anticipated ROD, DWR “intends to issue its Notice of Determination” only after receiving the forthcoming final biological opinions from USFWS and NOAA.</p> <p>Concurrently with publication of the FEIR/FEIS, the Resources Agency posted on the California Water Fix website a brochure entitled California Water Fix: Moving Toward Environmental Review Process Completion. Its description of the steps following FEIR/FEIS completion indicated that DWR expected to complete its decision-making in Spring 2017. (Brochure, p. 6.) This document also represented that DWR would make its final decisions on EIR certification and the project, adopt any CEQA findings and mitigation monitoring, and issue any NOD only after issuance of both the final biological opinions and Reclamation’s final ROD.</p>	
San Joaquin Agencies	ATT 1	<p>As detailed below, black-letter CEQA and NEPA law requires that the just-released FEIR/FEIS, and the to-be-released information identified above, remain amendable to public review and comment until the time of final state (CEQA) and federal (NEPA) decisions.</p> <p>As soon as possible, and prior to January 30, 2017, the San Joaquin agencies request that DWR:</p> <ol style="list-style-type: none"> a. Specify its proposed course of action from completion of the FEIR/FEIS to final decision (including its decisions on EIR certification and project approval and approval of any NOD), and confirm that the DWR Director is the decision-maker; b. Describe how the following information and developments will be included in the CEQA documentation, and how that information will be afforded public review and comment prior to final project decision: <ol style="list-style-type: none"> 1. All that has developed since close of comment on the DEIR/DEIS; 	This comment 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.

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		<p>2. The pending but still incomplete USFWS and NOAA biological opinions, and Independent Science Board peer review anticipated prior to their final completion;</p> <p>3. The pending but still incomplete State Board decision on the petition for change of the state and federal projects' points of diversion;</p> <p>4. The pending but still incomplete State Board establishment of Delta flow standards;</p> <p>c. As a minimum, with confirmation requested by Friday, January 20th:</p> <p>1. Not cut off the opportunity to present grounds for noncompliance with CEQA prior to final DWR decision;</p> <p>2. After issuance of the final biological opinions, but prior to DWR's certification and final decision, conduct a public hearing on the new CEQA-related information.</p> <p>Failing to heed these requests for a project of this scale, complexity and import, when voluminous and relevant new documents have only been publicly available for weeks and others await completion, would not only be unreasonable, but unlawful as well. CEQA's exhaustion provisions (Pub. Res. Code, § 21177) do not authorize, much less require, the exclusion of relevant information presenting grounds for noncompliance months before DWR even expects to act on certification and decision-making, and before key documents of pivotal importance to project consequences referenced in Secretary Jewell's order are even available.</p>	
San Joaquin Agencies	ATT 1	<p>Moreover, DWR cannot avoid its duty to consider relevant information by failing to schedule a hearing prior to final decision-making, which if remaining in place for this project would preclude application of exhaustion requirements. (See Pub. Res. Code, § 21177(e).) With the high volume of new material and the proposed project generating grave concerns about the health and future of the Delta, the fate of protected species, the protection of public trust resources and the achievement of the 2009 Delta Reform Act's coequal goals, the proposed 30-day cutoff for CEQA objections and supporting documentation is far removed from any meaningful "opportunity" for the public to raise and register objections. (Id.) Without a "clearly defined administrative procedure" providing a genuine opportunity to address and resolve major public concerns about the "project as finally configured," CEQA exhaustion would not even apply, and cannot be used to prematurely curtail meaningful objections. (Santa Teresa Citizen Action Group v. City of San Jose (2003) 14 Cal.App.4th 689, 702.)</p>	<p>This comment requests a hearing prior to final decision making. This comment 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.</p>
San Joaquin Agencies	ATT 1	<p>Opportunities for public comment on earlier drafts must not be conflated with the separate issue addressed here: prospectively creating an exhaustion trap for those with CEQA objections just one month after releasing "final" NEPA and CEQA documents of truly extraordinary length and complexity. (Compare 14 Cal. Code Regs., § 15141; 40 CFR § 1502.7 (even for proposals of "unusual" scope and complexity, EIR and EIS "normally" should be less than 300 pages).) Notably, earlier comment periods preceded EPA's October 30, 2015 review assigning a failing grade of 3 (inadequate) to the 2015 SDEIR/SDEIS, and recognition of "missing pieces" precluding meaningful evaluation of project impacts in that draft to be addressed in related proceedings (e.g., the still-pending biological opinions and State Board proceedings on points of diversion and delta flow).</p>	<p>This comment objects to the period to submit any grounds for noncompliance with CEQA to DWR. This comment 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.</p>
San Joaquin Agencies	ATT 1	<p>Nothing arising from NEPA requirements or procedure requires this arbitrary cutoff. The 30-day period merely provides a minimum period between publication of the Federal Register notice and issuance of the final ROD. NEPA regulations "allow agencies</p>	<p>This comment objects to the period to submit any grounds for noncompliance with CEQA to DWR. This comment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S. Please see</p>

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		<p>and members of the public to submit comment on a final EIS at any time” before the final agency decision. (<i>Center for Biological Diversity v. Department of Fish & Wildlife</i> (2015) 62 Cal. 4th 204, 237 (citing 40 CFR §§ 1503.1(b), 1506.10(b)(2)).) Even where CEQA decision-makers have not formally reopened comment periods, they have not been allowed to use the mantle of exhaustion to deprive the public of the opportunity to hold them accountable in final decision-making. (Id. at 239.) Here, depriving the public of the opportunity to engage analysis that DWR and USBR recognize as necessary to final decision-making would undermine CEQA’s most basic objectives. Lastly, the need for informed and accountable decision-making, necessary for both CEQA compliance and sound public policy, also compels the granting of the request. (See, e.g., <i>Vineyard Area Citizens for Responsible Growth c. City of Rancho Cordova</i> (2007) 40 Cal.4th 412, 449-450.) Prematurely curtailing the opportunity to register and document CEQA objections under the circumstances here would undermine public awareness, review, and comment, on vital information governing a project that to both its supporters and detractors is clearly of transcendent importance. Our concern with the proposed premature cutoff of CEQA objections is narrowly the threat of a State claim that we failed to exhaust remedies, but more broadly the State’s denial of those remedies: insulating the Delta Tunnels project from meaningful input from California agencies and citizens, and denying their opportunity to affect the proposed project’s outcome.</p>	<p>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.</p>
San Joaquin Agencies	ATT 2	Exhibit 2	<p>This attachment is a DWR/USBRE letter regarding requests for extending NEPA cooling off comment period. This attachment does not raise any substantive new environmental information or analysis.</p>
San Joaquin Agencies	ATT 3	Exhibit 3	<p>This attachment is the cover page of a review of the use of science and adaptive management in California’s Draft Bay Delta Conservation Plan. This attachment 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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San Joaquin Agencies	ATT 4	Exhibit 4	This attachment is Order No. 3343 from the Secretary of the Interior regarding actions to address effects of drought and climate change on California's water supply and listed species. This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 5	Exhibit 5	This attachment is 2016 California WaterFix outreach material regarding the environmental review process. This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 6	Exhibit 6	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.
San Joaquin Agencies	ATT 7	Exhibit 7	This comment letter from the EPA was received during the NEPA cooling off period. This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 8	Exhibit 8	This attachment is the Sacramento County Superior Court ruling of the Delta Stewardship Council Cases invalidating the Delta Plan. This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 9	Exhibit 9	This attachment is regarding MWD's purchase of the Delta Islands. This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.

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San Joaquin Agencies	ATT 10	Exhibit 9	This attachment is a brochure regarding the Delta Islands purchase. This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 11	Exhibit 10	This attachment is a 2016 Benefit-Cost Analysis of 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.
San Joaquin Agencies	ATT 12	Exhibit 11	This attachment is Exhibit SJC-004, SJC-003, SJC-002, and SJC-001 presented for 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. See Section 4, State Water Board Change Petition Process, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on State Water Recourses Control Board hearing materials.
San Joaquin Agencies	ATT 13	Web link	This attachment is a link to detailed records for cases-in-chiefs and 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. See Section 4, State Water Board Change Petition Process, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on State Water Recourses Control Board hearing materials.
San Joaquin Agencies	ATT 14	MWD, Sepcial Committee on Bay-Delta Presentation Re. Review Status of BDCP Cost Allocation Discussions	This attachment is a PowerPoint presentation detailing cost allocation and does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 15	California water tunnels would need US funding, analyst says (Associated Press by Ellen Knickmeyer, September 14, 2016)	This attachment is an article regarding the cost of the project and does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 16	draft CalWater Fix Economic Analysis	This attachment is a 2015 economic analysis for the Natural Resources Agency and does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.

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San Joaquin Agencies	ATT 17	Feds to Probe Delta Tunnel Misuse of Grant Funds, Inspector General to Audit California Water Resources Handling of Federal Aid	This attachment is a reference to a complaint by a USBR employee regarding funding of the project and does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 18	Legislators approve audit of Gov. Jerry Brown's water tunnels plan	This attachment is an article regarding the financing of the project and does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.
San Joaquin Agencies	ATT 19	DWR exhibit 334 in water board hearings	This attachment is Exhibit DWR-334 presented for 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. See Section 4, State Water Board Change Petition Process, Developments after Publication of the Proposed Final Environmental Impact Report, for discussion on State Water Recourses Control Board hearing materials.
San Joaquin Agencies	ATT 20	New legislation titled Water Infrastructure Improvements for the Nation Act.	This legislation provides for the establishment of a "pilot program" under Title III, Subtitle J, Section 4001(b). At the end of this pilot program, there may be changes to operations which would require subsequent NEPA analysis. The specific operational plans to be developed under this legislation also are not well defined at this time to be qualitatively or quantitatively included in the Cumulative Impact Analysis. This attachment does not raise any substantive new environmental information or analysis that was not previously addressed in the Final EIR/S.