
**Santa Barbara County Superior Court, "*Santa Clarita Organization for
Planning the Environment v. County of Los Angeles*, Case No. 1043805"
(January 6, 2006)**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA STREET ADDRESS: 1100 Anacapa St MAILING ADDRESS: CITY AND ZIP CODE: Santa Barbara, CA, 93101 BRANCH NAME:		FILED SUPERIOR COURT of CALIFORNIA COUNTY of SANTA BARBARA JAN 06 2006 GARY M. BLAIR, Executive Officer BY <i>Leanna M. Pearson</i> LEANNA M. PEARSON, Deputy Clerk
PLAINTIFF: Santa Clarita Organization DEFENDANT: County of Los Angeles		RECEIVED JAN 11 2006 PAUL HASTINGS
ORDER AFTER HEARING		CASE NUMBER: 1043805

On October 5, 2005 a Civil Law and Motion Hearing was set before Judge James Brown on the following matter(s):

Matter(s):

(1) 08-24-05 Notice of Motion and Motion for Order Decertifying Environmental Impact Report and Expanding the Current Injunction/Opposition to Return on Writ; P's and A's -- Hrg: 10/05/2005 at 9:30 am in Dept 5, Filed by Petitioner

(2) 08-04-05 Notice of Hearing Return to Peremptory Writ of Mandate Filed by Respondent and Real Parties in Interest Hrg 10/05/05 9:30am Dept 4, Filed by Respondent

Issues Presented:

Return to Peremptory Writ of Mandate; Motion for Order Decertifying Environmental Impact Report and Expanding the Current Injunction

Findings:

Background

This is an administrative mandamus action. Respondent County (County of Los Angeles) certified a final EIR and passed resolutions approving the West Creek development. The West Creek project is a proposed mixed residential and commercial development in the Santa Clarita Valley, which is to include 2,545 homes among other things. Petitioner SCOPE (Santa Clarita Organization for Planning the Environment and the Friends of Santa Clarita River, collectively) challenged the certification of the EIR and related resolutions. The developer of the Project is real party in interest, The Newhall Land and Farming Company, a California Limited Partnership, and Valencia Corporation, a California corporation (collectively "Newhall").

On 1/10/02 Dept 3 of this court denied the petition for writ of mandate. SCOPE appealed. In a published decision, the Court of Appeal reversed.

The Court of Appeal concluded that the water service portion of the EIR was inadequate. "An [EIR] for a housing development must contain a thorough analysis that reasonably informs the reader of the amount of water available. The dream of water entitlements from the incomplete State Water Project (SWP) is no substitute for the reality of actual water the SWP can deliver." *Santa Clarita Organization for Planning the Environment v. Los Angeles County (Newhall Land and Farming Co.)* (2003) 106 Cal.App.4th 715, 717-718.

Upon reversal, the Court of Appeal ordered:

"Because the water services portion of the EIR is inadequate, the judgment is reversed. The trial court shall issue a writ of mandate vacating the certification of the EIR, shall **retain jurisdiction until the County certifies the EIR complying with CEQA** consistent with the view expressed in this opinion, and shall consider such orders it deems appropriate. (See section 21168.9 on trial court's power over EIR.)"

(*Santa Clarita v. Los Angeles County* (2003) 106 Cal.App.4th 715. Emphasis supplied.)

Upon Remittitur, SCOPE exercised a 170.6 challenge, and on 5/13/03 the matter was reassigned to this department.

On 6/27/03 this Court issued a Writ of Mandate ordering the County to vacate certification of the EIR, to revise the EIR to include the issues raised in the Court of Appeals decision, and to re-circulate for public comment.

On 6/30/05 this Court issued a decision clarifying the injunction contained in the Writ of Mandate.

On 8/4/05 RPI Newhall filed its Return to the Writ of Mandate.

On 8/24/05 SCOPE filed an Opposition to the Return and "Motion for Order Decertifying Environmental Impact Report and Expanding the Current Injunction"

The Return and Petitioner's Motion present overlapping issues and are considered here together.

The Court has considered on the merits all new developments impacting the adequacy of the EIR, having retained jurisdiction until an EIR in compliance with CEQA is certified. The Court of Appeal directed this court to "retain jurisdiction until the County certifies the EIR complying with CEQA..." (*Santa Clarita v. Los Angeles County* (2003) 106 Cal.App.4th 715. Public Resources Code §21168.9(b) provides that, "...The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division." County and Newhall cite no authority that would prevent this court from considering new developments that occurred after issuance of the Writ and before certification of the revised EIR.

The certified "Revised EIR" consists of the initial EIR, an Additional Analysis concerning water services that was circulated in response to the Writ and revised in response to public comment, and a Supplement concerning perchlorate contamination, also circulated for public comment, discussed below.

The Writ of Mandate provided that "This Court will retain jurisdiction over this matter ...until such time as the Court has determined that the County has certified a revised EIR for the West Creek project that complies with the provisions of the California Environmental Quality Act..." The Writ of Mandate directed the County to take specific action regarding revision of the water supply analysis, and all water supply and demand analysis, within the EIR:

"The water supply analysis in the EIR shall be revised to include the issues in the Court of Appeal decision, including, at a minimum, **accurate availability, reliability and supply estimates for State Water Project water** in wet, average and dry years, which estimates must be obtained from the Department of Water Resources. The County must also revise and re-assess the EIR's cumulative impacts analysis for water supply and demand, and must revise and re-assess any and all analysis contained in the EIR related to water supply and demand. The revised EIR shall then be re-circulated for public review and comment. If there are comments on the revised EIR, then **adequate and detailed responses must be prepared for such comments**, as required under Public Resources Code §21092.5 and consistent with the Court of Appeal decision in this case. The County must make clear in the revised analysis that State Water Project entitlements are not equivalent to actual deliveries of water." (Emphasis supplied)

This court finds the Revised EIR does comply with CEQA, and includes accurate availability, reliability supply estimates for State Water Project Water in wet, average and dry years based upon estimates from the DWR, contains revised and re-assessed analysis for water supply and demand, makes clear that SWP entitlements are not equivalent to actual deliveries of water. The court finds that adequate detailed response has been prepared for public comments on the revised EIR. Petitioner's Request to expand the injunction will be denied.

Standard of Review

An agency's certification of an EIR is subject to judicial review, but a court's inquiry "shall extend only to whether there was a **prejudicial abuse of discretion**. Abuse of discretion is established if the agency has **not proceeded in a manner required** by law or if the determination or decision is **not supported by substantial evidence**." (Public Resources Code section 21168.5) (Emphasis supplied)

"**When the informational requirements of CEQA are not complied with, an agency has failed to proceed in 'a manner required by law'** and has therefore abused its discretion." *Save Our Peninsula Committee v Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 118. (Emphasis supplied)

The court "does not pass upon the correctness of the EIR's environmental conclusions, but **only upon its sufficiency as an informative document**." *Laurel Heights Improvement Ass'n v Regents* (1998) 47 Cal.3d 376, 392. (Emphasis supplied)

An EIR must include analysis of the water supplies necessary to serve the project, including impacts related to infrastructure necessary to develop and deliver the water to the project. *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, Guidelines App G, ¶XVI(d) ("sufficient water supplies available to serve the project from existing entitlements and resources.")

An EIR "cannot simply label the possibility that [water resources] will not materialize as 'speculative,' and decline to address it." *Napa Citizens for Honest Government v Napa County Board of Supervisors*, (2001) 91 Cal.App.4th 342, 373 in which an EIR failed to provide sufficient information as to the effects the project might be expected to have on the region's water supply and the need for treatment of wastewater, so that the governing body's conclusion that project was consistent with general plan was invalid. "The County should be informed if other sources exist, and be informed, in at least general terms, of the environmental consequences of tapping such resource. Without either such information or a guarantee that the resources now identified in the FSEIR will be available, the County simply cannot make a meaningful assessment of the potentially significant environmental impacts of the Project" *Id.* at 373-374.

The court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable" and "may not...substitute [its] judgment for that of the people and their local representatives" but "can and must, however, scrupulously enforce all legislatively mandated CEQA requirements." *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal. 3d 553, 564.

"Under CEQA, an EIR is presumed adequate (Pub. Res. Code §21167.3), and the plaintiff in a CEQA action has the burden of proving otherwise." *State of California v. Superior Court*, (1990) 222 Cal. App. 3d 1416, 1419.

Return to Peremptory Writ of Mandate; Motion for Order Decertifying Environmental Impact Report and Expanding the Current Injunction

The County has complied with the directions set forth in the Peremptory Writ of Mandate issued 6/27/03 and the Writ should be discharged. The County has certified an EIR in compliance with CEQA.

The Revised EIR contains an extensive Additional Analysis concerning water supply, based on DWR estimates for actual delivery, and makes clear that water entitlements are not equal to actual delivery.

Petitioner's challenge to the Revised EIR focuses on two issues: (1) Disclosure and Reliability Conclusions concerning the Kern-Castaic Transfer of 14,000 acre foot of water per year (afy), a source of water relied on for planning purposes; and (2) Disclosure and analysis concerning Spread of Perchlorate Contamination in the aquifer, a source of water relied on for planning purposes. The two issues are discussed in turn.

(1) Kern-Castaic Transfer of 14,000 afy

The EIR relies for planning purposes on availability of a 41,000 afy transfer of State Water Project water from Kern County Water Agency to Castaic Lake Water Agency.

The County's decision that the 41,000 afy transfer from Kern to Castaic would be available for planning purposes, despite some uncertainty arising from ongoing litigation, was supported by substantial evidence and was fully disclosed such that there was no abuse of discretion by way of failure to comply with CEQA's informational requirements.

Petitioner contends there is inadequate disclosure on the reliability of a 41,000 afy transfer from Kern to Castaic, because the Revised EIR does not refer to an Exhibit E to a Settlement Agreement reached in other litigation between Castaic, the Department of Water Resources, and other parties. (The "PCL" Litigation)

A brief historical background of the 41,000 afy SWP transfer is as follows. In 1951, California's Legislature authorized construction of a State Water Project (SWP), for which voters approved a bond issued approximately eight years later. The Department of Water Resources (DWR) is operator of the State Water Project. The DWR entered into agreements with various water districts to supply water (SWP Contracts). Castaic Lake Water Agency is such one such Contractor. In the early 1990's water shortages resulted in disputes between DWP and Contractors, which were resolved by the "Monterey Agreement" and execution of the "Monterey Amendments." The Monterey Agreement allowed SWP contractors (such as Castaic and Kern) to transfer unused Table A Amounts to other SWP contractors on a permanent basis.

In a 1999 Monterey Amendment, the DWR approved a transfer of 41,000 afy from Kern County Water Agency to Castaic Lake Water Agency. The West Creek EIR presently before the court relies heavily on availability of this transfer for planning purposes.

In 1995 an EIR for the Monterey Amendments was certified. However, it was decertified following a 2000 appellate decision in *Planning and Conservation League [PCL] v. Department of Water Resources*, (2000) 83 Cal.App.4th 892. The Third District found there that the EIR for the Monterey Agreements was inadequate, and should have been prepared by DWR as the lead agency who was in the best position to assess statewide impacts of the Monterey Amendments. This decertification of the Monterey EIR is disclosed in the EIR's Additional Analysis. (Vol 59, p. 27743, §4.2.4 *Imported Water Supplies, (c) Monterey Agreement Environmental Review and Litigation*) This Monterey Amendment EIR litigation is generally referred to as the "PCL Litigation."

On May 5, 2003, (after the Second District's 2/27/03 decision in this West Creek case) the PCL parties reached a Settlement Agreement concerning preparation of the required new EIR for the Monterey Amendments. That Monterey Agreement EIR is not complete. The Department of Water Resources is the lead agency for the PCL Monterey Agreement EIR, and has not yet made its final decision. This fact is also disclosed in the West Creek Revised EIR.

The EIR's Revised Additional Analysis discloses that the PCL Monterey Agreement EIR has been decertified and that the court has retained jurisdiction "until DWR certifies an EIR in accordance with CEQA." (Vol. 59, p 27743, §4.2.4(c) *Monterey Agreement Environmental Review and Litigation*) The EIR's Additional Analysis also states, "The appellate court decision invalidated certification of the EIR, but did not set aside, invalidate or otherwise vacate the Monterey Agreement. In addition, no court orders have been issued to 'stay' further implementation of the Monterey Agreement." (*Ibid.*) The statement is accurate, although it is also true no court has determined whether or not agencies may rely upon the 41,000 afy transfer for planning purposes pending recertification of the Monterey Agreement EIR.

The May 5, 2003 PCL Settlement Agreement is disclosed and summarized in the EIR's Revised Additional Analysis at section 4.2.4(c) (Vol. 59, p. 27743-27744). The PCL Settlement is attached to the Revised EIR as Appendix O. (This court recognizes that disclosure in the appendixes would not, alone, be sufficient for CEQA compliance. The Court of Appeal has previously criticized Respondent herein for relying on disclosures in appendixes. "It is not enough for the EIR simply to contain information submitted by the public and experts. Problems raised by the public and responsible experts require a good faith reasoned analysis in response." 106 Cal.App.4th 715, 723.)

In the May 5, 2003 PCL Settlement Agreement, the parties including DWP and Castaic Lake Water Agency agreed that certain transfers were "final" and agreed not to "hereafter challenge the effectiveness or validity of such water transfers" (Vol. 55, p.22513, Settlement Agreement §III, D)

The 41,000 afy Kern-Castaic transfer was not among those agreed "final" transfers immune from challenge. It was treated separately in section III, E of the Agreement, because parallel litigation remained pending in Los Angeles Superior Court ("*Friends*") challenging Castaic's own certification of an EIR for the 41,000 afy purchase. The PCL parties expressly deferred to *Friends* court's jurisdiction. The PCL parties expressly acknowledged in section III, E of the PCL Agreement that the Kern-Castaic transfer was subject to separate pending litigation (*Friends of the Santa Clara River v. Castaic Lake Water Agency*, LASC BS05954, "*Friends*" in which Castaic's own EIR for the 41,000 afy transfer had been challenged, and the Court of Appeal ordered the EIR decertified. The Revised EIR discloses this information. (Vol 59, 27745-27746) The *Friends* litigation has subsequently been voluntarily dismissed. On 12/22/04 Castaic certified a revised EIR for the 41,000 transfer. A new challenge to the revised EIR is pending in Los Angeles. The PCL parties agreed, "that nothing in this Settlement Agreement is intended to predispose the remedies or other action that may occur in that pending [*Friends*] litigation."

Exhibit E to the PCL Settlement Agreement is entitled "Final Permanent Table A Amount Transfers from Kern County Water Agency Subsequent to Monterey Amendments (January 1, 2003)." It lists the seven "final" transfers. The transfer from Kern to Castaic Lake Water Agency is not included. (Vol. 55, p. 22561). The Agreement is signed by the Castaic Lake Water Agency, as well as DWR. (Vol. 55, p. 22545)

The West Creek EIR and its Additional Analysis do not refer to Exhibit E of the PCL Settlement Agreement, or to the separate treatment of that transfer by the PCL parties due to the pending *Friends* litigation. Petitioner contends this is a fatal deficiency.

In the PCL Settlement Agreement, the parties including DWP and Castaic Lake Water Agency also agreed that "they will not approve any new project or activity in reliance on the 1995 EIR, that was not approved, initiated or implemented prior to March 26, 2001, and the approval, initiation or implementation of which would require a separate environmental impact report or negative declaration under CEQA (other than, or in addition to, the 1995 EIR)." (22529, §VII (A))

On the other hand, nowhere in the PCL Agreement or anywhere else in the record does DWR disavow its prior approval of the 41,000 afy transfer and its subsequently published delivery estimates continue to list the 41,000 afy transfer.

Petitioner argues that the 41,000 afy transfer is not reliable for long-term planning purposes because, before determining whether to authorize the transfer as final and permanent, the DWR must prepare an EIR analyzing state-wide impacts of such a long-term transfer. Petitioner points out that DWR is allowing Castaic to avail itself of the 41,000 afy on an interim basis, and that the DWR may ultimately determine that state wide impact of the Monterey Amendments is too great and may disapprove all or part of the 41,000 afy transfer, which is the only transfer not immune from challenge pursuant to Exhibit E.

Petitioner contends that it is speculative to consider any transfer outside the Monterey Agreements, because DWR must agree to any transfer, even if made outside the Monterey Agreement (*PCL v DWR*, (2000) 83 Cal.App.4th 892), and DWR has not done so.

This court finds that the Revised EIR adequately discloses the uncertainties arising from the pending DWR recertification process, and substantial evidence supports the County's conclusion that the transfer is reliable notwithstanding the uncertainty created by litigation and pending DWR environmental review.

The Court of Appeal directed that the Revised EIR must disclose that State Water Project entitlements cannot be taken at face value:

"Here the draft EIR gives no hint that SWP entitlements cannot be taken at face value. It is only in response to comments and submissions by project opponents such as SCOPE that the EIR obliquely acknowledges that the entitlements may not be all they seem. Instead of undertaking a serious and detailed analysis of SWP supplies, the EIR does little more than dismiss project opponents' concerns about water supply. Water is too important to receive such cursory treatment.

"The final EIR's acknowledgement that there 'could be a deficit of supply' does not cure the defect. Without some reasonably accurate estimate of SWP's ability to deliver water, it is impossible to judge how likely or how deep the deficit might be."

Santa Clarita Organization for Planning the Environment v County of Los Angeles, supra, 106 Cal.App.4th 715, 723.

The revised EIR does disclose that the 41,000 transfer is subject to DWR's assessment of the statewide environmental impacts of the Monterey Amendments. It discloses that the PCL Monterey Agreement EIR has been decertified and that the court has retained jurisdiction until DWR certifies an EIR in accordance with CEQA, as noted above.

The West Creek revised EIR discloses that the 41,000 afy transfer is subject to "**many factors including ...the environmental requirements associated with the Sacramento-San Joaquin Delta (Delta)**, where the water supplied by the SWP is pumped into the California Aquaduct..." (Vol. 53, 19091-19097) * (Emphasis supplied)

The West Creek revised EIR discloses that, "**an adverse final judgment invalidating the Monterey agreement could affect Castaic's completed acquisition of the 41,000 AF**, which could in turn impair CLWA's supply of SWP water contracts with DWR and other SWP contractors." (Revised Additional Analysis, Vol. 59, 27747; Vol 53, 19142) It continues, "Nevertheless, CWLA believes that an adverse outcome in the Monterey Agreement litigation is not likely to adversely affect CLWA's water supplies over the long-term because (a) CWLA believes that such a result is unlikely to 'unwind' executed and completed agreements with respect to the permanent transfer of SWP water amounts; (b) existing SWP water supply contract provisions allow such transfers (without the need for the Monterey Agreement); and (c) existing law enables the CWLA to enter into contract outside the context of the Monterey Agreement." (*Ibid.*) (Emphasis supplied)

There is further information in the Revised EIR concerning the status and reliability of the 41,000 afy transfer. Responses 1 and 3 to Letter 4 from Rossman and Moore LLP, it is disclosed that Castaic Lake Water Agency's water supply contract with the State Water Project reflect only an expectation and that under some conditions only a lesser amount will be available, relies upon the 41,000 as an amount reported in the DWR's State Water Project Delivery Reliability Report, and **acknowledges that the Monterey Settlement Agreement does not list the 41,000 afy transfer as final.**

There is substantial evidence in the record to support the decision to rely upon the 41,000 afy transfer for planning purposes. The EIR's Revised Additional Analysis, section 4.2.4 Imported SWP Water Supplies, provides a brief history of the SWP, and describes the Table A Amount as the "maximum annual allocation of SWP water." (Vol. 59, p. 27740) It describes the SWP contract for 41,000 afy, and discloses that "Because the SWP system was not fully constructed, and its capacity has been constrained due to environmental considerations and evolving policies for the Sacramento-San Joaquin Delta (Delta) not contemplated in the 1960s, **the SWP cannot reliably deliver the full amounts of supplies anticipated in the contracts in any given year.** However, in ten percent of the years, (i.e. during wet periods), DWR estimates the annual water delivery of the SWP, utilizing existing facilities, to be at or above 4.10 million AF per year (98 percent of the full Table A Amount of 4.13 million AF.) The most SWP Table A water delivered to date (2003) in any year was about 3.5 million AF in 2000, and 2003 may result in a new high for annual deliveries. The demands for SWP water are expected to increase as the population of California continues to increase." (Vol 59, pp 27740-27741)

There is further disclosure in EIR's Revised Additional Analysis, section 4.2.4, subdivision (g) SWP Supplies: "DWR water supply contracts require the SWP to deliver 4.2 million AFY to 29 SWP contractors. Although the SWP is not fully constructed and cannot yet deliver the full 4.2 million AFY, **since the end of the six year drought in 1992, the SWP has fully met SWP contractor's water needs every year, except the dry years of 1994 and 2001.** Of SWP water deliveries, about 70 percent is delivered to SWP urban contractors and about 30 percent is delivered to SWP agricultural contractors. In 2003 DWR indicates that it can deliver 90 percent (or 3.71 million AF) of SWP Table A Amount to its contractors. Ninety percent of CLWA's SWP maximum table amount of 95,200 AFY equates to 85,680 AF of water. However, as discussed more fully below, **the maximum Table A amount contractually allocated does not necessarily result in equivalent deliveries of SWP water in any given year.**" (Vol 59, p. 27754) (Emphasis supplied)

Section 4.2.4 of the Revised Additional Analysis continues at subdivision (h), *SWP Reliability*, and discloses, "SWP supplies are **subject to reduction**, especially in drought periods." (Vol 59, p. 27756). It provides that Table A Amounts, "**should not be read as a guarantee of that amount**, but rather as the tool in an allocation process that defines an individual contractor's 'slice of the pie.' The size of the 'pie' itself is determined by **many factors** including local weather conditions, the amount of winter rains and snow pack in on northern California watersheds and **the environmental requirements associated with the Sacramento-San Joaquin Delta (Delta)**, where the water supplied by the SWP is pumped into the California Aqueduct....**As a result of various factors, the SWPs annual deliveries of both Table A Amount water and non-Table A Amount Water have ranged from approximately 550,000 AF to 3.52 million AF (DWR 2003).**" [Vol. 53, 19091-19097] (Emphasis supplied). The total of all contractor's maximum Table A Amounts is 4.173 million.

The EIR's Revised Additional Analysis provides a thorough discussion of reliability of water supplies from the SWP using DWR's published reliability projections. (Additional Analysis, Volume VIII, AR Vol 59 pp27630-27826)

The court does recognize that the EIR and its Additional Analysis do not provide water supply figures assuming the DWR does *not* approve the 41,000 transfer after completion of the Monterey Amendments revised EIR. The 41,000 afy transfer constitutes about 43% of the Castaic SWP water relied on by the West Creek revised EIR.

The EIR's Revised Additional Analysis concludes that, "because cumulative water supplies exceed demand, cumulative development (including the proposed West Creek project) would not result in unavoidable significant impacts on Santa Clarita Valley water resources." (Vol 59, p 27794.)

The EIRs Additional Analysis disclosed that the Castaic EIR for the transfer was decertified in the *Friends* litigation, and that preparation of a new EIR is in process. The EIRs Additional Analysis states that, "the trial court did not order CLWA to vacate its approval of the water transfer itself. Rather, the court ruled that CWLA may utilize and rely on the 41,000 AFY. The trial court allowed that the petitioner may renew its application for a prohibition on CLWA's use of the 41,000 AFY if the petitioner could provide evidence that CWLA is actually using the additional entitlement for purposes petitioner considers improper." (Vol. 59, p 27701)

Petitioner contends this summary is misleading, because it suggests that the *Friends* court allowed CWLA to "rely" on the transfer *for planning purposes*, when it did not. The court's order does not in fact approve or disapprove reliance for planning purposes:

"Petitioner requests that the Court also prohibit respondent from using any of the 41,000 acre feet of additional water allotted to it from the subject State Water Project. **Petitioner contends that the said water will be used**

to approve new development that will not be able to be reversed if a Final Environmental Impact Report is not certified. Respondent contends that such a prohibition would prevent it from meeting the existing water needs in the area it services. Both **contentions appear to be speculative** at this time. Respondent will not be prohibited from using the water to which it is entitled, but **petitioner may renew its application for such prohibition based upon evidence of actual use** of such additional water for purposes it considers improper."

(Judgment of Los Angeles Superior Court in *Friends*, BS056954, decertifying Castaic EIR on remand, included in Appendix O to the Draft Additional Analysis, AR at Vol 54, p20658.) (Emphasis supplied)

Before this court presently County and Newhall are using the water to approve new development. Whether such reliance is appropriate, *if the uncertainties are disclosed*, appears to be a question of first impression.

On appeal in this case, Petitioner argued that the transfer was not final and could not be relied upon because the 5th Circuit Court of Appeal in *Planning and Conservation League v Dept of Water Resources* (2000) 83 Cal.App.4th 892, found the Monterey Agreement EIR defective, and the Second District in *Friends of the Santa Clara River v Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, found CLWA's EIR for the 41,000 afy transfer to be defective, having tiered off the Monterey Agreement EIR. (Petitioner's Reply Brief on appeal, Ex 5 to Appendix filed 9/8/05 herein, p. 11.) This court does not read the Opinion of the Court of Appeal herein as rejecting or accept the argument. (*SCOPE*, 106 Cal.App.4th 720, 721-724) In the Opinion, the Court notes that Petitioner cites the *Friends* decision (decided after certification of the initial West Creek EIR) only to show that entitlements cannot be taken at face value, and goes on to conclude that because actual delivery is not adequately analyzed, the decision to approve the West Creek EIR is not supported by substantial evidence. The Court did not reach the merits of the question whether an agency may rely on the 41,000 afy transfer for planning purposes pending the DWR's environmental review of statewide impacts of the Monterey Agreements.

Reliance on the 41,000 afy transfer for planning purposes was recently addressed by Division 8 of the Second Circuit, but there the EIR failed to disclose the uncertainties surrounding the transfer. In *California Oak Foundation v City of Santa Clarita* (Nov. 2, 2005) 133 Cal.App.4th 1219, decided after this court hear oral argument in this case, the trial court erred in approving an EIR certified by the City of Santa Clarita 6/24/03 concerning the Gate King industrial business park development project, because the section discussing water supplies "did not adequately inform the public about [] uncertainties in the water supply" with regard to the 41,000 afy entitlement. (The court also rejected *SCOPE*'s contention that the "EIR's treatment of perchlorate contamination was insufficient" *Id.* at 1226.) The EIR for the Gate King development in *California Oak Foundation*, contained "inadequate discussion—in fact, no discussion at all—of the uncertainty surrounding the transfer of the 41,000 AFY entitlement. The text of the [Gate King] EIR does not mention the decertification of the EIR for the Castaic purchase, and does not discuss the fact that entitlements are not really entitlements, but only 'paper' water...The EIR merely states, in an analysis unchanged from the draft [after public comment on the decertification issue] that Castaic's entitlement 'can fluctuate from year to year based on a number of factors...'."

The West Creek Revised EIR here contains similar language about fluctuation based on factors such as "(including 'environmental requirements,' and 'evolving policies for the Bay-Delta') but also includes the Additional Analysis circulated for public comment with specific discussion of the *Friends* and *PCL* litigation and disclosure of the EIR decertification. In *California Oak Foundation*, by contrast, "the only discussion in the EIR of the uncertainty created by the decertification of the EIR for the Castaic purchase appears in an appendix added to the final EIR, shortly before certification...at a minimum, the text of the EIR should refer to the appendices that contain the relevant discussion." (*Id.* , at 1239) Here, disclosure was more complete.

Castaic has now certified a revised EIR, and that EIR is presumed adequate pending challenge. (*State of California v. Superior Court*, (1990) 222 Cal. App. 3d 1416, 1419.) The court does recognize that the DWR has not certified a Revised EIR for the statewide impact of the Monterey Amendments and that it does not appear the DWR would be bound by the decisions of Castaic if the DWR were ultimately to decide against all or part of the 41,000 afy.

The court in *California Oak Foundation* acknowledged that the decision whether to rely on the 41,000 afy transfer is to be made by the agency, but emphasized the importance of clear disclosure. "[T]he question is whether the entitlement should be used for purposes of planning future development, since its prospective availability is legally uncertain. Although this decision must be made by the City, the EIR is intended to serve as an informative document to make

government action transparent. Transparency is almost impossible without a clear and complete explanation of the circumstances surrounding the reliability of the water supply." (*Oak Creek, supra*, at 1237-1238.)

This court finds the issue to be a close call, but on balance finds that the uncertainties surrounding the 41,000 afy transfer are adequately disclosed and that there is substantial evidence supporting the County's decision to rely upon the 41,000 afy transfer. The court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable" and "may not... substitute [its] judgment for that of the people and their local representatives..." *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal. 3d 553, 564.

"CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive. . . . The absence of information in an EIR, or the failure to reflect disagreement among the experts, does not per se constitute a prejudicial abuse of discretion. [Citation.] A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process. [Citation.]" *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.

Here, the omission of specific reference to Exhibit E did not preclude informed decisionmaking and informed public participation or thwart the goals of the EIR process.

Petitioner also contends the Revised EIR contains inadequate response to two written public comments concerning the transfer.

Two written comments were submitted on behalf of Petitioner raising the issues of finality of the Kern-Castaic Transfer, and its exclusion from Exhibit E to the PCL Agreement listing final transfers.

Comment 1 was submitted by Petitioner, transmitting correspondence on the subject between Petitioner's Counsel and the Director of the DWR regarding the outstanding EIR on the Monterey Amendments consistent with the PCL Agreement. Petitioner wrote to County:

"Please include the following correspondence between our attorney and the Department of Water resources and their response regarding the timeline for the completion of the Monterey Agreement Environmental Impact Report. **We continue to protest that you may not approve projects based on this water transfer were [sic] two environmental impact reports have been decertified.** This would mean that the **water transfer project is proceeding without any CEQA documentation.** Such action is precluded by law...." (Vol. 56, p. 24329.) (Emphasis supplied)

Enclosed was a letter from Petitioner's counsel to the Director of the Department of Water resources inquiring about the process and timeline for approval of the water transfer. Also enclosed was the DWR Director's letter in response acknowledging that the Department of Water was undergoing, and had not completed, environmental review of the impact of the 41,000 afy transfer.¹ The Director of DWR wrote, "...**DWR has not completed any draft or final analysis regarding these transfers.** Attached is an estimated schedule for completion of the EIR...." (Emphasis supplied)

¹ Counsel wrote, "Pursuant to the Court decision in *Planning & Conservation League v. Department of Water Resources*..., the Department of Water Resources is required to prepare a new Environmental Impact Report regarding all aspects of the Monterey Amendments. I understand you will be overseeing this process. ¶ The Settlement Agreement that was entered into between all of the parties to the PCL case on May 5, 2003 set forth various requirements for the EIR. According to Attachment B-1 of this Settlement Agreement, the parties specifically excluded the 41,000 afy entitlements purchased by Castaic Lake Water Agency ("CLWA") emanating from the Monterey Amendments from the list of final transfers. It is therefore my understanding that your office will be evaluating the environmental impacts of the 41,000 afy transfer as part of the Environmental Impact Report for your project (the Monterey Amendments Project.) ¶ As you may also be aware, the EIR prepared by the CLWA for the 41,000 afy transfer was decertified by the Los Angeles Superior Court on November 1, 2002 in *Friends of the Santa Clara River Valley v. Castaic Lake Water Agency*... ¶...please advise me of the procedural steps that DWR will take before making a determination whether or not to approve the Kern-Castaic transfer as a 'final' transfer and criteria that will be utilized for making this determination..." (Vol 56, p. 24330-24331, 5/18/04 Letter from counsel for Petitioner to Lester Snow, Director Department of Water Resources)

The DWP Director responded, "...the Department of Water Resources (DWR) is preparing an Environmental Impact Report (EIR) on the Monterey Amendments and the Settlement Agreement resulting from the court of appeal decision in *Planning & Conservation League v Department of Water Resources*... ¶ ...the EIR will include an 'analysis of

Comment 2 is a 4/13/04 letter written on behalf of Petitioner by its counsel, objecting that the water supply analysis overstates the reliable amount of State Water Project entitlements, because **"Depending upon the outcome of DWR's analysis of the environmental impacts of Castaic's 41,000 afy project on the State Water Project's current users ...DWR may ultimately decide to deny approval of the transfer of the 41,000 acre feet yearly to Castaic as part of the Monterey Amendment program."**² (Emphasis supplied)

Failure to respond to any significant public comment is an abuse of discretion. *Cleary v County of Stanislaus* (1981) 118 Cal.App.3d 348. The agency must respond in writing to written comments. 14 CCR 15088(a); *Browning-Ferris Industries City Council* (1986) 181 Cal.App.3d 852. The Revised EIR contains both topical response concerning perchlorate contamination ((Vol 54, pp 21361-21374 and 21386-21396) and specific responses to particular comment.

A specific Response to the 4/13/04 comment letter mentions decertification of the Monterey Program EIR, but does not mention the DWR's pending environmental impact analysis of the 41,000 afy transfer. The Additional Analysis does disclose the pending review, as discussed above. The Response concludes, **"Because the 41,000 AFY was a permanent water transfer, because DWR includes the 41,000 AFY in calculating CLWA's share of SWP Table A Amount, and because the courts have not prohibited CLWA from using or relying on those additional SWP supplies, the County has determined that it remains appropriate for the West Creek project to include those water supplies in its water supply and demand analysis, while acknowledging and disclosing the potential uncertainty created by litigation."**³ The Response also incorporates Topical Response 4 and Responses 1 and 3 to a letter from

the potential environmental impacts relating to (a) the Attachment E transfers, and (b) the Kern-Castaic [41,000 afy] Transfer, in each case as actions that relate to the potential environmental impacts of approving the Monterey Amendments.' ...DWR has not completed any draft or final analysis regarding these transfers. Attached is an estimated schedule for completion of the EIR...." (Vol. 56, p 24332, Letter from Director Snow to counsel for Petitioner) (Emphasis supplied)

² Petitioner's counsel wrote, "...I. The Water Supply Analysis Overstates the Reliable Amount of State Water Project Water Entitlements Available on a Long-Term Basis from Castaic Lake Water Agency by 41,000 acre feet per year. ... ¶ Throughout the DAAEIR, the estimate of SWP water supply available for the project is improperly premised upon Castaic's claimed entitlements/allocation of 95,200 acre feet per year. ... The DAAEIR fails to disclose that of this amount of allocation (described by the Court in the SCOPE decision as 'paper water'), the transfer of 41,000 acre feet annually ('afy') has been specifically recognized by DWR to be a 'non-final' transfer of agricultural water to urban use (See the DWR/PCL Settlement Agreement Attachment E-1 [FN omitted]) ... ¶The DWR/PCL settlement agreement specifically requires DWR to analyze 'the potential environmental effects' relating to the Castaic project...and to make new determinations regarding all non-final aspects of the Monterey Agreement upon completion of a new EIR... ¶ Depending upon the outcome of DWR's analysis of the environmental impacts of Castaic's 41,000 afy project on the State Water Project's current users ...DWR may ultimately decide to deny approval of the transfer of the 41,000 acre feet yearly to Castaic as part of the Monterey Amendment program. ¶ Because a decision has not yet been made by DWR as to whether or not to approve the permanent transfer of the 41,000 afy allotment to Castaic, it would be speculative and without factual foundation for Los Angeles County to factor in any of the 41,000 afy in its calculations of the future water supply that will be available for West Creek's use." (Vol. 54, p. 21328-21330)

³ More fully quoted, the response states, "...Evidence in the record supports CLWA's reliance on the 41,000 acre-feet of SWP supplies as part CLWA's SWP Table A Amount. [FN 1] Please see the West Creek Draft Additional Analysis, Section 4.2.4, at pages 4.0-5.9 through 4.0-65.

"The transfer of the 41,000 acre-feet ...was the subject of a completed contract between the parties in 1999, and imported water supply associated with that transfer became available for use by CLWA starting January 2000. The 41,000 acre-feet Transfer Agreement and the Point of Delivery Agreement ...are included in Appendix L of the Final Additional Analysis. ...

"The 41,000 acre-foot water transfer ... was evaluated previously in a Final EIR prepared by CLWA in 1999. The Second Appellate Court, Fourth Division, ordered that the EIR be decertified in January 2002 ... (Friends decision) in Appendix N of this FAA. The appellate court decertified the 1999 EIR because it tiered from the Monterey Agreement Program EIR, which itself was decertified as a result of a separate appellate court decision issued while the Friends decision was on appeal. (See *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892 [PCL decision, Appendix P of this FAA] [FN: "For copies of the referenced opinions, decisions and other related documents, please see Appendices M, N, P and Q of the Final Additional Analysis."])

"In the Friends decision, the appellate court found that 'all other contentions' concerning the legal adequacy of the EIR

Rossman and Moore, LLP. The referenced Responses 1 and 3 to Letter 4 from Rossman and Moore LLP disclose that Castaic Lake Water Agency's water supply contract with the State Water Project reflect only an expectation and that under some conditions only a lesser amount will be available, relies upon the 41,000 as an amount reported in the DWR's State Water Project Delivery Reliability Report, and **acknowledges that the Monterey Settlement Agreement does not list the 41,000 afy transfer as final**, but concludes that it is appropriate to include the 41,000 afy because the transfer was permanent, DWR has consistently included it in CLWA's share of the Table A Amount, and "courts have not prohibited CLWA from using and relying on" it. The Response also notes that CLWA is currently preparing a new EIR concerning the 41,000 afy transfer, and that "Nothing precludes CWLA from relying on this portion of its SWP supplies, pending completion of the new EIR."⁴ (Emphasis supplied)

"The written response shall describe the disposition of significant environmental issues raised (e.g., revisions to the proposed project to mitigate anticipated impacts or objections). In particular, the **major environmental issues raised** when the lead agency's position is at variance with recommendations and objections raised in the comments **must be addressed in detail** giving reasons why specific comments and suggestions were not accepted. There must be **good faith, reasoned analysis in response**. Conclusory statements unsupported by factual information will not suffice." 14 CCR 15088(c) (Emphasis supplied)

were 'without merit.' ...CWLA's Board of Directors decertified the 1999 EIR in the fall of 2002.

"In September 2002, the trial court was requested to prohibit CLWA from using the 41,000 acre-feet in any manner. The trial court refused to enjoin performance of the completed 41,000 acre-feet Transfer Agreement, maintained its jurisdiction over the matter, and authorized CWLA to utilize "any of the 41,000 AFY," subject to the following order: 'Respondent [CWLA] will not be prohibited from using the water to which it is entitled, but Petitioner may renew its application for such prohibition based upon evidence of the actual use of such additional water for purposes it considers improper' [FN]

"...the Court of Appeal affirmed the trial court's judgment that CWLA use of the 41,000 AFY is not prohibited.[FN]"

"Because the 41,000 AFY was a permanent water transfer, because DWR includes the 41,000 AFY in calculating CLWA's share of SWP Table A Amount, and because the courts have not prohibited CLWA from using or relying on those additional SWP supplies, the County has determined that it remains appropriate for the West Creek project to include those water supplies in its water supply and demand analysis, while acknowledging and disclosing the potential uncertainty created by litigation."

"In the meantime, CLWA has reported to the County that it continues to prepare the new EIR for the 41,000 AFY water transfer..."

"In light of the information presented in the Draft Additional Analysis and the entire record, the County believes that CLWA was entitled to use, and may continue to use, the additional SWP water supplies from the 41,000 AFY water transfer pending completion of the new EIR pursuant to CEQA, absent a subsequent order to the contrary from the Los Angeles Super Court..."

"For further responsive information, please see Topical Response 4: SWP Supplies – Reliance on the 41,000 AFY Water Transfer, and Responses 1 and 3 to Letter 4 from Rossman and Moore, LLP (Roger B. Moore), dated February 3, 2004." (Vol. 55, pp. 21458-21460, Responses to Comment Letters)

⁴ More specifically, Response 1 discloses that the water supply contract with SWP contractors including CLWA to state that the Table A Amount (here 41,000 AFY) "shall not be interpreted to mean that in each year the State will be able to make that quantity of project water available to the Agency" and that the Table A Amounts "reflect an expectation that under certain conditions the Agency will receive its full Annual Table A Amount; but that under other conditions only a lesser amount, allocated in accordance with this contract, may be made available to the Agency."

Response 1 also refers to, and relies upon, amounts from the DWR's State Water Project Delivery Reliability Report, 2002, (Appendix L), which states "[t]his report provides local officials with a single source of the most current data available on SWP delivery reliability for use in local planning decisions."

Response 3 acknowledges that "Attachment E to the Monterey Settlement Agreement does not list CLWA's 41,000 AFY transfer as 'final'" but states that, "neither the appellate court nor the trial court (on remand) invalidated CLWA's permanent water transfer..." restates that it is appropriate to include the 41,000 afy because the transfer was permanent, DWR has consistently included it in CLWA's share of the Table A Amount, and "courts have not prohibited CLWA from using and relying on" it. The Response also notes that CLWA is currently preparing a new EIR concerning the 41,000 afy transfer, and that "Nothing precludes CWLA from relying on this portion of its SWP supplies, pending completion of the new EIR." (Vol 55, p. 21414-21418, FAA, Response to Comment Letters)

This court finds the Revised EIR contains adequate written response to significant public comment.

"[T]he court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record." *Public Resources Code* §21168)

Substantial evidence appears in record to support the decision to rely upon the 41,000 transfer based upon the fact that the Dept. of Water Resources continues to allocate and deliver the water in accordance with the 41,000 afy transfer, neither the PCL litigation nor Monterey Settlement Agreement set aside any of the water transfers made under the Monterey agreement including the 41,000 transfer, the courts have not enjoined CLWAs use of the transfer, and CLWA has prepared and certified an EIR and its is presumed to be adequate despite pending legal challenges.

This court finds that the uncertainties involving the 41,000 afy transfer were adequately disclosed in the revised EIR, and substantial evidence supports the County's conclusion that it could be relied upon for planning purposes, notwithstanding the pending DWR environmental review and the fact that it is not among those transfers listed as immune from challenge in the PCL Settlement Agreement.

(2) Spread of Perchlorate Contamination Aquifer

The revised EIR also relies for planning purposes on 35,000 afy from the Alluvial Aquifer and 11,000 afy from the Saugus Formation in average years. (Vol 59, p27642)

The County's decision that these amounts would be available for planning purposes was supported by substantial evidence and was fully disclosed such that there was no abuse of discretion by way of failure to comply with CEQA's informational requirements

Petitioner has waived its challenge based on disclosure, analysis and conclusions concerning perchlorate contamination to the extent those issues were raised previously before Judge Anderle, decided, and not appealed. To the extent new information is involved (detection of contamination in two additional wells in 2002 and 2005), the Supplement of the Revised EIR adequately discloses the information and contains a reasoned (even if optimistic) analysis supported by substantial evidence concerning impact on the water supply. (Vol 53, p 19115, 19121-19132, Draft Additional Analysis, Ammonium Perchlorate discussions)

Due to perchlorate contamination, 4 wells were closed in the Saugus Formation at the time the Petition was presented to Judge Anderle, and 2 additional wells were closed in the Alluvial Aquifer. The four Alluvial wells were closed in 1997. The first Saugus well was closed in 2002 and the second in April 2005.

In its challenge to the initial EIR, Petitioner raised the perchlorate contamination issue. ("Until clean-up of the perchlorate contamination is completed – perhaps years from now—pumping from the Saugus Aquifer can not be increased without jeopardizing the health and safety of the communities relying upon that water. Petitioner's Trial Brief, 9/10/01, p. 22)

In January 2002 Judge Anderle rejected Petitioner's concerns that perchlorate contamination rendered the aquifer supply unreliable. Petitioner did not appeal that issue. Judge Anderle observed in his Statement of Decision (January 2002) that an expert hydrologist testified, "there is no evidence of widespread perchlorate contamination of the groundwater and that the groundwater that is contaminated is generally limited to that in the vicinity of the Whittaker-Bermite site..." and that "... Testimony of other experts noted that technology for effective treatment of perchlorate contamination is currently available and is not contingent on further characterization of the contamination..." (Statement of Decision, pp 15-16)

The EIR's Additional Analysis discussed the perchlorate contamination found in four Saugus wells and (at that time) one Alluvial well, and its potential impact on groundwater supply. (Vol 59, p27719-27736) Included were discussions of detected contamination, and programs to test all wells. It was reported that treatment technology was expected to return contaminated water to drinking water quality 'soon.'

The EIR states that, "technology to clean up the contamination exists and will soon be brought online, thus returning the wells to production." (Final Additional Analysis, Topical Responses, Vol 54, 21390)

The Supplement does not provide an analysis of the environmental impacts to the aquifers if the location and patterns of pumping were changed in response to contamination, and does not identify specific funding for perchlorate treatment. This issue was raised by public comment. (Vol 59, 27941)

Public disclosure concerning the contamination proceeded as follows.

In response to the Writ, the EIR's Additional Analysis was prepared and circulated. It acknowledged that four municipal supply wells in the Saugus Formation and one in the Alluvial had been taken out of service due to perchlorate contamination. (Vol 53, p19122, figures 4.0-17) It anticipated further spread of the plume, and a need to contain it. ("Slade has reported that the Saugus Aquifer is and will continue to be a viable source of water supply for the water purveyors in the Santa Clarita Valley as long as efforts remain in place to treat impacted wells on an interim basis to contain the plume." Vol. 53, p. 19123)

On March 22, 2005, the County certified the EIR and Final Additional Analysis.

Subsequently, in April 2005 the perchlorate contamination was detected in the second Alluvial Aquifer well, Well Q2. (Supplement May 2005, Vol 59, p 27853-27854, 28522)

In response, the County provided a Supplement to the Additional Analysis. (Vol 59, 27827-27909 and 27912-28160) The Supplement was circulated for 45 day review and comment, the County prepared written responses to public comment, held a public hearing, and the County then recertified the EIR, including the Additional Analysis and the Supplement.

The Supplement reports that as a result of the detection, Well Q2 had been removed from service and that the retailer, Valencia, "is pursuing rapid permitting and installation of wellhead treatment in order to return the well to water supply service." (Vol 59, 27831)

The County concluded that the development did not constitute significant new information and did not require recirculation of the Revised EIR. Also, the County concluded that after the detection there are sufficient water supplies to serve both West Creek and cumulative development. [59 27829-27830, 27834-27835, 27846]

"[B]ecause CWLA and the other retail water purveyors have found that perchlorate detected in the designated wells, including Well Q2, does not significantly effect water supplies in the Santa Clarita Valley, and that such supplies are treatable given the current remediation schedule, the County believes that perchlorate detected at Well Q2 does not constitute new or more severe impacts, particularly where Valencia Water Company has planned for some time to initiate wellhead treatment should other Alluvial wells be impacted, and Valencia already has sought permitting, and obtained funding, for wellhead treatment at Well Q2." (Vol 59, 27835)

The County did circulate the Supplement for a 45-day review and comment period, prepared written responses to public comments, and held a public hearing, after which the Board recertified the revised EIR, including the Additional Analysis and the Supplement.

Although contamination was somewhat contained at the time the initial EIR was certified, the spread of contamination was not unforeseen. Spread beyond the Whittaker-Bermite was anticipated by the prior analysis, as can be seen by its discussion of groundwater flows and testing to detect new contamination. (Vol. 59, 27718-719, 721, 724; Vol 59, 27829-830, 27846.)

Petitioner argues essentially that the conclusion is wrong. Petitioner argues that County relied upon "speculation that these wells will 'soon' reopen despite present absence of needed funding and statewide agency approvals, and despite the strong prospect that the contamination may never be cleaned up." (Motion p5) "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." *Public Resource Code* §21080(e)(2)) In certifying an EIR, the agency may not rely on speculation. "[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." *Public Resource Code* §21080(e)(1)) The conclusions are based on the findings that treatment is already underway, including installation of wellhead treatment (DHS 'best available technology') and that treatment was expected to be on line by the end of 2005. Petitioner points out that five years after certification of the initial EIR, the four originally contaminated wells have not been treated. This fact is self-evident from the information contained in the Revised EIR. The record contained substantial evidence including expert opinion based on fact to support the conclusions reached by the County concerning perchlorate contamination.

The court has received and considered:

08-04-05 Notice of Hearing Return to Peremptory Writ of Mandate Filed by Respondent and Real Parties in Interest
Hrg 10/05/05 9:30am Dept 4, Filed by Respondent

08-04-05 Memorandum of Points & Authorities Joint Filed by Respondent and Real Parties in Interest in Support of Return on Peremptory Writ of Mandate, Filed by Respondent

08-04-05 Request for Judicial Notice Joint Filed in Support of Joint Memorandum of Points and Authorities of Respondent and Real Parties in Interest in Support of Return to Peremptory Writ of Mandate Declaration of Robert I McMurry in Support Thereof, Filed by Respondent

08-04-05 Certificate Certification of Additional Administrative Record as Part of the Entire West Creek Administrative Record Additional Administrative Record Vol 53-59, Filed by Respondent

08-04-05 Appendix Joint of Excerpts From Administrative Record and Additional Administrative Record Cited in Joint Memorandum of Ps and As Filed Respondent and Real Parties in Interest in Support of Return to Peremptory Writ of Mandate Declaration of Robert I McMurry Vol II, Filed by Respondent

08-04-05 Appendix Joint of Excerpts from Administrative Record and Additional Administrative Record Cited in Joint Memorandum of Ps and As Filed Respondent and Real Parties in Interest in Support of Return to Peremptory Writ of Mandate Declaration of Robert I McMurry Vol I, Filed by Respondent

08-08-05 Notice of Completion Certification and Service of West Creek Additional Administrative Record, Filed by Respondent

08-24-05 Notice of Motion and Motion for Order Decertifying Environmental Impact Report and Expanding the Current Injunction/Opposition to Return on Writ; P's and A's -- Hrg: 10/05/2005 at 9:30 am in Dept 5, Filed by Petitioner

09-08-05 Reject Letter joint appendix etc 1) The Joint Appendix's appear to be Administrative Records and must be lodged with the court, not filed. Lodged Documents must be submitted with an envelope large enough and bearing sufficient postage to

09-08-05 Document: Supplement to Certification of Additional Administrative Record as Part of the Entire West Creek Administrative Record, Filed by Respondent

09-08-05 Points & Authorities Joint Memorandum of Points and Authorities Filed by Respondent and Real Parties in Interest in Support of Return on Peremptory Writ of Mandate, Filed by Respondent

09-08-05 Proof of Service by Mail, Filed by Respondent

09-08-05 Proof of Service via Personal Service, Filed by Respondent

09-08-05 Document: Joint Appendix on Reply Filed by Respondent and Real Parties in Interest in Support of Return to Peremptory Writ of Mandate; Declaration of Robert I McMurry in Support, Filed by Plaintiff

09-08-05 Document: Joint Appendix on Reply Filed by Respondent and Real Parties in Interest in Support of Return to Peremptory Writ of Mandate, Filed by Party in Real Interest

09-21-05 Document Lodged Administrative Record-Volume 53, Lodged by Respondent

09-21-05 Document Lodged Administrative Record-Volume 54, Lodged by Respondent

09-21-05 Document Lodged Administrative Record-Volume 55, Lodged by Respondent

09-21-05 Document Lodged Administrative Record-Volume 56, Lodged by Respondent

09-21-05 Document Lodged Administrative Record-Volume 57, Lodged by Respondent

09-21-05 Document Lodged Administrative Record-Volume 58, Lodged by Respondent

09-21-05 Document Lodged Administrative Record-Volume 59, Lodged by Respondent

09-21-05 Document Lodged Administrative Record-Volume 60, Lodged by Respondent

09-21-05 Document Lodged various CDs, Lodged by Respondent

09-27-05 Reply to Respondents Response to Motion for Order Decertifying Environmental Impact Report and Expanding the Current Injunction/Surreply to Return on Writ; Points and Authorities, Received by Petitioner, Doc Sent To: sb4

09-29-05 Ex Parte Application to File Longer Memorandum; Order, Filed by Petitioner

09-29-05 Opposition (Joint) to Ex Parte Application to File Longer Memorandum; Joint Objection to, and Motion to Strike Improper Sur-Reply Brief and Request for an Award of Sanctions Against Petitioners and Their Counsel, Alyse M Lazar; Declaration of Edgar Khalatian, Filed by Party in Real Interest

09-29-05 Reply to Objection to Ex Parte Application to File Longer Memorandum and Notice of Erratum, Filed by Petitioner

09-29-05 Order, Denied [D], Filed by Petitioner

10-05-05 Minute Order Hearing: Re Compliance, Submitted with argument, Filed

11-03-05 Notice of November 2 2005 Published Court of Appeal Opinion, Filed by Petitioner

11-07-05 Objection to and Motion to Strike, Petitioners' Notice of Court of Appeal Decision, and Response to Notice/Joint, Filed by Respondent

11-09-05 Objection Petitioners and Motion to Strike Respondents Post Submittal Extra Record Evidence and Brief, Filed by Petitioner

Ruling:

Return to Peremptory Writ of Mandate; Motion for Order Decertifying Environmental Impact Report and Expanding the Current Injunction

The Request to expand the Injunction is DENIED.

The Writ is DISCHARGED

Petitioner's Motion for Order Decertifying EIR is DENIED

Respondent's Objection to, and Motion to Strike, Petitioners' Notice of Court of Appeal Decision is OVERRULED and DENIED. The court has considered the published decision reported after hearing on this matter, *California Oak Foundation v City of Santa Clarita* (Nov. 2, 2005) 133 Cal.App.4th 1219, and the parties' supplemental briefs with respect to it.

Petitioner's Objection to, and Motion to Strike, Respondents Post Submittal Extra Record Evidence and Brief is OVERRULED and DENIED except with respect to the excerpts of the unauthenticated draft EIR for the Gate-King Industrial Park project (Ex A to Respondent's 11/7/05 filing), to which the objection is SUSTAINED. The court has not considered these excerpts of the Gate-King DEIR, which were submitted after hearing, are not authenticated, and are not the proper subject of judicial notice.

SO ORDERED

Dated: January 6, 2006

JAMES W. BROWN

James W. Brown
JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA STREET ADDRESS: 1100 Anacapa Street MAILING ADDRESS: CITY AND ZIP CODE: Santa Barbara, California 93101 BRANCH NAME: Santa Barbara-Anacapa Division	<div style="text-align: center;">FILED</div> SUPERIOR COURT of CALIFORNIA COUNTY of SANTA BARBARA <div style="text-align: center;">JAN 10 2006</div> GARY M. BLAIR, Executive Officer BY <u>Leanna M. Pearson</u> LEANNA M PEARSON, Deputy Clerk
Caption: Santa Clarita Organization vs County of Los Angeles	CASE NUMBER: 1043805
<div style="text-align: center;">CLERK'S CERTIFICATE OF MAILING</div>	

I certify that I am not a party of this action and that a true copy of the foregoing was mailed first class, postage prepaid in a sealed envelope addressed as shown, and that the mailing of the foregoing and execution of this certificate occurred at Santa Barbara, California, on (date) 01/10/2006 Re: Order After Hearing.

Lawrence L Hafetz
 Los Angeles County Counsel
 648 Kenneth Hahn Hall of Administration
 500 W Temple St
 Los Angeles, CA 90012-2713

Alyse M Lazar
 3075 E Thousand Oaks Blvd Ste 100
 Westlake Village, CA 91362

A Catherine Norian
 Paul Hastings Janofsky & Walker LLP
 515 S Flower St 25th Fl
 Los Angeles, CA 90071-2228

Gary M. Blair, Executive Officer

By **LEANNA M. PEARSON**, Deputy