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10 THE SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF MONTEREY  
12 MONTEREY COURTHOUSE

13 MEYER COMMUNITY GROUP;

14 Petitioner,

15 vs.

16 COUNTY OF MONTEREY; MONTEREY  
17 COUNTY BOARD OF SUPERVISORS,

18 Respondents,

19 HARPER CANYON REALTY, LLC; and DOES  
20 1-25 inclusive,

21 Real Parties in Interest

22 AND RELATED CONSOLIDATED ACTION.  
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ELECTRONICALLY FILED BY  
Superior Court of California,  
County of Monterey  
On 4/10/2018 12:15 PM  
By: Mariela Hernandez, Deputy

Case No.: M131913  
(Consolidated with Case No. M131893)

**LANDWATCH SUPPLEMENTAL BRIEF  
IN RESPONSE TO THE COURT'S  
MARCH 14, 2018 MINUTE ORDER**

Hon. Thomas W. Wills  
Dept. 14

Action Filed: May 4, 2015  
Trial Date: May 3, 2018

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**TABLE OF ACRONYMS**

af	acre-feet
afy	acre-feet per year
AR	Administrative Record
CDT	Corral de Tierra (Subbasin)
DEIR	Draft Environmental Impact Report
EIR	Environmental Impact Report
FEIR	Final Environmental Impact Report
LOS	Level of Service
MCWRA	Monterey County Water Resources Agency
RDEIR	Revised Draft Environmental Impact Report
SR68	State Route 68
SVGB	Salinas Valley Groundwater Basin
SVWP	Salinas Valley Water Project
TAMC	Transportation Agency of Monterey County



LandWatch offers the following supplemental briefing on the questions posed by this Court in its March 14, 2018 Minute Order.

## A. RESPONSES TO WATER QUESTIONS

### 1. Geographic scope of cumulative impact analysis and relation of CDT Subbasin and Geosyntec Study Area.

#### Court's questions:

What is the geographic scope of the FEIR's cumulative analysis? Is the CDT Subbasin the same physical area as the Geosyntec Study Area? If, as Real Parties claim, the FEIR's cumulative analysis is restricted to the CDT Subbasin, why is that section entitled "Cumulative Adverse Effect on the Groundwater Basin" (AR 384)?

We take the first and third sub-questions first, and then address the second sub-question.

#### a. What is the geographic scope of the FEIR's cumulative analysis?

**Response: The scope of analysis is the entire Salinas Valley Groundwater Basin.**

#### Discussion

As briefed (LW Op. Brf., p. 14:21-25) the scope of the cumulative analysis in the *draft* EIR is only the El Toro Groundwater Basin, whereas the scope of the cumulative analysis in the *final* EIR includes the Corral de Tierra ("CDT") Subbasin *and* the Salinas Valley Groundwater Basin ("SVGB") as a whole. AR 842-843, 384. The increased geographic scope of the FEIR's cumulative analysis is evident from the following:

- As the redlining in the FEIR shows, the County changed the caption of the cumulative analysis section from "Cumulative Adverse Affect [sic, "Effect"] on the *Surrounding Subareas*" to "Cumulative Adverse Affect on the *Groundwater Basin*." AR 384, emphasis added.
- The FEIR's revised cumulative analysis identifies the cumulative impact at issue to include the entire SVGB by stating that "[g]roundwater pumping has the potential to cumulatively influence groundwater supplies within in the adjacent subbasins *and the basin as a whole*." AR 384, emphasis added.
- The FEIR's cumulative impact analysis cites the Project's contributions to the Salinas Valley Water Project ("SVWP") as mitigation, unlike the cumulative impact analysis in the DEIR, which cites only the purported "surplus" in the El Toro Groundwater Basin. *Compare* AR 384-387 to AR 842-843. The FEIR relies on the claim that project mitigation addresses impacts to the *entire* SVGB: "[t]he project's impact on *the groundwater basin* is therefore mitigated by this

1 contribution, as the SVWP provides a regional mitigation strategy *for the groundwater basin and*  
2 *its subbasins.*” AR 387, emphasis added.

- 3
- 4 • The description of the environmental setting in the FEIR deletes the DEIR’s references to the El  
5 Toro Groundwater Basin and instead places the project within two subareas of the Corral de  
6 Tierra Subbasin of the Salinas Valley Groundwater Basin: “As shown in Figure 3.6-2, Geosyntec  
7 Study Area Subareas and Well Locations, the project site lies in the El Toro Creek and San  
8 Benancio Gulch subareas of the Geosyntec Study Area. These subareas are located within the  
9 Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin.” AR 358; *see* AR 353 and  
10 358-359 (deleted references to El Toro Groundwater Basin).

11 Thus, the cumulative analysis in the FEIR addresses impacts to the SVGB as a whole, not just impacts to  
12 the aquifer that the DEIR previously described as the El Toro Groundwater Basin.

13 LandWatch argues that the change in the scope of the cumulative analysis was one material  
14 factor in the County’s prejudicial failure to proceed as required by CEQA. First, the change in the scope  
15 of the cumulative analysis to include the entire SVGB resulted in a prejudicially untimely provision of  
16 the cumulative analysis in the FEIR instead of in the DEIR, where it belonged. LW Op. Brf, pp. 14:16-  
17 16:11. LandWatch also argues that the change in scope of the cumulative analysis was one of several  
18 pieces of significant new information that compelled recirculation of the draft EIR. LW Op. Brf, pp.  
19 21:16-23:5. We discuss this further in the response to Water question 8, below.

20 Real Party argues that the scope of the cumulative analysis is limited to what it terms the “Toro  
21 Aquifer” because “the geographic scope of the area directly affected by cumulative groundwater  
22 resources is the Toro Aquifer.” RP Opp., p. 32:19-20. It is true that the most direct impact of the  
23 Project would be on the El Toro Primary Aquifer System identified by Geosyntec, which is located  
24 within the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin.<sup>1</sup> Thus, LandWatch’s  
25 briefing focuses largely on the EIR’s failure to provide an adequate disclosure of the cumulative impacts  
26 to the CDT Subbasin.<sup>2</sup> LandWatch Op. Brf, p. 15:22-25. However, *in addition* to its objections to the

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26 <sup>1</sup> See discussion in next section below for a clarification of the relation of the El Toro Primary Aquifer System to the  
27 Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin.

28 <sup>2</sup> For example, neither the FEIR, nor any subsequently provided analysis, explained how the SVWP, even if it were to  
sustain or increase the groundwater levels in the adjacent 180/400-Foot or Pressure Subbasin, which are hovering at sea level,  
could possibly halt the falling groundwater levels in the CDT Subbasin, *which are located 250 to 350 feet above sea level*.  
The groundwater levels on the Valley floor in the Pressure Subarea due east of the Project were at or below sea level in the

1 EIR's failure to disclose conditions and impacts in the CDT Subbasin, LandWatch *also* objected that the  
2 County failed to assess the Project's cumulative impacts on the rest of the Salinas Valley Groundwater  
3 Basin. For example, hydrologist Parker and LandWatch objected that the EIR fails to consider or  
4 disclose that the Project pumping will impair the *recharge* to the adjacent downgradient Pressure or  
5 180/400-Foot Subbasin of the SVGB. AR 13147, 13153, 6793, 6796 (Parker); LandWatch Op. Brf., p.  
6 15:19-21. Parker and LandWatch also objected that (1) the EIR failed to address the evidence that the  
7 SVWP is not expected to stabilize groundwater elevations in order to prevent seawater intrusion in the  
8 coastal subbasins of the SVGB without additional groundwater management projects and (2)  
9 accordingly, payment of Zone 2C assessments for the SVWP is not sufficient mitigation – for the CDT  
10 Subbasin or the rest of the SVGB. AR, 13126-13132, 5825-5828, 6788 (LandWatch); AR 13151-  
11 13152, 6795 (Parker); LandWatch Op. Brf. 15:26-28. LandWatch argues that the belated disclosure of  
12 the scope of the cumulative analysis prejudicially denied the public a meaningful opportunity for  
13 comment, *and to obtain responses to comments*, on these issues. LandWatch Op. Brf., p. 16:7-11, 21:5-  
14 8, 22:15-24; *see* section I.H, below.

15 Real Party's briefing attempts to restrict the geographic scope of the cumulative analysis to avoid  
16 acknowledging the EIR's failure to answer uncomfortable questions about the SVWP. Despite the  
17 FEIR's unsupported and unsupportable claim that the SVWP will mitigate the Project's cumulative  
18 impacts to both the CDT Subbasin and the rest of the SVGB, Real Party argues that the County was not  
19 obliged to respond to questions challenging the demand assumptions on which the efficacy of the SVWP  
20 is predicated. RPI Opp., p. 34:3-335:16; *see* LandWatch Op. Brf. pp. 15:11-16:11, 21:15-22:27 (arguing  
21 (1) that the cumulative analysis in the FEIR was prejudicially untimely and should have been  
22 recirculated because the FEIR relies on new analysis and (2) that the County failed to respond to

23  
24 2009-2011 period. AR 17749-17750 (MCWRA presentation of ground water level data to the Board); *see also* AR 4309-  
25 4310 (illegible version of same presentation, cited by Project findings at AR 9, 49-50). Groundwater levels at the Project  
26 wells are 250-300 feet above sea level, and the levels in the CDT Subbasin as a whole vary from 200-900 feet above sea  
27 level. AR 134 (FEIR, plotting site location on Geosyntec's groundwater elevation contours); *see also* AR 20125 (Geosyntec  
28 groundwater elevations), 1454 (Todd report, stating local groundwater elevations are 320 feet above sea level).  
As hydrologist Parker explains, the connection between the CDT Subbasin and the SVGB and the steep gradient causes  
groundwater to flow *out of* the CDT Subbasin. AR 13147, 13150-13151 (Parker). Geosyntec confirms that outflow is  
determined by these hydraulic gradients between connected aquifers (AR 20153-20154), and both Geosyntec and the FEIR  
report that there is a hydraulic connection and down-sloping gradient from the CDT Subbasin to the SVGB to the northeast of  
the CDT Subbasin. AR 19395, 363.

1 comments objecting to the new analysis). Regardless of the scope of the cumulative analysis, if the  
2 FEIR chooses to rely the efficacy of the SVWP, the public should have the opportunity to challenge that  
3 reliance and to receive good-faith responses to those challenges.

4 **b. Is the CDT Subbasin the same physical area as the Geosyntec Study Area?**

5 **Response: The CDT Subbasin *contains* the Geosyntec Study Area; and the**  
6 **Project wells are within both the CDT Subbasin and the Geosyntec Study Area.**

7 **Discussion**

8 The FEIR establishes that the Geosyntec Study Area is located entirely within the Corral de  
9 Tierra Subbasin, and that the Project wells are located within *both* the Geosyntec Study Area and the  
10 Corral de Tierra Subbasin. Unfortunately, the FEIR fails to provide a map that overlays the two areas.  
11 Furthermore, although the FEIR's map shows that the *entire* Project site is within the CDT Subbasin, the  
12 FEIR inconsistently claims that a *portion* of the Project site, not containing wells, is in not in the CDT  
13 Subbasin, but in the adjacent 180/400-Foot or Pressure Subbasin.

14 The primary technical report on which the FEIR relies is the 2007 *El Toro Groundwater Study*  
15 by Geosyntec, supplemented in 2010, which the FEIR states to have "superseded" prior technical  
16 reports. AR 353. The Geosyntec study does not use the term "Geosyntec Study Area," nor does it refer  
17 to the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin. AR 20052-20169. The  
18 Geosyntec report identifies the area that it investigates as the "El Toro Planning Area," which consists of  
19 the same five "hydrologically contiguous" subareas that are identified in the DEIR as part of "the El  
20 Toro Groundwater Basin" and that are identified in the FEIR as constituting the Geosyntec Study Area.<sup>3</sup>  
21 AR 20071 (Geosyntec); *see* Attachment A: 20076 (Geosyntec, Fig. 1-2, El Toro Planning Area and  
22 Subareas), 360 (FEIR Figure 3.6-2); *see also* AR 826 (DEIR); AR 358 (FEIR).

23 The term "Geosyntec Study Area" was assigned by the FEIR to identify the area investigated by  
24 Geosyntec. AR 354. The FEIR explains that the Geosyntec Study Area was defined with reference to

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25  
26 <sup>3</sup> Geosyntec identifies the five subareas: "The El Toro Planning Area includes five designated planning subareas based  
27 on local topographic drainage divides (Figure 1-2): Calera Creek, Watson Creek, Corral de Tierra, San Benancio Gulch, and  
28 El Toro Creek. However, water supply for the El Toro Planning Area is derived entirely from groundwater and major  
portions of the El Toro subareas are hydrogeologically contiguous." AR 20071 (Geosyntec); *see* Attachment A: AR 20076  
(Geosyntec Figure 1-2, El Toro Planning Area and Subareas). Note that the Corral de Tierra *subarea* of the Geosyntec Study  
Area is not the same unit as the Corral de Tierra *Subbasin* of the Salinas Valley Groundwater Basin.

1 topographical and watershed boundaries and that it “did not take into account MCWRA’s Zone 2C  
2 boundaries nor the groundwater basins/subbasins recognized by MCWRA and the California  
3 Department of Water Resources (DWR).” AR 354. Thus, the FEIR explains, it uses the term Geosyntec  
4 Study Area “to prevent confusion” with these other boundaries. AR 354. However, although the El  
5 Toro Planning Area is a “watershed-based planning area” (AR 20058), the Geosyntec Report is in fact  
6 concerned with a defined groundwater aquifer, the “El Toro Primary Aquifer System,” which is the  
7 source of the “majority of groundwater production in the El Toro Planning Area.” AR 20059.

8 As the FEIR explains (1) the Project’s wells are in San Bernancio Gulch subarea, which is one of  
9 the five subareas of the Geosyntec Study Area, and (2) the Geosyntec Study Area is itself within the  
10 CDT Subbasin:

11 The proposed project would procure water from two existing wells within the San Benancio  
12 Gulch subarea of the Geosyntec Study Area, as shown in Figure 3.6-12, Geosyntec Study Area  
13 Subareas and Well Locations, which are also located within the Corral de Tierra Subbasin of the  
14 Salinas Valley Groundwater Basin.

15 AR 362.

16 According to DWR basin maps, the project site and wells that would procure water for the  
17 proposed project are located in the northeastern portion of the Corral de Tierra Subbasin (DWR  
2010) of the Salinas Valley Groundwater Basin.

18 AR 387; *see also* AR 333. The FEIR’s map of the Salinas Valley Groundwater Basin overlays the  
19 Project site, showing it entirely within the CDT Subbain. Attachment A: AR 356 (Figure 3.6-1, inset).

20 The FEIR does not provide a map that shows the relation of the Geosyntec Study Area to the  
21 Corral de Tierra Subbasin. However, the FEIR does provide information from which one can infer that  
22 the Corral de Tierra Subbasin *contains* the Geosyntec Study Area and extends to the north and east of it.  
23 As noted, the FEIR’s map of the groundwater basins locates the Project site entirely within the Corral de  
24 Tierra Subbasin, which it shows extends well to the north and east of the site. Attachment A: AR 356.  
25 Second, the FEIR provides several figures showing that most of the Project site and the Project wells are  
26 within the San Bernancio Gulch and El Toro Creek Subareas of the Geosyntec Study Area, but that a  
27 northern and an eastern portion of the Project site are located just outside of the Geosyntec Study Area.  
28

Attachment A: AR 132 (Figure MR1-1), 138 (Figure MR1-4), 360 (Figure 3.6-2). From these two facts one can infer that the Geosyntec Study Area is contained *within* the Corral de Tierra Subbasin.<sup>4</sup>

Unfortunately, the FEIR also provides a *conflicting* account of the Project's location with respect to the Corral de Tierra Subbasin. Although the FEIR's map locates the *entire* Project site within the CDT Subbasin, far from the adjacent 180/400-Foot Aquifer (Attachment A: AR 356, Figure 3.6-1), the text of the FEIR states that a *portion* of the Project site is *outside* of the Corral de Tierra Subbasin and within the adjacent 180/400-Foot or Pressure Subbasin:

The project site lies within two subbasins: the Corral de Tierra Area subbasin *and 180/400-Foot Aquifer (Pressure) subbasin*; however, wells that would serve the proposed project are located within the Corral de Tierra Area subbasin. These subbasins are defined and recognized by both MCWRA and California Department of Water Resources and are based on hydrogeologic features. These basins are not contiguous with the Geosyntec Study area."

AR 129, emphasis added.

Again, this changed and conflicting description of the environmental setting and the location of the Project site with reference to the Corral de Tierra Subbasin instead of the El Toro Groundwater Basin was belatedly provided to the public in the final EIR, not in the draft EIR. Comments objected that the FEIR had fundamentally changed the description of the groundwater basins. AR 13142-13143, 13142-1314.

Although the FEIR's accounts of the Project location in Figure 3.6-1 and in the discussion at AR 129 conflict with regard to some portion of the Project site, the conflicting accounts do agree that ***the relevant feature, the Project wells, are within the Corral de Tierra Subbasin (AR 387) and within the Geosyntec Study Area (AR 362).***

Finally, the County's findings apparently attempt to distance the County from the analysis in the Geosyntec report by challenging the hydrological relevance of the Geosyntec Study Area. The findings recite portions of the FEIR that distinguish a "topology/watershed-based methodology" to define the limits of a study area versus the identification of the underlying aquifers. AR 47 (findings); *see* AR 353-354 (FEIR). The findings state that the Geosyntec Study Area did not consider the boundaries of Zone

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<sup>4</sup> That is, if the Project is entirely within the CDT Subbasin but only partially within the Geosyntec Study Area, then the CDT Subbasin must be more extensive than the Geosyntec Study area.

2C or the Corral de Tierra Subbasin and then note that both MCWRA and Geosyntec recognize that “it is the underlying groundwater *aquifers*, not watershed topographic boundaries that are of greater importance with respect to long term groundwater management.” AR 47, emphasis added. However, any implication that the Geosyntec analysis is not relevant or credible or that it did not identify and address conditions in an *aquifer* is incorrect. First, the FEIR clearly found the Geosyntec report relevant, because it is the primary technical report on which the FEIR relies, superseding prior reports. AR 353. Second, the Geosyntec report was not just focused on an arbitrary area defined by topology or watersheds; it was in fact focused on the properties of an *aquifer*, which it identified as the El Toro Primary Aquifer, and that aquifer is the primary source of groundwater in the El Toro Planning Area. AR 20059. The Project wells are located in the heart of the El Toro Primary Aquifer. Attachment A: AR 20133 (Geosyntec Figure 4-13, “Primary Aquifer System Saturated Thickness and Geologic Map”), 360 (FEIR, Figure 3.6-2, locating Project wells in the San Bernancio subarea). Geosyntec’s conclusions that falling groundwater levels and aquifer depletion would be aggravated by increased pumping apply to the area that includes the Project wells and that Geosyntec identifies as the El Toro Primary Aquifer:

- Geosyntec finds that “the rate of groundwater pumping in the *El Toro Primary Aquifer System* exceeds the rate of groundwater replenishment.” AR 20062, 20156, emphasis added.
- Geosyntec finds a long-term decline in groundwater levels of 0.6 ft/year and a corresponding long-term depletion of 500 afy for the *El Toro Primary Aquifer System*. AR 20062, 20156.
- Geosyntec recommends extending the B-8 zoning well moratorium area to the *El Toro Primary Aquifer System*, unless the County policy is to allow “overdraft conditions and mining of groundwater” that will “result in a lowering of the water table below the screened intervals of existing wells in the shallower portions of the aquifer system” and will decrease groundwater production potential relatively quickly in the hydrologically contiguous areas of less saturated thickness. AR 20063, 20163.

**2. How could Geosyntec’s conclusions be similar to the Todd Report in light of Geosyntec’s comments on the Watson Creek subarea surplus?**

**Response: Geosyntec’s fundamental conclusion that groundwater levels are falling is based on *directly measured well level data*; thus, it does not depend on rainfall recharge data or on modeling the water balance. However, unlike Todd, which merely reports the Fugro estimates, Geosyntec challenges the Fugro estimate of a surplus of rainfall recharge over pumping in the Watson Creek subarea.**

1           **Court's question:**

2           Real Parties note that the Geosyntec Study's conclusions were similar to the Todd Report in that  
3           they both predict a surplus. (RPI Brief, p. 54, ln. 9-p.55, ln. 6; see AR 385.) Given that the  
4           Watson Creek subarea makes up nearly all of the projected surplus (AR 4034), how can this  
5           claim be reconciled with language in the Geosyntec report, which states:  
6           "Based on hydrogeologic analysis conducted for this study, however, the limited saturated  
7           thickness of the El Toro Primary Aquifer System in the majority of the Watson Creek subarea  
8           indicates poor groundwater production potential and casts doubt on the existence of surplus  
9           groundwater supply in the Watson Creek subarea (Figures 4-13 and 4-14). Revision of the  
10          recharge modeling to account for limited saturated thickness of the El Toro Primary Aquifer  
11          System in the Watson Creek and the upper portions of San Benancio subareas was not part of the  
12          scope of this study, but would likely result in a range of recharge significantly lower than the  
13          estimated build-out demand." (AR 3932-3933.)

14           **Response:**

15          What matters to the analysis of significant impacts, which the EIR identifies as falling  
16          groundwater levels or aquifer depletion (AR 371), is not just the question whether there is a surplus of  
17          pumping over recharge. What matters is the empirical fact of 45 years of falling groundwater levels  
18          and aquifer depletion, which the EIR fails to disclose, and which is a significant cumulative impact  
19          under the EIR's definition of significance. AR 20156, 20061-20062 (Geosyntec). Geosyntec did not  
20          *model* this conclusion based on water balance data, Geosyntec *measured the fact directly* by compiling  
21          45 years of water well levels. AR 20120 (Geosyntec, Table 4-4, summary of hydrograph data and  
22          groundwater level trends); AR 20094-20105 (Geosyntec, water well data compilation); 20113-20115  
23          (Geosyntec, water level elevations and trends).

24          Geosyntec did also discuss the water balance elements for the El Toro Primary Aquifer,  
25          identifying estimates of pumping demand and estimates of inflow and outflow, including rainfall  
26          recharge and surface and subsurface outflows. AR 20151-20162 (Geosyntec, water balance). The  
27          discussion of the water balance components in Section 6 of the Geosyntec report is primarily  
28          descriptive. The discussion of pumping estimates and rainfall recharge are *not* used to determine  
29          Geosyntec's empirical conclusion that groundwater levels are falling, which it *measured directly*, or its  
30          conclusion regarding the ongoing volume of aquifer depletion, which it models without reference to  
31          inflow and outflow data. In particular, Geosyntec estimates the volume of annual aquifer depletion (500



1 afy long term and 1,000 afy since 1999) based on three factors: the geometry of the aquifer, the storage  
2 coefficient, and the measured decline in groundwater level:

3 Based on the geometry of the El Toro Primary Aquifer System (Figure 4-13), the 2001 water  
4 level data (Figure 4-5), and a storage coefficient of 10 percent, the calculated volume of  
5 groundwater in storage in the El Toro Primary Aquifer System in the El Toro Planning Area is  
6 approximately 280,000 acre feet. Figure 6-5 shows the calculated depletion of storage with  
7 declining water levels in the El Toro Primary Aquifer System in the El Toro Planning Area.  
8 Figure 6-6 shows calculated average decline of groundwater levels with time in the El Toro  
9 Primary Aquifer System in response to a range of water balance deficits for the El Toro Planning  
10 Area. For example, Figure 6-6 shows that a constant deficit of 500 AF/Y for approximately 25  
11 years results in a drop in groundwater level of 20 feet, which is similar to the average long-term  
12 rate of decline of 0.6 ft/yr estimated from the trend analyses of the long-term hydrographs. The  
13 calculations illustrated by Figure 6-6 suggest that the average recent rate of groundwater decline  
14 of 1.8 ft/yr in the El Toro Primary Aquifer System is consistent with a deficit in excess of 1000  
15 AF/Y.

16 AR 20156. As is evident from the above discussion, Geosyntec does not use rainfall recharge data in  
17 estimating ongoing aquifer depletion.

18 However, *in addition to* measuring groundwater level declines and estimating the aquifer  
19 depletion, Geosyntec puts these conclusions in the water balance context, finding its estimate of aquifer  
20 depletion to be *consistent* with at least the pumping records:

21 Figure 6-6 also shows calculated groundwater level declines with time for an initial deficit of  
22 500 AF/Y increasing by 20 AF/Y and by 50 AF/Y. This initial deficit and range of increasing  
23 pumping is consistent [with] water balance calculations and records for the Ambler and Toro  
24 Water Systems, which both show pumping rates increasing at approximately 10 AF/Y (Figure 3-  
25 7).

26 AR 20156. In sum, Geosyntec did not use estimates of inflows from rainfall recharge and outflows to  
27 other groundwater basins to establish its critical conclusions that (1) groundwater levels are falling from  
28 0.6 to 1.8 ft/yr., and (2) the aquifer is being depleted by 500 to 1,000 afy.

As noted by the Court, Geosyntec does call into question some of the 1996 Fugro study estimates  
of rainfall recharge. Geosyntec notes that the estimated pumping at buildout is “bracketed” by range of  
total rainfall recharge as determined by Fugro in 1996 (i.e., the buildout pumping volume is between the  
high and low estimates of recharge). AR 20155. Absent any other factor, such as surface and subsurface  
outflows (discussed in the next section below), this might lead to a conclusion that groundwater levels

1 would remain static. However, since the empirical evidence is that they have *not* remained static,  
2 Geosyntec provides an explanation for the fact groundwater levels are declining and that “the rate of  
3 groundwater pumping in the El Toro Primary Aquifer System exceeds the rate of groundwater  
4 replenishment.” AR 20156. Based on its review of the geologic evidence and the saturated thickness,  
5 Geosyntec concludes that the 1996 Fugro study overstates the rainfall recharge for the Watson Creek  
6 subarea. AR 20155-20156. The four hydrologically interconnected subareas that would share any  
7 surplus of rainfall over recharge include the Watson Creek subarea, and there would be no surplus for  
8 these interconnected subareas without the Fugro estimate of a Watson Creek surplus. AR 843 (DEIR),  
9 20155 (Geosyntec). Geosyntec concludes that it is “likely” that Fugro overstated its rainfall recharge  
10 estimate for the Watson Creek subarea. AR 20156.

11       Regardless, the undisputed, directly measured empirical fact remains that groundwater levels in  
12 the El Toro Primary Aquifer System are declining, and this was not determined with reference to rainfall  
13 recharge estimates. And because Geosyntec did not use the rainfall recharge data to determine aquifer  
14 depletion, Watson Creek recharge estimates are not relevant to that that determination either.

15       **3. How does Geosyntec account for outflows from the Geosyntec Study Area?**

16       **Response: Geosyntec’s primary conclusion that groundwater levels are falling is**  
17 ***directly measured*; thus, it does not depend on outflow data. However, Geosyntec**  
18 **reports substantial outflows.**

19       **Court’s question:**

20       Relatedly, how do Real Parties account for outflow from the Study Area to Laguna Seca "in the  
21 range of 200 to 500 AF/Y"? (AR 4033.) Is this outflow factored into Geosyntec's recharge  
22 calculations? If so, where is this explained in the record?

23       **Discussion:**

24       As discussed above, it is important to frame any discussion of outflows or rainfall recharge in the  
25 context of how the information was used in the Geosyntec report. Again, Geosyntec *directly measured*  
26 the decline in groundwater levels, which measurement establishes that there is a significant cumulative  
27 impact. AR 371 (FEIR standards of significance). And Geosyntec also estimated aquifer depletion  
28 without using recharge or outflow data. That aquifer depletion is another basis for finding a significant  
cumulative impact. AR 371. Thus, regardless of any consideration of outflows, the direct empirical

1 evidence of declining groundwater levels and the estimate of depletion establishes a significant  
2 cumulative impact in the El Toro Primary Aquifer System, *which the FEIR fails to disclose*. LandWatch  
3 Reply, pp. 1:26-28, 2:19-28; LandWatch Op. Brf., pp. 12:20-14:12.

4 That said, Real Party attempts to confuse the issue by arguing about outflows from the El Toro  
5 Primary Aquifer System. Real Party argues that Geosyntec identifies a “potential” 700 afy surplus over  
6 the eventual buildout demand, because the highest estimate of rainfall recharge exceeds buildout  
7 demand (AR 20155); and that this Geosyntec “discussion of a substantial surplus in the Toro Area is  
8 even more compelling in light of Petitioner’s admission that its analysis also showed ‘substantial’  
9 outflows to Laguna Seca and SVGB.” RP Opp., pp. 56:15-57:1.

10 First, Geosyntec does not provide a “*discussion of a substantial surplus* in the Toro area” as Real  
11 Party claims. RP Opp., p. 56:18, emphasis added. Real Party apparently takes its 700 afy figure from  
12 Geosyntec Table 6-6, where it represents the highest end of the Fugro estimates of the surplus of rainfall  
13 recharge over pumping (707 afy). AR 20155. But as discussed in response to question 2, above,  
14 Geosyntec does not acknowledge the Fugro surplus estimate; Geosyntec *challenges* it. AR 20156.

15 More problematically, Real Party implies that Geosyntec is somehow agnostic on the question of  
16 falling groundwater levels and a depleting aquifer because a “potential” surplus or the magnitude of  
17 outflows might alter or qualify its analysis. This is not true. Geosyntec does not calculate groundwater  
18 declines and aquifer depletion by constructing a model of inputs and outputs to the aquifer. Geosyntec  
19 unambiguously and directly establishes the 45 years of falling groundwater levels by compiling the  
20 direct measurement data of well levels. AR 20120, 20094-20105, 0113-20115 (Geosyntec). And  
21 Geosyntec estimates aquifer depletion using only the geometry of the aquifer, the storage coefficient,  
22 and the measured decline in groundwater level, not by using water balance data such as rainfall recharge  
23 or outflows. AR 20156. So Real Party’s implication that Geosyntec’s analysis was dependent on the  
24 magnitude or outflows, or dependent on a potential surplus of rainfall recharge over pumping, is simply  
25 wrong. *Geosyntec’s direct measurement of groundwater declines and its estimate of aquifer depletion*  
26 *do not rely on either rainfall recharge data or outflow data*. Geosyntec discusses these water balance  
27 data only to provide context for its conclusions.

1 Although its conclusions about groundwater levels or depletion do not depend on its assumptions  
2 about outflows, Geosyntec does compile available outflow data and identifies substantial outflows in the  
3 form of both groundwater *and* surface flows: (1) 525 afy of surface outflow via El Toro Creek (2) 200-  
4 500 afy groundwater outflow to the Laguna Seca area; (3) an unspecified amount of groundwater  
5 outflow to the northeast to the Salinas Valley; (4) no offsetting surface or groundwater *inflows*. AR  
6 20153-20154, 19395 (Geosyntec); *see also* AR 830, 363 (EIR, noting outflows to the SVGB). Outflows  
7 are a relevant element of the water balance context. AR 20159 (Geosyntec, water budget components).  
8 For example, combined surface outflows from El Toro Creek and groundwater flows to Laguna Seca  
9 total from 725 to 1,025 afy (AR 20153-20154), which is greater than the “potential” 700 afy surplus that  
10 Real Party cites based on the high end of Fugro’s rainfall recharge assumptions.

11 In sum, Geosyntec’s critical conclusions do not rely on outflow data. Geosyntec provides  
12 outflow and rainfall recharge data for context, but these data are not used by Geosyntec to establish its  
13 critical conclusions that, over the long term, (1) “the rate of groundwater pumping in the El Toro  
14 Primary Aquifer System exceeds the rate of groundwater replenishment,” (2) groundwater levels have  
15 been falling 0.6 ft/yr., and (3) the aquifer has been depleted by 500 afy. AR 20156.

16 **4. Support and reconcile the FEIR’s claim that the Project area is not connected to the**  
17 **less productive and stressed areas within the Geosyntec Study Area.**

18 **Response: There is no evidence for the claim that the Project wells are not connected**  
19 **to these areas, and the claim is inconsistent with the DEIR, FEIR, and Geosyntec.**

20 **Court’s question:**

21 Explain the FEIR's statement that the Project area is not connected to "the less productive and  
22 stressed areas within the Geosyntec Study Area" (AR 385.) How, if at all, does the connection  
23 between the Project and the rest of the SVGB preclude this connection? How can this statement  
24 be reconciled with the DEIR's conclusion that the four Geosyntec Study subareas are  
hydrogeologically connected? (AR 843.)

25 **Discussion:**

26 The FEIR claims “aquifer in the immediate vicinity of the project site is hydrogeologically  
27 contiguous with the aquifers to the east in the Salinas Valley, *rather than* the less productive and  
28 stressed areas within the Geosyntec Study area.” AR 385, emphasis added; *see also* AR 375-376 (FEIR,

1 same claim). The claim that the aquifer at the Project site is somehow isolated from the stressed areas of  
2 the study area is not supported by any facts, and it is contradicted by the rest of the EIR and Geosyntec.

3 First, Real Party incorrectly attributes this isolation conclusion to the Geosyntec update. RP  
4 Opp., p. 39:16. In fact, the claim is made *only* by the FEIR (AR 385, 375-376), and, as discussed below,  
5 it is contradicted by Geosyntec, by the DEIR, and by other claims in the FEIR.

6 Second, other than the final EIR's bare conclusion, which by itself is not substantial evidence  
7 (Guidelines, §15384(a)), Real Party's only purported evidence for the isolation claim is the Project well  
8 map (Attachment A: AR 364) and the 2010 Geosyntec update showing a hydrological *connection* from  
9 the El Toro Planning area to the Salinas Valley aquifers to the east (AR 4140-4144). RP Opp., p. 40:13.  
10 Although the Geosyntec 2010 update does establish that there is "hydraulic connection between the El  
11 Toro Planning Area and the Salinas Valley" (AR 19395), there is no basis to infer from the existence of  
12 this hydraulic connection that there is not *also* a connection to the rest of the Geosyntec Study Area.

13 Nor does the map of the Project's well locations constitute any evidence that the aquifer at the  
14 Project site is isolated from the rest of the Geosyntec Study Area. Attachment A: AR 364, FEIR Figure  
15 3.6-3 (cited by Real Party, locating primary well C and backup well B); *see also* Attachment A: AR 132  
16 (FEIR Figure MR1-1, locating the wells in relation to Geosyntec Study Area) and AR 134 (FEIR Figure  
17 MR1-2, locating Project site in relation to Geosyntec Study Area and showing subarea boundaries,  
18 groundwater contours, and direction of groundwater flow). Comparison of the FEIR's map of the well  
19 location and the Geosyntec maps of the Primary Aquifer System (e.g., Attachment A: AR 20133, 20134;  
20 *see also* AR 20098-20101) shows that the primary well, Well C on San Bernancio Road, is *right in the*  
21 *heart of the San Bernancio subarea*. As the FEIR reports, the well is located in an area of large  
22 saturated thickness. AR 385. Geosyntec's map of saturated thickness and groundwater production  
23 potential show that the area along San Bernancio road where Well C is located does have a saturated  
24 thickness of 600 to 800 feet. Attachment A: AR 20134. But that map *also* shows that there are areas of  
25 poor production potential directly to the east and south of the Well C location on San Bernancio Road.  
26 And there is no evidence in any of these maps that there is no hydraulic connection between the Project  
27 wells and these "less productive and stressed areas."  
28

1 In fact, the evidence in the EIR and Geosyntec is to the contrary. The draft and final EIR  
2 repeatedly state that the San Bernancio Gulch subarea, in which the wells are located, is one of four  
3 hydrologically interconnected subareas of the CDT Subbasin. AR 826, 837, 843, 1460, 385. Indeed, the  
4 final EIR states the Project may in fact contribute to impacts on the “currently stressed” subareas, which  
5 are “ultimately interconnected.”

6 The Todd Engineering report concluded that although the proposed project *may contribute to an*  
7 *adverse cumulative impact on some of the individual subareas that are currently stressed*, the  
8 four subareas are *ultimately interconnected* and will maintain an overall water surplus where  
recharge exceeds extraction.

9 AR 385, emphasis added. This conclusion by the FEIR directly contradicts the FEIR’s claim, in the  
10 very next paragraph, that the Project area is *not* connected to “the less productive and stressed areas  
11 within the Geosyntec Study Area.”<sup>5</sup> AR 385.

12 Geosyntec, which was charged to determine “hydrogeologic connectivity between existing  
13 subareas” (AR 20059), concludes that both the water chemistry and uniform groundwater levels  
14 demonstrate “substantial hydraulic interconnectivity between lithologic units.” AR 20136. Geosyntec  
15 shows long-term declining groundwater levels of from 0.5 ft. to 2 ft. per year in all of the four  
16 interconnected areas; and Geosyntec identifies a long-term groundwater level decline of 0.5 to 1.0  
17 ft/year in the Well C location. Attachment A: AR 20131. And, since 1999, Geosyntec identifies a  
18 groundwater level decline of from 1.5 to 2.5 ft/year in the Well C location.<sup>6</sup> AR 20132. Geosyntec  
19 concludes that continued pumping from the Geosyntec Study Area, which includes the San Bernancio  
20 Gulch subarea, will have impacts on less productive areas. AR 20062, 20163. Finally, regardless of  
21 impacts to less productive areas, increased pumping will also contribute to overall net deficits and  
22

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23  
24 <sup>5</sup> The only evidence here shows the four subareas are interconnected, that they have suffered a groundwater decline  
25 from cumulative pumping, and that the Project pumping will contribute to this. Thus, contrary to Real Party (RP Opp., p.  
26 40:1-8), the facts in *O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 593-594 regarding potential  
27 lack of uniformity in a *different* groundwater basin are simply irrelevant.

28 <sup>6</sup> The magnitude of decline determined by Geosyntec is consistent with the two sets of well tests for the two Project  
wells; the more recent tests demonstrate that the depth to groundwater declined by 25 and 23 feet over the 15 and 12 year  
periods since the prior tests. AR 6794 (Parker), *citing* AR 3555 (Bierman), 1453 (Todd); *see* LandWatch Op. Brf., p. 29:19-  
25. Thus, contrary to Real Party, water levels are declining not just in “**other** portions” of the aquifer (RP Opp., p. 52:19,  
bold in the original), but in the Project wells themselves.

declining groundwater levels (AR 20163, Geosyntec), an effect that the EIR defines as significant (AR 371).

Finally, even if there were evidence the Project site is hydrologically isolated from stressed areas, it is too late for Real Party to offer it in briefing, because an agency may not “remedy the inadequacies of the EIR by presenting evidence to the trial court.” *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lack of evidence for the hydrologic isolation claim in the EIR, and the compelling evidence that debunks that claim in both the EIR and its primary technical source, should be dispositive.

**5. Explain and support the claim that the portion of the CDT Subbasin that includes the Project area was included in the modeling for the SVWP and Zone 2C.**

**Response: There is no evidence that the CDT Subbasin was included in the modeling of SVWP benefits for Zone 2C.**

**Court’s question:**

Real Parties insist, “[p]resumably because only a relatively small portion of the CDT Subbasin is in Zone 2C, the [SVWP] Engineer’s Report did not list the CDT Subbasin separately. Instead, it includes the portion of the CDT Subbasin within Zone 2C, including the Project site and wells, as within the adjacent Pressure Subbasin. But, this area was unquestionably included in the modeling for the SVWP and in Zone 2C.” (RPI Brief, pp. 44-45, fn. 87.) However, Real Parties provides no explanation or citation for this claim. Referencing the record, please explain and support this claim.

**Discussion:**

Real Party supports its claim that the SVWP would benefit the Project area or the CDT Subbasin by contending that the 2003 Engineer’s Report concludes that the area around the Project site is benefitted by the SVWP. RP Opp., pp. 44:10-45:2. Real Party insists, without citing any evidence, that the Project area was included in the modeling for the SVWP and Zone 2c. RP Opp. 45:26-27.

First, it is too late for Real Party to attempt to amend the record by arguing new material to the trial court. *Santiago County Water District, supra*, 118 Cal.App.3d at 831. Neither the EIR nor the findings cite the Engineer’s Report as evidence that the Project site or the CDT would be benefitted by the SVWP:

- Neither the DEIR nor FEIR discuss or reference the SVWP Engineer’s Report. AR 388 (FEIR references), 844 (DEIR). Indeed, the DEIR and FEIR do not cite the SVWP EIR either.

- 1
- 2 • The General Plan consistency findings consider whether the Project has an assured long-term
- 3 water supply and the CEQA findings discuss water supply impacts. AR 8-13, 44-53 (consistency
- 4 finding), AR 28-33 (CEQA findings re water supply impacts). None of these findings cite the
- 5 Engineer's Report.

6 Second, the Engineer's Report does not include the CDT Subbasin in its list of benefitted sub-

7 areas or in its determination of benefits. AR 7710, 7741-747 (Engineer's Report). The Project wells are

8 in the CDT Subbasin. AR 387 (FEIR).

9 Third, even if post-EIR hearing testimony were relevant – and it is not<sup>7</sup> – that testimony does not

10 support Real Party's contentions. When MCWRA's Johnson discussed the boundaries of Zone 2C at a

11 January 8, 2014 hearing, he did not mention the Engineer's Report. AR 5301-5302. The only mention

12 of the Engineer's Report in the record was by Real Party's attorney.<sup>8</sup>

13 Real Party's attorney *claimed that the Project site is in the Pressure Zone*, which the Engineer's

14 Report identifies as benefitted by the SVWP:

15 Now with respect to water I -- I just want to echo a couple of things that the staff has

16 indicated that the -- the more-recent reports that were done, particularly, the Geosyntec 2010

17 report, established the connectivity of this area where these wells are drawing from with the

18 Salinas Valley groundwater basin. But in addition I have here the Salinas Valley Water Project

19 engineer's report that was the background report done for the rubber dam the Salinas Valley

20 water project. *And this report clearly demonstrates that this property that we're talking about*

21 *and the graphic that was put up by staff shows it -- this report -- or this property is in the*

22 *pressure zone of Zone 2-C. And it is in the pressure zone, and it is the pressure zone that is the*

23 *zone that is most benefitted by the development of the rubber dam. And it is also the pressure*

24 *zone that is the one that is hit with the biggest part of the -- of the costs of developing the dam.*

25 So the burdens and the benefits are – are commensurate.

26 And so the -- the water report or the water analysis in the EIR goes on to reflect that this

27 property has been in the predecessor of Zone 2-C, that is Zone 2-A, and, over the years has

28 contributed financially to the cost of the -- the dam, San Antonio and Nacimiento, that have

benefitted the entire Salinas Valley basin of which this property is a part.

And – and, again, I refer to the Geosyntec 2010 study, which is incorporated into the EIR

which clearly demonstrates the connectivity.

7 See response to Water question 8, pp. 30-32, below.

8 The Engineer's Report appears in the record as Attachment M to a February 20, 2015 letter from the Project's attorney. AR 7701-7755. The one page from the Project's attorney does not mention much less discuss the Engineer's Report; it simply forwards several thousand pages of reference material without discussion. AR 6809-9751.4.



1 AR 5161-5162, emphasis added. Real Party now cites this misleading discussion as its evidence that the  
2 “Engineer’s Report concludes that the area including the Project site *and its wells* is the most benefitted  
3 from the SVWP.” RP Opp., p. 44:19-45:1, emphasis added. As discussed above, the FEIR equivocates  
4 as to whether the entire Project site is in the CDT Subbasin, but it does establish that the Project *wells*  
5 are located *in the CDT Subbasin, not the Pressure Subbasin*.<sup>9</sup> See response to question one, above.

6 Thus, the claims by Real Party’s attorney that the “property is in the pressure zone of Zone 2C” and that  
7 “the graphic put up by staff shows it” are highly misleading. At most, the FEIR makes an *equivocal*  
8 claim that a *portion* of the site – the portion that does *not* include the wells – is in the Pressure Subbasin.

9 LandWatch does not dispute that the well site was included in Zone 2C. As the mapping of the  
10 Project site and its wells shows, Zone 2C contains a long skinny peninsula that extends from the bulk of  
11 the Project site to its Well C on San Bernancio Road. Attachment A: AR 364 (FEIR, Figure 3.6-3); *see*  
12 *also* AR 14086 (same figure presented to Supervisors). As MCWRA’s Johnson explained when  
13 discussing the Zone 2C boundaries, “you ran them along parcel lines for kind of cleanliness, if you will,  
14 for assessment purposes.” AR 5302. Thus, the peculiar geometry of the parcel led to the inclusion in  
15 Zone 2C of a well site located in the heart of the San Bernancio subarea of the El Toro Primary Aquifer,  
16 where, despite the reservoir projects funded under Zone 2A assessments, groundwater levels have been  
17 declining for 45 years. However, the fact that the Project’s parcel was included in Zone 2C, does not  
18 demonstrate that the Project site, much less its wells, are somehow “with the adjacent Pressure  
19 Subbasin” as Real Party claims. RP Op., p. 44:228, 45:26. In sum, the claim is not supported by the  
20 Engineer’s Report and is directly contradicted by the FEIR itself.

21 There is no evidence in the EIR that correlates the area modelled for the SVWP EIR and the area  
22 included in Zone 2C by the Engineer’s Report, and there is substantial evidence that the Engineer’s  
23 Report included a larger territory than the SVWP EIR modelled. For example, the SVWP EIR modeling  
24 assumed that irrigated acreage in the SVGB would be at most 196,357 acres. AR 9277. However,

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25  
26 <sup>9</sup> The FEIR locates the entire Project site within the CDT Subbasin, far from the adjacent 180/400 Foot Aquifer,  
27 which the FEIR also identifies as the Pressure Subbasin. Attachment A: AR 356 (FEIR, Figure 3.6-1, mapping Project as  
28 entirely within CDT Subbasin); *see also* AR 14085 (same figure presented to Supervisors); AR 129 (FEIR equating the  
180/400-Foot Aquifer and the Pressure Subbasin). The FEIR contradicts itself by claiming that a portion of the Project site is  
in the Pressure Subbasin. AR 129. Regardless, the FEIR says the *wells* are in the CDT Subbasin. AR 387.

1 Table 3-5 of the Engineer's Report indicates that a total of 212,003 acres of irrigated land were included  
2 in Zone 2C. AR 7740.

3 Third, Real Party claims that because the Project area is "actually within the Pressure Subbasin"  
4 it is therefore within the area that is "most benefitted from SVWP." RP Opp., p. 44:19-20. Even if the  
5 wells were in the Pressure Subarea – and they are not – this would be irrelevant. As the Engineer's  
6 Report explains, the Pressure Subarea is disproportionately benefitted by the SVWP because it is  
7 expected to benefit from the *reduction in seawater intrusion*. AR 7736 (disproportionately weighting  
8 the benefit of controlling seawater intrusion), 7741-7744 (benefit evaluation by subarea). As the FEIR  
9 explains, there *is no* seawater intrusion in the CDT Subbasin. AR 367. Indeed, there is nothing in the  
10 SVWP EIR that states that its modeling of seawater intrusion effects or its modeling of Basin  
11 groundwater balance includes any portion of the CDT Subbasin. *See, e.g.*, AR 8954-8960; 8655-8688  
12 (SVWP EIR modeling results). The SVWP EIR states that its modelling includes *only* the four primary  
13 subbasins of the SVGB: the Pressure, East Side, Forebay, and Upper Valley areas. AR 8904-8905.

14 To the extent that maintenance and increase of groundwater elevations is relevant to seawater  
15 intrusion, the SVWP EIR explains that it is a benefit to the coastal areas where groundwater levels that  
16 have fallen below sea level permit seawater intrusion. AR 8904. Groundwater levels in the CDT  
17 Subbasin are 250 to 900 feet above sea level, whereas the groundwater levels in the Pressure Subbasin  
18 due east and north of the CDT Subbasin are at or below sea level. AR 20125 (Geosyntec), 134 (FEIR),  
19 4309-4310 (MCWRA presentation). Something beyond mere assertion is required to support the  
20 conclusion that the elevation of coastal groundwater levels enough to retard seawater intrusion would  
21 necessarily halt the decline of groundwater levels in an upgradient connected aquifer. AR 13147-13149,  
22 6795 (Parker). This explanation is not in the SVWP EIR *or* the Engineers Report.

23 Furthermore, the Engineer's Report attributed benefits to each sub-area based on the historic  
24 benefits from the prior groundwater management projects: the Nacimiento and San Antonio Reservoirs.  
25 The Engineer's Report explains that it relied on "the findings of the Technical Committee relative to the  
26 operation of the two existing reservoirs," which were used "as a basis to identify and assign benefit  
27  
28

factors for each of the SVWP components within each of the sub-areas.”<sup>10</sup> AR 7741; *see also* AR 5301 (MCWRA’s Johnson testifying that the benefit areas were based on the areas that had benefitted from prior reservoir operations). The Nacimiento and San Antonio Reservoirs were completed in 1957 and 1967. AR 13199, 13212. *Despite* these two reservoirs, for which the Project site was assessed because it was within Zone 2A (AR 5162:3), water levels in the Geosyntec Study Area, including the area of the Project wells, have declined by 0.6 feet per year for the past 45 years, accelerating to 1.8 ft/year since 1999. Attachment A: AR 20131; AR 20120, 20132. Because the existing reservoirs have *not* avoided an ongoing significant cumulative impact in the Geosyntec Study Area, their operations are not a valid basis to ascribe benefits to the area.<sup>11</sup>

Fourth, the SVWP EIR and the Engineer’s Report were completed in 2002 and 2003, *before* the investigation leading to the 2007 Geosyntec Report, which established the 45-year history of falling groundwater levels and aquifer depletion in the Project area. AR 7756 *et seq.* (SVWP EIR), AR 7701 *et seq.* (Engineer’s Report), 20052 *et seq.* (Geosyntec). Even if there were some inference of a benefit to the Project site in the Engineer’s Report, it is clear that the subsequent site-specific analysis in the Geosyntec Report, showing the Project site in the heart of an area of falling groundwater levels, would supersede and rebut it.

**6. How is local well interference relevant to the cumulative impact analysis?**

**Response: As Real Party admits, local well interference *not* relevant to cumulative impact analysis.**

**Court’s question:**

How is the Project’s effect on nearby wells and groundwater levels relevant to the *cumulative* impact analysis?

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<sup>10</sup> The findings of the Technical Committee are not included in the Engineer’s Report. See AR 7703 (Engineer’s Report Table of Contents.)

<sup>11</sup> As discussed in response to Question 7 below, the FEIR’s revision to the DEIR implicitly acknowledges that the reservoir operations have not in fact sustained groundwater levels in the El Toro area. *Compare* AR 830 (DEIR) to AR 363 (FEIR).

1           **Discussion:**

2           The Project's effect on nearby wells is *not* relevant to the cumulative impact analysis.

3           First, the FEIR and the two hydrogeologic reports prepared for the Project by Todd Engineers in  
4 2002 and 2003 clearly distinguish (1) the conclusion about local well interference based on a well test  
5 from (2) the conclusion regarding the cumulative impact to an aquifer. Referencing the 72-hour  
6 pumping test that was conducted for the primary Project well in 2003 (AR 1453), the FEIR evaluates  
7 whether the Project would have an "Adverse Effect on Nearby Wells" as a *distinct* potential impact  
8 ("Impact 3.6-3"), unrelated to its separate discussion of whether there would be a "Cumulative Adverse  
9 Affect [sic, "Effect"] on the Groundwater Basin" ("Impact 3.6-4"). *Compare* AR 383-384 to 384-387.  
10 Under Impact 3.6-3, the FEIR concludes that there would be no adverse effects on nearby wells, based  
11 on the pumping tests. AR 384. Under Impact 3.6-4, the FEIR, concludes that there would be no  
12 significant cumulative impact, without referencing the pumping tests.

13           The hydrogeological reports prepared by Todd Engineering in 2002 and 2003 also provide  
14 separate analyses of local well interference and cumulative impacts on the aquifer, based on separate  
15 data sources. Todd prepared two hydrogeological reports, one in 2002 and another in 2003 after a well  
16 test was conducted on the new well. Both the Todd reports contain distinct conclusions regarding  
17 "Effects on Local Wells" and "Effects on Aquifer." AR 1499 (2002 report), 1463 (2003 report). The  
18 2002 Todd hydrogeological report's conclusions regarding "Effects on Local Wells" was based on a  
19 pumping test (AR 1499) and its separate conclusion regarding the "Effects on Aquifer" was based on a  
20 comparing Project pumping to "recharge estimates" (AR 1499), which in turn were based on a "simple  
21 water balance" using the Fugro rainfall recharge and pumping demand data (AR 1461-1462). The 2003  
22 updated Todd report (AR 1443-1480) drew the same conclusion regarding the "Effect on Local Wells,"  
23 based on two pumping tests; and it drew the same separate conclusion regarding "Effects on Aquifer,"  
24 again based on the Fugro recharge estimates. AR 1463-1464, 1460-1461.

25           Second, although the Supervisors invited the applicant to re-test the two wells (AR 5197-5198,  
26 5209-5214), that invitation was offered to permit the applicant to demonstrate the existence of a water  
27 *supply*, not to demonstrate whether using that supply would aggravate cumulative impacts. AR 5198  
28 (Chairman Calcagno inviting new tests because the applicant should not "go gamble on creating lots and

1 not have water”), AR 5211 (Calcagno inviting new tests but declining to approve the Project without  
2 them because “there’s no water”). As briefed, the new tests by Bierman do incidentally confirm the  
3 long-term decline of groundwater levels documented by Geosyntec: the depth to groundwater in the  
4 Project’s wells declined by 25 and 23 feet over the 15 and 12 year periods since the prior tests. AR  
5 6794, *citing* AR 3555, 1453; LandWatch Op. Brf, p. 29:16-18.

6 Third, counsel for Real Party *admitted* in the record that the well tests were not intended to  
7 evaluate cumulative impacts:

8 ... the Beerman report was *never intended to address cumulative impacts*. The Beerman report  
9 was a direct response to Supervisor Calcagno's request that we, essentially, retest the wells and  
10 prove up that they still have water. That testing was done. It does show that they still have water,  
and they have more-than-adequate water to supply the subdivision.

11 AR 4978, emphasis added. Real Party’s counsel’s admission is consistent with hydrologist Parker’s  
12 explanation that a well test does not assess the long-term cumulative impact from increased pumping  
13 because it is intended only to ensure a well can meet its daily demand and determine whether it has  
14 short-term interference with immediately adjacent wells. AR13152, 6793 (Parker).

15 Fourth, despite Real Party’s implication to the contrary, the fact that MCWRA testified that the  
16 72-hour well tests conformed to standard protocols for such tests does not change the fact that the tests  
17 are not relevant to cumulative impact analysis. RP Opp. 23:24-25, *citing* AR 4963-4966 (MCWRA  
18 testimony re Bierman test methodology).

19 Finally, as noted in briefing, Real Party’s argument that the well tests are relevant to cumulative  
20 impacts depends on its claim that the scope of the cumulative impact analysis is only the 1,000-foot  
21 radius evaluated by Bierman, and “not the aquifer or the Basin.” RP Opp., pp. 57:22-58:2. This claim is  
22 directly contradicted by the EIR’s announced scope of the cumulative impact analysis to include  
23 “groundwater resources within the Corral de Tierra Subbasin of the Salinas Valley Groundwater Basin”  
24 and “the potential to cumulatively influence groundwater supplies within the adjacent subbasins and the  
25 basin as a whole.” AR 384. Real Party’s 1,000-foot radius claim is also directly contradicted by Real  
26 Party’s claim *in the same brief* that that “the geographic scope of the area directly affected by  
27 cumulative groundwater resources is the Toro Aquifer.” RP Opp., p. 32:19-20.  
28

1  
2 **7. How does the FEIR “retract” the DEIR’s claim that the Project site has been**  
3 **benefitted by operation of the Nacimiento and San Antonio Reservoirs?**

4 **Response: The FEIR strikes out the DEIR’s claim, which is not historically accurate.**

5 **Court’s question:**

6 Landwatch claims that the FEIR "retracts" the DEIR's assertion that previous groundwater  
7 management projects sustain groundwater levels in the Project area. (POB, p. 26:5-10.) The  
8 DEIR states:

9 "According to MCWRA, this portion of the El Toro Planning area, including the project site,  
10 receive [sic]benefits of sustained groundwater levels attributed to the operation of both the  
11 Nacimiento and San Antonio Reservoirs and will receive benefits of the [SVWP] upon  
12 completion." (AR 830.)

13 The FEIR states that the relevant portion of the CDT Subbasin, including both the Project site  
14 and its wells, "indirectly receive benefits of sustained groundwater levels within the Basin  
15 attributed to the [SVWP]." (AR 363.)

16 How does the second statement retract the first?

17 **Discussion:**

18 As the Court notes, the draft EIR claims that “[a]ccording to MCWRA, this portion of the El  
19 Toro Planning area, including the Project site, receive benefits of sustained groundwater levels attributed  
20 to the operation of both the Nacimiento and San Antonio Reservoirs and will receive benefits of the  
21 Salinas Valley Water Project upon completion.” AR 830. The Nacimiento and San Antonio Reservoirs  
22 were completed in 1957 and 1967. AR 13199, 13212. *Despite* these two reservoirs, water levels in the  
23 Geosyntec Study Area have declined by an average of 0.6 feet per year for the past 45 years,  
24 accelerating to 1.8 ft/year since 1999. AR 20120 (Geosyntec, Table 4-4, “Summary of Hydrograph Data  
25 Groundwater Level Trends). Consistent with its finding for the overall study area, Geosyntec finds that  
26 groundwater levels *at the Project’s primary well location* declined over the long-term at 0.5 to 1.0  
27 ft/year. Attachment A: AR 20131 (Geosyntec, Figure 4-11, “Estimated Annual Rate of Change of  
28 Groundwater Elevation Based on Long-Term Trends”). Declines accelerated after 1999. AR 20132.

In light of this information, the DEIR’s claim that the reservoir operations have “sustained  
groundwater levels” in the Project area is contradicted by the primary technical report on which the  
FEIR relies. There is no other evidence in the record that would support the counterfactual claim that  
reservoir operations have sustained groundwater levels in the Project area.

Possibly recognizing that the DEIR's claim of sustained groundwater levels is unsupportable in light of the Geosyntec report, the FEIR revises the DEIR's claim to strike out the reference to the *past* benefits of the Nacimiento and San Antonio Reservoirs and to claim only that the Project area will "indirectly receive benefits of sustained groundwater levels attributed to the Salinas Valley Water Project." AR 363. Because the FEIR strikes out the DEIR's claim and because that claim is not true, LandWatch has argued that the FEIR "retracts" the DEIR's claim. LandWatch Op. Brf., pp. 11:23-26, 26:5-10; LandWatch Reply, p. 8:3-5.

Whether this change in the claims made by the DEIR and FEIR is termed a retraction or simply a revision, it is part and parcel of the fundamental changes to the environmental setting and cumulative impact analysis made in the FEIR that constitute a prejudicial failure to provide adequate information in the draft EIR and to recirculate the revised analysis for comment and response. This is discussed further in response to Water question 8, below.

**8. Explain why recirculation under Guidelines section 15088.5(a)(4) is required due to the change in the scope of cumulative analysis.**

**Response: Belated disclosure of the scope of cumulative analysis is but one item of the significant new information that required recirculation. With regard to that item, the public was denied meaningful comment and response regarding the FEIR's claim of mitigation through the SVWP and the County's later claim that Project demand is a small fraction of SVGB storage or pumping.**

**Court's question:**

Landwatch claims that the geographic scope of the cumulative analysis changed between the DEIR and FEIR. It argues that this change renders the DEIR "so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded," triggering recirculation. (See Guidelines, § 15088.5, subd.(a)(4).) Landwatch provides no analysis for this claim. Please explain this argument with reference to the record.

**Discussion:**

LandWatch argues that recirculation was required under Guidelines section 15088.5(a)(4) due a number of separately identified items of significant new information, including new information regarding the environmental setting or baseline conditions and new information regarding cumulative

1 impacts. LandWatch Op. Brf., pp. 21:16-22:8. The significant new information related to the  
2 environmental setting included:

- 3 • identifying the Project's aquifer as a subbasin of the SVGB rather than as a separate aquifer  
4 (*compare* AR 825-829 to AR 352-353, 362);
- 5 • admitting that the Project's basin is in overdraft, whereas the DEIR found a surplus (*compare*  
6 AR 837-838, 842-843 to AR 363, 375, 385);
- 7 • abandoning the claim that existing groundwater management projects are sustaining groundwater  
8 levels and instead claiming only that the SVWP would "indirectly" do this (*compare* AR 830 to  
9 AR 363); and
- 10 • claiming that the "aquifer in the immediate vicinity of the project site is hydrogeologically  
11 contiguous with the aquifers to the east in the Salinas Valley, rather than the less productive and  
12 stressed areas within the Geosyntec Study area," contrary to the claim in the DEIR, elsewhere in  
13 the FEIR, and in the Geosyntec report that the subareas of the Geosyntec Study are  
hydrologically interconnected (*compare* AR 385 (FEIR) to AR 826, 837, 1460 (DEIR) and AR  
20136 (Geosyntec).

14 The significant new information regarding cumulative analysis included:

- 15 • The FEIR evaluates a different geographic scope than the DEIR, including not just the four  
16 interconnected subareas of the Project's local aquifer but also "adjacent subbasins and the basin  
17 as a whole," i.e., the entire SVGB. *Compare* AR 842 to AR 384-387.
- 18 • The FEIR's new analysis relies on the efficacy of future groundwater management projects as  
19 mitigation whereas the DEIR concludes that there is no significant cumulative impact, simply  
because there is a "surplus." *Compare* AR 842-843 to AR 384-387.
- 20 • After the FEIR, the County offered yet another basis to claim there was no considerable  
21 contribution to a significant cumulative impact – the argument that the pumping would be a  
22 small percent of overall SVGB pumping. AR 4913; *see* AR 5163, 4979-4980.

23 Thus, the change in the geographic scope of the cumulative analysis was but one of many changes made  
24 by the FEIR that required recirculation.

25 An agency must recirculate an EIR if new information shows that the draft EIR was so  
26 fundamentally and basically inadequate and conclusory in nature that meaningful public review and  
27 comment were precluded. Guidelines, § 15088.5(a)(4). The purpose of recirculation is to provide the  
28 public the same opportunity to evaluate the new information and the validity of the EIR's conclusions as



1 it had for information in the draft EIR. *Sutter Sensible Planning v. Board of Supervisors* (1981) 122  
2 Cal.App.3d 813, 822; *Laurel Heights Improvement Ass’n v. Regents of the Univ. of Cal.* (1993) 6  
3 Cal.4th 1112, 1132. Thus, *Save Our Peninsula Committee v. Monterey County Board of Supervisors*  
4 (2001) 87 Cal.App.4th 99, 131, 133-134 required recirculation where the EIR omitted critical  
5 information regarding the hydrological setting – despite the belated post-EIR disclosure. And *Spring*  
6 *Valley Lake Association v. City of Victorville* (2016) 248 Cal. App. 4th 91, 108 required recirculation  
7 where the agency amended the hydrology analysis to rely on additional technical reports and new  
8 mitigation.

9 *Spring Valley Lake Association* is right on point here because it holds that recirculation was  
10 required under directly parallel circumstances. In *Spring Valley*, the final EIR replaced the draft EIR’s  
11 hydrology analysis with a “globally amended” revision. *Id.* at 108. Here, the FEIR did the same thing  
12 by providing an entirely revised 38-page Section 3.6, titled “Revised: 3.6 Groundwater Resources and  
13 Hydrology.” AR 350-388.

14 In *Spring Valley*, the amended version relied on new technical reports. *Id.* at 108. Here, the  
15 FEIR did the same thing by relying on Geosyntec, which the FEIR explained “superseded” the DEIR’s  
16 technical reports. AR 353.

17 In *Spring Valley*, the amended version did not provide strike-out revisions showing each of the  
18 specific amendments to the DEIR. *Id.* at 108. Here, while the FEIR *purported* to provide a strike out  
19 and underlined version, the underlining does not reflect all of the changes, particularly the changes to the  
20 discussion of cumulative impacts. *See* AR 317(FEIR, directing reader to revised section 3.6 and stating  
21 that changes are identified by strikeouts and underlining); *compare* AR 842-843 (DEIR cumulative  
22 impact analysis) to AR 384-387 (FEIR’s revised cumulative impact section). Six paragraphs of new  
23 material in the FEIR’s cumulative impact analysis are not underlined, and these include:

- 24 • the change in the geographic scope,
- 25 • the claim that the aquifer around the Project site is not contiguous with the stressed areas in the
- 26 study area,
- 27 • and the claim that the SVWP mitigates the Project’s impact to cumulative conditions. AR 384-
- 28 387.

1 The failure to underline this new material, despite its claim that new material was underlined, creates the  
2 false impression that this material had been included in the DEIR. AR 14149 (LandWatch objection).

3 In *Spring Valley*, as here, the revised hydrology section found no significant impacts. *Id.* at 106.  
4 Under CEQA, absent a new or substantially more severe significant impact or the project proponent's  
5 refusal to adopt feasible mitigation, the remaining basis for ordering recirculation is the preclusion of  
6 meaningful comment opportunity. Guidelines, § 15088.5(a)(4). And in *Spring Valley*, recirculation was  
7 indeed required because the FEIR's revisions precluded meaningful comment:

8 Given their breadth, complexity, and purpose, the revisions to the hydrology and water quality  
9 analysis *deprived the public of a meaningful opportunity to comment on an ostensibly feasible*  
10 *way to mitigate a substantial adverse environmental effect.* Accordingly, we conclude the  
11 revisions to the hydrology and water analysis constituted significant new information requiring  
12 recirculation under section 21092.1

13 *Id.* at 108–109, emphasis added. Here, the public was similarly deprived of a meaningful opportunity to  
14 comment on the EIR's new claim of an “ostensibly feasible way to mitigate” cumulative impacts, the  
15 claim that the SVWP would mitigate the Project's cumulative effect. More generally, the public was  
16 denied the opportunity for meaningful comment, *with responses from the County*, on *each* of the  
17 elements of significant new information.

18 Question 8 posed by the Court asks in particular how the change to the geographic scope of the  
19 cumulative analysis precluded meaningful comment opportunity. The draft EIR's cumulative analysis  
20 considers *only* the impacts to the “El Toro Groundwater Basin” and concludes that there was no  
21 cumulative impact to that area simply because its interconnected subareas enjoyed a surplus. AR 842-  
22 843. However, the final EIR purports to evaluate Project impacts to the local aquifer (now termed the  
23 CDT Subbasin) *and* to the “adjacent subbasins and the basin as a whole,” and it finds that there is no  
24 significant cumulative impact due to a number of factors in addition to the purported surplus, including  
25 the effect of the SVWP. AR 384-387. The draft EIR simply does not notify the public that the Project  
26 *could* have cumulative impacts on the *rest* of the SVGB, nor does it claim that the Project *would not*  
27 have those impacts due to the SVWP. Nor does the draft EIR notify the public that the Project could,  
28 but would not, aggravate existing overdraft conditions in the Corral de Tierra Subbasin due to the  
ostensibly feasible mitigation effect of the SVWP. Because the public was not notified of the claims

1 that the final EIR makes as it enlarged the geographic scope of impact analysis and mitigation, the  
2 public had no reason to challenge those claims in comments on the draft EIR.

3 After the final EIR was issued, LandWatch did repeatedly challenge the new claims that were  
4 based on enlarging the scope of cumulative analysis and mitigation to include the Basin as a whole,  
5 including the claims that the SVWP would mitigate cumulative impacts to adjacent subbasins, the  
6 SVGB as a whole, or the CDT Subbasin itself. For example, LandWatch and hydrologist Parker  
7 commented in a series of letters that:

- 8 • the efficacy of the SVWP is predicated on out-of-date demand projections that the final EIR fails  
9 to supply or acknowledge (AR 13329-13331, 13127-13130 (LandWatch));
- 10 • the County has admitted that groundwater management projects in addition to the SVWP would  
11 be required to sustain groundwater levels in the Valley (AR 13126-13132, 13151-13152, 6788,  
12 6791, 5825-5829 (LandWatch); AR 6795-6796 (Parker));
- 13 • the EIR contains no analysis of the impact of the Project on the Pressure Subbasin or the rest of  
14 the SVGB due to lost recharge (AR 14153 (LandWatch); AR 13147, 13153, 6793 (Parker));
- 15 • there was no evidence that the SVWP, even if it were effective at maintaining Valley  
16 groundwater levels, could possibly maintain groundwater levels in the CDT Subbasin that are  
17 250 to 350 feet higher (AR 14149-14150, 13125-13126, 6787-6788, 5828 (LandWatch); AR  
18 13144-13147, 13149-13151, 6795 (Parker));
- 19 • the FEIR's continued claim of a "surplus" is misleading in light of the Geosyntec report that the  
20 CDT Subbasin is in overdraft and that groundwater levels are in fact declining (AR 13143-  
21 13144, 13147-13149 (Parker));
- 22 • the FEIR fails to acknowledge that declining groundwater levels and aquifer depletion in the  
23 CDT Subbasin are by definition a significant cumulative impact (AR 13149, 6792 (Parker));
- 24 • comparison of Project pumping to total pumping or total storage in the SVGB was legally and  
25 factually irrelevant, particularly in assessing the cumulative impact to the CDT Subbasin (AR  
26 5829-5830 (LandWatch)).

26 Real Party argues that the County was only obliged to respond to comments on the *draft* EIR. RP Opp.,  
27 pp. 60:24-61:61. Thus, the public was denied the benefit of informed comments and response on the  
28 post-DEIR disclosures of the environmental setting and the actual basis of the cumulative analysis.

1 Real Party argues without any citation to the record that “Petitioner’s late comments that the  
2 County was not legally obligated to respond to were nonetheless addressed by expert consultants and/or  
3 by the County’s professional planning staff . . .” RP Opp, p; 61:4-6. Elsewhere Petitioner cites  
4 conclusory findings and staff testimony at hearings as evidence that the County responded to  
5 LandWatch’s comments. RP Opp., pp. 43:5-44:2, 23:23-28. As LandWatch demonstrated in its Reply,  
6 Real Party’s citations are to conclusions without factual support or to testimony or documents in the  
7 record that do not in fact address the issues in dispute, e.g., the misleading surplus claim, the failure to  
8 disclose the fact of declining groundwater levels in the CDT Subbasin, or the lack of evidence that the  
9 SVWP could maintain groundwater levels in the CDT Subbasin.

10 As *Santiago County Water District* holds, conclusions without factual support are not sufficient:

11 The EIR must contain facts and analysis, *not just the bare conclusions of a public agency*. An  
12 agency’s opinion concerning matters within its expertise is of obvious value, but the public and  
13 decision-makers, for whom the EIR is prepared, should also have before them the basis for that  
14 opinion so as to enable them to make an independent, reasoned judgment.

14 *Santiago County Water District*, *supra*, 118 Cal. App. 3d at 831, emphasis added.

15 The post-EIR staff claims at hearings and findings cited by Real Party (RP Opp. pp. 43:5-44:2)  
16 are simply conclusions without factual support or do not address issues in dispute:

- 17 • AR 8 – The findings claim benefit of sustained groundwater levels from the two reservoirs and  
18 SVWP. The assertion that MCWRA claims benefits to the Project area from the SVWP is  
19 reference to a bare conclusion in the FEIR (AR 363), not substantial evidence. As explained  
20 above, there is no evidence that the inclusion of the parcel within Zone 2C means that it will not  
21 continue to suffer long-term and accelerating groundwater level declines and contribute to  
22 impacts to the El Toro Primary Aquifer System. The DEIR’s claim of benefits from the two  
23 reservoirs is contradicted by the history of declining water levels and was stricken from the  
24 FEIR. AR 363.
- 25 • AR 9, 46 – A finding asserts benefits from the SVWP to the CDT Subbasin from the “suite of  
26 MCWRA projects,” arguing without evidence, and contrary to 45 years of history, that the  
27 improvement in Valley groundwater levels will reduce the hydraulic gradient between the CDT  
28 Subbasin and the Valley sufficiently to retard outflow from the CDT Subbasin. As Parker  
explains, there is no modeling or evidence in the EIR or elsewhere in the record to support the  
contention that such an improvement *could* sustain falling groundwater levels that are 250-350  
feet higher than the Valley floor. AR 13147-13149, 6795 (Parker). This explanation is not in the  
SVWP EIR or the Engineers Report.

- 1 • AR 134 (FEIR, Figure MR1-2, showing groundwater elevations and flow direction), AR 136  
2 (FEIR, Figure MR1-2, showing hydrologic connection between CDT Subbasin and SVGB), and  
3 414-4144 (Geosyntec 2010, showing hydraulic connection) simply establish the hydraulic  
4 connection, and do not provide evidence that groundwater management in the Valley will benefit  
5 the upgradient CDT Subbasin.
- 6 • AR 9, 46, 49, 50 – Findings claim that evidence of an increase in groundwater levels since the  
7 SVWP was implemented supports the claimed benefit to the CDT Subbasin. The reference is to  
8 an MCWRA presentation reporting groundwater levels for the *Pressure and Eastside Subbasins*,  
9 *not the CDT Subbasin*. AR 4284 (cover), 4300-4305 (data description), 4315 (summary); *see*  
10 AR 17745 *et seq.* (legible version of same presentation). Furthermore, the data, even if relevant,  
11 were cherry-picked: all of the post-2011 reports show *falling* groundwater levels in the Pressure  
12 Subbasin. AR 5978, 5992, 6005, 6028, 6031. MCWRA and the State of the Salinas River  
13 Groundwater Basin report both confirm that the overdraft condition in the Valley that drives  
14 seawater intrusion persists and will accelerate in a latent response to the most recent drought.  
15 AR 6058-6059 (State of the Basin), 4315 (MCWRA presentation), 5850 (MCWRA's Franklin).
- 16 • AR 4912-13 – Planning Director Novo's conclusory claim at a hearing that Zone 2C assessments  
17 reduce seawater intrusion and replenishes aquifers is without factual support and not  
18 demonstrably relevant to the CDT Subbasin.
- 19 • AR 4934-35, 5207 – Supervisors' statements that they rely on staff are not themselves  
20 substantial evidence of any benefit from the existing groundwater management projects to the  
21 CDT Subbasin.

22 Nor does the post-EIR staff testimony cited by Real Party (RP Opp., pp. 23:23-28) provide  
23 substantial evidence that addresses the substance of the objections made by LandWatch and Parker:

- 24 • AR 1505 - The Health Department 2002 memorandum citing the 2002 Todd hydrogeological  
25 study, which was superseded by the Geosyntec report, relies on the misleading claim of a  
26 "surplus" in the four interconnected subareas, without any consideration of the Geosyntec  
27 evidence of 45 years of declining groundwater levels. *See* AR 1505 and 1507 (DEH) *quoting*  
28 AR 1501 (Todd 2002).
- AR 4363-4365 - A staff report claims there is an adequate *supply*, which does not address the  
*impact* to the aquifer from using supply.
- AR 4963-4966 – MCWRA's Franklin validates the *methodology* of the Bierman well tests,  
which tests, as Real Party admits (AR 4978), are not relevant to cumulative impacts.

- 1 • AR 4991-4993 – Planning Director Novo distinguishes the short vs. long term rate of  
2 groundwater decline in the El Toro Primary Aquifer, an issue that is not in dispute.
- 3 • AR 5144-48, 5243-44 – EIR consultant Stearn erroneously claims that the EIR acknowledges  
4 future declines in groundwater levels (it does not – see LandWatch Reply, pp: 1:26-28, 2:20-23)  
5 and simply repeats the EIR claims re SVWP.
- 6 • AR 5301-02 – MCWRA’s Johnson states that Zone 2C boundaries were determined by models  
7 and hydrogeologic data but without pointing to any of that data in the record, and while  
8 acknowledging that the boundaries were *also* arbitrarily determined by parcel boundaries.
- 9 • AR 5308 - A Planning Commissioner repeats the SVWP benefit claim, without citing any  
10 evidence.
- 11 • AR 5336-40 - Moss explains that there is a connection between the CDT Subbasin and the  
12 SVGB, a fact that is not in dispute.
- 13 • AR 5378 – Contrary to Real Party, this is not a citation to planner Kinnison-Brown, but to  
14 applicant’s attorney discussing an unrelated issue. At AR 5343 Kinison-Brown does imply, but  
15 without citing any evidence other than its inclusion in Zone 2C, that the site is benefited by the  
16 SVWP.

17 *See also* LandWatch Reply, pp. 9:17-10:28 (summarizing content of material cited by Real Party to  
18 show it to be non-responsive).

19 And even if the County *had* provided substantive responses to LandWatch’s and Parker’s  
20 objections to the new analysis in the FEIR, it would not have been sufficient as a matter of law. The  
21 California Supreme Court has repeatedly held that oral presentations or information in post-EIR reports  
22 cannot cure the failure to provide an adequate EIR. In *Vineyard Citizens*, the Court found the EIR  
23 inadequate because it relied on water supply and demand data from another environmental document  
24 without a summary or roadmap to that information:

25 To the extent the County, in certifying the FEIR as complete, relied on information not actually  
26 incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided  
27 in CEQA.

28 *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.  
Elsewhere, the California Supreme Court admonished that “whatever is required to be considered in an

1 EIR must be in that formal report; what any official might have known from other writings or oral  
2 presentations cannot supply what is lacking in the report.” *Laurel Heights Improvement Assn. v. Regents*  
3 *of University of California* (1988) 47 Cal.3d 376, 405.

4 The Sixth District has held that belated disclosure of information regarding the groundwater  
5 setting cannot cure an informationally inadequate EIR because it precludes comment *and response*.  
6 *Save Our Peninsula Committee, supra*, 87 Cal.App.4th at 117-118, 128. Similarly, *San Joaquin*  
7 *Raptor/Wildlife Rescue Ctr. v. Cty. of Stanislaus* (1994) 27 Cal.App.4th 713, 727 holds that post-EIR  
8 testimony cannot make up for an inadequate EIR because “[w]hatever is required to be considered in an  
9 EIR must be in the report itself. Oral reports cannot supply what is lacking.” Like *Save Our Peninsula*,  
10 *San Joaquin Raptor/Wildlife Rescue Ctr.* holds that the belated information was prejudicial because it  
11 precluded comment *and response*, explaining that if the required information had been in the draft EIR,  
12 “[c]omments could have then been made addressing the adequacy of the investigation and responses  
13 prepared to these comments. The FEIR would then have provided information sufficient for the Board  
14 to intelligently assess the conclusion . . .” 27 Cal.App.4th at 727

15 In *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal. App. 4th 70, 88 the Court  
16 rejected the claim that post-EIR testimony could cure the EIR’s omission regarding baseline conditions,  
17 again citing the Sixth District in *Save Our Peninsula*. *Sierra Club v. Tahoe Regional Planning Agency*  
18 (2013) 916 F.Supp.2d 1098, 1139 also cites *Save Our Peninsula* in its holding that the adequacy of  
19 mitigation measures must be reviewed *solely on the basis of information in the EIR* because  
20 “[a]dditional documentation in the record, however, does not make up for the lack of analysis in the  
21 EIR.” Likewise, *Santiago County Water District, supra*, 118 Cal.App.3d at 829 rejects the relevance of  
22 information regarding available water resources that was not in the EIR because “[i]t is the adequacy of  
23 the EIR with which we are concerned . . .” Where the EIR itself does not adequately disclose critical  
24 water supply information, it “fails in its function as an informational document,” and this cannot be  
25 cured by information provided by the public or not in the EIR. *California Oak Foundation v. City of*  
26 *Santa Clarita* (2005) 133 Cal.App.4th 1219, 1240.

27 In sum, even if after the FEIR was released, there had been an adequate response to comments  
28 on the significant new information in the FEIR, that discussion could not suffice as a matter of law.

1 Belated disclosure cannot cure the failure to recirculate because belated disclosure is the reason  
2 recirculation is required. Thus, in *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214  
3 Cal.App.3d 1043, 1052, the Court declined even to review the adequacy of an amended cumulative  
4 analysis that was not circulated for public review and comment, because the failure to recirculate it was  
5 error.

## 6 **B. RESPONSES TO TRAFFIC QUESTIONS**

### 7 **1. Explain Real Party's claim that Project traffic was not cumulatively considerable.**

8 **Response: The Project's addition to cumulative traffic is significant under the adopted**  
9 **County guidance; indeed, since cumulative conditions will deteriorate, the Project's 2030**  
10 **trips will constitute a *more severe* impact in 2030 than in 2015.**

#### 11 **Court's question:**

12 Real Parties claim that the Project's contribution to cumulative traffic "was not 'cumulatively  
13 considerable' even prior to mitigation." (RPI Brief, p. 77, ln. 9-10.) How can this claim be  
14 reconciled with 1) the RDEIR's thresholds of significance (see AR 436); or 2) the RDEIR's  
15 conclusion that "[i]mplementation of the proposed project would contribute to a cumulative  
16 increase in traffic volumes that would indirectly result in or exacerbate unacceptable levels of  
17 service on the regional roadway network. This would be considered a significant cumulative  
18 impact"? (AR 451.) If Real Parties' claim is correct, why is fair-share mitigation necessary in the  
19 first place?

#### 20 **Discussion:**

21 The Court has cited the relevant and dispositive evidence on the issue, the EIR's adopted  
22 thresholds of significance (AR 436) and its actual conclusions regarding the significance of cumulative  
23 impacts (AR 451). Argument to the contrary in litigation is irrelevant, because an agency may not  
24 "remedy the inadequacies of the EIR by presenting evidence to the trial court." *Santiago County Water*  
25 *District, supra*, 118 Cal.App.3d at 831. Furthermore, an agency is responsible for a consistent record on  
26 its significance findings; to deny its initial finding that an impact is significant is as "untenable" as "the  
27 unringing of a bell." *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th  
28 144, 154.

The RDEIR explains that it employs "conventional thresholds of significance." AR 436. As  
Real Party admits (RP Opp., p. 65:2-3), those conventional LOS thresholds were taken from the  
County's published CEQA thresholds. AR 6839. These standards determine what counts as a



1 significant impact. CEQA requires mitigation for significant impacts. Guidelines, §§ 15126.4(a),  
2 15091(a). The County's published CEQA thresholds also require mitigation; in particular, they require  
3 that a project's LOS impacts "be eliminated or reduced to a level of insignificance." AR 6829.

4 The EIR applies the same thresholds of significance to both 2015 background impacts and to  
5 2030 cumulative impacts. The EIR states with respect to cumulative *segment* impacts:

6 *Similar to Background Plus Project Conditions*, the addition of one vehicle to the LOS F  
7 conditions along four of the study segments and the degradation of the level of service on  
8 westbound State Route 68 between State Route 218 and York Road would result in the project  
9 having a significant cumulative impact.

10 AR 454-455, emphasis added. The EIR states the same thing for cumulative *intersection* impacts:

11 All six study intersections would operate at unacceptable levels of service under Cumulative  
12 Conditions. Similar to Background Plus Project Conditions, all six study intersections would be  
13 impacted by the project because of LOS F operating conditions.

14 AR 452. If 2015 impacts are significant, the same impacts in 2030 using the same thresholds are too.

15 Furthermore, Real Party's efforts to minimize the Project impacts to the Supervisors were  
16 misleading. For example, although the EIR states that the Project traffic will add 32 seconds to travel  
17 time over the entire SR 68 corridor under background conditions (AR 614, 445), Real Party's counsel  
18 repeatedly mischaracterized the EIR's conclusion at the hearings by claiming that the Project traffic  
19 would add only 2 seconds *to corridor travel time*. AR 4978:2-4 (two seconds is "the maximum  
20 additional delay caused through the Highway 68 Corridor"); AR 5163:15-17 ("the totality of their  
21 impact through the Highway 68 corridor is, at worst, 2 seconds."); *see also* 5259:22-25, 5260:9-10. The  
22 landowner and the traffic engineer also testified to the inaccurate claim that the total corridor impact  
23 would only be two seconds. AR 5293:8-9 (landowner), 5361:7-9 (traffic engineer). While the longest  
24 increase in delay *at a single intersection* under *background* conditions is 2.1 seconds (AR 447), there are  
25 numerous intersections and segments along the SR 68 corridor, and thus the actual total delay was  
26 determined to be 32 seconds.<sup>12</sup>

27 <sup>12</sup> And contrary to Real Party's briefing (RP Opp., 75:23-24), the Project's traffic is not a mere 0.045 percent of the  
28 *relevant* traffic, i.e., the traffic on SR 68. Real Party cites the claim in the EIR that the Project "will contribute approximately  
0.045 percent of the total volume toward the cumulative daily trips." AR 451. However, that 0.045 percent figure represents  
the Project's 163 daily trips (AR 485) as a percentage of the "estimated 358,002 daily trips *within this regional planning*

1 The EIR does not reveal either the incremental intersection and segment delays or the  
2 incremental corridor delay due to the Project's traffic under 2030 *cumulative conditions*, that is, it does  
3 not provide a comparison of 2030 delays with and without the Project. *See* AR 582-606 (Traffic Study,  
4 App. H). However, the FEIR demonstrates that 2030 traffic conditions will be much worse than 2015  
5 conditions. Intersection delays from all traffic will be greatly increased: most individual intersection  
6 delays will increase *more than two minutes*. *Compare* AR 439 (Table 3.10-9) to AR 452 (Table 3.10-  
7 11). Average vehicle speed will be greatly reduced on each segment. *Compare* AR 442 (Table 3.10-10)  
8 to AR 454 (FEIR, Table 3.10-12). Thus, the Project's cumulative contribution will much greater in  
9 2030 than in 2015, because "the greater the existing environmental problems are, the lower the threshold  
10 should be for treating a project's contribution to cumulative impacts as significant." *Communities for a*  
11 *Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120.

12 **2. How is reduction of corridor travel time under 2015 Background conditions relevant to**  
13 **cumulative analysis?**

14 **Response: Neither the 2015 analysis nor any other substantial evidence supports Real**  
15 **Party's claim that widening one segment of SR 68 would reduce overall SR 68 corridor**  
16 **travel time under 2030 conditions, when traffic is projected to double.**

17 **Court's question:**

18 How is the reduction of travel delay under Background Conditions relevant to the Cumulative  
19 analysis? RPI claims that, based on the 4.7-minute reduction in travel time in their study from a  
20 theoretical 1.1-mile widening of SR 68, the County's traffic experts concluded "that the widening  
21 project will also benefit circulation under 2030 conditions, especially once the entire 2.3-mile project  
is implemented." (RPI Brief, p. 77, ln. 20-24.) However, Real Parties' citation (AR 456-459) does  
not support this claim. Further, the traffic study itself does not discuss this reduction in travel time in  
its cumulative conditions analysis. (See AR 488-490.)

22 **Discussion:**

23 As LandWatch has explained, CEQA does not countenance the use of a different metric to  
24 determine the significance of impacts (e.g., degradation of LOS at specific intersections and segments)  
25 than to determine the efficacy of mitigation (e.g., reduction in overall corridor travel time). LandWatch  
26

27 *area.*" AR 451, emphasis added. But the EIR explains that only 4 to 5 percent of that total regional traffic uses SR 68 (AR  
28 452), whereas all of the Project traffic would use SR 68. Assuming that 4.5% of the 358,002 regional daily trips use SR 68  
(i.e., 16,110 trips) and that all of the Project's 163 daily trips use SR 68, the Project's trips are 1% of the daily SR 68 trips.

1 Op. Brf., pp. 41:14-24. Furthermore, the County did not in fact identify travel time reduction in its  
2 findings as the basis for concluding that cumulative impacts would be mitigated. AR 33-34 (findings re  
3 traffic impacts mitigated to less than significance). The findings identify travel time reduction *only* as a  
4 basis for finding overriding considerations. AR 44. But an overriding consideration is not a mitigation  
5 measure: a finding of overriding considerations under Guidelines section 15092(b)(2)(B) is entirely  
6 distinct from a finding that feasible mitigation will be imposed under Guidelines section 15091(a)(1).  
7 *City of Marina v. Bd. of Trustees of the California State Univ.* (2006) 39 Cal. 4th 341, 368 (overriding  
8 considerations are relevant only *after* mitigation found infeasible); Guidelines, § 15093(c) (overriding  
9 considerations are distinct findings). Thus, had the County actually considered travel time reductions to  
10 be a mitigation measure, it could not properly have *also* identified it as an overriding consideration.

11 However, even if it were permissible to consider corridor travel time reduction as a measure of  
12 mitigation efficacy, and even if the County had done so, there is no evidence here that planned  
13 improvements will in fact maintain or reduce corridor travel time under cumulative conditions.  
14 LandWatch Op. Brf., pp. 41:25-42:6.

15 First, the EIR is clear that traffic impacts should be evaluated for two distinct periods, 2015  
16 “background” conditions and 2030 “cumulative” conditions, based on differences in traffic conditions  
17 and planned improvements. *Compare* AR 439-447 (2015 analysis) *to* 451-459 (2030 analysis).  
18 However, the corridor travel time study does not evaluate travel time under cumulative 2030 conditions;  
19 it assesses only 2015 conditions. AR 614 (Traffic Study, Appendix O). Absent any analysis of corridor  
20 travel time under 2030 conditions, there can be no evidence that planned improvements would maintain  
21 or reduce overall corridor travel time or mitigate the Project’s impacts on corridor travel time.

22 Real Party’s litigation claim of a travel time reduction is based on the EIR’s analysis of  
23 *background* conditions, not cumulative conditions. RP Opp., pp. 76:6-7, citing AR 445 (RDEIR).  
24 Testimony by traffic engineer Chad Oleno at the hearings regarding improvements to travel time is also  
25 based only on the travel time study in the traffic analysis, which assessed only background conditions  
26 (AR 614), not cumulative conditions. AR 5335, 5350, 5355, 5360.

27 Second, recognizing the absence of evidence under 2030 conditions, Real Party cites the 2030  
28 analysis in the 2014 Regional Impact Fee Nexus Study Update as evidence of a travel time reduction.

1 RP Opp., pp. 77:26-78:6, *citing* AR 6869. However, neither the EIR nor the findings refer to the 2014  
2 Nexus Update as the basis of a corridor travel time conclusion. Real Party cannot now argue this to the  
3 trial court for the first time. *Santiago County Water District, supra*, 118 Cal.App.3d at 831.

4 More fundamentally, the 2014 Nexus Update does not even *address* corridor travel time other  
5 than to make two non-specific references to the possibility that some of the numerous improvements  
6 evaluated (most of which are unrelated to the SR 68 corridor) would improve travel time. AR 6847,  
7 6866. The only actual performance analysis in the Nexus Update (AR 6869) is based on precisely the  
8 conventional LOS values that Real Party claims that the County was *not* using to evaluate mitigation  
9 efficacy. And the Nexus Update provides those LOS values for only two of the five SR 68 segments  
10 that will suffer cumulative impacts. The Nexus Update shows that the segment 5 (Corral de Tierra to  
11 Portola) will operate at LOS B, but that segment 4 (Laureles Grade to Corral de Tierra will in fact  
12 remain at LOS F. The Nexus Update provides *no* information about segments 1, 2, and 3, which the  
13 EIR projects will operate at LOS F. AR454. And, again, it provides no analysis or conclusion regarding  
14 overall SR 68 corridor travel time.

15 Third, Real Party invites the Court to speculate that, even after regional traffic more than doubles  
16 between 2015 and 2030, travel time on the SR 68 corridor would still be improved over existing  
17 conditions by virtue of a single project, the SR 68 Commuter Improvements Project, which is not even  
18 scheduled until 2035 (AR 22717, 22867).<sup>13</sup> RP Opp., p. 77:18-22. Such speculation is neither  
19 substantial evidence nor the role of the Court. Guidelines § 15384 (substantial evidence does not  
20 include speculation); *Environmental Protection Information Center v. California Dept. of Forestry and*  
21 *Fire Protection* (2008) 44 Cal.4th 459, 488 (“a determination of whether omitted information would  
22 have affected an agency's decision . . . is highly speculative, an inquiry that takes the court beyond the  
23 realm of its competence”).

24 Fourth, even if the Court were inclined to speculate about corridor travel time under 2030  
25 conditions, the evidence in the EIR is that travel times will worsen, not improve. The RDEIR projects

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27 <sup>13</sup> The EIR indicates that regional traffic will double between 2015 and 2030, projecting 173,596 daily trips from  
28 approved projects as of 2015 (AR 431, 525), and an additional 184,243 daily trips from projected foreseeable future  
development projects between 2015 and 2030 (AR 581). *See also* AR 451 (EIR, projecting a total of 358,002 regional trips  
by 2030 from both the “approved and cumulative relevant projects”).

1 much worse intersection and segment level of service under 2030 conditions than under 2015 or existing  
2 conditions: both intersection delays and travel speeds will be greatly degraded. *Compare* AR 439 (Table  
3 3.10-9) *to* AR 452 (Table 3.10-11); *compare* AR 442 (Table 3.10-10) *to* AR 454 (Table 3.10-12). These  
4 worsening conditions, intersection by intersection, and segment by segment, mean *longer* travel times.

5 **3. Did TAMC and Caltrans support the claimed 2030 SR 68 corridor travel time reduction?**

6 **Response: Nothing in TAMC and Caltrans comments is evidence that 2030 corridor travel**  
7 **times will be reduced. Indeed, TAMC's comments on the DEIR endorsed the sufficiency of**  
8 **RDIF payments as cumulative mitigation *even though the DEIR concluded that impacts***  
**would not be mitigated.**

9 **Court's question:**

10 Real Parties also claim that TAMC and Caltrans agreed with the "County's traffic experts"  
11 purported conclusion described in question 3, ante. (RPI Brief, p. 77, ln. 20-24.) But the citations  
12 provided (at AR 201, 273) only show that TAMC and Caltrans agreed generally with the  
13 appropriateness of RDIF fair-share mitigation. Is there support in the record for the broader  
14 conclusion that TAMC and Caltrans agreed that the 4.7-minute reduction in travel time under  
Background Conditions was a basis upon which to conclude the TAMC project would benefit  
traffic under cumulative conditions?

15 **Discussion:**

16 As the Court has noted, neither the EIR nor the comments by TAMC and Caltrans included in  
17 the FEIR provide any actual evidence on the question at issue: whether the SR 68 Commuter  
18 Improvement Project would maintain or reduce SR 68 corridor travel time under 2030 conditions.  
19 Furthermore, it is apparent that the agency comments endorsing payment of impact fees were not offered  
20 as competent evidence as to the legal sufficiency of mitigation. For example, TAMC commented *only*  
21 on the DEIR (AR 200-202 - TAMC), in which the cumulative impacts were found to be significant and  
22 unavoidable *despite* payment of the Regional Development Impact Fee ("RDIF") (AR 932-933 -  
23 DEIR).<sup>14</sup> In light of the DEIR's conclusion that cumulative impacts remained significant, TAMC's  
24 opinion that payment of the RDIF is sufficient mitigation cannot be taken as evidence that TAMC would  
25 *also* conclude that the payment necessarily renders cumulative impacts less than significant. TAMC's  
26

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27  
28 <sup>14</sup> TAMC did not submit comments on the RDEIR. AR 203 (FEIR, response to TAMC's comments on the DEIR,  
noting lack of comments on RDEIR).

endorsement of the RDIF payment was obviously not intended as a factual conclusion that the impacts are fully mitigated or as a legal conclusion as to whether the RDIF is adequate mitigation under CEQA.

The RDEIR states that TAMC and Caltrans are exploring methods other than LOS metrics to evaluate corridor-wide effects, and that TAMC considered this in establishing the RDIF. AR 437. However, nothing in this general statement is evidence that the planned improvements for the SR 68 corridor will in fact maintain or reduce corridor travel time or mitigate this Project's impacts.

In light of the absence of any evidence in support of Real Party's claim in the EIR, and the obvious inference that at least TAMC did not mean that payment of the RDIF renders impacts less than significant as a matter of law or fact, the Court should disregard Real Party's speculation as to what TAMC and Caltrans believed about travel time under cumulative conditions.

**4. How can fair share payments for the SR 68 CIP mitigate 2015 impacts when the improvement is not certain before 2035?**

**Response: Payment of a fair share of an improvement that is not committed for 20 years after it is needed is not substantial evidence of adequate mitigation.**

**Court's question:**

The RDEIR concluded that fair-share mitigation payments toward the SR 68 CIP would mitigate direct project impacts to some intersections. (AR 441-442.) In light of 1) the traffic study's 2030 horizon for cumulative impacts (AR 488); and 2) the uncertainty whether the project will be funded prior to 2035 (AR 22717, 22867), how can fair-share RDIF payments be considered adequate mitigation for 2015 direct impacts?

**Discussion:**

The EIR concludes that completion of the SR 68 CIP is necessary to mitigate the Project's direct level of service impacts *as of 2015* to the SR 68 intersections at Corral de Tierra and at San Bernancio and the segment between them (i.e., intersections 5 and 6 and segment 5).<sup>15</sup> AR 447 (RDEIR). The record is unambiguous that TAMC has not scheduled the completion of the SR 68 CIP before 2035 because TAMC has chosen in its current Regional Transportation Plan to allocate its available funding

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<sup>15</sup> The 1.1 mile portion of the SR68 CIP that might be built by the Ferrini project will not mitigate these impacts because it would end at Toro Estates (AR 496), east of San Bernancio Road (see map at AR 623). *See* Real Party Request for Judicial Notice, Ex. D, p. AR 11 (acknowledging that the Ferrini project's widening of SR 68 "will not improve the functioning of failed intersections on Highway 68 beyond the boundaries of the project area.")

1 to other projects first.<sup>16</sup> AR 22717 (TAMC RTP). LandWatch asked TAMC’s Executive Director to  
2 confirm this, and she did so, agreeing that funding will not be available before 2035.<sup>17</sup> AR 22867 (Hale  
3 e-mail).

4 The necessity of timely mitigation is inherent in the EIR’s analysis of traffic impacts. The EIR  
5 separately evaluates and proposes mitigation for impacts as of 2015 and as of 2030. If mitigation by  
6 2030, or 2035, were sufficient to address significant impacts that would occur by 2015, there would  
7 have been no point in evaluating 2015 impacts separately.

8 Real Party repeatedly cites *City of Marina, supra*, 39 Cal. 4th at 365 and *Save our Peninsula*  
9 *Committee, supra*, 87 Cal.App.4th 141 the proposition that CEQA does not require “a time-specific  
10 schedule for the County to complete specified road improvements.” RP Opp., pp. 70:14, 71:2-3.  
11 However, there is a fundamental difference in the factual circumstances at issue in those cases and the  
12 circumstances here. In both of those cases there was evidence that the necessary improvements *would*  
13 be provided timely, i.e., before the impacts occurred; here, the evidence here is precisely to the contrary.

14 In *Save Our Peninsula*, the Court found that improvement plans were in place, construction was  
15 underway, and a “time schedule for improvement was *inherent* in the County’s traffic improvement  
16 program, in that *it provided for improvements to be constructed as the traffic triggering the need for the*  
17 *improvements exceeded a projected threshold . . .*” 87 Cal.App.4th at 141, emphasis added. Here, the  
18 time schedule is not inherent, it is explicit; however, that explicit schedule calls for the improvements to  
19 be built twenty years *after* “the traffic triggering the need for the improvements exceeded a projected  
20 threshold.” *Id.*

21 In *City of Marina*, the primary issue was the refusal by California State University Monterey Bay  
22 (“CSUMB”) to adopt fair share mitigation for its share of the needed traffic improvements based on  
23 what the Court held to be CSUMB’s legally erroneous finding that its payments were not authorized by  
24 law. 39 Cal. 4th at 356-363. CSUMB had also made a secondary finding to justify its non-payment, a  
25

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26 <sup>16</sup> Despite this, Real Party cites the claim at a hearing by County planning staff, who do not speak for TAMC, that “the  
27 funding is looking to be in the 2025 to 2030 timeframe,” which would, in any event, still be too late. AR 5370, *cited by* RP  
Opp., p. 71:12. And, as discussed below, there is no evidence that the TAMC 2035 date would be accelerated.

28 <sup>17</sup> Elsewhere, the County has admitted that the SR 68 CIP “is not currently funded or scheduled for completion.”  
Request for Judicial Notice by Petitioner LandWatch Monterey County (“RJN”), Exhibit 1.

1 finding that the construction of improvements was so uncertain as to be infeasible, simply because the  
2 Fort Ord Reuse Authority (“FORA”) rather than CSUMB controlled the construction of improvements.  
3 *Id.* at 364. The Court held that there was “no reason to doubt” that FORA would in fact provide the  
4 improvements because the evidence showed that FORA had in fact prepared a plan that would fund and  
5 construct the needed infrastructure over a 20-year period. *Id.* at 347-348, 365. The Court analogized the  
6 FORA improvements plan to the mitigation plan in *Save Our Peninsula*, noting that if plans ensure that  
7 improvements will be built as traffic triggered the need for them, they need not contain a “time-specific  
8 schedule.” *Id.* at 365.

9       *Critically, CSUMB did not offer any evidence that needed improvements might not be*  
10 *constructed timely. Id.* at 363-366. CSUMB merely *speculated* that funding might not be sufficient. *Id.*  
11 at 364. Unlike here, the dispute was not over a factual matter, e.g., facts that show that the  
12 improvements will not be timely or that funding is actually uncertain. Thus, the Court held that  
13 CSUMB erred as a matter of law, not as a matter of fact. *Id.* at 365-366.

14       In holding that an agency need not set out a “time-specific schedule” for mitigation, the Courts in  
15 *Save Our Peninsula* and *City of Marina* found that the improvements would occur when needed under  
16 existing plans, or that there was simply no evidence that they would not be timely. Neither case stands  
17 for the proposition that improvements need not be timely; indeed, both cases indicate that the committed  
18 plan was adequate because it would provide timely mitigation. Here, by contrast, LandWatch argues as a  
19 factual matter that the proposed mitigation will *not* be timely, because both the committed plan and the  
20 statement by TAMC’s director make it clear that the improvements will not be timely, but 20 years too  
21 late.

22       Thus, Real Party’s argument that there should be a presumption that the County and TAMC will  
23 “comply with their own ordinances and carry out the program they have committed to” is simply  
24 irrelevant. RP Opp., p. 71:14-19. The only “commitment” is the adopted plan, but that plan calls for  
25 completing the SR 68 CIP in 2035, not when it is needed.

26       Real Party speculates that the County might accelerate the completion of the SR 68 CIP. RP  
27 Opp., p. 68:25-69:4. But CEQA requires more than speculation, because mitigation must be an  
28 enforceable commitment. Guidelines, § 15126.4(a)(2) (“mitigation measures must be fully enforceable



1 through permit conditions, agreements, or other legally-binding instruments”); *Anderson First Coalition*  
2 *v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189 (mitigation must include plan “that the relevant  
3 agency has committed itself to implementing”). Nothing in the Project’s conditions of approval or in  
4 TAMC’s RTP commit TAMC to accelerate its 2035 schedule for the SR 68 CIP.

5 Contrary to Real Party, the fact that the SR 68 CIP is in the “current RDIF” project list is not  
6 evidence that it will be accelerated. RP Opp, p. 69:1-4, *citing* AR 5373 (County Counsel remarks).  
7 County Counsel stated at a hearing that the SR 68 CIP would be built “within the horizon of the current  
8 RDIF” because it is “on the list” of the projects for which the RDIF is collected. However, the RDIF  
9 does not have a “horizon” that dictates project schedules. TAMC establishes the schedules for the RDIF  
10 projects through its Regional Transportation Plan. AR 22772 (2013 RDIF Update, explaining  
11 implementation scheduling); AR 22774 (2013 RDIF Update, explaining that TAMC programs the RDIF  
12 projects through its RTP process); AR 22730 (2013 RDIF Update, noting that the RDIF project list is in  
13 the RTP); AR 22626 (2014 RTP, funding sources include RDIF). And the 2014 RTP took the current  
14 RDIF nexus study into account: “an update to the Nexus Study was therefore completed *in concert with*  
15 *development of a preferred scenario for the 2014 regional plan.*” AR 22621 (RTP, emphasis added).  
16 After considering the available funding, the current nexus study, and project priorities, the 2014 RTP  
17 placed the SR 68 CIP in the list of projects that will not be constructed until 2035.<sup>18</sup> AR 22621 (RTP,  
18 discussing RDIF Update), 22717 (RTP, project list with schedules). In sum, the fact that the SR 68 CIP  
19 was included in the 2013 Nexus Update is not evidence that TAMC will accelerate it, because TAMC  
20 *already had that information* when it scheduled the project for 2035.

21 **5. What authority is there for the claim that the County and TAMC have power to fund the**  
22 **RDIF projects?**

23 **Response: Regardless of the power to raise funds, there is no evidence of a *committed plan***  
24 **to construct the needed improvements before 2035. And in allocating scarce funds to RDIF**  
25 **projects, the 2014 RTP *already assumed* the sales tax revenues cited by Real Party as**  
26 **evidence of the fundraising power.**

---

27 <sup>18</sup> Real Party also cites the FEIR’s statement that payment of impact fees “would accelerate implementation of specific  
28 capacity improvements along Highway 68 consistent with TAMC’s project priorities, and would address the project’s  
cumulative impacts regionally.” AR 221, emphasis added, *cited at* RP Op., p. 69:4. The issue here is timely mitigation of  
2015 impacts, not 2030 cumulative impacts; and, regardless, TAMC’s “project priorities” led it to schedule the SR 68 CIP  
project for 2035.

1           **Court’s question:**

2           Real Parties claim that "the County and TAMC have the power to raise the additional funding  
3           necessary to complete the projects included in the RDIF program .... " (RPI Brief, p. 71, ln. 14-  
4           16.) What is the authority for this claim?

5           **Discussion:**

6           As argued, the SR 68 CIP is inadequate mitigation simply because it is not committed before  
7           2035. However, as LandWatch has explained (LandWatch Op. Brf., pp., 42:27-43:22), the SR 68 CIP is  
8           also inadequate because its funding is acknowledged by TAMC to be uncertain. Only 16.5% can legally  
9           be funded by impact fees. AR 13135, *citing* SAR 22730-22731 (nexus study, stating “RDIF program  
10          only represents a portion of the required funding for each of the proposed projects”), SAR 22759, 22764  
11          (nexus study, listing those portions)]; *see* Gov. Code § 66001(g) (Mitigation Fee Act, impact fees may  
12          not be used to correct existing deficiencies). Where available impact fees fund only a portion of needed  
13          improvements, “it cannot be reasonably argued that the funds the County has raised or that it can  
14          reasonably expect to raise in the future, will be enough to mitigate the effect on traffic . . .” *Napa*  
15          *Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 364.  
16          Payment into a fee program is insufficient mitigation where the agency will not have sufficient funds to  
17          construct the improvements the program is intended to implement. *Id.*; *Endangered Habitats League v.*  
18          *County of Orange* (2005) 131 Cal.App.4th 777, 785.

19          TAMC’s 2014 RTP acknowledges that there is not sufficient transportation funding to complete  
20          all needed projects and recites some of the key factors:

- 21           • It has been 20 years since gas taxes have been increased.
- 22           • Local street and road maintenance needs are significantly underfunded.
- 23           • State and federal transportation revenues available to Monterey County are decreasing and  
24           becoming less consistent.
- 25           • The general trend has forced agencies implementing projects to work harder while receiving less  
26           funding. AR 22596-22597.

27          TAMC acknowledges that it cannot “ensure a mechanism for *complete* funding for all RDIF program  
28          projects at this time.” AR 22765, emphasis added. TAMC provides a wish list of “potential/additional

1 funding sources that could fund either in in part or full . . . some or all of the improvement projects  
2 included for funding through the RDIF program.” AR 22765. However, TAMC’s discussions of the  
3 uncertainty of funding, the fact that funding has become increasingly difficult to raise, and its wish-list  
4 of sources that *might* become available for *part* of the improvements is just like the evidence in *Napa*  
5 *Citizens* that led the Court to conclude that “mitigation measures could not be accomplished within a  
6 reasonable period of time, and thus were infeasible.” *Napa Citizens, supra*, 91 Cal.app.4th at 364-365.

7 TAMC’s 2014 RTP schedules the projects that it expects can be funded through revenues that it  
8 “reasonably expects to be available to fund projects over the life of the plan,” i.e., through its “2035  
9 horizon year.” AR 22612. TAMC places the SR 68 CIP in the 2035 column, and it acknowledges that  
10 this means that “funding will not be available until then.” AR 22867. Thus, TAMC has scheduled the  
11 SR 68 CIP no sooner than 2035 in light of its reasonable expectation of funding.

12 Despite this, Real Party implies that that the SR 68 CIP might be delivered timely, simply  
13 because “like FORA in the *City of Marina* case, the County and TAMC have the power to raise the  
14 additional funding needed to complete the projects in the RDIF program,” and “because it must be  
15 presumed they will comply with their own ordinances and carry out the program they have committed  
16 to.” RP Op., p. 71:14-19. Again, the only *commitment* is that, in light of the reasonable estimates of  
17 available funding and TAMC’s priorities, the SR 68 CIP is scheduled for 2035. Thus, unlike in *City of*  
18 *Marina*, the evidence here shows that the needed project will not be timely.

19 Real Party disingenuously cites a sales tax ordinance enacted in November 2016, apparently as  
20 evidence that TAMC can *now* timely fund all the projects in the RDIF program. RP Opp., pp. 14-17,  
21 23-25. Not so. First, TAMC’s 2014 RTP, which scheduled the SR 68 CIP after 2035, *already assumed*  
22 the passage of a countywide sales tax measure and *included* its expected revenues in its available  
23 revenues. AR 22613, 22616 (RTP). Second, nothing in the ballot materials submitted by Real Party  
24 indicates that the sales tax revenue would be used to accelerate the SR 68 CIP or to change its priority.  
25 Real Party Request for Judicial Notice, Ex. F. And third, even if it were relevant, this post-approval  
26 material is inadmissible as extra-record evidence. *Western States Petroleum Assn. v. Superior Court*  
27 (1995) 9 Cal.4th 559, 578 (extra-record evidence only admissible if it “existed *before* the agency made  
28 its decision” and it was not possible to present it).

1 Finally, we note that LandWatch’s claim with respect to the mitigation of traffic impacts is that  
2 the County lacked substantial evidence to support its finding that mitigation would be adequate.  
3 Accordingly, this Court need not, and should not, consider the issue of prejudice if it finds that the  
4 County’s findings are not supported by substantial evidence of timely mitigation. CEQA’s prejudice  
5 requirement, codified at Public Resources Code section 21005, only applies where the agency fails to  
6 make required informational disclosures or follow CEQA’s procedural requirements, *not* where an  
7 agency has failed to support findings with substantial evidence.

8 Generally, abuse of discretion claims under CEQA are either claims “that the agency failed to  
9 proceed in the manner CEQA provides” or that it “reached factual conclusions unsupported by  
10 substantial evidence.” *Vineyard, supra*, 40 Cal.4th at 435; P.R.C., § 21168.5. Case law only calls for  
11 prejudice analysis when an agency has not proceeded as required by CEQA so as to preclude disclosure  
12 of relevant information:

13 A claim that an agency failed to act in a manner required by law presents *other* considerations.  
14 Noncompliance with substantive requirements of CEQA or noncompliance with information  
15 disclosure provisions “which precludes relevant information from being presented to the public  
16 agency ... may constitute prejudicial abuse of discretion within the meaning of Sections 21168  
17 and 21168.5, regardless of whether a different outcome would have resulted if the public agency  
18 had complied with those provisions.” (§ 21005, subd. (a).) In other words, when an agency fails  
19 to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to comply  
20 with the law subverts the purposes of CEQA if it omits material necessary to informed  
21 decisionmaking and informed public participation.

22 *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946, emphasis  
23 added; *see also San Joaquin Raptor/Wildlife Rescue Center, supra*, 27 Cal.App.4th at 721–722  
24 (distinguishing review for inadequate disclosure, which requires prejudice analysis, from review for lack  
25 of substantial evidence to support factual determinations). Similarly, *Association of Irrigated Residents*  
26 *v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392 carefully distinguishes claims that an agency  
27 lacked substantial evidence from claims that it failed to comply with information disclosure  
28 requirements, noting that the prejudice provisions in Public Resources Code section 21005 apply to  
information disclosure claims. *Association of Irrigated Residents* couples the requirement to show  
prejudice only with a claim of noncompliance with CEQA’s disclosure requirements:

1 As frequently occurs, many of the disputes in this case center on the question whether relevant  
2 information was omitted from the FEIR. Noncompliance with CEQA's information disclosure  
3 requirements is not per se reversible; prejudice must be shown. (§ 21005, subd. (b).) This court  
4 has previously explained, "[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."

5  
6 *Id.* at 1391. Indeed, application of a prejudice test to a substantial evidence claim would be gratuitous.  
7 The test of prejudice is whether the agency's failure to proceed as required by CEQA precluded  
8 *informed* decision making. *Id.* This test is *necessarily* met when the decision is not supported by  
9 substantial evidence, because decision making as to the sufficiency of mitigation could not be  
10 adequately "informed" if substantial evidence did not support it. Guidelines, § 15091(b) (mitigation  
11 findings "shall be supported by substantial evidence in the record.")

12 In sum, the County lacked substantial evidence that 2015 traffic impacts would be mitigated  
13 because the only evident, committed mitigation is 20 years too late. The lack of substantial evidence to  
14 support the County's finding cannot be excused by arguing that it was not prejudicial.

15 **6. Was the finding that impacts to intersections 5 and 6 and to segment 6 are significant and**  
16 **unavoidable a scrivener's error?**

17 **Response: The record shows that the draft findings affirmed the DEIR's initial conclusion**  
18 **that the impacts would be significant and unavoidable and that the County then reaffirmed**  
19 **the DEIR's conclusion in express response to LandWatch's comments.**

20 **Court's questions 6 and 7:**

21 Real Parties contend that the Board's Finding that direct impacts to Intersections 5 and 6 and  
22 Segment 5 were significant and unavoidable was an "obvious scrivener's error." (RPI Brief, p.  
73, ln. 23-24; AR 35.) Does the County agree? What is the basis for its conclusion?

23 Landwatch contends that the Board opted to disregard the RDEIR's conclusions regarding  
24 Intersections 5 and 6 and Roadway Segment 5 in favor of the DEIR's conclusions. What  
25 evidence in the record supports the contention that the Board considered this option?

26 **Discussion:**

27 The revised draft EIR concludes 2015 impacts to SR68 intersections 5 and 6 at Corral de Tierra  
28 and San Bernancio Road and to segment 5 between these two intersections would be less than

1 significant. AR 447. But the findings identify the 2015 impacts at these facilities as significant and  
2 unavoidable. AR 35. The public must be able to rely on the County's findings to discern the basis of its  
3 action. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515-  
4 517. The acknowledgment of new significant impacts in the findings required recirculation. Guidelines,  
5 §15088.5(a)(1) (disclosure of a new significant impact requires recirculation); *Vineyard, supra*, 40  
6 Cal.4th at 448. A fair reading of the evidence supports the conclusion that the County did disregard the  
7 *revised* draft EIR's conclusion and reaffirmed the conclusion in the *initial* draft EIR that the impacts  
8 would remain significant and unavoidable.

9 First, LandWatch repeatedly argued that these impacts *should be* found unavoidably significant  
10 because there was no funding available for timely mitigation. AR 13133-13136, 5830. And in fact these  
11 impacts *were* found unavoidably significant in the draft EIR – at page 3.10-20:

12 The major improvements previously discussed under existing and background traffic conditions  
13 (4-laning the entire SR 68 corridor) would improve the operations at the study intersections to  
14 acceptable levels of service under background plus project traffic conditions. However, no  
15 funding is available for the implementation of the widening of State Route 68 to four lanes, or  
16 implementation of the South Fort Ord Bypass, nor have any of these improvements been  
17 included in the Regional Transportation Plan.

18 AR 918 (DEIR, p. 3.10-20).

19 Second, the draft findings released as part of a staff report prior to the April 7, 2015 hearing  
20 identify the impacts at intersections 5 and 6 and the segment between them as significant and  
21 unavoidable. AR 1781-1782 (draft finding 9i), 1783-1784 (draft finding 10). The draft findings state,  
22 consistent with the initial draft EIR, that the impacts would be significant and unavoidable because “no  
23 funding is available for the implementation of these major improvements.” AR 1784.

24 In response to the draft findings, LandWatch objected on April 6, 2015 that recirculation was  
25 required because the draft findings disclosed new unavoidably significant impacts that were not  
26 disclosed in the RDEIR:

27 As set out in previous comments, the EIR also relies on uncertain mitigation, i.e., the unfunded  
28 and untimely State Route 68 Commuter Improvements project, to conclude that impacts under  
background plus project conditions to the SR 68/Corral de Tierra intersection, the SR 68/San  
Bernancio Road intersection, and the SR 68 segment between Corral de Tierra and San  
Bernancio Road are mitigated to a less than significant level. RDEIR, p. 3.10-31. Any finding  
that these impacts are less than significant cannot be justified. Findings 9i and 10 conclude that

1 these impacts are significant and unavoidable. If that is not an error, the post-EIR  
2 acknowledgment of new significant impacts requires recirculation of the EIR.

3 AR 5830 (LandWatch).

4 Third, after LandWatch's objection, the errata issued on April 7, 2015 *reaffirmed* the substance  
5 of these findings, making only a minor change to add the breakdown of AM and PM trips, to specify  
6 that finding 9i applies to Background Plus Project conditions, and to specify that the segments are on  
7 "SR 68 between" the listed intersections:

8 Page 31: Finding 9, evidence (i)- " .. . The addition of up to 30 vehicle trips to SR 68 during the  
9 weekday A.M. and P.M. peak traffic hours (13 trips during the A.M. peak hour and 17 trips  
10 during the P.M. peak hour), however, will result in the further degradation of the operation under  
11 Background Plus Project conditions of four intersections (as noted in Impact 3.10-1 a of the Final  
12 EIR) and four roadway segments (as noted in Impact 3.10-1 b of the Final EIR) along SR 68 ... "  
13 Page 32: Finding 10, evidence- "The addition of up to 30 vehicle trips to State Route 68 (SR 68)  
14 during the weekday A.M. and P.M. peak traffic hours (13 trips during the A.M. peak hour and 17  
15 trips during the P.M. peak hour) will result in the further degradation of the operation of  
16 intersections and roadway segments, under Background Plus Project Conditions, along the SR 68  
17 ... The impacted roadway segments are SR 68 between: York Road and Pasadera Drive/Boots  
18 Road; Pasadera Drive/Boots Road and Laureles Grade Road; Laureles Grade Road and Corral de  
19 Tiena Road ... However, no funding is available for the implementation of these major  
20 improvements ... "

21 AR 3515 (April 7, 2015 errata)

22 Fourth, at the final hearing on April 7, County staff (Oleneo) responded to LandWatch's  
23 objection that the findings disclose new significant and unavoidable impacts by citing the *draft EIR's*  
24 *disclosure on page 3.10-20 that the impacts will remain significant and unavoidable.*

25 There was a comment related to the findings of significant and unavoidable impacts. This was  
26 identified in the EIR on page 3. -- I'm sorry -- **3.10.20** and -- and 3.10-35 where it does state that  
27 cumulative impact to intersections and roadway segments will remain significant and  
28 unavoidable. As such, I would like to recommend a correction to Finding 10 and 17 where it  
does speak of impacted roadway segments. There is some wording that needs to be added, and it  
should read -- in the evidence for both findings -- "The impacted roadway segments are State  
Route 68 between Laureles Grade Road." And that's (unintelligible) intersection. So, again, that's  
just correcting the evidence to Findings 10 and 17 adding the wording "State Route 68 between."

AR 4928:12-4929:1 (emphasis added), citing draft EIR page 3.10-20 (AR 918). *Oleneo's testimony was*  
*specifically identified as a response to LandWatch's April 6, 2017 letter.* AR 4911:16-21 (transcript).

1 Note that Oleneo also referenced the need to make the same minor correction to Finding 17 to  
2 add the phrase “State Route 68 between” in order to specify the affected segments. Finding 17 is the  
3 statement of overriding considerations, and it *also* lists as unavoidably significant the impacts to SR68  
4 intersections 5 and 6 at Corral de Tierra and San Bernancio Road and to segment 5 between these two  
5 intersections. Oleneo suggested no change to the conclusion in Finding 17 that the impacts to  
6 intersections 5 and 6 and the segment between them would remain significant and unavoidable.

7 No other testimony was offered by staff on the issue of the significance of traffic impacts under  
8 background 2015 conditions at the April 7, 2015 final hearing.

9 Furthermore, at the April 7, 2015 hearing, counsel for Real Party specifically agreed that the “the  
10 resolution of intent, as corrected by the errata sheet, reflects what the Board voted on, and we support  
11 that recommendation.” AR 4915:1-3.

12 Consistent with the draft findings, the errata, and staff’s testimony at the final hearing, the  
13 findings numbers 9i, 10, and 17 as adopted by the Supervisors on April 7 at the conclusion of the  
14 hearing do in fact acknowledge significant and unavoidable impacts to these intersections and the  
15 segment between them. AR 33, 35, 43. As LandWatch had argued, and as the draft EIR, the draft  
16 findings, and the Errata had all concluded, the rationale for that conclusion was that “no funding is  
17 available for the implementation of these major improvements.” AR 35.

18 In sum, after LandWatch objected that all the 2015 impacts should be found significant and  
19 unavoidable, staff and the findings acknowledged that they are in fact significant and unavoidable.  
20 Since three of these impacts were not acknowledged in the RDEIR, recirculation was required.

21 Dated: April 10, 2018

22 M. R. WOLFE & ASSOCIATES, P.C.

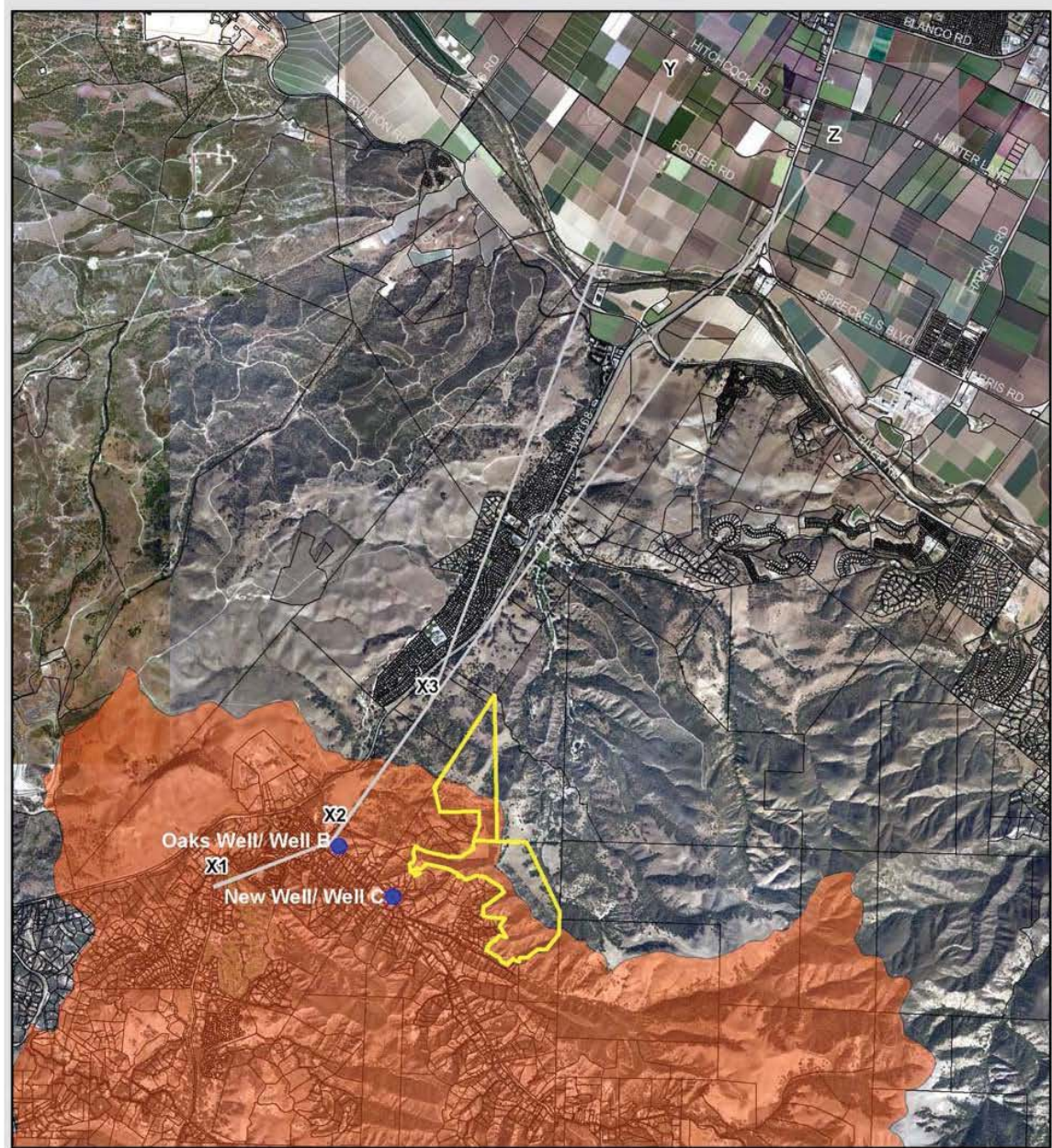
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26 Mark R. Wolfe  
27 John H. Farrow  
28 Attorneys for Petitioner LandWatch Monterey County

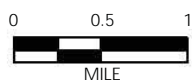


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## **ATTACHMENT A - MAPS**

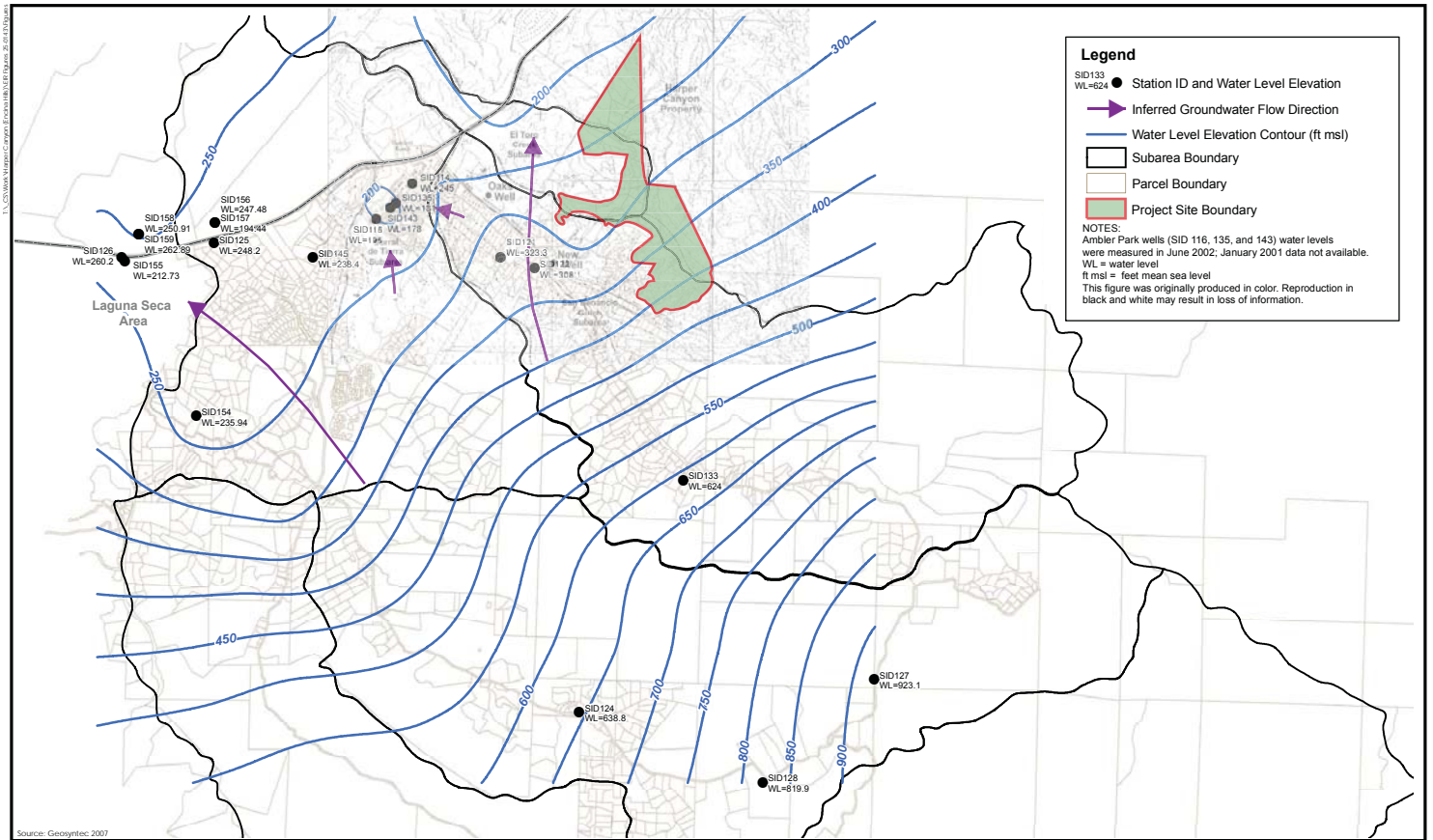


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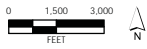


**Figure MR1-1**  
Geosyntec Study Area in Relationship to the Project Site





Source: Geosyntec 2007



**Figure MR1-2**  
 Geosyntec Study Area Groundwater Flow  
**PMC**

AR000134



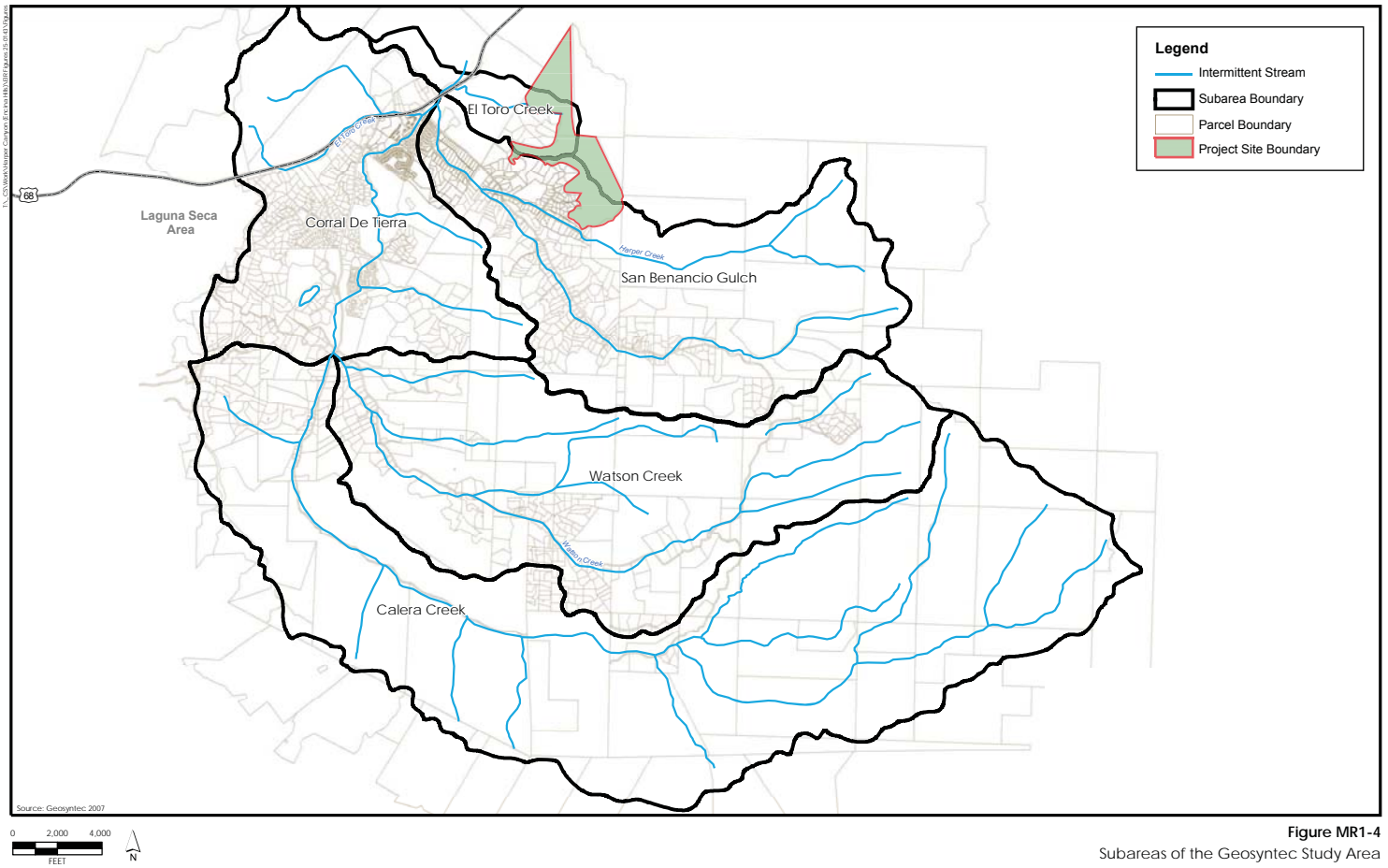


Figure MR1-4  
Subareas of the Geosyntec Study Area

PMC

AR000138

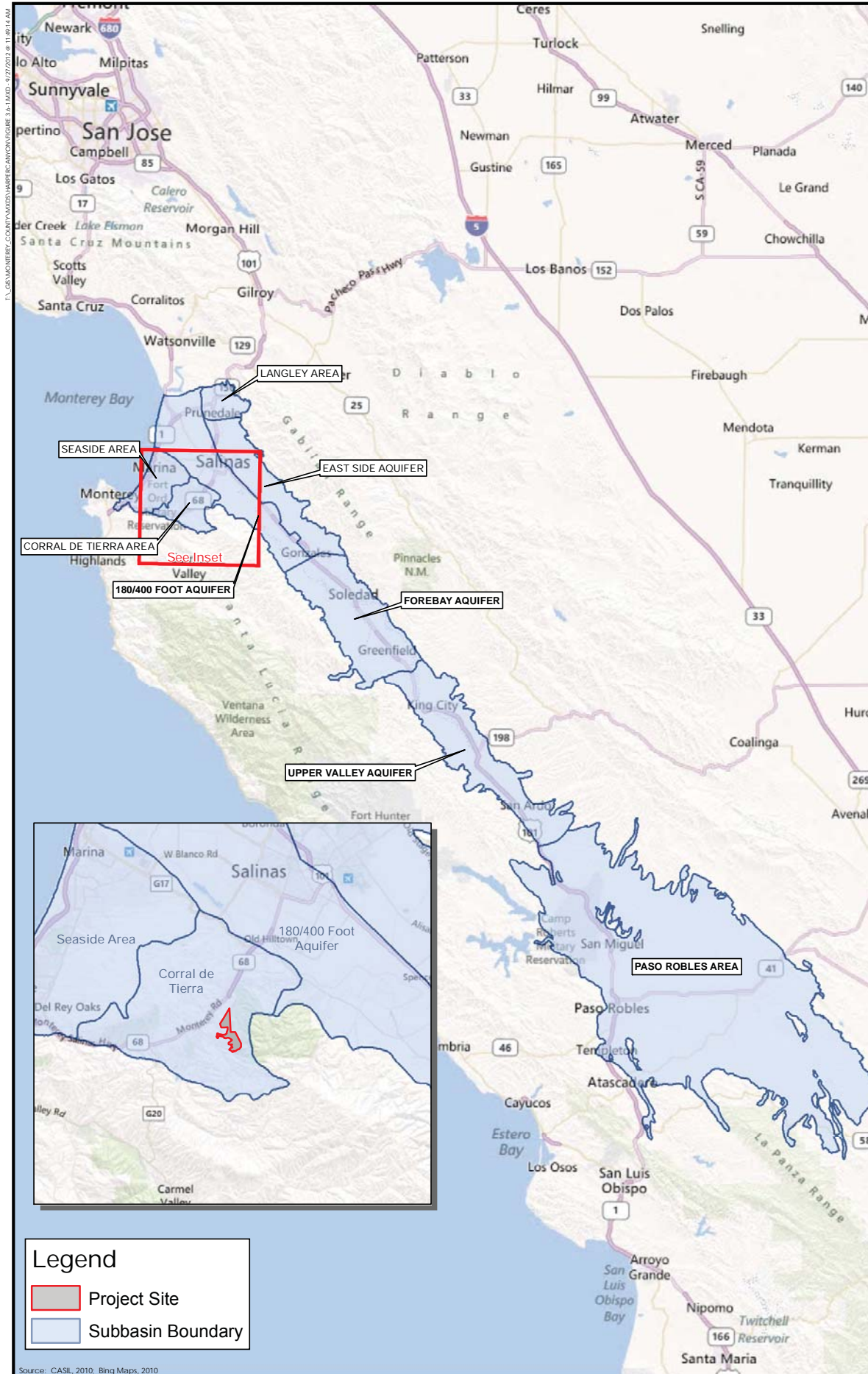


Figure 3.6-1  
Groundwater Basin Map

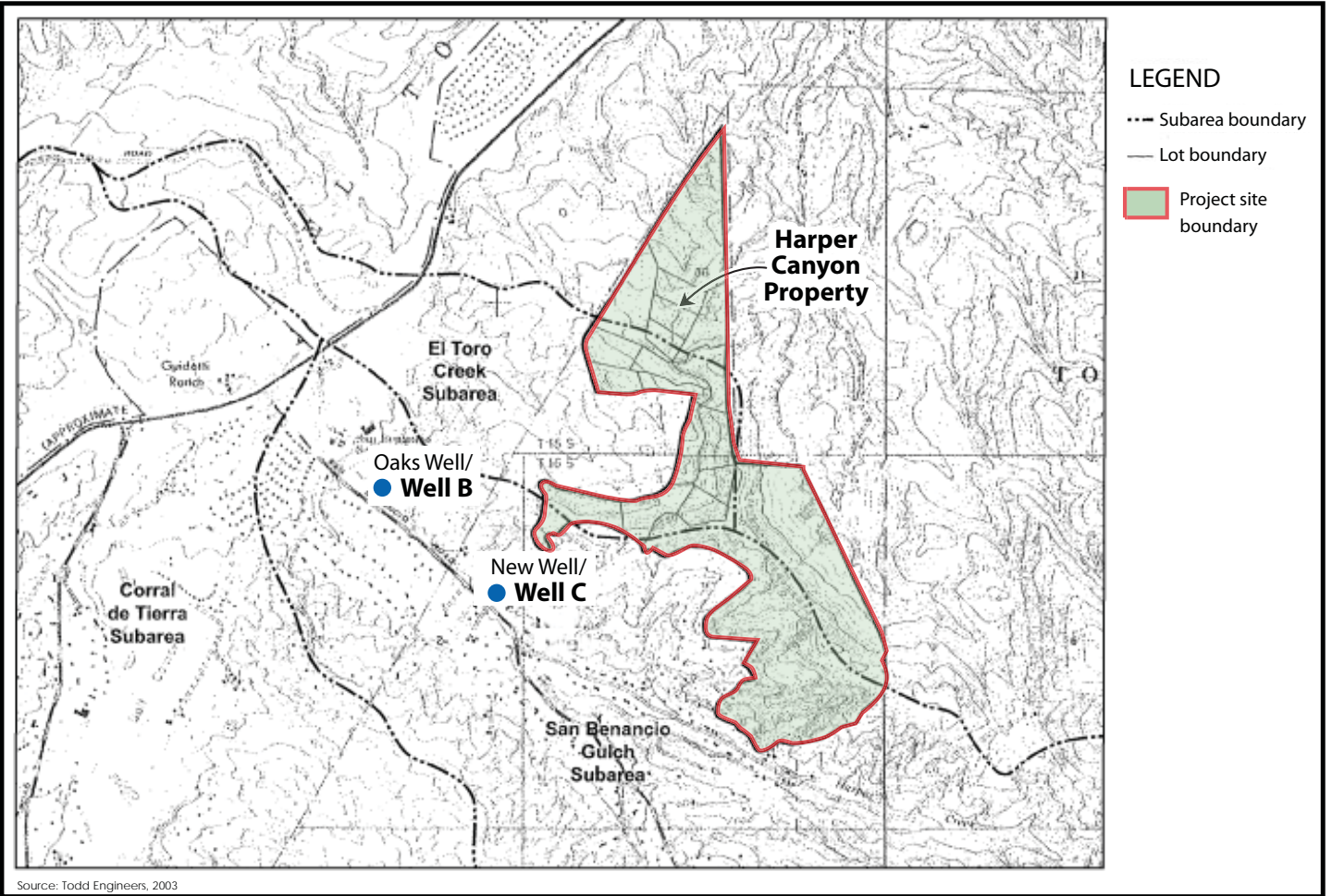
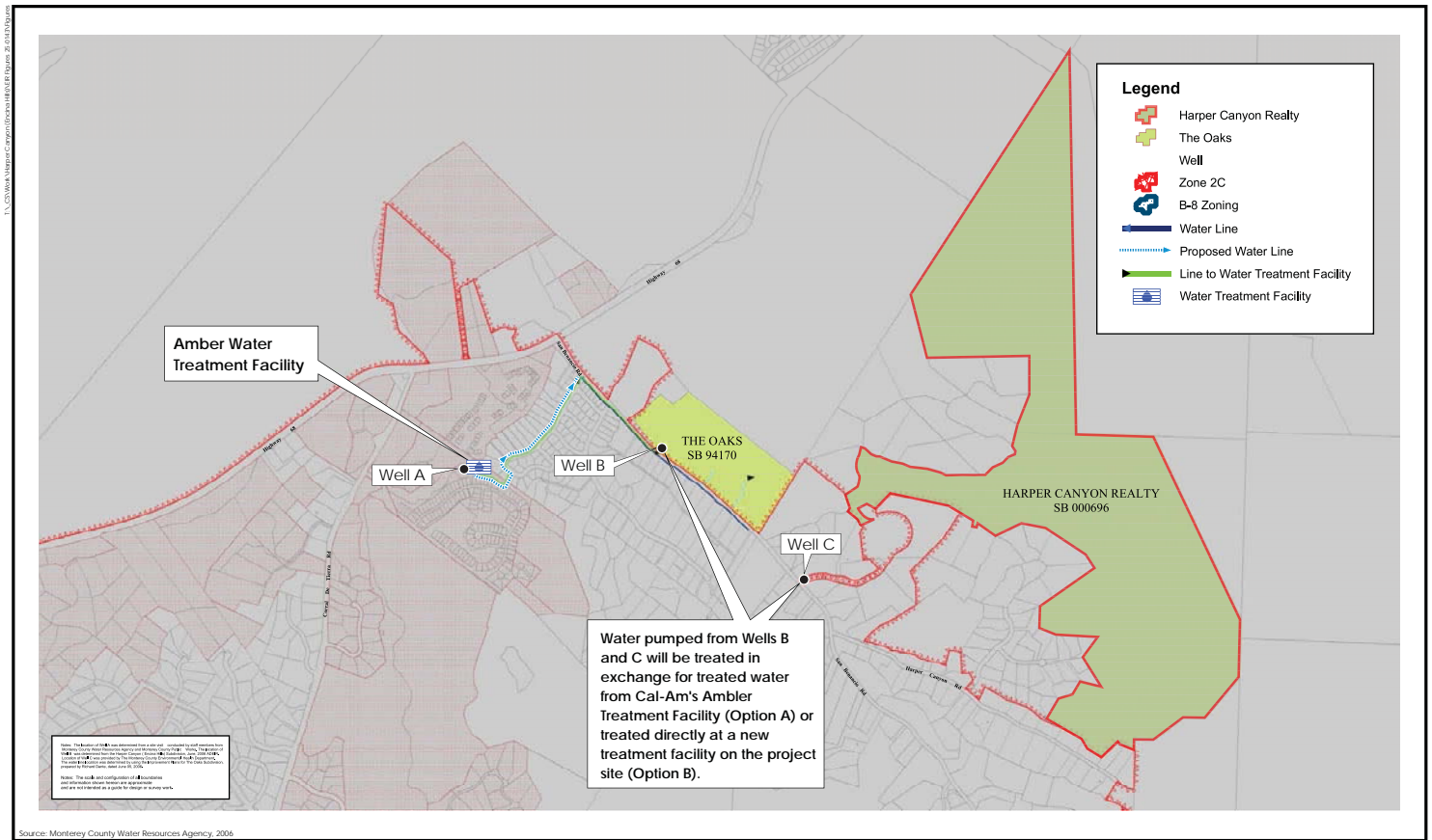


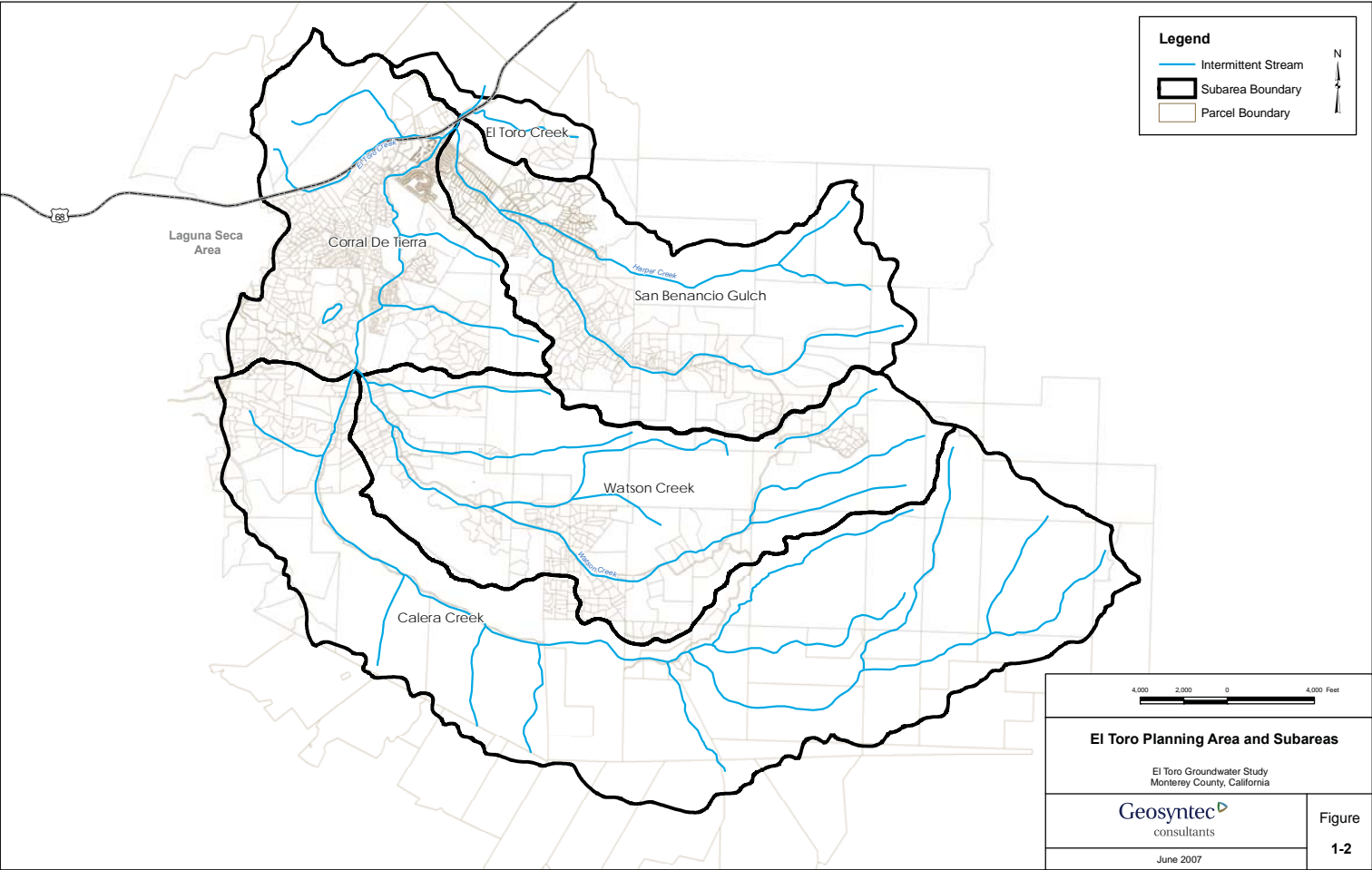
Figure 3.6-2  
Geosyntec Study Area Subareas and Well Locations





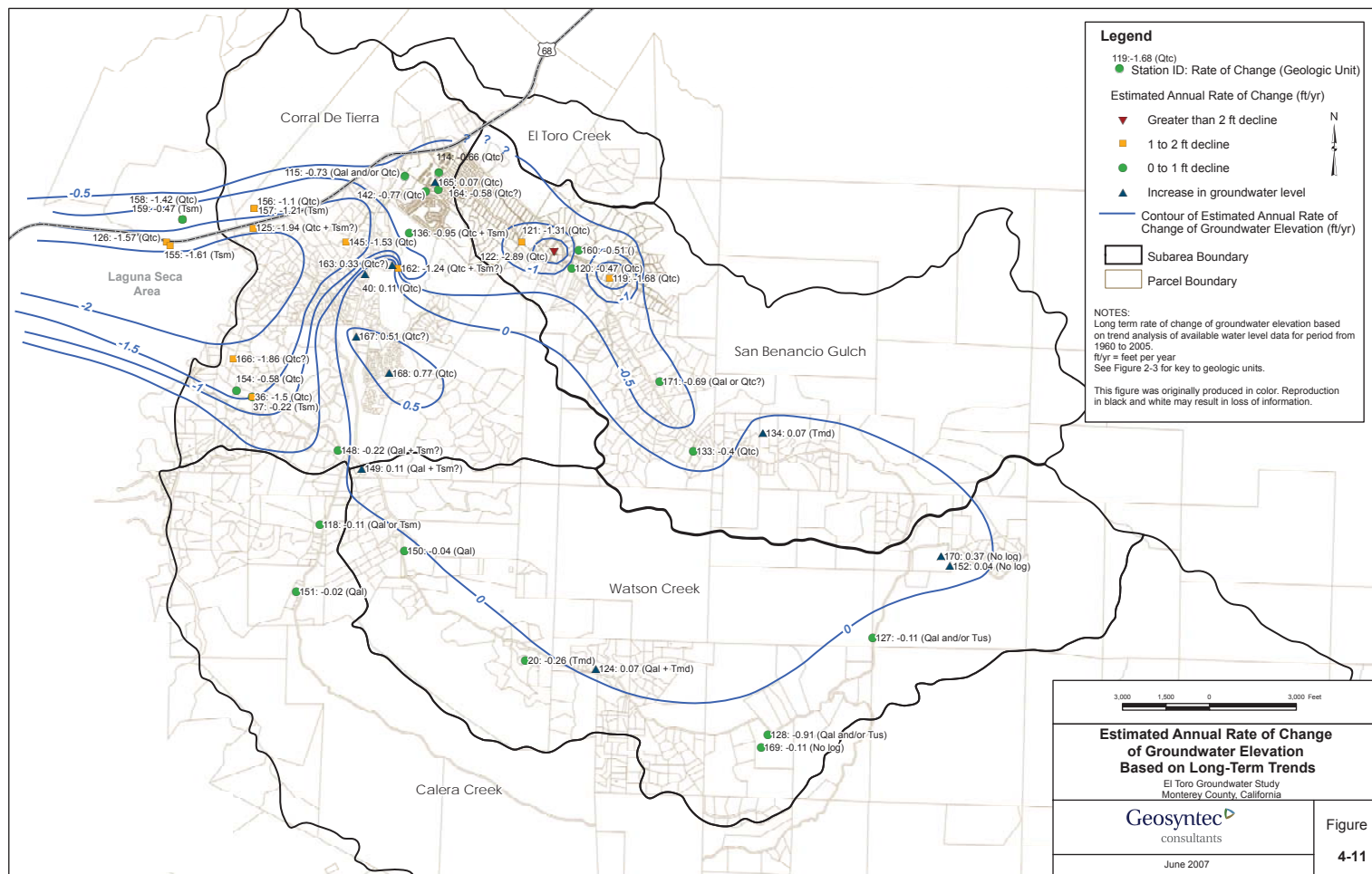
**Figure 3.6-3**  
MCWRA Zone 2C, B-8 Zoning District, and Proposed Project Well Locations

**PMC**  
AR000364



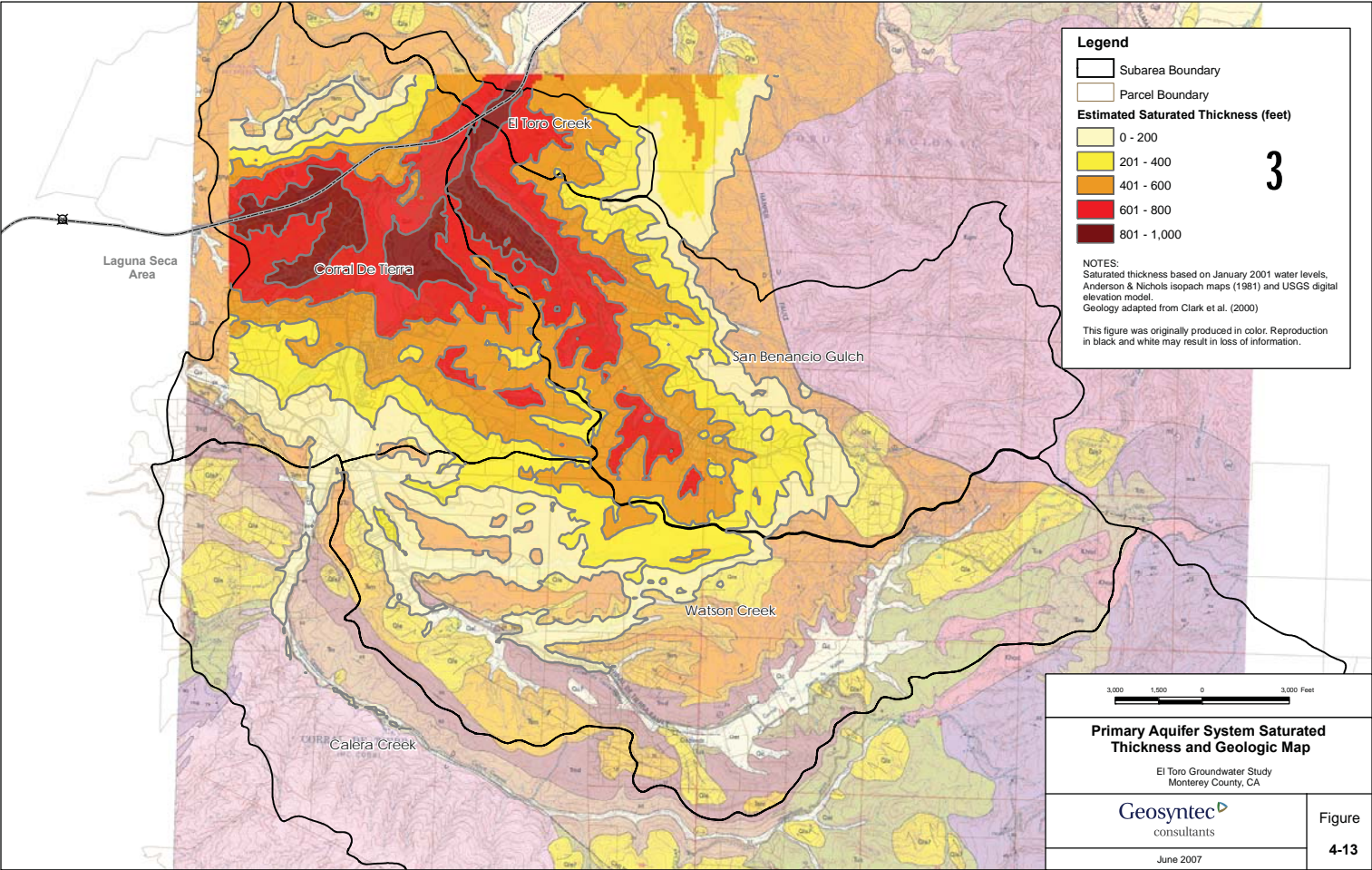
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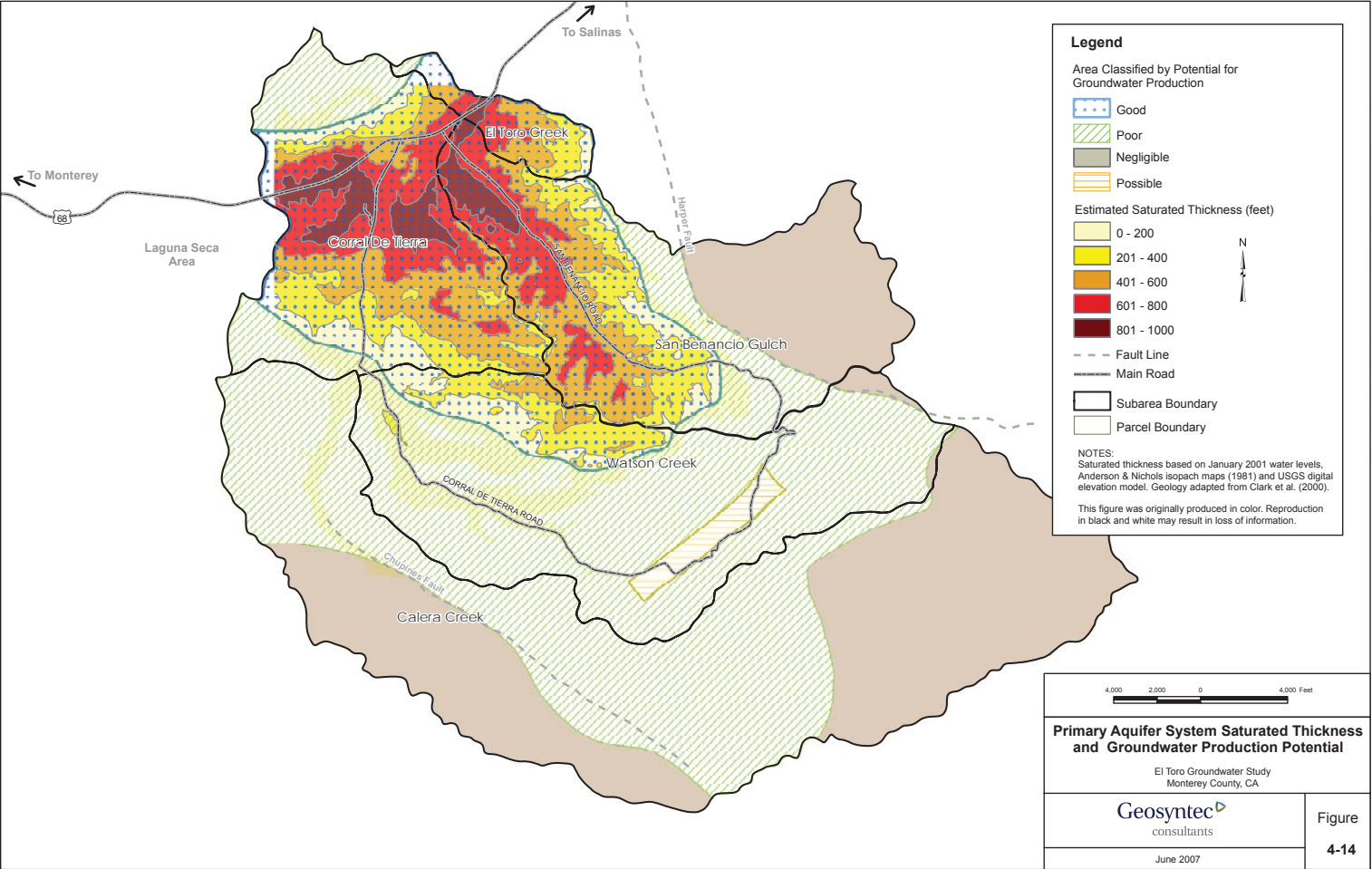


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**PROOF OF SERVICE**

I hereby declare that I am employed in the City San Francisco, County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 555 Sutter Street, Suite 405, San Francisco, CA 94102. I am familiar with this firm's practice for the collection and processing of mail sent via U.S. Mail, which provides that mail be deposited with the U.S. Postal Service on the same day in the ordinary court of business. On April 10, 2018, I served the attached **LANDWATCH SUPPLEMENTAL BRIEF IN RESPONSE TO THE COURT'S MARCH 14, 2018 MINUTE ORDER** in this action via the U.S. Mail by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid addressed to:

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for collection and deposit with the U.S. mail on this date according to ordinary business practices. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at San Mateo, California on April 10, 2018.

  
\_\_\_\_\_  
John Farrow