

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

LANDWATCH MONTEREY COUNTY, et al.,
Petitioners, Respondents, and Cross-Appellants,

v.

COUNTY OF MONTEREY et al.,
Respondent, Appellant, and Cross-Respondent;

HARPER CANYON REALTY, LLC et al.,
Real Parties In Interest, Appellant, and Cross-Respondent.

Case No. H046932

Appeal from Monterey County Superior Court
Cases No. M131913 and M131893, consolidated for trial only

Hon. Thomas Wills, Judge of the Superior Court

JOINT REPLY BRIEF OF RESPONDENTS AND CROSS-APPELLANTS
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AFY	acre-feet per year
AR	Administrative Record
CDT	Corral de Tierra [Subbasin of SVGB]
CEQA	California Environmental Quality Act
DEIR	Draft Environmental Impact Report
EIR	Environmental Impact Report
FEIR	Final Environmental Impact Report
FSOD	Final Statement of Decision [trial Court]
JA	Joint Appendix
MCWRA	Monterey County Water Resources Agency
POB	Petitioners' Opening Brief
ROB	Respondents' Opening Brief
RROP	Respondents' Reply and Opposition Brief
SGD	Stahl Gardner & Dunne [report]
SVGB	Salinas Valley Groundwater Basin
SVWP	Salinas Valley Water Project

INTRODUCTION

Petitioners LandWatch Monterey County and Meyer Community Group hereby reply to the joint opposition by Respondents County of Monterey and Harper Canyon Realty to Petitioners' cross-appeal. Petitioners' cross-appeal demonstrates that (1) the County failed to proceed as required by CEQA because the final EIR for the Project is informationally inadequate, and (2) this Court should not reach the issue as to whether substantial evidence supported the County's findings regarding water supply impacts. (Petitioners' Opening Brief ["POB"] at 97-114.) In their joint opposition, Respondents do not come to terms with Petitioners' claims.

The FEIR's contradictions stemming from its perpetuation of the DEIR's "surplus" claim and its failure to disclose the substance of the Geosyntec Report.

Most notably Respondents cannot explain away the FEIR's material contradictions in its description of the environmental setting and its impact analyses. The FEIR relies on both the 2003 Todd Report that is included in the DEIR *and* the 2007 Geosyntec Report even though these reports reach diametrically opposite conclusions. Todd claims the Project wells draw from four interconnected subareas that share a groundwater *surplus*. Geosyntec documents that the aquifer at the Project well sites and the subareas are in long-term *overdraft*, rejects the surplus claim, and details 47 years of increasing aquifer deficits and groundwater declines. The FEIR's contradictions, its failure to disclose actual groundwater conditions, and its failure to provide a legally adequate cumulative analysis render the FEIR informationally inadequate.

The final EIR's inadequacies stem from its efforts to paper over the obvious inconsistencies between the *draft* EIR and the Geosyntec report. On May 1, 2008, five months before the draft EIR was released, the EIR preparer sent an email to County staff about the Geosyntec study. (AR18618.) He explained that the DEIR's water supply analysis, which was based on the water balance analysis in 2003 Todd Report, found the Project's water demand to be less than significant because it could be accommodated by a surplus of recharge over pumping in the San Benancio Gulch subarea and by the shared surplus among the four interconnected subareas. (*Id.*) He noted that the DEIR's analysis "does not draw conclusions" from the 2007 Geosyntec study because "it was not available on the radar at the time." (*Id.*) He recommended that "we should look at that study for obvious inconsistencies with the EIR's current findings." (*Id.*)

A week later, after he had "spent some time with the Geosyntec Report," the EIR preparer identified the most obvious inconsistency: "In a nutshell, the 2007 Geosyntec says that the entire El Toro Planning Area (called El Toro Groundwater Basin in other studies) is indeed in overdraft - as a whole." (AR18617.) He then asked whether the DEIR would make a frank disclosure of the groundwater problems in the El Toro Planning Area or gloss it over:

The question is now, do we cite this study more directly at this point, and point to its slightly different conclusions regarding the basin as a whole, but then point out the project specific well locations are in some of the better areas of the basin? My feeling is that this study cannot be ignored or glossed over at this point, but rather discussed in context.

(AR18617-18618.) Unfortunately, the County ignored the EIR preparer's advice and effectively "glossed over" the Geosyntec report in the DEIR released five months later. The October 2008 DEIR contains exactly the same "Water Balance" analysis that was in the EIR preparer's May 1, 2008 e-mail, prepared *before* he had

reviewed Geosyntec – an analysis that finds impacts less than significant based on a purported surplus shared by the four interconnected subareas. (*Compare* AR18618 to AR837.)

Despite the EIR preparer’s suggestion, the DEIR does *not* cite Geosyntec “more directly,” so the DEIR does *not* acknowledge the overdraft condition in the El Toro Area or Geosyntec’s express rejection of the surplus claim. (POB at 59-61; *see* AR20155-20156 [Geosyntec].) Instead, the DEIR cites Geosyntec in two sentences stating only that groundwater flows northeasterly toward the Salinas Valley. (AR830.) Inexplicably, the DEIR’s next sentence concludes that the Project’s wells “receive benefits of *sustained* groundwater levels attributed to the operation of both Nacimiento and San Antonio Reservoirs, and will receive the future benefits related to the operation of the Salinas Valley Water project.” (AR830, emphasis added.) But Geosyntec demonstrates that groundwater levels have not been “sustained,” documenting 47 years of *falling* groundwater levels at the Project well site in the San Benancio Gulch subarea, and throughout the rest of the Geosyntec Study Area, *despite* the Nacimiento and San Antonio Reservoirs operations. (AR20131-20132 [Geosyntec: maps of long-term and short-term groundwater level trends]; AR13146, 13150 [Parker].)

When public comments objected that the DEIR fails to disclose what Geosyntec actually concludes about Toro area groundwater, the FEIR’s response was to double down, even if the price was internal contradiction. The FEIR pays lip service to Geosyntec by acknowledging an overdraft, but it stubbornly clings to the DEIR’s precise claim of a 314.82 AFY groundwater surplus in the four interconnected subareas, even though that purported surplus condition is manifestly inconsistent with an overdraft condition. (POB at 99-102; *see* Section II.B below.) Critically, in equivocating between its overdraft and surplus claims, the FEIR does not disclose the *consequence* of the overdraft that Geosyntec

documents through 47 years of well data: groundwater levels in the Toro Area and at the Project site have declined since 1960, *which is the very condition identified by the FEIR as a significant impact.* (POB at 102-103, 106, 109.)

By failing to disclose the severity of cumulative conditions in the four interconnected subareas, which is the area the *DEIR* identifies as the relevant geographic scope for cumulative analysis, the FEIR could not and did not determine if the Project's pumping would be a considerable contribution to a significant long-term cumulative impact *in those four subareas.* (POB at 105-109.) Instead, the FEIR simply changes the subject: it alters the *DEIR*'s geographic scope of analysis to include the entire Salinas Valley Groundwater Basin where, it claims, payment of Zone 2C impact fees is "regional mitigation." But the FEIR fails provide any analysis of the effectiveness of this "regional mitigation" *in the four interconnected subareas*, where Geosyntec documents that it has been increasingly ineffective since 1960. The FEIR provides *no* analysis of impacts in the four subareas with and without this regional mitigation.

Apparently to provide some basis to claim that the Project would not affect the four interconnected subareas, the FEIR adds *another* internal contradiction: it claims that that the Project wells are both interconnected *and not* interconnected to the "stressed areas" within the four subareas. First, the FEIR states that, although the Project wells "*may contribute* to an adverse cumulative impact on some of the individual subareas that are *currently stressed*, the four subareas are *ultimately interconnected* and *will maintain an overall water surplus* where recharge exceeds extraction." (AR385, emphasis added; *see also* AR374 [same].) Then, in the next paragraph, the FEIR directly contradicts itself by claiming that "the aquifer in the immediate vicinity of the project site is hydrogeologically contiguous with the aquifers to the east in the Salinas Valley, *rather than* the less productive and

stressed areas within the Geosyntec Study area.” (AR385; *see also* AR375-376 [same].)

To recap: first the FEIR claims there will be no harm to “stressed areas” because, although the Project “may contribute” to that stress, there is a shared surplus. Then, presumably for those who doubt the existence of the surplus, the FEIR claims there will be no harm because the Project wells are actually *not* connected (not “hydrogeologically contiguous”) to the “stressed areas.”

The FEIR’s two material contradictions – surplus and overdraft, connection and no connection, as well as its non-disclosure of the fact and magnitude of declining groundwater levels, are material informational inadequacies. Because of this, the FEIR fails to disclose the environmental setting adequately or to provide consistent rationales for the FEIR’s significance conclusions.

Respondents’ opposition regarding the FEIR’s informational inadequacy.

Respondents’ opposition fails to address the substance of Petitioners’ claim that the FEIR’s water supply analysis does not comply with CEQA’s information disclosure provisions.

Respondents’ first error is to misrepresent the standard of review as substantial evidence and then to argue that there is substantial evidence for the County’s ultimate findings. But the “existence of substantial evidence supporting the agency’s ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA.”

(*Communities for a Better Env’t v. City of Richmond* (“*CBE v. Richmond*”) (2010) 184 Cal.App.4th 70, 82.)

This Court should use its non-deferential and independent judgment to determine if the FEIR complies with the information disclosure mandates set out in CEQA, its Guidelines, and case law.

Respondents deny that the FEIR perpetuated or relied on the DEIR's groundwater surplus claim, even though the plain language of the FEIR repeatedly claims a surplus in both the San Benancio Subarea and the four interconnected subareas, cites the DEIR's surplus calculation to two decimal places, and features the surplus claims prominently as the first factor in its discussions of both noncumulative and cumulative impact significance. (AR372, 385.)

Respondents attempt to justify the FEIR's inaccurate statement that the surplus claim in the DEIR's Todd Report was "similar" to the Geosyntec Report's conclusion, arguing that both reports merely "review" the 1996 Fugro Report. Respondents fail to acknowledge that Todd *accepts and relies on* Fugro's surplus estimates and Geosyntec expressly *rejects* Fugro's surplus claim.

Respondents argue that the FEIR's contradictory surplus claim and its failure to disclose the fact and magnitude of aquifer deficits and falling groundwater levels can be excused because this Project has a decades-long *source* of water, a source that depends on continuing overdraft. But as the California Supreme Court has explained, the "ultimate question under CEQA [] is not whether an EIR establishes a likely source of water but whether it addresses the reasonably foreseeable *impacts* of supplying water." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* ("Vineyard") (2007) 40 Cal.4th 412, 434, emphasis in original[.]

The FEIR fails to disclose the existing and foreseeable cumulative impact to which Project pumping would contribute, which is documented and projected by Geosyntec, the technical report that the FEIR says "supersedes" other reports. Geosyntec documents and projects declining groundwater levels throughout the

four subareas with consequent well failures and decreased groundwater production potential for wells in shallower areas and areas of less saturated thickness.

(AR20163, 20062.)

Respondents claim that Petitioners did not exhaust administrative remedies regarding the FEIR's contradictory claim that the Project wells will not affect stressed areas of the Toro Area because they are connected to the Salinas Basin. That is not true. Petitioners' hydrologist Parker, and other members of the public repeatedly objected that Project pumping *would* impair Toro Area wells, including shallower wells and wells up the canyon from the Project wells. Hydrologist Parker objected that the connection to the Salinas Basin was in fact limited and that there was no evidence that the connection could mitigate Project pumping impacts.

Respondents simply fail to address Petitioners' objection that the FEIR contradicts itself by claiming that the project wells are interconnected and *not* interconnected to stressed areas. Instead, Respondents argue irrelevantly that there is substantial evidence for *one* of these contradictory statements. But even if that "evidence" were not merely an unlikely "logical inference" made for the first time in this litigation, the point is that the FEIR is informationally inadequate because it makes directly contradictory claims. The contradiction is material. The FEIR dismisses cumulative impacts because it claims Project wells *are* interconnected to the four subareas that share a groundwater surplus. The FEIR *also* dismisses cumulative impacts because it claims that Project wells are *not* interconnected to these stressed areas but only to the Salinas Valley Groundwater Basin to the northeast. Both cannot be true.

Respondents also fail to address Petitioners' objection that the FEIR fails to disclose the severity of cumulative conditions in the Toro Area and to assess the Project's contribution in light of this severity. Respondents dismiss the relevant case law without discussion. Respondents claim inaccurately that the FEIR did

disclose the severity of cumulative conditions even though the FEIR's bare acknowledgment of an "overdraft" does not disclose either the fact or the magnitude of deficits and falling groundwater in the Toro Area, the very condition that the FEIR defines as a significant impact. Indeed, Respondents claim that the EIR disclosed cumulative conditions by characterizing deficits as mere "paper deficits," even though that characterization amounts to a *denial* of overdraft conditions.

Respondents argue that the FEIR was not required to assess impact significance with and without mitigation as required by *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645. Respondents' argument is premised on misreading *Lotus* as applicable only when an agency commits *two* distinct errors: failing to assess impact significance with and without mitigation *and* incorporating mitigation into the project description. But *Lotus* and its progeny require assessment of impact significance with and without mitigation *regardless* whether the agency also erred by incorporating mitigation into the project description.

The County does not get a pass on *Lotus*' mandate simply because the FEIR identifies Zone 2C as mitigation rather than part of the Project description. Having identified that mitigation, the EIR must demonstrate its efficacy by assessing significance with and without that mitigation.

Conflicts between Respondents' arguments that the FEIR is informationally adequate and that it is not significant new information.

Respondents' argument that the FEIR is informationally adequate conflicts with its argument that the County did not need to recirculate the DEIR. Respondents cannot claim that the FEIR is informationally adequate if it contains

unresolved contradictions, i.e., its claim of a surplus and an overdraft and its claim the Project wells are interconnected and not interconnected to the stressed areas.

So Respondents have to argue that, despite the FEIR's plain language to the contrary, the FEIR actually repudiates or does not rely on either the DEIR's surplus claim or the DEIR's claim that the aquifer around the Project wells is interconnected to the four subareas. But as Respondents admit, the DEIR's cumulative analysis is based on the claim that the Project wells are interconnected to the four subareas and that its pumping will not contribute to a significant cumulative impact because there is a shared surplus. (Respondents' Opening Brief ["ROB"] at 27.) If the FEIR really does unequivocally repudiate the DEIR's claim of a shared surplus among interconnected subareas, then Respondents cannot consistently claim that the FEIR is not significant new information that warrants recirculation.

The substantial evidence claim.

Respondents give short shrift to Petitioners' argument that this Court need not and should not reach the issue whether substantial evidence supports the County's findings. Contrary to Respondents, CEQA does not require this Court to reach all issues, and particularly those issues that are mooted because they must be resolved anew on remand in light of the agency's other failures to comply with CEQA. Respondents also fail to acknowledge that reaching the issue of substantial evidence would require this Court to overlook or to resolve by itself the FEIR's unresolved factual contradictions and its missing information and to speculate impermissibly as to the effect of the County's failure to respond to Petitioners' substantive objections to the FEIR's fundamentally new analysis of water supply

impacts. That is not this Court’s job. And, as set out in Exhibit 1 to this brief, the County did not respond to those objections.

I. REPLY TO RESPONDENTS’ CLAIM THAT PETITIONERS MISSTATED FACTS.

Respondents begin their opposition brief by addressing five “misstatements of facts” that Respondents claim to find in Petitioners’ opening brief. (RROP at 17-20.) Because Respondents apparently intend this separate section of their brief to inform their opposition to Petitioners’ cross-appeal and not just their reply in Respondents’ appeal, Petitioners will reply to each point that appears to relate to Petitioners’ cross-appeal.

A. The impact of the Project’s 12.75 AFY demand.

First, Respondents characterize the Projects 12.75 AFY water demand as “miniscule” and therefore less than significant. (RROP at 17.) Under the EIR’s significance criteria, a “net deficit in aquifer volume or lowering of the local groundwater table” is a significant impact. (AR833, 371.) Geosyntec documents 47 years of net deficits and declining groundwater levels in the El Toro Primary Aquifer System from which the Project would pump groundwater, caused by cumulative pumping for new development that “exceeds the rate of groundwater replenishment.” (AR20156; *see* AR20103-20105 [pumping increases], 20158 [cumulative building permits].) Geosyntec documents that each 10 AFY increment in pumping for new development has added to the cumulative overdraft trend. (AR20104.) This Project’s 12.75 AFY would add to that trend too.

As discussed in Section II.E below, the relevant question for cumulative analysis is not whether the Project’s impact is relatively small, but whether it is a considerable contribution *in light of the severity of cumulative conditions*.

(*Communities for a Better Environment v. California Resources Agency* (“*CBE v. CRA*”) (2002) 103 Cal.App.4th 98, 120 [“the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant”].) Thus, an EIR may not conclude a cumulative impact is insignificant merely because the project’s individual contribution to an unacceptable existing condition is relatively small. (*Kings County Farm Bureau v. City of Hanford* (“*Kings County*”) (1990) 221 Cal.App.3d 692, 720 [rejecting ratio theory]; *Los Angeles Unified School Dist. v. City of Los Angeles* (“*LAUSD*”) (1997) 58 Cal.App.4th 1019, 1025-1026; *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497, 515.) Even an “individually minor” impact may nevertheless be “cumulatively considerable.” (*CBE v. CRA, supra*, 103 Cal.App.4th at 120; *see also* Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25.)

As argued, the EIR is informationally inadequate because it fails to consider the effect of the Project’s 12.75 AFY demand *in the cumulative context*. (POB at 105-109; *see* Section II.E below.) Indeed, because the FEIR fails to *disclose* the cumulative context, i.e., decades of falling groundwater levels and annual aquifer deficits, it *could not* determine whether the Project’s contribution is considerable in that context. Respondents cannot ask this Court to make the determination the FEIR failed to make.

B. B-8 zoning boundaries.

Second, Respondents are correct that the Project wells are approximately 1,500 and 3,000 feet from the current B-8 zoning area. (RROP at 17-18, *citing* AR364.) However, as discussed in the next section below, unless the County policy is to countenance overdraft, falling groundwater levels, and aquifer deficits, Geosyntec recommends that the “B-8 zoning should be expanded to cover the

entire extent of the El Toro Primary Aquifer System,” which includes the Project well site in the San Benancio subarea. (AR3933-3934, 4042, emphasis added.)

Geosyntec documents that the overdraft has resulted in aquifer deficits and falling groundwater levels. (AR20156, 20115, 20131-20132 [map of long-term and short-term declines].) The FEIR identifies precisely these conditions as a significant impact. (AR371.) The FEIR is inadequate because it fails to disclose the aquifer deficits and falling groundwater levels that are occurring in the Toro area *regardless* of the existing B-8 zoning boundaries.

C. Short and long-term cumulative impacts; Geosyntec’s recommendations to extend the B-8 moratorium area.

Third, Respondents imply incorrectly that Petitioners “focus on short-term declines in groundwater levels (from 1999-2007).” (RROP at 18.) Not so. In each instance in which Petitioners cite Geosyntec’s data regarding the magnitude of groundwater declines, Petitioners cite *both* the short-term and long-term declines documented by Geosyntec, and nothing in Petitioners’ argument rests on the difference. (POB at 24, 102.) As argued, the EIR is informationally deficient because it fails to report *either* figure. (POB at 102; *see* Section II.C below.)

In a complete non-sequitur, Respondents then state that “Geosyntec recommended expansion of the B-8 zoning for areas where the saturated thickness is less than 100-200 feet” and that the thickness in the project wells is 650 feet. (RROP at 18.) Respondents’ report of Geosyntec’s recommendations was incomplete and therefore not candid.

Respondents misleadingly omit Geosyntec’s recommendation that the B-8 moratorium on new wells be expanded to cover the *entire* El Toro area *unless* the County policy is to permit the continuing significant cumulative impact caused by cumulative overdraft:

. . . if County Policy does not allow overdraft conditions and mining of groundwater, *the B-8 zoning should be expanded to cover the entire extent of the El Toro Primary Aquifer System.*

(AR3933-3934, 4042.) Geosyntec did *also* made the unqualified recommendation to expand the B-8 zoning “where the saturated thickness of the El Toro Primary Aquifer System is less than 100 to 200 feet, regardless of *policy* on overdraft.”

(AR3934, emphasis added.)

Although Geosyntec does not pretend to make the *policy* decision whether the County should countenance continuing and increasing overdraft, Geosyntec does explain that the overdraft condition caused by “current and increasing rates of pumping” will cause two problems:

Water level data compiled and reviewed for this study indicates that the primary aquifer system in the El Toro Planning Area is in overdraft. However, current and increasing rates of pumping could be sustained for decades in areas with large saturated thicknesses of the El Toro Primary Aquifer System because of the large volume of groundwater in storage. *The most evident problem would be lowering of the water table below the screened intervals of existing wells completed in shallower portions of the aquifer system. This has already occurred in portions of the Corral de Tierra subarea. In addition, with continued overdraft conditions, groundwater production potential would likely decrease relatively quickly in hydrogeologically contiguous areas of less saturated thickness.*

(AR3933, 4042, emphasis added.) Geosyntec explains that the B-8 moratorium is necessary to prevent “*long term declines in groundwater levels and reliance on groundwater storage.*” (AR4042, 3933.) The declining groundwater levels and the problems it causes – well failures and reduced groundwater production – are precisely what the EIR identifies as a significant impact. (AR371.)

Thus, regardless of whether *this* Project is well situated to mine the aquifer, permitting it to do so will aggravate declining groundwater levels generally and

adversely affect existing wells and groundwater production, which the EIR defines as a significant impact (AR371). The FEIR is informationally inadequate because it fails to disclose this. (POB at 102-103, 106-109.) Respondents' implication that Geosyntec recommended expansion of the B-8 zoning *only* in areas of less saturated thickness is misleading.

D. Overdraft conditions in the Corral de Tierra Subbasin and the misleading claim there are only “paper deficits” in its four interconnected subareas.

Fourth, Respondents again argue “that the DEIR does identify overdraft condition.” (RROP at 18, *citing* AR825, 829-830, 837.) As argued, the DEIR does *not* identify overdraft conditions *in the Geosyntec Study Area of the Corral de Tierra Subbasin* (“CDT Subbasin”). (POB at 60 [explaining why AR829-830 and AR837 do not disclose overdraft in the CDT Subbasin].) To the contrary, the DEIR *and the FEIR* repeatedly claim a water *surplus* in the four interconnected subareas, on the basis of which both the DEIR *and the FEIR* conclude that Project impacts would be less than significant because its demand is less than the purported surplus. (AR836, 837, 838, 842-843 [DEIR]; AR372, 373, 374, 385 [FEIR].)

Respondents now add a citation to the DEIR's reference to “*paper deficits*” as evidence that the DEIR disclosed overdraft conditions. (RROP at 18, *citing* at AR829-830.) The FEIR contains the *same* paragraph referencing “*paper deficits*” in a quotation from the 1996 Fugro report:

An Additional Hydrogeologic Update, El Toro Area Monterey County, California (MCWRA 1996) was prepared, which evaluated the overall water supply in the B-8 zoning district and concluded, among other things, that a “Revision of the subareas would *correct* the ‘*paper deficits*’ that occur in subareas that are hydraulically connected. As a starting point, it is suggested

that the subareas north of the trace of the Chupines fault be aggregated into a single unit. This would combine the majority of the subareas of Corral de Tierra, Watson Creek, San Benancio Gulch, and El Toro Creek into a single Hydrogeologic unit....”

(AR363, *quoting* AR22911 [Fugro 1996], emphasis added.)

The characterization of a water *supply* as “paper water,” complete with ironic quotes, is a well-established rhetorical device to deny the reality of that supply in CEQA. (*See, e.g., Vineyard, supra*, 40 Cal.4th at 430, 432 [citing cases].) Here the reference to “paper *deficits*,” complete with the ironic quotes, serves a similar rhetorical point: it denies the reality of the deficits and thereby affirms the adequacy of the purported supply. Thus, in quoting the Fugro recommendation to *correct* the mere “*paper deficits*” in some of the four subareas, the DEIR and FEIR are *not* disclosing the overdraft, they are *denying* it. Fugro repeatedly uses the term “paper deficits,” including the ironic quotes, because Fugro concludes that the four subareas are “hydraulically connected” (AR22911), and *that there is no actual deficit* because their combined supply exceeds projected demand:

The 1991 [SGD] report strongly recommended the revision of the subareas to reflect the regional hydrogeology rather than surface hydrology. *If all of the subareas north of the Chupines fault were aggregated, the total estimated supply for these areas is between 1,791 and 2,850 acre-feet. Estimated demand for these same areas is projected to be approximately 1,700 acre-feet at build-out.* Adoption of new subareas would remove the “*paper*” *deficits* that currently occur in some of the subareas of the study areas.

(AR22908 [Fugro 1996], emphasis added.)

In short, neither the DEIR *nor the FEIR* disclose the existence, much less the magnitude, of an overdraft by quoting Fugro’s reference to mere “paper deficits” (AR829-830 [DEIR], 363 [FEIR]), particularly given their repeated and direct

claims of a water *surplus* based on Fugro’s recharge and demand estimates (AR322, 331, 372, 373, 374, 385 [FEIR surplus claims]; AR669, 836, 837, 838, 842, 843, 863, 956, 971, 972 [DEIR surplus claims]; AR1460 [surplus claim in DEIR’s Appendix F, the Todd Report].)

E. New groundwater impacts and new mitigation in the FEIR’s cumulative analysis.

Fifth, Respondents deny that the FEIR analyzed new groundwater impacts or identified new mitigation. (RROP at 18.) Respondents deny this to address Petitioners’ recirculation claims, which are based in part on the fact that the DEIR’s cumulative analysis was fundamentally different than the FEIR’s cumulative analysis. Unlike the FEIR, the DEIR considered only impacts in the four interconnected subareas, not the entire Salinas Valley Groundwater Basin; the DEIR considered only water supply impacts, not seawater intrusion impacts; and the DEIR did not identify Zone 2C impact fees as mitigation for cumulative impacts. (POB at 15-16, 32, 61-63, 66-67, 68-69, 98-99.)

As Petitioners argue in their cross-appeal, Respondents cannot have it both ways. Respondents cannot consistently claim both (1) recirculation was unnecessary because *DEIR’s* cumulative analysis, which was limited to water supply impacts, limited geographically to the four interconnected subareas, and based on a purported shared surplus was fully adequate, and (2) the FEIR’s *revised* cumulative analysis, which addresses both groundwater level and seawater intrusion impacts, which identifies a *different* geographic scope consisting of the entire Salinas Valley Groundwater Basin, and which, Respondents now argue, does *not* claim or rely on a surplus but on Zone 2C mitigation, was *also* adequate. (POB at 99; Section II.B below.) As argued, after the public objected that Geosyntec

rebutts the DEIR's analysis of cumulative impacts to the Toro area water supply, the FEIR simply changes the subject to talk about different problems in a different area.

II. THE FEIR'S REVISED GROUNDWATER RESOURCES AND HYDROGEOLOGY SECTION FAILS TO MEET CEQA'S REQUIREMENTS FOR INFORMATIONAL ADEQUACY.

A. The standard of review for Petitioners' claim that the FEIR is informationally inadequate is this Court's non-deferential and independent judgement whether the FEIR meets CEQA's disclosure requirements, not whether there was substantial evidence for the County's factual findings.

Petitioners have demonstrated that the County failed to proceed as required by CEQA because the FEIR's revised hydrology section is informationally inadequate for five reasons:

- The environmental setting description is contradictory because it claims a surplus even while admitting an overdraft. (POB at 99-102.)
- The setting description fails to disclose the fact and magnitude of aquifer depletion and falling groundwater levels even though these are the identified significance criteria. (POB at 102-103.)
- The setting description is contradictory because it claims that the aquifer in the Project vicinity is both interconnected and not interconnected with "stressed areas." (POB at 103-104.)
- The cumulative analysis fails to determine whether there is a significant cumulative impact in the CDT Subbasin, and, if so, whether the Project makes a "considerable contribution" in light of the seriousness of existing conditions. (POB at 105-109.)

- The impact analysis fails to determine the significance of impacts with and without mitigation. (POB at 109-111.)

As argued in Petitioners’ opening brief on cross-appeal, inadequate description of the environmental setting, failure to describe the nature and magnitude of project-specific and cumulative impacts, and failure to assess impacts with and without mitigation are failures to proceed as required by CEQA, rendering the EIR inadequate as a matter of law.¹ (POB at 49-50, 97-98, 107, 109, 110.) These informational inadequacy claims are reviewed de novo, without deference to the agency, under the independent judgment standard. (*Sierra Club v. County of Fresno* (“*Sierra Club [Friant Ranch]*”) (2018) 6 Cal.5th 502, 512-516.) To evaluate these claims, the Court must determine if the EIR “comports with its intended function of including detail sufficient to enable those who did not

¹ See, e.g., *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 881 [failure to provide adequate cumulative baseline and analysis renders EIR “an inadequate informational document”]; *Environmental Planning and Information Council v. City of El Dorado* (1982) 131 Cal. App. 3d 350, 358 [EIRs at issue “fail as informative documents” because significance determinations were not based on “extensive, detailed evaluations of the impacts of the proposed plans on the environment in its current state”]; *San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus* (1994) 27 Cal.App.4th 715, 729 [incomplete or misleading baseline description is “inadequate as a matter of law”]; *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, 1122-1124 [EIR inadequate for failure to provide regional setting description and an analysis of “how adverse the impact will be”]; *Cleveland National Forest Foundation, supra*, 3 Cal.5th at 514–515 [cumulative analysis must “reasonably describe the nature and magnitude of the adverse effect”]; *LAUSD, supra*, 58 Cal. App.4th at 1024-1026 [cumulative analysis is inadequate because significance of project contribution was not assessed in light of seriousness of cumulative conditions]; *Lotus, supra*, 223 Cal.App.4th at 655-658 [failure to identify and apply a threshold of significance with and without mitigation is a “structural deficiency” in the EIR, which therefore omits information “necessary to informed decisionmaking and informed public participation”].)

participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Id.* at 516, internal quotes omitted.)

However, Respondents’ opposition to Petitioners’ cross-appeal fails to acknowledge the applicable standard of review. (RROP at 53-62.) More problematically, Respondents incorrectly argue that these claims are reviewed under the deferential substantial evidence standard. (RROP at 57, 58 [arguing irrelevantly “The Project’s Connectivity To The SVGB Is Supported By Substantial Evidence”]; 58-59 [arguing incorrectly the applicable standard of review is substantial evidence].)

For example, Respondents claim that the “standard of review that applies to the issue of whether an agency adequately determined that a project’s incremental effect is not cumulatively considerable is substantial evidence.” (RROP at 59.) But Respondents’ authority establishes only that the substantial evidence standard of review is applicable to *factual* challenges to cumulative analyses, i.e., precisely the challenges that Petitioners’ cross-appeal does *not* make and that Petitioners ask this Court *not* to reach. Thus, *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1358 is not apt. It does *not* address the applicable standard of review for informational inadequacy claims; it simply holds that in *that* case there was “*no evidence at all* that these projects would have a cumulative effect or that any such effect would be considerable.” (*Id.*, emphasis added.)

Likewise, *San Franciscans for Livable Neighborhoods v. City & County of San Francisco* (2018) 26 Cal.App.5th 596, 622 is not apt. While it states that the “agency decision to not identify an impact as significant is reviewed for substantial evidence,” it does *not* state substantial evidence review is the end of the matter. Nothing in *San Franciscans* holds that failure to comply with CEQA’s information disclosure mandates is reviewed under the substantial evidence standard rather

than by using the Court’s independent judgment as to what CEQA requires of a cumulative analysis.

And likewise, *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1046 is not apt here. It does not even *address* cumulative impact issues. Its discussion of the applicable standard of review determines that substantial evidence review applied to the issues raised in *that* appeal, but it acknowledges that “absence of information in an EIR may be a failure to proceed in a manner required by law.” (*Id.*, citing *Vineyard*, *supra*, 40 Cal.4th at 428.) In sum, none of Respondents’ cases hold that this Court should not apply non-deferential independent judgment to its determination whether the EIR was informationally adequate.

Substantial evidence review does not apply to Petitioners’ claims that the EIR was informationally inadequate, *because these claims are not factual disputes*:

On appeal, “the existence of substantial evidence supporting the agency's ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA.”

(*CBE v. Richmond*, *supra*, 184 Cal.App.4th at 82; quoting *Association of Irrigated Residents v. County of Madera* (“*AIR v. County of Madera*”) (2003) 107 Cal.App.4th 1383, 1392; see *Bakersfield Citizens for Local Control v. City of Bakersfield* (“*Bakersfield Citizens*”) (2004) 124 Cal.App.4th 1184, 1208 [substantial evidence review does not apply where claim is that EIRs failed to comply with “information disclosure provisions of CEQA”].)

Accordingly, Petitioners ask that this Court be guided by CEQA, its Guidelines, and case law in applying its independent judgment to Petitioners’ claims that the EIR was informationally inadequate in the five respects alleged.

B. The FEIR’s setting description for the CDT Subbasin is informationally inadequate because it is contradictory: it pays lip service to Geosyntec’s overdraft conclusion but continues to claim and to rely on the same water surplus claimed in the DEIR.

The FEIR’s revision of the DEIR’s setting description is inadequate because it is contradictory, claiming a surplus of recharge over pumping, as the DEIR claims, *and* also admitting that, based on Geosyntec, there is an overdraft condition in the CDT Subbasin where the Project wells are located. (POB at 35, 100-102.) *Both cannot be true.*

CEQA mandates that the description of the existing environmental setting be adequate to support both project-specific and cumulative analysis.² (POB at 97, 99-100.) In addition, a valid determination whether a project’s impact is “cumulatively considerable” must assess the *severity* of the existing and foreseeable cumulative problem because “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” (*CBE v. CRA, supra*, 103 Cal.App.4th at 120; *see* POB at 100, 105-106.) Here, the contradiction in the setting description is material because it undermines the FEIR’s significance conclusions, its description of cumulative conditions, and its claims regarding the efficacy of groundwater projects as mitigation.

² *See, e.g.*, Guidelines, §§ 15125(a), (c) [setting description must “give the public and decision makers the most accurate and understandable picture practically possible of the project’s” impacts; regional setting description must permit assessment of impacts in “full environmental context”]; 15130(b)(4), (5) [cumulative analysis must disclose effects and impacts from cumulative sources]; *Friends of the Eel River, supra*, 108 Cal.App.4th at 875 [setting description must “set the stage for a discussion of the cumulative impact”].

The contradictory information renders the EIR setting description inadequate as a matter of law. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655-656 [claim of both an increase and a decrease in mining operations]; *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 284 [“the EIR does not adequately analyze the project's water supply impacts” in light of “unexplained discrepancy”]; *Vineyard, supra*, 40 Cal.4th at 439 [setting aside EIR for “factual inconsistencies and lack of clarity” regarding water supply and demand data].)

Despite the obvious inconsistency in the FEIR’s claims that the four subareas enjoy a water surplus and its admission that Geosyntec concludes the subareas are in overdraft, Respondents claim that “there are no factual inconsistencies or lack of clarity on this point,” by which Respondents implicitly acknowledge such an inconsistency would render the EIR informationally inadequate. (RROP at 55 and fn 14 [arguing that cases cited by Petitioners finding EIR’s making contradictory claims to be informationally are inapposite].) Respondents’ claim that there are no inconsistencies is based on a misreading of the record.

1. Contrary to Respondents, the FEIR’s significance analyses repeat and rely on the same surplus claims as the DEIR’s.

Contrary to Respondents (RROP at 53-55), the FEIR’s noncumulative and cumulative impact analyses *do* cite and rely on the purported surpluses, and the FEIR’s surplus claims repeat the DEIR’s discussion, data, and conclusions. (AR372-376, 385.)

The first two paragraphs of the noncumulative impact analysis (Impact 3.6-1) discuss the 2003 Todd Report appended to the DEIR, claiming that, based on subarea recharge of 486 AFY, and taking into account other water demand after

buildout, the subarea would have “a water surplus of approximately 29.9 AFY.” (AR372.) The discussion concludes: “[a]ccording to the [Todd Report], this water surplus would be able to accommodate the proposed project’s water demand of approximately 12.75 AFY.” (AR373.) The 486 AFY recharge and 29.9 AFY water surplus data recited in this discussion were taken from Todd (AR1460), which got the data from Fugro (AR22907).

The section of the FEIR’s noncumulative impact analysis captioned “Project Specific Analysis” repeats the claim that the “project’s water demand of approximately 12.75 AFY would be met by the water surplus in the area.” (AR374.) It then reports that, according to Todd:

It was determined that although the loss of return flow associated with the proposed project may have an adverse impact on some of the individual subareas, the four subareas are interconnected and will maintain an overall water surplus of approximately 314.82 AFY.

(AR374.) The purported 314.82 AFY surplus claimed in the FEIR was based on the DEIR’s calculations in Table 3.6-4 (AR843), which in turn were based on recharge and cumulative demand assumptions reported by Todd (AR1460) based on Fugro (AR22907.)

The first paragraph of the FEIR’s cumulative analysis (Impact 3.6-4) repeats the surplus claim made in the DEIR:

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

(AR385.) This is exactly the same rationale that the DEIR offers for its significance conclusion, as Respondents admit. (ROB at 27, *citing* AR842-843.)

In sum, the plain language of the FEIR's impact analyses repeats the same surplus claims on which the DEIR relied for its significance conclusions, prominently featuring the surplus discussion as the first consideration in the noncumulative and cumulative impact analyses. Respondents cannot reasonably ask this Court to ignore those expressly stated rationales for the FEIR's conclusions that Respondents now find inconvenient.

2. The FEIR relies on exactly the same surplus claims as the DEIR.

Contrary to Respondents, it is of no moment that the FEIR strikes out the DEIR's tables 3.6-2 and 3.6-4 in which the DEIR calculated the purported surpluses. (RROP at 54, *citing* AR375, 386.) The FEIR *still reports and relies on the DEIR's exact calculations of purported surpluses from those tables: 29.9 AFY for the San Benancio Gulch subarea and 314.82 AFY for the four interconnected subareas.* (AR372, 373, 374, 385 [FEIR]; *see* AR837-838 [DEIR: calculating 29.9 AFY surplus in San Benancio Gulch subarea], 842-843 [DEIR: calculating net surplus of 314.82 AFY in the four interconnected subareas].)

Furthermore, the FEIR explains *why* it revises the DEIR's Table 3.6-2: the DEIR's Table 3.6-2 projects the water balance under estimated *future buildout* conditions, but "MCWRA requested that the water balance be prepared to analyze the proposed project's demand on *existing* conditions." (AR376, *emphasis added*.) Conveniently, in revising Table 3.6-2 for existing conditions, the FEIR changes its scope to limit it to the Project site only, where there is no existing water use. (AR376-377 [Table 3.6-2].) Thus, the FEIR's revised Table 3.6-2 does not disclose the *existing* deficit condition in the San Benancio Gulch subarea or the four interconnected subareas.

3. Contrary to Respondents, the FEIR’s statement that Geosyntec supersedes the Fugro and SGD Reports does not repudiate the DEIR’s surplus claims.

Respondents argue that it should be evident that the FEIR does not rely on the purported surplus because the FEIR states that the 1991 SGD Report and the 1996 Fugro Report “have been superseded” by the Geosyntec Report. (RROP at 54, *citing* AR353.) However, the FEIR’s statement neither mentions nor retracts the surplus claims. The statement certainly does not notify the public that the FEIR repudiates the FEIR’s own repeated and express claims of a surplus based on the DEIR’s Todd Report. (AR 372, 373, 374, 385; AR1459-1460 [Todd, *citing* Fugro].)

And, despite the FEIR’s statement that Geosyntec supersedes Fugro, *the FEIR continues to use Fugro’s recharge and buildout demand data to claim a surplus.* (AR372 [FEIR claiming a 29.9 AFY surplus at buildout in the San Benancio Gulch based on 486 AFY annual recharge and buildout demand], 22907 [Fugro, Table 12, identifying 486 AFY as the middle recharge estimate and buildout demand as 456.1 AFY].)

Critically, the FEIR does *not* state that Geosyntec supersedes the DEIR’s Todd report. As discussed below, the Todd report, with its finding of a groundwater surplus based on Fugro (AR1459-1460), remains an integral part of the FEIR.

4. Contrary to Respondents, Geosyntec’s conclusion *rejecting* the Fugro surplus claims, are not “similar” to the Todd Report’s conclusions, *accepting* and *relying* on Fugro’s surplus determination.

The FEIR claims that the Todd Report’s conclusion that the four subareas share a surplus is “similar to the conclusions of the subsequent El Toro Groundwater Study prepared by Geosyntec.” (AR385.) However, Geosyntec expressly *rejects* the Fugro surplus claims (AR20155-20156.) Nonetheless, Respondents claim that the similarity claim “is entirely accurate” because, Respondents claim, (1) the “Todd Report did not reach a conclusion about surplus water supplies” but instead (2) merely “reviewed recharge data provided by SGD and Fugro . . . as did Geosyntec.” (RROP at 54-55.) *Neither claim is true.*

First, it is not true that Todd “did not reach a conclusion about surplus water supplies.” (RROP at 54.) The Todd Report section captioned “Water Balance” states that “[a] simple water balance was conducted to compare inflows (recharge) and outflows (demand) *to determine if a surplus or deficit exists* between groundwater demand and recharge,” and it then compares Fugro’s recharge data to projected buildout water demand. (AR1459-1460, emphasis added.) Todd summarizes its “Comparison of Supply and Demand” in a table that lists recharge estimates and water demand at buildout for the El Toro Creek and San Benancio Gulch subareas in order to calculate the values in a column headed “Build-out Water *Surplus*.” (AR1460, emphasis added.) Todd then compares the Project’s net water demand to “the estimated *surplus* at projected buildout,” concluding that “recharge is greater than the 1995 water usage plus the proposed project usage in the El Toro Creek and San Benancio Gulch subareas.” (AR1460, emphasis added.) Todd concludes that “[b]ased on these data, it appears that a long-term

supply exists for this subdivision.” (AR1460-1461.) That fact that, contrary to Respondents, Todd *did* “reach a conclusion about surplus water supplies” (RROP at 54-55) is also evident because the DEIR’s significance conclusions are *based on* Todd Report’s surplus conclusion. (AR836, 842-843 [DEIR, citing Todd’s *Project Specific Hydrology Report – Harper Canyon Realty LLC*].) Indeed, Respondents identify this surplus claim as the basis of the DEIR’s cumulative impact analysis. (ROB at 27, *citing* AR842-843.) In sum, Todd announces it will determine if there is a surplus or deficit, calculates a surplus, and concludes that the surplus would accommodate Project demand; and then the DEIR relies on that purported surplus, citing Todd.

Second, contrary to Respondents, it is not true that the Todd and Geosyntec reports are “similar” because both merely “reviewed” Fugro’s recharge data. (RROP at 54-55, quoting AR385.) Respondents cynically misread the record. Todd reviews and *accepts* the Fugro surplus claims. (AR1459 [Todd states that the SGD and Fugro estimates “seem reasonable”], 1460 [Todd *calculates* a surplus *using* Fugro’s estimates].) By contrast, Geosyntec reviews and *rejects* Fugro’s surplus claim: the “hydrogeologic analysis conducted for this study . . . casts doubt on the existence of a surplus groundwater supply in the Watson Creek subarea,” which represents the vast majority of the estimated surplus in the four interconnected subareas. (AR20155-20156.) Geosyntec concludes that a revised recharge model “would likely result in a range of recharge significantly lower than the estimated build-out demand,” identifying a 500-1,000 AFY deficit, not a surplus. (AR20156.)

5. Contrary to Respondents, the FEIR does not relegate the Todd Report and its surplus claim to history; the Todd Report remains part of the FEIR.

Respondents also attempt to downplay the Todd Report’s surplus conclusion by arguing that the “Todd Report was cited merely to provide historical background and context,” offering as evidence only the fact that it was discussed under a section entitled “Previous Studies.” (RROP at 54, *citing* AR375.) But the Geosyntec Report was *also* discussed under that “Previous Studies” heading. (AR374-376 [both reports appear under their own italicized subheadings under the main heading “Previous Studies”].) And while the FEIR states that Geosyntec supersedes the Fugro and SGD reports, it does *not* say that Geosyntec supersedes Todd. (AR353.)

Indeed, the Todd Report remains an integral part of the FEIR. The FEIR does not revise the DEIR’s Appendix F, “Groundwater Resources,” which *contains* the 2003 Todd Report. (AR1441-1480; *see* AR290-349 [revisions to the DEIR].) The Todd Report remains part of the FEIR because the findings provide that the 2008 DEIR, the 2010 RDEIR, and the 2013 FEIR “constitute the Final EIR on the project.” (AR19.)

6. Contrary to Respondents, the surplus claim appears in the staff reports.

Respondents also argue that there is no reference to the purported surplus in the findings or staff reports. (RROP at 54.) That is not true either. The Planning Commission staff report reference the purported surplus. (AR4479, 4486, 4512.) And the FEIR, which was included as Attachment B-3 to the final staff report

(AR3216-3492), repeatedly references the surplus. (AR3434, 3475, 3476, 3477, 3488.)

Regardless, it is the informational adequacy of the *FEIR* that is at issue. Its contradictions cannot be rectified by information outside the EIR, particularly since neither the findings nor the staff reports actually reject or correct the FEIR's false and contradictory surplus claim.³

7. Respondents cannot consistently claim that the DEIR's impact analysis, which was premised on the surplus claim, was not fundamentally inadequate and that the FEIR somehow repudiates the DEIR's surplus premise.

Respondents' opening brief admits that "[r]elying on the Fugro study, the Draft EIR also found that the Project would have a less than significant impact to groundwater resources due to a net surplus from recharge among four

³ See *Vineyard, supra*, 40 Cal.4th at 442 ["To the extent the County, in certifying the FEIR as complete, relied on information not actually incorporated or described and referenced in the FEIR, it failed to proceed in the manner provided in CEQA"]; *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal. ("Laurel Heights I")* (1988) 47 Cal.3d 376, 405 ["whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report."]; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra*, 27 Cal.App.4th at 727 [same]; see also *CBE v. Richmond, supra*, 184 Cal. App. 4th at 88 [post-EIR testimony cannot cure DEIR's omissions]; *Sierra Club v. Tahoe Regional Planning Agency* (2013) 916 F.Supp.2d 1098, 1139 ["[a]dditional documentation in the record, however, does not make up for the lack of analysis in the EIR"]; *Santiago County Water District v. County of Orange ("Santiago")* (1981) 118 Cal.App.3d 818, 831 [rejecting water supply information outside EIR because "[i]t is the adequacy of the EIR with which we are concerned . . ."]; *Sierra Club [Friant Ranch], supra*, 6 Cal.5th at 520 ["the EIR itself must explain why . . ."]; "the relevant informational document here is the EIR . . ."; *Preserve Wild Santee, supra*, 210 Cal.App.4th at 284.

interconnected subareas.” (ROB at 27, *citing* AR842-843.) Respondents also argue that there is no significant new information in the FEIR that warranted recirculation. (ROB at 47-60; RROP at 23-45.)

Respondents cannot now consistently argue that the FEIR repudiates the DEIR’s surplus claim and its significance rationale *and* that the DEIR and FEIR analyses are not inconsistent enough to warrant recirculation. Respondents cannot have it both ways.

8. Contrary to Respondents, the FEIR’s contradictory claim of a surplus, despite the admitted overdraft, were prejudicial to informed public participation and decision making.

Finally, Respondents argue that there was no prejudice from the FEIR’s contradictory claim of a water surplus despite the admitted overdraft conditions because there was “other substantial evidence” to support the impact conclusions. (RPOP at 55.) But that other evidence is not independent of the surplus claim; it is undermined if the surplus claim is not correct. So if the surplus claim is erroneous, that other evidence is not probative.

The “other substantial evidence” offered by the FEIR that there is no cumulative impact is the FEIR’s claim that the Salinas Valley Water Project is sustaining groundwater levels for the Project wells and other wells in its vicinity.⁴ (AR363.) The findings claim that the Project wells “receive benefits of sustained

⁴ The other two rationales cited by the FEIR are not probative. The fact that the Project is well situated to pump for decades regardless of its impacts to other aquifer users demonstrates at most that it has a water supply. Neither the Project’s water supply nor its functional ability to extract groundwater from its wells are at issue here. The issue is the impact of *using* that supply, which is the “ultimate question” under CEQA. (*Vineyard, supra*, 40 Cal.4th at 434.) And the FEIR’s claim that the Project wells are not interconnected with stressed areas is contradicted by the FEIR’s claims that the four subareas, which contain stressed areas, are in fact interconnected. (POB at 103-104; Section II.D below.)

groundwater levels attributed to the operation of both the Nacimiento and San Antonio Reservoirs and the Salinas Valley Water Project. “ (AR8, 45.) Thus, the FEIR and findings claim that the Project’s payment of Zone 2C fees is adequate mitigation because these Zone 2C projects *sustain* groundwater levels and benefit the Project wells. (AR387, 9.) But the evidence from Geosyntec, which the FEIR says supersedes the other technical reports, is that there *is* no surplus because there is an overdraft that results in an annual aquifer *deficit* of 500-1000 AFY. (AR20156.) And because of that annual deficit, groundwater levels have not been “sustained” but have *declined* at the Project site, in its subarea, and in the four interconnected subareas from 1960 to 2007 *despite* the Zone 2C projects. (AR20113-20115, 20120.) And the groundwater level in the Project wells *continued* to decline through 2015 despite the 2010 Salinas Valley Water project, as documented by the 2015 Bierman well tests. (AR6794 [Parker], *citing* AR3555 [Bierman], 1453 [Todd].)

Furthermore, Respondents’ authority that prejudice from the FEIR’s reliance on surplus water supplies was cured by other substantial evidence is inapt. (RROP at 55.) Respondents cite *Association of Irrigated Residents v. Kern County Bd. of Supervisors* (“*AIR v. Kern County*”) (2017) 17 Cal.App.5th 708, 745 to claim that other evidence can obviate prejudice from an EIR’s erroneous claims. But in *AIR v. Kern County*, petitioners did not claim that the EIR was informationally inadequate or point to contradictory claims; the *AIR* petitioners argued only that the EIR’s calculation of truck trip reductions was too speculative to provide substantial evidence supporting a significance conclusion. (*Id.* at 744-745.) *AIR v. Kern County* held that (1) the prejudice from any lack of substantial evidence support for the EIR’s claim of emission reductions would be obviated by the EIR’s *entirely independent* explanation that the emissions impact was also avoided by the project’s participation in the cap and trade program and (2) there was *in fact*

substantial evidence for the contested truck trip reduction. (*Id.* at 745.) So *AIR v. Kern County* is inapt because, unlike this case, the EIR contained no contradictory claims *and* the petitioners did not claim the EIR was informationally inadequate.

California Native Plant Society v. City of Rancho Cordova (2009) 172 Cal.App.4th 603, 639 is also inapt. Again, in that case, but unlike here, petitioners did not allege that the EIR was informationally inadequate. The Court found only that petitioners had not carried their burden to demonstrate a lack of substantial evidence to support the agency’s finding on the matter. (*Id.*) There was no claim that the EIR contradicted itself.

Save Cuyama Valley v. County of Santa Barbara (2013) 213 Cal.App.4th 1059, 1073-1074 is also inapt. There, the Court found that an error in the EIR’s report of groundwater levels around the proposed mine was obviated by mitigation mandating that the mine not intrude into the groundwater table regardless of groundwater depth. By contrast, here there is no such performance criteria for mitigation to redress the FEIR’s informational inadequacy. For example, the Project will not be forbidden to pump even if groundwater levels continue to fall due to continuing annual deficits in the Toro Area.

Critically, *Save Cuyama Valley* carefully distinguishes *San Joaquin Raptor v. County of Merced*, where the EIR *was* informationally inadequate because it contradicted itself:

San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 57 Cal.Rptr.3d 663, cited by *Save Cuyama*, is not to the contrary. In that case, the environmental impact report incorrectly described the underlying project as both increasing mining operations and not increasing them. This sent “conflicting signals to decisionmakers.” (*Id.* at pp. 655–656, 57 Cal.Rptr.3d 663.) Put differently, *the report’s internal inconsistency* “precluded informed decision making” and was, for that reason, prejudicial. ... *Unlike the report in San Joaquin Raptor Rescue*

Center, the Report here did not inconsistently describe the Diamond Rock mine.

(*Id.* at 1074, emphasis added.) Here, as in *San Joaquin Raptor v. County of Merced*, the FEIR is internally inconsistent because it materially contradicts itself by describing the aquifer as both in surplus and in overdraft. Furthermore, the FEIR also materially contradicts itself by describing the Project wells as both interconnected and not interconnected with “stressed areas.” (POB at 103-104; *see also* Section II.D below.) These contradictions are prejudicial because the FEIR sends “conflicting signals to decisionmakers and the public” about the environmental setting and cumulative conditions, which directly compromise the rationales for its significance conclusions. (*San Joaquin Raptor Rescue Center v. County of Merced, supra*, 149 Cal.App.4th at 655-656.)

C. The FEIR’s setting description for the CDT Subbasin is informationally inadequate because it fails to disclose the fact and magnitude of aquifer depletion and falling groundwater levels.

As argued, a setting description is not adequate if it does not “make further analysis possible.” (POB at 102, *citing County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 954.) Here, the further analysis that the setting description does not make possible is the application of the EIR’s threshold of significance, under which “a net deficit in aquifer volume or a lowering of the local groundwater table level” is a significant impact. (AR371.) Because the FEIR’s setting description fails to disclose either the fact or magnitude of falling groundwater levels and aquifer depletion in the four subareas, the FEIR cannot and does not apply its threshold of significance to determine the existence and magnitude of a significant cumulative impact in the four subareas. Without that determination, the EIR cannot and does not assess whether the Project’s pumping

will be a considerable contribution to a significant cumulative impact. (POB at 105-108.) Thus, as discussed in Section II.E below, the FEIR’s failure to provide an adequate setting description leads to further error: failure to *apply* the EIR’s significance threshold to make a determination of significance. (*Lotus, supra*, 223 Cal.App.4th at 655.)

Here, the FEIR merely acknowledges “an overdraft condition within the Geosyntec Study area” (AR363), but it does not disclose the severity of the overdraft, i.e., that this overdraft has caused the very conditions – falling groundwater levels and aquifer deficits – that the FEIR’s threshold of significance defines as a significant impact. (AR371.) In fact, Geosyntec documents the following conditions that constitute a significant impact under the EIR’s threshold of significance:

- Groundwater levels fell an average of 0.6 ft./yr from 1960 to 1999, worsening to 1.8 ft/yr since 1999. (AR20062, 20113-20115, 20131-20132 [Figures 4-11, 4-12].)
- These declines indicate annual aquifer deficits in the El Toro Primary Aquifer System of 500 AFY from 1960, worsening to 1,000 AFY after 1999. (AR20156, 20062.)
- Worsening conditions are caused by increased groundwater pumping for new development, which “exceeds the rate of groundwater replenishment.” (AR20156; *see* AR20103-20105 [pumping increases], 20158 [cumulative building permits].)
- Continuing overdraft will “lower[] the water table below the screened intervals of existing wells completed in shallower portions of the aquifer system, which has already occurred in portions of the Corral de Tierra.” (AR20062.) That is, wells have failed and will continue to fail.
- “[W]ith continued overdraft conditions, groundwater production potential would likely decrease relatively quickly in hydrogeologically contiguous

areas of less saturated thickness.” (AR20163.) That is, some wells in the interconnected subareas will produce less water.

Groundwater levels are declining not just in the four interconnected subareas, but specifically at the location of the Project wells, as documented by the Geosyntec data for 1960-2007 (AR20131-20132 [groundwater level maps showing long-term declines in San Benacio Gulch subarea]) and the 2015 tests of the Project wells. (AR6794 [Parker], *citing* AR3555 [Bierman], 1453 [Todd]. Non-disclosure of this information renders the FEIR inadequate.

1. Contrary to Respondents, *County of Amador* is on point here because disclosure of falling groundwater levels and aquifer deficits was essential to further analysis.

Respondents attempt to distinguish *County of Amador*, arguing that case involved “artificial baseline data that precluded meaningful environmental assessment.” (RROP at 56.) But *County of Amador* is right on point.

In *County of Amador*, the setting description for a project that could impair habitat and recreation by disrupting surface water levels provided “only end-of-month lake levels” without providing “other factors relevant to historical operations,” e.g. the timing and variability of water releases and water levels that would support an “operational analysis.” (*County of Amador, supra*, 76 Cal.App.4th at 954-955.) *County of Amador* holds that even if the public could assess adverse changes in water levels from information “appended to the EIR, . . . such an effort should not be necessary. An adequate EIR requires more than raw data; it requires also an analysis that will provide decision makers with sufficient information to make intelligent decisions.” (*Id.* at 955.)

Here, the setting description simply does not provide the information about historic and projected groundwater levels and aquifer deficits to allow the public or

decision makers to apply the EIR’s significance threshold. Indeed, the EIR here is even *more* infirm than in *County of Amador*. Unlike in *County of Amador*, the FEIR and its appendices do not disclose even the “raw data” necessary to apply its threshold of significance. (*Id.*) It is impossible from the FEIR’s mere use of the term “overdraft,” contradicted by its repeated claims of a surplus and “paper deficits,” to determine if cumulative pumping will “[s]ubstantially deplete groundwater supplies . . . such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level. . . .” (AR371.)

2. Contrary to Respondents, the adequacy of the Project’s water supply does not excuse disclosure of the setting information needed to determine the impacts of using that supply.

Respondents argue that it was sufficient to show that “Project wells are located in an area of good groundwater production, connected to the aquifers to the east in the Salinas Valley, and benefitted by increased groundwater levels due to the SVWP.” (RPOP at 56.) Not so.

First, as the California Supreme Court explained, the “ultimate question under CEQA [] is not whether an EIR establishes a likely source of water but whether it addresses the reasonably foreseeable *impacts* of supplying water.”⁵ (*Vineyard, supra*, 40 Cal.4th at 434, emphasis in original.) Here, aquifer thickness demonstrates at most that *this* project has an adequate supply, but it does not demonstrate that *using* this supply will not impact other aquifer users by

⁵ CEQA is concerned with “the *project’s* impact on the environment—and not the *environment’s* impact on the project.” (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 377, original emphasis.) Thus, whether the environment succeeds or fails to provide this Project a water supply is not an issue under CEQA because that is a potential impact of the *environment on this Project*.

contributing to significant cumulative impacts in the form of declining groundwater levels and increasing aquifer deficits. Geosyntec concludes that using the supply or continuing to “mine” the groundwater *will* aggravate these cumulative pumping impacts in the Geosyntec Study Area by further lowering groundwater levels, increasing the deficit, impairing some existing wells, and decreasing groundwater production potential. (AR20062, 20163.) The adequacy of this Project’s water *supply*, or functional ability to extract groundwater, is simply not relevant to these cumulative impacts.

Second, the fact and magnitude of falling groundwater levels in the four interconnected subareas and the Project wells themselves should have been disclosed because it is directly relevant to the County’s inconsistent contention that existing groundwater management projects have sustained groundwater levels at the Project site. For example, the findings claim that the “wells and project site receive benefits of *sustained* groundwater levels attributed to the operation of both the Nacimiento and San Antonio Reservoirs and the Salinas Valley Water Project.” (AR8, 45, emphasis added.) The FEIR fails to disclose factual information from the superseding Geosyntec Report that directly undermines this claim.

3. Contrary to Respondents, the EIR’s analysis of short-term interference with wells within 1,000 feet does not excuse disclosure of the setting information needed to assess long-term cumulative impacts to wells throughout the Toro area.

Respondents imply incorrectly that the EIR’s *separate* significance determination regarding a different kind of impact – immediate short-term interference with *nearby* well operations – somehow excuses the non-disclosure of falling groundwater levels and aquifer deficits in the Geosyntec Study Area and the CDT Subbasin as a whole. (RROP at 56.)

Respondents argue that the FEIR’s threshold of significance “*equates* lowering of the local groundwater table with ‘the production rate of pre-existing nearby wells’ dropping to a level that would not support existing or planned land uses.” (RROP at 56 *citing* AR371, emphasis added.) Then Respondents argue that “neither the Project alone nor in conjunction with any other reasonable foreseeable development will have any adverse impacts on nearby wells.” (RPOP at 56, *citing* AR10 [findings re Bierman report], 383-384 [FEIR Impact Analysis 3.6-3.]) This is entirely disingenuous.

First, the FEIR does not “equate” its definition of significant impacts with nearby well failures; it *defines* a significant impact as a “net deficit in aquifer volume or a lowering of the local groundwater table . . .” (AR371.) The FEIR then cites nearby well failures as an *example* of one way to determine that there are declining groundwater levels and aquifer deficits. (AR371 [“(e.g., the production rate of pre-existing nearby wells would drop . . .”).] And, even if it were necessary to show consequences to other users to determine significance, Geosyntec explains that aquifer deficits and declining groundwater levels do have other consequences than immediate operational impacts to *nearby* wells, e.g., decreased groundwater production potential in “hydrogeologically contiguous areas of less saturated thickness” and failures of “existing wells completed in the shallower portions of the aquifer system,” which has already occurred. (AR20163.)

Second, the 72-hour pumping test used to analyze impacts to nearby wells is not part of the EIR’s cumulative analysis of impacts to the “groundwater basin;” it is the EIR’s *distinct* analysis of short-term operational interference with “nearby wells,” i.e., those within 1,000 feet. (*Compare* AR383-384 [Impact 3.6-3, “Adversely Affect Nearby Wells”] to AR384-387 [Impact 3.6-4, “Cumulative Adverse Effect on the Groundwater Basin”].)

Third, the pumping tests assessed only the effect of each Project well operating for 72 hours (AR1463 [Todd] 3527-3569 [Bierman]); they did not assess the impacts of the Project “in conjunction with any other reasonable foreseeable development” as Respondents claim. (RPOP at 56.)

Finally, Respondents have *admitted* that the pumping tests used to measure short-term operational interference with nearby wells are not relevant to cumulative analysis:

... the Beerman [sic, Bierman] report was never intended to address cumulative impacts. The Beerman report was a direct response to Supervisor Calcagno's request that we, essentially, retest the wells and prove up that they still have water.

(AR4978 [Real Party’s counsel], emphasis added; *see also* AR13152, 6793 [Parker: nearby well interference tests unrelated to cumulative impact analysis].) The 72-hour pumping tests are an irrelevant red-herring here.

Even if the Project wells do not interfere immediately or directly with nearby wells, Geosyntec establishes that cumulative overdraft of the four interconnected aquifers has lowered water levels, and continued overdraft will do so in the future, resulting in well failures and reduced production for wells in shallower portions of the aquifer. (AR20062, 20163.) Indeed, the Planning Commission denied the Project in light of these impacts. (AR5304, 5306, 4343-4344 [Planning Commission]; *see* AR193-194, 234, 283, 5499 [public comments re well failures].) The FEIR fails to disclose this critical information.

In sum, the EIR fails informationally because it does not disclose the information required to apply its stated threshold of significance to determine whether there are significant cumulative impacts. The missing information is the fact and the magnitude of the groundwater declines and aquifer deficits that are documented and projected by Geosyntec. Information about the adequacy of the

Project's water *supply* or its short-term operational interference with nearby wells does not and cannot substitute for this critical disclosure.

D. The FEIR's setting description is informationally inadequate because it claims that the aquifer in the Project vicinity is both interconnected and not interconnected with "stressed areas."

As argued (POB at 103-104), the FEIR is informationally inadequate because it makes the directly contradictory claims that the aquifer in the Project vicinity is both interconnected (AR385, 374) and *not* interconnected with the "stressed areas" in the Geosyntec Study Area (AR385, 376).

The FEIR's cumulative significance conclusion cites and relies on these contradictory claims. In one paragraph, the FEIR admits the Project "may contribute to an adverse cumulative impact" to areas that are "stressed" but this will be remedied by its interconnection to subareas with a shared surplus:

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

(AR385, emphasis added; *see also* AR374 [although "proposed project may have an adverse impact on some of the individual subareas, the four subareas are interconnected and will maintain an overall water surplus of approximately 314.82 AFY"].) In the *very next paragraph* the FEIR argues that the Project will *not* affect "stressed areas" because they are *not* interconnected. (AR385, emphasis added; *see also* AR376.) Both statements cannot be true.

As the trial Court found, the claim that the aquifer around the Project site is *not* connected to stressed areas "directly contradicted the core underpinning of the DEIR's conclusion," i.e., the claim that the Project wells are in "one of four

hydrogeologically interconnected subareas of the El Toro Groundwater Basin.” (JA1425 [FSOD].)

Again, the FEIR’s setting description is inadequate because its claims are conflicting. (*San Joaquin Raptor Rescue Center v. County of Merced, supra*, 149 Cal.App.4th at 655-656; *Vineyard, supra*, 40 Cal.4th at 439; *Preserve Wild Santee, supra*, 210 Cal.App.4th at 284.) Again, the contradiction is material and prejudicial because each of the contradictory statements is offered as a basis for the FEIR’s claim that Project impacts will not be significant. The paragraphs claiming interconnection say the Project “may have an adverse effect” but that the 314.82 AFY shared surplus will address that adverse effect. (AR374, 385.) The paragraph claiming *no* interconnection with stressed areas say that Project pumping “would not likely affect” the stressed areas due to the lack of interconnection. (AR376, 385.) Both claims cannot be true.

1. Contrary to Respondents, Petitioners exhausted administrative remedies regarding the interconnection of Project wells with the Salinas Valley Groundwater Basin and with stressed areas of the Corral de Tierra Subbasin.

Respondents argue that Petitioners did not exhaust their remedies in the administrative proceedings regarding this objection. (RROP at 53.) In fact, Petitioners and others objected to (1) the claim that the Project area is hydrogeologically contiguous with the Salinas Valley aquifers to the east and (2) the claim that the Project would not affect stressed wells in the El Toro Area, including the shallower wells and wells up the canyon, or hydrogeologically upgradient, from the Project wells.

First, in objecting that the FEIR’s hydrogeological setting description was fundamentally different than the DEIR’s, hydrologist Parker objected in particular to the FEIR’s new claim that the Project area is hydrogeologically contiguous with

the Salinas Valley aquifers to the east. Parker objected that, contrary to the FEIR's claim that there are no barriers restricting flow to the Salinas Valley, the Geosyntec report shows that the Project site has only *limited* hydraulic connectivity to the Salinas Valley. (AR13145, 13147 [Parker], *citing* AR363 [FEIR] and AR19395 [Geosyntec 2010].) Furthermore, Parker objected at length that there are no data, modeling, or other evidence to support the FEIR's claim that water projects intended to raise Valley groundwater levels could sustain groundwater levels in the Project area 250 to 350 feet above the Valley groundwater levels. (AR13144-13147, 13149-13150.) In short, Parker challenged the FEIR's claim that the wells are connected to and influenced by the aquifers in the Valley to the east, which is the only factual evidence that Respondents offer for their "logical inference" that the Project wells are *not* connected to the stressed areas of the Geosyntec Study Area. (RROP at 58.)

Second, Parker, LandWatch, other members of the public, and members of the Planning Commission objected that overdraft conditions in the Toro Area, and in the Harper Canyon area in particular, has caused a significant cumulative impact to groundwater levels, that this has caused wells to fail, that it would cause well failure in the future, and that the Project would aggravate this problem. (AR6793 [Parker: continuing overdraft "will potentially lower groundwater levels sufficiently to impair existing wells, even if those wells are not immediately adjacent to the project site"], 6794 [Parker: groundwater at Project wells has declined at same rate as rest of Geosyntec Study Area, and Project will contribute to aquifer depletion]; AR193-194 [public comment: reciting significance criteria, objecting that "[t]here are many reports of existing wells going dry;" that her well "up the canyon" from the Project had already had to be deepened; and that she did not believe the area is sufficiently recharged to support additional wells]; AR234 [public comment: objecting that a "survey of Harper Canyon residences, whose

private wells have dried up over time” contradicts the EIR’s claim that there are not significant groundwater impacts from the Project]; AR283 [public comment: objecting that water availability in Harper Canyon has always been problematic, citing well failures in Harper Canyon area]; AR5499 [public comment: reporting survey of wells in the Project area finding that shallow wells less than 150 feet needed to be deepened after 1995 by an average of 500 feet], 5304, 5306 [Planning Commissioners citing well failures].) These objections specifically cited impacts to wells in Harper Canyon, where the Project wells are located; to wells “up the canyon” from the Project; and to shallower wells “drilled at less than 150 feet.” (AR193-194, 234, 5499.) In short, the Petitioners and others objected to the claim that the Project wells would not affect stressed areas.

In sum, Petitioners met their exhaustion requirements because Petitioners and other members of the public challenged the FEIR’s hydrogeologic connectivity conclusions and also objected that the Project *would* adversely affect wells in the Toro Area, including wells in the Project vicinity and shallower wells. Even if Petitioners themselves had not raised these objections – and they did –Petitioners may assert any issues that were timely raised by other persons. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 191.)

2. Contrary to Respondents, substantial evidence for one of two contradictory statements could not cure the contradiction itself because the unexplained contradiction renders the EIR informationally inadequate.

Respondents simply fail to address the direct contradiction that renders the FEIR informationally inadequate – the FEIR’s inconsistent claims that the wells are connected *and* not connected to “stressed areas,” and its inconsistent claims that Project pumping “would not likely affect” *and* “may have an adverse effect” on these stressed areas. (AR385, 374, 376.) Instead, Respondents argue that the

County had substantial evidence that allowed the trial Court to make a “logical inference” that *one* of the contradictory statements was correct. (RROP at 57-58.) Respondents simply ignore the FEIR’s *contradictory claims* and thereby completely fails to address Petitioners’ cross-appeal objection that these contradictory claims render it informationally inadequate. Petitioners’ cross-appeal does not depend on showing a lack of substantial evidence. Indeed, Petitioners argue that this Court should not *reach* substantial evidence issues in light of (1) the failure to recirculate the EIR for comment and response and (2) the FEIR’s informational inadequacy, *including* its directly contradictory claims, which this Court need not and should not try to resolve as a factual matter.

In short, Respondents’ arguments under the heading “The Project’s Connectivity To The SVGB Is Supported By Substantial Evidence” is simply irrelevant. “[T]he existence of substantial evidence supporting the agency’s ultimate decision on a disputed issue is not relevant when one is assessing a violation of the information disclosure provisions of CEQA.” (*CBE v. Richmond, supra*, 184 Cal.App.4th at 82; *quoting AIR v. County of Madera, supra*, 107 Cal.App.4th at 1392; *see Bakersfield Citizens, supra*, 124 Cal.App.4th at 1208.) Nowhere do Respondents explain how the FEIR resolves its contradictory claims or why they do not constitute informational inadequacy.⁶

⁶ Although this point is not necessary to Petitioners’ claim that the FEIR contradicts itself by claiming that the Project wells *are* and are *not* interconnected to stressed areas, there is no evidence in the record to support Respondents’ “logical inference” that one of the contradictory statements is correct (RROP at 58), i.e., the inference that a connection to other subbasins of the Salinas Valley Groundwater Basin to the northeast somehow precludes interconnection and impacts to the stressed areas in the four subareas of the CDT Subbasin. (*See* POB at 104.) As the trial Court acknowledges Geosyntec does *not* state this. (JA1435.) Thus, Respondents must rely on argument to the Court, not evidence in the record, that the northerly or northeasterly direction of groundwater flow at the Project site

somehow *precludes* interconnection to the stressed areas.

All four of the technical reports, the DEIR, *and the FEIR itself* state that the four subareas of the Geosyntec Study Area/CDT Subbasin *are* interconnected and that pumping in the four subareas *does* affect overall groundwater conditions – either because the four subareas share a surplus from which each well can draw to avoid cumulative impacts or because they share a deficit that each well would aggravate. (AR21007-21008 [SGD 1991]; AR22908 [Fugro 1996]; AR1451, 1460 [Todd 2003]; AR20058, 20136 [Geosyntec]; AR669, 825, 837, 842, 843, 956, 971, 972 [DEIR]; AR374, 385 [FEIR].)

Respondents ask the Court to make a “logical inference” based on the surprising and completely undocumented hydrogeological proposition that a well cannot be interconnected to, and cannot affect, an aquifer area or well that is located upgradient, simply because “groundwater does not flow in two directions.” (RROP at 57; *see* JA808-809.) There is *no* evidence in the record that the premise – that groundwater flows in only one direction – implies the conclusion Respondents advance – that a well could have no effect on upgradient conditions. *If this were true, the back half of a bathtub would never drain.* However, regardless of Respondents’ challenge to this Courts’ common sense, this Court need not make *any* inference to find the FEIR is informationally inadequate: the Court should do so *simply because the FEIR contradicts itself.*

And, regardless, this Court should not accept argument in briefing that is not in the EIR itself. *Sierra Club [Friant Ranch], supra*, 6 Cal.5th at 520 [“Contained in a brief, such explanation is directed at the wrong audience”]; *Santiago, supra*, 118 Cal.App.3d at 831 [agency cannot “remedy the inadequacies of the EIR by presenting evidence to the trial court”].)

Finally, there is no evidence for Respondents’ litigation claim that the “stressed areas,” which Respondents assume consist of the areas Geosyntec identifies as having “Poor to Negligible” groundwater production potential, include *only* the Watson Creek and Calera Canyon subareas to the south or west. (JA808-809, citing AR3938, 4140-4141; RROP at 57-58.) Contrary to Respondents and the trial Court (JA809, 1436, citing AR3938), Geosyntec also illustrates such areas to the north and east of the San Benancio Gulch subarea, including areas in the Corral de Tierra and El Toro Creek subareas and the San Benancio Gulch Subarea itself. (AR3938.)

3. Respondents cannot consistently claim that the DEIR’s impact analysis, premised on the interconnection of four subareas sharing a surplus, was not fundamentally inadequate and that the FEIR correctly repudiates that premise.

Elsewhere, Respondents argue that the FEIR’s claim that the Project wells are not connected to stressed areas relieves the EIR from disclosing the fact or magnitude of falling groundwater levels and aquifer deficits in the Geosyntec Study Area. (RPOP at 56-57.) Respondents’ argument cites Guidelines Section 15130(a)(1), providing that an EIR need not “discuss impacts which do not result in part from the project evaluated in the EIR.” (*Id.*)

In effect, Respondents now argue that the FEIR had *no duty whatsoever* to describe the groundwater setting in the four interconnected subareas that were the geographic scope of the DEIR’s analysis, because, as a purported factual matter that was not disclosed until the FEIR was released, the Project wells have no possible adverse effect on the four interconnected subareas. However, even if that were true – and there is no evidence in the record for the claim⁷ – Respondents’ argument proves too much.

The DEIR claims that the four subareas *are* interconnected and share a surplus, which, as Respondents admit and the trial Court found, is the basis of the DEIR’s cumulative impact analysis. (ROB at 27, *citing* AR842-843; JA1475 [FSOD].) The DEIR, which must define and justify the geographic scope of analysis, confines its cumulative analysis to those four interconnected subareas. (AR842-843; *see* Guidelines, §15130(b)(3) [agency must “define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used”]; *Citizens To Preserve the Ojai v.*

⁷ See footnote 6 above.

County of Ventura (1985) 176 Cal.App.3d 421, 430 [EIR deficient for failure to define and justify geographic scope].)

Respondents cannot argue that the geographic scope and impact analysis rationale for DEIR’s analysis was consistent with the FEIR’s scope and rationale so that recirculation was not required while *simultaneously* claiming that the FEIR correctly retracts the DEIR’s fundamental claims that the Project wells *are* interconnected to the four subareas and they share a surplus. If it *were* true that the Project will have *no* impact on the Geosyntec Study Area or the four interconnected aquifers, then the logic and geographic scope of the DEIR’s cumulative analysis was completely irrelevant and recirculation was clearly mandated for that reason alone.

E. The FEIR’s cumulative analysis is informationally inadequate because it fails to disclose the existence and severity of a significant cumulative impact in the CDT Subbasin or to determine whether the Project makes a considerable contribution in light of that severity.

The FEIR is informationally inadequate because (1) it fails to determine whether there is a significant cumulative impact in the Corral de Tierra Subbasin and to disclose its severity, and (2) it fails to assess the Project’s incremental contribution to cumulative Corral de Tierra Subbasin groundwater impacts in light of the severity of the existing problem. (POB at 104-109.)

Here, as Petitioners objected, the FEIR simply fails to *apply* its stated threshold of significance – a “net deficit in in aquifer volume or a lowering of the local groundwater table level” (AR371) – to the conditions in the CDT Subbasin. (AR13149 [Parker: FEIR does not explain how its significance threshold of a “net deficit in aquifer volume or a lowering of the local groundwater table level” “could be characterized as anything other than a significant cumulative impact” in light of

the Geosyntec Report]; AR5825, 5829, 6790, JA262-264 [LandWatch: FEIR does not explain basis of its significance findings or make required cumulative impact significance determinations].) Nor does the FEIR disclose the severity of cumulative conditions, which is an essential step in determining whether the Project makes a considerable contribution.

1. Contrary to Respondents, CEQA requires that the EIR determine the severity of cumulative conditions in order to determine whether the Project makes a considerable contribution.

CEQA requires that an EIR both identify *and then apply* its threshold of significance. (*Lotus, supra*, 223 Cal.App.4th at 655 [EIR inadequate because it “fails to identify any standard of significance, *much less to apply one* to an analysis of predictable impacts from the project,” emphasis added].) The “determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.” (Guidelines, § 15064(b)(1).)

An EIR must also disclose the *cumulative* effects or impacts. (Guidelines, § 15130(b)(4), (5).) As argued (POB at 105-109), cumulative analysis requires that an agency determine the severity of the cumulative impact from all sources and then determine whether this project’s incremental contribution is considerable in light of that severity. As the leading CEQA treatise explains:

Determining whether a cumulative impact must be analyzed in an EIR is more complicated than determining whether a project-specific impact must be analyzed. When determining whether a project-specific impact must be analyzed, the critical question is whether the impact is significant. 14 Cal Code Regs §§15126(a), 15126.2(a). When determining whether a cumulative impact must be analyzed, however, *there are two related determinations to make:*

- Is the combined impact of the project and other projects significant? 14 Cal Code Regs §15130(a)(2).
- Is the project's incremental effect cumulatively considerable? 14 Cal Code Regs §15130(a).

Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2019 Update), § 13.39, emphasis added.) The agency must determine and disclose the *severity* of the cumulative condition because “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” (*CBE v. CRA*, 103 Cal.App.4th at 120.)

Here, the EIR’s threshold for a significant impact is a “net deficit in in aquifer volume or a lowering of the local groundwater table level.” (AR371.) Because the FEIR fails to disclose either the fact or magnitude of aquifer deficits and groundwater declines in the vicinity of the Project wells, it fails to identify either the existence *or* the severity of the impact to groundwater resources caused by cumulative groundwater pumping. *The failure to assess the Project’s incremental contribution in light of the severity of existing conditions was a failure to proceed as required by CEQA.* (*LAUSD, supra*, 58 Cal.App.4th, at 1024-1026; *Kings County, supra*, 221 Cal.App.3d at 719-721; *City of Long Beach v. Los Angeles Unified School District* (2009) 176 Cal.App.4th 889, 906; *CBE v. CRA, supra*, 103 Cal.App.4th at 119-120; *see Environmental Protection Information Center v. Department of Forestry & Fire Protection* (“EPIC”) (2008) 44 Cal.4th 459, 524 [requirement that a cumulative impacts analysis disclose and take account of the impacts of past projects “signifies an obligation to consider the present project in the context of a realistic historical account of relevant prior activities that have had significant environmental impacts”]; *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 490 [omission of “meaningful information”

regarding cumulative air emissions in the project vicinity is error; agency “must make a ‘good faith and reasonable disclosure’ of the cumulative impacts”].)

Respondents argue that *Save Cuyama Valley, supra*, 213 Cal. App. 4th at 1065, 1072 and *Rialto Citizens for Responsible Growth v. City of Rialto* (2015) 208 Cal.App.4th 899, 933 stand for the proposition that an agency need not “follow any two-step process.” (RPOP at 59.) As Petitioners have explained (POB at 107-108), neither case permits an agency to determine whether a project’s incremental contribution to a significant cumulative impact is considerable without basing that determination on a separate determination of the severity of cumulative conditions.

Save Cuyama Valley permitted the agency to rely on its *previous* determination of the quantitative threshold for considerable contribution, a threshold expressly adopted for cumulative analysis, which was based on the agency’s *previous* study to determine “the tolerable impact an individual project on the amount of water available basin-wide” in light of overdraft conditions. (*Save Cuyama Valley, supra*, 213 Cal.App.4th at 1072; *see id.* at 1065 [“To evaluate whether the mine's water consumption is significant within the meaning of CEQA, the Report uses the threshold of significance *formally adopted* by the County in its Environmental Threshold and Guidelines Manual” in 1992, and “the County *confirmed the continued validity* of those thresholds with agency staff and by evaluating more recent studies”, emphasis added].) So when the agency set the threshold for considerable contribution, it did so in light of its express consideration of the cumulative condition: i.e., the relation of basin-wide water demand and supply. Similarly, in *Rialto Citizens*, the agency properly relied on the *air district’s* prior quantification of cumulative air pollution sources and its quantitative threshold for considerable contribution. (208 Cal.App.4th at 931-933.) *Rialto Citizens* expressly found this met CEQA’s requirement to determine if the projects impact “should be considered cumulatively significant *in light of the*

existing air quality problem.” (*Id.*, emphasis added.) Thus, both cases *confirm* that an agency must use a threshold for considerable contribution that is based on an analysis of the severity of the cumulative problem, which the FEIR fails to do here.

Respondents claim that “most of the cases” Petitioners cite, holding that an EIR must disclose how adverse an impact is, “did not address or deal with cumulative impacts.” (RROP at 61.) But Respondents fail to mention or address the cases cited by Petitioners that *do* specifically address cumulative impacts, mandating that the agency determine whether a project’s contribution is considerable in light of a determination of the severity of cumulative impacts. (*See e.g., LAUSD, supra*, 58 Cal.App.4th, at 1024-1026; *CBE v. CRA, supra*, 103 Cal.App.4th at 119-120.) These cases cite and affirm the holding in *Kings County*, that it is legally erroneous not to determine whether a project’s incremental contribution to a significant cumulative impact is considerable in light of the severity of the cumulative impact. (*Kings County, supra*, 221 Cal.App.3d at 719-721.) *Kings County* holds that, in determining whether the “incremental effects” of the project under review are “considerable,” the cumulative “analysis *must assess the collective or combined effect*” of all sources of the cumulative impact. (*Id.* at 721, emphasis added.) Consistent with this authority, the CEQA Guidelines provide that a “summary of the expected environmental effects to be produced by those [cumulative] projects” and a “reasonable analysis of the cumulative impacts of the relevant projects” are “*necessary to an adequate discussion of significant cumulative impacts.*” (Guidelines, § 15130(b)(4), (5), emphasis added.) Here, the EIR fails to provide this necessary disclosure.

2. Contrary to Respondents, the FEIR does not disclose the severity of cumulative conditions in the CDT Subbasin.

Respondents erroneously claim that the EIR does comply with CEQA’s mandate to determine and disclose the severity of the cumulative condition, arguing that “the overdraft conditions are acknowledged here as well as described in some detail,” offering as evidence the fact that the EIR uses the term “overdraft” four times. (RROP at 60, *citing* AR353, 363, 375, 385.) Contrary to Respondents, the EIR does *not describe* the overdraft condition in any detail.

First, the bare term “overdraft” does not disclose the magnitude, duration, or projected continuation of the annual deficits and declining groundwater levels. Nowhere does the FEIR disclose that the overdraft has resulted in increasing aquifer deficits and falling groundwater levels for 47 years since 1960 and that Geosyntec projects this condition to continue – the very conditions that the EIR define as a significant impact. (AR371.)

Second, the EIR repeatedly contradicts its otherwise unexplained use of the word “overdraft” by claiming a surplus (AR372, 373, 374, 385), and it denies the reality of aquifer deficits by referring to them as mere “paper deficits” (AR363).

The four pages cited by Respondents (RROP at 60, *citing* AR353, 363, 375, 385) do not describe the overdraft condition in the CDT Subbasin “in some detail,” or in *any* detail. (RROP at 60.) At AR353 the FEIR states that the Salinas Valley Groundwater Basin has experienced overdraft conditions that lead to seawater intrusion. This general statement of overdraft in unspecified portions of the SVGB *does not mention the Project area or the CDT Subbasin*. Indeed, the FEIR is careful to explain there *is no* seawater intrusion in the CDT Subbasin. (AR367.)

At AR375 the FEIR states that “According to the Geosyntec Study, the primary aquifer is in overdraft but current and increased groundwater pumping

could be sustained for decades in areas where large saturated thicknesses of the primary aquifer stored large volumes of groundwater.” There is no mention of falling groundwater levels or aquifer deficits and no mention of the EIR’s threshold of significance. Instead, the sentence implies that the only salient issue is the availability of a water supply for this Project rather than the impacts of *using* that supply.

At AR363, the FEIR states “Geosyntec Study determined there is an overdraft condition within the Geosyntec Study Area,” but again, it does not disclose falling groundwater levels or aquifer deficits or how that implicates the threshold of significance. Instead, the discussion on that page denies the reality of overdraft by quoting the 1996 Fugro report that characterized deficits as mere “paper deficits” in light of the purported shared surplus. (AR363, quoting AR22911 [Fugro 1996]; *see also* AR22908 [Fugro 1996].

At AR385 where the FEIR again recites the Geosyntec overdraft finding, the FEIR again denies the reality of the overdraft by stating there is actually a surplus, based on the Todd report:

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

(AR385.) The FEIR then claims that “this conclusion was similar to “ Geosyntec’s conclusion (AR385), even though Geosyntec expressly *rejects* the conclusion that there is a groundwater surplus in the four interconnected subareas and instead concludes that there is a 500 to 1,000 AFY annual *deficit*. (AR20155-20156.)

In sum, the FEIR does not disclose the severity of the actual groundwater condition in the CDT Subbasin or the Geosyntec Study Area because it does not

admit, much less quantify, the declining groundwater levels or aquifer deficits and because it contradicts its otherwise unexplained overdraft statements by claiming a surplus and by calling the deficits mere “paper deficits.”

3. Contrary to Respondents, Petitioners do not claim that *any* contribution to overdraft is considerable: Petitioners claim only that the EIR failed to determine if this Project’s contribution is considerable in light of the severity of existing conditions.

Respondents attack a straw man by mischaracterizing Petitioners’ claims in this cross-appeal. Respondents argue that in briefing below, “Petitioners claimed that *any* contribution to the existing overdraft condition should be considered considerable.” (RROP at 60 n. 16, emphasis added, *citing* JA256:13-15, 259:1-9, 262:18-22, 276:4-6.) Respondent’s argument is not accurate, Petitioners did not claim this previously and do not claim this now.

At JA256:13-15, Petitioners argued only that Geosyntec’s overdraft conclusion contradicts the DEIR’s claim that cumulative impacts are less than significant due to a purported surplus. At JA262:18-22, Petitioners argued that the cumulative analysis was informationally inadequate because the “FEIR equivocates by claiming both a surplus and an overdraft, and then failing to acknowledge that the overdraft constitutes a significant cumulative impact because it entails falling groundwater levels and aquifer depletion.” Neither of these arguments as to the informational adequacy of the EIR discuss what level of Project pumping constitutes a considerable contribution.

At JA276:4-6, in connection with Petitioners’ challenge to the lack of substantial evidence for the cumulative impact findings, which Petitioners do not pursue in this cross-appeal, Petitioners cited hydrologist Parker’s opinion that “[i]n the context of the problem in the CDT Subbasin, the Project’s *additional 12.75 afy*

should be seen as a considerable contribution.” (*Id.*, citing AR6792-6793, 6796 [Parker].)

In sum, Petitioners have not asserted the “one-molecule rule” in this litigation and neither Petitioners’ recirculation claim nor its cross-appeal make any argument as to what constitutes a considerable contribution. Petitioners do however challenge the EIR’s failure to make *any* determination whether the Project makes a considerable contribution based on a determination and disclosure of the severity of the cumulative impact. (*See, e.g., Kings County, supra*, 221 Cal.App.3d at 724 [“the EIR is inadequate” because it does not provide relevant information about the severity of cumulative conditions].)

4. Respondents’ authority does not excuse the FEIR’s cumulative analysis because Respondents’ cases hold that an EIR may not ignore or minimize cumulative impacts.

Finally, Respondents argue that CEQA does not require “exhaustive analysis of cumulative impacts” if it “adequately deals with the question of cumulative impacts.” (RPOP at 60, quoting *Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35, 51 and *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 748.) But neither *Al Larson* nor *Paulek* excuse the inadequate cumulative analysis here.

In *Al Larson*, unlike here, the EIR *admitted* that the project would make considerable contribution to significant cumulative traffic and air quality impacts, and it “did not minimize or ignore the impacts.” (*Al Larson, supra*, 18 Cal.App.4th at 749.) And unlike here, the *Al Larson* petitioners did “not identify, or even suggest, any manner in which the omission of more detailed information underlying the Board's conclusions on these subjects mislead the agency or the public, omitted or understated any problem, or was prejudicial in any way.” (*Id.*)

In *Paulek*, ruling on the adequacy of a general *response* to a general *comment*, the Court held that the brief response could *reference* the otherwise adequate cumulative analysis in the draft EIR. (*Paulek, supra*, 231 Cal.App.4th 51.) *Paulek* then held that the petitioner “fails to articulate, however, any reason why the cumulative impact analysis that *is* in the draft EIR . . . does not suffice.” (*Id.*, emphasis in original.)

Thus, both *Al Larson* and *Paulek* hold that petitioners had not demonstrated *why* the cumulative analysis was inadequate. Here, however, Petitioners have laid out precisely the contradictions and omissions by which the FEIR did “minimize or ignore the impacts,” rendering the FEIR prejudicially inadequate as an informational document. (*Al Larson, supra*, 18 Cal.App.4th at 749.)

Al Larson quotes a footnote from *Whitman v. Board of Supervisors* (1979) 88 Cal. App.3d 397, 411, fn.7 for the proposition that if the EIR “read as a whole, adequately deals with the question of cumulative impacts, it will suffice.” (*Al Larson, supra*, 18 Cal.App.4th at 748.) *Whitman*’s “read as a whole” footnote holds only that cumulative analysis can appear either in the same section as the noncumulative analysis or in a separate section. (*Id.*) But *Whitman*’s *primary* holding is that the cumulative analysis at issue *was* inadequate because, like the EIR here, it failed to disclose the effects of existing cumulative projects. (*Id.* at 410.) Furthermore, like the EIR here, the *Whitman* EIR lacked “specificity or detail” and did not provide “definition and explanation” of vague statements like “minor increase in air emissions,” just as the EIR here lacks specificity and detail as to the consequence of the overdraft. (*Id.* at 410-411.)

F. The FEIR’s cumulative analysis is informationally inadequate because it fails to determine the significance of impacts in the CDT Subbasin with and without mitigation.

The FEIR is also informationally inadequate because it fails to apply its threshold of significance to determine the significance of the Project’s impact to the CDT Subbasin with and without the purported mitigation by the Zone 2C groundwater projects. *Lotus* requires that an EIR specify whether impacts are significant without mitigation so its impacts are adequately described and so that the need for and the sufficiency of mitigation are separately evaluated. (*Lotus, supra*, 223 Cal.App.4th at 653-658.)

1. Petitioners do not challenge the use of impact fees as a general proposition; Petitioners challenge the failure to provide the required “facts and analysis” about the efficacy of mitigation when relying on impact fee mitigation.

Respondents argue that the EIR was adequate because CEQA permits an agency to determine that a project’s contribution to a significant cumulative impact through payment of impact fees, *a general legal principle that is not at issue here*. (RROP at 61, *citing* Guidelines, § 15130(a)(3) and *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (“*Save Our Peninsula*”) (2001) 87 Cal.App.4th 99, 140.)

Petitioners do not argue that payment of impact fees is *never* sufficient as mitigation, only that the agency must separately evaluate the significance of impacts with and without the mitigation projects that are funded with the impact fees. (*Lotus, supra*, 223 Cal.App.4th at 653-658.) Thus, Guidelines Section 15130(a)(3) provides that when the agency relies on impact fees, the “lead agency shall identify facts and analysis supporting its conclusion that the contribution will

be rendered less than cumulatively considerable.” (Emphasis added.) And when the Court in *Save our Peninsula* upheld the impact fees as mitigation, it noted that the EIR had *first* found impacts without the proposed improvements would be significant and had *then* provided a separate analysis of impacts with the proposed improvements. (*Save Our Peninsula, supra*, 87 Cal.App.4th at 135-137.) For example, the EIR provided analyses by which it “found that the traffic increase over the threshold was a significant impact, which could be reduced through the implementation of Carmel Valley Road improvements.” (*Id.* at 135.)

While a reviewing court may defer to an agency’s factual analysis of the efficacy of mitigation, *Lotus* holds that the EIR must actually *provide* such an analysis:

The failure of the EIR ***to separately identify and analyze the significance of the impacts*** to the root zones of old growth redwood trees ***before proposing mitigation measures*** is not merely a harmless procedural failing. Contrary to the trial court's conclusion, this shortcutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decisionmaking and informed public participation. It precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences. The deficiency cannot be considered harmless.

(*Lotus, supra*, 223 Cal.App.4th at 658, emphasis added.)

Lotus is consistent with cases holding that a reviewing court will not defer to the agency's determination that mitigation measures are sufficient if the EIR does not provide evidence they will be effective. For example, in *Gray v County of Madera* (2008) 167 Cal.App.4th 1099, 1116, 1119, the Court rejected the only potentially effective mitigation measure because it “was never studied or examined” in the EIR. (See also, *Sierra Club v. Tahoe Regional Planning Agency, supra*, 916 F.Supp.2d at 1139 [mitigation adequacy must be demonstrated in the

EIR itself]; *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168-1169 [no evidence that recommendations for reducing greenhouse gas emissions would be enforceable or effective mitigation measures]; *CBE v. Richmond, supra*, 184 CA4th at 95 [rejecting greenhouse gas mitigation measures as "of unknown efficacy".]) To meet the obligation to provide evidence of mitigation efficacy, *Lotus* holds that, at a minimum, the EIR must evaluate impacts with and without the proposed mitigation.

The California Supreme Court holds that an EIR is inadequate when it relies on a “bare conclusion” that mitigation would be effective without “facts or analysis to support the inference that the mitigation measures will have a quantifiable ‘substantial’ impact on reducing the adverse effects.” (*Sierra Club [Friant Ranch]*, *supra*, 6 Cal.5th at 522.) Failure to provide facts and analysis to support claims that water supply impacts will be mitigated render an EIR informationally inadequate: “[t]o fulfill the EIR's *informational role*, the discussion of the mitigation measures must contain facts and analysis, not bare conclusions and opinions.” (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 869 [inadequate information to support water supply mitigation claims], emphasis added, *citing Sierra Club [Friant Ranch]*, *supra*, 6 Cal.5th at 522.)

Here, after striking the DEIR’s erroneous claim that *past* Zone 2C projects have “sustained groundwater levels” in the Toro Area and for the Project wells, the FEIR offers only the bare conclusion that the Project wells “indirectly receive benefits of sustained groundwater levels within the Basin attributed to the Salinas Valley Water Project.” (AR363.) Instead of providing facts and analysis, the EIR admits that it is “too soon to draw hard conclusions” about the SVWP’s efficacy. (AR368.) Instead of disclosing that groundwater elevations *have been* declining in the CDT Subbasins since 1960 despite the Zone 2C projects and that Geosyntec

projects this *will* continue unless pumping is curtailed, the FEIR states only that some future “study will make recommendations on additional measures the County could take” if “groundwater elevations are going to decline by 2030.” (AR368.) Critically, the FEIR provides no facts and analysis to explain how raising groundwater levels to sea level *in the Valley* could mitigate falling groundwater levels *in the CDT Subbasin* hundreds of feet above the Valley.

Because the EIR fails to assess falling groundwater levels and aquifer deficits in the CDT Subbasin with and without the identified mitigation, it fails as an informational document: there are simply no facts or analysis to support the bare conclusion that this mitigation could be effective.

2. An agency must evaluate the significance of impacts with and without mitigation regardless whether it mistakenly incorporates mitigation into the project description and regardless whether the mitigation is through a pre-existing program.

Respondents argue that *Lotus* does not apply because “Harper’s payment of Zone 2C assessment was not incorporated into the project description here,” citing *Citizens for Environmental Responsibility v. State ex rel. 14th District Agricultural Association* (2015) 242 Cal.App.4th 555 to claim that a pre-existing obligation does not count as new mitigation. (RROP at 62.) Respondents cite irrelevant case law and misread *Lotus* and its progeny.

First, *Citizens for Environmental Responsibility*, testing the applicability of a CEQA exemption, is irrelevant here. The case holds only that a pre-existing manure management obligation adopted to address impacts from pre-existing fairground operations was not the kind of *new* mitigation measure that would preclude reliance on a CEQA exemption for a rodeo event. (*Id.* at 569.) The case

did not consider what is at issue here: whether, when a project is *not* exempt and an agency *does* prepare an EIR, it must comply with *Lotus* to evaluate a project’s impacts with and without the measures identified as mitigation.

Second, in arguing that payment of impact fees “was not incorporated into the project description here” (RROP at 62), Respondents imply that the obligation to evaluate a project’s impacts with and without mitigation is triggered only if the agency mistakenly incorporate the mitigation into the project description. (RROP at 62.) Not so. While the mistaken incorporation of mitigation into the project description may explain *why* the agency erred in *Lotus*, *Lotus* and its progeny do *not* turn on whether the agency mistakenly incorporates mitigation into the project description or whether the mitigation is a preexisting obligation.

In *Lotus*, the agency argued that it would comply with a set of existing standards for tree protection and the agency did mistakenly incorporate some of those standards into the project description. (*Lotus, supra*, 223 Cal.App.4th at 654-655.) But *Lotus* identifies the CEQA *error* at issue as the “structural deficiency” that occurs *whenever* EIRs “fail to discuss the significance of the environmental impacts *apart from* the proposed ‘avoidance, minimization and/or mitigation measures’ and thus fail to consider whether other possible mitigation measures would be more effective.” (*Id.* at 657, emphasis added.) *Lotus* holds that “[b]y compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA.” (*Id.* at 656.)

In *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 182-185, the Court held that the pre-existing nature of the mitigation obligation and its possible partial inclusion in the project description were *not* be relevant to the fundamental obligation to discuss impacts with and without mitigation. There, petitioners alleged the agency had failed to assess transportation impacts with and without compliance with the

Municipal Transportation Agency’s “special event transit service plan (Muni TSP), which provides for additional transit service during large evening events.” (*Id.* at 184.)

The *Mission Bay Alliance* Court acknowledged that some components of the TSP might be characterized as mitigation and others as part of the project itself. However, the Court explained that in complying with *Lotus*, “[a]ny mischaracterization is significant, however, only if it precludes or obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures.” (*Id.* at 185.) The Court then explained that it does not matter whether the measures are considered to be part of the project or a distinct condition of approval *as long as the EIR evaluates impact significance with and without the measures:*

Here, characterization of the Muni TSP as part of the project and not as a mitigation measure did not, as plaintiffs suggest, interfere with the identification of the transportation consequences of the project or the analysis of measures to mitigate those consequences. Unlike the situation in *Lotus*, the environmental impacts of the project on vehicle traffic and transit are fully disclosed in the FSEIR. *The FSEIR includes analysis both with and without implementation of the Muni TSP and applies the same threshold standards to determine the significance of those impacts. By comparing the significance of the impact on local transit with and without the TSP, a reader learns that while implementation of the TSP will reduce impacts on Muni travel to a less than significant level, the impact without the TSP remains significant and unavoidable, even with alternative mitigation measures.*

(*Id.* at 185.)

Here, the FEIR and Respondents expressly identify the Zone 2C impact fees as mitigation through a pre-existing program. (AR387; RROP at 61-62.) However, that does not make *Lotus* inapplicable. It is not enough to separately

identify mitigation; the EIR must actually assess significance *with and without* that mitigation.

3. Contrary to Respondents, the EIR does not separately assess the significance of impacts with and without mitigation.

Respondents argue that the “analysis of impacts and mitigation was not compressed into a single issue as was the case in *Lotus*.” (RROP at 62.) But Respondents do not and cannot point to any portion of the FEIR that actually “discuss[es] the significance of the environmental impacts *apart from* these proposed ‘avoidance, minimization, and/or mitigation measures.’” (*Lotus, supra*, 223 Cal.App.4th at 657, emphasis added.) The FEIR does *not* determine the significance of impacts without implementation of the Zone 2C infrastructure projects. To the contrary, the FEIR simply assumes that groundwater levels at the Project site will be sustained by these projects. (AR363.)

Indeed, as Petitioners here objected, the EIR fails to make the required determinations of significance *at all* – without or with the Zone 2C projects – because, by failing to connect the Geosyntec report of historic and projected declining groundwater levels and aquifer deficits with its stated threshold of significance that identifies precisely these conditions as significant impacts, the EIR fails to do what *Lotus* mandates: actually apply its standard of significance. (*Id.* at 655; *see* AR13149 [Parker: EIR does not explain how its significance threshold of a “net deficit in aquifer volume or a lowering of the local groundwater table level” “could be characterized as anything other than a significant cumulative impact” in light of the Geosyntec Report]; AR5825, 5829, 6790, JA262-264 [LandWatch: EIR does not explain basis of its significance findings or make required cumulative impact significance determinations].)

Furthermore, even if the EIR *had* acknowledged the existence of a significant cumulative impact, the EIR here fails to provide any analysis of the sufficiency of the Zone 2C infrastructure projects to mitigate the Project’s contribution to aquifer deficits and declining groundwater levels. (AR13144-13145, 13149-13151, 6795 [Parker: falling groundwater and deficits occurred despite decades of Zone 2C projects and EIR provides no analysis, modeling, or evidence that SVWP will mitigate impacts 250-350 feet upgradient]; AR14150-14153, 5828 [LandWatch].) The missing information was critical here because Petitioners and the public repeatedly challenged the sufficiency of Zone 2C projects to mitigate impacts in the CDT Subbasin. As Parker explained, CDT Subbasin groundwater levels have fallen for decades *despite* the Zone 2C projects. (AR13146 [“Geosyntec documents long-term trends of declining groundwater levels despite the fact that MCWRA has operated both reservoirs for decades in order to improve groundwater levels”].)

Lotus holds that these failures are prejudicial and not “a harmless procedural failing” for two reasons. “It precludes *both* identification of potential environmental consequences arising from the project and *also* thoughtful analysis of the sufficiency of measures to mitigate those consequences.” (*Lotus, supra*, 223 Cal.App.4th at 658, emphasis added.) Both forms of prejudice occurred here.

III. THE COURT SHOULD NOT DECIDE WHETHER THE GROUNDWATER FINDINGS WERE SUPPORTED BY SUBSTANTIAL EVIDENCE: THE ISSUE IS MOOT AND DECIDING IT WOULD REQUIRE THIS COURT TO ASSUME THE COUNTY’S FACT-FINDING ROLE.

Petitioners have explained that this Court need not and should not reach the issue as to whether substantial evidence supported the County’s water supply findings. (POB at 111-114.)

A. The Court need not reach the adequacy of the Board’s findings because they are moot in light of the need for new findings on remand of the water supply analysis.

Whether substantial evidence supports the previous findings is a moot issue this Court need not address because the County must make new findings as part of the remedy for (1) its failure to recirculate the FEIR’s revised Groundwater Resources and Hydrology Section and (2) its failure to provide an informationally adequate setting description and impact analysis in the FEIR’s revision. As the trial Court observed, on remand, “the new FEIR may be markedly different than the existing FEIR; the County may arrive at different conclusions and/or develop new mitigation measures that would bear on the Board’s groundwater supply findings.” (JA1516 n. 45.)

Thus, contrary to Respondents, in declining to reach this issue, the Court would not prejudice the parties by leaving them “to wonder whether or not the unaddressed theories had merit.” (RROP at 63, quoting *Friends of Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1387.) Wondering about this would be pointless because the County will need to make *new* findings on remand.

As *Friends of Santa Clara River* explains, CEQA Section 21005(c) is not mandatory, so it does *not* require this Court to reach each of the alleged grounds for noncompliance. (95 Cal.App.4th at 1387.) In particular, this Court need not resolve claims involving issues that may be addressed differently on remand. (*North Coast Rivers Alliance v Kawamura* (2016) 243 Cal.App.4th 647, 682 [“section 21005 does not require us to address additional alleged defects that may be addressed in a completely different and more comprehensive manner upon further CEQA review following remand”], citing *CBE v. Richmond, supra*, 184 Cal. App.4th at 101-102 [declining to address cumulative analysis and

recirculation claims given EIR’s informational inadequacy]; *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 290 [declining to address issues mooted by Court’s conclusion that project description is inadequate]; *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 920 [declining to “hypothesize on the remaining issues” given remand]; *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1383 n. 24 [additional noise claims mooted].)

Respondents dismiss this authority in a footnote without discussion or analysis by arguing “[n]o such extreme facts are present here.” (RROP at 63 n. 17.) But these cases do not turn on any “extreme facts.” They turn on the commonplace that a court need not issue opinions on mooted issues. Here, because the water supply analysis must be reconsidered on remand and the County must make new findings, this Court need not address the validity of the Board’s previous findings.

B. The Court should not reach the adequacy of the findings because that would require the Court to resolve factual contradictions and to speculate that the County’s failure to respond to substantive comments challenging the FEIR’s new analysis did not affect its findings.

The Court should not determine if substantial evidence supported the Board’s findings without the County’s substantive responses to the substantive comments by hydrogeologist Parker and LandWatch challenging the revised water supply analysis in the FEIR. As argued in Petitioners’ opening brief (POB at 72-78), the County did *not* respond substantively to these comments. Exhibit 1 to this brief replies to Respondents’ belated claims to the contrary, which appear in Exhibit A to Respondents’ Reply and Opposition (RROP at 67-69).

First, the EIR does not support a finding of substantial evidence because it is informationally inadequate. For example, the EIR’s failure to describe the environmental setting without contradiction, and with the salient information needed to apply its significance criteria, precludes substantial evidence. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, *supra*, 27 Cal.App.4th at 729 [“the description of the environmental setting is not only inadequate as a matter of law but it also renders the identification of environmental impacts legally inadequate and precludes a determination that substantial evidence supports the Board’s finding that the environmental impacts on wildlife and vegetation had been mitigated to insignificance”]; *Vineyard*, *supra*, 40 Cal.4th at 439 [“Factual inconsistencies and lack of clarity in the FEIR leave the reader—and the decision makers—without substantial evidence . . .”]; *Preserve Wild Santee*, *supra*, 210 Cal.App.4th at 284 [“such an unexplained discrepancy precludes the existence of substantial evidence . . .”].)

Second, the EIR’s failure to respond adequately to comments challenging the FEIR’s revised analysis precludes finding there is substantial evidence. (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1242 [lack of “reasoned analysis in response” renders EIR informationally defective and thus “substantial evidence of sufficient water supplies simply does not exist”]; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (“SCOPE”) (2003) 106 Cal.App.4th 715, 724 [same]; *Vineyard*, *supra*, 40 Cal.4th at 449 [no substantial evidence where comment response regarding effect of stream flow loss on salmonids is inadequate].)

Indeed, without the County’s substantive responses to substantive objections to the FEIR’s new analysis, this Court would have to speculate impermissibly as to the effect of the omitted information. In particular, the Court would have to determine *as a factual matter* that the County’s failure to respond substantively to

Petitioners’ substantive comments, including comments objecting to contradictions, would not have altered its findings. As argued (POB at 68-69, 104), where an agency fails to respond to a comment “courts are generally not in a position to assess the importance of the omitted information to determine whether it would have altered the agency decision . . .” (*EPIC, supra*, 44 Cal.4th at 487.) *EPIC* holds that “a determination of whether omitted information would have affected an agency's decision . . . is highly speculative, an inquiry that takes the court beyond the realm of its competence.” (*Id.* at 488.)

Only where comments are “repetitive” or “patently irrelevant” or “support[] the agency action” should a court dismiss the failure to respond, because a court is normally competent to determine that comments *are* repetitive⁸, supportive, or irrelevant and thus the failure to respond does not matter. (*Id.* at 487-488.) But where, as here, the comments to which the agency did not respond were *not* repetitive, irrelevant, or supportive, “a court ‘may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed.’” (*Id.* at 488.)

Thus, in *Ultramar, Inc. v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689, 703, where the agency did not “respond to the comments received from [the Office of Planning and Research] and other state agencies,” the

⁸ Only when the repetitive nature of the comments is not contested may the Court dismiss the failure to respond, because “the question whether public comments were duplicative, particularly when these comments involve, as they do here, highly technical material, may not be obvious to a reviewing court.” (*EPIC, supra*, 44 Cal.4th 459, 488.) As argued Section B to Exhibit 1 of this brief, Petitioners *do* contest Respondents’ absurd argument that comments on the FEIR’s novel analysis were repetitive, because Respondents’ argument is based only on the presence of two copies of one letter in the record, to *neither* of which did the County respond.

Court set aside the project because a trial court should not “evaluate the omitted information and independently determine its value.” (*See also Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1021 [“It was impossible for the trial court to know what effect these expert criticisms would have had on public comments, presentations and official reaction. Its independent judgment that the information was of ‘no legal significance’ amounts to a ‘post hoc rationalization’ of a decision already made, a practice which the courts have roundly condemned.”]; *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052 [declining to reach the issue of the adequacy of the environmental review because the agency failed to circulate it for public review].)

Accordingly, contrary to Respondents (RROP at 64), the County’s failure to respond to substantive comments *should* have constrained “the trial court’s action in issuing a ruling on all matters before it.” This Court should not step into the County’s shoes as fact-finder to determine whether there is substantial evidence for the Board’s findings despite the unaddressed comments and unresolved contradictions.

When the agency fails to conduct an adequate cumulative analysis, e.g., by failing to disclose the severity of the cumulative impact, courts properly decline to assume the agency’s fact-finding burden:

Because the record does not provide information regarding similar energy developments in the San Joaquin Valley air basin, the agency could not, *nor can we*, determine whether such information would have revealed a more severe impact. Accordingly, the EIR is inadequate. To conclude otherwise would place the burden of producing relevant environmental data on the public rather than the agency and would allow the agency to avoid an attack on the adequacy of the information contained in the report simply by excluding such information.

(*Kings County, supra*, 221 Cal.App.3d at 724 [failure to disclose severity of cumulative emissions impact], emphasis added.) Other courts concur that an agency should not be able to “avoid an attack on the adequacy of the information contained in the report simply by excluding such information.” (*Bakersfield Citizens, supra*, 124 Cal.App.4th at 1218, quoting *Kings County* [agency has burden to answer questions regarding cumulative impacts where severity of impact not disclosed].)

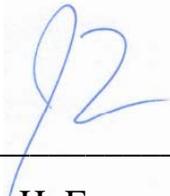
In sum, this Court need not and should not reach the issue of the adequacy of the Board’s findings, because it should not go beyond its role in evaluating the adequacy of the information that *is* in the record by speculating about the possible effects of the information that is *not*.

CONCLUSION

LandWatch and Meyer respectfully request this Court to AFFIRM the trial Court’s Judgments regarding recirculation and wildlife corridors and to REVERSE its Judgments that the water supply analysis was informationally adequate and that substantial evidence supported the County’s water supply findings and REMAND the matter to the trial Court with instructions to issue the writ sought.

Dated: September 7, 2020

Respectfully submitted,
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Dated: September 7, 2020

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Exhibit 1 - Contrary to Respondents, the County did not respond to substantive comments objecting to the FEIR’s revised analysis.

Petitioners explained in their Joint Opposition and Opening Brief that the County did not provide substantive responses to comments by hydrologist Parker and LandWatch objecting to the fundamentally new water supply analysis in the FEIR. (POB at 37-38, 72-78, 112-113.) Petitioners cite the County’s failure to respond to substantive comments on the fundamentally revised FEIR to support arguments that: (1) failure to recirculate that revised FEIR as required by Section 15088.5(a)(4) was prejudicial (POB at 72-78); (2) the FEIR was informationally inadequate without the missing information (POB at 110, 111-113), and (3) this Court should not decide whether the findings were supported by substantial evidence because the omission of substantive comment responses would require this Court to speculate impermissibly that, as a factual matter, the omitted responses would not have affected the findings (POB at 112-113).⁹

As Petitioners explained in their opening brief (POB at 75), Respondents’ opening brief cites only three pages of the record purporting to support their claim to have responded to comments on the FEIR, and therefore Respondents waived additional argument. (POB at 75 n. 9; *see also Save Sunset Strip Coalition v. City of West Hollywood* (2001) 87 Cal.App.4th 1172, 1181 n3.) Despite this, Respondents’ reply brief now provides an “Exhibit A” containing further argument. Accordingly, Petitioners respond in in this Exhibit 1 by explaining why Respondents’ belated arguments fail.

⁹ Respondents miss the point by arguing that there is no duty to respond to comments on a final EIR. (RROP at 40, *citing* Guidelines, § 15088(a); *see also* RROP at 64.) Petitioners do not allege a violation of Section 15088.

A. The purported comment responses do not satisfy CEQA’s requirements because they are outside the EIR and conclusory.

Petitioners reiterate that comment responses and argument outside of the EIR, e.g., statements at hearings or in the findings, cannot cure its informational deficiency.¹⁰

Furthermore, even if the comment responses *had* been in the EIR, conclusory responses without facts or analysis are not sufficient. (Guidelines, § 15088 [responses must provide good-faith, fact-based, reasoned analysis, not conclusory statements]; *Cleary v. County of Stanislaus* (2015) 118 Cal.App.3d 348, 356-359 [error not to address comments “in detail,” providing “specific factual information” requested by the commenter, and addressing “specific concerns”]; *SCOPE, supra*, 106 Cal.App.4th at 722 [failure to provide facts, data, or estimates from the agency that would supply the water]; *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841 [rejecting a “conclusory statement ‘unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind’”].) The California Supreme Court holds that in an adequate response to substantive comments, such as hydrologist Parker’s comments, an EIR must “lay out any competing views,” “summarize the main points of disagreement,” and “explain why it declined” to accept those views. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940-941; *see also Berkeley Keep Jets Over the Bay Committee, supra*, 91 Cal.App.4th at 1371[EIR must “acknowledge the opinions of responsible agencies and experts who cast substantial doubt on the adequacy of the EIR’s analysis;” “conclusory and evasive” responses unsupported “by scientific or objective data” are not

¹⁰ See cases cited at footnote 3, above.

sufficient].) As discussed in Exhibit 1, Section C, below, the County’s post-EIR statements were purely conclusory and failed to meet these requirements.

B. Contrary to Respondents, comments on the FEIR’s new analysis by LandWatch and hydrologist Parker cannot be dismissed as repetitive, irrelevant, or supportive of the County’s actions.

As noted, *EPIC* holds that an agency’s failure to respond to comments can be dismissed only if the comments are repetitive, patently irrelevant, or support the agency action. (*EPIC, supra*, 44 Cal.4th at 487.) Respondents argue that the County had no duty to respond to comments objecting to the FEIR’s new analysis because, Respondents claim, these comments were repetitive or supported the County’s action. (RROP at 42.) That is not true.

Respondents’ claim that Petitioners’ comments were “repetitive” is based on the Administrative Record’s inclusion of a duplicate unsigned draft of one of LandWatch’s letters. (RROP at 42, *citing* AR14147 et seq. and AR14154 et seq. [unsigned duplicate draft].) Petitioners do not object to the County’s failure to respond *twice* to this letter, but its failure to respond *at all*. An agency may disregard repetitive comments only if they are “material already considered.” (*EPIC, supra*, 44 Cal.4th at 487.)

Incredibly, Respondents argue that hydrologist Parker’s two letters somehow “*support* the action taken by the County” because they “were not comments on the EIR at all.” (RROP at 42, *citing* AR6792 et seq. and AR13142 et seq., emphasis added.) To justify this absurd claim, Respondents argue that Parker’s first letter “mostly describes the contents of the Draft EIR or Final EIR without making a comment.” (RROP at 42, *citing* AR13142 et seq.) In fact, Parker’s first letter makes the following comments *objecting* to the action that was to be taken by the County in certifying the EIR and approving the Project:

- Parker objects that the FEIR’s analysis is fundamentally different from and inconsistent with the DEIR because it describes different basins (AR13142), admits an overdraft condition (AR13143), abandons the DEIR’s claim that the Zone 2C reservoirs have sustained groundwater levels at the project wells (AR13146-13147), and relies on the purported efficacy of the SVWP as mitigation for cumulative impacts (AR13149).
- Parker objects that the FEIR is informationally inadequate because it fails to disclose falling groundwater levels and aquifer deficits as a significant impact under its stated threshold of significance (AR13149), inconsistently claims a surplus even while admitting an overdraft (AR13149), fails to disclose that Geosyntec rejects the surplus claim (AR13148), and unreasonably claims that the Todd and Geosyntec report conclusions are “similar” (AR13149).
- Parker objects that the FEIR provides no information, modeling, or analysis to support the unsupportable contention that projects intended to maintain groundwater levels in the Valley could possibly sustain groundwater levels 250 to 350 feet above the Valley at the Project site, particularly since groundwater has declined for decades despite these projects. (AR13146-13147, 13149-13150.)

Nothing in Parker’s letter supports the County’s action.

Respondents dismiss Parker’s second letter, and apparently find it supports the County’s action too, because it contains “comments on the Bierman Report.” (RROP at 42, *citing* AR6792 et seq.) To the contrary, Parker’s second letter directly challenges the EIR’s unsupported claims:

- Parker objects that the FEIR fails to acknowledge declining groundwater levels as a significant impact (AR6792); that continued overdraft would impair wells in the CDT Subbasin even if they were not adjacent to the Project site; and that pumping tests are not relevant to cumulative impact analysis (AR6793).
- Parker objects that existing groundwater projects have not sustained and will not sustain groundwater levels, and the EIR provides no support for this

claim (AR6793, 6795-96); and that additional information has come to light since Parker's initial comments demonstrating that the existing groundwater management projects do not prevent groundwater declines in the Valley or in the CDT Subbasin (AR6795-6796).

- The 2015 Bierman well tests confirm the continuing groundwater declines at the Project well sites identified by the 2007 Geosyntec Report. (AR6794-6795.)

In sum, neither of Parker's letters "support the action taken by the County." (RRPO at 42.) Both letters are directly support Petitioners' objections that (1) the setting descriptions and impact analyses in the DEIR and FEIR are fundamentally different and (2) the FEIR is not informationally adequate.

C. Contrary to Respondents' Exhibit A, the County did not respond substantively to comments objecting to the FEIR's new water supply analysis.

Petitioners' opening brief summarizes in four bullet points the comments by LandWatch and by hydrogeologist Parker objecting to the FEIR's new analysis of water supply impacts to which the County failed to respond substantively. (POB at 72-73.) Respondents' Exhibit A purports to identify evidence in the record that the County responded to each of these comments. Sections 1 through 6 of Petitioners' reply below follows the organization of Respondents' Exhibit A in which Respondents separately address objections 1, 2, 3, 4a, 4b, and 4c.

1. The County failed to respond to comments objecting that the FEIR's admission of overdraft fails to acknowledge long term CDT Subbasin groundwater declines and that these declines meet the EIR's definition of significant impact.

Neither the FEIR nor the findings report the fact or the magnitude of the aquifer deficits or the falling groundwater levels reported by Geosyntec.

(AR20163, 20156, 20061 [Geosyntec].) And while staff grudgingly admitted that Geosyntec documents falling groundwater levels, *after* the FEIR was completed, nowhere do the FEIR, staff, or findings *relate the documented deficits and groundwater declines to the FEIR's threshold of significance*.

Respondents claim that the FEIR “equated” overdraft with falling groundwater levels, citing the FEIR’s general statement that overdraft has led to falling groundwater levels in unspecified locations in the Salinas Valley Groundwater Basin that are experiencing seawater intrusion (RROP at 67, *citing* AR353), but the FEIR carefully states seawater intrusion is *not* occurring in the CDT Subbasin (AR367.) So this “equation” did not disclose the fact or magnitude of declining groundwater in the CDT Subbasin *and it did not relate falling groundwater levels to the FEIR's significance threshold*.

Respondents claim that the FEIR acknowledges long-term groundwater declines through its statement that the Project wells “indirectly receive benefits of *sustained* groundwater levels within the Basin’ due to the SVWP.” (Emphasis added.) (RROP at 67, *quoting* AR363.) This statement does not disclose documented groundwater *declines* nor does it relate them to the threshold of significance. And its claim of “sustained groundwater levels” implies the declines have *not occurred*, contrary to Geosyntec and the Project’s own well tests.

Respondents similarly claim that that the FEIR acknowledges long-term groundwater declines through its statement that “monitoring data shows that since the SVWP went into operation, groundwater levels (relative to sea level) have *increased* and the rate of seawater intrusion has decreased.” (RROP at 67, *citing* AR 368, 377, 387, emphasis added.) Again, this statement does not disclose the existence or magnitude of documented groundwater *declines* or relate them to the significance threshold; it *denies* them.

Furthermore, the claim in the FEIR, repeated in the findings, that monitoring data showed short-term increases between 2009 and 2011 is misleading, because *that monitoring data is not for the CDT Subbasin*. (See AR49-50, citing AR4286-4334 [MCWRA presentation]; see AR17731-17779 [legible copy – showing that monitoring data are for *other* subbasins].) Neither the FEIR nor the findings disclose that MCWRA’s reports do not include *CDT Subbasin* groundwater levels and so provide no support for the claim that groundwater levels in the Valley have affected or could affect groundwater levels 250 to 350 feet upgradient in the CDT Subbasin. (AR17731-17779 [2011 presentation]; AR5853-6031 [2003-2014 reports showing monitoring only of other subbasins].)

Respondents claim that that the FEIR acknowledges long term groundwater level declines through its statement that “that the Project will not result in a significant cumulative impact because the Project wells are located in an area of good groundwater production, the aquifer in the vicinity of the Project wells is connected to the Salinas Valley rather than the less productive and stressed areas within the Toro Area, and the wells are benefited by the SVWP which provides a regional mitigation strategy for the groundwater basin and its subbasins.” (RROP at 67, *quoting* AR384-387.) Again, this statement does *not* disclose the documented groundwater declines at the Project wells and throughout the CDT Subbasin nor does it apply the FEIR’s stated threshold of significance.

Respondents argue that a post-EIR staff report states “[l]ong term trends predict lower groundwater levels in the study area as a whole into the future (Geosyntec, page ES-3). However, according to the Geosyntec Study (Geosyntec, page ES-4), the wells for the proposed project are located in an area noted as having good potential for groundwater production due to a saturated thickness of over 600 feet.” (RROP at 67, *quoting* AR3767-3768.) Respondents claim that the same argument was made by the EIR consultant and the Planning Director at a

hearing. (RROP at 67-68, *citing* AR5147, 5205.) First, post-EIR staff statements cannot cure the *EIR's* informational deficiency. Second, the statement about projected *future* groundwater levels does not disclose the fact or magnitude of documented *past* declines since 1960. Third, the statement does not apply the *EIR's* significance criteria. Indeed, the statement is affirmatively misleading because it implies that future groundwater declines are somehow *not* relevant to a significance determination because *this* project can mine the aquifer, regardless of its impact to groundwater levels.

Finally, Respondents argue that MCWRA staff stated at a hearing that the declines in the Project wells over the past 12 to 14 years were consistent with the Geosyntec report. (RROP at 68, *citing* AR4964.) Respondents also cite a statement by the Planning Director at a hearing arguing that “we don’t look at the short term. We look at the longer-term trends.” (RROP at 68, *citing* AR4992.) Again, post-EIR statements cannot cure the *EIR's* informational deficiency. And again, *nothing in these statements relates groundwater declines to the EIR's significance threshold, which was the point of Petitioners' objection.*

2. The County failed to respond to comments objecting that the FEIR fails to demonstrate that groundwater projects to maintain Valley groundwater levels could maintain groundwater levels in the CDT Subbasin, 250 to 350 feet higher.

Petitioners have objected that neither the *EIR* or post-*EIR* material responds to comments objecting that the *EIR* fails to demonstrate that groundwater projects to maintain *Valley* groundwater levels could maintain groundwater levels in the *CDT Subbasin*, which are 250 to 350 feet higher. (AR14149-14150, 13125-13126, 6787-6788, 5828-5829 [LandWatch]; AR13144-13147, 13149-13151, 6795 [Parker].)

Respondents claim that the Board’s findings responded to this objection because the findings make the following conclusory assertions:

- “[T]here is substantial evidence that the suite of MCWRA projects that address the [SVGB] provide benefit to the area where the project wells are located. According to the [MCWRA] hydrologic modeling performed for the [SVWP] indicated that, under 1995 Baseline conditions, groundwater levels in the basin would increase and seawater intrusion would be halted. Higher groundwater levels in the [SVGB] will result in a reduction in the hydraulic gradient between the [SVGB] and the Corral de Tierra subbasin retarding outflow from Corral de Tierra to the [SVGB].” (RROP at 68, *quoting* AR9.)
- “[T]he wells and project site are located within [MCWRA’s] benefit assessment Zone 2C, and receive benefits of sustained groundwater levels attributed to the operation of both the Nacimiento and San Antonio Reservoirs and the [SVWP].” (RROP at 68, *quoting* AR8.)
- “The SVWP provides a regional mitigation strategy for the groundwater basin and its subbasins, and the Zone 2C boundary and associated areas of benefit have been modeled based upon the predicted long term effect of the SVWP.” (RROP at 68, *quoting* AR49.)
- “The project and project’s wells are located on parcels in Zone 2C. The Zone 2C area is the benefit assessment zone for the [SVWP]. . . . The County considers participation in the Zone 2C assessment as contributing to a long term, regional solution to help mitigate groundwater issues well beyond the project boundaries.” (RROP at 68, *quoting* AR50.)

First, these post-EIR findings cannot remedy the informational inadequacy of the EIR itself.

Second, these findings address the purported benefits of groundwater projects to *Valley* groundwater levels and seawater intrusion, and then offer conclusory speculation that this might somehow address the falling groundwater levels in the *CDT Subbasin*. There is nothing in the SVWP EIR that states that its modeling of seawater intrusion effects and the Basin groundwater balance includes any portion of the CDT Subbasin. (*See, e.g.*, AR 8954-8960; 8655-8688 [SVWP

EIR modeling results].) The SVWP EIR states that its modelling includes *only* the four primary subbasins of the SVGB: the Pressure, East Side, Forebay, and Upper Valley areas. (AR8904-8905.) Thus, Parker objected that the EIR relies on an unattributed and bare conclusion from MCWRA that the groundwater projects somehow benefit groundwater levels in the Project area (AR13147, 13149 *citing* AR363). Parker objected that prior Zone 2C projects have failed to sustain groundwater levels in the CDT Subbasin for decades (AR6795, 13146-13147, 13150) and that the EIR provides no modeling, analysis, or data to demonstrate how Valley groundwater projects *could* sustain the steeply upgradient CDT groundwater levels (AR6795, 13149-13151, 13153). Parker explained that, due to the 250-350 foot hydraulic gradient from the Valley floor to the Project well site, such projects could *not* in fact do so (AR6795, 13147, 13150-13151, 13153). The findings response does not address Parker’s objections, but simply reasserts the EIR’s bare conclusion.

Third, these findings continue to make the conclusory and demonstrably incorrect claim that operation of the San Antonio and Nacimiento reservoirs *has* “sustained groundwater levels” at the Project site. (AR8.) That claim is inconsistent with the FEIR, which *withdraws* the DEIR’s claim that the previous reservoir projects have “sustained groundwater levels.” (AR13146 [Parker]; *compare* AR363 [FEIR] to AR830 [DEIR].) As Parker objected, Geosyntec documents accelerating groundwater declines since 1960 *despite* reservoir operations, including declines at the Project well site in the San Benancio Gulch subarea. (AR13143, 13146 [Parker]; *see* AR20062, 20156, 20131 [Geosyntec].) The Project well tests confirm that the Project wells’ groundwater levels declined from 2000 to 2015 despite the commencement of Salinas Valley Water project operations in 2010. (AR6794 [Parker], *citing* AR3555 [Bierman], 1453 [Todd].) Nowhere did the County respond to these specific objections.

Respondents also claim that the Planning Director, MCWRA, and the EIR consultant made similar claims at hearings, citing their assertions that:

- The SVWP “helps reduce the impacts of seawater intrusion along the coast and helps replenish the aquifer on a continuous basis. It’s clear that the project area does benefit from water provided . . .to replenish the Zone 2-C aquifers. . . . Helping to fund the water projects in . . . Zone 2-C has substantially lessened potential cumulative effects on water supply in the Salinas valley.” (RROP at 68-69, *quoting* AR4912-4913.)
- The Zone 2C boundary was determined using models and hydro-geologic information “to determine parcels that receive benefit from the operation of the San Antonio and Nacimiento reservoirs as well as, at the time of the proposed project, the [SVWP].” (RROP at 69, *quoting* AR 5301-5302.)
- Given the Project’s location within Zone 2C, it receives benefits from the SVWP “due to the hydrologic connectivity between the sub-basins and the larger groundwater basin.” (RROP at 69, *quoting* AR5147.)

Again, these post-EIR claims do not cure the EIR’s informational deficiency. Again, these claims continue to argue against all evidence that the San Antonio and Nacimiento reservoirs have benefitted the Project site in the past. Critically, these staff statements are conclusions, not explanations. They fail to respond substantively to Parker’s specific objections that (1) all empirical evidence in this record is that the Zone 2C projects have *not* prevented accelerating groundwater declines in the CDT Subbasin and (2) the FEIR provides no data, analysis, or modeling to support a projection that Zone 2C projects might prevent future CDT Subbasin groundwater declines.

3. The County failed to respond to comments objecting that existing groundwater management projects cannot even maintain Valley groundwater levels because they were designed to mitigate out-of-date demand projections.

Petitioners objected that existing groundwater projects cannot even maintain Valley groundwater levels because their predicted efficacy is based on out-of-date demand projections, projections which LandWatch provided and rebutted *based on MCWRA's actual pumping records from 1995 to 2013*. (AR13127-13131, 13329-13331.) As LandWatch objected, the 2010 SVWP was expected to halt seawater intrusion based on 1995 demand, but not necessarily under 2030 conditions. (AR8836 [SVWP DEIR], 7849 [SVWP FEIR], 13226-13228 [MCWRA's Johnson], 13126-13127 [LandWatch].) The SVWP's analysis assumed there would be substantial *declines* in SVGB water demand (AR8789), and its EIR cautioned that increased demand would "exacerbate seawater intrusion." (AR9274). However, post-1995 pumping *increased* substantially, and MCWRA now *agrees* that SVWP modeling understated demand. (AR13227 [MCWRA's Johnson]; *see* AR13126-13131 [pumping data].)

Respondents claim that these objections were addressed by "a 11/26/14 letter to the County" from "expert hydrogeologist William Halligan," who "noted that both urban and agricultural water demands in the adjacent Pressure Subbasin were less than assumed for the Phase I SVWP." (RROP at 69, *quoting* AR7030-7031.)

The Halligan letter – part of a 2,700+ page document dump from Real Party's counsel to the County planning staff *after* the FEIR (AR6809-9571.4 – was not provided to the public, much less included in the EIR. If information "buried in an appendix" to the EIR does not constitute adequate comment responses (*Vineyard, supra*, 40 Cal.4th at 442, *quoting California Oak Foundation, supra*,

133 Cal.App.4th at 1239; *Banning Ranch Conservancy*, *supra*, 2 Cal.5th at 941), then information buried in the applicant’s non-public document dump is even less adequate. Furthermore, the Halligan letter relates to the County’s consideration of a *different* project, drawing water from the adjacent Pressure subarea *not* the CDT Subbasin, where this Project would pump. Halligan compares Pressure subarea demand for a single year, 2013, to the 1995 demand assumed in the SVWP EIR; but it does not address Petitioners’ objection that the SVWP EIR’s assumed decline in Basin-wide pumping from 1995 to 2030 has not occurred. In short, the County never responded to LandWatch’s detailed and substantive objection that the efficacy of the SVWP was oversold because actual pumping impacts have been greater than was assumed in its modeling, *a fact that MCWRA’s staff has previously admitted*. (AR13227 [Johnson, agreeing that “the amount of pumping that was assumed in those models was, actually, much lower than the amount of pumping that’s being reported”].)

4. (4a) The County failed to respond to comments objecting that the most recent information shows that additional groundwater projects are needed, as County staff and the Board have admitted.

LandWatch objected that existing groundwater management projects are not sufficient to maintain groundwater levels in the *Valley*, much less in the upgradient CDT Subbasin, documenting this fact through County staff admissions, County findings for another project, and modeling analyses relied on by the County. (AR13131-13132, 6788.)

LandWatch and Parker objected that MCWRA acknowledged in October 2014 that additional projects supplying another 60,000 AFY of groundwater recharge are needed to raise and maintain groundwater levels to control seawater intrusion. (AR13223-13224, 13229-13230 [Johnson]; *see* 13130 [LandWatch],

13151-13152 [Parker, citing Geoscience modeling].) MCWRA’s conclusion was based on 2013 modeling that confirms that this would require additional water projects sufficient to supply another 48,000 AFY of groundwater recharge, *over and above the 12,000 AFY supplied by the 2010 SVWP*. (AR22546 [Geoscience 2013 - modeling], 13224 [MCWRA’s Johnson testimony].) LandWatch objected that the County has not yet perfected water rights for, or environmentally reviewed, funded, or approved, the necessary additional projects. (AR13131-13132 [LandWatch], *citing* AR22530 [SVWP Phase II description], 22546 [Geoscience 2013: modeling demonstrates the need for 135,000 AFY surface water right], 22572-22587 [SVWP Phase II Notice of Preparation], 7850 [SVWP EIR – Phase II project is not environmentally evaluated], 8001 [same], 22875-22878 [SVWP Phase I project description].) LandWatch also objected that in a December 2014 findings for another project, the Board of Supervisors *admitted* that current projects are not sufficient to halt seawater intrusion and that “more are necessary.” (AR5826, *citing* JA796.)

Under these circumstances, LandWatch objected that the County could not rely on impact fees for the current Zone 2C projects as adequate mitigation because impact fee mitigation requires that the needed infrastructure projects have been environmentally reviewed and approved. (AR5827-5829, 6790-6791; *see Anderson First Coalition v. City of Anderson* (“Anderson”) (2005) 130 Cal.App.4th 1173, 1188-1189 [impact fees inadequate because needed Phase 2 interchange not approved and share of its cost not included in impact fee]; *Gray, supra*, 167 Cal.App.4th at 1121-1122 [“definite commitment” to improvements required in order to rely on impact fees]; *California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026, 1055-1056 [impact fee’s mitigation project must itself be reviewed under CEQA to demonstrate efficacy]; *California Clean Energy Committee, supra*, 225 Cal.App.4th at 199 [same]; *Center for Sierra*

Nevada Conservation v. County of El Dorado (2012) 202 Cal.App.4th 1156, 1180 [same].)

In short, Petitioners documented the County's previous admissions that additional water projects are needed and the County's lack of commitment to, and environmental review of, those needed projects. Respondents now say the County "did *not* admit that additional projects were needed." (RPOP at 69, emphasis added.) That claim is completely inconsistent with the evidence of the County's prior admissions that Petitioners put before the County in their comments. (JA796, AR13224.) If the County had in fact changed its mind, the public was entitled to know. But the County failed to respond to LandWatch's comments identifying staff testimony, modeling, and previous Board findings in which the County clearly admitted that additional projects are needed.

Respondents can only cite findings that *evade* this issue, e.g., findings that state that the SVWP was *designed* to halt seawater intrusion (RROP at 69, *citing* AR9), even though the evidence supplied by LandWatch demonstrates that the County *no longer* expected that design to be sufficient. Respondents argue that the FEIR states that the County might take additional measures if a later study finds them to be necessary (RROP at 69, *citing* AR368). But the evidence supplied by LandWatch, and ignored by the County, is that the County had *already* found that additional projects are necessary, but had not environmentally reviewed or approved them, so impact fees to pay for existing projects would not be sufficient mitigation.

Again, other than the information supplied by LandWatch and Parker, the record is devoid of facts and analysis, of any acknowledgment of a competing viewpoint on this issue, and any explanation why Respondents now claim "the County did *not* admit that additional projects are needed" (RROP at 69, emphasis added), even though the County has previously admitted this (JA796, AR13224).

CEQA requires more in comment responses. (*Cleary, supra*, 118 Cal.App.3d at 356-359; *SCOPE, supra*, 106 Cal.App.4th at 722-723; *People v. County of Kern, supra*, 39 Cal.App.3d at 841; *Banning Ranch Conservancy, supra*, 2 Cal.5th at 940-941.)

5. (4b) The County failed to respond to comments objecting that the 2009-2011 increase in Valley groundwater levels is not indicative of a long-term trend.

LandWatch and Parker objected that the short-term increase from 2009-2011 in *Valley* groundwater levels cited by the FEIR was not indicative of a long-term trend and did not support the claims that groundwater management projects would either sustain CDT Subbasin groundwater levels *or* prevent seawater intrusion in the Valley. (AR14150-14150, 5826 [LandWatch]; AR13145, 6795-6796 [Parker].) The County did not respond to these comments.

Respondents now point to the findings to claim that the County “cited *the most recent data available* from MCWRA which showed groundwater levels increasing and the rate of seawater intrusion decreasing since the SVWP began operations in 2010.” (RROP at 69, *citing* AR 9, 49-50.) That is not true. Unaddressed comments by LandWatch demonstrate that the County did *not* cite “the most recent data available from MCWRA.” LandWatch objected that the County had cherry-picked the 2009-2011 data and that the *more* recent data, MCWRA’s 2014 groundwater level report, demonstrates that that groundwater levels in the Pressure 180-Foot and 400-Foot Aquifers fell substantially from the transient 2011 levels. (AR5826 [LandWatch], *comparing* AR5978 [2011 vs. 1985 groundwater levels showing Pressure 180-Foot increased 1 foot compared to 1985 reference year] to AR6031 [2014 vs. 1985 groundwater levels showing Pressure 180-Foot had declined 22 feet compared to 1985 reference year].) LandWatch’s

unaddressed objection pointed out that MCWRA’s senior hydrogeologist observed in 2015 that groundwater levels were at “historic lows” and that seawater intrusion data would show it has “restarted its march down the valley.” (AR5826, *citing* AR5850 [Monterey Herald, *quoting* Franklin].)

Nor did the County respond to LandWatch’s objection that the FEIR’s report of an increase in some Valley groundwater levels between 2009 and 2011 was misleading because (1) the short-term increase does not support the inference that existing groundwater projects will restore and sustain *Valley* groundwater levels and (2) it does not demonstrate *any* effect on *CDT Subbasin* groundwater levels. LandWatch provided evidence that the 2009-2011 increase was transient and that MCWRA staff admit it is *not* indicative of any long-term trend. (AR14150 [LandWatch], *citing* AR13390 [MCWRA’s hydrologist: increases since 2009 are “short-term increases” that “no way indicate a long-term trend in groundwater levels], AR17744 [MCWRA 2012 presentation].) Parker objected that the short-term increase was due to higher than average precipitation in 2010, which he quantified and supported with authority. (AR13145 [Parker, providing historic rainfall data], *citing* AR20115 [Geosyntec, stating that short-term groundwater level fluctuations are due to rainfall variation].) LandWatch objected that even though MCWRA reported short-term increases in groundwater levels for the Pressure 180-Foot and 400-Foot Aquifers in 2009-2011, MCWRA acknowledged that the “mechanism for seawater intrusion persists.” (AR14150-14151, *citing* AR17760 [MCWRA 2012 presentation].) That mechanism is the fact that groundwater levels in the coastal subbasins remain well below sea-level *for miles inland*. (AR17750, 17752 [2011 groundwater levels below sea-level].) Nowhere did the EIR, staff presentations, or the findings address these objections.¹¹

¹¹ As explained in Section C.1 of this Exhibit 1, above, the claim in the FEIR,

6. (4c) The County failed to respond to comments objecting that Geosyntec directly contradicts the Final EIR’s continued reliance on a purported “surplus.”

Parker objected to the FEIR’s continued and contradictory claim that there is a surplus of recharge over pumping in the four interconnected subareas even though the FEIR admits the area is in overdraft. (AR13148-13149.) Parker noted that Geosyntec specifically rejects the surplus claim in the Fugro Report cited by the Todd Report in the DEIR. (AR13144, *citing* AR20155-20156.) Parker also objected to the FEIR’s misleading claim that the Geosyntec Report’s conclusions are “similar” to the Todd Report’s conclusion that the four interconnected areas will maintain an overall water surplus where recharge exceeds extraction. (AR13149 [Parker], *citing* AR385 [FEIR].)

Nothing in the record addresses these objections. Because it is clear that the County *never* addressed this fundamental objection, Respondents can now argue only that the unexplained contradiction does not matter:

The Final EIR does not rely on surplus to justify its significance conclusions. (*See* Response 1; *see also* AR 375 [striking Table 3.6-2 entitled El Toro Groundwater Basin Water Balance Upon 1995 Estimated Build-Out] and AR 386 [striking Table 3.6-4 entitled Water Surplus Upon Buildout Minus Loss of Return Flow].)

As explained in Section II.B above, the FEIR does in fact repeat and rely on the DEIR’s surplus claims in both its noncumulative and cumulative analyses, citing precisely the same surplus quantities. (AR372-374, 385 [FEIR]; *see* AR836, 842-843 [DEIR].) The FEIR reinforces its surplus claim by mischaracterizing it as “similar” to Geosyntec’s conclusions (AR385) and by referencing deficits as mere

repeated in the findings, that monitoring data showed increases between 2009-2011 is also misleading because *that monitoring data is not for the CDT Subbasin.*

“paper deficits” remedied by the shared surplus in the interconnected subareas (AR363).

Even if the FEIR were not relying on the surplus claim in its significance conclusions, the FEIR’s repeated references to precisely quantified surpluses, its failure to disclose the fact or magnitude of the long-term and projected *deficits*, its characterization of the very real overdraft conditions as mere “paper deficits,” and its failure to correct or repudiate the Todd Report incorporated into the EIR, constitute precisely the kind of misleading environmental setting description that demands explanation through responses to comments seeking clarification. Instead, the FEIR and the post-FEIR record simply perpetuate the “obvious inconsistencies” between the DEIR’s surplus claims and the Geosyntec Report that were known to County staff five months before the County released the *draft* EIR. (AR18618 [EIR preparer’s email].)

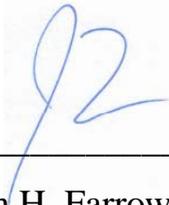
CERTIFICATION OF LENGTH

I, John Farrow, declare:

In accordance with Rule 8.204(c)(1) of the California Rules of Court, I hereby certify that the length of this brief excluding tables, as calculated by the word processing software with which it was produced, is 25,524 words.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Dated: September 7, 2020



John H. Farrow

PROOF OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is 580 California Street, Suite 1200, San Francisco, California, 94104. On September 8, 2020 I served the attached document(s):

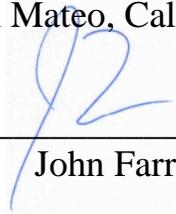
JOINT REPLY BRIEF OF RESPONDENTS AND CROSS-APPELLANTS LANDWATCH MONTEREY COUNTY AND MEYER COMMUNITY GROUP

on the following parties in the manner indicated:

SEE ATTACHED SERVICE LIST

- BY ELECTRONIC TRANSMISSION OR EMAIL by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below, via the Court's electronic filing service provider. I did not receive any electronic message or other indication that the transmission was unsuccessful.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Proof of Service was executed on September 8, 2020 at San Mateo, California.



John Farrow

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