

Case No. H045253

**COURT OF APPEAL FOR THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT**

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HIGHWAY 68 COALITION, et al.,  
*Plaintiffs and Appellants,*

v.

COUNTY OF MONTEREY, et al.,  
*Defendants and Respondents,*

DOMAIN CORPORATION, et al.,  
*Real Parties in Interest and Respondents.*

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Appeal from the Superior Court of California, County of Monterey  
Case No. M130670  
Hon. Thomas Wills, Judge of the Superior Court

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**BRIEF OF RESPONDENTS AND REAL PARTIES IN  
INTEREST IN OPPOSITION TO OPENING BRIEF FILED  
BY LANDWATCH MONTEREY COUNTY**

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**TO BE FILED IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT**

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

Court of Appeal Case No.: H045253

Superior Court Case No.: M130670

Case Name: County of Monterey v. Domain Corporation, et al.

This form is being submitted on behalf of the following party: County of Monterey, et al.

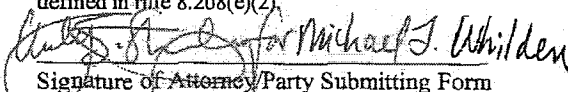
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- Interested entities or persons are listed below:

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Domain Corporation	Owner of property at issue
Mark Kelton	Owner of property at issue; co-owner of Domain Corporation
David Kelton	Owner of property at issue; co-owner of Domain Corporation
Richard Kelton	Owner of property at issue

*Please attach additional sheets with Entity or Person Information if necessary.*

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

 for Michael J. Whilden

October 9, 2018  
Date

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et al.

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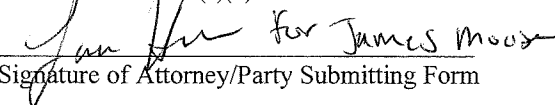
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## INTRODUCTION

As the trial court correctly held in its thorough and well-grounded decision denying the petition for writ of mandate filed by Petitioner and Appellant LandWatch Monterey County (LandWatch), the environmental impact report (EIR) certified by Respondent County of Monterey (County) for the Ferrini Ranch Subdivision (Project) adequately analyzes cumulative groundwater impacts; and substantial evidence supports the EIR's conclusion that the Project's incremental contribution to the cumulative groundwater impact is not cumulatively considerable. (Clerk's Transcript Vol. 5, pp. 1191–1230 ("CT 5:1191–1230").) Because the Project's contribution to the groundwater impact will not be cumulatively considerable, the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) required only that the EIR "briefly describe" the basis for that conclusion. (Cal. Code Regs., tit. 14, div. 6, ch. 3 (Guidelines), § 15130, subd. (a).)

As concluded by the trial court, ample substantial evidence supports the County's conclusion in the EIR that the Project's incremental contribution to groundwater impacts is not cumulatively considerable. (CT 5:1191–1230.) The record shows that seawater intrusion—an intrusion caused primarily by 70+ years of over-pumping for agricultural irrigation—is substantially slowing as a result of the ongoing "project suite" of public

works projects implemented by the Monterey County Water Resources Agency (MCWRA). The Project is part of this groundwater solution because the Project is located in Zone 2C, an assessment zone that helps fund MCWRA's project suite. MCWRA, the agency responsible for protecting the County's groundwater supplies, agrees that the Project will not cause significant groundwater impacts due, in large part, to its location in Zone 2C. (CT 5:1223–1228.)

The Project's water demand (95 acre feet per year [afy] as originally proposed, and 91.13 afy as approved) was also accounted for in its water supplier's Urban Water Management Plan (UWMP), which is a long-term, cumulative water planning document. (Wat. Code, §§ 10620–10631.) These facts, and others discussed in the EIR and supported in the record as a whole, support the County's conclusion that the Project's incremental contribution to groundwater impacts is not cumulatively considerable.

Under the deferential substantial evidence standard of review, the court must therefore uphold the EIR's conclusion, even if an opposite conclusion would be equally or even more reasonable. (*Laurel Heights Improvement Assn. v. Regents of U. Cal.* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I.*))

The essence of LandWatch's argument is that because one of the project's in MCWRA's suite – the Salinas Valley Water Project (SVWP) –

has not yet stopped, and may not completely stop, seawater intrusion into the approximately 150-mile-by-30-mile Salinas Valley Groundwater Basin (Basin) from which the Project will be supplied water, the County may not conclude that the Project's incremental contribution to cumulative groundwater impacts is less than cumulatively considerable.

As correctly held by the trial court, however, the Ferrini Ranch EIR is not responsible for solving the overdraft problems and its conclusions remain valid regardless of whether MCWRA is likely to stop seawater intrusion in the foreseeable future. (CT 5:1211–1212, citing *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1094 (*Watsonville Pilots*)). This is because substantial evidence shows that the Project's location in Zone 2C adequately mitigates the Project's incremental contribution to the cumulative impact by funding MCWRA's project suite, which is substantially slowing, if not completely stopping seawater intrusion. Further, to the extent that future projects may be needed to fully stop seawater intrusion, there is every reason to believe that MCWRA will diligently pursue such projects, and no reason to believe it will not. In fact, under state law, the Basin must have a plan that will result in sustainable yield by 2040. (Wat. Code, §§ 10721, subs. (k), (r), (v), 10727, 10727.2, subd. (c).) In light of this substantial evidence, the trial court correctly upheld the EIR's cumulative groundwater analysis.

Cherry-picking certain sentences in the Draft EIR (DEIR), LandWatch claims that the DEIR misleadingly states that the SVWP will stop seawater intrusion. The trial court correctly rejected LandWatch's selective reading of the DEIR. (CT 5:1208–1209.) Although the DEIR accurately reflects the project *objective* of the SVWP to slow and ultimately stop seawater intrusion, numerous statements and visual representations in the DEIR make it clear that the SVWP has not stopped seawater intrusion and that monitoring is required to determine its ultimate effectiveness. These issues, as well as the potential need for future projects, were also clarified in the Final EIR (FEIR) and discussed extensively at the public hearings on the Project before both the Planning Commission and the Respondent Board of Supervisors, ensuring that the public and the decisionmakers were fully informed.

Moreover, as cogently explained by the trial court, the ability of the SVWP or other projects to fully halt seawater intrusion is only incidental to the issue with which the EIR must grapple—that is, whether *the Project's* incremental contribution to cumulative groundwater impacts is cumulatively considerable. (CT 5:1210–1213.) The trial court correctly rejected LandWatch's claims that the EIR must include far more information regarding the SVWP's effectiveness, the total water supply and demands in the Basin, and the assumptions on which the SVWP separate

EIR were based. (CT 5:1213–1215.) That further study “might be helpful does not make it necessary.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 415.) The EIR for a less-than-212-unit residential project ““was not required to resolve the overdraft problem, a feat that was far beyond its scope.”” (CT 5:1211–1212, quoting *Watsonville Pilots, supra*, 183 Cal.App.4th at p. 1094.)

The trial court also correctly rejected LandWatch’s claims that the County was required to recirculate the EIR and that the County’s responses to comments were inadequate. (CT 5:1219–1223, 1228–1229.) No “significant new information” was added to the record requiring recirculation. And the County provided reasoned and good faith responses to LandWatch’s numerous comments regarding the region’s groundwater management efforts.

This court should affirm.

## **STATEMENT OF FACTS**

### **I. Project Background**

In 2005, Real Party in Interest Domain Corporation (Real Parties) submitted an application for the Ferrini Ranch Subdivision (Ferrini Ranch), proposing to subdivide the 870 acre property and develop the site with 212 units. (AR 189.) The County ultimately approved “Alternative 5” evaluated in the Project’s EIR, with minor changes to reduce the Project’s visual



impacts. (AR 3, 4805–4988.) As approved, the Project’s vesting tentative map calls for the creation of 185 lots and three open space parcels totaling 700 acres (or ~80% of the Project site). (AR 3–4.)

## **II. Groundwater Management in Monterey County**

As approved, the Project will require 91.13 afy of water. (AR 20391.) The Salinas District of the California Water Service Company (Cal Water) will supply water to meet this demand through wells in the Spreckels area of the 180/400-Foot Aquifer Subbasin (also referred to as the “Pressure Subarea”), which is one of the eight subbasins comprising the Basin. (AR 452.)

To address seawater intrusion in the Basin, MCRWA formulated a three-part strategy, which includes: (i) developing surface water sources to replace groundwater, (ii) stopping pumping along the coast, and (iii) moving surface water to the northern portions of the Salinas Valley to reduce groundwater pumping there. (AR 4844, 15239, 16435, 5158–5159.) MCWRA is implementing this strategy through a “project suite.” (AR 7115, 16439.)

First, to develop surface water sources, MCWRA constructed the Nacimiento and San Antonia Reservoirs, which store water from Salinas River tributaries of the same names. (AR 25271.) It is estimated that the

reservoirs have increased groundwater storage in the Basin by 30,000 afy, and reduced seawater intrusion by 7,000 afy. (AR 16370.)

Second, to help stop pumping along the coast, MCRWA implemented the Monterey County Water Recycling Project, which includes the Salinas Valley Reclamation Project and the Castroville Seawater Intrusion Project (CSIP), allowing the use of recycled water for irrigation. (AR 15239, 16437, 468.) Since CSIP was implemented in 1998, the annual average rate of seawater intrusion has been reduced from 15,600 afy to approximately 9,000 afy. (AR 26057.)

Third, to move surface water to the northern portions of the Salinas Valley, MCWRA implemented the SVWP, which includes the construction of a variety of improvement projects at the San Antonio and Nacimiento Reservoirs. (AR 25266–25271, 26020.) In June 2002, MCWRA certified a final EIR for the SVWP. (AR 16351.) Using the Salinas Valley Integrated Ground and Surface Water Model (SVIGSM), the SVWP EIR evaluated the effectiveness of the SVWP, in combination with the CSIP, to halt seawater intrusion. The modeling assumed the Ferrini Ranch Project's water demands as part of its growth assumptions. (AR 4115–4116.) Based on 1995 water demands, the modeling showed that the SVWP, in conjunction with CSIP, would halt seawater intrusion. (AR 25281.) For the year 2030, the modeling indicated that seawater intrusion may be at 2,200

afy (representing an approximately 80 percent reduction in seawater intrusion). (AR 25281, 5185.) The SWVP EIR explained, however, that given the uncertainties inherent in long-term water modeling, it was not possible to tell precisely how effective the SVWP would be. (AR 25280–25281, 23268–23269.) The SVWP therefore includes monitoring requirements and contemplates a future phase if monitoring shows seawater intrusion is not halted. (AR 25272, 25283–25284.)

Funding for MCWRA’s project suite is provided by payment of assessment fees by the proponents of projects located within special assessment zones, including Zone 2C. (AR 4113, 467, 16341.) Because the Ferrini Ranch property is located within Zone 2C, the property owners have been contributing financially to the project suite for years, while using almost no groundwater. (AR 490, 4113; see also AR 484 [existing demand at Project site is 0.5 afy].) The assessment imposed on the Ferrini Ranch property will increase if the land is developed with residential uses. (See AR 16382)

The SVWP went into operation in 2010. (AR 489.) As indicated, while the modeling performed for the SVWP EIR showed the SVWP will be effective at substantially slowing seawater intrusion in the near- and long-terms, it is still too early to determine just how effective the SVWP will be. (AR 15244, 9304 [at least 10 years of monitoring is necessary for

meaningful evaluation of the SVWP's effectiveness].) Nevertheless, available data shows that MCWRA's project suite has significantly slowed seawater intrusion. (Supplemental AR 29426 (SAR 294226), 4117–4118, 5156–5157, 5189, 16400, 16414–16415, 16399, 20381–20382, 9338; see also CT 5:1226–1228.)

As shown in the Ferrini Ranch FEIR, starting around the year 2000, intrusion rates into the 180/400-Foot Aquifer began to decrease substantially with the implementation of the Castroville Seawater Intrusion Project. (AR 4117–4118, 5157, 5569–5570.) Since the SVWP went online in 2010, seawater intrusion into the 180 and 400-Foot Aquifers has continued to slow. (AR 5157, 20401, 4117–4118, 5166:23–25 to 5167:1–3, 5189:6–9; see also AR 15243.) “Seawater intrusion has not advanced since 2007 in the area upgradient (toward the coastline) from the general location and aquifer unit where the Cal Water wells are located.” (AR 20401.)

MCWRA will continue to monitor the intrusion and plan for future projects, as necessary, to stop its advancement entirely. (AR 3, 37, 20381–20382.) MCWRA is already taking some such steps, including the Arundo Removal Project, which will remove non-native vegetation that uses water and is expected to provide 40,000 to 60,000 afy for use in the City of Salinas, thereby potentially eliminating the need for future infrastructure projects, such as the SVWP “Phase II.” (AR 37, 5164–5165, 15499.)

In addition, state law requires that the Basin achieve groundwater sustainability by 2040. (Wat. Code, § 10727.2, subs. (b)(1); see AR 5167–5169.) More specifically, prior to the County’s approval of the Project, the Legislature enacted the Sustainable Groundwater Manage Act (SGMA) (Wat. Code, § 10720 et seq.), which requires local interests to come together to form groundwater sustainability agencies required to adopt groundwater sustainability plans by early 2020. By law, such plans must result in sustainable yield by 2040 (or 2042). (*Id.* at §§ 10721, subs. (j), (k), (r), (v), 10723, 10727, 10727.2, subs. (b)(1), (c).) “‘Sustainable yield’ means the maximum quantity of water ... that can be withdrawn annually from a groundwater supply without causing an undesirable result” such as “[s]ignificant and unreasonable seawater intrusion.” (*Id.* § 10721, subs. (w), (x)(3).)

### **III. The Ferrini Ranch EIR’s Cumulative Water Supply Impact Analysis**

The EIR’s groundwater impact chapter, when read as a whole, clearly follows the “two-part test” for cumulative impacts recommended in the legal treatises cited by LandWatch. (Compare Opening Brief (OB), p. 28.) The DEIR includes a 42-page chapter describing existing environmental conditions, analyzing the Project’s potential to cause direct, indirect, and cumulative impacts to groundwater and hydrogeology, and

determining whether the Project would cause a cumulatively considerable impact. (AR 451–494.)

Under “step one” of the cumulative impact analysis (i.e., determining whether the combined effect of the project and other closely related past, present, and reasonably probable future projects would be cumulatively significant), the DEIR discloses the historic groundwater overdraft and seawater intrusion, but also correctly reports that the severity of this impact has been substantially reduced by MCWRA’s project suite. Specifically, in a separately-labeled paragraph, the DEIR discloses the historic severity of groundwater overdraft and seawater intrusion caused by past projects (primarily agriculture). (AR 465–466.) The DEIR alerts readers:

Virtually all water used in the Salinas Valley Groundwater Basin is pumped from groundwater aquifers. ... Intensified land use activities over the years have gradually increased the amount of groundwater pumped from the aquifers, while the ability of watersheds to recharge underlying aquifers has decreased. Seawater has contaminated both the 180-Foot and 400-Foot Aquifers of the 180/400-Foot Aquifer Subbasin. Figures 3.6-5a and 3.6-5b [AR 469, 471] provide historical seawater intrusion maps for the 180-Foot and 400-Foot Aquifers of the subbasin. It is estimated that seawater has intruded an average of 10,000 AFY since 1949. By 1999, an estimated 24,109 acres of land were underlain by seawater intrusion in the 180-Foot Aquifer and 10,504 acres were underlain by seawater intrusion in the 400-Foot Aquifer [Citation]. Seawater intrusion is not just an agricultural problem since the seawater is close to threatening the domestic water supply for the City of Salinas. Aquifers

intruded with seawater are largely unusable for agricultural or municipal purposes.

(AR 465–466.)

The DEIR explains, however, that these serious problems are now substantially improving based on MCWRA’s project suite, which will continue to substantially reduce the impacts severity. (AR 492, 466–468, 491 [noting that as a result of the SVWP, the Basin “as a whole appears to be becoming more hydrologically balanced”].)

Under “step two” of the DEIR’s cumulative analysis (i.e., determining whether the Project’s incremental contribution to the overall significant cumulative impact will itself be “cumulatively considerable” and thus significant), the DEIR concludes that the Project’s incremental contribution (95-acre feet of water from the 180/400 Foot Aquifer Subbasin) to the cumulative groundwater impact is *not* cumulatively considerable. (AR 481–492.)<sup>1</sup>

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<sup>1</sup> Although impact 3.6-4 is labeled the “cumulative” impact discussion, impacts 3.6-2 (long-term impacts to groundwater resources) and impact 3.6-3 (adversely affect nearby wells) also considered cumulative impacts in that they assessed whether the Project’s groundwater withdrawal would cause a long-term impacts on water supply, which necessarily factors in past, current, and probable future groundwater uses. (AR 481–491.) This conclusion was also supported by the fact that Monterey County defines “Long-Term Water Supply (safe yield)” as “the amount of water that can be extracted continuously from the basin or hydrologic sub-area without degrading water quality, or damaging the economic extraction of water, or producing unmitigable adverse environmental impacts.” (AR 4122.) This DEIR used this definition in assessing long-term impacts. (*Ibid.*) Additionally, County staff recognized that the issue of seawater intrusion is a cumulative impact, not a project-specific impact. (AR 5569.)

The DEIR offers several facts in support of this conclusion. For example, the DEIR sets forth detailed calculations of the Project's gross and net water demand. (AR 481–489.) The DEIR considers the Project's demand in relation to the amount of total Cal Water supplies available for the Project and other past and present projects. (AR 491 [explaining that “project's water demand, relative to the size of the groundwater basin and capacity of the existing water delivery system, is not significant with respect to neighboring wells and stabilizing groundwater levels in the basin as a whole”].) Further, the DEIR also explains that the Project is located in benefit Zone 2C, which funds the SVWP. (AR 467, 489–490, 492.)

Because some comments on the DEIR misinterpreted the EIR's less-than-cumulatively-considerable conclusion as being based entirely on the Project's location in Zone 2C, the FEIR clarifies that the EIR's conclusions are also based on the following facts: (i) the insignificance of the Project's 95 afy demand relative to both the total storage capacity in the 180/400-Foot aquifer (7.24 million acre feet) and the total overall demand in the Basin; (ii) the Project's consistency with Cal Water's 2010 Urban Water Management Plan (UWMP); and (iii) the positive influence of MCWRA's project suite to combat seawater intrusion. (AR 4114.)

Although the Project would not have a significant impact to long-term cumulative water supplies, the EIR recommends, and the County



adopted, mitigation measures requiring water conservation measures, including a prohibition on water-intensive uses, water efficient landscaping, and installation of low-flow toilets. (AR 490, 94–95.)

#### **IV. The FEIR and the County’s Approval of the Project**

LandWatch and other commenters raised questions regarding water seawater intrusion and overdraft in the Basin and the viability of the SVWP. The FEIR addressed these concerns in Master Response 2 – “Water Supply and Related Issue,” as well as in individual responses to comments. (AR 4111–4122.)

The topics of seawater intrusion, water supply, and the current and predicted effectiveness of the SVWP also received much attention during the public hearings on the Project conducted by the Planning Commission and the Board of Supervisors. (See, e.g., AR 5078–5079, 5118–5119, 5125–5127, 5149–5194, 5213, 5554–5556, 5568–5570, 5576–5578, 4431.)

Additional information about the FEIR’s responses to comments and information provided at the public hearings is provided in the Argument below.

#### **PROCEDURAL BACKGROUND**

After receiving over 450-pages of briefing on the merits, and holding four full days of hearings, the trial court, Honorable Thomas W. Wills, presiding, issued a 142-page statement of decision, which is incorporated in

the judgment by reference, denying the petitions for writ of mandate in full. The decision extensively addresses LandWatch’s arguments regarding the EIR’s cumulative groundwater impact analysis and concludes that the County’s analysis complied with CEQA’s procedural requirements and is supported by substantial evidence. (CT 5:1191–1230.)

### **STANDARD OF REVIEW**

Under CEQA, an EIR is presumed adequate; the petitioner has the burden of proving otherwise. (*Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 937 (*Gilroy Citizens*)). The court reviews an agency’s determinations and decisions for abuse of discretion. (Pub. Resources Code, §§ 22168, 21168.5.) Under this standard, the court independently reviews the agency’s compliance with CEQA’s procedural requirements, but defers to the agency’s factual decisions if they are supported by substantial evidence. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 (*Vineyard*)).

LandWatch incorrectly asserts that all claims challenging “the adequacy of the EIR” raise purely procedural issues, which are reviewed de novo. (OB, p. 24.) CEQA, however, leaves to the discretion of lead agencies the determination of how best to fulfill CEQA’s informational mandates (in this case, the mandate to consider cumulative water supply

impacts) on a project-by-project basis. Such determinations, which include decisions about the type, scope, and amount of analysis to include in EIRs, are inherently factual, so they are reviewed under the substantial evidence standard. (*Cal. Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986 (*CNPS*); *Ebbetts Pass Forest Watch v. Cal. Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 950–951 [failure to analyze cumulative impacts “at the level of detail plaintiffs believe is needed” is a claim of insufficient evidence]; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1046 [“[d]espite [petitioner’s] strenuous efforts to reframe the issues to allege procedural violations under CEQA, virtually all of the issues it raises on appeal challenge the sufficiency of the information provided to the public and the decision makers”].)

Here, LandWatch claims that the EIR’s cumulative water supply analysis underestimated impacts and should have included more information about regional water supply and regional water demand. Plainly, these are challenges to the County’s factual determinations regarding the significance conclusions reached and the “amount or type of information contained in the EIR,” and so must be reviewed under the deferential substantial evidence standard. (*CNPS, supra*, 177 Cal.App.4th at p. 986.)

## ARGUMENT

### I. The trial court correctly upheld the EIR's cumulative groundwater impact analysis.

#### A. Legal Background

An EIR must include a discussion of cumulative impacts only “when the project’s incremental effect is cumulatively considerable.” (Guidelines, § 15130, subd. (a); see also *City of Long Beach v. Long Beach Unified School Dist.* (2009) 176 Cal.App.4th 889, 909 (*City of Long Beach*)).

“‘Cumulatively considerable’ means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects ...current projects and ...probable future projects.” (Guidelines, § 15064, subd. (h)(1).) If the lead agency determines “the cumulative impact is insignificant or if the project’s incremental contribution is not cumulatively considerable, the [l]ead [a]gency is not required to conduct a full cumulative impacts analysis, but the EIR must include a *brief explanation* of the basis for the agency’s finding(s).” (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 222 (*San Francisco Baykeeper*), italics added, citing Guidelines, § 15130, subd. (a).)

In determining whether a project, in combination with other projects, would have a cumulatively significant effect, an EIR shall use either a list approach (a list of past, present, or probable future projects producing

related or cumulative impacts) or a summary of projections adopted in a planning document or certified EIR that evaluates conditions contributing to the cumulative effect. (Guidelines, § 15130, subd. (b)(1).) A summary of projections may be updated with additional information. (Guidelines, § 15130, subd. (b)(1)(B).)

The two-step process recommended by the practice guides cited by LandWatch for analyzing cumulative impacts need not be as explicit as LandWatch suggests. (Compare OB, pp. 28–29.) For example, in *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899 (*Rialto Citizens*), the court upheld an EIR that addressed cumulative air quality effects based solely on whether the emissions from the proposed project would exceed a significance threshold recommended by an air quality management district. The court found this approach to be reasonable, even though the EIR did not specifically address whether the total emissions from all of the projects on the “cumulative projects list” would be cumulatively significant. (*Id.* at pp. 931–934; see also *Sierra Club v. Gilroy City Council* (1990) 222 Cal.App.3d 30, 44, 46–48 [upholding EIR’s two-sentence cumulative impact analysis], disapproved on another ground in *Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 570, fn. 2; *City of Long Beach, supra*, 176 Cal.App.4th at p. 909 [“given [EIR’s] conclusion that the project would not have a

cumulatively considerable impact on air quality, its relatively brief explanation for its conclusion is sufficient”].)

The courts’ flexibility in these cases is consistent with the notion, set forth in Guidelines that “[t]he discussion should be guided by the standards of practicality and reasonableness....” (Guidelines, § 15130, subd. (b).) If the EIR, “‘read as a whole, adequately deals with the question of cumulative impacts, it will suffice.’ [Citation.]” (*Al Larson Boat Shop, Inc. v. Bd. of Harbor Comrs.* (1993) 18 Cal.App.4th 729, 748.) “CEQA does not require an exhaustive analysis of cumulative impacts.” (*Paulek v. Dept. of Water Resources* (2014) 231 Cal.App.4th 35, 51 (*Paulek*).)

**B. As threshold matters, LandWatch misrepresents the EIR’s discussion of and reliance on the SVWP and overstates CEQA’s requirements for a cumulative impact analysis.**

Before addressing the specific issues raised by LandWatch, it is important to clarify three fundamental misconceptions that pervade LandWatch’s arguments.

First, contrary to LandWatch’s claim, the EIR did not categorically state that the SVWP will halt seawater. (OB, pp, 19, 30 citing AR 489, 466, 492.) Rather, read in context, the statements cited by LandWatch “equally permit the inference that the SVWP – an ongoing project, not a purely historical set of limited actions – has the *goal* of halting seawater intrusion.” (CT 5:1210.) The EIR did not claim that the SVWP has

accomplished that goal, or that it necessarily will. Instead, the DEIR's discussion reflected that seawater intrusion has not been halted by the SVWP and that continued monitoring is required.<sup>2</sup>

Second, the EIR did not base its cumulative impact significance conclusion on the effectiveness of the SVWP alone; the conclusion was based on the Project's financial contribution to MCRWA's project suite, which, in addition to the SVWP, includes the CSIP, and the continued operation of the Lake Nacimiento and Land San Antonio Reservoirs. (CT 5:1225, citing AR 492, 4113–4414.) “It is thus irrelevant whether substantial evidence supported the claims that the SVWP would halt seawater intrusion or hydrologically balance the basin.” (CT 5:1225.)

Third, and perhaps most importantly, LandWatch's arguments ignore the legally relevant issue in this case: whether the effect of *this* Project's

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<sup>2</sup> For instance, page 3.6-16 (AR 466), cited by LandWatch, states that under the SVWP, “the cumulative rate of seawater advancement *is slowing and stabilizing*, while the annual advance is *beginning* to decrease.” (AR 466, italics added.) Similarly, page 3.6-41 of the DEIR observes that “[s]ince construction of the SVWP, groundwater levels are rising in some areas of the Salinas Valley, and the basin as a whole appears to be *becoming* more hydrologically balanced.” (AR 491, italics added.) The charts and figures included in the DEIR and FEIR unambiguously show that the MCSWRA's project suite has slowed, but not stopped seawater intrusion. (AR 4117–4118, 467, 469, 471.) The FEIR also clarified that WCWRA “continues to monitor groundwater levels within the basin in order to assess the long term effect of current management efforts and projects over wet and dry years, including the SVWP. The most recent [WCWRA] groundwater data (2013) demonstrates [the] near-term benefits of these management efforts, with an understanding that monitoring will be ongoing.” (AR 4114.)

contribution to the seawater intrusion problem is cumulatively considerable. (CT 5:1210.) The issue is not, as LandWatch suggests, whether the Project, or another scheme, completely solves the seawater intrusion problem. (*Ibid.*, citing quoting *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 346 (*Cherry Valley*)).) An EIR for a single development project need not lay out all information regarding the state of a groundwater basin and all the ways water agencies will solve the basin's problems. (*Id.* at p. 346; *Watsonville Pilots, supra*, 183 Cal.App.4th at p. 1094.)

*Watsonville Pilots* is on point. That case involved a challenge to the EIR prepared for the City of Watsonville's general plan update. The city's groundwater supplies comes from the Pajaro Valley groundwater basin. The basin has been "in overdraft...for decades." (183 Cal.App.4th at p. 1091.) The overdraft has caused seawater intrusion into the basin. (*Ibid.*) At the time the city approved the general plan update, the Pajaro Valley Water Management Agency, in order to "substantially alleviate" the overdraft problem, was working to acquire a substantial quantity of surface water to import through a pipeline that would connect to a proposed (but not built) coastal distribution system. The water agency also proposed other surface water projects in collaboration with the city. (*Id.* at pp. 1091–1092, 1094, fn. 27.)



The *Watsonville Pilots* petitioners raised several objections, including a failure to “pinpoint a solution to the overdraft problem.” (183 Cal.App.4th at p. 1094.) The court rejected these arguments:

The purpose of an EIR is to identify and discuss the impact of the *proposed project* on the existing environment. The FEIR concludes that the impact of the new development contemplated by the 2030 General Plan will be offset. ... Thus, the overdraft problem will remain but will not be exacerbated by the proposed project. The FEIR was not required to resolve the overdraft problem, a feat that was far beyond its scope.

(*Ibid.*, italics added; CT 5:1211–1212 [same].)

The petitioners in *Watsonville Pilots* also claimed that the FEIR was deficient because it failed to discuss the possibility that the water agency’s funding for the water supply projects would not come to fruition. (*Id* at p. 1094.) The court disagreed, explaining:

The speculative possibility that [the water agency] might encounter future difficulties in financing various water supply projects was not necessary to the validity of any of the FEIR’s conclusions. [The water agency’s] water supply projects were discussed in the FEIR as efforts that were anticipated to be made to help resolve the long-term overdraft problem. Yet the FEIR was not tasked with proposing solutions to the overdraft problem, and its conclusions remained valid regardless of whether [the water agency] was likely to resolve the overdraft problem in the foreseeable future. Speculation about [the water agency’s] possible future funding problems was not necessary to support the FEIR’s analysis of the impact of the 2030 General Plan on the existing environment, one in which, as the FEIR acknowledged, the long-term overdraft problem will continue to be a concern regardless of the 2030 General Plan.

(*Id.* at p. 1094, fn. omitted; CT 5:1212 [same]; see also *Cherry Valley*, *supra*, 190 Cal.App.4th at p. 346 [EIR for individual development project was not required to address whether and to what extent the affected groundwater basin is in overdraft, except to analyze the extent to which the project will contribute to that condition].)

Although this case is somewhat different from *Watsonville Pilots* in that the dispute involves cumulative impacts, not project-specific impacts, a general plan EIR necessarily looks at cumulative impacts as part of its “project-specific” analysis because a general plan is a long-term planning document. (CT 5:1212.) Furthermore, the underlying reasoning of *Watsonville Pilots* supports the County’s EIR under the particular facts of this case, which show that the groundwater situation is improving due to projects put in place to which the project under review contributes funding. As correctly held by the trial court, and shown below, substantial evidence supports the EIR’s conclusion that the Project’s incremental contribution to groundwater impacts is not cumulatively considerable. The EIR was not required to include the additional information, such as total cumulative demand and supply data, that LandWatch demands.

**C. Substantial evidence supports the County’s conclusion that the Project’s incremental contribution to the cumulative groundwater impact is not cumulatively considerable.**

As held by the trial court, LandWatch fails to demonstrate that the County lacked substantial evidence to support its conclusion that the Project’s incremental contribution to cumulative the groundwater impact is less than cumulatively considerable. (CT 5:1223–1228.)

**1. *The Project’s location in Zone 2C***

Zone 2C fees provide enormous benefits to the Basin by funding MCWRA’s project suite, including the SVWP and the continued operation of Lake Nacimiento and Lake San Antonio Reservoirs. (AR 4113; CT 5:1225–1228.) The Project’s location in Zone 2C – a benefit assessment zone that helps funds the project suite – constitutes substantial evidence that the Project will not have a cumulatively considerable impact on groundwater. (See Guidelines, § 15130, subd. (a)(3).) MCRWA data shows “that the cumulative rate of seawater advancement is slowing and stabilizing, while the annual advance is beginning to decrease.” (AR 466; see also 467–468.) The ongoing maintenance of the Nacimiento and San Antonio reservoirs alone is estimated to reduce seawater intrusion that would otherwise occur by 7,000 afy. (AR 16370.) Since CSIP’s implementation, seawater intrusion in the 180-Foot and 400-Foot Acquire has substantially decreased. (AR 467, 5569, 4117–4118, 16400.) Although

it is too early to tell whether the SVWP will halt seawater intrusion, available data demonstrates that the SVWP is slowing seawater intrusion. (AR 16399.) As noted by the trial court, “substantial evidence confirms a causal connection between MCRWRA’s project suite and the rapid decrease in the rate of seawater intrusion [in] the 180-Foot and 400-Foot Aquifers since 2000.” (CT 5:1227, citing AR 5157–5158; see also AR 5189, 16399, 29426.)

MCRWA—the agency charged with preventing the waste or diminution of Monterey County’s groundwater supplies (see Wat. Code App., § 52-8)—agrees that the Project’s location in Zone 2C constitutes substantial evidence that the Project will not cause a cumulatively considerable groundwater impact. (AR 6024–6026, 6876–6878, 7186–7188; see *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 682–683 [administrative decision may be based on the opinion of experts as substantial evidence].)

By way of background, County staff circulated an administrative draft DEIR to MCRWA for its input prior to releasing the public draft DEIR. MCWRA commented: “The project is located entirely within the Salinas Valley Groundwater Basin, and it is located entirely within the benefit assessment zone (Zone 2C) for the [SVWP]. This area is considered

to have a long-term *sustainable* water supply.” (AR 6024, italics added.)

MCWRA also recommended the following edits to the text of the

administrative draft DEIR’s discussion of water supply impacts

(MCWRA’s additions shown in bolded italics and deletions shown in strikethrough):

... The SVWP’s diversion project is currently under construction and anticipated to be operational *in* 2010. As mentioned above, these improvements are funded by a special assessment zone, *Monterey County Resources Agency Zone 2C*. ~~Water users~~ *Property owners* within Zone 2C are assessed a special tax to fund *the SVWP* ~~water improvement projects in exchange for access to potable water~~. The project site is located with [sic] Zone 2C; therefore, the proposed project is ~~eligible for potable water~~ *is considered to have a long term sustainable water supply*.

(AR 6025.) The County, in good faith, incorporated MWRA’s recommendations into the public draft DEIR. (AR 489–490.)

MCWRA did not comment upon the administrative draft DEIR’s cumulative impact discussion, except to note that the SVWP is being built to meet the objectives of stopping seawater intrusion, providing adequate water supplies, and improving the hydrologic balance in the basin. (AR 6025.) This is true despite the fact that modeling performed for the SVWP indicated that, in the long-term (2030), the SVWP may not fully halt seawater intrusion—a fact about which MCWRA, as lead agency for the SVWP, is fully aware. (AR 25281–25282.)

Although, as stressed by LandWatch, after the public release of the DEIR, water modeling found that more groundwater recharge (~48,000 afy) would be needed to “maintain protective elevations” (OB, p. 43), MCWRA did not alter its conclusion that the Project would not cause significant groundwater impacts. (See SAR 29425–29426.) It can be assumed that if MCWRA believed that the Project’s 95 afy water supply would cause a cumulatively considerable groundwater impact, MWCRA would have stated so at some point; but it did not. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380 [the “lack of comment, like Sherlock Holmes’s ‘dog in the night-time’ which tellingly failed to bark [citation] was in itself evidence”].) In addition, William Halligan, an engineer with a firm involved with the development and technical analysis of the SVWP EIR, concluded “the Project will not exacerbate overdraft conditions in the Basin over and above what has already been accounted for in the SVWP technical analysis.” (AR 20401–20402.) As held by the trial court, these expert opinions constitute substantial evidence in support of the County’s conclusion (CT 5:1228), a conclusion that LandWatch does not even attempt to dispute.

LandWatch contends that the Project cannot rely on Zone 2C fees to mitigate its cumulative impact because Zone 2C fees do not fund future water supply projects. (OB, pp. 43, 55; see AR 16406.) As a preliminary

matter, the payment of Zone 2C fees is not a mitigation measures; rather, it is a piece of the substantial evidence supporting the EIR's impact conclusion. Therefore, the rules under CEQA governing mitigation measures do not apply. But, in any event, the pages cited by LandWatch do not demonstrate that existing Zone 2C funds are insufficient to support any additional projects that may be required. As noted, MCWRA's Arundo Removal Project alone could make up the ~48,000 afy needed. (AR 37, 5164–5165.) Moreover, LandWatch's argument ignores the nature of an assessment, which may be updated as necessary *for the special benefit to the assessment zone*. The Project's location in Zone 2C is thus distinguishable from *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, in which a project's one-time payment to a fee program was insufficient because the fee program did not include an improvement needed to reduce cumulative traffic impacts to less than significant. (*Id.* at p. 1189.) If additional projects become necessary to offset Zone 2C's impacts, the assessment can be updated. But, as this court held in *Watsonville Pilots*, "the speculative possibility that [a water agency] might encounter future difficulties in financing various water projects" does not invalidate an EIR's conclusion that water supply impacts will be less than significant. (183 Cal.App.4th at p. 1094.)

Moreover, there is every reason to believe MCWRA, consistent with its enabling legislation, will continue to undertake projects as necessary in furtherance of a cumulative groundwater solution. Significantly, under the SGMA, the Basin must achieve groundwater sustainability by 2040. (Wat. Code, § 10727.2, subd. (b)(1).) And the groundwater sustainability plan adopted for the Basin must include the control of saline (seawater) intrusion. (*Id.* at § 10727.4, subd. (a).) Aside from these legal requirements, the County has an enormous incentive to protect its water supplies, if for no other reason than to protect its \$4.14 billion a year agricultural industry. (AR 451.) Other than citing uncertainties that are present in any long-term planning, LandWatch cites no evidence that MCWRA will not continue to improve the valley's groundwater conditions. Such speculation is not a basis to overturn the EIR. (*Watsonville Pilots, supra*, 183 Cal.App.4th at p. 1094.)

## **2. Consistency with the UWMP**

The Project's consistency with the UWMP also supports the EIR's less-than-cumulatively-considerable conclusion. An UWMP is a long-term planning tool required to ensure adequate water supplies to serve existing customers and future demands for water. (Wat. Code, §§ 10620–10631.) In this case, Cal Water's UWMP assumed the Project's demand in assessing the water provider's cumulative water supply needs. (AR 1423–1425, 4114,



4122.) Cal Water's 2010 UWMP concluded that Cal Water will have sufficient water supplies to meet all of its near- and long-term demands, even during multiple dry years. (*Ibid.*)

LandWatch argues that the Project's consistency with the UWMP is irrelevant because the UWMP shows only that the Project will have a reliable water *supply*, rather than whether the Project will have a cumulatively considerable groundwater impact. (OB, p. 31.) But the UWMP is by its very nature a cumulative analysis because it considers whether Cal Water has supplies to meet all its existing and future demands, not just those of Ferrini Ranch. (See Wat. Code, § 10631, subds. (a)–(d); see also *id.* as amended by Stats. 2018, ch. 14, § 28.) Further, the fact that the Project will not have a project-specific water supply impact helps support the conclusion that the Project's incremental contribution to water supply impacts will not be cumulatively considerable, since additional sources will not need to be developed to meet the Project's demand, which is already accounted for in the UWMP and in the SVWP EIR.

LandWatch also argues that the UWMP does not constitute substantial evidence to support the EIR's less-than-cumulatively-considerable impact conclusion because the UWMP only looks at Cal Water's urban supplies and demands, rather than the Basin-wide supply and demand. (OB, p. 33.) But the EIR did not rely exclusively on the UWMP in

concluding that the Project would not have a cumulatively considerable groundwater impact. The UWMP does provide helpful context, however, in that it shows that, even with seawater intrusion into the 180/400-Foot Aquifers from which Cal Water pumps, Cal Water will be able to meet its future cumulative demands even in multiple dry years. The UWMP also provides evidence regarding Cal Water's extensive conservation efforts. (SAR 29329–29331.) Therefore, the UWMP is appropriately one piece of the substantial evidence supporting the County's conclusion that the Project would not cause a cumulatively considerable impact to groundwater supplies.

LandWatch further asserts that the UWMP contradicts the EIR's conclusion because the UWMP explains that MCWRA's project suite has not solved the seawater intrusion problem. (OB, p. 56, citing SAR 29332.) But as discussed above, the Ferrini Ranch EIR does not conclude that the Project's cumulative impact is less than significant because MCWRA has halted seawater intrusion; rather, the conclusion is based on a number of factors, including the fact that MCWRA's project suite, to which the Ferrini Ranch property contributes, is substantially slowing the intrusion. (CT 5:1225.) LandWatch selectively cites the UMWP as stating that Cal Water cannot count on the SVWP to provide future demand in the Salinas District; but, when read in context, it is clear that this statement was referring the

SVWP Phase II, not the existing SVWP. (SAR 29333.) The court should therefore reject LandWatch’s arguments regarding the UWMP.

**3. *The Project’s Small Percentage of Supply and Demand***

Another factor supporting the EIR’s impact conclusion is that the Project creates very little water demand. (AR 4113–4114, 491.) By way of comparison, there is 6.8 million acre feet of water in in the Pressure subarea and 19 million acre-feet of water stored in the Basin. (AR 20401, 36.)

When compared to overall water use in the Pressure subarea, the Project increases existing groundwater pumping in the Pressure subarea (19,000 af urban and 95,500 af agriculture) by less than on tenth of one percent. (AR 20401.) This amount is “such an extremely small percentage of aquifer storage that there is likely to be a greater amount of error or uncertainty involved in the calculation of aquifer storage as compared to the projected water use by the Project.” (*Ibid.*) As expert hydrologist Halligan explained:

The Project is helping to fund the improvements designed to combat overdraft conditions in the Basin. As a result, and due to its very small demand, the Project will not exacerbate overdraft conditions in the Basin over and above what has already been accounted for the SVWP technical analysis.

(AR 20401–20402.)

In identifying the Project’s small water demand as one basis, among others, in support of the less-than-cumulatively-considerable conclusion, the EIR does not rely on an impermissible “ratio” theory invalidated by the

courts. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718–719 (*Kings County*), cited by LandWatch, the court rejected the cumulative impact analysis prepared for a proposed coal-fired cogeneration plant in which the lead agency determined the project’s impact on air quality was not cumulatively considerable because it would contribute less than one percent of area emissions for all criteria pollutants. The court criticized the county’s focus on the ratio between the project’s impacts and the overall environmental problem, rather than on the combined effect of the project in addition to the already adverse conditions. Under this impermissible ratio theory approach, “the greater the overall problem, the less significance a project has in a cumulative impact analysis.” (*Id.* at p. 721.) Instead, the EIR should have considered whether the project’s incremental contribution to the cumulative impact was cumulatively considerable. (*Ibid.*)

The EIR in this case, unlike the one at issue in *Kings County* and its progeny cited by LandWatch, not only compares the *impact of the Project* against a much larger *cumulative impact* to determine the Project’s impact would be small in comparison and therefore not be considerable. The EIR also compares the *vast amount of the resource* (water) available (7.24 million acres in the 180/400-Foot aquifer) against the Project’s *small demand on that resource* (less than 95 afy). This type of common-sense

approach to a cumulative impact analysis is extremely typical in EIRs and does not violate CEQA.

Furthermore, to the extent the EIR considers the Project's very small demand in relation to the much larger demand in the subbasin and Basin, nothing in *Kings County* or any of the cases cited by LandWatch indicates that such a comparison cannot be one factor, among others, that an agency may consider in reaching an overall determination as to whether a project has a cumulatively considerable effect. As one appellate court recently made clear, the tiny size of a project's impact relative to the affected resource may be one relevant factor within a larger analysis of whether the impact is cumulatively considerable. (*San Francisco Baykeeper, supra*, 242 Cal.App.4th at pp. 223–224 [no violation of CEQA occurred where ratio is only one component of the EIR's cumulative impact analysis]; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 174 [noting that the incremental impacts of city's ordinance banning plastic bags were small enough that its cumulative effects, when combined with similar laws enacted and proposed in Los Angeles County and other jurisdictions, were "negligible" and not significant].)

**D. Substantial evidences supports the County’s determination as to what and how much information to include in the EIR’s cumulative groundwater impact analysis.**

LandWatch challenges the amount and type of information that was included in the EIR’s discussion of cumulative groundwater impacts. As noted, the court reviews such claims under the deferential substantial evidence standard. (*CNPS, supra*, 177 Cal.App.4th at p. 986.) CEQA does not impose specific analytic requirements on the data that must be included to support a cumulative impact analysis. Rather, the “discussion should be guided by the standards of practicality and reasonableness.” (*City of Long Beach, supra*, 176 Cal.App.4th at p. 906.) “The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence, but the discussion need not provide as great detail as is provided of the effects attributable to the project alone.” (Guidelines, § 15130, subd. (b).) Where, as here, the project’s incremental contribution is not cumulatively considerable, the EIR “shall briefly describe its basis” for that conclusion. (*Id.*, § 15130, subd. (a).)

LandWatch’s attacks the EIR’s cumulative impact discussion from various angles, but LandWatch essentially raises two points: (1) CEQA required the EIR to quantify total cumulative water supply and demand; and (2) CEQA required the EIR to include more data and information

regarding the SVWP EIR and the effectiveness of the SVWP. As shown below, and held by the trial court, LandWatch is mistaken on both points.

***1. CEQA does not require the EIR to quantify total cumulative water supply and demand.***

LandWatch mistakenly claims that CEQA requires a cumulative impact analysis to quantify total cumulative demand and supply for groundwater basins and subbasins. (OB, pp. 30–48.) But as correctly held by the trial court, this level of in-depth analysis was not required. (CT 5:1213–1214.)

***a. Vineyard does not support LandWatch’s claim.***

In arguing that CEQA requires the EIR to include total cumulative supply and demand data, LandWatch relies principally on *Vineyard*. (See, e.g., OB, pp. 27, 34.) But *Vineyard* does not address CEQA’s requirements for a cumulative water supply analysis; it only interprets CEQA requirements for a project-specific water supply analysis for a large, long-term, project. (*Vineyard, supra*, 40 Cal.4th at pp. 421, 446.) In fact, the *Vineyard* court expressly cautioned that CEQA does *not* require an EIR to demonstrate that total future water supply would be sufficient to meet total future water demand. (*Id.* at p. 441.) Rather, the EIR must only show “show a *likelihood* water would be available, over the long term, for *this project*.” (*Ibid.*, second italics added, fn. omitted; CT 5:1214)

Because CEQA is only concerned about the long-term likelihood of water supplies for the project under review, the appellate courts have refused to hold that CEQA requires an EIR to address regional water supply planning issues that are beyond the scope of the project in question. *Cherry Valley* is directly on point. The petitioners in that case, like LandWatch, argued that an EIR for a 560-residential project violated CEQA because it failed to discuss the extent to which the groundwater basin was in overdraft and failed to discuss inconsistencies in the record regarding overdraft conditions. (*Cherry Valley, supra*, 190 Cal.App.4th at pp. 342–346.) The court rejected petitioner’s claim, explaining:

CEQA ... is concerned with the environmental impacts of the project under consideration. (§ 21100.) Thus, the ultimate question the EIR had to address was not the extent to which the [groundwater basin] was in overdraft, but whether and to what extent the [project]—this project—would impact the [basin’s] overdraft conditions *beyond existing conditions*.

(*Id.* at p. 346.) In so concluding, the court in *Cherry Valley* recognized that, in assessing whether an individual project’s contribution to that overdraft will be significant or cumulatively considerable, an EIR need not include detailed information about the extent of groundwater overdraft and inconsistencies in various planning documents as to the extent of overdraft conditions. Instead, the proper focus should be on a proposed project’s own



effects on existing groundwater conditions and whether a sufficient supply is available to serve the project. (*Id.* at pp. 346–347.)

Here, consistent with *Cherry Valley*, the DEIR (i) discusses the state of seawater intrusion in the Basin and in the 180/400-Foot Aquifer Subbasin (AR 465–467, 469–471), (ii) explains MCWRA’s efforts to address this problem (AR 466–469), and (iii) reports that modeling performed for the SVWP EIR showed that seawater intrusion would decline in the near- and future-terms with implementation of MCRWA’s project suite (AR 466–467). In other words, the DEIR shows that, despite the historic severity of seawater intrusion in the Basin, MCWRA’s water projects are progressively slowing the problem and improving overdraft conditions. The EIR’s discussion thus adequately disclosed the severity and likelihood of the cumulative water supply impacts in that the EIR acknowledges that there is a problem with groundwater overdraft and seawater intrusion, but explains that this impact has been, and will continue to be reduced, based on MCWRA’s projects. (AR 451–471; Guidelines, § 15130, subd. (b).)

Ignoring *Vineyard’s* direction to focus on the impacts of the project, LandWatch states that *Vineyard* “holds that ‘some discussion of total supply and demand is necessary to evaluate the long term cumulative impact of development on water supply.’” (OB, p. 34, quoting 40 Cal.4th at

p. 441.) This statement in *Vineyard*, however, was dictum, not a holding, since *Vineyard* did not address CEQA’s requirements for cumulative impacts. Further, in connection with this statement, the Court in *Vineyard* made clear that the EIR for the 22,000 unit/multi-phase development project at issue need not solve county-wide water supply planning issues, but rather need only provide “some discussion” of total supply and demand to evaluate cumulative impacts. (40 Cal.4th at p. 441.)

Moreover, as correctly observed by the trial court, *Vineyard*’s analytic principles do not apply to small development projects, such as Ferrini Ranch. (CT 5:1214.) This interpretation of *Vineyard* is supported by the provisions of the Water Code governing preparation of “water supply assessments” (WSAs) that the *Vineyard* court invoked in setting forth the analytic principles for water supply analyses. (*Vineyard, supra*, 40 Cal.4th at pp. 433–434, citing Wat. Code, §§ 10910–10912.) WSAs are not required for small projects, such as Ferrini Ranch, with under 500 units. (Wat. Code, § 10912, subd. (a)(1); Guidelines, § 15155, subd. (a)(1)(A).)<sup>3</sup>

In any event, the Ferrini Ranch EIR includes more than just “some discussion” of total water supply and demand. As discussed above, the EIR

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<sup>3</sup> Notably, even WSAs need not quantify basin-wide or sub-basin supply and demand analyses; rather, the courts will defer to the water supplier’s choice of study area if it is supported by substantial evidence. (*O.W.L. Foundation v. City of Rohnert Park* (2008) 168 Cal.App.4th 568, 588–592 [holding Water Code does not require water suppliers to conduct an analysis of pumping by all users in the groundwater basin or sub-basin].)

explains the historic seawater intrusion into the Basin. The EIR demonstrates, based on substantial evidence, that because of MCRWA's project suite, the rate of seawater intrusion problem is slowing and groundwater conditions are improving. (AR 466–468, 491–492, 4114.) And if that is not enough, the FEIR provides quantitative cumulative supply and demand data. The FEIR reports that cumulative (year 2005) supply and demand in in the 180/400-Foot Subbasin is approximately 7 million feet and 118,372 afy, respectively. (AR 4114, 5214 [staff clarification].) The FEIR also reports that in year 2040, cumulative water demand in Cal Water's Salinas District will be 25,572 afy, but that Cal Water has more than adequate supplies (50,000 afy) to meet this demand. (AR 4111.) The fact that this information was included in the FEIR, rather than the DEIR, is of no moment. (Compare OB, p. 37, with *Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 516–517 [inclusion of information solely in a final EIR “is not an infirmity” since “responses to comments is an integral part of the EIR”]; *City of Long Beach, supra*, 176 Cal.App.4th at pp. 908–909 [court relied on clarification made in FEIR in upholding EIR's cumulative impact analysis].) The EIR thus more than satisfied the dictum in *Vineyard* that an EIR must provide some amount of total water supply and demand to evaluate cumulative impacts. (See *Vineyard, supra*, 40 Cal.4th at p. 441.)

LandWatch's reliance on *Kings County* is also misplaced. In that case, the EIR did not give any context, whatsoever, concerning the availability of groundwater to meet cumulative demands in the San Joaquin Valley. (221 Cal.App.3d at pp. 728–730.) In the absence of *any* indication of the availability of groundwater to meet cumulative demands, it was impossible to tell whether impacts would be significant and whether conservation efforts would reduce the impacts to less than significant. (*Ibid.*)

Here, in contrast, the DEIR explains that over the years the Basin has experienced overdraft, which in turn has resulted in seawater intrusion. (AR 451.) The EIR includes graphs showing the extent and rate of seawater intrusion. (AR 467, 469, 471.) The EIR explains that the Project's small demand for water will not adversely impact neighboring wells and will not interfere with the stabilization of groundwater levels in the basin as a whole. (AR 491.) The EIR further explains that, as a result of MCWRA's project suite, overall conditions in the Basin have improved and that the Project is part of this solution because it is located in Zone 2C. (AR 489–492.) The DEIR describes, based on substantial evidence, the basis for the County's conclusion that the Project's contribution to the groundwater impact is not cumulatively considerable. (AR 491–492, 4844.) Thus, the EIR is not at all like the EIR at issue in *Kings County*, which failed to

provide any information whatsoever to support its conclusion that cumulative water supply impacts would be less than significant. (See *Kings County, supra*, 221 Cal.App.3d at pp. 728–730.)

*Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829–831 and *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 282–286, are also off point. In those cases, the EIRs failed to discuss uncertainties surrounding the water supplies *for the projects* at issue, both of which would require substantial quantities of water. The EIRs assumed that the projects would have reliable water supplies, but in reality they would not. The EIRs’ failure to discuss the impacts of procuring additional supplies to meet the project’s demands violated CEQA.

Here, there is no uncertainty surrounding *the Project’s* water supplies. The “uncertainty” emphasized by LandWatch is that future water supply projects may be needed to fully halt seawater intrusion. The EIR, however, adequately alerts readers to the fact that seawater intrusion is slowing, but has not stopped. (See, e.g., AR 466, 469, 471, 4113–4114, 4117–4118.) The EIR correctly concluded that the Project, which was accounted for in the UWMP and the SVWP EIR, and which is located in Zone 2C, will not exacerbate the problem. The County thus correctly concluded that the Project’s incremental contribution to seawater intrusion

is not “cumulatively considerable.” As in *Watsonville Pilots*, the “FEIR was not tasked with proposing solutions to the overdraft problem, and its conclusions remained valid regardless of whether [MCRWA] was likely to resolve the overdraft problem in the foreseeable future.” (183 Cal.App.4th at p. 1094.) Nor was the FEIR not required to speculate as to whether MCWRA would run into future problems for future projects needed to solve the groundwater problem. (*Ibid.*) Such information is not necessary to support the EIR’s analysis of the impact of this Project on the existing environment, one in which, as the FEIR acknowledge, the long-term overdraft problem will continue to be a concern, regardless of the Project. (*Ibid.*; see also *Cherry Valley*, *supra*, 190 Cal.App.4th at pp. 344–345.) Moreover, as discussed in section E, below, even if the EIR could have been more clear regarding uncertainties concerning the SVWP’s effectiveness, these uncertainties were discussed in detail during the many days of the County’s public hearings on the project, so any lack of information in the EIR itself is not prejudicial.

- b. CEQA’s requirements for an EIR’s discussion of the “environmental setting” do not require total cumulative water demand and supply data.

In a variation of its *Vineyard* argument, LandWatch also wrongly claims that CEQA required the County to include information regarding total cumulative water supply and demand within the EIR’s description of

the Project’s “environmental setting.” (OB, pp. 30, 37.) The court should refuse to consider this argument, however, as it was not raised in the trial court. (*El Morro Community Assn. v. Cal. Dept. of Parks & Recreation* (2004) 122 Cal.App.4th 1341, 1351.) But even if the Court considers LandWatch’s new argument, LandWatch is mistaken.

Section 15125, subdivision (a), of the CEQA Guidelines provides: “[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation [NOP] is published ... from both a local and regional perspective.” The DEIR complies with this requirement. Section 3.6.1 (“Environmental Setting”) of the DEIR’s groundwater chapter explains the groundwater conditions as they existed in 2005 when the NOP was issued, from both a local and regional perspective. (AR 451–468.)

In particular, the DEIR’s discussion of the groundwater environmental setting first explains that water is vital to support agriculture and the population of Monterey County, and that, for this reason, the protection of groundwater resources is a primary issue in the County. (AR 451.) The discussion then summarizes the conditions of the Basin, including its location, size, and the fact that, over the years, it has experienced overdraft, which, in turn, causes seawater intrusion. (*Ibid.*) The

DEIR further describes the eight subbasins of the Basin and provides maps showing their locations. (AR 452–459.)

The DEIR then describes groundwater quantity, particularly in the 180/400-Foot Aquifer, from which the Project will be supplied water. (AR 460.) The DEIR reports that Cal Water has an existing demand of 1,464.72 afy (or 907.04 gallons per minute). (*Ibid.*) The DEIR also notes that, according to “MCWRA’s fourth quarter report for water year 2009–2010, the average depth to groundwater in the 180/400 Foot Aquifer has been reduced, which indicates higher well levels.” (AR 460.) Specifically, monitoring data shows that the depth of the 180-Foot Aquifer was 52 feet, which was up one foot from the previous month, up by as much as seven feet from the previous year, and down one foot from 1985 levels. Monitoring data for the 400-Foot Aquifer showed the depth of groundwater was 46 feet, which was up one foot from the previous month, up six feet from the previous year, and up by as much as 10 feet from the 1985 levels. (AR 460.)

After discussing the phenomenon of groundwater recharge (*ibid.*), the DEIR describes groundwater quality, including seawater intrusion. (AR 465–467.) Among other things, the DEIR notes that “[b]y 1995, seawater had intruded over 5 miles inland through the 180-Foot Aquifer, including the area beneath the towns of Castroville and Marina.” (AR 465.) Further,



“[s]eawater had also intruded over 2 miles into the 400-Foot Aquifer by 1995.” (*Ibid.*) Visual depictions of the extent of seawater in the 180-Foot Aquifer and 400-Foot Aquifer from 1944–2009 are provided and referenced in the text. (AR 469–471, 465.) The DEIR notes that it is estimated that seawater has intruded by an average of 10,000 afy since 1949, and that by 1999, an estimated 24,109 acres of land were underlain by seawater intrusion in the 180-Foot Aquifer; and 10,504 acres were underlain by seawater intrusion in the 400-Foot Aquifer. (AR 465.) The DEIR next explains MCWRA’s efforts to combat seawater intrusion, including the establishment of Zone 2C, the SVWP, and the CSIP. (AR 466–468.)

The DEIR’s discussion of the “environmental setting,” which describes groundwater conditions both locally and regionally, thus fully complied with Guidelines 15125, subdivision (a). LandWatch can point to no statute, Guideline, or court decision that requires the EIR to provide total cumulative water supply and demand data as part of an EIR’s discussion of the environmental setting; and the court should refuse to read a requirement into CEQA that does not exist. (See Pub. Resources Code, § 21083.1 [requiring explicit interpretation of CEQA]; see also *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1107 [Supreme Court approvingly cites legislative history of section 21083.1 describing its

purpose as being to ““limit judicial expansion of CEQA requirements”” and to ““reduce the uncertainty and litigation risks facing local governments and project applicants by providing a ‘safe harbor’ to local entities and developers who comply with the explicit requirements of the law””].)

**2. *CEQA does not require the EIR to include more information regarding the SVWP EIR.***

LandWatch asserts that the EIR was required to include a summary of demand projections in the SVWP EIR. (OB, pp. 34–35.) But as the trial court correctly held, “the EIR provided all necessary information regarding the SVWP EIR. (CT 5:1215.) In particular, as Judge Wills reasoned:

The EIR clearly sets forth the nature of the SVWP (AR 466) and explains its relevance to the Project: “In order to fund the improvements provided by the SVWP, the MCWRA established a special assessment zone, Zone 2C (formerly Zones 2a and 2b). ... Zone 2C benefits are deemed special benefits received by only those parcels that fund the SVWP. ... The proposed Ferrini Ranch project is located in ... Zone 2C” (AR 467).

(CT 5:1215.)

Further, the EIR explains the nature of the SVWP computer model and puts it into context as follows:

The Salinas Valley Integrated Ground and Surface Water Model (SVIGSM), a planning tool, was used to evaluate hydrologic effects of operations ... of the SVWP [Citation.] The analysis relied on assumptions about future population growth and water demand in the Salinas Valley, hydrology (patterns of wet and dry years), and regional economic trends, which were based on historical records and predictive tools

used by the Association of Monterey Bay Area Governments (AMBAG) and local planning departments.

(AR 466, CT 5:1215 [same]; see also AR 4115–4116.)

As held by the trial court, “[t]his paragraph adequately alerts the reader that the SVGISM computer model supported the SVWP EIR’s assumptions.” (CT 5:1215.) Additionally, “the EIR’s references specifically cite six pages of the SVWP EIR in support of the EIR’s conclusions. (AR 494.)” (*Ibid.*) The EIR thus provided “a sufficient ‘road map’ as to the information the EIR intended to convey.” (*Ibid.* quoting *Vineyard, supra*, 40 Cal.4th at p. 443.)

In response, LandWatch asserts that the EIR was required to spell out the data and assumptions made in the SVWP EIR, and not just reference them. But, as discussed above, CEQA does not require an EIR to set forth cumulative water supply and demand data in the DEIR. Rather, CEQA only required the EIR to “briefly explain” why the Project would not have a cumulatively considerable groundwater impact—a requirement the Ferrini Ranch EIR fulfilled. (Guidelines, §§ 15125, 15130, subd. (a); AR 491–492.)

LandWatch also asserts that Guidelines section 15150, subdivision (c), required the County to incorporate the SVWP EIR by reference. This argument was not administratively exhausted, or raised in the trial court below, so the court should not consider it. (See Pub. Resources Code, § 21177, subd. (a).) In any event, Guidelines section 15150, subdivision (c), does not require all documents on which an EIR relies to be formally incorporated by reference. Rather, as specified in Guidelines section 15148:

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. The EIR shall cite all documents used in its preparation

including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

The Ferrini Ranch EIR's "reference" section complied with this guidance. (AR 493-494.)

LandWatch further argues that the EIR should not have relied on the SVWP EIR because, in LandWatch's view, the SVWP EIR "greatly understate[d] cumulative demand." (OB, p. 35.) There are at least two problems with this argument.

First, the SVWP EIR did not underestimate demand as to the Project or as to urban users, or as to the 180/400-Foot Aquifer. Indeed, the SVWP modeling actually *overestimated* the amount of demand for groundwater pumped from the 180/400-Foot Aquifer from which the Project will be supplied its water. (AR 20389; see also 20401-20402.) Additionally, overall urban demand has been less than, or roughly equal to, the demand estimated in the SVWP EIR. (AR 25234 [SVWP estimating 45,000 afy baseline (1995) urban water demand], compare AR 16276 [total urban demand was 44,022 afy in 2010], 16292 [total urban demand was 44,474 afy in 2011], 16308 [total urban demand was 42,621 afy in 2011], 16324 [total urban demand was 44,332 in 2013].) The modeling also assumed that the Project would require over twice as much water as the approved Project actually requires. (AR 492.) The modeling performed for the SVWP was

therefore conservative as to the Project, its water-use type, and the 180/400-Foot Aquifer Subbasin from which it will be supplied water. In light of these facts, the FEIR appropriately concluded “[a]lthough the proposed project will increase the demand on the Salinas Valley Groundwater Basin, it would not be at a level that wasn’t already analyzed and disclosed through preparation of the UWMP or the SVP EIR.” (AR 4114.)

Second, as discussed above, the Ferrini Ranch EIR did not rely exclusively on the SVWP EIR in concluding that the Project’s incremental contribution to the groundwater impact would not be cumulatively considerable. Rather, the EIR concluded that the Project’s small demand, its consistency with the URWM, and its location in Zone 2C, which contributes to MCWRA’s project suite, ensures that its incremental contribution to the groundwater impact is not cumulatively considerable. Substantial evidence demonstrates that the project suite is slowing, if not entirely halting seawater intrusion. In light of these facts, the EIR appropriately concluded the Project would not have an cumulatively considerable contribution to groundwater impacts. Updated information regarding the SVWP EIR’s demand assumptions would not alter the EIR’s conclusion and was not required. (CT 5:1214–1215, 1221–1228.)

**E. In any case, LandWatch fails to show prejudice.**

Even if more information providing updated assumptions regarding the SVWP should have been provided in the EIR, LandWatch does not show that the lack of that information was prejudicial. (See Pub. Resources Code, § 21005, subd. (b).) Information presented at the public hearings on the Project, as well as information summarized in the publically available staff reports, is explicit that the SVWP has not yet stopped seawater intrusion, that modeling shows the SVWP may not stop seawater intrusion in the long term, and that additional projects may be necessary if monitoring shows the SVWP will not meet that objective.<sup>4</sup> The County's

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<sup>4</sup> For instance, the staff report for the October 8, 2014, Planning Commission hearing explained that the question of “quantity in the [Basin] is dependent upon whether [MCRWA’s] suite of projects ... provides sufficient mitigation for the seawater intrusion. The evidence indicates that the rate of intrusion is slowing, but the ultimate answer to that will not be available for several years as the projects designed to slow pumping and put water back into the ground have an effect and groundwater is monitored.” (AR 4155, 4195 [same]; see also AR 4249, 4359, 4483–4485, 4845 [“[t]he most recent MCWRA groundwater data (2013) demonstrates near-term benefits of these management efforts, with an understanding that monitoring will be ongoing”].) In addition, the draft findings attached to the staff reports for the Board of Supervisors hearing state that MCWRA’s project suite is the foundation of the projects to stop seawater intrusion, and that more projects are being proposed, including the SVWP Phase II, to stop seawater intrusion. (AR 4483, 4844.) Further, MCWRA’s Assistant General Manager, Robert Johnson, spoke at length at the Planning Commission’s October 29, 2014, hearing, and answered the questions of the Commissioners regarding MCWRA’s efforts to stop seawater intrusion. (AR 5149–5194, 5213.) Johnson also spoke at the Board of Supervisor’s December 9, 2014, hearing. (AR 5554–5556.) Among other things, Johnson explained that the new modeling performed for Water Right Permit 11043 showed that up to a total of 60,000 afy would be necessary to fully halt seawater intrusion. (AR 5178–5179.) Johnson also explained that the SVWP EIR’s conclusion that seawater would be stopped by Phase I of the SVWP alone is based on 1995 land use levels. (AR 5188:8–9.)

decision-makers and interested members of the public were therefore fully informed regarding the predicted effectiveness of the SVWP and the need for continued monitoring and future projects. LandWatch points to no evidence in the record that the public or decisionmakers misunderstood that the SVWP Phase I may not fully stop seawater intrusion. (See *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 709–710 [burden on petitioner to show prejudice based on specific facts in the record].) To the contrary, the robust discussion of groundwater issues at the Planning Commission and Board of Supervisors hearings demonstrates that the public and the decisionmakers were fully informed of both the current and predicted effectiveness of the SVWP Phase I and the potential need for future projects. (See, p. 62, fn. 4, *supra*.)

*Kings County* is instructive. There, the petitioners contended that the EIR was incomplete and thus “legally deficient under CEQA because it did not include accurate data regarding agricultural and industrial water use over the project lifetime.” (221 Cal.App.3d at p. 727.) The Court of Appeal rejected this argument explaining:

““[I]t is doubtful that any agency, however objective, however sincere, however well-staffed, and however well-financed, could come up with a perfect [EIR] in connection with any major project. Further studies, evaluations and analyses by experts are almost certain to reveal inadequacies or deficiencies. But even such deficiencies and inadequacies, discovered after the fact, can be brought to the attention of the decision-makers, ...” [Citations.]”

*(Ibid.)* The court explained that, regardless of whether the EIR’s discussion of groundwater impacts included accurate data regarding agricultural and industrial water demand, the claimed deficiencies in the data were before the planning commission. Thus, the alleged inaccuracies “did not render it difficult for the public or the city council to evaluate the EIR’s discussion of groundwater impacts.” *(Ibid.)*

Here too, the public and decisionmakers were adequately apprised of the alleged inaccuracies in the SVWP EIR. LandWatch therefore cannot show that any perceived omission of information regarding the assumptions made in the SVWP EIR was prejudicial in considering the Project and its less-than-cumulatively-considerable water demand.

**II. The County’s responses to LandWatch’s comments were adequate.**

During the public comment period on the DEIR, LandWatch submitted a 44-page, single-spaced letter, containing, by LandWatch’s count, 71 items, methodically criticizing virtually every section of the DEIR and demanding that the County conduct even further study in the manner that LandWatch sees fit. (AR 3530–3573.) Later, LandWatch submitted a similar letter, totaling 37 single-spaced pages, on the Recirculated DEIR. (AR 3903–3939.) The County provided reasoned, good-faith responses to each of the numerous comments submitted by



LandWatch and others. (See, e.g., AR 3574–3590, 4107–4128, 3726, 3744–3746, 3757, 3760–3761, 3968.) The trial court correctly rejected LandWatch’s claim that the County’s responses were inadequate. (CT 5:1219–1223.)

The CEQA Guidelines provide that, after issuance of a DEIR, “[t]he lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response.” (Guidelines, § 15088, subd. (a).) Responses need not be exhaustive; they only need to demonstrate a “good-faith, reasoned analysis.” (Guidelines, § 15088, subd. (c); *Gilroy Citizens, supra*, 140 Cal.App.4th at p. 937; see generally *City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 546–553 (*City of Irvine*) [discussing CEQA’s requirements for responses to comments].) “[N]ot all comments require a response,” but a lead agency ““must specifically respond to the most significant environmental questions presented.”” (*Citizens for East Shore Parks v. State Lands Com.* (2011) 202 Cal.App.4th 549, 568; see also *Twain Harte Homeowners Assn., Inc. v. County of Tuolumne* (1982) 138 Cal.App.3d 664, 686 [the question for a reviewing court is whether “[t]he responses *as a whole* evince good faith and a reasoned analysis, despite the fact that the responses are not exhaustive or thorough in some specific respects” (italics added)].)

An EIR need not provide all information reviewers request, as long as the report as a whole, reflects a “good faith effort at full disclosure.” (Guidelines, § 15204, subd. (a).) Thus, a lead agency is not required to “conduct every test or perform all research,” studies, or experimentation at the commenter’s request. (Guidelines, § 15204, subd. (a).) When ““a general comment is made, a general response is sufficient.”” (*Gilroy Citizens, supra*, 140 Cal.App.4th at p. 937; *City of Irvine, supra*, 238 Cal.App.4th at p. 550.)

In reviewing the adequacy of a lead agency’s responses, the court must presume the responses are adequate; the burden is on the petitioner to prove otherwise. (*Gilroy Citizens, supra*, 140 Cal.Ap.4th at p. 937.) When reviewing responses to comments regarding an EIR’s cumulative impact discussion in particular, the court must be mindful of “the circumstance that CEQA does not require exhaustive analysis of cumulative impacts.” (*Paulek, supra*, 231 Cal.App.4th at p. 51; Guidelines, § 15130, subd. (b).)

As with all of CEQA’s provisions, the rules governing responses to comments, “must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.” (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 576.)

[N]othing in CEQA Guidelines section 15088 ... allows project opponents to use the comment-and-response process to wear down a lead agency, or delay a project, by the simple expedient of filing an onerous series of demands for information and setting up a series of hoops for the lead agency to jump through. The comments of public agencies must not only be “substantive,” but also “within an area of expertise” of that agency or otherwise involve matters required to be “carried out or approved by the agency.” (§ 21153, subd. (c).) We note in this regard that, unlike the typical discovery process in litigation, the recipient of onerous demands for information by a project opponent has no recourse to the courts for relief (such as a protective order or other legal device) to prevent the comment-and-response process from being abused by project opponents.

(*City of Irvine, supra*, 238 Cal.App.4th at p. 549.)

In this case, as held by the trial court, the County provided reasonable and good-faith responses to LandWatch’s voluminous comments regarding water supply. (CT 5:1219–1223.)

In particular, the water supply comments LandWatch contends received inadequate responses appear to be comments 36-57, 36-59 through 36-63, and 36-65. (OB p. 38, citing AR 3555–3556, 3558–3560, 3562–3564, 3566–3567.) The comments cited by LandWatch reflect ongoing disagreement with the County on region-wide water planning issues, and are only tangentially relevant to Ferrini Ranch. LandWatch’s comments fall generally within four categories: (i) comments regarding LandWatch’s lawsuit against the 2010 General Plan EIR (AR 3554–3556 [Comment 36-57]); (ii)

comments demanding updated baseline information, mostly concerning the SVWP EIR's water demand assumptions (AR 3558–3560, 3562–3564, 3566–3567 [Comments 36-59 to 36-61, 36-63, 36-65]); (iii) comments expressing disbelief that the Project was accounted for in the SVWP EIR (AR 3560–3562 [Comment 35-62]); and (iv) comments expressing disbelief that the Project is located in Zone 2C (AR 3560–3562 [Comment 35-62]).

As the trial court correctly held, “[n]ot only are these requests unduly onerous, but they demand information outside of the EIR’s scope[,]” since CEQA does not require an exhaustive analysis of cumulative impacts and the Ferrini Ranch EIR is not required to solve the regions groundwater problems. (CT 5:1221.)

Regarding LandWatch’s “baseline” comments, the County reasonably and in good faith explained:

Comments are correct that the Notice of Preparation for the project was issued in 2005. Existing conditions for the water analysis were the conditions of the Salinas Valley Groundwater Basin as known in 2005 based on various previously prepared reports, including 2004 aquifer storage data from DWR (DEIR page 3.6-9). Section 3.6 of the DEIR is the resulting synthesis of several sources of information available over time, including reports by Kleinfelder, Frugo, Geosyntec, (Cal Water), and information provided by [MCWRA]. [MCWRA] assisted with the review and organization of all data sources to present a current and accurate section of the EIR. Several references to the “baseline year” used for the SVWP EIR are noted.

(AR 4113.)

The response goes on to clarify:

The water analysis for the proposed project does not rely solely on the SVWP and SVWP EIR for the adequacy of water supply. The DEIR uses a combination of factors when evaluating the impacts to water associated with this project. First as noted above, the proposed project will receive water from Cal Water (CWSC) for which a UWMP has been prepared. The UWMP for CWSC identifies that CWSC has more than sufficient water supply capacity to serve the proposed project. The CWSC's UWMP identifies the source of this water as the Salinas Valley Ground Water Basin. The impacts associated with the CWSC'[s] UWMP is included within the pumping demand assumed by SWVP on the basin.

(AR 4113.)

Thus, to the extent LandWatch's comments criticized reliance on the SVWP EIR, the FEIR sufficiently explains that LandWatch's criticism is misplaced because the County did not rely solely on the SVWP EIR. While the analysis relies on the SVWP EIR as appropriate, the analysis is also based on updated and accurate information provided by MCWRA.

Regarding LandWatch's disbelief that the Project's water demand was accounted for in the SVWP, Master Response 2 states: "The growth projections from AMBAG that were used for the SVWP EIR are conservative and did contemplate development at a level which would have included this property. Thus the SVWP EIR assumed development of this property in its analysis." (AR 4113.)

LandWatch insists that the growth assumptions were not conservative, but LandWatch is wrong. The SVWP EIR overestimated urban growth, particularly in the 180/400 Foot Subbasin. (Compare AR 20400–20401, 25234 with AR 16276, 16292, 16308, 16324.) It is impossible to understand how, in the words of LandWatch, the County’s response “sweeps the issue under the rug” when the response addresses the question presented and is supported by substantial evidence.

Neither *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722–723 (*SCOPE*) nor *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1244 (*California Oak*) advances LandWatch’s argument. The EIRs in both those cases concluded that the respective projects would have adequate water supplies, but failed to disclose substantial uncertainties affecting the supplies. Although commenters on the draft EIRs raised these points, the respondent agencies never owned up to the uncertainties underlying the water supply in the responses to comments. Instead, the agencies stood by their conclusions that the projects would have reliable long-term water supplies, when there was no substantial evidence supporting such optimism. The courts in those cases held

that the agencies had failed to respond in good faith to significant environmental issues raised in the comments.

Unlike the water entitlements at issue in *SCOPE* and *California Oak*, there is no uncertainty here regarding the Project's water supply. Furthermore, as discussed above, LandWatch fails to demonstrate that the County lacks substantial evidence to support its conclusion that the Ferrini Ranch's impact to water supplies is less than cumulatively considerable. Although the County's responses may not have expressly addressed each minor sub-point made in LandWatch's lengthy comments, Master Response 2 represents a reasoned and good-faith response to LandWatch's comments, which is all that CEQA requires. (CT 5:1219–1223; Guidelines, § 15204, subd. (a).)

### **III. Recirculation was not required.**

Recirculation of an EIR is only required when “significant new information” is added to the record between the release of the DEIR for public review and EIR certification. (Guidelines, § 15088.5, subd. (a).) “[S]ignificant new information” requiring recirculation includes, for example, a disclosure showing that: (1) “[a] new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;” or (2) “[a] substantial increase in the severity

of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.” (Guidelines, § 15088.5, subds. (a)(1)–(2).) This standard is “not intend[ed] to promote endless rounds of revision and recirculation of EIRs.” (*Laurel Heights Improvement Assn. v. Regents of U. Cal.* (1993) 6 Cal.4th 1112, 1132 (*Laurel Heights II*)). An agency’s decision not to recirculate the Draft EIR is entitled to substantial deference; the petitioner bears the burden of proof to show no substantial evidence supports the agency’s decision. (*Id.* at p. 1135; Guidelines, § 15088.5, subd. (e).) “An agency’s determination not to recirculate an EIR is given substantial deference and is presumed to be correct.” (*Beverly Hills Unified School Dist. v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661.) “A party challenging the determination bears the burden of showing that substantial evidence does not support the agency's decision not to recirculate.” (*Ibid.*)

As held by the trial court and demonstrated above, the EIR’s cumulative impact analysis complied with CEQA’s procedural requirements and substantial evidence supports the County’s conclusion that the Project would not have a significant cumulative impact on water supplies. (CT 5:1228–1230.) The FEIR merely amplifies and clarifies the information set forth in the DEIR. (AR 4111–4123.) LandWatch’s



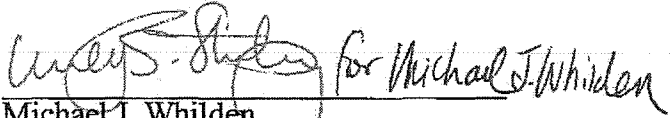
recirculation arguments are based on the same misconceptions described above and rejected by the trial court. (CT 5:1230.) None of the information cited by LandWatch demonstrates a new significant or substantially more severe impact of the Project. LandWatch, therefore, fails to meet its burden to show that “new significant information” has been added to the EIR. (Guidelines, § 15088.5, subd. (a).)

### CONCLUSION

LandWatch’s attack on the EIR’s cumulative groundwater analysis is based on a mischaracterization of the EIR and an overestimation of CEQA’s requirements for an adequate cumulative impact discussion. Any perceived omissions in the EIR’s analysis were not prejudicial. The court should uphold the trial court’s judgment denying LandWatch’s petition for writ of mandate.

Dated: October 9, 2018

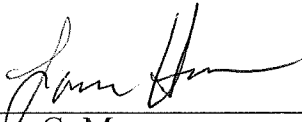
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*[additional signatures on p. 74]*

Dated: October 9, 2018

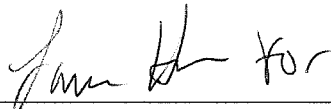
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### CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court 8.204, I certify that this Brief of Respondents and Real Parties in Interest in Opposition to Opening Brief filed by Highway 60 Coalition, including the headings, footnotes, and quotations, but excluding cover information, tables, signature block, certificate of word count, certificate of interested entities or persons, and certificate of service, contains 13,957 words as calculated using the word count function of the Microsoft Word program used to prepare this brief.

Dated: October 9, 2018

  
\_\_\_\_\_  
JAMES G. MOOSE

Court of Appeal for the State of California, Sixth Appellate District  
Highway 68 Coalition, et al. v. County of Monterey, et al.  
Case No. H045253

### **PROOF OF SERVICE**

I, Judith A. Salas, am employed in the County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, CA 95814, and email address is jsalas@rmmenvirolaw.com. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy Moose Manley, LLP's practice for collection and processing mail whereby mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day mail is collected and deposited in a USPS mailbox after the close of each business day.

On October 9, 2018, I served the following:

#### **BRIEF OF RESPONDENTS AND REAL PARTIES IN INTEREST IN OPPOSITION TO OPENING BRIEF FILED BY LANDWATCH MONTEREY COUNTY**

- BY FIRST CLASS MAIL** by causing a true copy thereof to be placed in a sealed envelope, with postage fully prepaid, addressed to the following person(s) or representative(s) as listed below, and placed for collection and mailing following ordinary business practices.
- BY OVERNIGHT DELIVERY** by causing a true copy thereof to be placed in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person(s) or representative(s) as listed below, and deposited in a dropbox or other facility regularly maintained by the express service carrier.
- 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.

**SEE ATTACHED SERVICE LIST**

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed this 9<sup>th</sup> day of October, 2018, at Sacramento, California.

/s/  
\_\_\_\_\_  
Judith A. Salas

Court of Appeal for the State of California, Sixth Appellate District  
Highway 68 Coalition, et al. v. County of Monterey, et al.  
Case No. H045253

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***[Pursuant to CRC 8.212(c)(2)]***