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Winnemem Wintu Tribe

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

WE ADVOCATE THOROUGH ENVIRONMENTAL REVIEW, A California non-profit Corporation; and WINNEMEM WINTU TRIBE

Petitioners

v.

COUNTY OF SISKIYOU; SISKIYOU COUNTY BOARD OF SUPERVISORS; and DOES 1 to 20,

Respondents

CRYSTAL GEYSER WATER COMPANY, a California Corporation; and Does 21-40

Real Parties in Interest.

No. SCCV-CVPT-2018-41

PETITIONERS' REPLY BRIEF

Hearing Date: May 10, 2019
Time: 8:30 a.m.
Dept.: 9
Judge: Hon. Karen Dixon
Petition Filed January 11, 2018

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I. INTRODUCTION

Respondents and Real Party in Interest (collectively "Respondents") begin their opposition brief by describing the proposed Project as a mere permitted use "*as a matter of zoning*" and the County just happened to be the first agency to issue a discretionary permit for the Project. The same Project that the County claims to have no discretionary authority over, other than the permit for the unnecessary caretaker's residence. (Respondents' and Real Party in Interest's Opposition Brief ["ROB"], p. 2.) The facts set forth in Petitioners' Opening Brief ("POB") provide the whole story with respect to how the County ended up as the chance "lead agency" for the bottling plant Project. (POB, pp. 7-8.)

Respondents assert that environmental review was "robust" and that much study and evaluation was done with respect to Project impacts. (ROB, p. 2.) As set forth in detail below and in the POB, the appropriate review was not conducted, and some studies were prepared for the purpose of justifying a no-impact finding. Additionally, the County failed to comply with AB 52.

The overarching and fatal flaw in the County's actions is that while the County purports to have *no authority* over Crystal Geyser's ("CG's") groundwater extractions, it went ahead and prepared an EIR, assuring concerned citizens and County decision makers that the impacts of the Project could and would be mitigated, and that extraction of groundwater could be quantified and that it would remain at the identified levels. This is simply false. There is no limit, and the Opposition Brief does nothing to explain away this problem, but only asserts that there is no foreseeable "expansion" on the horizon. The notion of expansion means nothing in the context of an approval that set no limits at all.

II. DISCUSSION

Respondents' Opposition Brief presented arguments in a different order than they were presented in the Petitioners' Opening Brief. This Reply addresses the issues in the same order as presented in the POB.

A. The EIR for the Project contains a misleading and unstable Project Description

The EIR described the bottling activities, including the amount of water that would be extracted each year by CG. (See AR 164, 1631, 1633, 1831, 7954-7955 and 9025-9026; and POB, pp. 18-19.) County, however, has repeatedly stated that it has no authority over the amount of water Crystal Geyser extracts from DEX 6, amount bottled, or otherwise used at the Project site or elsewhere. (AR 1624, 55546, 55555.)

Respondents argue that the Project Description is adequate based upon claims that the estimates of use provided by CG are "substantial evidence" (ROB, p. 24:10-17), but do not respond to the allegation in the

POB that the Project description is illusory. The Project includes unlimited groundwater extraction. Period. There is no limit to what CG may extract, and in an effort to redirect attention away from this fact, Respondents argue at length that an "increase" over what the Project applicant says it plans to extract at the outset is "speculative" and not "foreseeable." (ROB, pp. 23-25.) Nothing in the Project description describes an approved amount of groundwater extraction that one might "speculate" would be exceeded in the future due to expansion. There is no "approved limit," because there is no limit at all.

Respondents cite to *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1448 arguing that analyzing an "increase" in groundwater extraction at the bottling facility is similar to speculating how many homeowners will build a second unit in the future. (ROB, p. 24.) The *Round Valley* case is inapposite. In that case, the project approval was for a 27-lot subdivision for single-family residences. Opponents argued that the EIR should be required to analyze twice that number of units because homeowners could possibly build a second unit in the future. (*Id.* at 1443.) The court found the question of whether homeowners would choose to build a second unit to be speculative. (*Id.* at 1448-49.)

In the present case, there is no limit on groundwater extraction, and the EIR analysis is based only on the estimates of production levels provided by CG. Richard Weklych provided estimates of the production levels that could be anticipated given certain equipment (AR 7954-7955 and 9025-9026), but he did not make a commitment to operate at or below those levels. Unlike *Save Round Valley*, there is no approved limit that could be "expanded" in the future. The approval in this case includes an open-ended authorization to pump unlimited amounts of groundwater. One need not speculate.

This case is more analogous to *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645. In that case, the flawed EIR for a mining project analyzed the level of production the project applicant assured the County would be "average" annual production, *instead* of analyzing the full level of production allowed by the project approval. (*Id.* at 655.) It is not a question of whether there will be a foreseeable expansion of operations by CG in the future, the question is why the EIR did not analyze the unlimited groundwater extraction that is allowed. One practice in the water bottling industry is to truck water from one facility to another for bottling (see AR 1082, 19866, and19869), and there is nothing in the approval by the County that would prevent CG from doing just that at any time. It is not a question of whether or not this is foreseeable, it is part of the Project, and must be analyzed.

California courts have rejected attempts by project applicants and agencies to analyze something less

than what is authorized by claiming that the applicant will stick to a certain level of activity that falls below the full level of authorized use. (See *San Joaquin Raptor Rescue Center, supra,* 149 Cal.App.4th at 655-656.) The record in this matter contains a confusing combination of assurances by CG and County that groundwater extraction would be approximately 129 to 243 acre-feet per year (AR 164, 1633 and 1831), and other assertions by County that it has no authority to limit CG's groundwater extraction. (AR 1624, see 55546 & 55555.) Because of these conflicting signals sent to the public and the decisionmakers about the nature and scope of the activity being proposed, the Project Description was fundamentally inadequate and misleading. (See *San Joaquin Raptor Rescue Center, supra,* 149 Cal.App.4th at 655-656.)

The County failed to fully disclose the fact that groundwater extraction is unlimited, and hid that fact by inserting extraction and production figures that were impliedly limits, thereby confusing the public and failing to proceed according to law.

B. The EIR includes impermissibly narrow project objectives

Respondents defend the narrow project objectives and failure to analyze a reasonable range of alternatives by reiterating the problem: the County created a list of objectives that could only be satisfied by development of one specific location for the business purposes of one company, Crystal Geyser. (ROB, pp. 20-22.) The Opposition Brief essentially argues, "and what is wrong with that?"

As set forth in detail in the POB, because of the narrow set of project objectives, the EIR did not evaluate feasible alternatives as required by CEQA. (PRC §§ 21002, 21002.1(b); and POB, pp. 20-22.) Respondents clarify one thing: the Project objectives were essentially divided into the County's objectives and CG's objectives. (ROB, p. 21.) One set focused on CG's business interests (ROB, p. 21:1-7), and "[t]hese objectives were identified to ensure that Crystal Geyser is able to participate in and take advantage of the current business opportunities in the bottled water and beverage market." (*Id.*) The other set of objectives included taking advantage of the existing structure on the property, and the "availability and high quality of existing spring water on the property" and providing tax and employment benefits to the County. (ROB, p. 21:10-22). These objectives focused on developing the existing Plant into a water bottling facility. Between the two sets of objectives, there was no feasible alternative that could be evaluated. One set of objectives would go completely unmet so long as CG did not gain a business advantage, and the other set of objectives would go unmet unless the Project site was approved for water bottling activities. No feasible alternatives exist, and so none could be analyzed. Accordingly, the EIR fails as a matter of law.

E. The County Violated AB 52

1. The County terminated the Consultation in violation of the law

Respondents argue that "substantial evidence" supports the County's termination of consultation. (ROB, p. 13.) This claim is based upon the same assertion the County made at the time of termination: that the consultation took too long, interferred with the Project schedule. (AR 56375-78.) Respondents argue today that the County, based upon substantial evidence, determined that the parties could not reach "mutual agreement" but it is clear that the only point of "disagreement" was regarding the use of an ethnographer. (ROB, p. 13:21-24.) The County and the Tribe had not yet even consulted regarding the Tribal input on the issue of significance of impacts. Even if there is "substantial evidence" that the consultation process was slow, that is not a valid basis for termination under the statute. (PRC § 21080.3.2(b).)

With respect to the standard of review, the question of whether or not the County improperly terminated the consultation process is an issue of improper procedure and is subject to *de novo* review by the Court. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435; and *Banning Ranch v. City of Newport Beach* (2017) 2 Cal.5th 918, 935.)

AB 52 provides that the tribal consultation can be considered concluded if: (1) the consulting parties agree to mitigation measures to avoid significant impacts on TCRs; or (2) one party "acting in good faith and after reasonable efforts" determines that achieving mutual agreement is impossible. (PRC § 21080.3.2(b).) In their brief, Respondents assert that the County made this determination that mutual agreement would be impossible. (ROB, p. 13:21-24.) The County *did not* make such a determination.

The County stated that it was "electing to bring the consultation to completion." (AR 5609-56062.) The County's letter noted the timing and manner of the comments the Tribe submitted, the disagreement over the unqualified ethnographer, and the County's efforts to meet face to face with the Tribe. (AR 56061-56062.) What the County's letter does not do is indicate that a mutual agreement was not possible.

Respondents make much of the claim that the County was not required to engage an ethnographer. (ROB, pp. 15-16.) While there is not a statutory provision requiring this, the County *agreed* to engage an ethnographer and issued a Request for Proposals. (AR 56281-95.) Respondents discuss disagreement regarding the qualifications of available ethnographers, presumably because the County thinks this disagreement is part of the "substantial evidence" that the parties could not reach "mutual agreement," but what this actually shows is that the parties encountered difficulty agreeing upon a qualified ethnographer.

Respondents go on to argue that the County made a decision to terminate consultation and that the reviewing court's inquiry is limited to the following question: Did the lead agency act in good faith, and had the lead agency exercised reasonable efforts? (ROB, p. 19:1-7.) The statute actually states that termination of consultation may occur when mitigation measures are agreed to, or a party in good faith after reasonable efforts concludes that mutual agreement is not possible. It is not simply a matter of acting in good faith and exercising reasonable efforts, the conclusion of inability to reach agreement must be made. The County and the Tribe had not yet even consulted on the *significance* of the impacts to the aquifer and the Sacramento River, so such a conclusion could not have occurred.

2. Respondents improperly attempt to limit the definition of Tribal Cultural Resource

Respondents take the bold step of claiming that AB 52 did nothing to expand the review of cultural resources under CEQA, and that the review of cultural resources continues to be limited to those resources eligible for inclusion in the National Register of Historic Placers or for being listed as a historical resource in the California Register. (ROB, pp. 17-18.) According to Respondents, when a California Native American tribe identifies a resource as a Tribal Cultural Resource, the consulting agency may disregard that resource if it does not qualify as historically important under previously existing statutes. (*Id.*)

This could not be further from the truth. AB 52 defines a new category of resource to be considered when conducting CEQA review, it also expressly includes within the definition of a Tribal Cultural Resource "non-unique archeological resources," a type of resource that was previously only subject to limited review under CEQA. (PRC §§ 21074(c), 21083.2 (h).) This issue was set forth clearly in a letter from Petitioners' counsel to attorneys for the County before the Project was approved. (See Declaration of Marsha A. Burch in Support of Petitioners' Reply Brief, Exhibit A.)

As defined by CEQA, "non-unique archeological resources" are those which do not contain "information needed to answer important scientific research questions" for which there is "demonstrable public interest;" they are not of a "special and particular quality such as being the oldest of its type or the best available example of its type;" nor are they "directly associated with a scientifically recognized important prehistoric or historic event or person." (PRC § 21083.2 (g) and (h).)

The legislature's inclusion of non-unique archeological resources reflects the overall shift in CEQA achieved through AB 52. Instead of treating an archeological resource as significant under CEQA only if it is a good candidate for "scientific" research, or only if is associated with a "scientifically" important event,

public agencies must now view significance in a broader light—one keyed not just to the "scientific" value of a resource, but also to the sacred and/or cultural Tribal value of the resource. This is a dramatic change to CEQA's treatment of cultural resources.

In the present case, the TCRs identified by the Tribe during the consultation process were identified because of the cultural Tribal significance, as well as the sacred nature of the TCRs. Further, the County *accepted* the identified TCRs. (See ROB, p. 20:4-6.)

Now, Respondents want to argue for a miserly reading of AB 52 – business as usual, but will Native Americans who divulge the identity of important cultural resources be able to trust that they are being heard when their TCRs are subject to the same limited standards as before AB 52 was passed?

Respondents' argument goes from claiming that only places that qualify as historic under previous statutes are eligible to be TCRs, *and* this means that TCRs must be "physical places, or physical objects, geologic structures or other landscape formations." (ROB, p. 18:1-3.) This argument also asserts that "for purposes of CEQA, a TCR must have a property referent." (ROB, p. 18:3.) And, water is an "element" that does not meet the definition of a TCR as defined by CEQA. (ROB, p. 18:4-10.) Respondents conveniently overlook the fact that the TCR identified by the Tribe was the groundwater *aquifer* that will be the source of CG's water supply. Maybe according to Respondents' argument the aquifer is not a "formation"?

Respondents' argument concludes by claiming that the County may have agreed to consider the aquifer a TCR, but it was not required to do so under CEQA. "[G]iven that an elemental resource in and of itself is foreclosed from meeting the definition of a TCR under CEQA, as is the groundwater here, there is no analysis required for purposes of CEQA compliance under AB 52." (ROB, p. 18:16-20.)

Respondents' argument is that even if the County improperly terminated consultation and failed to get any input at all from the Tribe regarding the significance of impacts to the TCR's, the groundwater aquifer and the Sacramento River do not "qualify" as TCRs under CEQA, so the County was excused from AB 52 compliance. This argument is shocking given AB 52's clear requirements, as well as the intent behind its changes to CEQA: to establish a new category of resources in [CEQA] called "tribal cultural resources" that considers the tribal cultural values *in addition to* the scientific and archaeological values considered when determining and mitigating the impacts of a proposed project. (PRC § 21074(c).)

Respondents' argument that it is business as usual and agencies may ignore identified TCRs based upon old standards (or worse yet, acknowledge the TCRs and then disavow them later) is without merit.

D. The EIR's impacts analysis is insufficient

1. Impacts to aesthetics

With respect to aesthetics, Respondents essentially argue that personal observations may be ignored, citing to *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274-275 ("*Banker's Hill*"). (ROB, p. 34:3-6.) The decision in *Banker's Hill* actually states that "although local residents may testify as to their *observations* regarding existing traffic conditions, 'in the absence of specific factual foundation in the record, dire predictions by nonexperts *regarding the consequences of a project* do not constitute substantial evidence.'" (*Banker's Hill, supra,* at 274 (emphasis in original), citing *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.)

In the present case, *specific evidence in the record* shows that the Plant has a significant aesthetic impact in the area. The County itself found the Bottling Facility has a negative aesthetic impact when the County found that it required mitigation, as set forth in the 1998 Mitigation Agreement. (AR 1429, 32198.)

2. Air quality impacts

Respondents do not explain why the County's air quality experts tweaked the standard fleet mix in the analysis for the DEIR, causing the emissions to be reported in the DEIR at about half of what the FEIR finally revealed. Respondents also do not explain why the new analysis prepared for the FEIR continued to modify the standard fleet mix to minimize emissions estimates. The record is rife with evidence that the air quality impacts analysis was so utterly flawed that it cannot be relied upon, and yet Respondents argue that the County is entitled to choose methodology and rely upon its experts. (ROB, pp. 36-37.) This is true, except where a methodology is chosen for the purpose of justifying a no-significance finding. (*Center for Biological Diversity v. Dep't of Fish & Wildlife* (2015) 62 Cal.4th 204, 228, *as modified on denial of rehearing* (Feb. 17, 2016).)

There is no explanation for the manipulation of the fleet mix, and then the further refusal to use the standard analysis or to review the analysis of the health risks other than that the County wanted to come to certain conclusions. As described in the POB, the flaws were many in the first analysis, and they were carried over into the second. (POB, pp. 28-31.)

Respondents make the standard arguments that the lead agency is entitled to believe its own experts and to choose methodology, but those arguments do not hold up when the evidence is so clear that the analysis was done to produce a certain result.

With respect to the FEIR abandoning the threshold of significance for mobile sources that was used in the DEIR, Respondents argue that it was all just a mistake. (ROB, p. 38:8-18.) The County admits that the revised modeling reveals significantly increased emissions from mobile sources, but declines to use the threshold of significance that was applied to these emissions *in the Draft EIR*, claiming that numerical thresholds have not been established for mobile emissions (AR 1177 and 1697-1698.) Respondents claim that a "qualitative" threshold was applied. (ROB, p. 38:17-18.) The ROB does not describe the subjective, qualitative threshold for air emissions that it claims to have been used by the County. The FEIR does not set forth a qualitative threshold, in fact, it fails to identify *any* threshold at all for mobile sources.

A lead agency may not analyze an impact without using a threshold of significance, and the fact that another agency has not established a threshold does not excuse the County from this requirement. (*Lotus v. Dep't of Transportation* (2014) 223 Cal.App.4th 645, 655-656.) The County's actions in an effort to avoid making a finding of significance violated CEQA.

With respect to the Health Risk Assessment ("HRA"), Respondents provide a laundry list of excuses for not re-running the HRA. (ROB, pp. 38-39.) The fact remains that the new air quality analysis prepared for the FEIR showed a 68% increase in exhaust $PM_{2.5}$ emissions, and Respondents continue to claim that shocking increase noted by the County's own experts does not mean that the health risks near the plant have changed one bit. (*Id.* and AR 32212-32213.) The County's expert acknowledged that it would take a day to re-run the HRA. (AR 35812-13.) It seems that a day to ensure the safety of the citizens near the Plant would be worth the time, and it certainly was required by CEQA and common decency.

E. Greenhouse gas emissions

Respondents argue that the FEIR's revelation that the five-fold increase in GHG emissions were adequately addressed by increasing the amount of off-set mitigation required. (ROB, p. 42:14-21.) Off-set credits address global GHG emissions, but the five-fold increase also indicates what will be endured by the local citizens: five times what was disclosed in the DEIR, and yet Respondents now argue that no matter how great the GHG emissions, adding off-set credit requirements dispenses with the problem. The County should have recirculated at least the air quality portion of the DEIR in order to disclose the true GHG emission levels and consider potential mitigation measures that would not just reduce the global impact, but reduce the impact on local citizens as well. (PRC § 21092.1; and Guidelines § 15088.5(a)(4).)

With respect to the GHG emissions associated with making bottles on site out of "preforms,"

Respondents argue that these emissions need not be considered for two reasons: (1) there will be no preforms made on site (they will be made elsewhere); and (2) that there is no basis for requiring a "life-cycle" analysis. (ROB, p. 41:17-25.) Respondents cite to *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175, claiming that the increased use of preforms is similar to the increased use of paper bags in that case, and is "an indirect and uncertain consequence." (ROB, p. 41:20-21.)

In *Save the Plastic Bag*, the court addressed the question of whether a City banning the use of plastic bags must analyze the potential for increased demand for paper bags, and the impacts associated with paper bag use elsewhere. The court found that it impossible to predict whether or not there would be in increase in demand for paper bags, and that the impacts of paper bag manufacturing in an area outside of the City's geographical boundaries. (52 Cal.4th at 173-174.) This is distinguishable from the case at hand.

CG provided estimates to the County of the number of bottles it will use each year (AR 1631-32 and 1633), and so the number of preforms is not uncertain. The amount of CO_2 generated by the production of preforms is also known. (See AR 667 and 692.) Lastly, California courts recognize that GHG emissions are a global problem made up of cumulative impacts, and the fact that they "are not contained in the local area of their emission means that the impacts to be evaluated are also global rather than local." (*Center for Biological Diversity, supra,* 62 Cal.4th at 219-220.) The County may not avoid the analysis of the known cumulative, global impacts associated with the identifiable number of preforms the Project will consume.

F. Noise impacts

Respondents argue that substantial evidence supports the decision to use superseded and inappropriate noise standards and that the County has discretion with respect to methodology. (ROB, p. 29.) While a lead agency has discretion with respect to methodology, it may not rely on an inapplicable method to justify a no-significance finding. (*Center for Biological Diversity, supra,* 62 Cal.4th at 228.) The noise analysis and the revised analysis show a concerted effort to avoid a finding of significance. Noise impacts to neighbors in the quiet community near the Bottling Facility will impact their well being, and the County must engage in an objective analysis that allows for the development of mitigation measures to protect these citizens.

Respondents continue to claim that a 1-4 dB exceedance of noise standards is minor. (ROB, p. 28:22-28; and AR 37345-37346.) Even a 1 dB increase in 24-hour levels represents a potentially significant impact to local sensitive receptors that may require mitigation. (AR 33262.)

Respondents urge the Court to accept the notion that the area around the Bottling Facility is made up

of "industrial uses, Interstate 5, and nearby train tracks." (ROB, p. 30:11-13.) In fact, the Bottling Facility is in the midst of a quiet neighborhood in a relatively serene mountain setting, as many comments noted. (See AR 385, 393, 453, 493, 604, 652, and 656.) The noise analysis is inadequate. Case law requires the EIR to provide enough information so readers can determine whether project-related noise would "merely inconvenience" people or "damn them." (*Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371, 1382; see *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123.) The County failed to meet the standard set forth in *Berkeley Jets*.

G. Impacts to hydrology

Respondents argue that in 2017, the County "studied" the Project's impacts to neighboring wells. (ROB, pp. 30-31.) In fact, there has never been a study that directly evaluates the potential impacts on neighboring wells. Respondents rely upon Appendices P and W to the EIR, both prepared by the same consultant in 2016 and 2017, respectively. (ROB, p. 30:16-24.) Respondents argue that the County was entitled to rely upon these expert reports and could ignore conflicting opinions from other experts. (*Id.*) The trouble with the reports is that, despite Respondents' arguments to the contrary, they did not actually evaluate the potential for impacts to neighboring wells.

The 2017 study (Appendix W) measures the effect of three days of rapid pumping (at 247 gal/min) at the Domestic Well ("DM") upon a number of other CG "observation" wells within a radius of 2200 feet from DM. (AR 7371-7404.) The main problem is the same as with all previous hydrology tests: neither the pumped well nor the observation wells are the same (or even close to) the wells of interest, which are DEX-6 (the CG production well) and residential wells to the east. (AR 7391.) No evidence or reason exists to suspect that the pairs of wells that were actually tested and the pairs of wells of interest even feed off the same underground streams. Moreover, the 2017 test was very short-term (3 day pumping) whereas the effects of concern would develop from almost continuous long-term pumping for months or years. There is no evidence that the theories considered in Appendix W are well founded or relevant for the local geology.

The hydrogeology underlying the Southwest aspect of Mt. Shasta volcano is complex and poorly understood. (AR 34578.) "The hydrogeology is particularly complex leading to significant uncertainty and raising concern that neighboring domestic wells will be impacted." (AR 429-436 at 430-431.)

What is known about the aquifer is insufficient to support the conclusions made by the County. (AR 1061.) None of the necessary factors are addressed in Appendix W or anywhere else, because the wrong

questions are asked. (AR 1060-1065.) Appendix P acknowledges this complexity and notes that the DEX-3A, -3B and DEX-5 appear to be discontinuous from the other wells. (AR 04847)

No hydrological studies have ever indicated that the subjects of the 2017 study (the Domestic Well and the various CG-property wells) share the same aquifer as the residential wells. One would think that showing this sharing would be a prerequisite for relevant interpretation of measurements described in the 2017 study. Because of the universally acknowledged nature of the underground channels as a possibly discontinuous complex network in fractured andesite and lava tubes, this question of connectivity or lack thereof cannot be ignored just because it is unknown. (AR 429-436, 1060-1065, 4847 and 34578.) Yet the 2017 study completely ignores this fundamental question. The 2017 study contains no scientific justification for using any putative DM-to-CG wells connection results to make any conclusions regarding the DEX-6-to-residential well connection. (See AR 07375.)

The 2017 study looked only at the effect of 3 days of pumping, done once in just one season of one year. (AR 7376.) The community, on the other hand, is concerned about the effect of continuous pumping over many years, a time scale *hundreds or thousands of times* longer than what was tested.

Appendix W says the 3-day pumping period was *deemed* by the consultant to be of sufficient duration to monitor for possible measurable water level drawdown in the nearby water level observation wells, and to check for the possible presence of nearby boundary conditions." (AR 7378, emphasis added.) Appendix W provides no factual basis for "deeming" 3 days to be sufficient. In fact, the overly brief 3-day period precluded a serious examination of 4 out of 7 of the wells. (AR 7385.) The 2017 study (very short-term) is useless in predicting whether the aquifer will be depleted (or not) over the long-term. Whether these extrapolations are actually accurate or even relevant to the real world needs experimental verification at any given set of sites, a project that CG never investigated. Short-term experiments are quicker and cheaper and underestimate worrisome effects and yet may still serve to soothe the public and the decision makers.

A conclusion of the 2017 study was that vigorous pumping at DM had minimal effects on other CG wells nearby, and given some extrapolation in space and time, maybe vigorous pumping at DM would have little effect on a residential well to the northeast. (AR 7387.) Appendix W does not explicitly extend this conclusion to the expected effect of pumping at DEX-6 upon residential wells in general, but the implication is that there is *little or no* impact. (*cf.* AR 3299 [Slade noting that pumping at DEX-6 caused decline at DEX-1].) That is a conclusion desired by CG now, in order to allay community concerns. (AR

12559-12597 [SECOR report attempting to prove *connection* between DEX-6 and Big Springs].)

As an alternative to a valid scientific argument, Respondents argue that use of the PUMPIT program was peer reviewed by Geosyntec. (ROB, p. 32.) Peer review, however, must be independent. It is not to be done by "peers" that themselves were involved in the project. CG paid Geosyntec to produce a hydrological reports in 2012 and 2014. (See AR 751, 770, 1418, and 1423.) Flaws in the Geosyntec Report were extensively discussed in comments on the DEIR. (AR 34580; AR 34980 and 33079). Geosyntec is not an unbiased independent party.

The evidence in the record shows that the County never studied the question of whether or not industrial pumping at DEX-6 would impact neighboring wells. The studies in Appendix P and W address the wrong wells at the wrong time of year and for the wrong testing period. There is no substantial evidence to support the County's conclusion of no significant impact to the groundwater aquifer.

H. The Project violates General Plan thresholds and policies

Respondents argue that the violation of the noise standards in the County General Plan was remedied through mitigation measures included in the FEIR. (ROB, p. 45:24-28.) In fact, the finding of exceedance was "remedied" by creating a "new" baseline that included a residence immediately adjacent to the railroad tracks and omitted analysis of vibrational noise and decided not to analyze the combined impact of traffic and industrial noise from plant operations. (AR 33330-33333 at 33331.) The Project violates a clear, mandatory noise standard. (*Endangered Habitats League, Inc., supra,* 131 Cal.App.4th at 782.)

In response to comments regarding the inadequacy the County's review of General Plan consistency, the County states that the Policies of concern were dealt with in the FEIR. (AR 32052-53.) Unfortunately, there is no meaningful evaluation of the Policies in the FEIR. (AR 1849-1850.) The EIR dismisses the concerns about compatibility with surrounding land uses with the following statement: "The site does not have woodland potential where the proposed caretaker's residence is to be built, and development of the site and the caretaker's residence would not decrease the potential for industrial development. (AR 1850.) The County never made the necessary findings regarding consistency with the General Plan.

V. CONCLUSION

Based upon the foregoing and Petitioners' Opening Brief, Petitioners respectfully request that the Court issue the peremptory writ and other relief requested.

DATED: April 17, 2019

LAW OFFICES OF DONALD B. MOONEY

By _____
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PROOF OF SERVICE

I am employed in the County of Yolo; my business address is 417 Mace Blvd, Suite J-334, Davis, California; I am over the age of 18 years and not a party to the foregoing action. On April 17, 2019, I served a true and correct copy of

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____ (by mail) on all parties in said action listed below, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a United States mailbox in the City of Davis, California.

__X__ (by overnight delivery service) via Federal Express to the person at the address set forth below:

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Barbara Brenner Churchwell White, LLP 1414 K Street, 3rd Floor Sacramento, CA 95914	***Representing Real Party in Interest Crystal Geyser Water Company***

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 17, 2019.

Donald B. Mooney