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April 10, 2019

EMAIL veronica.cuevas@waterboards.ca.gov
AND U.S. MAIL

Attention: Veronica Cuevas

Irma Munoz, Board Chair
Lawrence Yee, Board Member
Charles Stringer, Board Member
Francine Diamond, Board Member
Cynthia Guzman, Board Member
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: Objections re items currently scheduled for hearing on May 9, 2019:

TSO Order Number R4-2019-XXXX, NPDES: CA 054313 and CI 2960 (Santa Clarita Valley Sanitation District Saugus Waste Water Reclamation Plant)

TSO Order Number R4-2019-XXXX, NPDES: CA 054216 and CI-4993 (Santa Clarita Valley Sanitation District Valencia Waste Water Reclamation Plant)

Honorable Chair and Board Members:

I. Introduction.

This firm and the undersigned represent the Affordable Clean Water Alliance (hereinafter "ACWA"). The following comments and objections to the two items listed above are being emailed prior to the April 10, 2019 5:00 p.m. deadline for comments. Please confirm to my email address that these comments have been timely received.

ACWA is a coalition of residents, business owners, environmental protection advocates, and political and civic activists who advocate for safe and sustainable water supplies in California, with special emphasis on Northern Los Angeles County and the

Santa Clarita Valley.

ACWA has consistently scrutinized the actions of the Santa Clarita Valley Sanitation District ("District") regarding its Chloride Compliance Project (sometimes hereinafter "Project"), and the Project's Recycled Water Component. ACWA has repeatedly worked, through community information and legal actions, to hold the District accountable to the public and the ratepayers for its conduct of the Project.

ACWA believes that the above-referenced Tentative Orders lack a solid factual and legal foundation in that they reflect a historical narrative so incomplete as to be misleading and even false.

For example, the narrative in ¶¶ 9-14 and 17 of the "Valencia TSO" minimizes the extent to which the District has acted inconsistently and irresponsibly, and its flagrant disregard for the substantive and procedural requirements of the California Environmental Quality Act (Pub. Res. Code § 21000, *et seq.*), the rulings of the Los Angeles Superior Court (see **Exhs. 1 & 2** hereto [the Judgment and Writ ACWA secured against the District]), and the importance of the Santa Clara River as habitat for special-status species.

II. The District Has Failed To Fully Comply With The Writ Of Mandate Issued Against It Three Years Ago Regarding The Chloride Project, And Has Consistently Violated CEQA.

We begin with ¶ 9 of the Valencia Tentative Order, which is only partially correct. The Superior Court, the Hon. James C. Chalfant presiding, ruled on June 2, 2016 that the District could not pursue the chloride removal portion of its Project separate from the recycled water portion of it without performing a proper CEQA analysis of separating the two Project components. (2/23/16 Decision, p. 24, at **Exh. 3** hereto; 6/2/16 hearing transcript, pp. 16-17, at **Exh. 4** hereto.)

The Judge conditionally allowed the District to go forward with the chloride removal portion of the Project in a ruling on October 24, 2017, but with the caveat that he was not ruling on the validity of separating out the water recycling portion of the Project (10/24/17 transcript, p. 5, at **Exh. 5**), which would still require the adjudication of ACWA's challenge to the EIR supporting the separation of the two portions of the Project (id. at pp. 16-17), and without the court ruling on the adequacy of the District's current effort to obtain CEQA approval of the Chloride Project, denominated the "Recirculated EIR." That is the District's 6th attempt to produce an EIR that would pass legal muster, with ACWA having prevailed in two prior lawsuits and cases against the

District. Trial of ACWA's pending petition/complaint against the District's Recirculated EIR is set for September 26, 2019. (**Exh. 6** [docket].)

However, there is more history than ¶ 9 of the Tentative Order sets out. The District made its first attempt to persuade Judge Chalfant to discharge the Writ by filing its first return to the Writ on April 14, 2016, which consisted solely of a Supplemental EIR on disposal of brine waste from the chloride removal component of the Project. (As set out in the 9/26/17 Decision, p. 3, at **Exh. 7** hereto.) In essence, the District asked to have the entire Writ discharged because it had allegedly complied with half of it.

ACWA filed a Code Civ. Proc. § 1097 motion challenging the return to the Writ, and Judge Chalfant rejected the District's Return on June 2, 2016, on grounds that the District had not adequately studied the potential impacts of potentially reduced discharges from the District's treatment plants on the Unarmored Threespine Stickleback (hereafter "Stickleback.") As set out in the court's recitation of the District's own evidence, the court also ruled that the "District could take no further action in performance of the Chloride Compliance Project until it completed further studies regarding the potential impacts to the unarmored threespine stickleback fish" (**Exh. 7**, pp. 3-4), i.e., the newly-separated recycled water EIR.

In August of 2016, the District issued a Notice of Preparation of a Supplemental EIR on the impacts on the Stickleback of reducing its effluent discharge to the Santa Clara River. (**Exh. 8** hereto.) Among other things, the District's NOP correctly stated that the Superior Court "set aside the 2013 EIR and related approvals **until the District complied with CEQA, including the additional study on the stickleback**." (Id. at p. 2; emphasis added.) The NOP further correctly stated:

> "The production and disposal of brine produced at Valencia WRP would reduce discharge to the SCR, which supports special-status species. Increased use of recycled water could also reduce discharge to the river. The SElR will **evaluate the impacts of the project on the unarmored threespine stickleback as directed by the court ruling** and, for potentially significant impacts, identify feasible mitigation measures to reduce the environmental impacts.
>
> "Operation of the project would result in reduced discharge to the river that could impact river hydrology (flow or configuration). The SEIR will **evaluate the project's hydrologic impacts on unarmored threespine stickleback as directed by court ruling**

> and, for potentially significant impacts, identify feasible mitigation measures to reduce the environmental impacts."

(**Exh. 8** at pp. 3-4; emphasis added.)

On September 26, 2017, the District's counsel stated in open court that, although it had learned from the Department of Fish and Wildlife that the analysis would be longer than the District had originally thought, the District would be doing a full analysis of the impacts of reducing its discharge to the Santa Clara River. (9/26/17 hearing transcript, p. 19, at **Exh. 9** hereto.)

As to ¶ 9 of the TSO, the court order allowing the chloride removal facilities to be built was not issued in a vacuum. It followed a lengthy and sometimes tortured history, which we will summarize. Although the Superior Court had directed the District to set aside all Project approvals and take no further steps in furtherance of the Project, the District nonetheless immediately continued to seek funding for the Project, and took other steps that were in furtherance of the Project, also in violation of the Writ.

As to ¶ 10 of the Tentative Order, ACWA quotes the Superior Court's summary of what occurred:

> "On March 18, 2016, the District made available the agenda for the March 23, 2016 District Board meeting by posting it on the District's website. The Agenda stated that the District's Board would consider adoption of resolutions that would: (1) decertify the Original 2013 EIR, as required by the Writ; (2) delete from the Original 2013 EIR the Project component that would have provided treated wastewater for use as recycled water; (3) consider the Original 2013 EIR, as modified by deletion of the recycled water component, together with the uncertified Supplemental EIR ("SEIR"), denominating the combination of the two documents the "Augmented/Modified 2013 EIR," and certify the combined Augmented/Modified 2013 EIR as adequate under CEQA; (4) certify the Final SEIR as a separate document as adequate under CEQA; (5) approve the Project as modified by the Augmented/Modified 2013 EIR, and the Final SEIR. The March 18 posting of the District's agenda for the March 23 meeting was the first notice given of the Augmented/Modified 2013 EIR, which was

> not circulated for public and public agency review under Guidelines section 15087."

(6/2/16 Decision, p. 3; at **Exh. 10** hereto.)

No actual, written document embodying the "Augmented/Modified 2013 EIR" was circulated for public review and comment, and indeed, none existed, as was shown when no such document was produced at the Board hearing where the Board certified it. (**Exh. 10**, pp. 3-4.) This conduct flagrantly violated the most basic CEQA procedures of full public environmental disclosure and public notice/opportunity to comment on CEQA documents. The District's actions were an unprecedented violation of CEQA.

ACWA brought a Motion to enforce the Writ, to contest the certification of the uncirculated, unreduced-to-writing Augmented/Modified 2013 EIR, and to prevent the District from taking <u>any</u> steps to forward the Project until it fully complied with CEQA. The court granted ACWA's Motion on June 2, 2016, finding that the District's attempt to separate the two Project components of chloride removal and provision of recycled water was "at least on its face, classic piecemealing [of the Project] in violation of CEQA" (**Exh. 10** at p. 7), and ruling that "[t]he District's certification of the Modified EIR and SEIR did not comply with CEQA." (<u>Id.</u> at p. 8.)

Judge Chalfant also admonished the District that it could not separate the chloride removal component of the Project from the recycled water component, or obtain a full discharge of the Writ, until and unless it complied fully with CEQA, including but not limited to performing an analysis of the environmental consequences of making that separation. (6/2/16 transcript, pp. 16-17, 19, 22-23, at **Exh. 4** hereto.) These are the facts and procedures that resulted in the Order referred to in ¶ 11 of the Tentative Order, causing the District to finally cease work on the Project about three months after the Writ commanding it to do so had been issued.

The events in ¶ 12 of the Tentative Order are grouped thematically, not chronologically, and it omits significant events. As noted above, on August 6, 2016, the District issued a Notice of Preparation of a Supplemental EIR that would analyze the environmental impacts, including on the Stickleback, of separating the recycled water component of the Project from the chloride removal component of the Project. No Scoping Meeting was held, and no Draft SEIR was ever issued. Very recently, on February 25, 2019, the District formally withdrew the NOP, and "reject[ed] the Recycled Water Project," some two and one-half years after issuing the NOP. (Resolution, section 1, at **Exh. 11**.) That was the first formal move by the District to attempt to abandon –

contrary to multiple averments by the District and its counsel to the court that the District would prepare the Supplemental EIR as to the recycled water component as part of the District being allowed to conditionally move forward with the chloride portion of the Project – rather than delay the recycled water component of its Project. Otherwise, the District has always maintained its commitment to performing the recycled water component CEQA review – repeatedly, in its various draft Supplemental EIRs, in representations to the Court, and for years to the rate payers and general public. Importantly, those statements remain embodied in its current Recirculated EIR that is under legal challenge by ACWA. The District cannot escape its prior statements in court and other legal documents.

It is important to note, in contradiction to recent assertions by the District that "two projects" have existed somehow, that no second independent project EIR for recycled water/Stickleback exists. Rather, many of the additional EIRs or Notices of Preparation issued for this same, single Chloride Project have been "Supplemental EIRs." These have all attempted to "supplement" the same, now-invalidated 2013 EIR issued for the "Chloride Compliance Project," which the Superior Court struck down. (**Exhs. 1 & 2**.) It is this same EIR that presented the provision of increased supplies of recycled water to the public not only as a key component, but as an integral benefit of the "Chloride Project." The recycled water component was an actual Project objective listed in the 2013 EIR. It remains so in the Recirculated EIR under challenge because the District, in either its ultimate sloppiness or hubris, or both, incorporated by reference the 2013 EIR into the Recirculated EIR.

The District's most recent Supplemental EIR, which was prepared, circulated, and certified while the NOP on the recycled water/Stickleback study was apparently kept dormant by the District, is the Recirculated EIR referred to in ¶ 13 of the Tentative Order. This Supplemental EIR purported to examine the separation of the recycled water component from the chloride removal component, and the abandonment of the recycled water component. However, what does not appear in either the Valencia or Saugus Tentative Order's narrative is that the Recirculated EIR continues to affirm the District's intent to carry out the recycled water component, both by incorporating by reference the Original 2013 EIR, which included – and still includes – both components in the Project description, and by listing the "SCVSD Recycled Water Project" as a related District project in the Recirculated EIR's cumulative impacts section. (See pp. 2-2 and 7-2 to 7-3 of Recirculated EIR, respectively, at **Exh. 12** hereto.)

The Recirculated EIR further states that diversion of recycled water away from discharge to the Santa Clara River "is deferred and will become a project objective for

the [District's] Recycled Water Project, which will be analyzed in a separate CEQA document." (**Exh. 12**, Recirc. EIR, p. 2-2.) As set out in ¶ 13 of the Tentative Order, the Recirculated EIR was certified by the District Board on August 30, 2017.

ACWA filed a challenge to the Recirculated EIR on September 25, 2017. A trial date has been set for September 26, 2019. (**Exh. 6**.) The Writ that issued as a result of ACWA's challenge to the Original 2013 EIR was partially discharged on October 24, 2017 due to the District's certification of the Recirculated EIR. However, the ***Judgment and Writ, requiring an adequate CEQA analysis of the Project's impact on the Stickleback, in furtherance of the recycled water component of the Project, and requiring a valid EIR to replace the 2013 Original EIR that the Court fully nullified, including as to the chloride portion of the Project based on ACWA's first lawsuit, remain in place, in force, and uncomplied with by the District to this day.*** It must be remembered that the Recirculated EIR (which remains subject to invalidation in ACWA's current lawsuit) was a temporary bridge that the judge allowed, but only partially and conditionally, in furtherance of the District's actions related to the chloride issue, and pending ultimate determination of the validity of the Recirculated EIR.

This full history shows the District both consistently averring a commitment to the recycled water as part of the Project, and at the same time often ignoring and minimizing that component, something not reflected in the narrative in the Tentative Orders for either the Saugus or Valencia Waste Water Reclamation Plants. The District's bold false statements and contradictions, including its attempt to now disavow any responsibility for the recycled water/stickleback Supplemental EIR, present another legal liability to its Chloride Project. A party, not the least of which a governmental agency, is not free "to deceive courts, argue out of both sides of [its] mouth, fabricate facts and rules of law, or seek affirmatively to obscure the relevant issues and considerations behind a smokescreen of self-contradictions . . . ." Ferraro v. Camarlinghi (2008) 161 Cal.App.4th 509, 558. "The public has a right to insist on the adequacy of the environmental document upon which the agency makes its decision, especially when the agency is one of the project proponents." Deltakeeper v. Oakdale Irrigation Dist. (2001) 94 Cal.App.4th 1092, 1109 (emphasis added).

ACWA has set out this history at some length because the District has failed to provide full and complete information to the Board as to its actions and intentions. The District has attempted to blame ACWA for delays in complying with this Board's chloride limit, but ACWA believes the fault lies with a government agency that has yet to produce a fully adequate CEQA document, despite issuing five separate EIRs and SEIRs and one NOP that never led to an EIR. We urge that this Board be extremely skeptical of

the District's claims and promises of future behavior, including regarding the recycled water component of the Project.[1] Recycled water remains part of the defined Project description in the Recirculated EIR. The recycled water component cannot legally be piecemealed from the whole, much less reneged upon and jettisoned outright, as the District now seeks to convince this Board can be allowed. The legality of the District's actions will be tested again, later this year, in the Superior Court. Accordingly, this Board's proposed actions and approvals regarding the above-referenced TSO's are premature.

III. The Unarmored Threespine Stickleback, A Legislatively Fully-Protected Species, May Be In Peril If This Board Grants The District's Request.

To recap, in ruling to invalidate the Original EIR, Judge Chalfant found that the District had not properly analyzed the impact on the Stickleback of reducing recycled water discharge to the Santa Clara River. (2/23/26 Decision, pp. 20-21 24, at **Exh. 3**.) It is vital to repeat that the District, three years later, still has not done this. There is still no analysis showing whether any level of diversion of recycled water away from its current discharge to the Santa Clara River will or will not harm the various species, including the fully-protected Unarmored Threespine Stickleback, a species for which no take whatsoever is legally permissible. (Fish and Game Code § 5515.)

Moreover, the District cannot legally wish away court orders and writs that compel the ***District's*** compliance, not some other agency to which the District has no authority to transfer its powers or obligations. The District engages in "semantic sleight of hand" (Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 784) when it implies that a different agency can simply assume the District's exclusive legal and lead agency responsibilities over the recycled water/Stickleback portion of the District's own Project. If such an attempt were actually formally attempted, that too would be subject to vigorous legal challenge.

It is equally important to note that the community is still confidently expecting that the District will not only continue to provide the 475 acre-feet per year of recycled

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[1] Referring to actions taken on the proposed Project site, which the District argued were not in violation of the Writ, Judge Chalfant stated: "I think that they [the District] are **playing close to the line on compliance with the Writ**, and that doesn't really help you in this lawsuit, but it might have an **impact on their [the District's] credibility in the next lawsuit**." (10/24/17 transcript, p. 31, at **Exh. 5**; emphasis added)

water that it is currently contracted to provide, but that it will provide even more such water.

Fully certified EIRs for numerous approved real estate development projects, some under construction now, listed increased supplies of recycled water to be supplied by the District as available for use by these projects. Approved General Plans for land governed by Los Angeles County and the City of Santa Clarita also call out this recycled water to be supplied by the District. The District cannot walk away (or figuratively wash its hands) of these legal and contractual obligations for recycled water, and the CEQA study requirements attendant to them, including as repeatedly memorialized in Court statements and rulings as part of ongoing litigation.

The Santa Clarita Valley Water Agency's (SCV Water) website further reflects the confidence that more recycled water will be produced by the District. The website says: (1) SCV Water is currently providing recycled water to the Valley community at the rate of approximately 475 acre-feet/year, which recycled water it obtains from LACSD, i.e., the District; (2) "[i]n the next few years, SCV Water is proposing to expand the use of recycled water to additional users throughout the Santa Clarita Valley. Large landscape irrigation and industrial users will be targeted for recycled water use"; and (3) the benefits of this expansion include "less need to release recycled water to the Santa Clara River[.]" (https://yourscvwater.com/recycled-water, accessed 4/2/19, and incorporated herein by reference.)

The local water agency is depending on an ***expanded*** supply of recycled water, which it states will come from recycled water that will not be released to the Santa Clara River. Indeed, for fiscal years 2014-2015 and 2015-2016, the District contractually agreed to vast increases in recycled water allotments, well above the 475 acre-feet/year, to 2,200 acre-feet/year in both years. (**Exh. 13**.) ACWA is informed and believes that similar increased allotments have been agreed to for the current fiscal year, and have requested records regarding same under the Public Records Act. The District and its treatment plants are the only source of this water, since only the District discharges recycled water to the Santa Clara in the Santa Clarita Valley. The District's attempt to shuck responsibility for the recycled water/Stickleback EIR will not be approved by the Court, as only the District is responsible for the treatment/production and contractual provision of this resource to others, such as SCV Water.

Diverting more effluent away from discharge to the Santa Clara River has the potential to reduce River flows, which in turn may disrupt and damage the habitat of the Stickleback and other species, and should only be authorized after the most careful

consideration by this Board, the other relevant agencies (see also 7/9/16 Dept. of Fish & Wildlife letter, at **Exh. 14** hereto), and through the full CEQA process that the District has repeatedly averred to the Superior Court would be forthcoming from it, but which the District now seeks to renege on. As the Court of Appeal has aptly stated, "the Agency cannot now retract its actions with the Emily Litella-like explanation, 'Never mind.'" Kunec v. Brea Redev. Agency (1997) 55 Cal.App.4th 511, 525.

SCV Water actually cites reducing discharge to the River as a "benefit," but such reductions have the clear potential to disrupt habitat provided by the River for the Stickleback and many other species, including the special-species arroyo toad and others.

However, the responsibility for performing these critical environmental studies are the District's. The District, and the District alone, has claimed them as an integral part of the "Chloride Compliance Project." In all of the District's CEQA studies to date, in the project description used in a successful Proposition 218 rate increase election, and in commitments affirmed by the District to the Superior Court, the provision of increased supplies of recycled water is always cited as a component of the Project.

The District has failed to ever adequately analyze the impact of reduced effluent discharge to the Santa Clara River on the Stickleback. Given that it has withdrawn the NOP for a Supplemental EIR that would have addressed the effects of reduced discharge on the Stickleback, and given that it now "rejects" the recycled water component of the Project, the District apparently has no intention of performing this analysis. However, increased effluent diversions are now reasonably foreseeable, based on SCV Water's plans as reinforced by contracts (**Exh. 13**), and must be considered. Laurel Heights Improvement Assn. v Regents of the University of California (1988) 47 Cal.3d 396, 434.

While the Tentative Order states in ¶ 17 that USEPA has concurred in a determination by the State Water Board that the District's Project "may affect" but is "not likely to affect" listed species or their critical habitat, **the US Fish and Wildlife Service has not yet issued a concurrence under Section 7 of the Endangered Species Act, and nothing is yet final**. ACWA urges this Board to condition any grant of additional time to the District on the strictest compliance with the federal and state Endangered Species Acts, and to ensure adequate analysis of impacts to, and full protection for, the Stickleback, the arroyo toad, and other species that live in the Santa Clara River and depend upon the River for their food and reproduction.

The District has yet to comply with its commitments to the Superior Court. Those include that the District study the effects of changed levels of discharges to the Santa

Clara River, both because of brine removal, and to allow more recycled water use. This was in return for being allowed to construct only the "hardware" for the Chloride Project. The Superior Court awaits full compliance. It does not await, and will not countenance, the District's attempted sleight of hand. Nor should this Board. (See also fn. 1, ante.)

IV. Conclusion.

The Tentative Orders are incomplete in their factual and legal narrative, and premature in their proposed actions. This Board should withdraw them, or reject them and require the District to present proof of full compliance with the Judgment and Writ, and with CEQA, before issuing any orders.

Lost in the convoluted history presented by the District is the fact that the District lacks a validated EIR for the Chloride Project. Its 2013 EIR was fully invalidated; its latest incarnation, the Recirculated EIR, is under legal challenge with a trial date less than 6 months away. The District's recent purported abandonment of its court-ordered obligation to prepare an EIR for recycled water/Stickleback violates, on its face, the court's orders. (See, e.g., many quotes, supra, including from **Exh. 8**.) This Board should not intervene to enable the District to continue ignoring the law.

Thank you for the opportunity to participate in this crucial proceeding. Please keep this office on the list of interested persons to receive timely notice of all hearings and determinations related to the Tentative Orders, and all other administrative, financial and legal applications or processes that pertain to actions by or for the District.

Very truly yours,

/s/ Robert P. Silverstein
ROBERT P. SILVERSTEIN
FOR
THE SILVERSTEIN LAW FIRM, APC

RPS:vl
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EXHIBIT 1

THE SILVERSTEIN LAW FIRM, APC
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Attorneys for Petitioner
AFFORDABLE CLEAN WATER ALLIANCE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

AFFORDABLE CLEAN WATER ALLIANCE, a California unincorporated association,

Petitioner,

vs.

SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY, a special district; and DOES 1 through 20, inclusive,

Respondents.

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, a governmental agency; and ROES 1 through 20, inclusive,

Real Parties in Interest.

Case No. BS145869

~~[PROPOSED]~~ JUDGMENT

Writ Hearing: February 23, 2016

[Hon. James C. Chalfant]

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

On February 23, 2016, the matter of Affordable Clean Water Alliance v. Santa Clarita Valley Sanitation District, Case No. BS145869, came on regularly for hearing in Department 85 of the Los Angeles County Superior Court, the Honorable James C. Chalfant presiding. Robert P. Silverstein and Susan L. Durbin of The Silverstein Law Firm appeared on behalf of Petitioner Affordable Clean Water Alliance ("Petitioner"). Paul J. Beck and Jessica L. Beckwith of Lewis, Brisbois, Bisgaard & Smith, LLP appeared on behalf of Respondent Santa Clarita Valley Sanitation District of Los Angeles County ("Respondent").

Pursuant to review of the pleadings and briefs filed in support of and in opposition to the First Amended Petition challenging Respondent's Chloride Compliance Facilities Plan and Respondent's certification of a Final Environmental Impact Report ("EIR") for said Plan on October 28, 2013 (collectively the "Project"), as well as the certified administrative record excerpts cited by the parties and as lodged by Petitioner, and after hearing the oral argument presented by the parties ("Joint Appendix"), the Court adopts the "Tentative Decision on Petition for Writ of Mandate: Granted in Part", issued on February 23, 2016, but as orally modified by the Court from the bench on February 23, 2016. The Court reissued the Tentative Decision showing a hand marked modification based on the oral argument on February 23, 2016.

As corrected, the first sentence of the third full paragraph on page 3 of the Tentative Decision, and now the Final Decision, shall read:

"The ~~City's~~ District's decision to approve the FEIR is a quasi-legislative action governed by traditional mandamus."

As corrected, the last sentence of the third full paragraph on page 12 of the Tentative Decision, and now the Final Decision, shall read:

> "Petitioner is correct that the Project approvals should be set aside ~~unless and until the SEIR is adopted until and if the Project is approved using Alternative 3~~."

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As hand corrected, the last sentence of the first paragraph of the "Conclusion" section on page 24 of the Tentative Decision, and now the Final Decision, shall read:

> "The petition for writ of mandate is granted in part on the grounds that (1) the FEIR lacks substantial evidence for its conclusion of no significant impact (no take) on stickleback populations, and (2) since the District has abandoned Alternative 2 and there is as yet no approved Project for Alternative 3, the Project approvals must be set aside ~~unless and until the SEIR is adopted and the Project is approved using Alternative 3~~."

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that a peremptory writ of mandate is granted in part and shall issue from the Clerk of the Court commanding Respondent to:

1. Set aside and invalidate the EIR prepared for the Project;
2. Set aside and invalidate the Project approvals; and
3. Refrain from taking any steps to carry out the Project until and unless Respondent has fully complied with CEQA, all other applicable laws, and the writ, and the writ has been discharged.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Respondent shall make a return to the peremptory writ of mandate under oath, specifying what Respondent has done or is doing to comply with the writ, and to file that return with the Court, and to serve that return by hand or facsimile upon Petitioner's counsel of record in this proceeding, no later than 30 days after issuance of the writ and service of the writ upon Respondent.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioner shall serve the peremptory writ of mandate on Respondent by personally delivering the writ to the office of Kimberly Compton, Secretary to the Boards of Directors, Los Angeles County Sanitation District, 1955 Workman Mill Road, Whittier, CA 90601, during regular business hours.

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioner ~~is entitled to a declaration confirming that all aspects of~~ Respondent's cause of action for declaratory relief as to Alternative 2, also known as "Deep Well Injection," ~~are and shall be invalid, not just the locations of said previously-proposed Deep Well Injection, as orally found by the Court during the February 23, 2016 hearing on this matter.~~ is dismissed as moot because abandoned.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioner may seek an award of attorney fees, which award of attorney fees shall be determined by the Court based upon noticed motion, and shall be awarded costs in the amount of $_____ as the prevailing party in this action.

The Court reserves jurisdiction in this action until there has been full compliance with the writ, including as provided in Code Civ. Proc. Sec. 1097.

LET THE WRIT ISSUE.

DATED: 3/9, 2016

HON. JAMES C. CHALFANT
JUDGE OF THE SUPERIOR COURT

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

PROOF OF SERVICE

I, ROBERT P. SILVERSTEIN, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is The Silverstein Law Firm, 215 North Marengo Ave, Third Floor, Pasadena, California 91101-1504. On March 9, 2016, I served the within document(s):

[PROPOSED] JUDGMENT

☒ by causing personal delivery of the document(s) listed above to the person(s) set forth below.

CASE NAME:	**AFFORDABLE CLEAN WATER ALLIANCE V. SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY**
CASE No.:	**BS145869**

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 9, 2016 at Pasadena, California.

ROBERT P. SILVERSTEIN

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
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EXHIBIT 2

THE SILVERSTEIN LAW FIRM, APC
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

AFFORDABLE CLEAN WATER ALLIANCE, a California unincorporated association,

Petitioner,

vs.

SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY, a special district; and DOES 1 through 20, inclusive,

Respondents.

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, a governmental agency; and ROES 1 through 20, inclusive,

Real Parties in Interest.

Case No. BS145869

~~[PROPOSED]~~ PEREMPTORY WRIT OF MANDATE

Writ Hearing: February 23, 2016

[Hon. James C. Chalfant]

TO RESPONDENT SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY:

In connection with the project commonly known as the Santa Clarita Valley Sanitation District Chloride Compliance Facilities Plan and Respondent's certification of a Final Environmental Impact Report ("EIR") for said Plan on October 28, 2013 (collectively the "Project"), RESPONDENT SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY, together with its officers, employees, agents, boards, commissions, other subdivisions, representatives, and successors, are hereby ordered, immediately upon receipt of this Writ, to:

1. Decertify the EIR prepared for the Project;
2. Set aside and invalidate the Project approvals; and
3. Refrain from taking any steps to carry out the Project until and unless Respondent has fully complied with CEQA, all other applicable laws, and this writ, and this writ has been discharged.

RESPONDENT IS FURTHER COMMANDED to make a return to the peremptory writ of mandate under oath specifying what Respondent has done or is doing to comply with the writ, and to file that return with the Court, and serve that return by hand or facsimile upon Petitioner's counsel of record in this proceeding, no later than 30 days after issuance of the writ and service on Respondent.

The Court shall retain jurisdiction in this action to compel compliance with this Peremptory Writ of Mandate, until there has been full compliance with the writ, including as provided in Code Civ. Proc. Sec. 1097.

LET THE WRIT ISSUE.

DATED: MAR 17 2016

SHERRI R. CARTER

K.W. KAM

Clerk of the Superior Court

THE SILVERSTEIN LAW FIRM, APC
215 North Marengo Avenue, 3rd Floor
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EXHIBIT 3

Affordable Clean Water Alliance v. Santa Clarita Valley Sanitation District of Los Angeles County, BS 145869

Tentative decision on petition for writ of mandate: granted in part

Petitioner Affordance Clean Water Alliance ("ACWA") petitions the court for a writ of mandate compelling Respondent Santa Clarita Valley Sanitation District of Los Angeles County ("District") to set aside its approval of a Final Environmental Impact Report ("FEIR").

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner ACWA commenced this proceeding on November 27, 2013. The operative pleading is the First Amended Petition ("FAP") filed on March 27, 2015.

The FAP alleges in pertinent part as follows. On October 28, 2013, the District's Board of Directors approved the "Santa Clarita Valley Sanitation District Chloride Compliance Facilities Plan" ("Facilities Plan") and certified a FEIR for the Facilities Plan (collectively, the "Project").

The District failed to provide an accurate, stable and finite project description. The plan that was the principal focus throughout the proceedings was "Alternative 4." Yet, at the final hearing on October 28, 2013, the District suddenly announced that the Project was changing to "Alternative 2," which became the approved and adopted Project. Although Alternative 2 was presented in the draft EIR ("DEIR"), it had never been studied at the same required level of disclosure as Alternative 4.

The last-minute change to the Project denied the public and the decision-makers adequate disclosure and information to properly understand, analyze and mitigate the impacts of the Project. The Deep Well Injection ("DWI") of brine as part of Alternative 2 was not adequately studied, and mitigation measures related to Alternative 2 either were not adopted or were improperly deferred. The potential for DWI and injection of hundreds of millions of gallons of brine into subsurface strata may result in an increase in seismicity (often referred to as "induced seismicity"), and this potential was brought to District's attention by its own seismic consultant. Yet, it was not adequately analyzed in the FEIR.

Alternative 2 disposes of the brine waste produced by advanced treatment of wastewater by injecting the brine into substrata layers through wells that are drilled as deep as one to two miles underground. Injection would occur on a round-the-clock basis, seven days a week. DWI requires the drilling of wells, with the resulting disturbance of the surface of the land where the wells are drilled, and the use of heavy drilling equipment, including a 150-foot tall drilling rig that would be onsite for approximately 16 months during construction and removed afterwards. Operation of the wells will require the installation of five to seven permanent well heads and appurtenant facilities such as injection pumps, chemical storage tanks, and electrical switchgear, at least one building near the wellheads for maintenance and servicing purposes, and some road or trail for access to the DWI facilities for use in such maintenance and servicing.

The FEIR's description of Alternative 2 presents two possible sites for installation of the DWI wells. The land on which DWI would be done under the Project as adopted is owned by the

Newhall Land and Farming Company ("Newhall Land"), and is located in an area that is designated by the County of Los Angeles' General Plan as Significant Ecological Area 64, an area containing valley oak woodlands and accorded special procedural treatment because of its environmental values. On October 14, 2013, two weeks before the Project was approved, Newhall Land executed a Conservation Easement Deed in favor of the Center for Natural Lands Management, a California non-profit corporation. This deed was recorded with the Los Angeles County Registrar-Recorder on October 22, 2013. The restrictions on land use in the Conservation Easement expressly forbid drilling, which is required for creation of the DWI injection wells, and also prevents the construction of the building and appurtenant facilities needed for operation, maintenance and servicing of the DWI wells. Without wells or support facilities, DWI, an essential part of the Project, cannot be carried out.

The District has admitted that the Project cannot proceed in the form described in the FEIR certified by the District's Board because it is not legal to engage in DWI uses on the land designated in the FEIR. In January 2015, District issued a document entitled Supplemental Environmental Impact Report for Alternate DWI Site ("SEIR"). The stated purpose of the SEIR is to supplement the FEIR by analyzing an alternate site for DWI to be performed. The SEIR states at page 102:

> The specific parcel of land analyzed as the DWI site in the certified FEIR is no longer available for development because of a recently recorded Conservation Easement. Consequently, the [District] proposes to develop DWI on an alternate site located approximately 800 feet north of the location previously analyzed.

The SEIR was expressly developed and issued to analyze the environmental effects of DWI on an alternate site. On March 11, 2015, District withdrew its proposal to locate DWI for the Project at the alternate site, and also withdrew the SEIR without finalizing or certifying it.

The District abused its discretion by failing to decertify or otherwise nullify the FEIR, despite its full knowledge and admission that the adopted Project described in the FEIR cannot be completed due to the Conservation Easement's restrictions on the DWI site identified in the FEIR. Further, the District failed to proceed in the manner required by law and/or abused its discretion by failing to issue, circulate, and certify a SEIR or subsequent EIR for an alternate DWI site that would inform the public of the changed circumstances regarding the Project, and that would allow the public and expert and responsible State and other agencies to properly review and comment on any alternate DWI site.

2. Course of Proceedings

On August 6, 2015, the court granted Petitioner ACWA's motion to augment the administrative record. The court additionally granted permission to the parties to file 20-page briefs.

B. Standard of Review

A party may seek to set aside an agency decision for failure to comply with CEQA by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085.

CEQA review of quasi-adjudicatory agency actions in which a hearing is required, evidence taken, and the agency determines factual issues are governed by administrative mandamus under CCP section 1094.5, in which the court determines whether the agency's decision is supported by substantial evidence. Pub. Res. Code §21168. Examples of such actions include issuance of use permits (Neighborhood Action Group v. County of Calaveras, (1984) 156 Cal.App.3d 1176, 1186), planned use development permits (City of Fairfield v. Superior Court, (1975) 14 Cal.3d 768, 773), and zoning variances. Topanga Assn. For a Scenic Community v. County of Los Angeles, (1974) 11 Cal.3d 506, 517.

CEQA review of quasi-legislative agency actions is governed by traditional mandamus per CCP section 1085, in which the court determines whether the agency prejudicially abused its discretion by not proceeding in a manner required by law or by making a decision not supported by substantial evidence. Pub. Res. Code §21168.5. Examples of such actions include adopting a general plan or zoning or rezoning property. O'Loane v. O'Rourke, (1965) 231 Cal.App.2d 774, 784-85 (general plan); San Diego Building Contractors Assn. v. City Council, (1974) 13 Cal.3d 205, 212-13).

The City's decision to approve the FEIR is a quasi-legislative action governed by traditional mandamus. There is no practical difference between the standards of review applied under traditional or administrative mandamus in CEQA cases. Friends of the Old Trees v. Dept. Of Forestry & Fire Protection, (1997) 52 Cal.App.4th 1383, 1389. Public entities abuse their discretion if their actions or decisions do not substantially comply with the requirements of CEQA. Sierra Club v. West Side Irrigation District, (2005) 128 Cal.App.4th 690, 698. Whether an agency abused its discretion requires "scrutiny of the alleged defect" depending on whether the claim is predominately "improper procedure or dispute over the facts." Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova, ("Vineyard") (2007) 40 Cal.4th 412, 435. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. Western States Petroleum Assn. v. Superior Court, (1995) 9 Cal.4th 559, 568.

Where an EIR fails to provide certain required information and/or was misleading is failing "to proceed in a manner required by CEQA" and an issue of law. Vineyard, *supra*, 40 Cal.4th at 435. Such issues require "a critical consideration, in a factual context, of legal principles and their underlying values." Harustak v. Wilkins, (2000) 84 Cal.App.4th 208, 212. On the other hand, whether an agency abused its discretion in an EIR's findings must be answered with reference to the existence of substantial evidence in the administrative record. "Substantial evidence," is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." Guidelines[1] §15384(a). The substantial evidence standard requires deference to the agency's factual and environmental conclusions based on conflicting evidence, but not to issues of law. Laurel Heights Improvement Assn. v. Regents of University of California, ("Laurel Heights") (1988) 47 Cal.3d 376, 393, 409. Argument, speculation, and unsubstantiated opinion or

[1]As an aid to carrying out the statute, the State Resources Agency has issued regulations called "Guidelines for the California Environmental Quality Act" ("Guidelines"), contained in Code of Regulations, Title 14, Division 6, Chapter 3, beginning at section 15000.

narrative will not suffice. Guidelines §15384(a), (b). Whether substantial evidence exists is a question of law. *See* California School Employees Association v. DMV, (1988) 203 Cal.App.3d 634, 644.

C. CEQA

The purpose of CEQA, (Pub. Res. Code §21000 *et seq.*,) is to maintain a quality environment for the people of California both now and in the future. Pub. Res. Code § 21000(a). "[T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." Save Our Peninsula Committee v. Monterey County Board of Supervisors, (2001) 87 Cal.App.4th 99, 117. CEQA must be interpreted "so as to afford the fullest, broadest protection to the environment within reasonable scope of the statutory language." Friends of Mammoth v. Board of Supervisors, (1972) 8 Cal.3d 247, 259.

The Legislature chose to accomplish its environmental goals through public environmental review processes designed to assist agencies in identifying and disclosing both environmental effects and feasible alternatives and mitigations. Pub. Res. Code §21002. Public agencies must regulate both public and private projects so that "major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." Pub. Res. Code §21000(g).

Under CEQA, a "project" is defined as any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment (1) undertaken directly by any public agency, (2) supported through contracts, grants, subsidies, loans or other public assistance, or (3) involving the issuance of a lease, permit, license, certificate, or other entitlement for use by a public agency. Pub. Res. Code §21065. The word "may" in this context means a reasonable possibility. Citizen Action to Serve All Students v. Thornley, (1990) 222 Cal.App.3d 748, 753. "Environment" means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance. Guidelines §21060.5.

The "project" is the whole of the action, not simply its constituent parts, which has the potential for resulting in either direct or reasonably foreseeable indirect physical change in the environment. Guidelines §15378. An indirect physical change must be considered if that change is a reasonably foreseeable impact which may be caused by the project. On the other hand, a change that is "speculative or unlikely to occur is not reasonably foreseeable." Guidelines §15064(d)(3). The term "project" may include several discretionary approvals by government agencies; it does not mean each separate government approval. Guidelines §15378(c).

An EIR must be prepared for a project if the agency concludes that "there is substantial evidence, in light of the whole record... that the project may have a significant effect on the environment." Pub. Res. Code §21080(d). The EIR is the "heart" of CEQA, providing agencies with in-depth review of projects with potentially significant environmental effects. Laurel Heights, *supra*, 6 Cal.4th at 1123. An EIR describes the project and its environmental setting, identifies the potential environmental impacts of the project, and identifies and analyzes mitigation measures and alternatives that may reduce significant environmental impacts. Id. Using the EIR's objective analysis, agencies "shall mitigate or avoid the significant effects on the environment... whenever it is feasible to do so. Pub. Res. Code §21002.1. The EIR serves to "demonstrate to an

apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its actions." No Oil, Inc. v. City of Los Angeles, (1974) 13 Cal.3d 68, 86. It is not required to be perfect, merely that it be a good faith effort at full disclosure. Kings County Farm Bureau v. City of Hanford, (1990) 221 Cal.App.3d 692, 711-12. A reviewing court passes only on its sufficiency as an informational document and not the correctness of its environmental conclusions. Laurel Heights, *supra*, 47 Cal.3d at 392.

All EIRs must cover the same general content. Guidelines §§ 15120-32. An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. The environmental effects need not be exhaustively reviewed, but the EIR's sufficiency is viewed in the light of what is reasonably feasible. Guidelines §15151. The level of specificity of an EIR is determined by the nature of the project and the "rule of reason." Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners, (1993) 18 Cal.App.4th 729, 741-42. The degree of specificity "will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." Guidelines §15146. The ultimate decision whether to approve a project is a nullity if based upon an EIR that does not provide decision-makers, and the public, with the information about the project required by CEQA. Santiago County Water District v. County of Orange, (1981) 118 Cal.App.3d 818, 829.

D. Statement of Facts

1. Water Recycling Plants

The District treats the wastewater for most of the Santa Clarita Valley at its Valencia and Saugus water recycling plants. The water recycling plants ("WRPs") produce highly treated wastewater, also known as recycled water. A portion of the recycled water is reused by the community and the remainder is discharged to the Santa Clara River (the "River"). Discharges to the River are regulated by the Regional Water Quality Board-Los Angeles Region ("Regional Board"). AR 3384.

2. The Project

In 2002, the Regional Board adopted the Upper Santa Clara River Chloride Total Maximum Daily Load ("Chloride TMDL"), which imposes a chloride limit of 100 milligrams per liter (mg/L) for the treated water discharged to the River from the District's Valencia and Saugus WRP. AR 3352-54. The District prepared the Facilities Plan and EIR (the "Project") to comply with the Chloride TMDL. AR 3354. The District had a 2015 deadline (AR 3385), enforceable by fines (AR 4721-22), to meet this limit when it certified the EIR.

The Project would reduce chloride (salts) in the effluent before discharge to comply with the Chloride TMDL. Another objective of the Project was to provide treated effluent to the Castaic Lake Water Agency ("CLWA") for municipal and industrial uses. AR 534, 3354. The District now discharges about 19.5 million gallons per day (mgd) of effluent. AR 279. The Project would allow an undisclosed amount of that effluent to be diverted from the River for use by CLWA for non-potable uses. AR 252. This is significant because the River has low flow in many places with "dry gap" areas (AR00539), and effluent discharged by the District's Valencia and Saugus WRPs helps keep enough water flowing in the River to support endangered fish species like the unarmored threespine stickleback ("stickleback"). AR 539.

3. The Four Project Alternatives

The FEIR presented four alternatives to meet the dual purposes of reduced chloride and diversion of effluent to CLWA. Three of the four would use various combinations of chloride reduction technologies (AR 286, 289-90, 303-05) to directly meet the chloride limit in the District's discharge; they vary mainly in the method of disposal of the waste product that the treatment would create. The fourth was focused on reducing chloride in the local watershed as a whole, and would not meet the Regional Board's 100 mg/L discharge limit.

All four Project alternatives would supply some of the District's effluent to the Castaic Lake Water Agency for use as non-potable water, diverting that water from the River. AR 534. The District could, under its current authority, divert more than four times the amount it now diverts. AR 267. The FEIR commits the District to discharge at least 13 mgd into the River (AR 312), a 6.5-mgd decrease from current discharge levels of 19.5 mgd. AR 279. This reduced amount of effluent would keep enough water in the River to avoid harming the "biological resources" in the River, including the fully-protected stickleback. AR 535.

Under Alternative 1 the District would build a new 37-mile brine pipeline to the Los Angeles basin and from there the brine would be conveyed to the ocean via existing sewers and an existing ocean outfall. AR 3519. Under Alternative 3 the District would load trucks with brine and transport the brine to a new brine disposal facility in the unincorporated community of City Terrace, from which the brine would flow to the ocean via existing sewers as in Alternative 1. AR 3525. Alternative 3 would require additional mitigation to reduced operational impacts associated with trucking the brine for disposal, and the FEIR did not recommend it for the Project. AR 50, 4039.

Alternative 2 would use treatment techniques to produce effluent that would meet the Regional Board's standard, but would produce high-salt brine as a waste product. The brine was to be piped to a site that has since become legally unavailable, and then injected at that site into non-potable groundwater aquifers one to two miles below ground surface. This DWI would require an extensive process to obtain a permit from the federal Environmental Protection Agency. AR 666, 4067.

Alternative 4 would not produce effluent that complies with the Regional Board's regulatory standard. Instead, the District would reduce the chloride in its effluent only to 117 mg/L in normal and wet years, and 130 mg/L in drought years. However, the District would reduce basin-wide chloride levels by pumping salty Ventura County groundwater, diluting it with other, low-salt pumped groundwater, then discharging the relatively low-salt mixture to the River in Ventura County. AR 355-58. The FEIR admitted that because Alternative 4 does not comply with the Regional Board's TMDL discharge limit of 100 mg/L of chlorine, it was "infeasible from a regulatory standpoint" (AR 349), and would require a complex permit application process that would include preparation of a new basin-wide plan approved by the Regional Board, together with proof that the River's water quality would not be degraded, before Alternative 4 could be carried out. AR 4597-98.

Alternative 4 was loosely based on a basin-wide plan, called the Alternative Water Resource Management ("AWRM") plan, negotiated among the District, the Regional Board, local water agencies and other undisclosed stakeholders in Ventura County over a period of several years. AR 4676. The Regional Board approved the original AWRM in 2008, essentially trading

permission for the District to discharge effluent with higher chlorine levels (117 mg/L in normal and wet years, and 130 mg/L in drought years), in exchange for the District's adoption of expensive advanced treatment techniques to reduce the chloride content of its effluent, while also building "salt management" facilities in Ventura County that would lower chloride content in the River downstream of the District by pumping and blending high-salt and low-salt groundwater and discharging the lower-salt blend to the River. AR 345-46.

Alternative 4 had two phases: Phase I and Phase II. AR 3293, 3516, 3526, 3537. Based on predictions of future chloride levels, Phase I elements were expected to be sufficient to meet a relaxed chloride limit of 117 mg/L in the River. AR 3526. Phase I would use low-salt groundwater to dilute the District's effluent enough to meet the loosened 117 mg/L and 130 mg/L discharge standards that were originally part of the AWRM. AR 347-49. The District would also build the salt management facilities in Ventura County, and would tum their management over to the United Water Conservation District, a Ventura County water purveyor.

Phase II was a backup plan that would be used only if Phase I did not consistently provide compliance with the TDML. AR 3297, 3532. Phase II would make Alternative 4 the most costly alternative. AR 3532. If Phase II were triggered, the District would build both salt management facilities and microfiltration and reverse osmosis facilities to treat its effluent. AR 348-49. To be viable, Ventura County stakeholders (such as farmers and water purveyors) would have to support, and the Regional Board would have to issue, a modification of the TMDL. AR 3519, 3528, 3531-32, 3545. The FEIR describes the triggers only as "being negotiated" with Ventura and Los Angeles County stakeholders. AR 4113, 4199, 4598. The FEIR also states that the negotiation of these triggers was being carried on "outside of the Facilities Plan and EIR process." AR 4034-35.

All of the alternatives would improve the quality of the water discharged to the River but would require significant rate increases to District ratepayers. *See* AR 3557. To meet the Project objective for recycling non-potable water, all four alternatives included a component called "support for municipal reuse of wastewater." AR 3293-94, 3481, 3523, 3525, 3526. This component established a minimum volume of recycled water discharge to the River to protect biological resources, with any remaining recycled water above this minimum available for municipal reuse. The minimum discharges were determined as part of the Reduced Discharge Technical Study (AR 28465-641) which evaluated potential impacts to special status species, including the stickleback and the arroyo toad, and their respective habitats.

After evaluation using a variety of criteria, including environmental impacts, costs, risk, and time for implementation (AR 3529), Alternative 4 was top-ranked and recommended by District staff. Alternative 2 (brine disposal by DWI) was second-ranked and deemed a backup to Alternative 4 in case the regulatory approvals required for Alternative 4 were not obtained. AR 3532, 3537.

4. <u>Reduced Discharge Technical Study</u>

In support of the Facilities Plan and FEIR, the District prepared a Reduced Discharge Technical Study (the "Study") to identify a minimum WRP discharge that would not result in a significant impact to protected species. AR 28470-593. The Study evaluated hydrology, biological species and habitat, and river morphology (shape) as well as analyzing a minimum combined WRP discharge of 13 million gallons per day (mgd). AR 28470.

The Study concluded that, despite increases in the combined WRP discharge between 1979 and 2008 from approximately 7 to 20 mgd (equivalent to 11 to 31 cubic feet per second ("cfs")) (AR 28488) and substantial increases in development in the Santa Clarita Valley (which could have increased groundwater pumping and led to loss of River flow), the base and peak River flows have been very similar during this period. AR 28501. The River has manifested peaks of 1,000 to 10,000 cfs during large storms with base flows of about 20 cfs with a few cases of flows dropping to about 10 cfs. AR 28501. The data illustrates that changes in WRP discharges during this period did not have an impact on the River. AR 28494.

Stickleback prefer low-velocity edge habitat (AR 28513) and make their nests at least 4 inches below water surface and predominantly 9 inches below the water surface (AR 28515). Stickleback are found consistently in the River within segments exhibiting approximately 10 cfs flows but only inconsistently in segments with 25 cfs flows. AR 28582-83. Populations of stickleback and other fish vary in location from year to year in response to the location of suitable habitat. AR 28586.

The Study found that the available information showed that there was no observable increase in the stickleback population since the 1990s even though the WRP discharge more than doubled during that period. AR 28475. Sticklebacks were observed in the River at points upstream of the Valencia WRP's discharge point, where River flows are significantly lower than those that would be provided by the Project. AR 28582-83.

At the WRPs' discharge points, the effluent represents 75-100% of the River flows during the driest times of the year. AR 28578. The River "gains" from the Valencia WRP to the Ventura County line due to rising groundwater. Therefore, the Valencia WRP's percentage contribution to total River flow decreases with distance from the that plant. Id. The proposed reduction in the Valencia WRP discharge is projected to reduce water depth by approximately 2 inches. AR 28580. As noted in the Study, "the variability of channel geometry suggests that where a reduction in channel depth altered fish habitat in some areas suitable habitat would still remain in other areas of the River channel. This is supported by historic data of the River as well as current observations in the River segment upstream of the VWRP discharge." AR 28586.

5. The District Board's Action

On October 21, 2013, the District's Board met to consider the Final Facilities Plan and FEIR. AR 33441-46, 33447-574. On October 24, 2013, the District received a letter from Ventura County stakeholders withdrawing their support for Alternative 4. AR 11840-42.

On October 28, 2013, the District's Board held a public hearing at which it certified that the FEIR was completed in compliance with CEQA and approved Alternative 2, the DWI alternative. AR 33575-79, 33580-667. The District stated that Alternative 4 had been rejected because of loss of support by unidentified Ventura County stakeholders. AR 33586.

6. Subsequent Proceedings

The site identified and analyzed for DWI brine disposal in Alternative 2 became legally unavailable for well drilling before the FEIR was certified due to the imposition of a Conservation Easement on the site that forbids drilling. AR 33718, 33723.

On March 11, 2015, the District's Board voted to abandon the Alternative 2 DWI sites:

> Upon the motion of Director Weste, duly seconded and unanimously carried, the Board of Santa Clarita Valley Sanitation District authorized to permanently reject the Tournament Players Club site and any other site located at Stevenson Ranch and Westridge as a site for deep well injection of brine. Dist. RJN Ex. 2.

District staff reinvestigated compliance alternatives and on September 18, 2015 the District filed and posted a Notice of Preparation of a Supplemental Environmental Impact Report for Brine Concentration and Limited Trucking ("2015 SEIR NOP"). Dist. RJN Ex. 3. The 2015 SEIR NOP states, in pertinent part:

> Staff reconsidered the alternatives examined in the previously approved Facilities Plan. At this time, neither DWI nor a brine pipeline alternative can be implemented by the State's regulatory deadline. Brine concentration with disposal by trucking is the only alternative that can be implemented with the timeline mandate by the Regional Water Board. Dist. RJN Ex.3, p. 3.

On November 17, 2015, the District filed and posted a Public Notice of Availability of its draft Supplemental Environmental Impact Report for Brine Concentration and Limited Trucking ("Draft SEIR Notice"). RJN Ex. 4. The Draft SEIR Notice states, in pertinent part:

> Brine, a salty water byproduct from advanced treatment, was originally to be managed by deep well injection. The [District] now proposes to modify one component of the approved compliance project—the approach to brine management. The proposed project modification is to replace deep well injection with the addition of enhanced brine concentration equipment at the [Valencia WRP] and limited trucking of concentrated brine to an existing industrial facility. RJN Ex. 4 p.1.

E. Analysis

Petitioner ACWA seeks a writ of mandate invalidating the District's Project approvals and the FEIR based on issues concerning the minimum combined WRP discharge to the River of 13 million gallons per day (mgd).

1. The Motion to Strike[2]

[2] The District asks the court to judicially notice (1) the August 6, 2015 reporter's transcript in this case, (2) the District Board's minutes from March 11, 2015, (3) the September 18, 2015 Notice of Preparation of the SEIR, (4) the November 17, 2015 Public Notice of Availability of the SEIR.

Petitioner opposes on the ground that these are extra-record documents not admissible in judicial review of the District's CEQA decision. *See* Western States Petroleum Assn. v. Superior Court, (1995) 9 Cal.4th 559, 571. Petitioner ignores the fact that the documents are offered on the issue of mootness, and Western States did not preclude documents otherwise subject to judicial notice from being received on issues other than the question of substantial evidence to support the

Respondent District moves to strike portions of Petitioner ACWA's opening brief on the grounds that it discusses issues ruled by the court as moot.

CCP sections 435 and 436 provide that a court may properly strike irrelevant, false, or improper matters from any pleading if the appropriate notice requirements have been met. Despite Respondent's acknowledgement that Petitioner's opening brief is not a pleading and no explicit statutory provision provides for a motion to strike portions of a party's brief, the District contends that the court has inherent power to strike portions of documents other than pleadings to prevent frustration, abuse, or disregard of its processes. Williams v. International Longshoremen's & Warehousemen's Union, (1959) 172 Cal. App. 2d 84, 87.

Williams states that a court has the inherent power to strike a complaint from the record if it is clearly frivolous. Id. While the court agrees that it has inherent power to strike frivolous portions of a brief, that fact does not mean that the District can make a motion asking the court to invoke its inherent power. Petitioner argues that the court ruled that the location of DWI at Sites A or B is moot, but not the legality of Alternative 2 itself. Given this position, the better course is not to strike portions of the opening brief and rather address mootness issues in the course of evaluating the parties' arguments.

The motion to strike portions of Petitioner's opening brief is denied.

2. Alternative 2

Petitioner argues that the District violated CEQA when it approved Alternative 2, which was an infeasible and impermissible Project. Petitioner notes that CEQA allows approval of a project with significant and unmitigable impacts upon a finding of overriding considerations only "if the project is otherwise permissible under applicable laws and regulations." §21002.1(c); City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, 1450. Alternative 2 cannot legally be carried out because Newhall Land's October 14, 2013 Conservation Easement bans such integral parts of DWI as drilling, building structures, and constructing access roads on the land selected for the injection. AR 33723. The District was aware in June 2013 that Newhall planned the easement, and that the easement might make it impossible to locate DWI facilities in the proposed sites. AR 33710-11. "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time, taking into account...legal...and technological factors." Guidelines §15364; Preservation Action Council v. City of San Jose, (2006) 141 Cal.App.4th 1336, 1353-54. The concept of "infeasibility" is a filter to eliminate proposed alternatives during the EIR's screening process. *See* Guidelines §15126.6(c). Petitioner argues that the FEIR was inaccurate because Alternative 2 could not be implemented when the FEIR was certified. Pet. Op. Br. at 7-10.

The District responds that Petitioner's argument is moot because the court already ordered the District to refrain from using Sites A or B for DWI. Opp. at 10.

A case is moot when a court ruling can have no practical impact or provide the parties effectual relief. Downtown Palo Alto Committee for Fair Assessment v. City Council, (1986) 180

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agency's quasi-legislative decision. Id. at 573, n.4.

The reporter's transcript proffered by the District (Ex. 1) is not subject to judicial notice, but a transcript from the case at issue may always be considered by a court. The remaining documents (Exs. 2-4) are subject to judicial notice and the request is granted. Evid. Code §452(c).

Cal.App.3d 384, 391. Under California law, a petition for writ of mandate may be dismissed as moot when the respondent provides the relief requested in the petition. Bruce v. Gregory, (1967) 65 Cal.2d 666, 671; California Teachers Ass'n. v. Ingwerson, (1996) 46 Cal.App.4th 860, 873-874. When an entity voluntarily complies with its alleged duty, a writ of mandate may be unnecessary, as there is no purpose in ordering a party to do what has already been done. State Board of Education v. Honig, (1993) 13 Cal.App.4th 720, 742.

While the court has foreclosed the District from using Sites A or B, the court made no ruling on the mootness of Alternative 2 or the District's possible use of other sites for DWI. Petitioner is correct in stating that "Alternative 2 **is** the Project, as selected by the District (AR00001-03), and no action appears in the record rejecting it." Reply at 3. Thus, the court has not previously ruled that Alternative 2 is moot.

The District offers evidence that enhances its position that the issues concerning Alternative 2 have been mooted. On March 11, 2015, the District's Board voted to permanently reject Site 1 and 2 for DWI. Dist. RJN Ex. 2. The subsequent 2015 NOP states that only Alternative 3 (brine concentration with disposal by trucking) can be implemented within the timeline required by the Regional Board. Dist. RJN Ex.3, p. 3. The District's Draft SEIR Notice proposes to adopt Alternative 3 with a modification to replace DWI with the addition of enhanced brine concentration equipment at the Valencia WRP and limited trucking of concentrated brine to an existing industrial facility. RJN Ex. 4, p.1. The Draft SEIR Notice reiterates that "neither DWI nor a brine pipeline alternative can be implemented by the State's regulatory deadline. Brine concentration with disposal by trucking is the only alternative that can be implemented within the timeline mandated by the Regional Water Board." Ex. 4, p.3. The document adds that "[s]ince the Facilities Plan and EIR were completed in 2013, enhanced brine concentration technology has been implemented in similar applications and has proven to be effective." Id.

The new evidence shows that the District has abandoned Alternative 2, and the arguments concerning it are moot. Petitioner relies on a statement in the Board's March 11, 2015 vote directing District staff to continue looking for suitable sites for DWI. Reply at 3, n.3. True, but the subsequent 2015 NOP and draft SEIR Notice show that the District is pursuing Alternative 3 to the exclusion of DWI. There is no evidence that the District would pursue both alternatives, meaning that the District has effectively abandoned Alternative 2.

Petitioner correctly argues that the FEIR's discussion of Alternatives 2 and 4 have not been deleted from the FEIR. Reply at 4.

Pub. Res. Code section 21080(b)(5) unambiguously requires no environmental review when a project is rejected or disapproved, and expressly stated that "all project disapprovals by a public agency are exempt from CEQA review." Main San Gabriel Basin Watermaster v. State Water Resources Control Board, (1993) 12 Cal.App.4th 1371, 1382. But the District has not disapproved or abandoned its Project; it has chosen a different Project alternative. "The core of an EIR is the mitigation and alternatives section." Citizens of Goleta Valley v. Board of Supervisors, (1990) 52 Cal.3d 553, 564. An EIR must describe a reasonable range of alternatives to the project, or location of the project, which could feasibly attain the project's objectives but would avoid or substantially lessen its significant environmental effects. Guidelines §15126.6(a). The alternatives analyzed need not be actually feasible, only "potentially feasible." Id. On the other hand, infeasible alternatives need not be considered. Among the factors considered when addressing feasibility are site suitability, economic viability, infrastructure, general plan

consistency, other regulations, jurisdictional boundaries, and whether the real party can acquire or have access to an alternative site. Citizens of Goleta Valley v. Board of Supervisors, ("Goleta Valley") (1990) 52 Cal.3d 553, 568; Guidelines §15126.6(f)(1).

The analysis of Alternatives 2 and 4 remains in the FEIR, but the District's choice of Alternative 2 has been abandoned and Petitioner's arguments concerning the infeasibility of, and inadequate mitigation of seismic impacts from, that initial choice are moot. The District's Board need not consider infeasible alternatives, and any errors in the analysis of such alternatives is irrelevant. *See* Goleta Valley, *supra*, 52 Cal.3d at 568; Guidelines §15126.6(f)(1).[3]

Petitioner argues that a mootness finding should be formalized in a writ of mandate under Pub. Res. Code section 21168.9(a). Reply at 6, n.6. This is incorrect. A writ of mandate is required where a court voids a determination by a public agency in whole or in part. Pub. Res. Code §21168.9(a). Issuance of a writ concerning Alternative 2 would mean that the court has addressed its merits, which the court has not done.

Petitioner also argues that, if the issues concerning Alternative 2 and its feasibility and mitigations are moot, then the District is left with no approved Project analyzed by the FEIR and the approvals should be ruled void. Reply at 6. There is no approved Project for Alternative 3, which is the subject of the SEIR. Petitioner is correct that the Project approvals should be set aside ~~unless and until the SEIR is adopted until and if the Project is approved using Alternative 3~~.

3. Exhaustion of Administrative Remedies

The District argues that Petitioner failed to exhaust its administrative remedies with respect to the stickleback and the arroyo toad because it never raised issues concerning these species at the public hearing. Instead, Petitioner relies on general comments by the Department of Fish & Wildlife ("DFW"), which are inadequate to raise specific issues concerning the stickleback. Moreover, none of Petitioner, DFW, and the general public argued that mitigation for the arroyo toad had been impermissibly deferred. Opp. at 9.

Pub. Res. Code section 21177(a) provides that no CEQA action may be filed "unless the alleged grounds for noncompliance" were presented to the public agency during the public comment period or prior to the close of the public hearing on the project. This provision means that the alleged grounds for noncompliance with CEQA must have been presented to the public agency by "any person." A petitioner who has standing to sue because he or she objected to approval of the project may raise issues raise by others. Galante Vineyards v. Monterey Peninsula Water Management District, ("Galanate Vineyards") (1997) 60 Cal.App.4th 1109, 1119.

The essence of the exhaustion of administrative remedies requirement is to provide the public agency an opportunity to receive and respond to articulated factual issues and legal theories before it acts. *See* Park Area Neighbors v. Town of Fairfax, (1994) 29 Cal.App.4th 1442, 1447. *See also* Azusa Land Reclamation Co., Inc. v. Main San Gabriel Basin Watermaster, (1997) 52 Cal.App.4th 1165, 1215 (exhaustion must include legal theories and articulated factual issues). This purpose is not satisfied if the objections are not sufficiently specific so as to allow the public agency to evaluate and respond to them. More is required to exhaust administrative remedies than

[3] It is worth nothing that Petitioner makes no argument that defects in the FEIR's discussion of Alternative 2 and the abandonment of Alternative 4 impacts the adequacy of the FEIR's consideration of a reasonable range of alternatives. *See* Guidelines §15126.6(a).

generalized environmental criticisms at public hearings: "It is difficult to imagine any derogatory statement about a land use project which does not implicate the environment somehow." Coalition for Student Action v. City of Fullerton, (1984) 153 Cal.App.3d 1194, 1197. On the other hand, less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding because parties in administrative proceedings generally are not represented by counsel. Citizen's Assn. for Sensible Development of Bishop Area v. County of Inyo, 172 Cal.App.3d 151, 163. To hold such parties to knowledge of the technical rules of evidence and to the penalty of waiver for failure to make a timely and specific objection would be unfair. It is no hardship, however, to require a layman to make known what facts are contested. Id.

Petitioner appeared at hearing and opposed the Project and the FEIR. *See, e.g.,* AR 33417-440. Therefore, Petitioner can raise any issue presented by any person. DFW made comments on the stickleback as a fully protected species for which a take would not be lawful. AR 4051-55. DFW did not break its take argument down into an individual take versus take of stickleback population, as Petitioner does. To the contrary, DFW's comments only were directed toward verifying that no take of the stickleback population occurred. The individual take versus population take are different issues. Nor did DFW or any other party object to the failure to mitigate for the arroyo toad.

Petitioner failed to exhaust its administrative remedies on the issues that the FEIR (1) did not analyze the potential for a take of individual stickleback and (2) did not impose a mitigation condition for the arroyo toad. Therefore, these issues are waived. Assuming *arguendo* that these issues are not waived, they are analyzed *post*.

4. The Stickleback

Petitioner argues that the District's FEIR violated Pub. Res. Code section 21080.4(a) and Guidelines section 15096(b)(2) by ignoring direction from DFW as to treatment of the endangered stickleback and that the record lacks substantial evidence that the stickleback will not be taken within the meaning of the California Endangered Species Act ("CESA"), Fish and Game Code section 2050 *et seq.* Pet. Op. Br. at 10-16.

CESA establishes "this state's policy to protect any endangered or threatened 'species or subspecies' if at risk of extinction 'throughout all, or a significant portion, of its range." California Forestry Assn., et al. v. California Fish and Game Comm'n., (2008) 156 Cal.App.4th 1535, 1540. CESA gives special protection to designated species, banning the hunting, capturing or killing — collectively known as "take" — of these species unless a permit is obtained first. Fish and Game Code §2080. A few species are granted even greater protection. These "fully-protected" species may not be taken at all; no permit can be granted for any "take," including kill, of these species. Fish and Game Code §5515.

The statutory protection for the stickleback in the River was recently affirmed by the Supreme Court in Center for Biological Diversity v. California Department of Fish and Wildlife, ("CBD")(2015) 62 Cal.4th 204, in which the court held that an EIR may not use a take by either killing or relocating the stickleback as a mitigation measure. Id. at 233. In CBD, the petitioner challenged DFW resource management plans for various resources that may be impacted by a large development project (Newhall Ranch). Among the species potentially impacted by the project construction was the stickleback, a fully protected species. Id. at 231. The mitigation measures proposed in the EIR for the resource management plan included the collection and

relocation of special status fish, including the stickleback, during construction in, or diversion of, the River. Id. The Court held that these activities constituted a take of the stickleback pursuant to Fish and Game Code section 88, which provides that a take includes pursuing, catching, or capturing wildlife. Id. at 232. The Court invalidated the EIR because Fish and Game Code section 5155(a)(2) expressly excludes actions to recover a species as mitigation for a project under CEQA. Id. at 233.

a. DFW's Comments as Responsible Agency

Petitioner contends that DFW directed the District to perform a specific analysis of the stickleback in the FEIR. DFW commented on the DEIR, directing the District to include a "complete, recent assessment of the stickleback. According to Petitioner, the District was mandated to include in the FEIR the information that DFW judged necessary to carry out its own statutory responsibilities as a responsible agency and trustee agency for the stickleback. But rather than include a recent survey, the DEIR relies on a 2009 in-River survey showing the presence and location (but not the numbers) of sticklebacks, four years before the FEIR was certified. The DEIR relied in part for its conclusions about available stickleback habitat compared 1995 aerial photos of River configuration with photos of River configuration taken in 2008, five years before the FEIR was certified. The DEIR's information also was incomplete since it failed to include any estimate of the total numbers of stickleback, their health, and their increase or decrease in population since the survey was done. DFW did not regard the aerial photo evidence as adequate to demonstrate lack of impact on the stickleback, and commented several times that the DEIR lacked requested data. This failure to provide information in the EIR that DFW directed to be included was a violation of the District's legal duty imposed by Pub. Res. Code section 21080.4(a) and Guidelines section 15096(b)(2). Pet. Op. Br. at 11-12.

If the lead agency determines that an EIR is required, it must send notice to each responsible agency. Pub. Res. Code §21080.4(a). A "responsible agency" means an agency which has some discretionary responsibility for carrying out or approving a project. Pub. Res. Code §21069; Guidelines §15381. Upon receipt of the notice, each responsible agency "shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency...and which, pursuant to the requirements of this division, shall be included in the environmental impact report." Pub. Res. Code §21080.4(a); Guidelines §15082(b) (responsible agency shall provide detail about the scope and content of environmental information that "must be included in the draft EIR").

The lead agency shall include the responsible agency's information in the EIR. Guidelines §15096(b)(2). A lead agency is required to include in the EIR information that a responsible agency directs should be in it. "[E]ach responsible agency...shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency...in connection with the proposed project and which, pursuant to the requirements of this division, shall be included in the environmental impact report." Pub. Res. Code §21080.4(a). Similarly, Guidelines section 15096 requires that the responsible agency "shall specify the scope and content of the environmental information which would be germane to the responsible agency's statutory responsibilities in connection with the proposed project. The lead

agency shall include this information in the EIR." Guidelines §15096(b)(2).[4]

DFW is a trustee agency for threatened and endangered species in the River, including the fully-protected stickleback and the endangered arroyo toad. AR 04048. Given its related permitting authority under CESA and the Fish and Game Code, DFW is also a responsible agency for the Project. *See* Pub. Res. Code §21069. AR 04048. The FEIR additionally acknowledges that DFW must issue a streambed alteration permit for the pipeline to be used in Alternative 4 for discharge of low-salt groundwater blend in Ventura County. AR 400.

The District prepared the Study evaluating hydrology, biological species and habitat, and river morphology as well as analyzing the proposed minimum WRP discharge of 13 mgd. AR 28466-640. Based on the Study's findings, the DEIR concluded that the Project's decrease in WRP discharge to the River would have less than significant impact on protected species and their habitat. AR 03704, 04065-67. The Study included an in-River survey showing the presence and location (but not the numbers) of sticklebacks performed in 2009. AR 05046-68. The DEIR relied in part for its conclusions about available stickleback habitat on a comparison of 1995 and 2008 aerial photos of River configuration. AR05079-89. The DEIR information did not estimate the total numbers of stickleback, their health, and their increase or decrease in population since the survey was done. *See* AR00535-36.

In February 2012, DFW recommended that, in order for it to adequately comment on the Project, the District should include a "complete, recent assessment of sensitive fish, wildlife, reptile, and amphibian species" including the stickleback, arroyo toad, and three other species. AR05270. In a subsequent July 23, 2013 comment letter, DFW noted that the DEIR states the proposed Project could result in a significant impact to special status species. AR 4048. DFW advised that it considers adverse impacts to a CESA-protected species to be significant without mitigation, and any take of a fully protected species, including the stickleback, is prohibited. AR 04051-53. "Based upon further [DFW] evaluation of the data referenced in the DIER (*sic.*), it may be determined that take of a [fully protected species" may occur.... [Such a take] is prohibited and [DFW] cannot authorize their take." AR 04053. DFW did not regard the aerial photo evidence of riparian vegetation in the Study that the reduced WRP discharges would have a negligible effect on the stickleback's habitat. AR AR04055. DFW concluded that the EIR should include and assess the net loss and gain of habitat for special-status species such as the stickleback. AR 04053.

The District contends that DFW's comments did not direct, and merely recommended, a complete recent assessment of sensitive species, including the stickleback. The District states that it complied with CEQA requirements by including the Study that evaluated hydrology, biological species and habitat, and river morphology as well as analyzing the proposed minimum discharge of 13 mgd. AR 28466-640. The Study included a complete, recent assessment and the team of professionals who prepared it included two of the foremost experts on the stickleback. There is

[4] A responsible agency complies with CEQA by reaching its own conclusions on whether and how to approve the project. Guidelines §15096(a). The responsible agency consults with the lead agency and comments on draft EIRs for projects which the responsible agency would later be asked to approve. Guidelines §15096(b), (d). If the responsible agency deems the lead agency's final EIR to be inadequate for use by the responsible agency, it must either sue, be deemed to have waived objection, prepare a subsequent EIR if permissible, or assume the lead agency role. Guidelines §15096(e).

no authority for Petitioner's argument that the District was required to perform the assessment in the precise manner recommended by DFW. Opp. p.13.

The District is correct. The District followed DFW's recommendation for an assessment of sensitive fish, wildlife, reptile, and amphibian species. Petitioner argues that the in-River study was insufficient because it relied on field work from 2009, and compared 1994-95 aerial photos with 2008, but provides no support that DFW or anyone else criticized the four year old data as outdated. DFW's July 23, 2013 letter criticized other features of the Study, but not the age of the field work. *See* Reply at 7.

Petitioner complied with its obligation as lead agency to include DFW's requested information in the EIR. *See* Guidelines §15096(b)(2).

b. Is There Substantial Evidence that Stickleback Will Not Be Taken?

Petitioner argues that the Study fails to provide substantial evidence that the stickleback will not be taken within the meaning of Fish and Game Code section 5515. Pet. Op. Br. at 12. All of the Project Alternatives have the potential to alter the stickleback' s habitat by diminishing the District's effluent discharge, through diversion of effluent to CLWA for non-potable uses and conversion of effluent to brine through effluent treatment and disposal outside the River. AR00534-35. A reduction of the WRPs' effluent discharge reduces the River's level. AR00534. The FEIR acknowledges that no take of the stickleback can be permitted under CESA. AR04061. However, the FEIR wrongly claims that the Project "would not result in take of any fully protected stickleback." AR04065. Pet. Op. Br. at 13.

(i) The FEIR's Evidence

The Study and FEIR note that the stickleback prefer low-velocity shallow water for their habitat (AR 28153), making their nests at least four inches and predominantly nine inches below the water surface. AR28515. Populations of stickleback and other fish vary in location from year to year in response to the location of suitable habitat. AR28586. The stickleback historically survived on the River's natural discharges prior to the WRP discharge contribution, which began about 50 years ago. AR03700.

The discharges from both WRPs have a direct effect on River flow immediately downstream of the point of discharge. During the driest periods, WRP discharges represent 75-100% of the River flow immediately downstream of each WRP. AR28578. The River gains from the Valencia WRP to the Ventura County line due to rising groundwater. Therefore, the Valencia WRP's contribution to total River flow decreases with distance from the plant. Id. Reduced discharges from the WRPs would not necessarily result in equivalent reductions in River flow. Id.

The base and peak River flows have remained similar between 1979 and 2008 despite increases in the combined WRP discharge from approximately 7 to 20 mgd (equivalent to 11 to 31 cubic feet per second ("cfs")) (AR28488) and substantial increases in development in the Santa Clarita Valley (which may have increased groundwater pumping and loss of River flow). AR28501. The River has had peaks of 1,000 to 10,000 cfs during large storms with base flows of about 20 cfs with a few cases of flows dropping to about 10 cfs. AR28501. This data illustrates that changes in WRP discharges have not had a linear impact on the River flow rate at the discharge point. AR28494.

In 2010, the Valencia WRP and Saugus WRP discharged approximately 14.5 and 5.0 mgd,

on average, respectively, into the River. AR 03700. Discharges under current operations fluctuate throughout a given day and may be as low as 5.0 mgd at the Valencia WRP for a period of up to one hour. AR28499, 03700. The Project would not change this minimum instantaneous flow. ARO3700. Thus, the proposed average minimum Valencia WRP discharge of 8.5 mgd with a 5 mgd minimum instantaneous discharge would not change the minimum instantaneous discharge from existing conditions. Id.

The stickleback population has historically survived on the natural River discharges without any WRP contribution. AR 03700. The stickleback was found in the River both upstream and downstream of the WRP discharges in the early 1990s when WRP discharges were substantially lower than current conditions. AR 28583. Since the 1990s, there has been no observable increase in the stickleback population even though the WRP discharge more than doubled during that period. AR28475. Stickleback are found consistently in the River within segments exhibiting approximately 10 cfs flows (AR 28582, 28583) but only inconsistently in segments with 25 cfs flows.

The FEIR concludes that water quantity above the proposed minimum amount is not a stress factor for the stickleback's habitat. AR03704. The stickleback's overall suitable habitat area would not be reduced and any increase in water flow does not necessarily create a better habitat for the stickleback. The FEIR projects that the proposed reduction in the Valencia WRP discharge rate, which is equivalent to the rate in the 1990s, would reduce water depth by approximately two inches. AR28580. This reduction in River level would not affect the stickleback's habitat because "the variability of channel geometry suggests that where a reduction in channel depth altered fish habitat in some areas suitable habitat would still remain in other areas of the River channel. This is supported by historic data of the River as well as current observations in the River segment upstream of the VWRP discharge." AR 28586. From year-to-year, the stickleback population will move to a new suitable location. Id.

The FEIR concludes that average flows of 8.5 and 4.5 mgd at the Valencia WRP and Saugus WRP, respectively, would be sufficient to support the stickleback as long as the minimum 5.0 mgd flow from the Valencia WRP is maintained. AR03700.[5] The minimum effluent discharge of 13 mgd (8.5 mgd from Valencia WRP and 4.5 mgd from Saugus WRP), with a minimum instantaneous discharge of 5 mgd from the Valencia WRP is a project design feature, not a mitigation measure. *See* AR 03542, 3704. The FEIR concludes that the Project's impact to special status species, including the stickleback, will be less than significant (no take). AR03704, 04063, 04065.

(ii) Individual Stickleback

Assuming *arguendo* that Petitioner did not fail to exhaust its administrative remedies on the issue (*see ante*), Petitioner argues that the FEIR lacks substantial evidence that the Project will not kill any individual stickleback.

The FEIR commits to maintaining an effluent discharge level of 13 mgd, an amount that is equal to the effluent discharge in the 1990s when a population of stickleback in the River survived. AR05095. Based on this fact, the FEIR concludes that the existing population of stickleback in

[5] Additional studies would be required to support discharges if they were consistently lower than these averages.

the relevant portion of the River will survive at this same 13 mgd effluent discharge level. AR00535. Petitioner criticizes the FEIR's evidence as focused on the population of sticklebacks, not on individual fish. According to Petitioner, the District interprets Fish and Game Code section 5515 as permitting a take of individual fish so long as the stickleback population is maintained. However, the statute prohibits the take of any fully protected fish. The FEIR provides no analysis of the impacts of diminished effluent discharge from the proposed Project on individual stickleback. In other words, the FEIR does not perform a take analysis for individual members of the stickleback population, only doing so for the population as a whole. Pet. Op. Br. at 13.

The FEIR did not, and was not required to, study each individual stickleback. CBD does not state otherwise. In that case, the California Supreme Court merely prohibited an EIR's use of recovery of stickleback as a mitigation measure to preserve the fish population because Fish and Game Code section 5155(a)(2) expressly excludes such recovery actions as mitigation under CEQA. 62 Cal.4th at 233.

The District's FEIR acknowledges that the stickleback is fully-protected (AR 4744), substantial adverse impacts to any protected species would be significant (*see* AR 519), and no take of the stickleback can be permitted. AR 4061. The District's Project does not propose or intend any collection or recovery of stickleback. Nor does Petitioner cite evidence that a take of any stickleback would result from the Project. Instead, the Study determined the minimum WRP discharge where no take of stickleback would occur. Once this value was determined, this minimum discharge was established as a project feature. The FEIR does not, as Petitioner asserts, describe the minimum level of discharge for bare survival of the stickleback; it set a flow level at which there would be no take of the stickleback.

By definition, the Project is designed not to take any stickleback. Because the Project does not involve construction or other physical work on the River – only a reduction of effluent discharge -- no direct impact to individual stickleback comparable to that discussed in CBD would occur. *See* AR04061.

(iii) Stickleback Population

Petitioner argues that the FEIR lacks substantial evidence that the stickleback population will not be taken. The bulk of the FEIR's evidence is directed towards showing that (a) the proposed 13 mgd minimum effluent discharge is about equal to the discharge two decades earlier, (b) these historic River flow levels supported stickleback population in the past, and (c) maintenance of the same effluent discharge levels will ensure sufficient River flow to support the stickleback population. AR00535. Petitioner argues that this reasoning is flawed for two reasons. Pet. Op. Br. at 14.

First, the sizes of the current and historic stickleback populations are not shown to be equivalent. There is no calculation, not even an estimate, of the relative size of the historic stickleback populations and the size of the current one. This alone makes the comparison unsupportable. Pet. Op. Br. at 14.

Second, the historic and current environmental conditions, including flow levels, in the River are not shown to be comparable. DFW's commented that River conditions in the 1990s are not comparable to current conditions because the early 1990s were especially wet years, and there was much less upstream development of the land adjoining the River with the attendant pressures on stickleback habitat from such development. AR04057. The District's response to the DFW

comment seemed to assert that a difference in River conditions cannot affect the stickleback's habitat, saying that "[w]et years and dry years could affect flows, but the reduced perennial contribution from the [District's plants] would not result in significant habitat degradation or loss." AR04069. In response to DFW's comment about increased urban pressures from "well withdraw, landscape watering and overall water use" (AR04057), the FEIR merely generally observed that both District effluent quality and urban storm water discharges have improved in quality since the 1990s, thereby preventing any significant impact. This response did not address changes in water use and their possible effect on River flow levels, and was a failure to make a good faith, reasoned response to a comment by a public agency, a patent procedural violation of CEQA. *See* Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners, (2001) 91 Cal.App.4th 1344, 1367. Pet. Op. at 14-15.

Petitioner notes that even a small additional stress on an already stressed resource may be cumulatively significant. Kings County Farm Bureau v. City of Hanford, (1990) 221 Cal.App.3d 692, 718; Los Angeles Unified School Dist. v. City of Los Angeles, ("Los Angeles Unified School Dist.") (1997) 58 Cal.App.4th 1019, 1025 (in area already plagued with noise, even small additional contribution may be significant). The stress on the stickleback population from diminished discharge into the River in an area already experiencing increased well withdrawal and other increased water use may be significant.

According to Petitioner, the FEIR tries to minimize the additional stress the Project would impose on the stickleback's habitat. It admits that the Project "would reduce, but not eliminate suitable shallow edge habitat", but states that the variability of channel geometry along the length of the River's channel suggests that suitable stickleback habitat would remain. AR05094. Petitioner contends that the FEIR's reliance on a "suggestion" that suitable habitat may remain to prevent any take of stickleback is speculation that does not rise to the level of substantial evidence. *See* Guidelines § 15384(a). DFW, the expert agency, did not agree with the District's speculation, stating in its comment letter: "[N]either the science nor observational evidence (aerial imagery 1994-2-12, Google Earth 2013) supports the conclusion that the [District's] discharges have a negligible effect on total riparian habitat area. . . ." AR04055. DFW further stated that the FEIR "should show where habitat is expected to be less or the same, and where it is expected to increase". AR04053. This showing was not met by the FEIR's suggestion that the River's morphology means that stickleback habitat would exist somewhere along the River to replace other stickleback habitat destroyed by the Project. Pet. Op. Br. at 15-16.

Stickleback populations vary over time based upon a variety of factors, including parasites and water quality. *See* AR28512-13. The stickleback is threatened by habitat destruction through channelization, urbanization, mining and water quality degredation, and non-native predators and competitors. AR 28512. The issue is whether a decreased WRP discharge will lead to decreased River levels which would adversely affect the stickleback population.[6] In this regard, the District

[6] As the District argues, Petitioner has raised an issue of River flow and level, not water quality or the Project's proposed compliance with the Regional Board's chloride reduction mandate. Opp. at 17. In fact, the quality of WRP effluent has substantially improved over the years which would only aid stickleback populations. AR04069. In 2005, major upgrades to the level of treatment at both treatment plants (AR03428) reduced the level of ammonia and nitrogen compounds in the discharge and resulted in a more complete removal of biologically-degradable

is not required to remedy the impacts to the stickleback that may have occurred over the years; it is only required to reduce the impact of the proposed Project on the stickleback when considered with other cumulative effects. *See* Los Angeles Unified School Dist., 58 Cal.App.4th at 1025.

The FEIR states that the proposed minimum of 13 mgd of effluent discharge is about equal to the effluent discharge in the 1990s when the stickleback population was supported. AR 28583. The FEIR concludes that this level will ensure no take of the current stickleback population because "historic [River flow] levels...supported these species in the past." The FEIR's reasoning is that keeping effluent discharge equal to those prior discharge levels will ensure sufficient River flows and levels to support the existing stickleback population. AR 535.

The fact that the level of effluent discharge in the 1990s was sufficient to support the then existing stickleback population does not necessarily mean that it is sufficient to support the stickleback population now. If there were few stickleback fish in the 1990s, and the population has greatly increased since then, then the same level of discharge may not support the larger population. The District never responds to Petitioner's argument on this issue. Nonetheless, the FEIR contains substantial evidence to support the conclusion that the populations are roughly equivalent. The FEIR expressly notes that, since the 1990s, there has been no observable increase in the stickleback population even though the WRP discharge more than doubled during that period. AR28475.

This leaves the issue of impact of the River's level on the stickleback habitat. The DEIR concluded that, based on a comparison with 1990 conditions, the projected WRP discharge would reduce water depth by two inches, which would not stress the stickleback's habitat and not reduce the overall habitat. DFW commented that River conditions in the 1990s are not comparable to current conditions because the early 1990s were especially wet years, and there was much less upstream development of the land adjoining the River with the attendant water useage pressure from such development on stickleback habitat. AR04057.

As for DFW's comment about increased development and resulting water usage, the FEIR merely observed that both District effluent quality and urban storm water discharges have improved in quality since the 1990s. AR 04057. This was a *non-sequitur*. Improved water quality may improve the stickleback's existence, but not if there is insufficient water to inhabit. The response did not address changes in water use and their possible effect on River flow levels, and was not a proper response to a comment by a public agency. *See* Berkeley, *supra*, 91 Cal.App.4th at 1367.

With respect to DFW's comment about comparable conditions, the FEIR's response acknowledged that wet and dry years could affect River flows, but contended without explanation that the reduced WRP contribution would not result in significant habitat degradation or loss. AR04069. In response to another DFW comment that the District was setting a 1990s baseline for the stickleback analysis, the District responded that the baseline was properly set at the condition

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compounds. This Project would further improve effluent quality for chloride and other compounds through the advanced treatment of a portion of the Valencia WRP's flow (AR03457, 03458), as well as by switching from chlorine-based disinfection to UV disinfection (AR03471, 03472, 03496, 03548. The new Los Angeles County municipal separate stormwater sewer systems discharge permit also is likely to result in better stormwater quality than experience in the past. AR04069.

of the River and effluent discharge at the time of the DEIR. AR 04065. The historical data from the 1990s was used to help estimate the significance of the Project impact from reduced effluent discharge. The conclusion that there would be no significant impact for the stickleback's habitat was based on aerial photos showing little difference in total riparian cover between those years. AR04065-66. The District admitted that the discharge reduction would reduce, but not eliminate, some of the shallow edge habitat created by higher flows. But the channel geometry suggests that suitable habitat would still remain in other areas of the River channel. Historic data as well as observations of the River upstream from the discharge show as much. AR 04065.

While flow rates *per se* are not important to this case, the depth of the River is important to stickleback nesting. As Petitioner argues, the FEIR states that the River is only a foot or less deep in many places with stickleback habitat, (*see* AR 05055, 05058), and a two inch drop could have an impact on the nine inches of water necessary for stickleback nests. *See* Reply at 8, n.9. The District was entitled to rely upon an historical comparison of River levels so long as the comparison accounted for variances due to wet/dry years and water usage from development. There is insufficient evidence that it did so, and the determination of the minimum effluent discharge on River levels therefore is not adequately supported.

DFW also did not regard the District's aerial photo evidence as adequate to demonstrate that the WRP discharges would have a negligible effect on the stickleback's habitat. AR 04055. DFW previously commented that the FEIR should include and assess the net loss and gain of habitat for special-status species such as the stickleback. AR 04053. The District was not obligated to follow DFW"s suggestions, but they are well taken, and the failure to at least address the issue means that the District lacks substantial evidence that the stickleback's habitat would not be affected by the minimum effluent discharge. The District's general conclusion that the reduced effluent discharge levels will result in some loss, but that adequate habitat will remain based on historical data and observations of the River upstream from discharge, is unsupported by any detail. The District did not necessarily have to follow DFW's recommendation by preparing a map of net loss/gain of habitat, but more specificity was required for this fully protected species.[7]

The fact that any threat to the stickleback's ecological health may earmark it for extinction (AR 05024) means that the FEIR was required to contain more information in the historical comparison to justify the reduced discharge's impact River depth and stickleback habitat. Without an adequate showing that the River's environmental conditions are the same as in the 1990s, and without specific details on why sufficient suitable stickleback habitat will persist, the FEIR lacks substantial evidence for its conclusion of no significant impact (no take) on stickleback populations.

5. <u>Arroyo Toad</u>

Assuming *arguendo* that Petitioner did not fail to exhaust its administrative remedies on the issue, Petitioner argues that the FEIR is invalid because it impermissibly deferred and failed to impose such mitigation for the arroyo toad, which is a federally endangered and California species

[7] The District's opposition also relies on the fact that it will need approval from the State Water Resources Control Board for its discharge pursuant to Water Code section 1211 (AR03379), and might be required to provide additional protections for biological resources. Opp. at 14. The District cannot defer its environmental analysis to another date.

of special concern "[k]nown to occur in the [River] and its tributaries." AR 499. The FEIR admits that "[a] reduction in the [District's effluent] discharge and a commensurate reduction in river flows may reduce the size and abundance of pools suitable for arroyo toad breeding." AR 537.

The District made a finding that Phase I of Alternative 4 "would adversely affect breeding and aestivating habitat of the arroyo toad." AR 25. To mitigate this significant impact, the FEIR adopted Mitigation Measure BIO-4: Arroyo Toad Survey. This mitigation measure requires, prior to discharging water from the blended groundwater pipeline to the River, that a qualified biologist conduct a survey to determine whether arroyo toads are present in this particular segment of the River. If so, "a plan shall be developed to determine discharge conditions during the breeding and aestivation periods that are compatible with the arroyo toad management goals." AR 26.

Petitioner claims that this measure is too vague because it does not specify who shall develop the plan and who would carry it out. Further, the plan only requires that compatible discharge conditions be identified, without stating what the arroyo toad management goals are and without even requiring that the compatible discharge conditions be followed. Petitioner argues that, while mitigation may be deferred if performance standards for such mitigation are specified and mitigation is shown to be effective at the time of EIR certification (Oakland Heritage Alliance v. City of Oakland, (2011) 195 Cal.App.4th 884,892-93), the FEIR provides no performance standards and there is no showing of the plan's effectiveness. *See* Guidelines §15126.4(a)(1)(B); City of Long Beach v. Los Angeles Unified Sch. Dist., (2009) 176 Cal.App.4th 889, 915. Pet. Op. Br. at 16-17.

Petitioner also notes that Mitigation Measure BIO-4 does not even appear in the Mitigation Monitoring Plan. AR 92-93. Acknowledging that the District selected Alternative 2, not Alternative 4, Petitioner argues that the reduced effluent discharge is a feature of all the Alternatives. The FEIR states that the reduced effluent discharge "would adversely affect breeding and aestivating habitat of the arroyo toad." AR 00025. It therefore needed to be mitigated and was not. Pet. Op. Br. at 17.

As the District points out (Opp. at 18), the proposed Mitigation Measure BIO-4 for Alternative 4 was based upon the "additional flow" that would have resulted from the salt management facilities specific to that Alternative. AR 03709-11. Alternative 4 was ultimately rejected in favor of Alternative 2. While it is true that all four Alternatives, including Alternative 2, involved reduced WRP discharges, the potential impacts on the arroyo toad from those reduced discharges alone were investigated and found to be less than significant and no mitigation was required. AR 3704, 3707.

The lack of mitigation measures for the arroyo toad does not invalidate the EIR.

6. The Project Description

Petitioner argues that the District violated CEQA's mandate of an "accurate, stable and finite" project description for the preferred project, Alternative 4, which was presented in a slanted and prejudicial manner in the EIR, distorting the entire CEQA process. The FEIR rejected some approaches on the ground that they would not meet the Regional Board's standard or deadline (AR002379, 00280, 00282-83), yet Alternative 4 would not meet the standard or the deadline either, and the FEIR admitted it was "infeasible from a regulatory standpoint." AR 04349. Moreover, the District's process concealed crucial information from the public concerning the circumstances on which the more costly and environmentally impactful Phase II of Alternative 4

would be triggered, and the public would not know for 18 months whether the Regional Board approved Alternative 4. Pet. Op. Br. at 19.

An "accurate, stable and finite project description" is a bedrock requirement for "an informative and legally sufficient EIR." County of Inyo v. City of Los Angeles, (1977) 71 Cal.App.3d 185, 193. Only through an accurate view of the project may the public and the agency decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, and weigh other alternatives in the balance. In addition, not only must the project description be accurate, it must be complete, including all aspects of the proposed project. City of Santee v. County of San Diego, (1989) 214 Cal.App.3d 1438, 1450.

Petitioner's criticism of the FEIR's project description is unavailing. At least potentially, Petitioner's contention that the FEIR's analysis was slanted in favor of Alternative 4 is not a criticism of the stability of the Project description, but rather of the FEIR's alternatives analysis. In any event, Petitioner's "thumb on the scale" argument is too vague to warrant detailed analysis. And, as the District points out (Opp. at 20), the argument is rebutted by the fact that Alternative 4 was ultimately not selected. Alternative 2, which was approved, was fully studied and evaluated as the backup to Alternative 4. The public was informed that Alternative 4 required stakeholder approval, and if that approval was not received then Alternative 2 would become the Project. AR 51. Petitioner has not shown that the FEIR's analysis lacked objectivity.

Petitioner's contention that the FEIR does not describe the process for triggering Phase II of Alternative 4 is mooted by the fact that Alternative 4 is infeasible. Unlike other alternatives, Alternative 4 would not produce effluent that complies with the Regional Board's regulatory standard. The Alternative planned for the District to reduce basin-wide chloride levels by pumping salty Ventura County groundwater, diluting it with other, low-salt pumped groundwater from a number of wells, then discharging the relatively low-salt mixture to the River. The District would import additional water to replace the groundwater used. AR 355-58. Phase I was anticipated to meet a chloride limit of 117 mg.L and ultimately 100 mg/L if a Bay Delta Conveyance Facility was built by the Regional Board's deadline. AR 355. Phase II, in which salt management facilities would be built, would be necessary only if Phase I did not meet the required water supply chloride limit of 100 mg/L and the Bay Delta Conveyance Facility was not built by the deadline. AR 355. Implementation of Alternative 4 would require both the agreement of stakeholders on the scope of the salt management facilities and the Regional Board's modification of the 100 mg/L TDML. AR 358.

In its comments, the Regional Board stated that clear triggers and implementation schedules should be provided for the commencement of Phase II. AR 4032. While the Regional Board's comments on the triggers and implementation of Phase II may be valid, they also are mooted by the infeasibility of Alternative 4. As discussed with respect to Alternative 2, an EIR need consider only feasible alternatives and infeasible alternatives are irrelevant. Goleta Valley, *supra*, 52 Cal.3d at 568; Guidelines §15126.6(f)(1). The FEIR disclosed that the stakeholders would have to approve the salt management facilities and the District abandoned Alternative 4 when it became clear that they would not do so. AR 1. The adequacy of the Alternative 4 analysis at that point became moot. Petitioner makes no argument concerning the adequacy of the range of alternatives in light of the abandonment of Alternatives 2 and 4.

Finally, Petitioner's argument that the public would not know for up to 18 months whether Alternative 4 would be implemented because it might take that long to know whether the Regional

Board would approve it is both moot and ignores the fact that an EIR is an informational document, not a decision-making document. An EIR describes the project and its environmental setting, identifies the potential environmental impacts, and identifies and analyzes mitigation measures and alternatives that may reduce significant environmental impacts. Laurel Heights, *supra*, 6 Cal.4th at 1123. Using the EIR's analysis, the decision-maker decides whether to proceed with the project and which alternative to use, mitigating or avoiding the significant effects on the environment whenever feasible to do so. Id; Pub. Res. Code §21002.1. The FEIR met this informational purpose.

The FEIR's Project description is not grounds to invalidate the FEIR.

F. Conclusion

The petition for writ of mandate is granted in part on the grounds that (1) the FEIR lacks substantial evidence for its conclusion of no significant impact (no take) on stickleback populations, and (2) since the District has abandoned Alternative 2 and there is as yet no approved Project for Alternative 3, the Project approvals must be set aside unless and until the SEIR is adopted and the Project is approved using Alternative 3.

Petitioner's counsel is ordered to prepare a proposed judgment and a writ, serve it on Respondent's counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for March 29, 2016 at 1:30 p.m.

EXHIBIT 4

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE

AFFORDABLE CLEAN WATER ALLIANCE, PETITIONER,	)	
vs.	)	NO. BS145869
SANTA CLARITA VALLEY SANITATION DISTRICT, RESPONDENT.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, JUNE 2, 2016

FOR PETITIONER: ROBERT P. SILVERSTEIN, ATTORNEY AT LAW
and SUSAN DURBIN, ATTORNEY AT LAW

FOR RESPONDENT: PAUL BECK, ATTORNEY AT LAW and
JESSICA L. BECKWITH, ATTORNEY AT LAW and
WESLEY BEVERLIN, ATTORNEY AT LAW

BUFORD J. JAMES
OFFICIAL REPORTER 9296
111 NORTH HILL STREET
LOS ANGELES, CALIFORNIA 90012

CASE NUMBER: BS145869
CASE NAME: ACWA VS. SANTA CLARITA SANITATION DISTRICT
LOS ANGELES, CALIFORNIA THURSDAY, JUNE 2, 2016
DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE
REPORTER: BUFORD J. JAMES CSR 9296
TIME: 9:30 A.M.
APPEARANCES: (AS NOTED ON TITLE PAGE)

--o0o--

THE COURT: All right. Affordable Clean Water Alliance versus Santa Clarita Vallley Sanitation District, BS145869, number three on calendar.

MR. BECK: Good morning, Your Honor, Paul Beck, Wes Beverlin, and Jessica Beckwith who has a medical issue who will be joining us presently, for respondents.

MR. BEVERLIN: She stepped out and will be right back.

THE COURT: We can move forward?

MR. BECK: Yes.

MR. SILVERSTEIN: Thank you, Your Honor.

Robert Silverstein and Susan Durbin appearing on behalf of petitioner and moving party ACWA, Affordable Clean Water Alliance.

THE COURT: All right. Good morning, counsel.

This is here on petitioner's motion to compel compliance with the writ previously issued in this case. I have issued a tentative which is to grant.

Actually, I'll note the issues are kind of complicated, but it boils down to really a relatively simple point, that the EIR addressed two components -- maybe it addressed more. I can't remember, but it addressed -- counsel --

MS. BECKWITH: Jessica Beckwith appearing for respondent.

THE COURT: All right -- raised two issues, two components. One, which is the principal component, which is compliance with the Regional Board's compliance for the effluent of the District and two is a water recycling component which is required by California law, that is, all agencies are required to conserve.

The District -- and the Court issued a decision indicating that, based on the impact -- that the impact on the stickleback fish -- there was another animal involved, wasn't there?

MS. BECKWITH: The Arroyo Toad was raised in the petition.

MR. BECK: But that was not part of the Court's ruling.

THE COURT: The stickleback fish had not been adequately addressed. And so the District, in an effort to comply with the Regional Board's compliance order, is attempting to carve out from the EIR the Chloride Compliance component and adopting, I think, an alternative that involves trucking of brine and leaving for another day the Water Recycling component, and argues that it can do this because the two are inherently separate.

And so I think there are two problems. One is the substantive problem, which is the CEQA does not allow you to piecemeal projects. And, in order to separate the two projects, the District has to have evidence that they are, in fact, separate. And I don't believe that, other than the District's say-so, that they have that evidence. And the other is -- and that they have to show that there are separate in the sense that the District contends, that is, that there is no -- that the Water Recycling component's affects will not change the scope or nature of Chloride Compliance component. In other words, the project is severable.

And, too, you have to give the public a chance to comment by going through some CEQA-related review process. So whether you call it an EIR or a Supplemental EIR, a new EIR, I don't know, but I do think that the District hasn't done both of those things, hasn't done either one of those things. One, they haven't given the public a chance to comment. Two, they haven't presented real evidence that the two projects are severable.

Now, the petitioner says that what the District has to do is it has to show the impact of delaying the Water Recycling issue on other public agencies that plan to use the District's recycled water. They say that several times. And, also, the District must rebalance the impact of taking the Recycled Water component out as a project objective on its choice of project alternatives.

That may or may not be true. I don't think

I need to reach that conclusion in order to conclude that the District has to do what it argues to me, which is show that there is no environmental impact from severing the two into two separate projects. Otherwise, CEQA requires the whole of the project to be considered, et cetera, et cetera.

And then there's a violation of the writ, which I think, technically, seeking funding for the project is a violation, building a retaining wall that was previously approved and -- I don't know if it was approved, but previously supported by the final environmental documentation probably is not a violation. Under either circumstance, I believe the District is attempting to comply. I do not intend to sanction the District.

That's what it says. Have you seen it?

MR. SILVERSTEIN: Yes.

MR. BECK: We have.

THE COURT: You wish to be heard?

MR. BECK: I would like to be heard, Your Honor.

THE COURT: Go ahead.

MR. BECK: Your Honor, I think it's important that we provide perspective as to what this project is and what it isn't. This project is designed primarily as a focal point, which is the same language that's used in the Dusek case, as a focal point of this project is complying with the Regional Board mandates with regard to Chloride Compliance.

The title of the very EIR is Santa Clarita

Valley Sanitation District Chloride Compliance Facilities Plan an Environmental Impact Report. So it's clear that the focal point of this, as per the Dusek case, is complying with the Regional Board's requirements and the Chloride Compliance project; which I'll point out in the Court's original ruling in this case the Court didn't find anything wrong with the Chloride Compliance portion of project.

THE COURT: Right.

MR. BECK: There was absolutely nothing wrong with it.

THE COURT: Right.

MR. BECK: The other portion that we're talking about here, which is the Recycled Water portion, which is -- the only reason that that is at issue here is because of the Court's second ruling, which was that there needed to be more study of the stickleback population issue. And in order to permit that to go forward without having to entwine it with the Chloride Compliance project, which is itself not -- the Recycled Water component is just what happens at the end of the Chloride Compliance project. The Chloride Compliance project takes place entirely by itself without necessarily including the Recycled Water portion, what happens to the water.

If you compare this to -- well, before I get into that. To now elevate the importance of this other objective, which is clearly not the focal objective of the CIR, of the Recycled Water portion of this, is truly the

tail wagging the dog. Because this is a secondary objective. This is an objective that does not affect the Chloride Compliance project. I mean, logically it does not because it's just something as to what happens to the water at the end. Either you continue to send the water down the river, as the District has done, or you give it to somebody else.

THE COURT: Or you reuse it yourself or you can put it on golf courses.

MR. BEVERLIN: You don't have to do it.

MR. BECK: You don't necessarily have to in order to do the Chloride Compliance project.

THE COURT: Right.

MR. BECK: So the point is the way we understand the Dusek case is that the Dusek case permits the agency to have substantial discretion as to which portions of the project that it studied in the EIR it will carry out. That's the difference between the EIR, which talks about the various alternatives that are available, and the project itself, which can be narrowed.

THE COURT: Exactly right.

MR. BECK: And that is exactly what the District has done. And --

THE COURT: That is not what the District has done.

MR. BECK: Let me allow Ms. Beckwith to speak, our Dusek expert.

MS. BECKWITH: Your Honor, if I may, the Dusek

case, and I'll quote, says, "retention or demolition of the Pickwick was the focal point of the EIR."

As we all know from that case, the EIR talked about acquisition of the property, demolishing of the Picwick hotel, and redevelopment of the property. And that redevelopment agency chose to make the project only the acquisition and demolition. They chose to leave redevelopment for another day. And the Court in determining that that was an appropriate action under CEQA said that the adverse environmental impacts of demolition were recognized and considered and public input was taken.

And if you analogize that to our situation, the Chloride Compliance portion of the project is the primary objective. I'm quoting from the AR. The public was made aware of that from day one. It is literally the title of the EIR, and the public gave input about the Chloride Compliance portion of the project.

THE COURT: Right. If Dusek were to be on point, they would have had to say we have environmental review of demolition of this Picwick Hotel which is adequate. And then this redevelopment of the property we don't find to be adequate, but we're going to allow you to drop that component and approve only the demolition of the hotel.

If that's what happened in Dusek, that would be on point. That isn't what happened in due sack. So I'm not in any way -- but could they have in due sack said, "Well, okay, we don't how we are going to redevelop the property so we're going to cut the project down to just

demolition of the Picwick Hotel and leave for another day how we are going to develop"? Yes, they could have do that.

And, yes, you can do that. Yes, I agree with almost everything you said about the primary focus here is compliance with the chloride tolerance limit and that the Recycled Water component is the tail wagging the dog. That's a little strong because California law requires you to recycle water. You have to have that and consider that when you are adopting any project or plan.

But can you carve this out? Absolutely, I think you can. Have you adequately done so? No, it's not good enough for the District to just say, "We think these things are independent. We're going to drop one and go forward with the other." That's what they did. That's not good enough.

MR. BECK: Your Honor, I think that is primarily what they did in due sack. That's our reading of it --

THE COURT: Nobody says the environmental review document in Dusek was inadequate; right? The argument of the petitioner was there was a changing project description by narrowing the project and so the environmental review was inadequate. And the court of appeal gets rid of that and says no, you can narrow a project.

Nobody said there was anything wrong with environmental review of the developmental portion of the project in due sack. The agency just did exactly what you described, had an inadequate environmental review, and

based on that environmental review they decided to narrow the project. That's perfectly permissible. As you said, there's a difference between environmental review and approval, and that's what Dusek stands for.

The approval does not have to be of the entire project that was environmentally reviewed. Here, we have a somewhat slightly inadequate environmental review, and you are purporting to approve a narrowed project with an adequate environmental review.

MR. BECK: Well, Your Honor, no one has -- in fact, no one challenged -- except for with regard to the stickleback, no one challenged the portion about the Recycled Water portion either. Nobody claimed it was inadequate either. So what we're facing is the same thing that we had in due sack, which is, we have a project that has components and the District, like the redevelopment agency in due sack, determined that it would only go forward with a portion of the project.

That's not -- that wasn't project splitting. There is no reason to have project splitting here other than to protect the stickleback.

THE COURT: I want to ask Mr. Silverstein something, because it did strike me -- I can see that the District would be exasperated with you, Mr. Silverstein. Because on one hand you argued that this environmental review was inadequate because the project Water Recycling component was going to take water away from the Santa Clara River, and the stickleback would not be protected, and you

won on that.

Now, you are arguing, "Well, we really need this Water Recycling component. Other agencies are depending on it. And so, you know, it -- we don't want to take water away from the stickleback. But, oh, by the way, we want to recycle water." Those are the two positions you have taken on the merits and in this motion.

MR. SILVERSTEIN: Your Honor --

THE COURT: Right? If I were the District, I would say, "Come on, you are game playing. You are just being hyper technical."

MR. SILVERSTEIN: In response, Your Honor, the simple answer is we did not design their project description. Their project -- and to suggest, as they do, somehow the Recycled Water component is the poor step child or the tail wagging the dog is false. It was a co-equal project objective. There were three stated consistently throughout.

And, ironically, even in their Supplemental EIR, they were so sloppy they forgot to do their Recycled Water-ectomy there. And they continue pronounce that this is a critical core component of the project. We know from their own words that is the project, and they have to analyze the whole of the project.

So the answer is, number one, we didn't design the project. Number two, we didn't design their noncompliance with CEQA. We are properly saying you have to include the public, you have to include other agencies,

trustee agencies, Fish and Wildlife. You have to follow the procedures. And if we see that in their followup to the writ and the judgment that they are flipping and doing sort hundred eighty degree different violations, we intend to identify that.

It's not a hyper technicality. It's the law. And what's driving all this is this -- a false premise. The false premise really is the unstated, but what is going on is District is saying we're under an order from the Regional Board; therefore, that effectively acts as preemption of CEQA and allows us to run rough shod over the public's rights, over endangered species, and over the law.

We're saying, no, it doesn't. There certainly is no exemption in CEQA so they can get something approved faster. They have to have it approved in compliance with the law. So we're not playing -- we're not playing gotcha. We would rather them have complied with the judgment and the writ. They didn't. And we have, not the only remedy under 1097, but the obligation to say so when it is clear that there is noncompliance.

I appreciate how Your Honor said, I think, generously, said that the District's actions, quote, could be construed as negligent disregard of the writ. We would submit that it's knowing. But, regardless, even if it's negligent, it is disregard of the writ. And under 1097 the procedure available to us is to come back to Your Honor and say the writ needs to be maintained in full force and

effect. They can't disregard it. They can't ignore it.

I mean, 1097 actually authorizes imprisonment. We thought we were being generous by not --

THE COURT: I'd need a big pair of handcuffs for the District.

MR. SILVERSTEIN: We will help supply them.

MR. BECK: For counsel.

MR. SILVERSTEIN: Well, Mr. Beck mentioned something that I didn't -- you know, since that door has been opened, Your Honor, we have in our papers, we have a chart contrasting what Your Honor said, not only once, but twice in hearings, and where Your Honor personally struck out the language in the judgment, the language in the ruling which got reflected in the judgment --

THE COURT: I only did that because you asked me to. That's my recollection. So I don't think the strike-out means I was finding anything. It means that I was being prudent and not finding something.

MR. BEVERLIN: Careful.

MR. SILVERSTEIN: Well, Your Honor actually said I'm -- Your Honor found, "I'm certainly not going to set aside and invalidate a ruling until a Supplemental EIR is certified and a project is approved. I am not going to say that, and I'm not going to say, then dash, I don't know why I shouldn't just say, quote, decertify the FEIR and set aside the project approvals, period, close quote.

Your Honor did find that. And we had a long discussion. When we came in ex parte on March 18, and I

said, "The District is not complying with your ruling, the District is fighting us on basic language in the judgment and the writ," and you agreed. This whole issue came up again. So twice, orally, and in writing more than once because it was reflected in the ruling and in the judgment, there has been a clear statement that you did not make a finding that as long as they certify this Supplemental EIR --

THE COURT: I didn't make a finding that they couldn't do that either. That's my point.

MR. SILVERSTEIN: You made a finding that whatever they do they have to do in compliance with the law. That was a long way of saying my point is what's being represented by counsel -- and we submitted not only a transcript but also link to a You Tube thing so that Your Honor can see it.

THE COURT: I didn't watch it, I will tell you.

MR. SILVERSTEIN: Understood. I am making an offer of proof in living color statements made by counsel that directly contradict what Your Honor said, not once, not twice, but I think it was five times. And that isn't right.

MR. BEVERLIN: May I be heard, Your Honor.

THE COURT: No. Do you dispute, Mr. Silverstein, that they can -- with appropriate findings and public notice they can separate these two projects, the Water Reclamation project from the Chloride Compliance project, they can do it. They are not bound by the EIR that says

they are inextricably linked if it says that, which I don't think it does. They can -- if they have evidence that they are separate, they can separate them into two projects. Do you agree with that?

MR. SILVERSTEIN: If they can gin up evidence that's legitimate, they can try. But all I can say is that there is nothing better than the District's own words to disprove their current position. And at pages 5 through 6 we extensively analyze and distinguish the reliance on due sack. It's totally inappropriate. And simply saying that two components of the whole of a project are separate is a clear violation of Laurel Heights and of Arviv Enterprises.

THE COURT: In general, that is true. In general. On the other hand, if it is true, as they contend, that this project is all about the Chloride Compliance issue and that the Water Recycling is an, oh, by the way, and they want to separate the two and they have evidence that there is no environmental impact, cumulative or otherwise, from -- in separating the two, they can do it, can they not?

MR. SILVERSTEIN: I can't prejudge. All I can look at is what they have publicly committed to, which is --

THE COURT: Depends on what the evidence is, but I have to believe you cannot be bound forever by a statement that the project consists of A and B, no matter what the whole of the project law and case law says.

MR. SILVERSTEIN: I agree, in general, with the

concept, but what it cannot be, Your Honor, is a contrivance. And where we're headed, I believe, is a contrivance where they will try to do this Recycled Water-ectomy and claim, you know, never the twain shall meet. But what we have is in existence now, documents and years of statements saying that these are co-equal goals, and that the goals of the project include, not just Chloride Compliance, but also the Recycled Water compliance.

THE COURT: Well, a separate issue is I never got the impression that it would be hard to sort of paint the last strokes of the brush and do the stickleback evaluation that I said was defective.

MR. BECK: It's harder than you think, Your Honor.

MR. SILVERSTEIN: We were surprised also that there was this -- you know, to call it a rush would be an understatement. You know, March 18 we -- the judgment was entered. March 23 they are doing this very, very unusual situation which we've described it's like a 6-step Rube Goldberg process of nominally decertifying and then instantly recertifying using a Supplemental that's defective to support itself, kind of like pulling itself up by its bootstraps. Then integrating that with another thing and then calling it a name that does not exist in CEQA, an Augmented EIR, and then saying everything is honky dory.

And, by the way, we have now with no notice

to the public or other agencies that are going to be impacted, we have done away with a whole component with zero study when we're talking about between 5 to 17 million gallons a day. Where we've submitted and the Court has recognized that there are other plans that have been approved in reliance on the provision of this water. For the District to simply say, "Haw, it doesn't matter, it's not important, it's segregatable," at least on this record, is fallacious.

THE COURT: Well, look, a couple of things are clear. One, you know, it is my view that you won. I didn't think the stickleback issue was a lot of effort. Maybe it is, but the District is free to pursue whichever course it wants. Comply with the stickleback issue. Separate the two components into two projects.

If you do the latter -- well, either way you are going to have Mr. Silverstein monitoring your efforts. As you can tell, he's going to call you on it if he does not think you comply with the law. And I don't set policy. I think that, you know, it's -- "admirable" is the wrong word. The District is trying to comply with a Regional Board order which is -- certainly it has that other public duty to do that. So that's why I said I have sympathy. Motives are pure.

How you get there, though, you have to comply with CEQA. All I do is call balls and strikes. I don't set public policy. You are going to -- if you want to do it this way, you are going to have to evaluate the

environmental impact of separating the two components into two projects and give the public the right to comment.

If you want to do it the other way, you are going to evaluate the impact of Water Recycling on -- I thought it was only a component of the stickleback.

MR. SILVERSTEIN: It's listed as one of three goals of the project.

THE COURT: No, but I mean my finding on the merits was -- it wasn't -- there was the individual stickleback which I did not agree with Mr. Silverstein on. And then there was the stickleback population. It was only one small part of the stickleback population impact that I found effective.

That's my recollection. Could be wrong. I did not think that was a major hurdle to get past, but if it is, you can separate. You can do what you are trying to do, but I think -- you know, I've indicated conceptually how you have to do. And Mr. Silverstein is going to make sure that you do it lawfully under CEQA.

MR. SILVERSTEIN: We are the armor of the un-armored stickleback.

Your Honor, what I was going to say before Mr. Beck spoke, was I was going to say we would respectfully submit on the tentative, but I wanted to request a little bit of clarification in terms of the order, and I still would like to ask Your Honor for a little bit of clarification.

In the Court's tentative, the Court states

at page 9, "Petitioner ACWA's motion for an order maintaining the writ of mandate is granted." And then also at page 9, "The District has violated the writ by taking steps to carry out the project before the writ was discharged." And that refers to the request for million of dollars of state funding. And then at page 8 the Court writes, quote, The District's certification of the modified EIR and SEIR did not comply with CEQA. And then the Court mentioned that this could be construed as negligent disregard of the writ.

But the clarification that I am asking for is we have gone through this process that we didn't want to have to go through, this 1097 process, which is not easy. And we have proven up these issues. And but my concern is that, whether negligent or whether maybe somehow not entirely negligent, partially -- knowing the District hasn't complied yet and, as Your Honor said, disregarded the writ, and my concern is that when we have the statements that your Honor made implicit in them, if not explicit, but certainly implicit, is that that action in furtherance of the project as a violation of the writ should be rescinded.

So I think that they need to have an order saying your resolution, District, whereby you authorize the pursuing of millions of dollars of state funding must be rescinded. Otherwise, they gain the benefit of it, and the relief that we've been granted is somewhat illusory, goes to the whole Laurel Heights post hac --

THE COURT: I don't know -- they just want to pursue state funding. I don't know where they are in that process. They have to stop that process.

MR. SILVERSTEIN: They have a resolution now that authorizes them to go forward.

THE COURT: Right. Some person or persons have to carry that out, and they can't do it. Okay. They are estopped by this order from doing it.

MR. BEVERLIN: May I be heard on that issue, Your Honor.

THE COURT: No. You cannot pursue the project until it's approved. You can't approve it until you have adequate environmental documentation. I'm not sure -- you can be heard, but there's not much more to say on that.

MR. SILVERSTEIN: That was the clarification I was seeking. Thank you, Your Honor.

MR. BEVERLIN: All I want to say on that issue, Your Honor, just the funding issue, the reason why we did not consider that to be a violation of the mandate of the writ is because it doesn't in any legal way lock us into pursuing the project. Asking for a loan can be turned down; it can be granted, in part. Or, if it's granted in whole, the District can decide for any number of reasons, you know what, we're not going to proceed.

THE COURT: But the problem with that argument is, so long as we don't take the final step, we don't sign the loan document or we don't approve the project, we should be able to do everything up until the final step

without adequate environmental review documentation. And I'm not aware of any case that says you can do that. Maybe there are cases that say so long as you don't take the final step you can take preliminary steps, but it seems to be inconsistent with CEQA, which is first you do the environmental review before you make judgments about what you are going to do. And --

MR. BEVERLIN: It was not a final step, argument, as much, Your Honor, as us looking at this and practically seeing that asking for state loan money has no environmental impact at all. None. As I have just stated, since it does not lock us into any other actions that potentially could have environmental impacts, we didn't think there was anything that was in violation.

THE COURT: Frankly -- I mean, I have articulated the issue, but -- I don't know whether there's a case on the issue or not, whether you can take preliminary steps.

MR. SILVERSTEIN: Your Honor, you can't because it's in furtherance of the project. It can -- first of all, we don't need to get into the speculation and theory -- the writ says that the District shall, quote, refrain from taking any steps, any --

THE COURT: Yes.

MR. SILVERSTEIN: -- to carry out the project.

THE COURT: Yes. You can't do it. But I'm not going to direct the District to hold a meeting rescinding its authorization. You have done it. You can't go further. You have got to stop.

MR. BEVERLIN: Understood, Your Honor.

MR. SILVERSTEIN: And "any" should apply to "every" because that's what the Court's writ says.

THE COURT: You can't take steps for this project, yes. That's what the writ says. Yes.

MR. SILVERSTEIN: Thank you, Your Honor.

MR. BEVERLIN: The other issue I wanted to bring to the Court's attention, with all respect, I heard the Court a few minutes ago say that we are under a legal duty, a legal obligation to have to recycle water. With respect, Your Honor, that's not true. We are under a legal duty to use water as reasonably as we can. The law does not require us to have to recycle water.

The law requires us --

THE COURT: There is recycling law. What does the recycling law say?

MR. BEVERLIN: There is a recycling law, but it does not require public agencies that are not currently recycling water to have to spend the money and go through the process of upgrading their treatment procedures in order to recycle water. That's all I am saying.

Here, the District has elected to recycle water. That's fine, but the law doesn't require us to have to do that; nor does the law require us to have to give it to any third parties. We could continue to put that recycled water in the Santa Clara River so that it eventually flows out to the ocean as a secondary --

THE COURT: That would be a mistake unless it --

MR. BEVERLIN: Well, of course, it would be a mistake. Perhaps, it wouldn't be the most proper use of a precious item, recycled water. I agree with that. I'm addressing the Court's notion that somehow we were under a legal obligation to do that.

THE COURT: If you aren't yet, you will be.

MR. SILVERSTEIN: And we've submitted contracts. They are under a legal obligation.

MR. BECK: Not for this water, Your Honor.

MR. BEVERLIN: The point I'm trying to make, Your Honor, is what's the importance of that distinction that I raised. The importance is this: It goes right back to this issue of what is the focal point of this project.

THE COURT: You keep arguing that. I have no reason to dis- -- I guess Mr. Silverstein does. It is entitled to whatever -- however you called it. It isn't entitled to water recycling EIR. I fully -- if you want to carve it out, I have no doubt that you can so long as you have adequate evidence that supports the carve-out.

MR. BEVERLIN: What kind of evidence would that be --

THE COURT: You have got a project that involves two components, and you have to demonstrate that the environmental impact, cumulative or otherwise, of the project without the water recycling is insignificant or as mitigated will be less than significant.

MR. BEVERLIN: With respect, Your Honor, isn't that a little bit like trying to prove a negative. If

we're not doing that now, it seems like the Court is saying, okay, you have to produce evidence to show that if you continue to not do that, it's not going --

THE COURT: You have argued in your papers and -- both orally and in your papers that they are completely separate and that there is no environmental impact from separating them. And I think that's what you have -- and Mr. Silverstein, I don't want to put words in his mouth, I think he would argue you are the one who chose to put these two components together in a single project. If you want to separate them, you have to prove that they could be separated.

MS. BECKWITH: Your Honor, if I may. In the due sack case, however, the redevelopment portion was only a conceptual portion. It wasn't fully studied. The agency admitted it was only conceptual. It is the exact same facts here with our Recycled Water portion.

THE COURT: Maybe, except a couple things are obvious. One, you can demolish a hotel without building on the property; right? It's pretty easy to approve one part and not the other. And you can also study the environmental impact of development that is, as yet, undefined. That happens, actually, with some regularity.

And so I don't -- I don't know what the EIR in the due sack case looked like and how significant the component was for the development. All I know is the Court did not -- that the redevelopment agency did not decide to go down the path of demolition only on the basis that the

environmental assessment of redevelopment was inadequate. They didn't do that.

MR. BEVERLIN: But is that a distinction with an important difference in this case, Your Honor. The focal point of the holding, it seems to me, is that they made a decision that the court of appeal respected was well within their discretion. This Court seems to be saying --

THE COURT: Sure.

MR. BEVERLIN: -- well, you have got the discretion to limit the size of the project, but because in due sack there was no holding, prior holding, that there was an inadequate environmental review of the redevelopment it's somehow importantly distinguishable from this instance.

THE COURT: It's hugely -- I don't want to say hugely. It's a distinction. CEQA requires environmental review of the project. In due sack there was a project that had components A and B. They reviewed them both and decided they were only going to do A. Perfectly appropriate to narrow the project after they had that environmental review.

Here, we have environmental review of A and B. The review of A is acceptable. The review of B is unacceptable. So we do not have a complete environmental document. You want to narrow by carving out B without a complete environmental reviewed document. Can you do that. Yes, you can. How do you do it, you have to show that separating the project that was the whole of the project

before can be separated into two projects. How do you do that, you have to show that there is no environmental impact from -- no significant environmental impact from separating the two. That's how I see that.

MR. SILVERSTEIN: Your Honor, you have used the key word, they have to prove it. Mere assertion is not adequate, is not substantial evidence. I was surprised when due sack was cited because I know due sack. Mr. Beverlin and I have been on the other side in eminent domain cases. Due sack has a lot to do with eminent domain and an agency abuse of the redevelopment powers.

And about three years ago redevelopment agencies were abolished by Governor Brown and I actually flew up to watch the Supreme Court decision Monsanto happen as that abuse was finally ended. In due sack, I kind of smiled when I saw the citation to due sack because it was a case where -- there were two Duseks where -- and I believe it was this one there was allegations of improper conduct by the agency, fraud in the EIR.

But in that EIR the court of appeal found, quote, the 1983 EIR rang the environmental law alarm bell loud and clear. Every reader was dramatically alerted to the recommended irretrievable loss of Pickwick. Nobody has heard an alarm bell ring other than from us saying, "You have suppressed information about public disclosure, about impacts of deleting the recycled water."

That's the opposite of the alarm bell being rung loud and clear. That's the alarm bell being stuffed

in a closet somewhere, and the public is told, you know, "Sit down and shut up."

MS. BECKWITH: Your Honor, if I may, the alarm bell that he's referring to in due sack in that quotation is the alarm bell for the demolition, not the redevelopment. Our alarm bell for the Chloride Compliance has been rung.

THE COURT: That is true. Way to ring Mr. Silverstein's bell.

MR. BEVERLIN: I don't think we're going to change your mind on due sack so --

THE COURT: It's not unhelpful to you, but --

MR. BEVERLIN: The last point we would like to raise with the Court, and we appreciate the time that you have given us, we would like to look and see if there is something practical that can be done in this instance.

I feel the Court fully understands the pressure the District is under because of the Regional Board order and the schedule. I think the Court has clearly articulated several times now that there is no problem with the compliance portion, the Chloride Compliance portion of the project.

The only problem that now seems to exist is being able to deal with this stickleback population as part of the Recycled Water part of the project. So what I would ask the Court is if the Court --

MR. SILVERSTEIN: I'm going to interpose an objection because I know where this is going.

THE COURT: How can you object --
MR. BECK: To an argument --
MR. SILVERSTEIN: Because what Mr. Beverlin is trying to do is trying to reargue the judgment and writ in this case.
MR. BEVERLIN: Your Honor, I am not trying to do that at all. I take exception to my friend Mr. Silverstein trying to anticipate what I am going to argue before he raised --
THE COURT: It's hard to object before somebody argues.
MR. BEVERLIN: The point I'm trying to ask the Court to consider is, frankly, a bifurcation of its writ. If there is no problem with the Chloride Compliance portion of this project and if that's the part of the project that is a under this mandate of the Regional Board and the District needs to go forward with that, the Court understands that, the District understands that, the Regional Board certainly understands that. Mr. Silverstein understands it too, but it's part of his plan to completely scuttle this project.
MR. SILVERSTEIN: Objection.
MR. BEVERLIN: What we would ask the --
THE COURT: You don't want to scuttle the project?
MR. SILVERSTEIN: Actually, what we have said is we want to work with the District to find an environmentally and ratepayer superior project. We're not

trying at every turn to stop them. What we are trying to do is to stop them from violating the law and from violating the public's rights. They have been --

THE COURT: We're way past that issue with the exception of the stickleback.

MR. SILVERSTEIN: This is outrageous because it is exactly what I predicted. He just said he wants to bifurcate the writ. I said he wants to reargue the judgment --

THE COURT: I don't know how I could do that.

MR. BEVERLIN: Let me finish my point before Mr. Silverstein contends it's improper and the Court says that you don't know how you could do it. What I am suggesting is that a writ, unlike an EIR or unlike a facilities plan, is wholly within the discretion of the Court. The Court can --

THE COURT: Modify. Sure.

MR. BEVERLIN: -- can modify its writ in any way it believes is just. What I'm trying to suggest is that it's, not only just, but it's practical, in this case to let the Chloride Compliance portion of the project, which this Court has already said is fine, let that go forward so that the Regional Board's order and schedule can be met. Maintain the writ with regard to the stickleback Recycled Water portion of the project. Make us come back and prove that doing what we are suggesting, severing it from the project, is not going to be environmentally harmful. We will endeavor to do that.

THE COURT: The problem with that argument is you have no environmental document upon which you can rely to approve the Chloride Portion of your project. There is no acceptable environmental document.

MR. BEVERLIN: We do, Your Honor. It's the SEIR. It was approved on March 23rd by the District Board, and that's exactly what it did. It adopted the other alternative for disposing of the brine. And that was the only issue that this Court needed to have addressed in order for the project to go forward, which is exactly what the District has done, that can go forward, and those problems can be taken care of, whereas the Recycled Water component that the Court wants addressed and we want to address can be dealt with separately so the writ should also deal with them separately.

MR. SILVERSTEIN: Your Honor, this exact argument was made by counsel on March 9 at our ex parte which Your Honor granted and Your Honor rejected this argument. And, Your Honor, there was a lot of deliberation about the language of the judgment and the language of the writ.

And if Your Honor will recall I submitted color red-lined copies showing the way that the District was attempting to avoid and evade the import of what this Court ruled. Your Honor looked at it. Your Honor said, yeah, that isn't right, what the District is saying. In effect, what the District is saying now is a rehash of that, this exact issue -- I can submit the March 9 transcript -- was raised and rejected it. And for --

THE COURT: It was March 9 of this year? I have no recollection.

MR. SILVERSTEIN: Yes.

MR. BEVERLIN: This is not true. Take a look at the transcript.

THE COURT: If I sat here and looked at transcripts of everything I said, I would never get off the bench. So, no, I'm not going to look at the transcript.

Look, I suspect I looked at the judgment said, well, okay, judgment says X; therefore, I cannot approve any change of the writ that deviates from the judgment. If you want me to -- if you want to say that the SEIR takes care of compliance with the writ, basically, is what you want to say, on the Chloride Component --

MR. BEVERLIN: Yes.

MR. SILVERSTEIN: Your Honor, I have to object. We had an entire trial. For this to be raised sua sponte now, in effect --

THE COURT: It's -- I'm not going --

MR. BECK: The SEIR isn't before this Court in this action. They have sued on it.

THE COURT: I'm not going to do it now. I guess what I am saying, maybe there is a third ground where you can make a motion to modify the writ to allow the chloride project to go forward as approved -- that you have an environmental document that approves the chloride project, the SEIR -- I don't know.

MR. SILVERSTEIN: But they don't have that. This

is putting the cart before the horse.

THE COURT: No, but there is another lawsuit which I certainly hope does not come to me.

MR. BEVERLIN: It already has.

MR. SILVERSTEIN: It's here.

MR. BEVERLIN: Which is a good thing. You know all about the project.

MR. SILVERSTEIN: We agree it is a good thing, but it is very much putting the cart before the horse. All we're here saying is they are approving things in derogation of the writ. They didn't even bother to try to respond --

THE COURT: You have won on that. Okay. The only issue is -- I'll leave it this way. I think it is always true that you can make a motion to modify a writ.

MR. BEVERLIN: All right, Your Honor. We'll pursue --

THE COURT: Can you do that, sure. Are you going to win, I have no idea.

MR. BEVERLIN: I would only say to the Court, and I understand you can't prejudge it at this point in time, my understanding of CEQA law is the SEIR that's been approved by the District Board is the SEIR. It's good for all intents and purposes until this Court says it isn't any good. It's true Mr. Silverstein has filed a lawsuit about it. That doesn't stop it in its tracks.

THE COURT: No. Projects go forward all the time where they are approved and there is a lawsuit to set aside

the environmental review. Absolutely. So if the only thing stopping you -- if you had an SEIR and there is a lawsuit seeking to set aside the SEIR, you could go on your merry way. The only thing stopping you is my writ in this --

MR. BEVERLIN: Yes.

MR. SILVERSTEIN: But that's where we need clarification. Your writ hasn't stopped them so far.

THE COURT: Well, it is now. I think they are acting in good faith.

MR. SILVERSTEIN: I think what Mr. Beverlin is saying, if I understood him correctly, they have an SEIR in place, and they are good to go.

THE COURT: That's not what he's saying, no. He's asking me can we use that to modify the writ. That's what he is asking.

MR. BEVERLIN: That's exactly what I'm asking.

THE COURT: The answer is make a motion.

MR. BEVERLIN: We'll do that.

MR. SILVERSTEIN: As long as Mr. Beverlin is not saying and will go back to his board and say, "The Court said because we approved the SEIR, we can go forward with our project," that is inconsistent with the writ and inconsistent with the judgment.

THE COURT: Yeah.

MR. SILVERSTEIN: We have shown that that so-called adoption was riddled with problems.

THE COURT: I've said there are two paths you can

take. Is there a third path, I don't know. Maybe.

MR. BEVERLIN: We understand, Your Honor.

THE COURT: All right. The tentative is adopted as order of the Court.

MR. BEVERLIN: Thank you very much.

THE COURT: Notice waived?

MR. SILVERSTEIN: Notice waived.

MR. BECK: Notice waived, Your Honor.

MR. BEVERLIN: Thank you.

MS. BECKWITH: Thank you.

(Proceeding adjourned at 11:48 a.m.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE

AFFORDABLE CLEAN WATER ALLIANCE, PETITIONER,	)	
vs.	)	NO. BS145869
	)	REPORTER'S
SANTA CLARITA VALLEY SANITATION DISTRICT,	)	CERTIFICATE
RESPONDENT.	)	

I, Buford J. James, CSR 9296, Official Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that the foregoing pages 1 through 33, inclusive, comprise a full, true, and correct transcript of the testimony and proceedings held in the above-entitled matter on TUESDAY, JUNE 2, 2016.

Dated this 6th day of JUNE, 2016.

Buford J. James, Certified Shorthand Reporter

EXHIBIT 5

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 85 HON. JAMES C. CHALFANT, JUDGE

AFFORDABLE CLEAN WATER ALLIANCE, PETITIONER, VS. SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY, RESPONDENT.	CASE NO. BS145869

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, OCTOBER 24, 2017

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TARRONICA WASHINGTON, CSR 12759
OFFICIAL REPORTER

CASE NUMBER:	BS145869
CASE NAME:	PEOPLE VS. SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY
LOS ANGELES, CALIFORNIA	TUESDAY, OCTOBER 24, 2017
DEPARTMENT NO. 85	HON. JAMES C. CHALFANT, JUDGE
REPORTER:	TARRONICA WASHINGTON, CSR 12759
TIME:	2:09 P.M.

THE COURT: *AFFORDABLE CLEAN WATER ALLIANCE VS. SANTA CLARITA VALLEY SANITATION DISTRICT*, BS145869, NO. 2 ON CALENDAR.

FROM MY LEFT TO RIGHT YOUR APPEARANCES, PLEASE.

MS. DURBIN: SUSAN DURBIN APPEARING FOR AFFORDABLE CLEAN WATER ALLIANCE.

MR. SILVERSTEIN: THANK YOU, YOUR HONOR. ROBERT SILVERSTEIN APPEARING ON BEHALF OF PETITIONER, AFFORDABLE CLEAN WATER ALLIANCE.

MR. ZISCHKE: GOOD MORNING, YOUR HONOR, MICHAEL ZISCHKE, COX, CASTLE & NICHOLSON ON BEHALF OF THE SANTA CLARITA VALLEY SANITATION DISTRICT.

MR. WAITE: GOOD AFTERNOON, YOUR HONOR. DAVID WAITE, COX, CASTLE & NICHOLSON ON BEHALF OF RESPONDENT.

MR. BECK: GOOD AFTERNOON, YOUR HONOR. PAUL BECK ALSO ON BEHALF OF RESPONDENT.

THE COURT: GREAT. GOOD AFTERNOON, COUNSEL. THIS IS HERE ON TWO MOTIONS: THE DISTRICT'S MOTION TO

PARTIALLY DISCHARGE THE WRIT, AND THE PETITIONER'S MOTION FOR ORDERS WITH RESPECT TO ENFORCEMENT OF THE WRIT. THE TENTATIVE IS TO GRANT THE FORMER AND DENY THE LATTER.

WITH RESPECT TO THE PARTIAL DISCHARGE, THE DISTRICT ARGUES THAT IT HAD COMPLIED WITH THE WRIT WITH RESPECT TO THE CHLORIDE COMPLIANCE PROJECT. IT HAS ADOPTED A FINAL RECIRCULATED EIR THAT UPDATES THE ANALYSIS FROM THE 2013 EIR THAT THE COURT HAS FOUND TO BE COMPLIANT WITH CEQA.

IT FURTHER UPDATES AND INCORPORATES THE BRINE TRUCKING ALTERNATIVE TO DISPOSE OF THE CHLORIDE AT THE WATER -- WHAT'S THE NAME OF THE PLANT, VALENCIA W --

MR. ZISCHKE: WATER RECLAIMATION PLANT, WRP.

THE COURT: -- WRP. OKAY.

THE FINAL RECIRCULATED EIR SEPARATES THE DISTRICT'S RECYCLED WATER PROJECT FROM THE CHLORIDE COMPLIANCE PROJECT AND ANALYZES THE ENVIRONMENTAL IMPACT OF THAT SEPARATION CONCLUDING THERE WILL BE NO IMPACTS TO THE STICKLEBACK FISH FROM GOING FORWARD WITH THE CHLORIDE COMPLIANCE PROJECT ALONE.

SO ON THE THRESHOLD THE ISSUE IS THE STANDARD OF REVIEW. PETITIONER POINTS OUT THAT THE DISTRICT'S MOTION IS INCORRECT INSOFAR AS THE STANDARD OF REVIEW IS THAT ABUSE OF DISCRETION IS ESTABLISHED IF THE AGENCY IS NOT PROCEEDING IN THE MANNER REQUIRED BY LAW OR IF THE DECISION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE. THE DISTRICT'S REPLY ACKNOWLEDGES THIS TWO-PRONGED STANDARD OF REVIEW.

PETITIONER ARGUES THAT THE DISTRICT HAS IMPERMISSIBLY NARROWED THE SCOPE OF REVIEW OF WRIT COMPLIANCE, AND THE DISTRICT RESPONDS THAT THE COURT'S RETAINED JURISDICTION IS LIMITED TO ENSURING THAT IT DID WHATEVER IT WAS SUPPOSED TO DO.

THE DISTRICT ARGUES IT NEEDS ONLY SELECT A BRINE MANAGEMENT ALTERNATIVE AND ELIMINATE THE NEED FOR ANY ANALYSIS OF STICKLEBACK IMPACT IN ORDER TO BRING THE CHLORIDE COMPLIANCE PROJECT INTO COMPLIANCE WITH THE WRIT, AND NOTING THAT THE COURT ESSENTIALLY SAID THAT AT A PREVIOUS HEARING, WHICH I AGREE WITH.

SO BOTH PARTIES ARGUE ACTUALLY THAT THE OTHER SIDE IS SEEKING TO VALIDATE OR INVALIDATE THE FINAL RECIRCULATED EIR, AND BOTH AGREE THAT THE MERITS OF THAT DOCUMENT WILL BE ADDRESSED IN A SEPARATE PETITION FILED BY ACWA, A-C-W-A.

I AGREE WITH THAT. MY JOB HERE ON THIS MOTION IS TO DECIDE IF THE DISTRICT HAS DONE WHAT IT WAS DIRECTED TO DO BY PREPARING THE FINAL RECIRCULATED EIR, DECERTIFYING THE OTHER EIR AND SEIR, AND CERTIFYING THE FINAL RECIRCULATED EIR ADOPTING FINDINGS OF FACT AND MITIGATION MONITORING AND APPROVING THE PROJECT AS SEPARATED FROM THE RECYCLED WATER PROJECT. WHETHER THE FINAL RECIRCULATED EIR COMPLIES WITH CEQA IS NOT BEFORE ME. SO THAT'S A SCOPE ISSUE.

NOW, THE PETITIONER ALSO COMPLAINS THAT THE DISTRICT IMPROPERLY PREPARED AN ADMINISTRATIVE RECORD WITHOUT GIVING THE PETITIONER AN OPPORTUNITY TO PREPARE

IT OR TO EVALUATE ITS COMPLETENESS. I THINK IT IS CORRECT THAT ON A MOTION THERE WOULD BE NO ADMINISTRATIVE RECORD. NORMALLY YOU WOULD PRESENT EVIDENCE LIKE THE PETITIONER DID IN SUPPORT OF ITS MOTION, RATHER THAN A RECORD, BUT THE EVIDENCE IN THE DISTRICT'S RECORD IS -- SEEMS TO BE OBJECTED TO BY PETITIONER ONLY BECAUSE THEY ARE CONCERNED THAT IT WOULD SOMEHOW CONSTITUTE THE RECORD FOR PETITIONER'S NEW LAWSUIT, WHICH IT DOES NOT.

SO I DON'T THINK THE EVIDENCE WAS PROPERLY PRESENTED, BUT I DON'T THINK IT IS A SIGNIFICANT ISSUE HERE.

SO THEN THE APPROVAL OF THE BRINE TRUCKING ALTERNATIVE IS NOT IN DISPUTE HERE. THE DISTRICT CAN DO THAT. THE PETITIONER DOESN'T COMPLAIN ABOUT IT.

SEPARATION OF THE PROJECTS, THAT IS THE CHLORIDE COMPLIANCE PROJECT FROM THE RECYCLED WATER PROJECT DEPENDS ON WHETHER THEY ARE FUNCTIONALLY INDEPENDENT AND HAVE SEPARATE UTILITY.

PETITIONER ARGUES THE FLIP SIDE OF FUNCTIONAL INDEPENDENCE AND SEPARATE UTILITY, I.E., THAT IS PIECEMEALING WHICH IS UNLAWFUL UNDER CEQA. SO THE ISSUE IS JOINED, AND THE QUESTION IS CAN THAT ISSUE BE DECIDED BY ME HERE, AND I THINK NOT.

THE REASON NOT IS THAT PETITIONER'S ARGUMENT NEATLY SHOWS THAT THERE ARE ISSUES OF FACT AND LAW TO BE ADDRESSED ON PIECEMEALING, AND THAT REQUIRES A FULL RECORD WHICH WILL SHOW THE PURPOSE OF THE SEPARATE CHLORIDE COMPLIANCE PROJECT, THE NATURE OF THE TWO

PROJECTS, WHICH IS REALLY NOT A BIG DEAL BECAUSE WE KNOW WHAT THE PROJECTS ARE, WHETHER THEY HAVE INDEPENDENCE OF SEPARATE UTILITY, THE REASONABLE FORESEEABILITY OF THE RECYCLED WATER PROJECT, AND HOW THAT SEPARATION OR JOINTNESS HAS BEEN PRESENTED TO THE PUBLIC.

AND I THINK THAT ALL WILL BE ASCERTAINABLE UPON REVIEW OF A RECORD, AND SINCE THERE IS NO RECORD FOR THIS MOTION I DON'T THINK IT IS APPROPRIATE FOR ME TO EVALUATE THESE MIXED QUESTIONS OF LAW AND FACT IN CONNECTION WITH COMPLIANCE.

RATHER I THINK THE ISSUE IS DID THEY DO WHAT I DIRECTED THEM TO DO, AND THEN THE ADEQUACY OF WHAT -- AND IF THE ANSWER IS "YES," WE ARE DONE. THE ADEQUACY OF THAT DOCUMENT OR DOCUMENTS THAT THEY PREPARED IN COMPLIANCE WITH MY DIRECTION IS FOR THE OTHER LAWSUIT. THEREFORE THE TENTATIVE IS TO GRANT AND PARTIALLY DISCHARGE THE PORTION OF THE WRIT THAT DEALS WITH THE CHLORIDE COMPLIANCE PROJECT.

THAT NARROWS THE PETITIONER'S MOTION FOR SANCTIONS AGAINST THE DISTRICT FOR FAILING TO OBEY THE WRIT. SO NOW CEQA SAYS IT NOW HAS ACCESS TO THE APRIL 18, 2016, BOARD MEETING TRANSCRIPT AND PROVIDES EVIDENCE THAT THIS RETAINING WALL THAT I PREVIOUSLY RULED WAS ACCEPTABLE FOR THE DISTRICT TO CONTINUE BUILDING, THERE IS NOW EVIDENCE THAT THE WALL IS BEING BUILT SOLELY FOR THE CHLORIDE COMPLIANCE PROJECT.

SO THE THRESHOLD PROBLEM HERE IS THE ARGUMENTS CONCERNING THE RETAINING WALL BY PETITIONER ARE A

DISGUISED RENEWED MOTION UNDER CCP 1008(B). WHEN YOU MAKE A RENEWED MOTION UNDER CCP 1008(B), YOU HAVE TO -- YOU PROVIDE AN ATTORNEY DECLARATION THAT STATES WHEN YOU APPEARED THE FIRST TIME, WHO THE JUDGE WAS, HOW THAT JUDGE RULED, AND WHAT NEW OR DIFFERENT FACTS YOU HAVE THE SECOND TIME AROUND THAT COULD NOT HAVE BEEN PRESENTED IN THE EXERCISE OF DUE DILIGENCE THE FIRST TIME AROUND.

PETITIONER DOESN'T PURPORT TO ADDRESS ANY OF THOSE ISSUES TECHNICAL OR SUBSTANTIVE IN NATURE. THE MOST IMPORTANT OF WHICH -- ACTUALLY PETITIONER'S BRIEF AND EVIDENCE DOES SHOW WHEN -- WHO THE JUDGES WAS, ME, AND HOW I PREVIOUSLY RULED, AND WHAT NEW OR DIFFERENT INFORMATION PETITIONER HAS THE SECOND TIME AROUND.

WHAT PETITIONER DOESN'T SHOW IS THE DUE DILIGENCE PART. IN OTHER WORDS, YOU JUST CAN'T COMPLAIN ABOUT THIS RETAINING WALL OVER AND OVER AGAIN UNLESS YOU SHOW THAT YOU COULDN'T HAVE PRESENTED THAT EVIDENCE THE FIRST TIME AROUND. SO THAT IS A PROCEDURAL PROBLEM FOR PETITIONER.

PETITIONER ARGUES AND PRESENTS PERSUASIVE EVIDENCE THAT THE DISTRICT IS PURSUING THIS RETAINING WALL SOLELY TO BENEFIT THE CHLORIDE COMPLIANCE PROJECT. IN OTHER WORDS, THE RETAINING WALL WAS APPROVED AS PART OF ANOTHER PROJECT, AND THAT HAS APPARENTLY NOT TAKEN PLACE AND IS NOW BEING USED -- THE MOTIVATION FOR IT IS SOLELY THE CHLORIDE COMPLIANCE PROJECT.

THE DISTRICT PRESENTS EVIDENCE THAT THE

RETAINING WALL IS A PART OF A SEPARATE PROJECT INTENDED TO SUPPORT THE VALENCIA WRP AND ANY FACILITY ASSOCIATED WITH IT. THE WALL IS NOT EXCLUSIVELY DEVOTED TO ANY PARTICULAR FACILITY.

I DON'T THINK THOSE POSITIONS ARE INCONSISTENT. THERE WAS A PROJECT. THE RETAINING WALL IS A PART OF THAT PROJECT. IT'S INTENDED TO SUPPORT ANY FACILITY, BUT THE FACILITY THAT IT IS SUPPORTING RIGHT NOW IS THE CHLORIDE COMPLIANCE PROJECT, AND THAT'S WHY IT'S BEING BUILT NOW AS OPPOSED TO IN THE PAST OR IN THE FUTURE.

SO THAT'S A PROBLEM. I DON'T THINK -- ON A CLEAN SLATE I DON'T THINK I WOULD BE DECIDING THIS ISSUE IN THE DISTRICT'S FAVOR. I DON'T THINK YOU COULD BE MOTIVATED TO BUILD THIS RETAINING WALL SOLELY BY YOUR CLIENT COMPLIANCE PROJECT -- CHLORIDE COMPLIANCE PROJECT WHEN I HAVE RULED THAT YOU HAD TO STOP THAT PROJECT.

NOW, THERE ARE PICTURES THAT ARE PRESENTED BY PETITIONER FROM MARCH 2016, OCTOBER 2016, AND OCTOBER 2017. THIS IS COMPLICATED BY THE FACT THAT WHATEVER THE DISTRICT DID BEFORE I MADE MY ENTERED JUDGMENT IN THIS CASE, WHICH I DON'T KNOW WHEN THAT WAS, BUT THE TRIAL WAS FEBRUARY 2016.

BEFORE THE JUDGMENT AND AFTER THE JUNE 2, 2017, DECISION OF PETITIONER'S MOTION, THE DISTRICT WAS FREE TO BUILD THIS RETAINING WALL. DURING THE PERIOD FROM THE JUDGMENT TO JUNE 2, 2017, THE DISTRICT WAS NOT FREE TO BUILD THIS RETAINING WALL IF IT WAS MOTIVATED SOLELY BY THE CHLORIDE COMPLIANCE PROJECT.

SO WE HAVE SORT OF A TIMELINE THAT IS MUDDY, AND IT IS NOT CLEAR TO ME, ALTHOUGH IT SEEMS PROBABLE, THAT THE DISTRICT IS VIOLATING OR DID VIOLATE THE WRIT BY GOING FORWARD WITH THIS PROJECT DURING THAT PERIOD.

BUT BECAUSE THE PETITIONER HAS NOT MADE THE 1008 DUE DILIGENCE SHOWING, AND BECAUSE THE TIMELIME IS MUDDY I HAVE DECIDED NOT TO SANCTION THE DISTRICT. EVEN THOUGH ON A CLEAN SLATE THE RESULTS MIGHT BE DIFFERENT.

THE SECOND ISSUE WAS THE DISTRICT'S APPROPRIATION OF 2.5 MILLION FOR THE CHLORIDE COMPLIANCE PROJECT, FOR ME THE APPROPRIATION IN AND OF ITSELF MIGHT BE CONSIDERED A VIOLATION, EXCEPT THE DISTRICT SHOWS THAT ALL OF THE MONEY WAS USED TO COMPLY WITH THE WRIT -- PAY FOR THIS LITIGATION AND PERFORM ADDITIONAL ENVIRONMENTAL REVIEW, NONE OF WHICH IS MOVING THE CHLORIDE COMPLIANCE PROJECT FORWARD. THAT'S NOT A VIOLATION.

PETITIONER SHOWS THAT THE DISTRICT HAS APPROVED A SECOND AMOUNT OF MONEY FOR THE 2017/18 FISCAL YEAR, AND THAT MIGHT BE A PROBLEM DEPENDING ON WHAT IT IS USED FOR, BUT I DON'T HAVE ANY EVIDENCE AS TO WHAT IT'S GOING TO BE USED FOR, BUT IT MAY BE MOOTED BY THE PARTIAL DISCHARGE OF THE WRIT ANYWAY.

SO THE TENTATIVE IS TO GRANT THE DISTRICT'S MOTION AND DENY THE PETITIONER'S MOTION.

HAVE YOU SEEN IT?

MR. SILVERSTEIN: YES, YOUR HONOR.

THE COURT: MR. SILVERSTEIN, DO YOU WISH TO BE HEARD?

MR. SILVERSTEIN: I DO, YOUR HONOR. THANK YOU. WHAT I WOULD LIKE TO DO IS ADDRESS THE MOTION FOR A PARTIAL DISCHARGE ASPECT OF THE HEARING FIRST, AND THEN MOVE ONTO THE 1087 MOTION IF THAT ORDER IS ACCEPTABLE FOR YOUR HONOR.

THE COURT: WHATEVER YOU WANT IS FINE.

MR. SILVERSTEIN: OKAY. SO WHAT I WANT TO DO IS SORT OF REFRAME THE BACKDROP FOR THIS ENTIRE ANALYSIS BECAUSE, AND I MAY ASK FOR MS. DURBIN'S ASSISTANCE WITH SOME OF THE CHRONOLOGY, BECAUSE THERE ARE SO MANY MOVING PARTS TO THIS CASE -- CASES.

BUT WHEN WE LOOK AT WHERE WE STARTED BACK IN MARCH OF LAST YEAR WITH THE JUDGMENT AND WRIT, THERE WAS A SIGNIFICANT DEBATE AT THAT TIME AS TO HOW THAT JUDGMENT WRIT WOULD BE TAILORED, AND WE, IN FACT, ON MARCH 9, 2016, CAME IN EX PARTE TO YOUR HONOR, AND I BROUGHT, BECAUSE THIS WAS HOTLY CONTESTED AT THE TIME, BUT I AM SURE IT IS LOST IN THE MIDST OF TIME, BUT WE WERE TALKING THEN ABOUT COMPETING JUDGMENTS AND WRITS.

AND I SHOWED YOUR HONOR, AND I BROUGHT COPIES FOR COUNSEL AGAIN, AND I DON'T KNOW IF THE COURT WOULD ALLOW ME TO APPROACH THE CLERK TO GIVE TO YOUR HONOR.

THE COURT: WHAT IS IT?

MR. SILVERSTEIN: THIS IS AN EX PARTE APPLICATION WHICH ATTACHES THE COMPETING JUDGMENT AND WRITS WHICH YOUR HONOR REVIEWED AND REJECTED THE DISTRICT'S ATTEMPT TO NARROW THE SCOPE OF YOUR HONOR'S RULING AND WRIT AND ACCEPTED COMPLETELY OUR VERSION OF

THE JUDGMENT AND WRIT, AND IT'S SORT OF LIKE WE ARE RELIVING THAT THROUGH THIS PROCESS EVEN THOUGH THAT WAS A FINAL AND COMPLETE PROCESS AT THE TIME.

WHAT HAPPENED WAS THE DISTRICT WANTED TO VERY NARROWLY TAILOR YOUR HONOR'S RULING IN THE WRIT SO THAT THE WRIT DID NOT SAY THAT THE ENTIRE EIR WOULD BE INVALIDATED, AND WE WERE SUCCESSFUL.

YOUR HONOR SAID, "NO. THE ENTIRE EIR MUST BE INVALIDATED," AND AS YOUR HONOR MIGHT RECALL, THE DISTRICT NEVER CAME FORWARD WITH ANY KIND OF MOTION OR SEVERABILITY FOR FINDINGS BY YOUR HONOR OF SEVERABILITY. NONE OF THAT EVER HAPPENED.

WHAT HAPPENED WAS A WRIT ISSUED WHICH SIMPLY SAID THREE THINGS: NUMBER ONE, THE ENTIRE 2013 EIR IS INVALIDATED. NOT TWO NARROW ASPECTS THAT THE DISTRICT HAS NOW MANAGED TO SORT OF CHANGE THE PICTURE. THE ENTIRE EIR, AND YOUR HONOR AGREED WITH THAT.

THE SECOND THING WAS THEY CANNOT PROCEED WITH THE PROJECT, AND THE THIRD THING WAS THEY HAD TO COMPLY FULLY WITH CEQA.

NOW WHAT HAS HAPPENED IS WE HAVE A SORT OF RADICAL REDRAFTING OF THE WRIT ESSENTIALLY BY THE DISTRICT SAYING, NO, WHAT YOUR HONOR REALLY MEANT OR REALLY INTENDED WAS THAT WE ONLY HAD TO COME UP WITH A NEW BRINE DISPOSAL SCENARIO, AND WE HAVE TO DEAL WITH THE STICKLEBACK. FUNDAMENTALLY THAT'S INCORRECT.

YOUR HONOR DID TALK ABOUT THOSE THINGS, BUT THAT'S NOT WHAT GOT REFLECTED IN THE ULTIMATE WRIT. WHAT

GOT REFLECTED IS WHAT I JUST SAID. SO FROM A STARTING POINT THEY CAN'T DEMONSTRATE COMPLIANCE WITH THE WRIT BECAUSE THE WRIT REQUIRED MUCH MORE FROM THEM THAN WHAT THEY HAVE NOW ARGUED, BUT THAT'S JUST STEP ONE IN THIS YOU CAN SAY EVOLUTION. WE WOULD SAY MUTATION OF WHAT THE WRIT ACTUALLY COMPELLED.

SO THEY WENT FROM --

THE COURT: IT'S ALL THE SAME, ISN'T IT "EVOLUTION" AND "MUTATION"?

MR. SILVERSTEIN: IT DEPENDS, I GUESS, WHICH SIDE YOU ARE ON. WHOSE OX IS BEING GORED.

THERE HAS BEEN A FURTHER PROGRESSION, THERE'S A NEUTRAL WORD, GOING FROM INVALIDATE THE ENTIRE EIR, TO THEIR POSITION WHICH IS REALLY YOUR HONOR MEANT JUST THOSE TWO ASPECTS.

NOW THEY ARE SAYING, YOU KNOW WHAT, WE DON'T EVEN NEED TO DO THOSE TWO STEPS. YOUR HONOR ALSO MENTIONED IN THE COURSE OF SOME OF THESE PRIOR HEARINGS THAT PERHAPS THEY COULD SEPARATE OUT THE CHLORIDE COMPLIANCE FROM THE RECYCLED WATER.

THIS IS NOT A JUDICIAL ENDORSEMENT OF THAT. THIS WAS NOT SOME SORT OF ADVISORY OPINION FROM YOUR HONOR THAT SAYS, GO AHEAD, THAT'S FINE. YOUR HONOR IN PASSING MENTIONED THAT THAT THEORETICALLY WAS A POSSIBILITY, BUT THAT ALSO DOES NOT OPERATE TO SOMEHOW UNRAVEL WHAT THE ACTUAL WRIT SAID.

THE ACTUAL WRIT IS VERY CLEAR IN COMPELLING COMPLETE INVALIDATION. THERE IS NO MORE 2013 EIR.

THE COURT: THEY DECERTIFY IT.

MR. SILVERSTEIN: THEY DECERTIFY IT, CORRECT, BUT WHAT THEY ARE SAYING IS -- WE AGREE WITH THE FIRST PART. THE FIRST PART IS THEY DID DECERTIFY IT, BUT WHAT THEY ARE COMING BACK IN A SORT OF REVISIONIST WAY SAYING, WELL, REALLY ONLY -- ALL WE HAVE TO DO IS TWO RELATIVELY NARROW THINGS, AND THAT'S NOT CORRECT.

THEY DON'T GET TO PRESERVE THIS WHOLE DOCUMENT, MUCH LESS IMPORT IT INTO A NEW EIR, MAKE IT FAIR GAME, HAVE THE NEW EIR DEPEND ON THE OLD EIR, AND STAND BEFORE YOU AND SAY, WELL, YOU ONLY REALLY MEANT TO SAY WE HAD TO DEAL WITH THE STICKLEBACK AND BRINE, BECAUSE --

THE COURT: HOW MUCH IS THERE?

MR. SILVERSTEIN: WELL, THERE'S NUMEROUS OTHER THINGS. FOR EXAMPLE, CUMULATIVE IMPACT, ALTERNATIVES, BASELINE. THE STUDIES THAT THEY ARE RELYING ON --

THE COURT: DID YOU RAISE THAT BEFORE OR IS THAT WAIVED?

MR. SILVERSTEIN: OUR POSITION IS, AND THIS GOES TO ANOTHER POINT, AND I MIGHT AS WELL JUMP RIGHT AT IT, BECAUSE THEY MADE NO -- THEY MADE NO REQUEST FOR SEVERABILITY UNDER 21168.9. THERE WERE NO FINDINGS OF SEVERABILITY. ON TOP OF THAT THEY NEVER APPEALED THE WRIT OR THE JUDGMENT.

THE COURT: YOU ARE GOING TO MAKE ME LOOK THIS UP, AREN'T YOU.

MR. SILVERSTEIN: THAT'S SEVERABILITY.

MR. WAITE: I CAN RESPOND ON THAT, YOUR HONOR,

WHICH IS THOSE ARE FINDINGS REQUIRED IF YOU SEVER AT THE REMEDY STAGE. YOU IN THE PROCEEDINGS HE REFERRED TO DID NOT DO THAT, AND SO WE HAVE A WRIT THAT SAYS WE HAVE TO DO SEVERAL THINGS.

THE COURT: YES.

MR. ZISCHKE: WE HAVE DONE SOME OF THOSE THINGS, AND THAT'S WHY WE'RE LOOKING FOR PARTIAL DISCHARGE.

THE COURT: I UNDERSTAND.

MR. ZISCHKE: HIS ARGUMENT WOULD MAKE SENSE IF WE WERE MOVING FOR A FULL DISCHARGE OF THE WRIT BASED ON ONLY THE CHLORIDE COMPLIANCE COMPONENT, BUT WE ARE NOT DOING THAT.

THE COURT: THERE IS MORE TO DO. YOU ARE MAKING A DISCRETIONARY CALL TO SEPARATE THE TWO ASPECTS OF COMPLIANCE.

MR. ZISCHKE: CORRECT.

THE COURT: I DON'T SEE HOW I CAN -- THAT DISCRETIONARY CALL MAY OR MAY NOT BE VALID, BUT THAT IS NOT WHAT I JUDGE HERE IN THIS MOTION OR THESE MOTIONS. THAT IS FOR THE OTHER LAWSUIT.

MR. SILVERSTEIN: IT'S INTERESTING BECAUSE WE FIND OURSELVES IN SOMEWHAT OF UNCHARTERED TERRITORY. HERE WE HAVE AN AGENCY COMING IN IN A MANNER ALMOST LIKE -- SORT OF LIKE YOU WERE HEARING EARLIER THIS AFTERNOON, AN ATTACHMENT PROCEEDING.

YOU HAVE SOME INTERIM PROCEEDING OR YOU CAN CALL IT -- YOU KNOW, THE EQUIVALENT OF A MOTION FOR PRELIMINARY INJUNCTION WHERE THEY ARE EFFECTIVELY ASKING

YOUR HONOR BASED ON AN INCOMPLETE RECORD WITHOUT HAVING ALL OF THE EVIDENCE BEFORE YOU TO GIVE YOUR JUDICIAL IMPRIMATUR TO THIS NEW EIR.

THE COURT: BUT I AM NOT DOING THAT.

MR. SILVERSTEIN: WELL, BUT INDIRECTLY YOU ARE WHEN YOU SAY THAT IT'S ADEQUATE TO SATISFY SHOWING COMPLIANCE WITH THE WRIT, AND WHEN YOU GO BACK TO THE ORIGINAL LANGUAGE OF THE WRIT, THAT'S WHY I WENT THROUGH THIS CHRONOLOGY, WHERE IT SAYS THEY MUST FULLY COMPLY WITH CEQA.

THEY CAN'T DEMONSTRATE THAT THEY HAVE FULLY COMPLIED WITH CEQA UNLESS AND UNTIL THERE'S BEEN A FULL AND FAIR HEARING, AND MOREOVER FROM THE EVIDENCE THAT WE HAVE ADDUCED, WE CAN POINT TO MANY EXAMPLES IN THE DOCUMENTATION WHERE IT'S VERY FLAWED BOTH PROCEDURAL, WHICH UNDER VINEYARD IS A DE NOVO REVIEW, AND SUBSTANTIVE.

I THINK THAT FOR THE COURT TO GIVE THEM THE BENEFIT OF THE DOUBT AND SAY THIS STATEMENT ABOUT YOUR NEW EIR IS ADEQUATE TO SHOW FULL COMPLIANCE WITH THE WRIT REQUIRES THAT YOUR HONOR MAY HAVE ADOPTED THEIR EVOLUTION/MUTATION OF MOVING AWAY FROM WHAT THE WRIT REALLY COMMANDED IN FULL; TO THIS SECONDARY POSITION WELL, IT'S REALLY NARROW; TO THIS THIRD POSITION THAT THEY DON'T EVEN NEED TO NECESSARILY CARE ABOUT THE STICKLEBACK NOW AS LONG AS THEY SEPARATE THEM, THEN WE WILL LEAVE THAT FOR ANOTHER DAY.

BUT I ALSO WANT TO GO BACK IN THE TIME MACHINE

AND REFER YOUR HONOR TO THE ORIGINAL 1097 HEARING AND RULING WHERE YOUR HONOR SAID AT PAGE 9 -- I'M SORRY, AT PAGE -- I HAD IT LINED UP.

AT PAGE 7, YOUR HONOR SAID,

> "AS ACWA POINTS OUT AND THE DISTRICT ADMITS, THE 2013 EIR CONSIDERED A PROJECT INVOLVING BOTH THE CHLORIDE COMPLIANCE AND WATER RECYCLING COMPONENTS.
>
> "THE DISTRICT NOW HAS SEPARATED THE PROJECT INTO ITS TWO COMPONENTS CONSENTING THAT THEY ARE INDEPENDENT AND THE WATER RECYCLING HAS NO BEARING ON THE CHLORINE COMPLIANCE COMPONENT
>
> "THE DISTRICT STILL INTENDS TO IMPLEMENT THE WATER REDUCE COMPONENT, BUT NOW INTENDS TO PERFORM A SEPARATE ENVIRONMENTAL ANALYSIS ON SOLELY THAT PORTION.
>
> "AT LEAST ON ITS FACE THIS IS CLASSIC PIECEMEALING IN VIOLATION OF CEQA."

SO THAT'S WHAT YOUR HONOR SAID THEN, SORT OF GIVING A PREVIEW OF --

THE COURT: OF ITS FACE, YEAH, RIGHT, AND THE FLIP SIDE OF THAT IS THAT THEY'RE SEPARATE AND INDEPENDENT UTILITY OF THE TWO PROJECTS.

LOOK, I MEAN THEY GET TO DECIDE THAT THEY ARE

GOING TO SPLIT. I GRANTED YOUR MOTION -- YOUR LAST MOTION, WHATEVER IT WAS CALLED, MOTION TO COMPEL COMPLIANCE, I GUESS IT WAS, ON THE BASIS THAT THEY CAN'T JUST SPLIT THE PROJECT AND GO THEIR MERRY WAY. THEY HAVE TO EVALUATE THE ENVIRONMENTAL IMPACTS OF DOING SO, WHICH THEY HAVE NOW DONE.

SO I THINK IT IS -- IT IS THEIR DISCRETIONARY CALL HOW THEY ARE GOING TO COMPLY WITH THE WRIT, AND THEY HAVE DECIDED TO DO SO BY SPLITTING THE PROJECTS IN TWO AND COMPLYING WITH THEM IN SERIATIM.

I DON'T THINK THERE IS ANYTHING CONCEPTIONALLY WRONG WITH THAT. WHETHER THE DOCUMENTATION OR THE INFORMATIONAL DOCUMENT IS ADEQUATE IS A MATTER FOR YOUR OTHER LAWSUIT THAT I CANNOT DECIDE HERE IN THIS COMPLIANCE HEARING.

SO THAT'S -- THAT'S WHERE I AM.

MR. SILVERSTEIN: I UNDERSTAND.

THE COURT: I GRANTED YOUR MOTION, AND IN DOING I SAID YOU MAY BE ABLE TO DO THIS, AND WHEN I QUALIFIED IT WHAT I MEANT WAS YOU CAN DO IT, BUT IF YOUR INFORMATIONAL DOCUMENT IS INADEQUATE -- IF YOU DON'T FOLLOW CEQA IN DOING SO, THEN IT'S NO GOOD. SO I DON'T KNOW WHETHER IT IS OR ISN'T ANY GOOD, AND I DON'T INTEND TO DECIDE ALL ASPECTS OF THE DISTRICT'S CHLORIDE COMPLIANCE PROJECT AND WATER RECYCLING PROJECT IN THIS LAWSUIT.

I DON'T INTEND TO DECIDE ALL OF THAT IN THIS LAWSUIT.

MR. SILVERSTEIN: BUT IT --

THE COURT: I THINK I HAVE THE OTHER LAWSUIT ANYWAY; RIGHT?

MS. DURBIN: YOU DO, YOUR HONOR.

MR. SILVERSTEIN: BUT IT APPEARS TO US THAT AT LEAST IN PART YOU HAVE GIVEN SIGNIFICANT DEFERENCE OR CREDENCE TO WHAT THE DISTRICT HAS PUT FORWARD AS ALLEGED COMPLIANCE. WE'VE TRIED TO DEMONSTRATE --

THE COURT: YOU TRIED TO ATTACK IT.

MR. SILVERSTEIN: YEAH.

THE COURT: WHAT I AM SAYING TO YOU, AND THAT'S FAIR ARGUMENT TO MAKE IN A COMPLIANCE MOTION, THAT IT'S WINDOW DRESSING, THERE'S NO SUBSTANCE TO IT, IT'S NOT REAL, BUT I THINK IT'S A MIXED QUESTION WHILE, IN FACT, I DON'T THINK YOU DISPUTE, WHICH MEANS I HADN'T EVEN -- YOU ARGUED WE NEED THE ENTIRE RECORD, AND YOU ARE ABSOLUTELY RIGHT. WE NEED THE ENTIRE RECORD.

I CAN'T EVALUATE THE INDEPENDENCE AND SEPARATE UTILITY OF THE TWO PROJECTS WITHOUT A COMPLETE RECORD ON HOW THEY HAVE DECIDED TO SEPARATE AND WHY AND ET CETERA.

MR. SILVERSTEIN: WE AGREE WITH THAT PORTION OF IT. WE JUST BELIEVE THAT THE NATURAL -- OR THE APPROPRIATE EXTENSION OF THAT WOULD BE THAT GIVEN THAT THE RECORD ISN'T COMPLETE, AND GIVEN THAT ISSUES ARE STILL IN DISPUTE, AND GIVEN THAT WE HAVE DEMONSTRATED THROUGH EVIDENCE THAT THERE ARE SIGNIFICANT PROBLEMS BOTH IN THE PROCESS AND THE SUBSTANCE OF WHAT THEY HAVE DONE.

IN OTHER WORDS, SORT OF ROUGHLY EQUIVALENT IN

THE MOTION FOR PRELIMINARY INJUNCTION THAT WE, I BELIEVE, HAVE DEMONSTRATED A REASONABLE PROBABILITY OF SUCCESS ON THE MERITS.

THE COURT: WHAT'S THE PROCESS THAT'S WRONG?

MR. SILVERSTEIN: THE PROCESS THAT HAS GONE WRONG?

THE COURT: YES.

MR. SILVERSTEIN: ONE ISSUE IS THEY SAY THAT THERE IS A RELATED PROJECT WHICH THEY ACKNOWLEDGE AS THE RECYCLED WATER PROJECT, BUT YET THEY DON'T DO ANY -- THEY ARE CLAIMING IN THEIR PAPERS THAT THEY DON'T HAVE TO DO ANY CUMULATIVE IMPACT ANALYSIS OF THAT, AND THAT SOMEHOW THE MERE SEPARATION OF THE TWO RESULTS IN NO LESSENING OF DISCHARGE OF THE MILLIONS OF GALLONS OF WATER PER DAY INTO THE RIVER, AND THEREFORE NO POSSIBILITY OF IMPACT TO THE STICKLEBACK.

THE COURT: THE CUMULATIVE IMPACTS OF THE CHLORIDE COMPLIANCE PROJECT WITH THE RECYCLED WATER PROJECT?

MR. SILVERSTEIN: IN CONNECTION WITH THE RECYCLED WATER PROJECT.

THE COURT: HOW CAN I EVALUATE THAT WITHOUT SEEING A RECORD?

MR. SILVERSTEIN: WELL, I THINK WHAT YOU CAN DO IS YOU CAN SAY, LOOK, THEY THEMSELVES HAVE TAKEN MUTUALLY INCONSISTENT EXCLUSIVE POSITIONS. IN THEIR PAPERS THEY SAY SORT OF NEVER THE TWAIN SHALL MEET. WE'RE SEPARATING IT, AND BY THE WAY, OUR CHLORIDE PROJECT HAS NOTHING TO

DO WITH RECYCLING, AND THERE WON'T BE ANY REDUCED DISCHARGE, BUT THAT'S NOT CONSISTENT WITH WHAT THEIR EIR ACTUALLY TALKS ABOUT, WHICH IS IT SAYS THERE IS THIS RELATED PROJECT, THE RECYCLED WATER/STICKLEBACK.

IT IS GOING TO BE COMPLETE IN 2018 OR 2019. SO POTENTIALLY AS EARLY AS A MONTH AND A HALF FROM NOW. WE ARE IN 2018 ALREADY, WHICH MEANS THEY SHOULD HAVE ALREADY RELEASED THIS DOCUMENT. THEY ARE THE SAME PROPONENT AGENCY. THEY HAVE IT.

SO THEY ARE TAKING A POSITION THAT YOUR HONOR CAN LOOK AT AND SAY ON THE ONE HAND THEY ARE CLAIMING IT'S A RELATED PROJECT. ON THE OTHER HAND IN THEIR BRIEFING THEY'RE SAYING IT'S BASICALLY IRRELEVANT. IT'S NOT CONNECTED. IT'S NOT GOING TO REDUCE THE DISCHARGE, THEREFORE IT'S NOT GOING TO MATTER, WE DON'T HAVE TO ANALYZE IT. NONE OF THIS -- YOU CAN'T RECONCILE THOSE TWO POSITIONS.

IN FACT, IF YOU LOOK AT THEIR REPLY BRIEF, AND OBVIOUSLY WE DIDN'T HAVE AN OPPORTUNITY TO SUBMIT A BRIEF IN RESPONSE TO THEIR REPLY.

THE COURT: NOR WOULD I HAVE READ IT.

MR. SILVERSTEIN: I APPRECIATE THAT, AND I UNDERSTAND. I DO UNDERSTAND.

BUT, YOUR HONOR, THEY NOW APPEAR TO BE SAYING THAT THEY ARE SPLITTING THIS NOT JUST INTO TWO PROJECTS, BUT INTO THREE PROJECTS, AND I THINK MS. DURBIN CAN SHED LIGHT ON THAT.

SO WE HAVE A FURTHER -- IT LOOKS THEY HAVE TAKEN

A HAIR AND SPLIT IT, AND NOW THEY ARE SPLITTING HALF OF THE HAIR. THIS THING IS GETTING MORE FRAGMENTED, OR ONE MIGHT SAY PIECEMEAL, AND SO YOU HAVE THESE INCONSISTENCIES IN THEIR PAPERS COMPARED TO WHAT THEIR EIR SAYS, AND BASED ON THAT LIMITED RECORD WE'RE SAYING, YOUR HONOR, IT SHOULDN'T BE GIVEN A PASS.

MR. ZISCHKE: IT'S NOT BEING GIVEN A PASS.

THE COURT: I CAN'T EVALUATE THE EIR WITHOUT HAVING THE EIR.

MR. SILVERSTEIN: THEY SUBMIT IT AS PART OF THEIR SO-CALLED ADMINISTRATIVE RECORD ON RETURN. THEY PUT IT INTO EVIDENCE.

THE COURT: TO WHICH YOU OBJECTED AS INCOMPLETE.

MR. SILVERSTEIN: THAT'S TRUE, BUT WE SHOULD STOP ON EVERYTHING. JUST LIKE YOU CAN'T MAKE A RULING THAT THEIR EIR IS EITHER GOOD OR BAD, WE'RE SAYING THAT SHOULD EXTEND TO YOU CAN'T MAKE A RULING WHETHER THEIR EIR IS GOOD OR BAD ENOUGH TO SATISFY THE WRIT AND GIVE THEM A PARTIAL DISCHARGE.

THE COURT: MR. SILVERSTEIN SAID THAT YOU'RE TAKING -- YOU THE DISTRICT ARE TAKING A POSITION IN YOUR PAPERS -- IN YOUR ARGUMENT THAT IS INCONSISTENT WITH YOUR INFORMATIONAL DOCUMENTS, THE FINAL RECIRCULATED EIR.

MR. ZISCHKE: THERE'S NOTHING INCONSISTENT. WE HAVE SEPARATED THE TWO PROJECTS. SO THE RECYCLED WATER PROJECT IS NOT PART OF THE PROJECT DESCRIPTION. IT HAS TO BE INCLUDED IN THE CUMULATIVE ANALYSIS. IF WE DIDN'T HE WOULD BE COMING AFTER US ON THAT GROUND.

SO THERE IS NOTHING INCONSISTENT ABOUT TAKING SOMETHING OUT OF THE PROJECT DESCRIPTION AND PUTTING IT INTO THE CUMULATIVE ANALYSIS, AND WHETHER THERE ARE ANY ISSUES WITH THAT, THAT IS GOING TO BE THE SUBJECT OF THE NEXT CASE WHEN YOU HAVE THE FULL EIR AND SUPPORTING ADMINISTRATIVE RECORD IN FRONT OF YOU.

I CONTINUE TO THINK WE ARE ARGUING AS IF WE ARE SEEKING A FULL DISCHARGE OF THE WRIT, AND HAVING VERY CAREFULLY READ YOUR PRIOR RULINGS THAT'S WHY WE ARE SEEKING A PRIOR DISCHARGE ONLY AS TO --

THE COURT: I AM THINKING ABOUT THE THIRD. THE NEXT LAWSUIT AFTER, WHICH WILL BE THE CHALLENGE TO THE STICKLEBACK EIR.

MR. SILVERSTEIN: WELL, APPARENTLY THEY HAVE ABANDONED THAT. THE FIRST INDICATION THAT WE'VE GOTTEN WAS IN THEIR REPLY BRIEF WHERE THEY -- THEY SUGGEST THAT THEY MAY NOT GO FORWARD WITH THAT AT ANY TIME IN THE FORESEEABLE FUTURE EVEN THOUGH IN THEIR RECORD THAT THEY SUBMITTED TO YOUR HONOR THERE IS THIS NOTICE OF PREPARATION, WHICH I HAVE COPIES TO HAND --

THE COURT: NOTICE OF PREPARATION OF WHAT?

MR. SILVERSTEIN: THIS IS NOTICE OF PREPARATION OF THE SANITATION DISTRICT'S EIR FOR STUDY OF IMPACT TO THE UNARMORED THREESPINE STICKLEBACK FISH UNDER REDUCED DISCHARGE CONDITIONS. SO THERE IS AN ADMISSION RIGHT THERE THAT THERE WILL BE REDUCED DISCHARGE.

MR. ZISCHKE: NOT FROM THIS PROJECT.

MR. SILVERSTEIN: SOMEHOW THEY ARE -- NEVER THE

TWAIN SHALL MEET, BUT THIS NOTICE OF PREPARATION -- THIS NOP APPARENTLY ISN'T BEING ACTED ON ANYMORE FROM WHAT WE CAN TELL IN THE REPLY BRIEF. SO IT'S --

THE COURT: I DON'T KNOW. IF THEY ABANDON THE RECYCLED WATER PROJECT, WHICH IT'S PRETTY HARD TO BELIEVE GIVEN THAT IT'S THE RECYCLED WATER POLICY OF THE STATE OF CALIFORNIA, BUT IF THEY ABANDON IT, ISN'T THAT WHAT YOU WANT?

MR. SILVERSTEIN: WELL, WE WANT COMPLIANCE WITH CEQA. WE DON'T WANT THEM TO DRAG THESE THINGS OUT AND DEFER THEM TO TRY TO CREATE THE APPEARANCE THAT THEY ARE NOT THE WHOLE OF A PROJECT EVEN WHEN THEY CURRENTLY ARE STILL REFERRING TO THE PROJECT BEING COMBINED, EVEN WHEN THEY ARE THE SAME PROPONENT, EVEN WHEN THE PHYSICALITY IS SIMILAR, AND THE TIMING USED TO BE SIMILAR.

ONE OF THE FACTORS FOR LOOKING AT WHETHER THERE REALLY IS AN INDEPENDENT UTILITY OR NOT IS TIMING ISSUES. WELL, IT USED TO BE THAT THESE THINGS WERE GOING TO BE HAPPENING CONCURRENTLY. NOW SOMEHOW THIS IS GETTING DRAGGED OUT FURTHER AND FURTHER.

MR. ZISCHKE: USED TO BE.

THE COURT: AND WHY DO YOU CARE? I AM HAVING TROUBLE UNDERSTANDING WHY DO YOU CARE WHETHER THE RECYCLED WATER THING IS DRAGGED OUT?

MR. SILVERSTEIN: BECAUSE IT'S AN ATTEMPT BY THE DISTRICT TO CREATE THE APPEARANCE OR THE FAÇADE THAT THESE THINGS ARE NOT PART OF THE SAME PROJECT, AND THEY HAVE THE ABILITY TO MANIPULATE THINGS TO CHANGE THE

TIMING TO MAKE IT APPEAR --

THE COURT: THEY DO, BUT IT DOESN'T APPEAR THAT THEY ARE MANIPULATING BECAUSE YOUR EVIDENCE SHOWS THAT THEY CONSISTENTLY TRUMPET THE RETAINING WALL AS INTENDED TO HELP THE CHLORIDE COMPLIANCE PROJECT. SO IF THEY ARE MANIPULATING, THEY ARE DOING A POOR JOB OF MANIPULATION.

MR. SILVERSTEIN: WELL, THAT'S RAISES THE EVIDENCE CODE 412 ISSUE. WHERE IS MS. HYDE? SHE'S THE ONE, YOUR HONOR, AND THAT'S WHY --

THE COURT: I KNOW MY POINT MAKES YOU SHIFT YOUR ARGUMENT. LET'S STICK WITH --

MS. DURBIN: YOUR HONOR --

MR. ZISCHKE: IF I CAN MAKE A COMMENT.

MR. SILVERSTEIN: JUST TO -- I CUT OFF MS. DURBIN. IS IT POSSIBLE FOR HER TO --

THE COURT: SURE.

MS. DURBIN: THERE IS ANOTHER ASPECT TO THIS, YOUR HONOR, WHICH IS SUBSTANTIAL EVIDENCE. YOUR HONOR HAS ACCEPTED THE IDEA THAT TO SOME EXTENT THE SUBSTANTIAL EVIDENCE STANDARD APPLIES HERE, AND THE DISTRICT CHOICES ABOUT HOW IT COMPLIES SHOULDN'T BE GIVEN DEFERENCE IF THERE IS ANY SUBSTANTIAL EVIDENCE TO SUPPORT.

THE COURT: I NEVER GET TO SUBSTANTIAL EVIDENCE. MY POINT IS I CAN'T DO THIS WITHOUT A RECORD, AND THEREFORE I CANNOT EVALUATE THE SUBSTANTIAL EVIDENCE ISSUES. I CAN EVALUATE THE PROCESS ISSUES: HAVE THEY DONE IT RIGHT? DID THEY SEPARATE THE PROJECTS IN THEIR DISCRETION? HAVE THEY PREPARED THE RIGHT DOCUMENTATION

FOR THE CHLORIDE COMPLIANCE PROJECT? ALL OF THOSE PROCESS STEPS I CAN EVALUATE. I CANNOT EVALUATE WHETHER SUBSTANTIAL EVIDENCE SUPPORTS WHAT THEY DID.

MS. DURBIN: YOUR HONOR, SURELY YOU CAN LOOK AT THE DOCUMENT THAT THEY PRODUCED. SEEING AS WE SET OUT IN OUR BRIEF THERE ARE FOUR OR FIVE DIFFERENT TIMES WHEN THEY SAY THE MERE ACT OF SEPARATING THE TWO COMPONENTS, RECYCLED WATER AND CHLORIDE COMPLIANCE WILL ELIMINATE, THAT'S THEIR WORD, ELIMINATE ANY REDUCTION AND DISCHARGE TO THE RIVER SO THERE CAN BE NO IMPACT TO THE STICKLEBACK.

THE COURT: RIGHT.

MS. DURBIN: BUT IN THE SAME DOCUMENT, AND WE HAVE THE CITATION FOR THE RECORD, THEY ALSO SAY THAT THERE'S GOING TO BE A RECYCLED WATER PROJECT. THAT'S ONE OF THEIR RELATED PROJECTS THAT THEY CITE. THE ENTIRE PURPOSE OF DOING A RECYCLED WATER PROJECT IS TO DIVERT DISCHARGE FROM THE RIVER TO RECYCLED USES IN THE COMMUNITY. BOTH CANNOT BE TRUE. THEY CANNOT ELIMINATE IT AND --

MR. ZISCHKE: BOTH CAN ABSOLUTELY BE TRUE. IT'S NOT PART OF THE CURRENT PROJECT. IT IS SOMETHING THAT MAY HAPPEN IN THE FUTURE, AND THE "MAY" HAS PROBABLY BECOME A LITTLE MORE UNCERTAIN AS HE NOTES THAT NOTICE OF PREPARATION HASN'T BEEN ACTED ON YET WITH A FULL EIR.

SO WHEREVER THINGS ARE, AND THAT'S NOT IN THIS RECORD, THE RECYCLED WATER PROJECT HAS SLOWED DOWN.

THE COURT: WELL, I THINK THAT -- REALLY YOU CAN

RAISE WHATEVER ISSUES YOU WANT IN YOUR NEXT LAWSUIT. THE CRUX OF THE MATTER IS IS SEPARATING THE PROJECTS PIECEMEALING OR NOT, AND I DON'T THINK IT MATTERS THAT IN THE RECYCLED WATER PROJECT THEY WILL BE SIPHONING WATER OFF FROM THE STICKLEBACK SO AS LONG AS THEY EVALUATE THE -- ADEQUATELY THE ENVIRONMENTAL IMPACTS OF DOING SO WHICH THEY HAVEN'T DONE YET.

SO CONCEPTUALLY THEY HAVE DONE EXACTLY WHAT I THOUGHT THEY COULD DO, AND THE ONLY REASON I QUALIFIED THAT WAS BECAUSE I DON'T KNOW WHAT THIS INFORMATIONAL DOCUMENT IS GOING TO LOOK LIKE. I DON'T KNOW WHETHER THEIR INDEPENDENT UTILITY ANALYSIS IS ADEQUATE OR NOT. IT DEPENDS ON WHAT THE DOCUMENT SAYS.

I DON'T THINK I CAN, AND EVEN IF I CAN, I AM UNWILLING TO EVALUATE THE RECIRCULATED EIR IN THIS LAWSUIT.

MS. DURBIN: WELL, YOUR HONOR, COULD WE ASK AT LEAST THAT YOU PRESERVE THE OPPORTUNITY FOR ACWA TO GET RELIEF ON A NEW EIR IF WE PROVE TO YOUR HONOR THAT IT'S INADEQUATE. IF YOU PARTIALLY DISCHARGE THE WRIT NOW AND THE CHLORIDE COMPLIANCE GOES FORWARD, YOU ALREADY KNOW THAT THEY ARE GRADING -- THEY ARE PREPARING A BUILDING PATH. IT MAY BE THAT BY THE TIME WE GET THIS LITIGATED THERE IS NO RELIEF.

THE COURT: OH, I ASSUME THAT THERE WOULD BE A MOTION FOR A PRELIMINARY INJUNCTION IN THE OTHER LAWSUIT. MAYBE I HAVE WRONGLY ASSUMED THAT.

HAVE YOU FILED THAT MOTION?

MR. SILVERSTEIN: NO, WE HAVE NOT, YOUR HONOR.

THE COURT: SO THEY SEEM TO REALLY BELIEVE THAT THEY ARE GOING TO GET HAMMERED BY THE WATER BOARD FOR THEIR CORE COMPLIANCE ISSUES.

MR. SILVERSTEIN: THAT IS NOT RELEVANT TO THEIR LEGAL DUTIES UNDER THE LAW TO COMPLY WITH CEQA.

THE COURT: IT'S RELATIVE TO THEIR MOTIVATION, AND YOU KNOW I WOULD HAVE ASSUMED THAT THEY WOULD BE -- THEY WOULD GET SOME LEEWAY IF, YOU KNOW, WE ARE PLOWING THROUGH COURT PROCESS EVALUATING THEIR CEQA COMPLIANCE.

MR. ZISCHKE: IT'S ALSO RELEVANT TO ANY ATTEMPT TO STOP US FROM MOVING FORWARD, TRO INJUNCTION, ET CETERA, BECAUSE BALANCING OF THE HARMS -- YOU KNOW, IRREPARABLE HARM, THE CHLORIDE DISCHARGES ARE THE HARM THAT WE'RE GOING TO AVOID WITH THIS PROJECT.

WE DON'T THINK THEY ARE GOING TO HAVE A GOOD SHOWING SHOULD THEY DECIDE TO DO THAT. AGAIN, THAT'S NOT BEFORE US NOW. THAT WOULD BE IF THEY BRING A PRELIMINARY INJUNCTION.

THE COURT: I MEAN, I CAN RETAIN JURISDICTION TO EVALUATE THE ADEQUACY OF THE RECYCLED EIR. I COULD, BUT I DON'T SEE ANY REASON TO DO SO.

MR. ZISCHKE: YOU HAVE JURISDICTION THROUGH THE OTHER LAWSUIT.

MR. SILVERSTEIN: YOUR HONOR, WE ALL KNOW THAT THERE IS -- THERE'S ALREADY BEEN A WRIT.

I WOULD SAY THAT NOTWITHSTANDING THE VERY CLEAR

ADMONITIONS THAT YOU GAVE LAST YEAR TO THE DISTRICT, YOU CAN'T MOVE FORWARD. YOU HAVE TO STOP. YOU ARE ESTOPPED FROM MOVING FORWARD EVEN FOR AN APPLICATION FOR FUNDING, AND YET WE HAVE MS. HYDE SAYING THAT WE ARE BUILDING THIS WALL BASICALLY FOR NO OTHER REASON THAN FOR THE PROJECT.

WE HAVE FIVE OR SIX EXAMPLES WHERE THEY HAVE SOUGHT OR APPROPRIATED MILLIONS OF DOLLARS OF FUNDS THAT SEEMS TO FLY IN THE FACE OF THE VERY EXCHANGE THAT OCCURRED LAST YEAR. SO I'M NOT SURE THAT THEY'RE REALLY EVEN STOPPING, BUT I DO THINK THAT IT'S IMPORTANT --

THE COURT: I'M SORRY TO INTERRUPT YOU.

MR. SILVERSTEIN: I DO THINK THAT IT'S IMPORTANT FOR YOUR HONOR SO WE SHOULDN'T HAVE TO GO IN FOR A PRELIMINARY INJUNCTION WHICH THEN TRIGGERS ALL KINDS OF OTHER THINGS FOR AN INDIGENT COMMUNITY GROUP THAT HASN'T BEEN ABLE TO PAY US ANYTHING. THEN YOU GET INTO THE BOND REQUIREMENT AND EVERYTHING ELSE.

THE COURT: TWO POINTS WHILE I AM THINKING OF THEM. THIS INDIGENT GROUP, I'VE NEVER REALLY UNDERSTOOD WHAT YOUR GOAL IS HERE. NOT YOUR LITIGATION OBJECTION THAT YOU JUST SAID IS TO COMPEL COMPLIANCE OF CEQA.

I MEAN, WHAT IS YOUR STRATEGIC GOAL? WHAT IS YOUR CLIENT LOOKING FOR? CLEAN WATER, OKAY. ARE YOU LOOKING TO PROTECT THE STICKLEBACK? ARE YOU LOOKING FOR MORE WATER FOR ALL? WHAT IS YOUR GOAL?

MR. SILVERSTEIN: THE TWO VERY PRINCIPAL GOALS ARE PROTECTION OF THE NATIVE HABITAT, NOT THE INVASIVE NON-NATIVE PLANTS. THAT'S ONE ISSUE, AND ALSO OF COURSE

THE STICKLEBACK, BUT ALSO IT IS THE RETENTION AND USE FOR THIS COMMUNITY OF THE RECYCLED WATER. THERE'S -- AS PART OF THIS WHOLE PROJECT, AS PART OF THIS WHOLE PROGRAM THERE'S THIS --

THE COURT: DIDN'T I ALREADY DECIDE YOU DON'T GET THAT? I MEAN, I DON'T THINK YOU GET TO DECIDE WHERE THE RECYCLED WATER GOES.

MR. ZISCHKE: AND NEITHER OF THOSE RELATE TO CHLORIDE COMPLIANCE.

MR. SILVERSTEIN: WELL, THERE IS AN INDIRECT CONNECTION WITH THE CHLORIDE COMPLIANCE WHICH IS THIS ARGUMENT THAT THE DISTRICT HAS MADE REPEATEDLY THAT UNKNOWN DOWNSTREAMING USERS IN VENTURA COUNTY ARE CLAIMING THAT THEIR STRAWBERRIES ARE BEING IMPACTED BY TOO MUCH SALT IN THE WATER, AND AS A RESULT THAT'S WHAT'S THE ORIGIN OF SO MUCH OF THIS, AND THEN THE EVENTUAL DISCHARGE AT THE FAR WEST OF THE BOUNDARIES WHICH THEN SENDS THE WATER TO PEOPLE THAT AREN'T EVEN IN SANTA CLARITA. THAT IS A CONCERN.

SO THERE ARE ISSUES BY THIS MANDATE BY THE STATE FOR THE USE OF RECYCLED WATER. THERE'S ALL OF THESE NON-POTABLE USES. THERE ARE ALL KINDS OF THINGS. THE CLWA, WHICH IS THE CASTAIC LAKE WATER AGENCY, EVEN IT, WHICH SORT OF WORKS COOPERATIVELY WITH THE DISTRICT, FILED AN OBJECTION LETTER CONCERNED ABOUT THIS NEWEST EIR SAYING, WELL, WE HOPE YOU ARE GOING TO REMEMBER THE CONTRACT WITH US TO PROVIDE THE MILLIONS OF GALLONS OF WATER PER DAY HERE IN OUR AREA.

SO THERE ARE CONCERNS ABOUT WHERE DOES THIS WATER GO, FOR WHOSE BENEFIT, HOW IS IT THAT IT IS HELPING OR NOT HELPING THE COMMUNITY. THAT'S ONE OF THE KEY ISSUES.

THE COURT: THOSE ARE POLICY ISSUES. I'M NOT SURE THERE IS ANY LAW THAT SUPPORTS YOU. DIDN'T I DECIDE THIS?

MR. SILVERSTEIN: NO.

THE COURT: MAYBE IT'S ANOTHER CASE. ONCE THE OWNER OF EFFLUENT CREATES RECYCLED WATER, I BELIEVE THE WATER BELONGS TO THEM, AND THEY CAN SELL IT IN SACRAMENTO IF THEY WANT TO. THEY DON'T HAVE TO USE IT LOCALLY.

MR. SILVERSTEIN: WELL, THERE ARE ENVIRONMENTAL IMPACTS THEN. IF THEY DON'T USE IT LOCALLY WHAT THAT MEANS IS THAT WATER COMES FROM THE BAY DELTA FROM 400 MILES AWAY, AND THAT'S ONE OF OUR OBJECTIONS, THAT THERE ARE ALL KINDS OF ENVIRONMENTAL IMPACTS OF -- LET'S SAY YOU HAVE SOMETHING -- A VALUABLE RESOURCE HERE AND YOU DECIDE, WELL, I AM JUST GOING TO THROW IT IN THE TRASH, AND I AM GOING TO BUY THAT VALUABLE RESOURCE FROM 400 MILES AWAY WITH ALL OF THE ATTENDANT ENVIRONMENTAL ISSUES THAT ARE PRESENT.

THAT -- THESE THINGS DO CONNECT. THERE IS THIS --

THE COURT: THERE IS A CONNECTION ALTHOUGH RIGHT NOW THEY ARE THROWING IT IN THE TRASH. IT'S GOING INTO THE PACIFIC OCEAN, RIGHT.

MS. DURBIN: YOUR HONOR, IT NOURISHES THE

HABITAT IN THE RIVER IN THE MEANTIME. IT'S NOT LIKE THEY CAN SIMPLY BUILD A PIPELINE STRAIGHT TO THE OCEAN, THEN IT WOULD BE THE SAME THING.

THE COURT: I THOUGHT IT WENT STRAIGHT TO THE OCEAN.

MR. ZISCHKE: IT'S NOT WHAT'S BEFORE US NOW.

THE COURT: I HAVE A SECOND QUESTION, AND NOW I FORGOT WHAT IT WAS.

MR. ZISCHKE: WE WERE -- WE APPRECIATED THE SUBSTANTIAL WORK THAT WENT INTO YOUR TENTATIVE BEFORE THIS DISCUSSION AGAIN. I WAS PREPARED TO SAY WE ARE HAPPY TO SUBMIT ON THE TENTATIVE, BUT YOU PROBABLY SORT OF UNDERSTOOD THAT.

THE COURT: I HAD A SEPARATE QUESTION FOR THE DISTRICT. I CAN'T REMEMBER WHAT IT IS.

MR. SILVERSTEIN: YOUR HONOR, I JUST REMEMBERED, NOT WHAT YOU WERE GOING TO ASK, BUT I REMEMBERED A SECOND PART OF WHERE YOU STARTED. YOU MENTIONED THE FINES, AND YOU RECOGNIZE THAT AS AN ISSUE OR A CONCERN ON THE PART OF THE DISTRICT, AND I WANT TO AT LEAST BE ABLE TO SET THE RECORD STRAIGHT HERE. THERE IS THIS FOG, THIS BOOGEYMAN OF FINES THAT THE DISTRICT HAS PUT OUT THERE. IT IS A CLOUD.

THE COURT: I KNOW WHAT I WAS GOING TO SAY. LET ME INTERRUPT YOU. YOUR ARGUMENT ABOUT MS. -- WHAT'S HER NAME?

MR. SILVERSTEIN: HYDE.

THE COURT: -- HYDE AND HER CONSISTENT

DECLARATIONS THAT THE WALL IS FOR THE CHLORIDE COMPLIANCE PROJECT, OR WORDS TO THAT EFFECT, AND THE APPROPRIATION OF MONIES, PARTICULARLY THAT MOST RECENT APPROPRIATION OF MONIES. I HAVE TO TELL YOU THAT GOES TO THE DISTRICT'S CREDIBILITY OR LACK THEREOF.

I THINK THAT THEY ARE PLAYING CLOSE TO THE LINE ON COMPLIANCE WITH THE WRIT, AND THAT DOESN'T REALLY HELP YOU IN THIS LAWSUIT, BUT IT MIGHT HAVE AN IMPACT ON THEIR CREDIBILITY IN THE NEXT LAWSUIT.

I VERY MUCH APPRECIATE THAT. WE THINK THEY HAVE CROSSED OVER THE LINE, AND I DO WANT TO ADDRESS -- I MEAN, THIS IS A NATURAL TRANSITION. I DO WANT TO ADDRESS YOUR CONCERN THAT OUR FILING OF THE NEW 1097 MOTION IS A DISGUISED CCP 10008 MOTION --

THE COURT: 10008(B).

MR. SILVERSTEIN: -- MOTION FOR RECONSIDERATION.

THE COURT: NO. IT'S NOT A MOTION TO RECONSIDER. THAT'S 10008(A), WHICH YOU HAVE TO FILE IT IN TEN DAYS, ET CETERA. THIS IS A RENEWED MOTION. THAT IS, YOU DIDN'T GET THE RELIEF YOU WANTED WHENEVER YOUR LAST MOTION WAS IN JUNE, AND SO YOU MADE A SECOND MOTION ON THE SAME SUBJECT MATTER. THAT'S 10008(B).

YOU HAVE TO SHOW -- THE WHOLE PURPOSE OF 10008(B) IS TO PREVENT LAWYERS FROM FILING THE -- SEEKING THE SAME RELIEF OVER AND OVER AND OVER AGAIN. SO YOU HAVE TO SHOW WHY YOU COULDN'T HAVE PRESENTED THAT EVIDENCE THE FIRST TIME AROUND, AND WE ARE TALKING ABOUT TRANSCRIPTS FROM 2016 THAT IT SEEMS TO ME IT COULD HAVE

BEEN PRESENTED THE FIRST TIME AROUND.

MR. SILVERSTEIN: THE MOTION WAS JUNE -- OUR LAST --

THE COURT: JUNE 2017.

MR. SILVERSTEIN: NO, JUNE 2016.

THE COURT: ALL RIGHT.

MR. SILVERSTEIN: ALMOST EVERYTHING THAT WE'VE SUBMITTED, INCLUDING THE AUGUST 30, 2017, STATEMENT BY GRACE HYDE THAT QUOTES, "NOW THAT CHLORIDE FACILITIES ARE PROPOSED FOR THE SITE WE ARE MOVING FORWARD WITH THE EXTENSION OF THE RETAINING," WHICH WAS WAS IN MS. DURBIN'S ORIGINAL DECLARATION AT EXHIBIT 6, THAT OCCURRED A MONTH AGO OR TWO MONTHS AGO.

THE ORIGINAL 1097 MOTION BEFORE YOUR HONOR WAS JUNE OF 2016. SO EVERYTHING WE ARE SAYING TO YOU IS THINGS WE DISCOVERED. INCLUDING WHEN WE FILED THIS NEW 1027 MOTION, IT WAS WITHIN A FEW WEEKS OF HEARING THAT STATEMENT AND PICKING UP OUR JAWS OFF OF --

THE COURT: SO YOU'RE TELLING ME THE NEW EVIDENCE IS, IN FACT, NEW EVIDENCE THAT COULD NOT HAVE PRESENTED IN THE EXERCISE OF DUE DILIGENCE BECAUSE IT DIDN'T EXIST --

MR. SILVERSTEIN: YES.

THE COURT: -- AT THE TIME OF THE PREVIOUS MOTION, AND SO YOUR ONLY FAILURE IS YOU DID NOT FILE A DECLARATION TO THAT EFFECT?

MR. SILVERSTEIN: CORRECT. THIS DOCUMENT RIGHT HERE, WHICH IS EXHIBIT 15 TO THE SUPPLEMENTAL DURBIN

DECLARATION ON OUR 1097 MOTION, WHICH IS A JUNE 5, 2017, MINUTES OF THE BOARD TALKS ABOUT CHLORIDE COMPLIANCE. A TOTAL OF $4.86 MILLION, AND BY THE WAY, THIS IS FOR JULY 1, 2017, WHICH IS ALREADY HAPPENING, THROUGH JUNE 30, 2018, BUT I WANT TO -- THIS AGAIN IS ANOTHER DOCUMENT. IT DIDN'T EXIST. WE COULD NOT HAVE CITED YOUR HONOR TO IT.

THE COURT: HOW MUCH MONEY?

MR. SILVERSTEIN: ROUND IT UP TO $5 MILLION. THE REASON WHY -- IT'S LIKE OPEN CONTEMPT OF WHAT YOUR HONOR DISCUSSED WITH MR. --

MR. ZISCHKE: ACTUALLY IT IS NOT OPEN CONTEMPT.

THE COURT: HOLD ON. I WANT AN ANSWER TO THAT, BECAUSE THAT'S A PROBLEM. LOOK, MR. SILVERSTEIN HAS PERSUADED ME THAT HIS ONLY FAILURE IN PRESENTING THIS NEW EVIDENCE IS NOT SUPPLYING AN ATTORNEY DECLARATION AND MENTIONING CCP 10008(B), BUT OTHERWISE HE HAS MET ALL OF THE ELEMENTS OF CCP 10008(B).

IT'S PRETTY CLEAR TO ME THAT THIS RETAINING WALL, WHILE IT WAS AUTHORIZED FOR ANY FACILITY THAT MIGHT BE THERE, IT IS, IN FACT, BEING BUILT BECAUSE OF THE CHLORIDE COMPLIANCE PROJECT, AND THEREFORE IT IS WITHIN THE SCOPE OF MY WRIT.

MR. ZISCHKE: YOU HAD PREVIOUSLY RULED ON THAT MOTIVE ISSUE, AND I DON'T REMEMBER EXACTLY WHERE IT HAPPENED.

THE COURT: THERE'S NO QUESTION THAT FROM JUNE 17TH OF THIS YEAR UNTIL NOW YOU COULD BE BUILDING

THAT RETAINING WALL.

MR. ZISCHKE: WHICH IS ALL THAT THE DISTRICT DID.

THE COURT: THAT'S NOT WHAT THEIR PHOTOGRAPHS SHOW.

MR. ZISCHKE: WELL, THE PHOTOGRAPHS SHOW DIRT BEHIND IT, BUT YOU DON'T BUILD A RETAINING WALL AND LEAVE IT STANDING OUT IN SPACE. IT FALLS DOWN. THERE'S NO -- THEY CALL IT A PAD, BUT THERE'S NO FOUNDATION.

YOU KNOW, THEY DIDN'T START THE CHLORIDE COMPLIANCE PROJECT. THEY BUILT THE WALL, AND THEY PUT DIRT BEHIND IT. I THINK THAT'S EVIDENT FROM THEIR PICTURES.

MR. SILVERSTEIN: THERE'S A FOOTBALL FIELD THAT IS NOW A FLAT PAD IN EXACTLY THE NORTH LOCATION --

THE COURT: WHERE ARE THE PHOTOGRAPHS?

MR. SILVERSTEIN: THEY ARE WITH OUR REPLY BRIEF ON THE 1097 ATTACHED TO THE PLAMBECK DECLARATION AT EXHIBITS 1 THROUGH 3, AND ALSO MS. DURBIN HAS ATTACHED IN HER SUPPLEMENTAL DECLARATION GOOGLE AERIAL PHOTOS SHOWING THE BREATHTAKING CHANGES IN THAT NORTHERN AREA OF THE WATER RECLAIMATION PLANT, AND WE HAVE ALSO SUBMITTED TO YOUR HONOR FROM THE 2013 ORIGINAL EIR THE IDENTIFICATION ON A SUPERIMPOSED AERIAL -- ON A MAP OF WHERE EXACTLY THESE CHLORIDE FACILITIES ARE INTENDED TO BE LOCATED.

SO THAT SHOULD BE ENOUGH, BUT IF THERE WERE ANY DOUBT WE HAVE MS. HYDE PERHAPS BUMBLING -- MS. HYDE, YOU KNOW, YOU SAID, WELL, THEY ARE NOT DOING A GREAT JOB OF

MANIPULATING. I DON'T KNOW FRANKLY WHY SHE IS SO CANDID IN THAT SENSE.

I DO KNOW THAT SHE IS NOWHERE TO BE FOUND NOW WHEN SHE IS THE MOST KNOWLEDGEABLE PERSON, AND IT'S HER STATEMENTS THAT ARE AT STORM CENTER OF THIS CASE, BUT SHE SAYS UNEQUIVOCALLY WHY WE ARE PUTTING CHLORIDE FACILITIES THERE, AND, IN FACT, WE'VE GOT THIS NOW -- SHE TALKS ABOUT, "NOW THAT CHLORIDE FACILITIES ARE PROPOSED FOR THAT SITE, WE ARE MOVING FORWARD WITH THE EXTENSION OF THE RETAINING WALL," BUT IT'S FAR MORE THAN MOVING FORWARD WITH THE EXTENSION OF THE RETAINING WALL.

IT IS AN ENORMOUS FOOTBALL FIELD SIZED BUILDING PAD WHERE THEY HAVE BEEN PROCEEDING IN FURTHERANCE OF THE PROJECT. THE VERY PROJECT THAT YOU ABOUT SEVEN DIFFERENT WAYS IN THAT LAST HEARING MADE UNAMBIGUOUSLY CLEAR THAT THEY HAD TO STOP. THEY COULD NOT GO FORWARD. THAT'S WHAT IT MEANS, AND THEN I JUMPED IN, AND I SAID, "YOUR HONOR, 'ANY' SHOULD MEAN 'EVERY.' EVERY ACTION," AND YOU SAID, "YES, THAT'S WHAT IT SAYS."

IN THE MEANTIME WE'VE GOT AN ENTIRELY DIFFERENT LANDSCAPE OUT THERE.

MR. ZISCHKE: YOUR HONOR, I THINK THIS IS THE SAME ISSUE THAT WAS THERE BEFORE. THERE WAS MOTIVE FOR THE TIMING, AND ALL THAT THESE PICTURES SHOW IS THAT THERE IS A RETAINING WALL WITH GRADED LAND, AND IN SOME CASES SMOOTH, AND IN SOME CASES ROUGH BEHIND IT.

IF THE CHLORIDE COMPLIANCE PROJECT ISN'T CLEARED, THAT COULD BECOME A FOOTBALL FIELD. THERE'S

NOTHING ABOUT PUTTING THE DIRT THERE THAT PREDETERMINES IT'S GOING TO BE USED FOR CHLORIDE COMPLIANCE OR ANY OTHER FACILITY.

THE COURT: I'M PERSUADED THE MOTIVATION FOR BUILDING THE WALL IS THE CHLORIDE COMPLIANCE PROJECT.

MR. ZISCHKE: WHICH IS SOMETHING --

THE COURT: I DON'T REALLY SEE WHERE THE WALL IS IN THE PHOTOS OF THE FOOTBALL FIELD.

MR. ZISCHKE: BUT YOU HAD INDICATED BEFORE THAT THE WALL HAD BEEN PREVIOUSLY APPROVED, PREVIOUSLY REVIEWED, AND THE FACT THAT THE CHLORIDE COMPLIANCE WAS A MOTIVATION FOR IT DIDN'T PROHIBIT IT FROM GOING FORWARD.

THE COURT: I UNDERSTOOD THIS TO BE A PARTIAL MOTIVATION. THAT IS YOU WERE ALWAYS GOING TO BUILD THIS WALL, AND WHATEVER FACILITY WE PUT IN THAT SPOT WAS GOING TO USE THAT WALL.

MR. ZISCHKE: THAT REMAINS CORRECT.

MR. SILVERSTEIN: NO, IT DOESN'T. HERE IT'S NOT A LEGITIMATE -- THERE'S ONE PURPOSE IN THIS UNIVERSE THAT IS NOT LEGITIMATE FOR THEM TO BUILD THE WALL, AND THAT IS THE THING THAT YOU PROHIBITED THEM FROM GOING FORWARD.

THEY WOULD BE ON BETTER GROUND IF THEY PUT A MARIJUANA FARM THERE THAN BUILDING IT FOR THE CHLORIDE PROJECT THAT YOU SAID, YOU MUST STOP. YOU CANNOT DO ANYTHING. YOU CANNOT EVEN --

THE COURT: STOP. WHERE IS THE WALL ON THESE -- IN EXHIBIT 16 OF THE REPLY BRIEF -- THE DURBIN DECLARATION -- THE SUPPLEMENTAL DECLARATION?

MR. SILVERSTEIN: YOU NEED TO BETTER LOOK AT THE HYDE DECLARATION. I'M SORRY, PARDON ME, THE PLAMBECK DECLARATION.

MR. WAITE: BY THE WAY, YOUR HONOR, ARE PHOTOS FROM OCTOBER OF 2016 ON THE QUESTION OF TIMELINESS OF THIS.

THE COURT: THAT'S WHY I SAID THE TIMELINE --

MR. SILVERSTEIN: NO, NO, THAT'S NOT FOR PLAMBECK. PLAMBECK IS AS RECENT AS THIS A COUPLE OF MONTHS AGO.

MR. WAITE: THEY ARE BOTH 2016 AND 2017.

MR. SILVERSTEIN: I THINK WHAT MR. WAITE WAS TALKING ABOUT WAS THE AERIAL PHOTOS FROM GOOGLE, WHICH ARE ONLY AVAILABLE FROM 2016, THAT THAT SHOWS A DRAMATIC DIFFERENCE IN THE BEFORE AND AFTER CONDITION, BUT IF YOU WANT TO LOOK AT PLAMBECK'S PHOTOS, AND WE HAVE ATTACHED A FAIR NUMBER OF THEM. YOU CAN SEE TRACTORS.

THE COURT: I DON'T SEE PLAMBECK.

MR. SILVERSTEIN: PLAMBECK IS RIGHT AFTER -- AT THE END OF OUR REPLY BRIEF ON THE 1097.

THE COURT: I LOOKED AT THOSE. THEY ARE SO CLOSE THAT I CAN'T TELL EXACTLY WHERE THE RETAINING WALL IS. IT'S A NICE BIG PICTURE OF THE RETAINING WALL, BUT IT'S SO CLOSE TO IT I CAN'T SEE WHERE IT IS. IT'S AT THE EDGE OF THE FOOTBALL FIELD?

MR. SILVERSTEIN: IT GOES AROUND TO -- WELL, SHE TESTIFIED, MS. PLAMBECK, THAT SHE WAS STANDING AT THE NORTHWEST AREA, AND AS I UNDERSTOOD IT THE EXTENSION OF

THE WALL GOES TO THE NORTH END AND THEN DOWN TO THE WEST. YOU CAN SEE IN THE 2003 EIR WHERE IT SHOWS WHERE THAT CHLORIDE FACILITY IS SUPPOSED TO GO. IT'S IN THAT YEAR, AND THERE IS AN ARROW IN THEIR 2003 EIR WHICH MS. DURBIN TALKS ABOUT IN HER DECLARATION WHICH POINTS TO THE NORTH, AND THAT WOULD BE AT -- THERE'S A BATE NUMBER ON IT OF CSD00369, AND THAT IS INCLUDED AT EXHIBIT 12 OF THE SUPPLEMENTAL DURBIN DECLARATION.

MS. DURBIN: YOUR HONOR, THE ADMINISTRATIVE RECORD FOR THE 2013 EIR ORIGINALLY WAS PAGINATED WITH A CSD NUMBER. WE SIMPLY AGREED THAT WE PREFER THEM AS AR NUMBERS.

THE COURT: OKAY. I WANT YOU TO LOOK AT EXHIBIT 16, THE GOOGLE MAP PHOTOS ON THE LAST PAGE WHICH IS FROM FEBRUARY 2016. IS THE PAD THERE?

MR. SILVERSTEIN: I DON'T BELIEVE IT IS AT THIS POINT, NO. I THINK THAT IT'S THE PLAMBECK ONES THAT REALLY SHOW, BECAUSE THIS ALL OCCURRED -- ALL OF THIS HEAVY WORK OCCURRED AFTER YOUR HONOR TOLD THEM STOP.

MS. DURBIN: THE FEBRUARY 16TH PHOTOGRAPH IS BEFORE THE WRIT WAS ISSUED.

THE COURT: YEAH. THAT'S WHEN THE HEARING WAS. THE WRIT WAS ISSUED IN MARCH.

MR. SILVERSTEIN: I THINK WE ATTACHED THIS AERIAL JUST TO GIVE YOUR HONOR A BETTER OVERVIEW PERSPECTIVE BECAUSE MS. PLAMBECK COULDN'T -- YOU KNOW, SHE DIDN'T HAVE --

THE COURT: THERE IS A CHANGE BETWEEN

AUGUST 2014 AND FEBRUARY 2016. DO YOU SEE THE CHANGE? YOU'VE GOT A SQUARE AREA THAT'S ALL CLEANED OUT NICELY IN TWO YEARS.

MR. SILVERSTEIN: WELL, IT LOOKS LIKE -- WELL, IT'S SMOOTHED OUT, BUT IT'S EFFECTIVELY ALL OF THAT AREA IS PRETTY MUCH THE SAME. THERE IS SOME KIND OF -- I HAVE NO IDEA IF THAT'S THE RESULT OF EARTH MOVEMENT OR, YOU KNOW, AFTER THE RAINS. WHAT I CAN TELL MUCH MORE CLEARLY FROM MS. PLAMBECK, NOT ONLY HER PHOTOS, BUT HER TESTIMONY --

THE COURT: HERE WE GO. I AM SORRY TO INTERRUPT. LOOK AT EXHIBIT 17.

MR. WAITE: RIGHT.

THE COURT: FROM OCTOBER 2016.

MR. WAITE: THAT'S RIGHT.

THE COURT: SO THAT LOOKS LIKE THE SAME AREA.

MR. SILVERSTEIN: YEAH. THAT IS A SIGNIFICANT CHANGE, AND THAT OCCURRED AFTER.

THE COURT: IS THIS A SIGNIFICANT CHANGE?

MR. SILVERSTEIN: YEAH.

MS. DURBIN: YOU CAN SEE THAT THE VEGETATION HAS BEEN -- THE SITE HAS BEEN SMOOTHED OUT. IT'S ALL GRADING AND PREPARATION FOR SOME KIND OF CONSTRUCTION.

MR. SILVERSTEIN: THAT WAS FOUR MONTHS AFTER YOUR HONOR SAID DON'T GO FORWARD. HOW MANY DIFFERENT WAYS CAN WE SAY IT?

THE COURT: THERE IS A PILE OF DIRT THAT HAS BEEN MOVED IN THAT PERIOD. WHAT WAS THAT DONE FOR?

NOTHING SHOULD HAVE BEEN HAPPENING DURING THAT PERIOD.

MR. WAITE: WELL, YOUR HONOR, I WOULD SIMPLY INDICATE THAT I THINK THE DECLARATIONS ARE VERY CLEAR FROM RAY TREMBLAY THAT IN CONNECTION WITH CONSTRUCTION OF THE WALL -- AND THIS IS A HIGH WALL. YOU CAN PLAINLY SEE HOW HIGH THE WALL IS.

THE COURT: I CAN'T SEE HOW HIGH. I DON'T KNOW WHERE THE WALL IS.

MR. WAITE: IF YOU LOOK AT THE EXHIBITS THAT ARE ATTACHED TO -- I BELIEVE THEY ARE EXHIBIT NUMBER -- A HOST OF PHOTOGRAPHS THAT ARE ATTACHED AS EXHIBIT NO. 3.

THE COURT: TO WHOSE DECLARATION?

MR. ZISCHKE: PLAMBECK.

THE COURT: ALL I SEE IS BRICKS CLOSE UP.

MR. WAITE: KEEP GOING BACK. IF YOU KEEP LOOKING THROUGH THAT STACK OF EXHIBITS. IT'S ACTUALLY PICTURES OF THE WALL FROM THE BASE OF THE WALL LOOKING UPWARD, PARTICULARLY, YOUR HONOR.

THE COURT: I SEE.

MR. WAITE: IT'S A VERY, VERY HIGH WALL. THE BACKFILLING THAT'S REQUIRED TO SUPPORT THAT WALL IS SIGNIFICANT. PARTICULARLY, YOUR HONOR, IF YOU LOOK AT THIS PHOTOGRAPH (INDICATING).

THE COURT: YEAH.

MR. WAITE: SO THE POINT IS, YOUR HONOR, THAT YOU HAVE, YOU KNOW, A SUBSTANTIAL AMOUNT OF GRADING WORK JUST TO SUPPORT THE CONSTRUCTION OF THE WALL IRREGARDLESS OF WHAT IS ULTIMATELY GOING TO BE BUILT ON THE PAD OR THE

GRADED AREA THAT'S SUPPORTING YOUR RETAINING WALL.

I THINK THE PROBLEM WITH MR. SILVERSTEIN'S ARGUMENT IS THE FACT THAT MS. HYDE MADE A STATEMENT ON THE RECORD THAT THE RETAINING WALL CAN SUPPORT CHLORIDE COMPLIANCE DOES NOT MEAN THAT THAT WAS THE PURPOSE FOR WHICH THE WALL WAS BEING CONSTRUCTED AND THE AREA WAS BEING GRADED.

AS YOUR HONOR PREVIOUSLY NOTED, THAT WALL COULD BE USED TO SUPPORT AN ABUNDANCE OF ACTIVITY.

THE COURT: WHY WOULD YOU GO FORWARD WITH THIS GRADING AND THIS WALL BUILDING UNLESS IT'S FOR CHLORIDE --

MR. WAITE: WHY --

(INTERRUPTION BY THE REPORTER.)

MR. SILVERSTEIN: IT'S NOT FAIR FOR COUNSEL TO CHARACTERIZE MS. HYDE'S STATEMENTS AS SHE SAID IT COULD WHEN WE HAVE HER STATEMENTS HERE, AND SHE SAYS, "NOW THAT CHLORIDE FACILITIES ARE PROPOSED FOR THAT SITE WE ARE MOVING FORWARD WITH EXTENSION OF THE RETAINING WALL," NOT THAT THERE IS SOME MYSTERY OTHER PROJECT OUT THERE THEORETICALLY. NOT THAT THERE'S SOME OTHER REASON. IT IS SOLELY THIS, AND SHE PROCLAIMS IT.

THE COURT: OKAY. I AM DONE WITH THAT. OKAY. I AGREE WITH YOU. THE SOLE MOTIVATION FOR THE RETAINING WALL BUILDING AT THIS TIME WAS THE CHLORIDE COMPLIANCE PROJECT. SO WHERE DOES THAT TAKE US?

MR. SILVERSTEIN: THAT TAKES US INTO THE REALM THAT THEY HAVE BEEN IN DISOBEDIENCE OF THIS WRIT SINCE

THE JUNE OF LAST YEAR TIME FRAME WHEN YOU SAID YOU HAVE TO STOP. THEY CANNOT GO FORWARD. THEY COULD GO FORWARD WITH -- YOU USED THE WORD "LEGITIMATE." YOU SAID THAT THEY MAY, QUOTE -- THE RETAINING WALL, THAT THEY MAY, "PURSUE IT FOR ANY LEGITIMATE REASON WITHOUT VIOLATING THE WRIT."

THAT'S WHY I SAID --

THE COURT: REFERRING TO?

MR. SILVERSTEIN: THIS IS FROM LAST YEAR.

THE COURT: THIS IS JUNE 2016 I SAID THEY CAN GO FORWARD WITH THE RETAINING WALL?

MR. SILVERSTEIN: FOR ANY LEGITIMATE REASON. THAT --

THE COURT: STOP. STOP. STOP. YOU KNOW, MY MISUNDERSTANDING THAT YOU WERE HERE IN JUNE 2017 INSTEAD OF 2016 CHANGES THE REALITY. THE REALITY IS THERE IS NO QUESTION THAT I AM FINDING THAT THEY ARE BUILDING THE WALL FOR THE CHLORIDE COMPLIANCE PROJECT, BUT THE IMPRIMATUR OF MY JUNE 2016 DECISION THAT THE RETAINING WALL THEY COULD GO FORWARD WITH.

MR. WAITE: YOUR HONOR, READING FROM THE COURT'S DECISION --

MR. SILVERSTEIN: "ONLY FOR ANY LEGITIMATE REASON WITHOUT VIOLATING THE WRIT," CONTAINED WITHIN YOUR HOLDING WAS A RECOGNITION THAT THE WRIT IS THE OPERATIVE THING. THAT IS THE FULCRUM ON WHICH --

THE COURT: YOU CAN'T -- YOU CANNOT BACK UP TO THE WRIT AFTER YOU'VE HAD A SPECIFIC HEARING ON THE

RETAINING WALL. WHAT DID I SAY IN MY DECISION ON THE RETAINING WALL?

MR. WAITE: IN YOUR DECISION, YOUR HONOR, YOU SAID THE RETAINING WALL DOES NOT VIOLATE THE WRIT.

THE COURT: FROM THAT DATE FORWARD THEY ARE FREE TO PLOW WHATEVER GROUND THEY WANT TO PLOW.

MR. WAITE: AND YOU SAID, "WHILE THE ACWA PRESENTS" --

THE COURT: DON'T READ SO FAST. DON'T READ SO FAST.

MR. WAITE: I'M SORRY, YOUR HONOR. I APOLOGIZE.

> "WHILE ACWA PRESENTS EVIDENCE THAT THE DISTRICT IS MOTIVATED BY THE PROJECT TO BUILD A RETAINING WALL, (REPLY BRIEF AT EIGHT), MOTIVE IS NOT ENOUGH TO PROVE A VIOLATION.
>
> "THE RETAINING WALL IS AN APPROVED PROJECT WHICH THE DISTRICT MAY PURSUE FOR ANY LEGITIMATE REASON WITHOUT VIOLATING THE WRIT."

FOR ANY LEGITIMATE REASON.

MR. SILVERSTEIN: CAN I READ THE VERY NEXT SENTENCE?

MR. WAITE: "THE TIMING OF THE DISTRICT'S ACTION IS INSUFFICIENT TO SHOW A VIOLATION."

THAT WAS YOUR RULING, YOUR HONOR.

MR. SILVERSTEIN: NOW, IN LIGHT OF YOUR HONOR'S

RULING, AND IN LIGHT OF THE FACT THAT THEY HAVE BOTH BEEN APPROPRIATING MILLIONS OF DOLLARS THAT THEY WEREN'T ALLOWED TO DO, WHICH IS ONE VIOLATION OF THE WRIT, AND THAT THEY HAVE BEEN MOVING EARTH NOT JUST INNOCENTLY EXTENDING A RETAINING WALL, BUT DOING IT IN EXPRESSED DEROGATION OF THE WRIT, AND THAT'S WHY I SAY WHEN YOU USED FOR "ANY LEGITIMATE PURPOSES," YOU ARE SIMULTANEOUSLY -- WE WERE OPERATING IN THE WORLD OF THE WRIT. THE ASSUMPTION WAS THAT IT WAS BEING --

THE COURT: NO, THAT'S NOT RIGHT. I WAS NOT QUALIFYING MY DECISION BY SAYING YOU COULD DO IT, BUT YOU BETTER BE RIGHT ABOUT THIS. I WAS NOT SAYING THAT. I WAS SAYING YOU CAN BUILD A RETAINING WALL.

NOW, I THINK -- AND MY REASONING, AND I REMEMBER THIS. MY REASONING WAS THAT IF THEY WERE GOING TO BUILD IT ANYWAY THE FACT THAT THEY'RE -- YOU KNOW, THE CHLORIDE PROJECT IS -- THEIR MOTIVATION IN BUILDING IT IS NOT SUFFICIENT. THAT'S WHAT MY REASONING WAS.

BUT IF THEY WERE GOING TO BUILD IT ANYWAY -- I NOW THINK IT'S NOT AT ALL CLEAR THEY WERE GOING TO BUILD IT ANYWAY, AND THEY ARE ONLY BUILDING IT BECAUSE OF THE CHLORIDE PROJECT.

SO I THINK MY REASONING IN JUNE 2016 BASED ON WHAT I KNEW THEN WAS CORRECT, BUT I THINK MY REASONING NOW DIFFERS BECAUSE I HAVE A DIFFERENT SET OF FACTS, AND I WOULD NOT HAVE RULED IN JUNE -- I WOULD NOT HAVE RULED THAT THEY CAN GO FORWARD WITH THE RETAINING WALL, BUT I DID.

SO THEY WERE FREE TO PLOW WHATEVER GROUND THEY WANT, BUILD WHATEVER -- STACK UP WHATEVER ROCKS THEY WANT FROM JUNE 2016 UNTIL TODAY. THEY WERE FREE TO DO THAT.

MR. SILVERSTEIN: BUT YOU MADE THAT FINDING BASED ON THEIR REPRESENTATION, WHICH WE NOW HAVE EVIDENCE WAS NOT AN ACCURATE REPRESENTATION, THAT THERE WAS A PRIOR PROJECT FOR WHICH THIS WALL WAS APPROVED THAT IS SOMETHING THAT THEY ARE APPARENTLY GOING FORWARD WITH.

IN OTHER WORDS, THE OTHER LEGITIMATE REASON, BUT MS. DURBIN IN HER DECLARATION HAS SHOWN THAT OTHER PROJECT WHICH IS REFERRED TO AS PHASE 6.

THIS GOES BACK TO 1998 WHEN THEY DID SOME OTHER EIR FOR THE FACILITY'S EXPANSION. THAT'S PHASE 6 IS WHAT THIS EXTENSION OF THE WALL WAS SUPPOSED TO BE FOR. IN THEIR 2013 EIR THEY TALK ABOUT THEY ARE NOT MOVING FORWARD.

THE COURT: I UNDERSTOOD. ALL YOU'RE REALLY ARGUING TO ME IS JUST WHAT I SAID, WHICH IS THAT THEIR SOLE REASON FOR BUILDING THIS WALL IS FOR THE CHLORIDE PROJECT, AND I AGREE WITH THAT NOW, AND I WOULD NOT HAVE MADE THAT RULING, I HOPE, IF I AM A CONSISTENT DECISION-MAKER, I WOULD NOT HAVE MADE THAT RULING IN JUNE OF 2016, BUT I DID. THEY ARE FREE TO DO IT.

MS. DURBIN: YOUR HONOR --

MR. SILVERSTEIN: THEY PULLED A WALL OVER OUR --

THE COURT: STOP. THIS IS NOT A FRAUD ON THE COURT. THIS IS A SLIGHTLY DIFFERENT SPIN OR A VERSION OF THE FACTS THAT ARE PERHAPS MORE INFORMATION, WHICH IS A

BETTER WAY TO PUT IT, THAT I AM RECEIVING NOW THAN I HAD THEN. THE DISTRICT DIDN'T PULL THE WOOL OVER MY EYES, AND THEY HAD MY IMPRIMATUR.

I MEAN, RECEIVERS COME IN AND THEY ASK FOR INSTRUCTIONS FROM THE COURT AS TO HOW TO PROCEED. THAT'S BASICALLY WHAT THE DISTRICT HAS DONE. CAN WE BUILD THIS RETAINING? THEY DIDN'T ASK. YOU TRIED TO STOP IT, AND I SAID THEY COULD BUILD IT. THEY COULD BUILD IT UP UNTIL TODAY.

MR. SILVERSTEIN: SO CAN WE ORDER A STOP TODAY?

THE COURT: ARE YOU DONE?

MR. SILVERSTEIN: NO, THEY ARE NOT DONE. ACCORDING TO MS. PLAMBECK THERE WAS WORK GOING ON WHEN SHE WAS THERE LAST SUNDAY.

MR. WAITE: YOUR HONOR --

THE COURT: STOP. I WOULD ORDER A STOP TODAY EXCEPT THAT I JUST DECIDED TO PARTIALLY DISCHARGE THE WRIT BASED UPON THEIR COMPLIANCE WITH THE WRIT WITH RESPECT TO THE CHLORIDE COMPLIANCE PROJECT.

MR. SILVERSTEIN: BUT THEIR CREDIBILITY IS -- YOU SAID YOU THINK THEY WERE CLOSE TO THE LINE. THEY WERE WALKING --

THE COURT: THAT -- I DON'T SEE ANY REASON -- MAYBE THERE IS A REASON. TELL ME WHAT THE CURRENT APPROPRIATION IS HERE FOR?

MR. SILVERSTEIN: MS. DURBIN HAS THIS DOCUMENT FROM JUNE 5TH.

THE COURT: I UNDERSTOOD. IT'S ALMOST

$5 MILLION. WHAT IS IT FOR?

MS. DURBIN: YOU KNOW, YOUR HONOR, IT DOES STATE --

THE COURT: NO, NO. I AM ASKING THE DISTRICT. WHAT IS IT FOR? WHERE ARE YOU SPENDING $5 MILLION ON A PROJECT I TOLD YOU TO STOP?

MR. WAITE: YOU HONOR, I THINK IT'S ALL DELINEATED IN THE BRUNS DECLARATION IN TERMS OF THE EXPENDITURES.

THE COURT: IT'S A DECLARATION THAT'S ATTACHED TO --

MR. WAITE: THIS IS THE DECLARATION OF DAVID BRUNS WHICH IS ATTACHED TO THE OPPOSITION TO THE MOTION FOR ORDERS. THERE IS A WASTE ORDER BUDGET THAT'S ATTACHED, YOUR HONOR, A JUNE 15, 2016, BUDGET.

THE COURT: IT'S NOT ATTACHED.

MR. WAITE: IT'S ATTACHED AS EXHIBIT A TO THE BRUNS DECLARATION.

THE COURT: BRUNS IS A SEPARATE DECLARATION?

MR. WAITE: CORRECT.

THE COURT: EXHIBIT A. WHAT PART OF EXHIBIT A?

MR. WAITE: YOUR HONOR, IF YOU LOOK AT THE REFERENCE TO "SIGNIFICANT CAPITAL EXPENDITURES," THERE'S A REFERENCE TO -- FROM THE BEGINNING OF THE MIDDLE OF THAT PARAGRAPH,

> "THESE INCLUDE THE CONSTRUCTION OF A RETAINING WALL ALONG THE EDGE OF THE VALENCIA WRP TO PREVENT FURTHER EROSION

OF THE SANTA CLARITA RIVER."

BY THE WAY, THE PURPOSE FOR THAT RETAINING WALL, YOUR HONOR, NOT JUST THE CHLORIDE COMPLIANCE PROJECT. IT HELPS STABILIZE THE PROPERTY FROM GROUND MOVEMENT. IT'S ALSO A SEISMIC ISSUE AS WELL, YOUR HONOR, A SEPARATE PURPOSE THAN CHLORIDE COMPLIANCE.

THESE INCLUDE CONSTRUCTION -- EXCUSE ME,

"TO PREVENT FURTHER EROSION BY THE SANTA CLARITA RIVER AND TO HELP STABILIZE THE PROPERTY FROM GROUND MOVEMENT."

THE COURT: YOU REALLY DON'T NEED TO READ IT. I HAVE IT IN FRONT OF ME. JUST POINT ME TO THE WORDS.

MR. WAITE: "FOR FISCAL YEAR 2016/2017, 7.5 MILLION HAS BEEN BUDGETED TOWARD THE DESIGN OF CONSTRUCTION OF THIS RETAINING WALL."

THE COURT: WE ARE TALKING ABOUT 2017/18. I AM NOT TALKING ABOUT THE HISTORICAL EXPENSE. I AM TALKING ABOUT FUTURE EXPENSE APPEARANCE.

MR. BECK: IT'S STILL BEING BUILT.

MR. WAITE: I THINK IT'S STILL UNDER CONSTRUCTION.

MS. DURBIN: EXHIBIT 15 TO MY SUPPLEMENTAL DECLARATION IN SUPPORT OF THE 1097 MOTION. I'LL WAIT UNTIL YOU'RE THERE.

THE COURT: EXHIBIT 17?

MS. DURBIN: 15.

THE COURT: OKAY.

MS. DURBIN: LOOK TO THE NEXT-TO-THE-LAST PAGE. THIS IS AN AGENDA FOR THE DISTRICT BOARD ON JUNE 5TH, 2017, AND THEY ARE DRAFTING EXPENDITURES AND PROPOSED EXPENDITURE. IF YOU LOOK AT THE NEXT-TO-THE-LAST PAGE, "PROPOSED CAPITAL PROJECTS." THEN GO DOWN TO WHERE IT SAYS, "CHLORIDE COMPLIANCE."

THE COURT: YES.

MS. DURBIN: YOU CAN SEE THEY'VE BROKEN OUT CHLORIDE COMPLIANCE PROJECT FROM LEGAL AND ENGINEERING SUPPORT FOR CEQA COMPLIANCE. THEY SAID IN THE BRUNS DECLARATION THAT ALL OF THAT MONEY WAS BEING SPENT EITHER FOR LEGAL EXPENSES OR FOR PLANNING AND COMPLIANCE, BUT HERE THAT ITEM IS BROKEN OUT, AND IT'S A MILLION AND SIX, BUT THE CHLORIDE COMPLIANCE PROJECT AS A WHOLE IS THE BULK OF THE MONEY, $3.8 MILLION.

THE COURT: I THOUGHT IT WAS 4.8.

MS. DURBIN: I AM LOOKING AT THE COLUMN SLIGHTLY TO THE LEFT THERE.

MR. ZISCHKE: CAN WE CLARIFY WHICH EXHIBIT WE ARE LOOKING AT?

THE COURT: 15.

MS. DURBIN: 15 TO THE SUPPLEMENTAL DURBIN DEC.

MR. SILVERSTEIN: YOUR HONOR, IN MY WORKING COPY HERE THAT PAGE -- I AM INFORMING THE COURT THAT I DON'T SEE THAT PAGE IN MY WORKING COPY.

MR. ZISCHKE: I DON'T EITHER.

THE COURT: IT'S PAGE 3 OF 3. IT'S IN MINE.

MR. ZISCHKE: BUT THAT'S NOT THE PAGE TO WHICH SHE'S REFERRING TO THERE.

MS. DURBIN: IT'S NOT THE PAGE. IT MAY BE INCOMPLETE.

THE COURT: WHAT PAGE ARE WE TALKING ABOUT?

MS. DURBIN: THEY ARE NOT NUMBERED.

THE COURT: MINE ARE NUMBERED.

MS. DURBIN: OH, SHOOT. WHAT'S IN THE DECLARATION IS THE MINUTES. IT'S NOT THE AGENDA.

THE COURT: THIS IS THE MINUTES OF THE MEETING, NOT THE AGENDA OF THE MEETING.

MS. DURBIN: WE MAY HAVE INADVERTENTLY OMITTED THIS.

THE COURT: SO BUILDING THE WALL UP UNTIL NOW IS OKAY. IF THEY SPENT MILLIONS OF DOLLARS BUILDING THE WALL, THEN THAT'S OKAY. THE FUTURE APPROPRIATIONS -- ARE YOU TELLING ME THAT YOU ARE SPENDING ANOTHER 5 MILLION ON THIS WALL IN 2017 AND '18?

MR. WAITE: I DON'T KNOW IF WE HAVE THAT CURRENT BUDGET IN FRONT OF US, YOUR HONOR.

MR. SILVERSTEIN: YOUR HONOR, THE CONCERN THAT MS. DURBIN WAS IDENTIFYING WAS THAT IN MR. BRUNS, B-R-U-N-S, DECLARATION. HE REFERRED TO MONEY THAT WOULD BE ALLOCATED TO ENVIRONMENTAL OR LEGAL TYPES OF THINGS.

THE COURT: 2016 AND '17, YES.

MR. SILVERSTEIN: AND WHAT WE HAVE DISCOVERED IN THIS -- I THINK THERE IS SOME CONFUSION BETWEEN THE AGENDA AND THE MINUTES. WE APOLOGIZE, BUT WE WILL MAKE

AN OFFER OF PROOF, BECAUSE THIS IS WHAT IT IS. THEY HAVE CHLORIDE COMPLIANCE IN ALL CAPS, AND THEN UNDERNEATH IT THEY HAVE TWO CATEGORIES BROKEN OUT.

ONE -- THE SECOND CATEGORY IS LEGAL AND ENGINEERING SUPPORT, WHICH IS WHAT MR. BRUNS SEEMS TO BE TALKING ABOUT. THAT'S 1,060,000. THE OTHER NUMBER, THE BIGGER ONE JUST SAYS, "CHLORIDE COMPLIANCE PROJECT." THAT'S 3.8 MILLION. SO THERE'S 3.8 MILLION THAT'S KIND OF NOT EVEN UNDER THE CATEGORY THAT THEY ARE TRYING TO USE TO SAY WE ARE IN A SAFE HARBOR HERE.

THE COURT: OKAY. SO LET'S SUM UP HERE, BECAUSE ON THIS MOTION I HAVE SPENT AN HOUR AND A HALF. I AM NOT PLEASED THAT THE DISTRICT BUILT A RETAINING WALL, BUT I DO BELIEVE THEY COULD RELY ON MY JUNE 2016 RULING TO DO SO.

THE REASON I AM NOT PLEASED IS I DO THINK THAT IF THEY WOULD NOT HAVE BUILT THIS WALL BUT FOR THE CHLORIDE COMPLIANCE PROJECT, THEN IT IS PART OF THE PROJECT EVEN IF THEY HAD THE AUTHORITY TO DO SO BEFORE.

AS FAR AS THE APPROPRIATIONS ARE CONCERNED, SPENDING MONEY ON LEGAL FEES AND ENVIRONMENTAL DOCUMENTATION IS PERFECTLY APPROPRIATE. ON THE OTHER HAND, ALLOCATING BUDGET IN THE FUTURE MAY WELL -- FOR ITEMS NOT -- THOSE ITEMS MAY WELL BE A VIOLATION OF THE WRIT, BUT I AM NOW GRANTING A MOTION FOR PARTIAL DISCHARGE WHICH MEANS THAT, YOU KNOW, UNTIL SUCH TIME AS ANY OTHER CASE I STOP THE CHLORIDE COMPLIANCE PROJECT, THEY CAN SPEND IT ON WHATEVER THEY WANT.

MR. SILVERSTEIN: BUT THAT THEY DO SO AT THEIR OWN PERIL.

THE COURT: WELL, EXCEPT THERE'S NO WRIT PREVENTING THEM FROM DOING SO.

MR. SILVERSTEIN: BUT THERE IS A LAWSUIT OUT THERE THAT TELLS THEM THAT THEY MAY BE FORCED TO STOP AGAIN.

THE COURT: OH, YES, AND YOU MAY MAKE A MOTION FOR A PRELIMINARY INJUNCTION IN THAT LAWSUIT IF YOU SO -- FEEL IT'S APPROPRIATE. I DO THINK, YOU KNOW, I SHOULD REPEAT AGAIN. THE DISTRICT HAS PLAYED CLOSE TO THE EDGE HERE, AND PETITIONER SAYS OVER THE EDGE, AND THE PETITIONER MAY BE RIGHT. I AM NOT GOING TO FIND A VIOLATION BY THE DISTRICT THOUGH.

MR. SILVERSTEIN: I WOULD LIKE, FOR THE RECORD, TO MAKE AN OFFER OF PROOF OF THIS JUNE 5, 2017, DOCUMENT THAT SHOWS THAT THEY ARE SPENDING 3 MILLION ON CHLORIDE COMPLIANCE FOR THINGS OTHER THAN LEGAL AND ENGINEERING. THIS IS THEIR OWN DOCUMENT.

MAY I HAND IT TO THE COURT?

MR. ZISCHKE: YOUR HONOR, WE OBJECT TO THAT.

THE COURT: I THINK IT'S ALREADY COME IN ON REPLY.

MR. ZISCHKE: AND I DON'T THINK WE'VE SEEN IT.

THE COURT: HOLD ON. I THINK IT'S IN EXHIBIT 15.

MS. DURBIN: THE PAGES INVOLVED ARE NOT, YOUR HONOR.

THE COURT: NO, NO. THE AGENDA IS NOT IN, BUT THE MINUTES ARE IN, AND THEY ARE SPENDING 4.8 -- 4,860,000 ON CHLORIDE COMPLIANCE. THAT'S PAGE 3 OF 3.

IS SOME PORTION OF THAT ATTORNEY'S FEES? OKAY, BUT NOT ALL OF IT IS, AND THEY HAVE ALREADY DONE THE ENVIRONMENTAL DOCUMENTATION. SO WHAT'S THAT MONEY FOR, AND, YOU KNOW, IT'S FOR THE CAPITAL EXPENDITURES ON THE PROJECT WHICH THEY ARE NOW FREE TO DO, BUT AS YOU SAY, IT'S ALL A RISK.

MR. WAITE: I WOULD JUST SIMPLY NOTE FOR THE RECORD MUCH OF THIS INFORMATION WAS SUBMITTED IN THE REPLY BRIEF. IT WAS NOT PART OF THE OPPOSITION. SO WE ARE RESPONDING TO IT IN FRONT OF YOUR HONOR FOR THE FIRST TIME. I SIMPLY WANTED TO NOTE THAT FOR THE RECORD AS WELL FROM THE STANDPOINT OF THE EVIDENCE THAT WAS SUBMITTED IN THAT REPLY BRIEF.

MS. DURBIN: YOUR HONOR, I WOULD LIKE TO NOTE SOMETHING FOR THE RECORD TOO JUST SO YOUR HONOR DOESN'T THINK WE ARE PLAYING CLOSE TO THE LINE.

THE COURT: WHERE YOU'RE SAYING "NOTE FOR THE RECORD," YOU'RE TALKING TO THE APPELLATE COURT. SO I CLOSE MY EARS.

GO AHEAD.

MR. ZISCHKE: WE AREN'T.

MS. DURBIN: THERE IS AN ASTERISK FOR CHLORIDE COMPLIANCE ON THIS JUNE 5, 2017, BUDGETING SAYING, "CHLORIDE COMPLIANCE EXPENDITURES IN 2017 TO '18 ARE CONTINGENT UPON A SUBSEQUENT FAVORABLE COURT RULING ON

CEQA COMPLIANCE."

SO THEY TRIED TO COVER THEMSELVES, BUT THEY ARE STILL ENACTING THE BUDGET.

THE COURT: WOULD THAT MEAN THEY WOULDN'T HAVE SPENT THE MONEY WITHOUT THE COURT'S APPROVAL?

MR. SILVERSTEIN: I DON'T KNOW, BUT THAT'S THE SAME ISSUE THAT CAME UP WITH MR. BEVERLIN LAST YEAR WHEN HE SAID IF WE APPLY WE MIGHT NOT -- WE MIGHT NOT ACCEPT THE MONEY OR WE MIGHT, YOU KNOW, DECIDE --

THE COURT: IT IS SIMILAR TO THE LOAN SITUATION. YES, IT IS.

MR. SILVERSTEIN: YEAH.

THE COURT: OKAY.

MR. SILVERSTEIN: YOUR HONOR, JUST AS A MATTER OF HOUSEKEEPING. WE HAD SUBMITTED SOME OBJECTIONS TO THE BRUNS DECLARATION, AND I DON'T THINK YOUR HONOR MADE A RULING ON THAT. I KNOW THOSE ARE ALWAYS A HASSLE, BUT I JUST --

THE COURT: ALL RIGHT. IF YOU OBJECTED, I AM CONFIDENT THAT I RULED ON THEM, AND I ALWAYS SAY SO IN THE BRIEF. THIS WAS --

MR. WAITE: FOOTNOTE 3, YOUR HONOR, ON PAGE 13 OF THE TENTATIVE.

MR. SILVERSTEIN: I DON'T BELIEVE THAT THIS IS A RULING OR --

THE COURT: THAT'S A CONTINUANCE ISSUE.

TELL ME WHAT YOUR OBJECTION DOCUMENT IS. OH, THIS IS YOUR OBJECTION WITHOUT THE ABILITY TO TAKE

DEPOSITIONS? ISN'T THAT WHAT IT WAS?

MR. SILVERSTEIN: WE HAD TWO OBJECTION DOCUMENTS. I THINK THEY WERE BOTH TITLED, "OBJECTIONS OR REQUEST TO STRIKE." THE FIRST ONE WAS --

THE COURT: OH, YEAH.

MR. SILVERSTEIN: AND, YOU KNOW, WHETHER OR NOT WHAT MR. BRUNS SUBMITTED IS EVEN A LEGAL CONCLUSION. IT LACKS FOUNDATION. IT'S ANOTHER REASON WHY WE THINK THAT THE BALANCE HERE OF EVIDENCE WEIGHS IN OUR FAVOR.

NOW, WHEN YOU LOOK AT THE VARIOUS DOCUMENTS, THE DISTRICT'S OWN DOCUMENTS, INCLUDING FULLY FOUR-FIFTHS OF THAT NEARLY $5 MILLION IS GOING FOR THE PROJECT OR ISSUES OTHER THAN LEGAL OR ENVIRONMENTAL REVIEW, AND THE REASON THAT WE HAVE THOSE DOCUMENTS, AND WE SCOURED TO TRY TO RESPOND TO WHAT MR. BRUNS WAS SAYING.

MR. WAITE: YOUR HONOR, WE WOULD JUST SIMPLY RESPOND BY NOTING THAT IN THE DECLARATION OF DAVID BRUNS HE DOES NOTE HE IS THE DEPARTMENT HEAD OF THE FINANCIAL MANAGEMENT DEPARTMENT FOR THE SANITATION DISTRICT, AND THESE DOCUMENTS ARE RECORDS THAT ARE CLEARLY WITHIN HIS PURVIEW FOUNDATIONALLY.

MR. SILVERSTEIN: YOUR HONOR --

THE COURT: ACTUALLY LET THE RECORD REFLECT, SINCE WE ARE TALKING ABOUT THE RECORD, I AM NOW OVERRULING THE OBJECTIONS BECAUSE I AGREE THAT THEY ARE WITHIN THE SCOPE OF WHAT HE KNOWS.

MR. SILVERSTEIN: YOUR HONOR, THERE'S VAGUENESS OBJECTIONS. NO ACTUAL BREAKDOWN OF EXPENSES BY

INDIVIDUALS --

THE COURT: THOSE ARE NOT OBJECTIONS. THOSE ARE PART OF YOUR REQUEST TO TAKE HIS DEPOSITIONS.

MR. SILVERSTEIN: WELL, VAGUE AND AMBIGUOUS IS AN OBJECTION IF IT'S UNINTELLIGIBLE. IF IT LACKS FOUNDATION.

MS. DURBIN: IF IT MAKES LEGAL CONCLUSIONS.

THE COURT: VAGUE AND FOUNDATION OBJECTION, THAT'S OVERRULED. THERE'S NOTHING VAGUE ABOUT IT. HE SAYS THIS MONEY WAS USED FOR THIS PURPOSE. THAT MONEY WAS USED FOR THAT PURPOSE. THERE'S NOTHING VAGUE ABOUT THAT.

MR. SILVERSTEIN: THAT'S WHY IT'S SO IMPORTANT WHAT WE JUST -- WHAT WE JUST WERE DISCUSSING, THE JUNE 5, 2017, DOCUMENT THAT BREAKS OUT -- IT'S SORT OF EXCLUSIO [SIC] UNIUS THING. I NEVER GET THAT LAST WORD.

THE COURT: I NEVER GET THAT WORD EITHER. THE COURT OF APPEAL LOVES THAT KIND OF STUFF.

MR. SILVERSTEIN: WELL, THE FACT THAT THEY CHOSE TO CREATE A DEFINITION "ENVIRONMENTAL OR LEGAL," WHICH 1 MILLION WENT TOWARDS MEANS THAT THE -- TO THE EXCLUSION OF ALL OF THE OTHER THINGS. THE OTHER THINGS ARE NOT IN THAT, AND THAT MEANS STUFF THAT THEY SHOULDN'T HAVE BEEN SPENDING AND ALLOCATING $4 MILLION ON.

I DO WANT TO REPEAT, MS. HYDE, WHO IS THE ONE -- YOU KNOW, SHE'S KIND OF PATIENT ZERO. I GUESS IF THAT'S THE RIGHT ANALOGY. IT IS HER STATEMENTS THAT GIVE RISE -- HER ADMISSIONS THAT GIVE RISE TO SO MUCH OF WHY

WE ARE IN FRONT OF YOU.

SHE IS BOTH -- SHE HAS TWO HATS. SHE IS CHIEF ENGINEER AND GENERAL MANAGER. SHE IS THE PERSON MOST KNOWLEDGEABLE, AND UNDER EVIDENCE CODE SECTION 411, WHICH WAS CITED IN OUR PAPERS. IT SAYS,

"IF WEAKER OR LESSER EVIDENCE IS SUBMITTED THEN THE JUDICIAL FACTFINDER SHOULD VIEW IT WITH DISFAVOR."

THE COURT: WHAT ARE WE TALKING ABOUT?

MR. SILVERSTEIN: WE ARE TALKING ABOUT MS. BRUNS DECLARATION WHICH IS NOT A PROPER DECLARATION. IT IS LACKING IN FOUNDATION AS TO SPECIFIC ISSUES. WE DIDN'T DO A BLUNDERBUSS OF THE ENTIRE THING.

WE DID FOCUS ON SPECIFIC ISSUES, BUT THERE IS ALSO THE FACT HE IS NOT THE PERSON MOST KNOWLEDGEABLE EITHER ABOUT THE ENGINEERING ISSUES AND WHAT THEY ARE SPENDING ON FOR CONSTRUCTION OR MOREOVER THAT HE WOULD BE THE PERSON MOST KNOWLEDGEABLE TO EXPLAIN AWAY MS. HYDE'S ADMISSION.

THE FACT THAT MS. HYDE --

THE COURT: I MEAN, BRUNS IS THE FINANCIAL GUY. THE DISTRICT ISN'T THAT BIG THAT THE FINANCIAL GUY DOESN'T KNOW WHERE EVERY DOLLAR IS GOING.

MR. BECK: HE'S GOT TO KNOW WHERE EVERY DOLLAR IS GOING.

MR. WAITE: IF GRACE HYDE HAS A QUESTION ABOUT THE FINANCIAL RECORDS, GRACE HYDE IS GOING TO GO TO DAVE BRUNS.

THE COURT: THEY ARE SAYING, "WE ARE BUILDING A WALL FOR THE PROJECT." "OKAY." "WHO IS PAYING FOR THE WALL?" "WELL, LET'S ASK BRUNS WHO IS PAYING FOR THE WALL AND HOW IT'S GETTING PAID FOR."

I MEAN, THERE'S NO INCONSISTENCY THERE, BUT IF WHAT YOU ARE SAYING IS THEY ARE BUILDING A WALL, SOME PORTION OF THIS MONEY MUST HAVE BEEN SPENT ON THE WALL AND NOT ON ENVIRONMENTAL DOCUMENTATION OR ATTORNEY FEES, THAT'S A MATTER OF SPECULATION THAT WE ARE PAST.

THE DRIFTWOOD HAVE PASSED BY THE STICKLEBACK AND IT'S DOWN THE RIVER ON THAT ONE.

MR. SILVERSTEIN: THERE'S A LOT OF WATER UNDER THE BRIDGE HERE.

THE COURT: THERE IS NO BRIDGE, BUT YES.

MR. SILVERSTEIN: I JUST DON'T WANT THE DISTRICT TO BE ABLE TO WASH THEIR HANDS OF RESPONSIBILITY OVER WHAT SEEMS TO BE VERY ACTIVE AND VERY DELIBERATE ACTIONS OF FUNDING AND CONSTRUCTION. AGAIN, IT'S NOT JUST A WALL.

THE COURT: SO LET'S CONTINUE THE WATER ANALOGIES. SO I HAVE NOW RULED THAT THE DISTRICT HAS PLAYED CLOSE TO THE EDGE, BUT I HAVE NOT FOUND THEM TO BE IN VIOLATION. BECAUSE I AM PARTIALLY DISCHARGING THE WRIT, THE FLOOD GATES ARE OPEN FOR THE CHLORIDE COMPLIANCE PROJECT UNTIL SUCH TIME AS THE FLOOD GATES ARE DROPPED IN THE OTHER LAWSUIT.

MR. SILVERSTEIN: BUT YOU ARE NOT SANITIZING THEIR CONDUCT TO DATE. IS THAT CORRECT?

THE COURT: NO -- YEAH, I AM NOT.

THEY HAD MY IMPRIMATUR ON GOING FORWARD WITH THE RETAINING WALL. I FEEL THEY COULD RELY ON IT IN BUILDING THE RETAINING WALL, THAT RULING. THAT'S ALL I CAN SAY.

MR. SILVERSTEIN: YOUR HONOR, THERE WAS -- AGAIN FOR THE RECORD, THERE WERE TWO OBJECTION DOCUMENTS. I CAN FIND THE OTHER ONE, BUT I JUST KNOW THAT YOUR HONOR LIKES TO DEAL WITH THOSE. SO I DIDN'T WANT TO FORGET THAT.

THE COURT: YOU SHOULD NOT PUT IT IN A DOCUMENT -- YOU SHOULD MAKE EVIDENTIARY OBJECTIONS SEPARATE FROM --

MR. SILVERSTEIN: IT IS.

THE COURT: WELL, IT WAS AN OBJECTION ASKING FOR A CONTINUANCE, AND WHEN I READ THAT I STOPPED.

MR. SILVERSTEIN: THERE WAS A SECOND ONE WHICH WAS FILED ON OCTOBER 11TH IN CONNECTION WITH THE DISTRICT.

THE COURT: I HAVE THAT ONE, AND IT'S A LENGTHY OBJECTION THAT IS ARGUABLY A DISGUISED VIOLATION OF CRC 3.1113(D) PAGE LIMITS. IT'S AN OBJECTION FOR THE RETURN WHICH I DON'T REALLY SEE THE POINT OF. YOU MADE YOUR MOTION. WHY DO WE HAVE THIS SEPARATE OBJECTION OF THE RETURN?

MR. SILVERSTEIN: BECAUSE THEY HAD FILED WITH THEIR -- THEY HAD FILED THREE DOCUMENTS: THEIR MOTION FOR PARTIAL DISCHARGE, THEIR SO-CALLED ADMINISTRATIVE ON RETURN IN THE RETURN.

THE COURT: RIGHT.

MR. SILVERSTEIN: AND WE WANTED TO MAKE SURE THAT --

THE COURT: I DON'T HAVE TO RULE ON YOUR OBJECTION TO THE RETURN.

MR. ZISCHKE: I THINK ACTUALLY YOU DID IN YOUR TENTATIVE RULING.

THE COURT: I DID?

MR. ZISCHKE: YOU RULED ON THE FACT THAT WE PRESENTED AN ADMINISTRATIVE RECORD, AND I THINK YOU SAID, YOU KNOW, THAT'S OBJECTIONABLE BUT WAS NOT OBJECTED. IT SOUNDS LIKE YOU WOULD RATHER HAVE THAT DONE BY DECLARATION.

THE COURT: RIGHT.

MR. ZISCHKE: SO I THINK THAT TAKES CARE OF ANY OBJECTION TO THE FORM OF THE RETURN.

THE COURT: WELL, I AM NOT SURE IT DOES, BUT I DON'T DO ANYTHING TO RETURNS. THEY SIT THERE IN THE FILE UNTIL THERE'S A MOTION. NOW I HAVE TWO MOTIONS, WHICH I HAVE RULED UPON, AND AN OBJECTION TO THE RETURN IS MEANINGLESS.

I RULE ON MOTIONS, NOT RETURNS.

MR. SILVERSTEIN: YOUR HONOR, GIVEN WHERE WE ARE TODAY WITH A VERY HEALTHY DEBATE ABOUT PAST ACTIONS SINCE -- BY THE DISTRICT SINCE OUR JUNE 2016 MOTION THAT YOUR HONOR GRANTED, AND THE RECOGNITION THAT PERHAPS THERE WAS SOME VERY CLOSE APPROACHING THE LINE, WE WOULD ASK THAT THE COURT NOT -- AT LEAST CONDITIONALLY, NOT

COMPLETELY, CONDITIONALLY PARTIALLY DISCHARGE THE WRIT AND MAINTAIN JURISDICTION WITHIN THIS CASE BECAUSE IT ASKS -- IT ASKED A LOT.

IT SHIFTS ANOTHER MASSIVE BURDEN TO US TO INDICATE THAT PERHAPS WE NEED TO COME IN FOR A MOTION FOR A PRELIMINARY INJUNCTION, WHICH IF YOUR HONOR BELIEVES THAT THAT IS SOMETHING THAT WOULD BE HELPFUL TO THE PROCESS, WE WILL DO. IT'S JUST --

THE COURT: I AM NOT ASKING FOR THAT MOTION.

MR. SILVERSTEIN: OKAY.

THE COURT: LET'S SEE HOW THIS ADVANCES THE BALL. WHAT GOOD DOES IT DO TO RETAIN JURISDICTION ON THE CHLORIDE COMPLIANCE PART OF THIS WRIT IN THIS CASE AT THIS POINT? WHAT IS THE ADVANTAGE FOR ALL OF US?

MR. SILVERSTEIN: I SORT OF CONCEPTIONALLY VIEW IT ALMOST LIKE A 664.6 PROCEDURE WHERE WE COULD GO IMMEDIATELY BACK TO YOUR HONOR FOR ENFORCEMENT VERSUS THE OTHER KIND OF SIDE OF THE COIN WOULD BE, OKAY, YOU HAVE TO START FROM THE BEGINNING WITH THE LAWSUIT WITH ALL OF THE INTERIM STEPS.

THIS IS BEFORE YOUR HONOR FULLY FORMED. IT'S RIPE, AND IT'S MATURE, AND YOU HAVE SEEN IT GROW, AND --

THE COURT: YOU ARE SAYING THE ADVANTAGE WOULD BE YOU DON'T HAVE TO HAVE A COMPLETE RECORD?

MR. SILVERSTEIN: PERHAPS, OR, YOU KNOW, THERE MAY BE OTHER EVIDENCE THAT WE ARE ABLE TO OBTAIN OR THERE -- FOR EXAMPLE, YOU KNOW, WE ARE AT A VERY SIGNIFICANT HANDICAP AND DISADVANTAGE WHEN YOUR HONOR HAS

OVERRULED THE BRUNS DECLARATION, BUT YET THERE'S SO MUCH BEHIND THAT THAT WE HAVEN'T SEEN.

WE DO INTEND TO ASCERTAIN WHETHER THERE ARE ONGOING VIOLATIVE -- THEY SEEM, WE BELIEVE, HAVE VIOLATED THE WRIT. WELL, YOUR HONOR ALREADY FOUND WHEN YOU GRANTED OUR 1097 ORIGINALLY THAT THERE WERE VIOLATIONS OF THE WRIT. SO THAT'S BEEN ESTABLISHED. THEN WE HAVE ALL OF THIS CLOSE TO THE LINE.

YOU ARE NOT DISCHARGING EVERYTHING. SO WE WOULD WANT TO --

THE COURT: OKAY, SO YOU WANT TO TAKE BRUNS' DEPOSITION?

MR. SILVERSTEIN: AND THE HYDE DEPOSITION.

THE COURT: WHICH DIFFERENCE DOES IT MAKE WHICH CASE YOU TAKE IT?

MR. SILVERSTEIN: I MEAN, I THINK -- I BELIEVE IT MAKES MORE SORT OF CONSISTENCY TO TAKE IT WITH REGARD TO THE CASE WHERE THE WRIT HAS ISSUES.

THE COURT: I DON'T THINK IT MATTERS. IF YOU WERE GOING TO TELL ME, YOU KNOW, WE DON'T WANT TO GO THROUGH THE EXPENSE OF ORDERING THE ENTIRE RECORD FOR THE OTHER LAWSUIT OR THERE'S A TIME DELAY BECAUSE WE HAVE ALL OF THE CEQA MEET AND CONFERS AND INDEX OF DOCUMENTS AND ALL THE REST OF THAT, AND SO THE RECORD WON'T BE READY FOR A LONG TIME, AND WE WANT TO BE ABLE TO COME INTO COURT EARLIER THAN THAT, MAYBE, BUT YOU COULD PROBABLY STILL DO THAT IN THE OTHER CASE.

MR. ZISCHKE: I THINK THAT BELONGS IN THE OTHER

CASE, YOUR HONOR, AND SUBJECT TO WHATEVER STANDARDS APPLY TO WHATEVER PROCEDURALLY --

THE COURT: IF THERE WAS SOME ADVANTAGE IN TERMS OF COST OR TIME I WOULD CONSIDER RETAINING JURISDICTION, PARTICULARLY SINCE I HAVE BOTH CASES.

MR. SILVERSTEIN: THERE IS AN ADVANTAGE IN TERMS OF COST AND TIME WHICH IS -- THAT WE'VE ALREADY NOTICED UP THEIR DEPOSITIONS. THOSE WERE --

THE COURT: YOU CAN DO THAT. YOU CAN DO THAT IN EITHER CASE. IF I RETAIN JURISDICTION OR DON'T YOU CAN NOTICE THOSE DEPOSITIONS. THAT'S FAIR GAME FOR A CHLORIDE COMPLIANCE ISSUE. SURE.

MR. SILVERSTEIN: BUT IF --

THE COURT: IT'S CLEANER TO END PART OF THIS CASE AND GO TO THE NEXT CASE.

MR. WAITE: WE WILL HAVE A FULL ADMINISTRATIVE RECORD ON THE NEXT CASE, YOUR HONOR.

MR. SILVERSTEIN: CAN YOUR HONOR MAINTAIN -- AGAIN, THERE ARE SOME THINGS THAT YOUR HONOR CAN THINK OF AS A COMPROMISED POSITION THAT WOULD ENABLE US TO HELP DEMONSTRATE THAT WHAT -- THE BRUNS DECLARATION AND THE NONEXISTENT HYDE EVIDENCE WOULD BE ABOUT THEIR ACTIONS AND THEIR SPENDING.

WE WANT TO KNOW WHERE THAT MONEY HAS GONE. THERE MAY BE A CCP 562 TAXPAYER WASTE, AND, YOU KNOW, MISUSE -- MISAPPROPRIATION OF FUNDS ISSUE HERE FOR THE MILLIONS THAT HAVE BEEN GOING OUT IN WHAT APPEARS TO BE VERY PLAIN DEROGATION OF THE WRIT. WE WANT TO GET

DISCOVERY ABOUT THAT BECAUSE, AGAIN, THEY WERE CLOSE TO THE LINE OR THEY WERE OVER THE LINE.

THE COURT: THAT IS DEBT RELIEF, AND I WON'T BE HANDLING THAT.

MR. SILVERSTEIN: IF IT'S SUBSUMED WITHIN -- WITHIN -- SOMETIMES YOUR HONOR WILL ADDRESS DEBT RELIEF IF IT'S CLOSELY RELATED.

THE COURT: IT'S SUBSUMED WITHIN, YES.

MR. BECK: YOUR HONOR, YOU HAVE VERY CLEAR EVIDENCE BEFORE THE COURT IN THIS CASE BEFORE YOUR HONOR RULED THAT THE DISTRICT WAS VERY CLEAR. IT ISSUED STOP ORDER NOTICES TO EVERYBODY INVOLVED IN THE PROJECT. THAT IS VERY CLEAR ON THE RECORD HERE.

SO WHY ARE WE GOING BACK NOW AND REVISITING AND CREATING THIS, WELL, WE WANT TO KEEP SOME ISSUES OPEN FOR FURTHER DISCOVERY. IT HOPELESSLY MUDDIES THE WATERS, YOUR HONOR. I THINK YOUR HONOR RECOGNIZES THAT. WE DO NEED TO MOVE FORWARD.

THE COURT: WELL, I AM THINKING NOW IF THERE IS A PRELIMINARY INJUNCTION IN THE NEW LAWSUIT, THAT MOTION WILL HAVE TO SHOW -- WHAT WILL YOU HAVE TO SHOW; THAT THEY ARE GOING FORWARD WITH THE CHLORIDE COMPLIANCE PROJECT, WHICH I HAVE ALLOWED THEM TO DO; THAT THEY ARE SPENDING MONEY ON X, Y, AND Z IN SUPPORT OF THAT PROJECT; AND THAT THAT PROJECT IS NOT SUPPORTED BY THE FEIR. I GUESS THAT'S WHAT YOU WOULD HAVE TO SHOW IN THAT PRELIMINARY INJUNCTION MOTION; RIGHT?

IF YOU MADE A MOTION IN THIS LAWSUIT, YOU WANT

ME TO PARTIALLY DISCHARGE THE WRIT WITH RESPECT TO THE CHLORIDE COMPLIANCE PROJECT BUT RETAIN JURISDICTION FOR AN ADDITIONAL SHOWING THAT THE RECIRCULATED FEIR IS INADEQUATE AND THEREFORE THEY SHOULD NOT GO FORWARD AT ALL WITH THE PROJECT.

I DON'T SEE A LOT OF DIFFERENCE BETWEEN THOSE TWO MOTIONS. THEY ARE VERY SIMILAR.

MR. ZISCHKE: YOU WOULD BE CONSIDERING THE SAME ISSUE IN TWO DIFFERENT CASES WHICH DOESN'T MAKE SENSE.

THE COURT: I DON'T SEE THE BENEFIT, MR. SILVERSTEIN, OF RETAINING JURISDICTION TO YOU OR TO ME, LET ALONE THE DISTRICT.

THIS SEEMS TO ME, ALTHOUGH ONE IS INJUNCTIVE RELIEF AND THE OTHER IS A MOTION TO COMPEL COMPLIANCE, THE LEGAL FORM DIFFERS, BUT THE SUBSTANCE DOES NOT.

MR. SILVERSTEIN: THE OTHER THING THAT DIFFERS SIGNIFICANTLY IS IF -- I ASSUME THAT THE DISTRICT WOULD -- WOULD CLAIM THAT THEY ARE BEING DAMAGED AND THAT A VERY SIGNIFICANT BOND WOULD NEED TO BE IMPOSED AS A CONDITION OF THE ISSUANCE OF A PRELIMINARY INJUNCTION.

THAT IS A VERY, VERY BURDENSOME AND PROBABLY UNREALISTIC CONDITION IF YOUR HONOR WERE TO IMPOSE THAT.

THE COURT: WELL, THAT'S A GOOD POINT. WHAT ABOUT THAT?

MR. BECK: IT'S BURDENSOME IF THE DISTRICT GETS FINED BECAUSE THEY CAN'T PROCEED WITH THE CHLORIDE COMPLIANCE PROJECT. IT'S BURDENSOME NOT ONLY TO THE DISTRICT, BUT TO THE DISTRICT --

THE COURT: HOLD ON. THAT BEGS THE QUESTION. THAT ASSUMES THAT I FIND THAT YOU ARE IN VIOLATION UNWARRANTEDLY. I AM NOT GOING TO ASSUME I AM GOING TO MAKE A WRONG RULING ON AN ADDITIONAL MOTION. IF I FIND THAT YOU ARE IN VIOLATION, YOU ARE IN VIOLATION.

MR. ZISCHKE: THOSE ARE ISSUES WE WOULD HAVE TO --

THE COURT: WHAT I AM LOOKING FOR IS THIS, ARE YOU WILLING TO WAIVE A BOND FOR A PRELIMINARY INJUNCTION IF I MAKE THEM DO THIS IN THE NEXT LAWSUIT?

MR. WAITE: I DON'T THINK WE ARE PREPARED TO SAY WE'LL WAIVE THE BOND, YOUR HONOR. ABSOLUTELY NOT.

MR. BECK: ABSOLUTELY NOT.

THE COURT: WELL, IT'S A GOOD ARGUMENT THAT HE SHOULDN'T HAVE TO POST A BOND TO GET THE SAME RELIEF IN THE SECOND LAWSUIT THAT HE COULD GET IN THIS ONE.

MR. ZISCHKE: DOESN'T THAT GET ARGUED IN THE SECOND LAWSUIT?

THE COURT: NO. HE'S ARGUING IT NOW. THAT'S THE WHOLE POINT THAT THERE IS AN ADVANTAGE TO NOT HAVING TO MAKE A MOTION IN THE SECOND LAWSUIT.

MR. SILVERSTEIN: YOU SAID IF THERE IS A FINANCIAL DIFFERENCE. I HAVE JUST IDENTIFIED A VERY SIGNIFICANT DIFFERENCE.

THE COURT: THAT'S A GOOD REASON. I AM EITHER GOING TO LIMIT THE DISCHARGE OR YOU ARE GOING TO WAIVE A BOND IN THE SECOND LAWSUIT. WHICH DO YOU WANT?

MR. WAITE: WELL, I DON'T KNOW THAT WE HAVE THE

AUTHORITY TO WAIVE THE BOND. I THINK WE HAVE TO EVALUATE WHATEVER MOTION IS FINAL.

THE COURT: WE'VE GOT THREE LAWYERS HERE FOR THE DISTRICT AND YOU CAN'T WAIVE A BOND?

MR. ZISCHKE: WELL, WE DON'T HAVE A CLIENT.

THE COURT: OKAY.

MR. WAITE: YES.

THE COURT: SO THE DISCHARGE IS LIMITED.

MR. ZISCHKE: HOW IS IT LIMITED?

THE COURT: IT'S LIMITED TO THE EXTENT THAT THEY CAN COME BACK AND MAKE A MOTION ON THE MERITS OF THE FINAL EIR THAT IT IS NONCOMPLIANT WITH CEQA FOR PURPOSES OF COMPELLING THE DISTRICT'S COMPLIANCE WITH THE WRIT. THAT'S WHAT YOU FORCED ME TO DO, TO LET THEM DO THAT IN THIS LAWSUIT.

WHEN I SAY "THEM," YOU HAVE -- THE DISTRICT HAS FORCED ME TO LET THE PETITIONERS DO THAT IN THIS LAWSUIT BECAUSE I DO THINK -- IF IT'S SIX OF ONE AND HALF OF THIS AND THE OTHER THEY SHOULD DO IT IN THE NEW LAWSUIT, BUT IT'S NOT. IT'S THREE OF ONE AND NINE OF THE OTHER, AND SO THEY GET TO DO IT HERE IF YOU ARE NOT WILLING TO WAIVE A BOND, WHICH YOU ARE NOT.

MR. WAITE: BUT, YOUR HONOR, I GUESS THE REAL QUESTION IS WHAT'S THE SCOPE OF THE MOTION FOR PRELIMINARY INJUNCTION IN THE LAWSUIT? IS IT TO STOP THE CHLORIDE COMPLIANCE PROJECT FROM MOVING FORWARD?

THE COURT: YES. YES.

MR. WAITE: BUT THE COURT HAS ALREADY PARTIALLY

DISCHARGED THE WRIT. SO THE DISTRICT IS FREE TO PROCEED TO IMPLEMENT CHLORIDE COMPLIANCE --

THE COURT: THEY WOULD HAVE TO SHOW IN THE NEW LAWSUIT THAT THE CHLORIDE COMPLIANCE PROJECT'S CEQA DOCUMENTATION IS INADEQUATE. THAT'S WHAT THEY ARE GOING TO DO IN THE NEW LAWSUIT, AND LIMITED DISCHARGE ALLOWS THEM TO DO IT IN THIS LAWSUIT.

MR. SILVERSTEIN: WITHOUT BEING CRUSHED BY WHAT THEY --

THE COURT: BY A BOND.

MR. ZISCHKE: I AM NOT CERTAIN THAT THE BOND REQUIREMENT WOULDN'T APPLY HERE ALSO. THAT WOULD BE SOMETHING WE WOULD EVALUATE IF -- IF THEY CHOOSE TO BRING THAT MOTION.

THE COURT: YOU CAN MAKE WHATEVER ARGUMENTS YOU WANT, OKAY. SO THE DISCHARGE -- THE TENTATIVE IS MODIFIED TO THE EXTENT THAT THE DISCHARGE IS LIMITED, AND PETITIONER MAY MAKE AND SHOW ON THE MERITS OF THIS FINAL RECIRCULATED EIR THAT THE CHLORIDE COMPLIANCE PROJECT SHOULD NOT GO FORWARD.

THAT IS THE ONLY BASIS, HOWEVER.

MR. SILVERSTEIN: THANK YOU, YOUR HONOR.

MR. WAITE: I WANT TO MAKE SURE WE ARE CLEAR ON THIS, YOUR HONOR. WHAT DOOR ARE YOU LEAVING OPEN, YOUR HONOR, BECAUSE IT'S NOT --

THE COURT: THE DOOR YOU LEFT OPEN BY NOT WAIVING A BOND.

MR. SILVERSTEIN: THE IRONY IS THAT WHEN WE WERE

HERE LAST YEAR ON ONE OF THESE ISSUES, MR. BECK -- MR. BECK TOOK THE OPPOSITE POSITION, AND HE MADE A STATEMENT THAT THIS HAD TO DO WITH ONE OF THE ALTERNATIVES, AND I THINK IT HAD TO DO WITH THE OBJECTION, AND I SAID, "WAIT A MINUTE," YOU KNOW, "IS HE AUTHORIZED TO DO THAT," AND YOUR HONOR HAD A COLLOQUY WITH HIM, AND HE SAID, YOU KNOW, HE IS MAKING A REPRESENTATION OF WHAT HIS -- THE DISTRICT BOARD IS GOING TO DO OR WILLING TO DO.

SO NOW WE ARE HEARING, YOU KNOW, PROTESTATIONS THAT --

THE COURT: WELL, LET ME BE CLEAR. IN MY VIEW LAWYERS REPRESENTING A CLIENT STANDING IN COURT BEHIND COUNSEL TABLE CAN DO ALMOST ANYTHING. THERE ARE VERY FEW DECISIONS YOU CAN'T MAKE TACTICALLY IN THE LAWSUIT WITHOUT THE PERMISSION OF YOUR CLIENT.

DISMISSING THE CASE IS ONE OF THEM. PLEADING GUILTY FOR A CRIMINAL DEFENDANT IS ONE OF THEM. WAIVING JURY MAY BE ONE OF THEM. ALTHOUGH I THINK A LAWYER CAN WAIVE A JURY. I AM NOT POSITIVE ABOUT THAT. I HAVEN'T HAD A JURY TRIAL IN OVER TEN YEARS, BUT THERE ARE VERY FEW DECISIONS YOU CAN'T MAKE.

WAIVING A BOND I AM CONFIDENT IS ONE OF THEM THAT YOU CAN MAKE, BUT I CAN'T COMPEL YOU TO DO THAT. SO, FINE. I'VE MADE MY RULING.

MR. SILVERSTEIN: THANK YOU, YOUR HONOR.

MR. ZISCHKE: THANK YOU, YOUR HONOR.

MR. BECK: THANK YOU, YOUR HONOR.

THE COURT: SOMEBODY WANT TO GIVE NOTICE? PROBABLY SOMEONE SHOULD GIVE NOTICE BECAUSE I WON'T REMEMBER THIS, AND YOU ARE GOING TO HAVE TO REMIND ME WHEN YOU MAKE YOUR MOTION.

MR. SILVERSTEIN: OKAY, YOUR HONOR, WE WILL GIVE NOTICE. WILL A MINUTE ORDER --

THE COURT: THERE WILL BE A MINUTE ORDER, BUT YOU WILL NEED TO GIVE NOTICE.

MR. SILVERSTEIN: OKAY. THANK YOU, YOUR HONOR.

(WHEREUPON THE PROCEEDINGS CONCLUDED.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT NO. 85 HON. JAMES C. CHALFANT, JUDGE

AFFORDABLE CLEAN WATER ALLIANCE, PETITIONER, VS. SANTA CLARITA VALLEY SANITATION DISTRICT OF LOS ANGELES COUNTY, RESPONDENT.	CASE NO. BS145869 REPORTER'S CERTIFICATE

I, TARRONICA WASHINGTON, CSR NO. 12759, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES 1 THROUGH 70 COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER.

DATED THIS 6TH DAY OF NOVEMBER 2017

_____, CSR NO. 12759
TARRONICA WASHINGTON, OFFICIAL REPORTER

EXHIBIT 6

CASE INFORMATION

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

Case Number: BS170983
AFFORDABLE CLEAN WATER ALLIANCE VS SANTA CLARITA VALLEY

Filing Courthouse: Stanley Mosk Courthouse

Filing Date: 09/25/2017
Case Type: Writ - Administrative Mandamus (General Jurisdiction)
Status: Pending

Click here to access document images for this case
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FUTURE HEARINGS

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

09/26/2019 at 09:30 AM in Department 85 at 111 North Hill Street, Los Angeles, CA 90012
Hearing on Petition for Writ of Mandate

PARTY INFORMATION

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

ALLIANCE AFFORDABLE CLEAN WATER - Petitioner

BECK PAUL JOHN - Attorney for Respondent

BEVERLIN WESLEY GENE - Attorney for Respondent

SANTA CLARITA VALLEY SANITATION DISTRICT - Respondent

SEKI BILL H. ESQ. - Attorney for Petitioner

SILVERSTEIN ROBERT PAUL - Attorney for Petitioner

WAITE DAVID PATRICK - Attorney for Respondent

DOCUMENTS FILED

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

Documents Filed (Filing dates listed in descending order)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
10/10/2017

01/15/2019 Minute Order ((Trial Setting Conference))
Filed by Clerk

11/26/2018 Minute Order ((Court Order))
Filed by Clerk

11/26/2018 Stipulation and Order (to continue trial setting)
Filed by SANTA CLARITA VALLEY SANITATION DISTRICT (Respondent)

10/25/2018 Minute order entered: 2018-10-25 00:00:00
Filed by Clerk

10/24/2018 Minute Order ((Court Order))
Filed by Clerk

10/23/2018 Stipulation and Order (to continue trial setting)
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/22/2018 Proof of Service (not Summons and Complaint) (of opening brief (personal service))

09/06/2018 Minute order entered: 2018-09-06 00:00:00
Filed by Clerk

09/06/2018 Minute Order

07/17/2018 Minute order entered: 2018-07-17 00:00:00

Filed by Clerk

07/16/2018 Minute order entered: 2018-07-16 00:00:00
Filed by Clerk

07/16/2018 Minute Order

07/16/2018 STIPULATION TO CONTINUE JULY 17, 2018 TRIAL SETTING CONFERENCE; ORDER

07/16/2018 Stipulation and Order
Filed by SANTA CLARITA VALLEY SANITATION DISTRICT (Respondent)

05/22/2018 Minute order entered: 2018-05-22 00:00:00
Filed by Clerk

05/21/2018 Minute order entered: 2018-05-21 00:00:00
Filed by Clerk

05/21/2018 STIPULATION TO CONTINUE MAY 22, 2018 TRIAL SETTING CONFERENCE; ORDER

05/21/2018 Minute Order

05/21/2018 Stipulation and Order
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

04/05/2018 Minute order entered: 2018-04-05 00:00:00
Filed by Clerk

04/04/2018 Minute order entered: 2018-04-04 00:00:00
Filed by Clerk

04/04/2018 STIPULATION TO CONTINUE APRIL 5, 2018 TRIAL SETTING CONFERENCE; ETC.

04/04/2018 Minute Order

04/04/2018 Stipulation and Order
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

01/02/2018 Minute order entered: 2018-01-02 00:00:00
Filed by Clerk

12/22/2017 STIPULATION TO CONTINUE JANUARY 2, 2018 TRIAL SETTING CONFERENCE; ORDER

12/22/2017 Stipulation and Order
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

12/15/2017 REQUEST FOR CEQA HEARING

12/15/2017 Request
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/27/2017 Notice
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/27/2017 NOTICE OF ACTION TO RESPONSIBLE AGENCIES

10/24/2017 Notice
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/24/2017 NOTICE OF COURT'S ORDER RE TRIAL SETTING CONFERENCE

10/17/2017 Miscellaneous-Other
Filed by SANTA CLARITA VALLEY SANITATION DISTRICT (Respondent)

10/17/2017 Notice
Filed by SANTA CLARITA VALLEY SANITATION DISTRICT (Respondent)

10/17/2017 RESPONSIBLE AGENCIES AND PUBLIC AGENCIES HAVING JURISDICTION OVER NATURAL RESOURCES AFFECTED BY PROJECT

10/17/2017 NOTICE OF SETTLEMENT MEETING

10/11/2017 Notice of Trial Setting Conference and Attached Orders Thereon
Filed by Clerk

10/11/2017 Notice of Trial Setting Conference and Attached Orders Thereon
Filed by Clerk

10/11/2017 NOTICE OF TRIAL SETTING CONFERENCE & ATTACHED ORDERS THEREON

10/11/2017 Notice
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/11/2017 NOTICE OF FILING PROOFS OF SERVICE

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
TOP 10/10/2017

10/10/2017 Minute order entered: 2017-10-10 00:00:00
Filed by Clerk

10/10/2017 Minute Order

10/02/2017 NOTICE OF RELATED CASE

10/02/2017 Notice of Related Cases

10/02/2017 Notice of Related Case
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

09/25/2017 PROOF OF NOTICE OF INTENTION TO FTHE CEQA PETITION

09/25/2017 SUMMONS

09/25/2017 NOTICE TO ATTORNEY GENERAL

09/25/2017 REQUEST FOR PREPARATION OF RECORD OF PROCEEDINGS

09/25/2017 VERIFIED PETITION FOR WRIT OF MANDAMUS

09/25/2017 Complaint
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
TOP 10/10/2017

PROCEEDINGS HELD

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

Proceedings Held (Proceeding dates listed in descending order)

01/15/2019 at 1:30 PM in Department 85, James C. Chalfant, Presiding
Trial Setting Conference - **Held**

11/27/2018 at 1:30 PM in Department 85, James C. Chalfant, Presiding
Trial Setting Conference - **Not Held - Continued - Stipulation**

11/26/2018 at 2:00 PM in Department 85, James C. Chalfant, Presiding
Court Order

10/25/2018 at 09:30 AM in Department 85, James C. Chalfant, Presiding
Trial Setting Conference - **Not Held - Continued - Stipulation**

10/24/2018 at 08:30 AM in Department 85, James C. Chalfant, Presiding
Court Order

09/06/2018 at 09:30 AM in Department 85
Trial Setting Conference - **Held - Continued**

07/17/2018 at 1:30 PM in Department 85
Trial Setting Conference (Trial Setting Conference; Matter continued) -

07/16/2018 at 2:00 PM in Department 85
Court Order (Court Order; Court makes order) -

05/22/2018 at 1:30 PM in Department 85
Trial Setting Conference (Trial Setting Conference; Continued by Stipulation) -

05/21/2018 at 08:30 AM in Department 85
Court Order - **Held**

04/05/2018 at 09:30 AM in Department 85
Trial Setting Conference (Trial Setting Conference; Continued by Stipulation) -

04/04/2018 at 08:30 AM in Department 85
Court Order - **Held**

01/02/2018 at 1:30 PM in Department 85
Trial Setting Conference

10/10/2017 at 00:00 AM in Department 1
Court Order (Court Order; Case is reassigned) -

REGISTER OF ACTIONS

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

Register of Actions (Listed in descending order)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
10/11/2017

01/15/2019 at 1:30 PM in Department 85, James C. Chalfant, Presiding
Trial Setting Conference - **Held**

01/15/2019 Minute Order ((Trial Setting Conference))
Filed by Clerk

11/27/2018 at 1:30 PM in Department 85, James C. Chalfant, Presiding
Trial Setting Conference - **Not Held - Continued - Stipulation**

11/26/2018 at 2:00 PM in Department 85, James C. Chalfant, Presiding
Court Order

11/26/2018 Minute Order ((Court Order))
Filed by Clerk

11/26/2018 Stipulation and Order (to continue trial setting)
Filed by SANTA CLARITA VALLEY SANITATION DISTRICT (Respondent)

10/25/2018 at 09:30 AM in Department 85, James C. Chalfant, Presiding
Trial Setting Conference - **Not Held - Continued - Stipulation**

10/25/2018 Minute order entered: 2018-10-25 00:00:00
Filed by Clerk

10/24/2018 at 08:30 AM in Department 85, James C. Chalfant, Presiding
Court Order

10/24/2018 Minute Order ((Court Order))
Filed by Clerk

10/23/2018 Stipulation and Order (to continue trial setting)
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/22/2018 Proof of Service (not Summons and Complaint) (of opening brief (personal service))

09/06/2018 at 09:30 AM in Department 85
Trial Setting Conference - **Held - Continued**

09/06/2018 Minute Order

09/06/2018 Minute order entered: 2018-09-06 00:00:00
Filed by Clerk

07/17/2018 at 1:30 PM in Department 85
Trial Setting Conference (Trial Setting Conference; Matter continued) -

07/17/2018 Minute order entered: 2018-07-17 00:00:00
Filed by Clerk

07/16/2018 at 2:00 PM in Department 85
Court Order (Court Order; Court makes order) -

07/16/2018 Minute Order

07/16/2018 Stipulation and Order
Filed by SANTA CLARITA VALLEY SANITATION DISTRICT (Respondent)

07/16/2018 STIPULATION TO CONTINUE JULY 17, 2018 TRIAL SETTING CONFERENCE; ORDER

07/16/2018 Minute order entered: 2018-07-16 00:00:00
Filed by Clerk

05/22/2018 at 1:30 PM in Department 85
Trial Setting Conference (Trial Setting Conference; Continued by Stipulation) -

05/22/2018 Minute order entered: 2018-05-22 00:00:00
Filed by Clerk

05/21/2018 at 08:30 AM in Department 85
Court Order - **Held**

05/21/2018 Stipulation and Order

Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

05/21/2018 STIPULATION TO CONTINUE MAY 22, 2018 TRIAL SETTING CONFERENCE; ORDER

05/21/2018 Minute Order

05/21/2018 Minute order entered: 2018-05-21 00:00:00
Filed by Clerk

04/05/2018 at 09:30 AM in Department 85
Trial Setting Conference (Trial Setting Conference; Continued by Stipulation) -

04/05/2018 Minute order entered: 2018-04-05 00:00:00
Filed by Clerk

04/04/2018 at 08:30 AM in Department 85
Court Order - **Held**

04/04/2018 Minute order entered: 2018-04-04 00:00:00
Filed by Clerk

04/04/2018 Minute Order

04/04/2018 STIPULATION TO CONTINUE APRIL 5, 2018 TRIAL SETTING CONFERENCE; ETC.

04/04/2018 Stipulation and Order
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

01/02/2018 at 1:30 PM in Department 85
Trial Setting Conference

01/02/2018 Minute order entered: 2018-01-02 00:00:00
Filed by Clerk

12/22/2017 STIPULATION TO CONTINUE JANUARY 2, 2018 TRIAL SETTING CONFERENCE; ORDER

12/22/2017 Stipulation and Order
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

12/15/2017 Request
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

12/15/2017 REQUEST FOR CEQA HEARING

10/27/2017 NOTICE OF ACTION TO RESPONSIBLE AGENCIES

10/27/2017 Notice
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/24/2017 Notice
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/24/2017 NOTICE OF COURT'S ORDER RE TRIAL SETTING CONFERENCE

10/17/2017 NOTICE OF SETTLEMENT MEETING

10/17/2017 Notice
Filed by SANTA CLARITA VALLEY SANITATION DISTRICT (Respondent)

10/17/2017 Miscellaneous-Other
Filed by SANTA CLARITA VALLEY SANITATION DISTRICT (Respondent)

10/17/2017 RESPONSIBLE AGENCIES AND PUBLIC AGENCIES HAVING JURISDICTION OVER NATURAL RESOURCES AFFECTED BY PROJECT

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
TOP 10/11/2017

10/11/2017 NOTICE OF TRIAL SETTING CONFERENCE & ATTACHED ORDERS THEREON

10/11/2017 Notice of Trial Setting Conference and Attached Orders Thereon
Filed by Clerk

10/11/2017 Notice
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/11/2017 Notice of Trial Setting Conference and Attached Orders Thereon
Filed by Clerk

10/11/2017 NOTICE OF FILING PROOFS OF SERVICE

10/10/2017 at 00:00 AM in Department 1
Court Order (Court Order; Case is reassigned) -

10/10/2017 Minute order entered: 2017-10-10 00:00:00
Filed by Clerk

10/10/2017 Minute Order

10/02/2017 Notice of Related Cases

10/02/2017 Notice of Related Case
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

10/02/2017 NOTICE OF RELATED CASE

09/25/2017 SUMMONS

09/25/2017 NOTICE TO ATTORNEY GENERAL

09/25/2017 PROOF OF NOTICE OF INTENTION TO FTHE CEQA PETITION

09/25/2017 VERIFIED PETITION FOR WRIT OF MANDAMUS

09/25/2017 Complaint
Filed by AFFORDABLE CLEAN WATER ALLIANCE (Petitioner)

09/25/2017 REQUEST FOR PREPARATION OF RECORD OF PROCEEDINGS

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
TOP 10/11/2017

EXHIBIT 7

Affordable Clean Water Alliance v. Santa Clarita Valley Sanitation District of Los Angeles County, BS 161742

Tentative decision on motion to dismiss: granted

Respondent Santa Clarita Valley Sanitation District of Los Angeles County ("District") moves to dismiss this action on the grounds that the case is moot. In the alternative, District seeks to stay the case until the related case Affordable Clean Water Alliance v. Santa Clarita Valley Sanitation District of Los Angeles County, Case No. BS 145869 ("Related Case"), has been finally resolved.

The court has read and considered the moving papers and opposition (no reply was filed), and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner Affordable Clean Water Alliance ("ACWA") commenced this proceeding on April 20, 2016. The verified Petition alleges in pertinent part as follows.

On October 28, 2013, District approved a project to remove chloride (salts) from the treated effluent from its Water Reclamation Plants in order to comply with an order from the California Regional Water Quality Control Board ("Regional Board"). On October 28, 2013, District also certified the Original 2013 EIR covering that project (the "Original Project"). The Original Project had three main objectives: (1) to comply with the chloride limit placed on its treated effluent discharge, as set by the Regional Board; (2) to build or establish the necessary treatment facilities to remove the chloride while maintaining enough space at the District's Valencia plant to allow for future expansion of the District's treatment facilities; and (3) to provide treated effluent "that accommodates recycled water reuse opportunities in the community while protecting beneficial uses of the [Santa Clara River]."

On November 27, 2013, ACWA challenged the Original 2013 EIR in the Related Case. On February 23, 2016, this court found the Original 2013 EIR to be in violation of CEQA, and issued a ruling and later a judgment finding that the District must decertify the Original 2013 EIR and set aside all Project approvals.

Before trial in the Related Case, on or about mid-November, 2015, the District released a Draft Supplemental Environmental Impact Report For Brine Concentration and Limited Trucking ("DSEIR") for review by the general public and by public agencies. The DSEIR purported to supplement the Original 2013 EIR by performing a CEQA analysis on a change to the Project -- a different method for the disposal of brine waste. The DSEIR analyzed a set of techniques to concentrate the brine waste, thereby reducing its volume, and analyzed disposal of the concentrated brine by trucking it to the Los Angeles County Sanitation District's wastewater disposal facility for eventual discharge to the Pacific Ocean. The Final 2016 SEIR ("2016 FSEIR"), including responses to public comments, was issued by District on March 11, 2016.

On March 18, 2016, the same day that the Writ decertifying the Original 2013 EIR was served on it, District put on its website the agenda for its upcoming March 23, 2016 Board meeting.

That agenda stated that the Board proposed to adopt a resolution to certify the 2016 FSEIR, and a resolution to decertify the Original 2013 EIR pursuant to the Superior Court's writ. The agenda also stated that the Board would consider recertifying the Original 2013 EIR in combination with the 2016 FSEIR. In addition, the agenda stated that the third objective of the Original 2013 EIR, providing treated effluent from District's Water Reclamation Plants to water providers, would be deleted from the Original 2013 EIR. No copy of the Original 2013 EIR as modified by these deletions and changes was attached to the agenda, put on the District's website, or circulated for public and other agency review and comment.

At its March 23, 2016 meeting, the District Board considered the Original 2013 EIR with the recycled water component of the Project deleted, and as combined with the 2016 FSEIR, which was not yet certified. This hybrid creation was referred to by the District as the "Augmented EIR," a term that does not appear in CEQA. Petitioner alleges that the Augmented EIR was not circulated for public review and comment prior to the March 23, 2016 Board meeting, was not made available on the District's website with the agenda for the March 23, 2016 Board meeting, and was not available, including upon specific request, at the March 23, 2016 meeting at which the District Board considered its certification. The Augmented EIR was not submitted to the Governor's Office of Planning and Research's State Clearinghouse for CEQA documents.

Petitioner challenges the actions taken by District's Board at its March 23, 2016 meeting to certify the Augmented EIR, certify the Final 2016 SEIR, and approve the truncated Chloride Compliance Plan as set out in the Augmented EIR. Based upon District's violations of CEQA, Petitioner seeks a writ of mandamus invalidating the District's certification of the Augmented EIR and the 2016 FSEIR, and invalidating and setting aside the new, truncated Chloride Compliance Plan and all related Project approvals,

B. Applicable Law

A case is moot when a court ruling can have no practical impact or provide the parties effectual relief. Downtown Palo Alto Comm. for Fair Assessment v. City Council, (1986) 180 Cal.App.3d 384, 391. A petition for writ of mandate may be dismissed as moot when the respondent provides the relief requested in the petition. Bruce v. Gregory, (1967) 65 Cal. 2d 666, 671; Cal. Teachers Ass 'n v. Ingwerson, (1996) 46 Cal. App. 4th 860, 873-74. When an entity voluntarily complies with its alleged duty, a writ of mandate is unnecessary, as there is no purpose in ordering a party to do what has already been done. State Bd. of Educ. v. Honig, (1993) 13 Cal.App.4th 720, 742. When a case is moot, dismissal of the action is the proper remedy, rather than engaging in a futile exercise of assessing the case on the merits. Coal. for a Sustainable Future in Yucaipa v. City of Yucaipa, ("Yucaipa I") (2011) 198 Cal. App. 4th 939, 945; Wilson v. L.A. County Civ. Serv. Comm 'n, (1952) 112 Cal.App.2d 450, 453.

CEQA cases are not automatically mooted merely because some progress has been made on the project. 624 Bakersfield Citizens for Local Control v. City of Bakersfield, (2004) 124 Cal.App.4th 1184, 1202-04 (partial construction of a project did not moot the appeal, as the project could still be modified, reduced, or mitigated); Woodward Park Homeowners Assn. v. Garreks, Inc., (2000) 77 Cal.App.4th 880, 888 (already constructed project could be modified or removed). Similarly, the preparation and certification of an EIR in the face of a CEQA challenge does not render an appeal moot where the approvals may still be set aside and no irreversible physical or legal change has occurred during pendency of the action. Save Tara v. City of West Hollywood,

("Save Tara") (2008) 45 Cal.4th 116, 127. Even if the case would otherwise be moot, a court retains discretion to hear the case where (1) a material issue remains; (2) an issue of public importance that may recur is presented; or (3) there may be a recurrence of the controversy between the parties to the case. Cucamongans United for Responsible Expansion v. City of Rancho Cucamonga, (2000) 82 Cal.App.4th 473, 479-80.

C. Statement of Facts[1]

1. Respondent's Evidence

On October 28, 2013, District certified the Original 2013 EIR. Tremblay Decl. ¶4. Among other things, the Original 2013 EIR provided for treatment facilities to manage brine and remove chloride from wastewater to meet the Regional Board's mandated chloride limits for the River and associated compliance deadlines ("Chloride Compliance Project"). Id. The 2013 EIR also contained a recycled water use component that provided for the reuse of the treated wastewater discharged from the District's plants ("Recycled Water Project"). Tremblay Decl. ¶5. In September, 2015, the Regional Board issued Order R-4-2015-0071, which contains deadlines for the District to propose, design, construct, and operate the Chloride Compliance Project. Unger Decl. ¶4. Among other deadlines, the Regional Board directed the District to commence startup of the entire system no later than July 1, 2019. Id., Ex. A at 26.

On November 27, 2013, ACWA filed the Related Case challenging the Original 2013 EIR. Beck Decl. ¶2. A trial on the 2013 EIR Case was held on February 23, 2016. Beck Decl. ¶3. In its ruling after the trial, the court determined that the 2013 EIR complied with CEQA with respect to those components relating to the chloride reduction processes, including the construction of microfiltration and reverse osmosis and ultraviolet light disinfection equipment. Id. The court found only two portions of the 2013 EIR to be out of compliance with CEQA: (1) the lack of substantial evidence to support its conclusions about the potential impacts of reduced discharge to the River on the habitat of the unarmored threespine stickleback fish, and (2) the lack of a recommended option for brine management that is an integral part of the chloride compliance facilities. Id.

On March 17, 2016, the Clerk of the Superior Court issued a Writ that ordered District to 1) decertify the 2013 EIR; 2) set aside and invalidate the project approvals; and 3) refrain from taking any steps to carry out the project until and unless the District has fully complied with CEQA, all other applicable laws, and the Writ, and the Writ has been discharged. Beck Decl. ¶4. The Writ also ordered District to demonstrate compliance with the Writ by means of a return to the Writ. Id.

On March 23, 2016, the District certified the Supplemental Environmental Impact Report for Brine Concentration and Limited Trucking ("Brine SEIR"). Tremblay Decl. ¶6. The Brine SEIR set forth the District's election to proceed with the brine minimization and trucking alternative for the Chloride Compliance Project. Id.

On April 14, 2016, the District filed a return to the Writ in the Related Case. Beck Decl. ¶5. Petitioner ACWA filed a motion challenging the return to the Writ, which was heard by the court on June 2, 2016. Id. At that hearing, the court ruled that the return to the Writ was insufficient because District had not adequately studied the potential impacts of potentially

[1] Petitioner ACWA's written objections to District's evidence were overruled.

reduced discharges from the District's water reclamation plants on the unarmored threespine stickleback fish. Id., Ex. B. The court ruled that District could take no further action in performance of the Chloride Compliance Project until it completed further studies regarding the potential impacts to the unarmored threespine stickleback fish. Id. The court also ruled that District could separate the Chloride Compliance Project from the Recycled Water Project if it undertakes an environmental analysis of the potential impacts of that separation. Id., Ex. B pp. 16-17. This ruling did not address the merits of the Brine SEIR.

On July 6, 2016, Samuel Unger ("Unger"), Executive Officer of the Regional Board, issued a letter to the District stating that the court's June 2, 2016 ruling in the Related Case had no effect on the Regional Board's chloride requirements and associated deadlines imposed on the District and its water reclamation plants. Unger Decl. ¶5. On March 17, 2017, Unger sent another letter to District reiterating the Regional Board's position. Unger Decl. ¶6.

On August 4, 2016, pursuant to the court's February 2016 ruling in the Related Case, and the court's later ruling on June 2, 2016, the District issued a Notice of Preparation of the Supplemental Environmental Impact Report for Study of Impacts to the Unarmored Threespine Stickleback Fish Under Reduced Discharge Conditions from the Santa Clarita Valley Sanitation District's Water Reclamation Plants ("Stickleback SEIR"). Tremblay Decl. ¶7. The purpose of the Stickleback SEIR will be to address potential impacts to the armored threespine stickleback fish resulting from the Recycled Water Project. Id. In a comment letter in response to the Notice of Preparation, CDFW called on the District to undertake a complete baseline assessment of biological and minimum in-stream flow analysis. Id. CDFW also stated that, without further scientific information, it could not conclude that reduced discharges would not result in "take" of unarmored threespine stickleback. Id. Based on its analysis of the modeling and studying required to meet CDFW's recommendations, District has concluded that completing the studies would further delay implementation of the Chloride Compliance Project. Id.

In light of the Regional Board's and CDFW's requirements imposed on the Recycled Water Project, Chloride Compliance Project, and unarmored threespine stickleback study, District has elected to pursue a course that will separate the Recycled Water Project from the Chloride Compliance Project. Tremblay Decl. ¶8. To this effect, on February 17, 2017, District published a Notice of Preparation of Recirculated Santa Clarita Valley Sanitation District Chloride Compliance Project Environmental Impact Report — Separation of Recycled Water Project ("2017 NOP"). Tremblay Decl. ¶9. The public review period for the 2017 NOP commenced on February 17, 2017 and ended on March 20, 2017. Tremblay Decl. ¶9.

The 2017 NOP provides notice of a recirculated draft Environmental Impact Report ("Recirculated Draft EIR") that will update the prior analysis of the Chloride Compliance Project in the Original 2013 EIR and Brine SEIR. Tremblay Decl. ¶10. The Recirculated Draft EIR will evaluate whether the eventual increased use of water in the Recycled Water Project is a separate activity with independent utility from the Chloride Compliance Project, and whether such separation results in no significant environmental impacts. Tremblay Decl. ¶¶ 10, 13. The optional Recycled Water Project will be pursued in a parallel effort and analyzed in a separate environmental document on its own timeline. Tremblay Decl. ¶10.

The Recirculated Draft EIR is scheduled to be released in late April or early May 2017, with certification tentatively scheduled for July or August 2017. Tremblay Decl. ¶12. The Recirculated Draft EIR is intended to achieve full compliance with the Writ in the Original 2013

EIR Case. Tremblay Decl. ¶10. The Recirculated Draft EIR, although superseding the 2013 EIR and the Brine SEIR as the operative environmental document, will retain those components of the 2013 EIR with which the Court in the 2013 EIR Case did not find fault. Tremblay Decl. ¶¶ 10-11. As such, the Recirculated Draft EIR will become the operative environmental document that supports the Chloride Compliance Project, consistent with all prior rulings. Tremblay Decl. ¶11.

The Recirculated Final EIR, which includes responses to comments and the revised Recirculated Draft EIR, was presented to District's Board at a public hearing on August 30, 2017. Prestia Decl. ¶5. At that hearing, the Board decertified the Original 2013 EIR, decertified the Brine SEIR, certified the Recirculated Final EIR, and approved the Chloride Compliance Project. Prestia Decl. ¶6, Exs. A-D.

2. Petitioner's Evidence

The Original 2013 EIR covered all aspects of the chloride project, including the chloride removal treatment, disposal of brine byproduct, and disposition of recycled water. Durbin Decl. Ex. 1. The court ordered the Original 2013 EIR decertified on February 23, 2016. Id.

District released a Draft Supplemental EIR for Alternative Deep Well Injection Site ("Deep Well Draft EIR") in January 2015. Durbin Decl. Ex. 2. The Deep Well Draft EIR was never certified by the District, and was withdrawn at the March 11, 2015 meeting. Id.

The Brine SEIR was certified on March 23, 2016 by vote of the District Board, and is one of two CEQA documents at issue in this litigation. Durbin Decl. Ex. 9. The District unsuccessfully presented the Brine SEIR to the court as the District's Return to the Writ. Durbin Decl. Ex. 3. The court refused to accept the Brine SEIR as an adequate return, stating that District's decision to split the Chloride Project into two parts (the Chloride Compliance Project and the Recycled Water Project) was classic piecemealing. Id. at p.7.

The Augmented EIR is a cobbled-together pseudo document never reduced to writing. Pet. ¶¶ 7-13. The Augmented EIR purportedly consists of (1) a revised version of the Original 2013 EIR with the Recycled Water Project deleted; and (2) the then-uncertified Brine SEIR. Id.

The District issued a Notice of Preparation for the Stickleback SEIR on August 4, 2016. Durbin Decl. Ex. 4. The Stickleback SEIR seeks to carry out the District's impermissible separation of the overall Project by carving out the Recycled Water Project. Id. The Stickleback SEIR purports to examine the environmental impacts of possible disposition of recycled water, whether discharged or diverted to community uses. Id. No draft of this Stickleback SEIR has been released to the public.

D. Analysis

1. Mootness

District argues that this case should be dismissed as moot because the Recirculated Final EIR has supplanted and superseded the EIR documents at issue in this case. Mot. at 9. There is no longer any justiciable controversy regarding the Brine SEIR because District decertified it on August 30, 2017. Prestia Decl. ¶6. The Augmented EIR is also supplanted by the Final Recirculated EIR. *See* Tremblay Decl. ¶10. As such, District asserts that the relief sought in the Petition has already been achieved by its actions, and the Petition should be dismissed as moot.

ACWA argues that the motion should be denied as procedurally improper, as the Recirculated Draft EIR was merely a draft when the motion to dismiss was filed. Opp. at 3. It

was not until August 30, 2017, four months after the motion was filed, that the Recirculated Final EIR was approved by the Board. Prestia Decl. ¶6. The Prestia Declaration, filed on September 1, 2017, contains the necessary supporting evidence for the motion, but was not filed with the motion as required by CCP section 1005 and 1010. Opp. at 4.

The court agrees that the motion to dismiss was prematurely filed and improperly set for hearing in June 2017 without the necessary supporting evidence. However, District has now provided the required evidence in the Prestia declaration filed on September 1, 2017 showing that the Recirculated Final EIR has been approved and the Brine SEIR and Augmented EIR have been decertified. *See generally* Prestia Decl. The Prestia Declaration was filed and served within the time limits of CCP section1005, before ACWA was required to file its opposition brief, and pursuant to the parties' stipulation to continue the hearing. Thus, while the motion was filed and set for hearing prematurely, it has now been scheduled when the evidence is fully developed and Petitioner has had an opportunity to oppose. An order requiring District to re-file the motion would not be in the interests of judicial economy. The court will exercise its discretion to hear and consider District's motion to dismiss.[2]

Turning to the motion's merits, ACWA argues that this case is not moot. ACWA concedes that the 2013 EIR and Brine SEIR have been decertified and superseded, but argues that District has not provided sufficient evidence that the Augmented EIR has been superseded so as to make the entire Petition moot. Opp. at 5.

As District argues, the Augmented EIR is not a separate document but merely a summary description of the 2013 EIR as modified by the Brine SEIR. Reply at 3. Even ACWA states that the Augmented EIR is a revised version of the 2013 EIR without the Recycled Water component, coupled with the Brine SEIR in which District adopted the trucking alternative for the Chloride Compliance Project. Opp. at 2. The Augmented EIR was never separately certified, and the operative documents are the 2013 EIR and the Brine SEIR. Both documents were decertified at the August 30, 2017 Board meeting. Prestia Decl. Exs. A, B. There is no Augmented EIR that can be decertified and its components have been decertified. Neither the 2013 EIR nor the Brine SEIR remains in force, and Petitioner's challenge to them is mooted by the Board's action. The Recirculated Final EIR is the operative document and the Chloride Compliance Project is the operative project for CEQA purposes.

ACWA asserts that, even if the Recirculated Final EIR supplanted both the Augmented EIR and the Brine SEIR, the time for ACWA to challenge the Recirculated Final EIR has not yet expired. Opp. at 6. If ACWA is successful in that challenge, the Augmented EIR and Brine SEIR will not be supplanted. This argument is not well taken. If ACWA successfully challenges the Recirculated Final EIR and it is invalidated by a court, neither of the Augmented EIR and the Brine SEIR would be reinstated. They have been decertified and have no effect.

Finally, ACWA argues that, even if the Petition is technically moot, the court can retain jurisdiction because the material issue of the validity of the Augmented EIR remains pending, the case is of public importance, and the issues in this Petition will likely arise again. Cucamongans United for Responsible Expansion v. City of Rancho Cucamonga, *supra*, 82 Cal.App.4th at 479-

[2] ACWA argues that the premature motion is evidence of District's unlawful pre-commitment to the Recirculated Final EIR. Opp. at 4. Perhaps so, but this conclusion is relevant to a challenge of the Recirculated Final EIR and has no bearing on the mootness issue.

80; Opp. at 6-7. The court disagrees that the validity of the Augmented EIR remains at issue. The Augmented EIR is a hybrid of two documents that have been decertified and the court cannot provide any effective relief to ACWA on that issue. ACWA is correct that CEQA cases are inherently of public importance, and that the issues in the Petition are likely to arise again. However, ACWA does not explain why those issues cannot be more efficiently resolved in a new writ petition challenging the Recirculated Final EIR, which ACWA admits it plans to file. *See* Opp. at 6.

ACWA also relies on Save Tara, *supra*, 45 Cal.4th at 127, and argues that certifying an EIR while a case challenging approval of a project without an EIR does not moot a case. Opp. at 7. In Save Tara, a petition challenged the city's approval of an agreement with a developer prior to any environmental review. Id. Although the city prepared an EIR after the lawsuit was filed, and the EIR was not the subject of the lawsuit, effective relief was still available because the petitioner sought a remedy of setting aside the approval of the agreement. Id.

Save Tara is not on point because the petitioner challenged a separate developer agreement and the certification of the EIR did not affect the validity of that agreement. In contrast, ACWA's Petition challenges only the validity of the Augmented EIR and the Brine SEIR for the Chloride Compliance Project and not a separate agreement by District with a third party. District's actions to decertify and replace those documents has effectively provided ACWA with the relief it sought in the Petition. Pet. ¶15 ("Petitioner seeks a writ of mandamus invalidating the District's certification of the [Augmented EIR] and the [Brine SEIR]..."). ACWA does not point to any other effective relief that can be granted now that District has decertified the Augmented EIR and Brine SEIR.

The case is moot and shall be dismissed.

2. Prevailing Party for Costs

District asserts that the dismissal should be entered in its favor as the prevailing party. Mot. at 11. District relies on City of Long Beach v. Stevedoring Servs. Of America, (2007) 157 Cal.App.4th 672, 680, in which the court held that the dismissal of a cross-complaint as moot would be entered in favor of the cross-defendant as prevailing party, even though the cross-complainant had achieved his primary litigation goal. This decision was based on the plain language of CCP section 1032(a)(4), which defines the "prevailing party" as "a defendant in whose favor a dismissal is entered." Id. The court stated that when a cross-complaint is dismissed as moot, the cross-defendant is one in whose favor the cross-complaint was dismissed and is therefore a prevailing party under CCP section 1032. Id.

Unlike City of Long Beach, the dismissal has not been entered in District's favor, thereby compelling an award of costs under CCP section 1032(a)(4). District has taken affirmative action to moot the case. Specifically, District's action of decertifying the 2013 EIR and Brine SEIR in the face of ACWA's challenge mooted the case. Affirmative action by a defendant during a lawsuit to moot the case does not result in a dismissal entered "in the defendant's favor" under CCP section 1032(a)(4).

enabled ACWA to achieve its litigation goal of invalidating the Augmented EIR and the Brine SEIR. Opp. at 11. The dismissal for mootness is not entered in District's favor.

CCP section 1032(a)(4) also provides that when "any party recovers other than monetary relief and in situations other than specified, the 'prevailing party' shall be as determined by the

court." This is the provision that applies to the cost determination of this lawsuit. The test for purposes of an award of CCP section 1021.5 statutory attorney's fees when a case is mooted – which admittedly is not identical to the test for costs -- is that a plaintiff is entitled to an attorney's fees award if the plaintiff achieved its litigation objectives by means of the defendant's "voluntary" change in conduct *in response to the litigation.* Yucaipa II, *supra*, 238 Cal.App.4th at 522 (emphasis in original). Litigation need not be the only cause of the defendant's acquiescence, only a substantial factor contributing to defendant's action. Id.

Despite District's protestations that it was motivated to separate the Recycled Water Project from the Chloride Compliance Project by the competing requirements imposed by the Regional Board and CDFW,[3] ACWA's challenge in this case to the Augmented EIR and Brine SEIR was a substantial factor in District's decision to decertify the 2013 EIR and the Brine SEIR, and to instead pursue the Recirculated Final EIR. The resolutions decertifying those documents refer to the Related Case as a causative factor. Prestia Decl. Exs. A, B. The Recirculated Final EIR is intended to achieve compliance with the Writ in the Related Case, which was also the purpose of the Brine SEIR and the Augmented EIR. Tremblay Decl. ¶¶ 6, 10. District's decision to decertify the Brine SEIR and Augmented EIR was caused at least in part by ACWA's challenge in this lawsuit to the Augmented EIR and Brine SEIR. ACWA is the prevailing party for purposes of costs.

E. Conclusion

The motion to dismiss is granted. The case must be dismissed as moot because the Brine EIR and the 2013 EIR have been decertified, there is nothing left of the Augmented EIR, and no effective relief can be granted. The dismissal will be entered in favor of ACWA as the prevailing party.

[3] The Regional Board informed District that the court's June 2, 2016 ruling in the Related Case had no effect on the chloride requirements and associated deadlines imposed on District. Unger Decl. ¶5. CDFW's comments to the Notice of Preparation for the Stickleback SEIR led District to conclude that the necessary studies will be time consuming and would further delay implementation of the Chloride Compliance Project. Id. Tremblay Decl. ¶7. Facing these separate issues, District decided to split the Chloride Compliance Project from the Recycled Water Project and prepare the Recirculated Final EIR.

EXHIBIT 8

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

GRACE ROBINSON HYDE
Chief Engineer and General Manager

NOTICE OF PREPARATION

To:	California Office of Planning and Research, Responsible Agencies, Trustee Agencies, and Other Interested Parties
Subject:	Notice of Preparation of a Supplemental Environmental Impact Report
Project Title:	Santa Clarita Valley Sanitation District Supplemental Environmental Impact Report for Study of Impacts to the Unarmored Threespine Stickleback Fish Under Reduced Discharge Conditions from the Santa Clarita Valley Sanitation District's Water Reclamation Plants
Lead Agency:	Santa Clarita Valley Sanitation District of Los Angeles County 1955 Workman Mill Road, Whittier, CA, 90601
Date:	August 4, 2016
Review Period:	August 8, 2016 through September 6, 2016

The Santa Clarita Valley Sanitation District (SCVSD) will be the Lead Agency and will prepare a Supplemental Environmental Impact Report (SEIR) for Study of Impacts to the Unarmored Threespine Stickleback Fish Under Reduced Discharge Conditions from the Santa Clarita Valley Sanitation District's Water Reclamation Plants (Project). The purpose of this notice is to explain the need for the project and to help define the scope of the SEIR.

If you are a Responsible or Trustee Agency, the SCVSD is soliciting written comments as to the scope and content of the environmental information, including impacts and mitigation measures that may be relevant to your agency's statutory responsibilities in connection with the Project. Your agency will need to use the supplemental EIR prepared by the SCVSD when considering any permit or other approval for the Project. Please provide the name and telephone number of a contact person in your agency with your response.

If you are a resident, property owner, or interested party, the SCVSD is requesting your written comments concerning any environmental effects the Project may have on your property or your community. Please share this Notice of Preparation (NOP) with anyone else you feel may be interested in this project. An electronic version of this NOP can be found at http://www.lacsd.org/info/documents_for_public_review.asp.

The SCVSD is holding a 30-day scoping period in compliance with the California Environmental Quality Act (CEQA). Please submit your written comments to the undersigned at the address shown above no later than September 6, 2016. In addition to written comments, two Scoping Meetings will be held to receive comments as to the scope of analysis and content of the SEIR. The Scoping Meetings will be held on August 22, 2016, at 1:30 p.m. and 7:00 p.m. at the Santa Clarita Activities Center, located at 20880 Centre Pointe Parkway, Santa Clarita, California 91350. The earlier meeting is primarily for agencies but the public is welcome to attend. The later meeting is intended for the public. For further information about the Project, please contact Mr. Mark Giljum at (562) 908-4288, extension 2456, or mgiljum@lacsd.org.

Date: 8/4/16

Bryan Langpap, P.E., BCEE
Supervising Engineer, Planning Section

1.0 Background

The Santa Clarita Valley Sanitation District (SCVSD) is the public agency responsible for treating Santa Clarita Valley's wastewater (sewage). Under the Federal Clean Water Act and the State's Porter Cologne Act, the California Regional Water Quality Control Board-Los Angeles Region (Regional Water Board), a State agency, is responsible for regulating discharges to the Santa Clara River (SCR) to protect beneficial uses of the river's water. In fulfilling this responsibility, the Regional Water Board adopted a regulatory order called the Upper Santa Clara River Chloride Total Maximum Daily Load (Chloride TMDL) in 2002 that imposes a strict limit on the level of chloride (salt) in the treated wastewater discharged by the SCVSD's two treatment plants, the Saugus and Valencia Water Reclamation Plants (WRPs)

The SCVSD spent more than ten years attempting to achieve the most reasonable chloride limit possible and develop the most cost-effective and environmentally responsible solution to meeting the State-mandated chloride limit. In 2013, after nearly two years of extensive public input, meetings, hearings, and environmental review, the SCVSD Board of Directors approved a project to comply with the State-mandated chloride limit and certified that the associated Environmental Impact Report (2013 EIR) complied with the California Environmental Quality Act (CEQA). The 2013 EIR was challenged in court.

The approved chloride compliance project included new reverse osmosis equipment at Santa Clarita's Valencia WRP. The water that has passed through a reverse osmosis membrane becomes ultra-clean water and the remaining salty water becomes a byproduct called brine that requires proper disposal. The brine would be managed with enhanced brine concentration equipment at the Valencia WRP and limited trucking of concentrated brine to an existing industrial facility, the Los Angeles County Sanitation Districts' Joint Water Pollution Control Plant in Carson. A Supplemental Environmental Impact Report for Brine Concentration and Limited Trucking (Trucking SEIR) was prepared to describe the environmental impacts from this brine management approach. On March 23, 2016, the SCVSD Board of Directors certified the Final Trucking SEIR as complying with CEQA and approved the brine management approach.

The approved project in the 2013 EIR also contained a component titled "Support for Municipal Reuse of Recycled Water" that involved reducing discharges of recycled water to the SCR so that more recycled water could be reused by the community. The 2013 EIR contained an analysis of the potential environmental impacts to biological resources (including an endangered fish known as the unarmored threespine stickleback) that could occur due to a proposed one-third reduction in discharge. This analysis concluded that no significant impact would occur.

While the Trucking SEIR was being finalized, the Los Angeles County Superior Court issued a ruling on the adequacy of the 2013 EIR. The Court found that two aspects of the 2013 EIR did not fully comply with CEQA. First, the Court directed the SCVSD to conduct additional environmental study on potential impacts to unarmored threespine stickleback fish (stickleback) resulting from the reduced discharge of recycled water. Second, the Court considered the SCVSD's pursuit of an alternate method of brine management to be an "abandonment" of deep well injection, which left the SCVSD with an incomplete chloride compliance project. The Court did not find fault with the environmental review related to the chloride compliance project components. The Court, nonetheless, set aside the 2013 EIR and related approvals until the District complied with CEQA, including the additional study on the stickleback.

With the March 23, 2016 certification of the Trucking SEIR and approval of a new brine management approach, the SCVSD addressed the Court's second issue. The purpose of this SEIR is to address the remaining unresolved issue from the February 2016 ruling—the need for additional studies on the stickleback.

2.0 Project Objectives

The project objectives from the 2013 EIR, as revised in the Trucking SEIR, are to:

- Provide compliance with the State-mandated Chloride TMDL for SCVSD wastewater treatment and discharge facilities by the State's deadlines
- Utilize an existing industrial facility for brine disposal
- Provide a wastewater treatment and effluent management program that accommodates recycled water reuse opportunities in the Santa Clarita Valley while protecting *beneficial* uses of the Santa Clara River

This SEIR will be focused on the potential effects on the stickleback which is related to the third project objective.

3.0 Project Description

The Project for the purposes of this SEIR involves analysis of potential impacts to the stickleback as a result of reductions in discharge from the Valencia and Saugus WRPs to annual average flows of 8.5 and 4.5 million gallons per day (mgd), respectively. Further, the daily minimum flows of both WRPs would not be reduced below the current daily minimum flows of 5 and 4 mgd, respectively, except as may be required by an emergency. The Project only seeks to make quantities of recycled water available to water purveyors that are in excess of a volume established to be protective of the beneficial uses of the SCR. This project does not involve any construction. Facilities to convey recycled water would be constructed by water purveyors and would need their own environmental review under CEQA before being implemented.

4.0 Potential Environmental Effects

CEQA requires analysis and consideration of a project's environmental impacts. The SEIR will be focused on evaluating the potential direct, indirect, and cumulative impacts associated with implementation of the Project. As noted above, the project does not include any construction. Therefore, impact assessment will necessarily be limited to operational effects, including potential direct, indirect and cumulative effects. An Initial Study for the Project has been drafted in compliance with the CEQA Guidelines. The draft Initial Study has thus far determined that the Project would result in a less-than-significant impact to aesthetics, air quality, agricultural and forestry resources, cultural resources, energy resources, geological resources, greenhouse gases, hazards and hazardous material, land use and planning, mineral resources, noise, population and housing, public services, recreation and traffic. As a result, these environmental issue areas will not be carried into the SEIR for further evaluation. The remaining environmental issue areas (listed below) will be evaluated within the SEIR. The final Initial Study will be part of the Draft SEIR and can be reviewed when the Draft SEIR is released for public review. The following sections summarize potential effects of the Project.

4.1 Biological Resources

The production and disposal of brine produced at Valencia WRP would reduce discharge to the SCR, which supports special-status species. Increased use of recycled water could also reduce discharge to the river. The SEIR will evaluate the impacts of the project on the unarmored threespine stickleback as directed by the court ruling and, for potentially significant impacts, identify feasible mitigation measures to reduce the environmental impacts.

4.2 Hydrology and Water Quality

Operation of the project would result in reduced discharge to the river that could impact river hydrology (flow or configuration). The SEIR will evaluate the project's hydrologic impacts on unarmored threespine stickleback as directed by court ruling and, for potentially significant impacts, identify feasible mitigation measures to reduce the environmental impacts.

EXHIBIT 9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE

AFFORDABLE CLEAN WATER ALLIANCE,	)	
	)	
PETITIONERS,	)	SUPERIOR COURT
	)	
-VS-	)	NO. BS161742
	)	
SANTA CLARITA VALLEY SANITATION DISTRICT,	)	
	)	
RESPONDENTS.	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, SEPTEMBER 26, 2017

APPEARANCES:

(SEE FOLLOWING PAGE)

REPORTED BY: PATRICIA ANN THAETE, CSR 8737
OFFICIAL REPORTER

APPEARANCES

FOR PETITIONERS: THE SILVERSTEIN LAW FIRM
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& SUSAN DURBIN, ESQ.
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FOR RESPONDENTS: COX CASTLE NICHOLSON
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&
LEWIS, BRISBOIS, BISGAARD &
SMITH, LLP
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SUITE 4000
LOS ANGELES, CALIFORNIA 90071

CASE NUMBER	BS161742
CASE NAME:	AFFORDABLE CLEAN WATER ALLIANCE VS. SANTA CLARITA VALLEY SANITATION DISTRICT
LOS ANGELES, CA	TUESDAY, SEPTEMBER 26, 2017
DEPARTMENT 85	HON. JAMES C. CHALFANT, JUDGE
APPEARANCES:	(AS HERETOFORE NOTED.)
REPORTER:	PATRICIA ANN THAETE, CSR NO. 8737
TIME:	P.M. SESSION

THE COURT: AFFORDABLE CLEAN WATER ALLIANCE VERSUS SANTA CLARITA VALLEY SANITATION DISTRICT. BS161742. NUMBER TWO ON CALENDAR.

MR. WAITE: GOOD AFTERNOON, YOUR HONOR. DAVID WAITE; COX CASTLE AND NICHOLSON APPEARING ON BEHALF OF THE RESPONDENT.

THE COURT: COUNSEL.

MR. ZISCHKE: GOOD AFTERNOON, YOUR HONOR. MICHAEL ZISCHKE ALSO WITH COX CASTLE FOR RESPONDENT.

MR. BECK: GOOD AFTERNOON, YOUR HONOR. PAUL BECK; LEWIS, BRISBOIS ALSO FOR RESPONDENT.

THE COURT: COUNSEL.

MR. SILVERSTEIN: THANK YOU, YOUR HONOR.

ROBERT SILVERSTEIN AND SUSAN DURBIN APPEARING ON BEHALF OF THE PETITIONER AFFORDABLE CLEAN WATER ALLIANCE.

THE COURT: COUNSEL, GOOD AFTERNOON.

SO THIS IS HERE ON THE RESPONDENT'S MOTION TO DISMISS THIS CASE AS MOOT.

BASIC FACTS ARE AS FOLLOWS; IN 2013 THE DISTRICT CERTIFIED THE ORIGINAL 2013 EIR, WHICH COVERED BOTH THE CHLORIDE COMPLIANCE PROJECT AND ITS RECYCLED WATER PROJECT.

I -- AFTER TRIAL IN THE ORIGINAL CASE, ON THE RELATED CASE, I ISSUED A JUDGMENT AND WRIT THAT REQUIRED DECERTIFYING THE 2013 EIR, SETTING ASIDE AND INVALIDATING PROJECT APPROVALS AND REFRAINING FROM CARRYING OUT THE PROJECT UNTIL THERE WAS COMPLIANCE WITH CEQA ON THE ISSUE, MOST PARTICULARLY, THE STICKLEBACK FISH PROTECTION AND THE LACK OF A RECOMMENDED OPTION AS TO WHICH BRINE MANAGEMENT OPTION THE DISTRICT WAS GOING TO USE.

THE DISTRICT TRIED A SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT CALLED "FOR BRINE CONCENTRATION AND LIMITED TRUCKING," MEANING THEY ELECTED TO TRUCK THE CHLORIDE IN THE BRINE SEIR, FILED A RETURN, PETITIONERS CHALLENGED THAT AS ADEQUATE. I FOUND IT NOT TO BE ADEQUATE BECAUSE THE DISTRICT HAD NOT STUDIED THE IMPACTS OF POTENTIALLY REDUCING THE DISCHARGES TO THE

SANTA CLARA RIVER FROM THE DISTRICT'S WATER RECLAMATION PLANT ON THE STICKLEBACK.

THEN THE REGIONAL WATER BOARD ISSUED A LETTER TO THE DISTRICT SAYING IT WAS NOT ABOUT TO CHANGE ITS DEADLINES FOR COMPLIANCE WITH CHLORIDE REQUIREMENTS IMPOSED ON THE DISTRICT'S WATER RECLAMATION PLANTS.

THE DISTRICT HAS ELECTED TO PURSUE A COURSE THAT WILL SEPARATE THE CHLORIDE COMPLIANCE FROM THE RECYCLED WATER PROJECT AND IN 2017 ISSUED NOTICE OF A RECIRCULATED DRAFT ENVIRONMENTAL IMPACT REPORT THAT WOULD UPDATE THE PRIOR ANALYSIS ON CHLORIDE COMPLIANCE AND ANALYZE THE SEPARATION OF THE RECYCLED WATER PROJECT FROM THE CHLORIDE COMPLIANCE PROJECT INDICATING -- AND THE DISTRICT INDICATES THAT THE OPTIONAL RECYCLED WATER PROJECT WILL BE PURSUED IN A PARALLEL EFFORT AND SEPARATELY ANALYZED IN WHAT IS CALLED THE STICKLEBACK SEIR.

SO THEN -- AND SO BECAUSE OF THIS, THE DISTRICT MOVED TO DISMISS THIS CASE WHICH CHALLENGES THE BRINE SEIR AND WHAT IS CALLED THE AUGMENTED SEIR -- SORRY, AUGMENTED EIR, WHICH IS DESCRIBED BY PETITIONER AS A COBBLED-TOGETHER PSEUDO DOCUMENT THAT WAS NEVER REDUCED TO WRITING.

THE DISTRICT CONTENDS THAT BECAUSE IT IS PURSUING THE RECIRCULATED FINAL EIR, THAT

SUPPLANTS AND SUPERSEDES THE EIR DOCUMENTS AT ISSUE IN THIS CASE.

PETITIONER ARGUES THE MOTION IS PREMATURE, AS THE RECIRCULATED DRAFT EIR WAS MERELY A DRAFT WHEN THE MOTION TO DISMISS WAS FILED. THAT IS TRUE, AND THE COURT AGREES THAT THE MOTION WAS IMPROVIDENTLY FILED PREMATURELY, BUT TIME HAS PASSED AND WE ARE NOW AT A STAGE WHERE THE RECIRCULATED EIR HAS BEEN APPROVED. I THINK THAT WAS ON --

MR. WAITE: AUGUST.

THE COURT: AUGUST.

AND, THEREFORE, THE 2013 EIR AND BRINE SEIR HAVE BEEN DECERTIFIED AND SUPERSEDED.

SO THE PETITIONER CANNOT ARGUE THAT THE BRINE SEIR IS NOT SUPERSEDED AT THIS POINT.

AND SO THE -- I'M SORRY. BACKING UP. PROCEDURALLY, THE MOTION IS NOW RIPE AND THERE IS NO REASON TO ASK THE DISTRICT TO REFILE IT.

TURNING FOR MERITS, PETITIONER ACKNOWLEDGES THAT THE BRINE SEIR HAS BEEN DECERTIFIED AND SUPERSEDED AS THE 2013 EIR HAVE, BUT ARGUES THAT THIS PSEUDO DOCUMENT, AS IT DESCRIBES IT, THE AUGMENTED EIR IS STILL A LIVE ISSUE.

AND THE SHORT ANSWER IS BOTH THE PETITIONER AND THE DISTRICT AGREE THAT THERE IS NO SUCH DOCUMENT AS THE AUGMENTED EIR, RATHER IT IS

THE 2013 EIR WITHOUT THE WATER COMPONENT, WATER RECYCLING PROJECT COUPLED WITH THE BRINE SEIR. BOTH HAVE BEEN DECERTIFIED.

THERE IS NO AUGMENTED EIR TO ADDRESS OR SEPARATELY ORDER DECERTIFIED, AND SO THIS CASE IS CLEARLY MOOT.

PETITIONERS ARGUES THAT EVEN IF IT IS MOOT, THE COURT CAN RETAIN JURISDICTION BECAUSE THEY MIGHT WIN THEIR CHALLENGE TO THE RECIRCULATED EIR; AND THUS THEY MIGHT, BUT THAT IS NOT A REASON TO KEEP JURISDICTION HERE. PETITIONER WILL HAVE THE COURT'S JURISDICTION AND ITS CHALLENGE YET TO BE FILED CONCERNING THE RECIRCULATED FEIR.

ACWA ALSO RELIES ON SAVE TARA AND IN SAVE TARA THERE WAS A DEVELOPER AGREEMENT THAT WAS AT ISSUE WHICH THE SUPREME COURT HELD RENDERED THE CASE NOT MOOT EVEN THOUGH AN EIR HAD BEEN PREPARED. THAT'S NOT WHAT WE HAVE HERE.

SO THE CASE IS MOOT AND IS ORDERED DISMISSED.

THEN WE COME TO THE ISSUE OF PREVAILING PARTY FOR COSTS.

THE DISTRICT MAKES AN INTERESTING ARGUMENT BASED ON THE CITY OF LONG BEACH CASE THAT UNDER 1032(A)(4), IT IS THE PREVAILING PARTY BECAUSE IT IS A QUOTE "DEFENDANT IN WHOSE FAVOR A DISMISSAL IS ENTERED."

IN THE CITY OF LONG BEACH THERE WAS A CROSS-COMPLAINT. THE CROSS-COMPLAINT WAS MOOTED BY THE FACT THAT THE CROSS-COMPLAINANT WON ON THE COMPLAINT AND THE CROSS-COMPLAINT, I THINK, WAS FOR INDEMNITY OR CONTRIBUTION, AND SO THE CROSS-COMPLAINT WAS MOOTED AND THEREFORE THE CROSS-DEFENDANTS SOUGHT COSTS AND THE COURT OF APPEAL AGREED AND SAID THAT THE DISMISSAL HAD BEEN ENTERED IN THE DISTRICT'S FAVOR AND THE -- NOT THE DISTRICT, THE CROSS-DEFENDANT'S FAVOR AND THE CROSS-DEFENDANT WAS ENTITLED TO COSTS.

THE DISTRICT HERE SAYS DISMISSAL -- MOOTNESS DISMISSAL HAS BEEN ENTERED IN ITS FAVOR AND ITS ENTITLED TO COSTS. AND NOBODY CITES A CASE ON POINT. I DON'T THINK THERE IS A CASE ON POINT, BUT AS A MATTER OF FIRST IMPRESSION, I AM DECIDING THAT THIS IS NOT A CASE WHERE THE DISTRICT HAS OBTAINED A DISMISSAL ON MOOTNESS GROUNDS IN ITS FAVOR. INSTEAD, IT HAS TAKEN AFFIRMATIVE ACTION DURING THE LAWSUIT, AND THAT'S THE KEY, TO MOOT PETITIONER'S CASE.

AND SO WHILE THE CASE IS DISMISSED AS MOOT, IT'S NOT A DISMISSAL IN THE DISTRICT'S FAVOR.

SO THEN THE OPERATIVE LANGUAGE IS CCP 1032(A)(4), WHICH PROVIDES "THAT WHEN -- QUOTE, "ANY PARTY RECOVERS OTHER THAN MONETARY RELIEF AND IN SITUATIONS OTHER THAN SPECIFIED,

PREVAILING PARTY IS DETERMINED BY THE COURT."

SO IN THIS CASE IT SEEMS TO ME TO BE PRETTY PLAIN THAT THE PETITIONER IS THE PREVAILING PARTY ON THIS DISMISSAL FOR MOOTNESS REASONS.

NOW, THE DISTRICT SAYS, LOOK, WE ARE RECIRCULATING THE EIR OUT OF A MOTIVATION TO SEPARATE THE WATER PROJECT ON WHICH WE'RE FEELING PRESSURE FROM THE REGIONAL BOARD'S DEADLINES FROM THE CHLORIDE COMPLIANCE PROJECT ON WHICH WE HAVE BEEN NOTIFIED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE THAT THE STICKLEBACK POPULATION ANALYSIS IS GOING TO TAKE SOME TIME. SO OUR MOTIVATION IS THE TENSION BETWEEN THOSE TWO ENTITIES AND THAT'S WHY WE'RE PURSUING THE RECIRCULATED EIR AND THAT'S WHY THIS CASE IS MOOT, IT HAS NOTHING TO DO WITH PETITIONER'S CHALLENGE. THAT'S THEIR ARGUMENT.

DESPITE THAT ARGUMENT, IT MAY NOT BE THAT PETITIONER'S CHALLENGE IS THE SOLE REASON FOR THE DISTRICT TO DO WHAT IT IS DOING, BUT IT IS PART OF THE REASON FOR THE DISTRICT TO DECIDE THAT THE BRINE SEIR IS JUST NOT THE WAY TO GO AND THAT THEY'RE GOING TO HAVE TO RECIRCULATE A WHOLE NEW FEIR, WHICH IS WHAT THEY'RE DOING, ONE THAT ANALYZES THE SPLITTING OF THE RECYCLED WATER PROJECT FROM THE CHLORIDE COMPLIANCE PROJECT.

AND THAT IS, IN MY VIEW, AT LEAST

PARTLY MOTIVATED BY THIS LAWSUIT AS WELL AS PETITIONER'S CHALLENGE TO THE RETURN AND THE RELATED LAWSUIT. NO DOUBT.

AND SO, WELL, THE ANALYSIS OF STATUTORY ATTORNEYS' FEES UNDER CCP 1021.5 IS NOT DIRECTLY ON POINT TO DETERMINE -- FOR DETERMINATION OF PREVAILING PARTY FOR PURPOSES OF COST, IT APPLIES BY ANALOGY.

AND FOR PURPOSES OF ATTORNEYS' FEES, IF THE PLAINTIFF -- PLAINTIFF'S EFFORT WAS A SUBSTANTIAL FACTOR IN WHAT HAPPENED IN DISMISSAL OF THE LAWSUIT AND MOOTNESS OF A LAWSUIT, THEN ATTORNEYS' FEES ARE AWARDED. AND I THINK THE SAME SUBSTANTIAL FACTOR TEST WOULD APPLY HERE TO THE PETITIONER BEING THE PREVAILING PARTY FOR PURPOSES OF COST AND I SO DECIDE.

THAT'S WHAT THE TENTATIVE SAYS.

HAVE YOU SEEN IT?

MR. WAITE: YES, YOUR HONOR.

MR. SILVERSTEIN: YES, YOUR HONOR.

THE COURT: LET'S TAKE MOOTNESS FIRST. DOES THE PETITIONER WISH TO BE HEARD ON MOOTNESS?

MR. SILVERSTEIN: YOUR HONOR, PETITIONER WOULD RESPECTFULLY SUBMIT ON THE TENTATIVE.

THE COURT: OKAY. SO DETERMINATION OF COST, I ASSUME THE PETITIONER DOES NOT WISH TO BE HEARD?

MR. SILVERSTEIN: YES, HONOR. PETITIONER

WOULD RESPECTFULLY SUBMIT ON THE TENTATIVE AS WELL.

THE COURT: ALL RIGHT. SO THE DISTRICT ON COST.

MR. WAITE: YOUR HONOR, THANK YOU. WE HAVE READ THE COURT'S TENTATIVE AND WE WOULD LIKE TO BE HEARD ON COSTS.

THE COURT: GO AHEAD.

MR. WAITE: YOUR HONOR, WE THINK THAT THE ANALYSIS BY THE COURT IN YUCAIPA II IS PERHAPS THE MORE INSTRUCTIVE DECISION OF LAW ON POINT BECAUSE, CLEARLY, THE CONTEXT IN WHICH THIS EIR CHALLENGE HAS COME ABOUT AND THE CONTEXT IN WHICH THE DISTRICT HAS TAKEN ACTION IN RESPONSE TO THE COURT'S WRIT OF MANDATE IN THE RELATED CASE AND THE DIRECTIVES FROM THE REGIONAL QUALITY CONTROL BOARD ARE TO MOVE FORWARD WITH THE PROJECT THAT SEPARATES CHLORIDE COMPLIANCE FROM THE RECYCLED WATER PROJECT AND RETAINS THE BRINE AND TRUCKING MANAGEMENT COMPONENT OF THAT PROJECT WITHOUT ANY MATERIAL CHANGE WHATSOEVER.

THE COURT: ALL RIGHT.

MR. WAITE: THE POINT HERE BEING, YOUR HONOR, THAT THERE IS NOTHING SUBSTANTIVELY THAT HAS BEEN ADVANCED IN THIS LITIGATION BY PETITIONER THAT HAS RESULTED IN ANY DIFFERENT OUTCOME FROM THAT WHICH WAS CHALLENGED BY THE SEIR VERSES THAT WHICH IS MOVING FORWARD ON THE RECIRCULATED

EIR.

THE COURT: OKAY. SO HOLD ON. SO A QUESTION CROSSED MY MIND. MAYBE MR. SILVERSTEIN CAN RESPOND TO THIS, WHAT WOULD HAVE HAPPENED IF THIS LAWSUIT HAD NEVER BEEN FILED? WHAT WOULD HAVE HAPPENED?

WHAT'S THE ANSWER?

MR. SILVERSTEIN: IF THIS LAWSUIT HAD NEVER BEEN FILED?

THE COURT: WOULD THEY HAVE GONE FORWARD WITH THE BRINE SEIR?

MR. SILVERSTEIN: MY BELIEF IS BUT FOR OUR ACTION THEY WOULD HAVE, THAT WE WERE A --

THE COURT: EVEN THOUGH IN THE RELATED CASE YOU MADE A MOTION, AND I AGREED WITH IT, THAT THE BRINE SEIR WAS NOT COMPLIANT WITH MY DIRECTION.

MR. SILVERSTEIN: WELL, YOUR HONOR, RECALL THERE IS ALSO THE SO-CALLED AUGMENTED EIR HERE THAT IS SORT OF A CONGLOMERATION OF THESE DOCUMENTS AND OUR CURRENT LAWSUIT CHALLENGES BOTH THE BRINE EIR, WHICH WAS CERTIFIED BY THE DISTRICT, AS WELL AS THIS VARIANT, THIS AUGMENTED DOCUMENT THAT SUBTRACTED PARTS, THAT MERGED PARTS, AND SO, YOU KNOW, QUITE CLEARLY WE WERE A SUBSTANTIAL FACTOR.

AND WHEN YOU LOOK AT --

THE COURT: SEEMS TO ME -- I'M GOING TO

INTERRUPT YOU. I UNDERSTAND THAT THERE IS -- YOU WERE UNDER PRESSURE FROM THE REGIONAL BOARD, THE FISH AND WILDLIFE IS TELLING YOU IT'S GONNA TAKE A WHILE TO ANALYZE THE STICKLEBACK, YOU HAVE AN ORDER FROM ME THAT THE BRINE SEIR IS NOT GOOD ENOUGH FOR COMPLIANCE IN THE RELATED CASE.

AND I DON'T KNOW WHAT YOU WOULD HAVE DONE IF THE PETITIONER HADN'T FILED THIS LAWSUIT, BUT I DO KNOW THE BRINE SEIR WOULD HAVE GONE UNCHALLENGED. THAT MAY NOT HAVE BEEN GOOD ENOUGH TO COMPLY WITH MY WRIT AND THE JUDGMENT IN THE RELATED CASE, BUT IT WOULD HAVE BEEN UNCHALLENGED AND IT WOULD BE FINAL.

NOW --

MR. SILVERSTEIN: IT WOULD BE FINAL. HOW DO WE UNRING THAT BELL ONCE IT'S FINAL? I MEAN, IT WAS IMPORTANT FOR US TO CHALLENGE IT, BUT FOR THE CHALLENGE THERE WOULD HAVE BEEN A DIFFERENT PATHWAY FOR THE DISTRICT.

THE COURT: THEY WOULDN'T HAVE HAD TO DO A RECIRCULATED -- A WHOLE NEW RECIRCULATED EIR. THAT'S THE -- THAT'S THE QUESTION.

MAYBE THEY WOULD HAVE HAD TO DO SOMETHING DIFFERENTLY, BUT THEY WOULD HAVE BEEN ABLE TO WORK WITH THIS BRINE SEIR AS A BUILDING BLOCK.

MR. SILVERSTEIN: BUT THEY ARE TRYING THEIR BEST BECAUSE THEY WANT TO HARVEST OR PRESERVE AS

MUCH AS THEY CAN, SUCCESSFULLY PRESERVE OR HARVEST IN ORDER TO CONTINUE THEIR ACTIONS IN FURTHERANCE OF THE PROJECT.

MR. WAITE: IN FACT -- IF I MAY BE HEARD, YOUR HONOR?

THE COURT: UH-HUH

MR. WAITE: IN FACT, IN JUNE OF 2016 YOUR HONOR RULED ON THE INITIAL RETURN ON THE WRIT IN RESPONSE TO MR. SILVERSTEIN'S MOTION OPPOSING THE WRIT, BUT THE DISTRICT COULD NOT PROCEED IN ANY MANNER WITH ANY COMPONENT OF THE PROJECT UNTIL SUCH TIME AS IT HAD EITHER SEPARATED, RECYCLED WATER FROM THE CHLORIDE COMPLIANCE PROJECT, WHICH INCLUDED BRINE MANAGEMENT, OR EVALUATE STICKLEBACK, FULLY EVALUATE STICKLEBACK.

THAT WAS THE COURT'S DIRECTION TO THE DISTRICT.

THE COURT: RIGHT.

MR. WAITE: YOU CANNOT PROCEED. WE EVEN ASKED WHETHER WE COULD DO STUDIES OR DO FUNDING AND THE COURT SAID, NO. YOU CAN DO NOTHING TO PROCEED WITH THIS PROJECT.

SO WE WERE -- WE WERE FORCED WITH THE CHOICE, YOUR HONOR, OF HOW WE PROCEED WITH THE PROJECT. IF WE WANT TO EVALUATE STICKLEBACK, WE CAN DO THAT, BUT WE HAVE NOW LEARNED FROM FISH AND WILDLIFE THAT THAT'S GOING TO TAKE A LONGER TIME THAN ANYONE EVER ANTICIPATED.

SO WE ELECTED FOR SEPARATION, SEPARATION OF THE CHLORIDE COMPLIANCE AND THE RECYCLED WATER PROJECT, BUT EVEN THERE, YOUR HONOR, WE COULDN'T HAVE PROCEEDED WITH THE BRINE PROJECT AS A COMPONENT FOR OUR COMPLIANCE UNTIL WE DID SEPARATION. IT SIMPLY -- WE SIMPLY COULD NOT.

THE COURT: THAT IS ABSOLUTELY TRUE. AND SO WHAT YOU WOULD HAVE HAD, YOU WOULD HAVE HAD -- YOU WOULD HAVE HAD IN HAND YOUR BRINE SEIR, AND THEN YOU WOULD HAVE HAD TO DO A SEPARATED -- SEPARATION ANALYSIS AND A STICKLEBACK ANALYSIS, BUT YOU WOULD HAVE HAD A PIECE OF IT IN HAND.

NOW YOU'VE GOT NOTHING. BECAUSE OF THE CHALLENGE YOU DECIDED, WELL, YOU KNOW WHAT. WE'LL -- "START OVER" IS THE WRONG WORD, BUT WE WILL RECIRCULATE THE WHOLE THING. AND YOU ONLY DID THAT BECAUSE THEY CHALLENGED THE BRINE SEIR; OTHERWISE, YOU WOULD HAVE KEPT THE PIECE THAT WAS FINAL AND THEN WORKED ON THE REMAINING STUFF.

MR. WAITE: AND IMPORTANTLY, YOUR HONOR NOTHING SUBSTANTIVELY CHANGED ABOUT BRINE MANAGEMENT.

THE DISTRICT'S MOVING FORWARD WITH THE SAME BRINE MANAGEMENT ALTERNATIVE THAT WAS PART OF THE SEIR IN 2016. THAT DIDN'T CHANGE ONE IOTA BASED ON THIS LAWSUIT. NOT ONE IOTA.

THE COURT: IT CROSSED MY MIND, WHAT ARE WE TALKING ABOUT IN TERMS OF COSTS IN THIS

LAWSUIT?

MR. SILVERSTEIN: FEES, YOUR HONOR?

THE COURT: NO. ATTORNEYS' FEES IS A DIFFERENT MATTER THAN COSTS.

MR. SILVERSTEIN: WELL, BUT THIS IS A TROJAN HORSE. THE DISTRICT IS TRYING DESPERATELY HERE TO CUT OUR LEGS OUT FROM UNDERNEATH US FROM BEING ABLE TO SEEK ATTORNEY FEES BY ASKING YOU TO RULE IN THEIR FAVOR AS THE PREVAILING PARTY.

THE COURT: WELL, THAT ALSO CROSSED MY MIND.

ISN'T IT POSSIBLE TO NOT BE AWARDED COSTS AND STILL GET FEES?

MR. SILVERSTEIN: YES, BECAUSE THERE ARE CASES SUCH AS IF YOU WIN A PRELIMINARY INJUNCTION AS LONG AS YOU HAVE VINDICATED IMPORTANT RIGHTS, WHICH WE HAVE, CONFERRED BENEFIT ON THE GENERAL PUBLIC, WHICH WE HAVE, DO NOT HAVE AN OVERRIDING FINANCIAL SELF-INTEREST.

THE COURT: BUT IT'S A DIFFERENT TEST. IT'S A DIFFERENT TEST, COST AND ATTORNEYS' FEES.

IT IS POSSIBLE TO NOT BE THE PREVAILING PARTY FOR PURPOSES OF COSTS AND STILL BE AWARDED ATTORNEYS' FEES, IS IT NOT?

MR. SILVERSTEIN: I THINK THAT'S CORRECT, BUT I WOULD MUCH RATHER NOT HAVE A SITUATION WHERE THE DISTRICT IS SOMEHOW DECLARED, WHICH IS WHAT THEY'RE TRYING TO MANEUVER HERE, THE PREVAILING PARTY.

THAT'S WHY WE CITED -- I DON'T OFTEN CITE IT, BUT, YOU KNOW, THAT'S WHY WE CITED THE CHUTZPAH CASE, YOU KNOW, WHERE I THINK THE GENERAL PRECEDENT DEFINES CHUTZPAH AS, YOU KNOW, SOMEBODY WHO KILLS THEIR PARENTS AND THEN PLEADS FOR MERCY FROM THE COURT BECAUSE THEY'RE AN ORPHAN. HERE, THEY'VE CAPITULATED, HERE THEY HAVE RESCINDED AND NOW THEY'RE SAYING --

THE COURT: WANT TO SPELL CHUTZPAH FOR THE COURT REPORTER.

MR. SILVERSTEIN: C-H-U-T-Z-P-A-H.

MR. WAITE: YOUR HONOR, I THINK YUCAIPA II IS FAR MORE INSTRUCTIVE THAN CHUTZPAH. AND HERE IS WHAT THE COURT SAID IN YUCAIPA II. IT SAID, "AT THE VERY LEAST, PLAINTIFF MUST ESTABLISH THE PRECISE FACTUAL AND LEGAL CONDITION THAT IT SOUGHT TO CHANGE OR EFFECT AS A PREREQUISITE FOR ESTABLISHING THE CATALYST EFFECT OF ITS' LAWSUIT.

"WHEN THE SUIT IS MOOTED EARLY IN ITS PROSECUTION, IT MAY GENERALLY BE ESTABLISHED DURING THE ATTORNEYS' FEE PROCEEDING BY DECLARATIONS OR AT THE DISCRETION OF THE TRIAL COURT BY AN ABBREVIATED EVIDENTIARY HEARING. THE TRIAL COURT MAY REVIEW THIS FACTUAL BACKGROUND NOT ONLY TO DETERMINE THE LAWSUIT'S CATALYTIC EFFECT, BUT ALSO ITS MERITS."

THE COURT: SO THIS IS ABOUT ATTORNEYS' FEES. I'M NOT READY TO RULE ON ATTORNEYS' FEES.

MR. WAITE: THERE YOU GO.

MR. SILVERSTEIN: BY RAISING THE ISSUE ABOUT CATALYST ALL WE'RE SAYING IS IT'S IMPROPER AND IT CLEARLY MERGES INTO THE TERRITORY OF CHUTZPAH.

FOR THEM TO SAY, YOUR HONOR, WE'VE NOW RESCINDED EVERYTHING, WE HAVE -- WE HAVE INVALIDATED IT AND DECLARE US THE PREVAILING PARTY, THAT'S ALL WE'RE SAYING, IS THAT IT'S WRONG, IT'S RIDICULOUS, AND WHAT IT IS, IS IT'S MASQUERADING AS A COST ARGUMENT IN AN EFFORT TO UNDERMINE OUR ABILITY, AFTER TWO YEARS OF MORE PUBLIC INTEREST, NON-PAID PRO BONO WORK TO SAY --

THE COURT: DIDN'T I GIVE YOU ATTORNEYS' FEES IN THE OTHER CASE?

MR. SILVERSTEIN: IN THE FIRST ONE, YEAH, BUT I'M TALKING ABOUT FROM TODAY. I'M TALKING ABOUT THIS CASE, WHICH WE CALL INTERNALLY ACWA II.

THERE HAS BEEN NO PAYMENT FOR ACWA II AND WE INTEND TO FILE A MOTION BEFORE YOUR HONOR.

THE COURT: WELL, I'M NOT READY TO RULE ON ATTORNEYS' FEES. ALL I'M TRYING TO DECIDE IS WHO IS THE PREVAILING PARTY FOR PURPOSES OF COST. AND, ACTUALLY, I DON'T THINK I EVEN NEEDED TO DO THAT. I WAS JUST GOING TO DISMISS THE LAWSUIT, BUT SINCE BOTH SIDES, YOU KNOW, BRIEFED THE ISSUE I THOUGHT I WOULD ADDRESS IT.

MR. SILVERSTEIN: AND I THINK IT WAS ADDRESSED PERFECTLY CORRECTLY. YUCAIPA II DOESN'T APPLY. THAT'S A CASE WHERE -- INVOLVING A TARGET WHERE THERE HAD BEEN SOME SORT OF FAILURE OF A CONTRACT, THERE WAS SOME EXTERNAL FORCE THAT LED TO THE ABANDONMENT OF THE CASE.

HERE, THEIR PAPERS ARE THICK WITH ADMISSIONS THAT OUR LITIGATION WAS, IF NOT THE PRIMARY, CERTAINLY IS A SUBSTANTIAL FACTOR IN THE DECISIONS THAT THEY MADE.

WHEN YOU LOOK AT THE RESOLUTION --

THE COURT: WELL, THE PROBLEM IS CONCEPTUALLY, WHEN YOU SAY "OUR LITIGATION," IT'S ACWA I THAT IS THE DRIVING FORCE HERE, NOT ACWA II.

MR. WAITE: EXACTLY.

MR. SILVERSTEIN: IT IS ACWA I AND II. IF THERE HADN'T BEEN A LITIGATION OVER THE BRINE TRUCKING, I STRONGLY BELIEVE THAT THERE WOULD BE A DIFFERENT PATHWAY THAT THIS WOULD BE GOING ON BECAUSE YOU'RE RIGHT --

THE COURT: I'M TRYING TO FIGURE OUT WHAT IT WOULD BE. YEAH, THEY WOULD HAVE THEIR BRINE SEIR IN HAND, THEN THEY WOULD SIMPLY HAVE TO ADDRESS THE RECYCLED WATER ISSUE AND THE SEPARATION OF THE TWO PROJECTS, WHICH THEY ARE DOING IN THE RECYCLED EIR, BUT THEY'RE ALSO ADDRESSING, I ASSUME, BRINE IN THEIR RECYCLED EIR, WHICH THEY WOULDN'T HAVE

HAD TO DO IF THE SEIR -- BRINE SEIR WAS FINAL.

MR. SILVERSTEIN: EXACTLY.

THE COURT: SO, I MEAN, THE PETITIONER IS THE PREVAILING PARTY.

MR. WAITE: YOUR HONOR, THE WHOLE POINT HERE IS YOUR HONOR WAS VERY SPECIFIC ON THIS IN JUNE OF 2016. YOUR HONOR SAID, "THE DISTRICT MUST FULLY EVALUATE --

THE COURT: YEAH.

MR. WAITE: -- SEPARATION." AND --

THE COURT: RIGHT.

MR. WAITE: -- THAT INCLUDES SEPARATION OF CHLORIDE COMPLIANCE.

THE COURT: THAT'S WHAT YOU'RE DOING.

MR. WAITE: ALL THAT IT ENTAILS, AND TO MAKE SURE THAT WE CAN, IN FACT, SEPARATE CHLORIDE COMPLIANCE FROM THE RECYCLED WATER PROJECT.

THE COURT: RIGHT.

MR. WAITE: SO BRINE MANAGEMENT NECESSARILY HAD TO BE REVALUATED IN THIS EIR BASED UPON THE FIRST LAWSUIT AND COMPLIANCE WITH THE TERMS OF THE WRIT OF MANDATE, NOT BASED UPON ANYTHING IN THE SECOND LAWSUIT.

THE COURT: OKAY. SO THAT WAS IN JUNE OF 2016 --

MR. WAITE: CORRECT.

THE COURT: -- RIGHT?

SO THEN THE OBVIOUS QUESTION IS WHY

DID IT TAKE YOU A YEAR TO MAKE THE DECISION THAT THE BRINE SEIR WAS NOT GOING TO GET YOU ANYWHERE?

MR. SILVERSTEIN: AND WHEN I WAS -- WHEN WE WERE HERE BEFORE YOUR HONOR IN APRIL AT THE STATUS CONFERENCE I SAID, LET THEM RESCIND IT NOW. THEY SHOULD RESCIND IT NOW AND SAVE US ALL THIS TIME AND EFFORT AND THEY REFUSED.

MR. WAITE: THE ANSWER IS VERY CLEAR, YOUR HONOR. THE ANSWER WAS BECAUSE AT THAT TIME THE DISTRICT WAS STILL PURSUING RECYCLED WATER AND STICKLEBACK. IT WAS IN DISCUSSIONS AND NEGOTIATIONS WITH FISH AND WILDLIFE.

IT WASN'T UNTIL LATER IN THE PROCESS THAT THE DISTRICT CONCLUDED IT'S NOT GOING TO GET THERE WITHIN THE REASONABLE TIME PERIODS AS MANDATED BY THE REGIONAL BOARD TO DO -- TO DO RECYCLED WATER. THE STICKLEBACK ANALYSIS IS GOING TO BE FAR MORE COMPLICATED AND COMPLEX THAN ANYONE ANTICIPATED.

SO IT'S AT THAT POINT WHERE THE DISTRICT SAID WE CAN'T COMPLY WITH THE REGIONAL BOARD DEADLINE IF WE ARE GOING DO STICKLEBACK AND DO CHLORIDE COMPLIANCE.

THE COURT: RIGHT.

MR. WAITE: THAT'S WHY THEY HAD TO MAKE A DECISION TO SEPARATE.

THE COURT: OKAY. SO IT SEEMS TO ME THAT

FEEDS INTO MR. SILVERSTEIN'S POINT, WHICH IS THAT THE BRINE SEIR, IF IT WAS UNCHALLENGED, ALL YOU HAD TO DEAL WITH WAS THIS STICKLEBACK ISSUE AND THE SEPARATION OF THE TWO PROJECTS.

AND YOU ONLY DECIDED TO GO BACK TO THE DRAWING BOARD AND ADDRESS ALL THREE OF THE ISSUES, THAT IS, BRINE, STICKLEBACK AND SEPARATION IN THE RECYCLED EIR AND THE STICKLEBACK -- WHAT ARE WE CALLING THE STICKLEBACK DOCUMENT? THE STICKLEBACK SEIR?

MS. DURBIN: SEIR.

MR. WAITE: SEIR.

THE COURT: THAT DECISION WAS MADE AFTER PRESSURE -- NOT PRESSURE, BUT AFTER RECEIVING THIS INFORMATION FROM FISH AND WILDLIFE AND I THINK YOU WOULD HAVE ACTED DIFFERENTLY BUT FOR THIS LAWSUIT. YOU WOULD NOT HAVE -- YOU WOULDN'T HAVE HAD TO EVALUATE THE CHLORIDE COMPLIANCE ISSUE IF THIS LAWSUIT WASN'T FILED.

YOU'D ONLY HAVE TO EVALUATE THE SEPARATION OF CHLORIDE COMPLIANCE FROM RECYCLED WATER.

MR. WAITE: YOUR HONOR, REST ASSURED, IF THAT'S ALL THE DISTRICT EVALUATED, MR. SILVERSTEIN WOULD BE STANDING IN FRONT OF YOU ON THE RETURN OF THE WRIT ARGUING THAT WE DIDN'T UPDATE THAT DOCUMENT APPROPRIATELY TO EVALUATE THE CHLORIDE.

THE COURT: I THINK YOU'RE PROBABLY RIGHT.

MR. WAITE: AND, BY THE WAY, HE WOULD BE ARGUING THAT THE BRINE COMPONENT OF THAT PROJECT HAD TO BE FULLY REEVALUATED AND UPDATED AS WELL.

I WILL GUARANTEE YOU THAT THAT WILL BE THE DISCUSSION WE WILL BE HAVING IN FRONT OF YOUR HONOR ON THE RETURN OF THE WRIT IN THE FIRST CASE.

SO THE DISTRICT, LOOK, THEY HAVE MADE THE DECISION EFFECTIVELY TO GO FORWARD WITH ONE COMPREHENSIVE DOCUMENT ON THE RETURN ON THE WRIT THAT EVALUATES CHLORIDE COMPLIANCE, SEPARATION, BRINE MANAGEMENT AND TRUCKING AND REMOVING THE RECYCLED WATER PROJECT TO A LATER DATE AND DIFFERENT PROJECT. THAT DOCUMENT HAD TO BE COMPLETE. THAT DOCUMENT HAD TO BE COMPREHENSIVE.

IN THE ABSENCE OF DOING THAT, WE WOULD BE BACK BEFORE THE COURT ON THE QUESTION OF WHETHER THERE IS A SUFFICIENT EIR TO MOVE FORWARD WITH CHLORIDE COMPLIANCE AND SEPARATION.

THE COURT: OKAY. BUT CAN'T WE JUST PUT THIS IN VERY SIMPLE TERMS FOR PURPOSES OF COST.

YOU HAD A BRINE SEIR. THIS LAWSUIT CHALLENGES THE BRINE SEIR. YOU HAVE DECERTIFIED THE BRINE SEIR AND YOU ARE CONTENDING, AND I'M AGREEING WITH YOU, THAT THE LAWSUIT IS MOOT.

ISN'T THE PETITIONER THE PREVAILING

PARTY UNDER THOSE CIRCUMSTANCES?

MR. WAITE: NO.

MR. SILVERSTEIN: YOUR HONOR, THEY TOOK A VOLUNTARY ACTION IN THE LITIGATION IN RESPONSE TO THE LITIGATION, AT LEAST IN SUBSTANTIAL PART, IT'S OBVIOUS AND --

THE COURT: I THINK SO TOO. AND, LOOK, IF THIS GIVES YOU COMFORT, I'M NOT SAYING I'M GOING TO AWARD THEM ATTORNEYS' FEES JUST BECAUSE I'M SAYING THE PREVAILING PARTY FOR PURPOSES OF COST IS THE PETITIONER.

IN MY MIND ACWA I AND THE WRIT IN ACWA I DROVE YOU TO DO WHAT YOU WERE DOING OVERALL AND YOU GOT CAUGHT BY THE REGIONAL BOARD'S REFUSAL TO CHANGE ITS DEADLINES AND BY FISH AND WILDLIFE SAYING IT'S GONNA TAKE A LONG TIME TO DO A STICKLEBACK ANALYSIS, AND THAT COUPLED WITH MY RULING IN ACWA I LED YOU DOWN THE PATH THAT YOU ARE DOWN. I SUBSCRIBE TO THAT.

NOW, IS THE PETITIONER'S LEGAL EFFORT IN THIS LAWSUIT, ACWA II, NOT ACWA I, BUT IN THIS LAWSUIT --

MR. WAITE: IN THIS LAWSUIT.

THE COURT: -- IS IT ENTITLED TO 1021.5 ATTORNEYS' FEES AS A CATALYST, I HAVE NO OPINION ON THAT.

MR. SILVERSTEIN: AND WE INTEND TO BRING A MOTION AND ESTABLISH THAT WE'VE SATISFIED THE

FACTORS AND PUT IT ALL IN FRONT OF YOUR HONOR. BUT THE REASON THAT THERE IS SUCH A EAGER DESPERATE FIGHT HERE TO HAVE THE AGENCY BE DECLARED THE PREVAILING PARTY FOR COST PURPOSES IS NOT BECAUSE THEY ACTUALLY CARE ABOUT THE COST.

THE COURT: NO. IT'S FILING FEE AND WHAT ARE THE COSTS IN THIS CASE? THEY CAN'T BE VERY EXPENSIVE.

MR. SILVERSTEIN: NOTHING. THEY'RE AN AGENCY. THEY DON'T EVEN HAVE FILING FEES.

THE COURT: NO, BUT YOU DID.

MR. SILVERSTEIN: YEAH. I MEAN, YOU KNOW, THERE IS THE RECORD, BUT THE COSTS ARE NOT HUGE.

THE COURT: WAS THE RECORD EVEN PREPARED YET?

MS. DURBIN: YES, YOUR HONOR. PREPARED AND CERTIFIED.

MR. SILVERSTEIN: AND, BY THE WAY, WE'VE BORNE THE COST. ACTUALLY, THE SILVERSTEIN LAW FIRM HAS BORNE THE COST BECAUSE OUR CLIENT HAS NOT BEEN ABLE TO PAY THOSE COSTS. SO THEY HAVE NO COST. THAT'S WHY THIS IS --

THE COURT: WAIT A MINUTE. YOUR CLIENT -- I'M SORRY. DID YOUR CLIENT GET PAID THE ATTORNEYS' FEES FROM ACWA I?

MR. SILVERSTEIN: NO, YOUR HONOR. WE GOT PAID THE ATTORNEYS' FEES BECAUSE THE CLIENT WAS NOT OWED ANY REFUND ON ATTORNEY FEES.

THE COURT: OKAY.

MR. SILVERSTEIN: AND AS YOU MIGHT RECALL, THE GRAND TOTAL IN THAT, I THINK, THREE YEARS OF LITIGATION, WAS $800 THAT WE RECEIVED AND YOU HAD NOTED THAT IN YOUR RULING AS WELL.

THE COURT: RIGHT. I HAVE NO RECOLLECTION.

MR. SILVERSTEIN: I REMEMBER THAT 'CAUSE THE $800 IS JUST, YEAH.

THE COURT: ALL RIGHT. SO I DON'T KNOW THAT YOU'RE THE CATALYST IN THIS CASE.

IN YOUR MOTION FOR ATTORNEYS' FEES YOU'RE GOING TO HAVE TO BE VERY CAREFUL TO DISTINGUISH ACWA I FROM ACWA II BECAUSE ACWA II ABSOLUTELY DROVE THE RESULT THAT WE HAVE THAT THE DISTRICT IS PURSUING NOW.

HAS THIS LAWSUIT DRIVEN IT FOR PURPOSES OF ATTORNEYS FEES' UNDER A CATALYST THEORY? I DON'T KNOW. I DON'T KNOW. BUT, YOU KNOW, YOU SUED TO SET ASIDE THE BRINE SEIR AND THE AUGMENTED SEIR WHICH CONSISTS OF THE BRINE SEIR AND A PORTION OF THE 2013 EIR.

WHAT HAS THE DISTRICT DONE? THEY HAVE DECERTIFIED AND SET ASIDE THE BRINE SEIR AND THE 2013 EIR THEREBY MOOTING THE CASE.

ARE YOU THE PREVAILING PARTY? YOU, THE PETITIONER, YES, YOU ARE.

MR. SILVERSTEIN: THANK YOU, YOUR HONOR. AND FOR THE DISTRICT TO ARGUE THAT WE SUED TO

INVALIDATE THE BRINE EIR, THEY INVALIDATED THE BRINE EIR, THAT THERE IS NO CAUSAL CONNECTION, THAT THERE WAS NO NEXUS, IT'S JUST, YOU KNOW, PREPOSTEROUS, BUT WE WILL PRESENT THAT --

THE COURT: IT MAY BE THAT THE PRIMARY MOTIVATING FACTOR FOR WHAT THEY HAVE DONE IS THE TENSION OF WHAT THE REGIONAL BOARD HAS SAID COUPLED WITH THE DIFFICULTY OF DOING A STICKLEBACK ANALYSIS. THAT MAY BE THE DRIVING FORCE HERE.

MR. SILVERSTEIN: IT DOES NOT HAVE TO BE THE ONLY FORCE THAT --

THE COURT: WELL, CERTAINLY FOR PREVAILING PARTY IT DOESN'T --

MR. SILVERSTEIN: I WOULD JUST MENTION THAT THIS -- THIS CONSTANT BOOGIE MAN THAT IS THROWN OUT THERE ABOUT THE WATER BOARD AND THE THREAT OF FINES, THE DISTRICT HAS PREVIOUSLY GOTTEN THE WATER BOARD TO ADJUST ITS DEADLINES AND THINGS LIKE THAT.

SO THIS NOTION THAT IT'S SOME UNAVOIDABLE PERDITION THAT THEY'RE HEADING INTO AND THERE IS NO WAY TO AVOID IT IS A FALSE ARGUMENT. IT IS SOMETHING THAT HAS BEEN USED TO JUSTIFY THEIR OBSTINANCE AND TO JUSTIFY --

THE COURT: DO YOU WANT TO TAKE DISCOVERY OF THE REGIONAL BOARD FOR PURPOSES OF ATTORNEYS' FEES?

MR. SILVERSTEIN: I THINK THAT'S PROBABLY A

GOOD IDEA AND TO SEE THE COMMUNICATIONS BETWEEN THE TWO AGENCIES.

THE COURT: BUT IF THEY STAND BY WHAT THEY SAID, YOU KNOW, WE SET A DEADLINE AND WE REALLY MEAN IT, THAT'S NOT GOING TO HELP YOU.

MR. SILVERSTEIN: IT IS STILL -- THAT IS STILL NO DEFENSE TO VIOLATION OF CEQA. THERE IS NOT --

THE COURT: NO, BUT WE'RE TALKING ABOUT CATALYST HERE. AND, YOU KNOW, ARE YOU THE CATALYST FOR WHAT'S --

MR. WAITE: YOUR HONOR, WE EXPECT THAT THE COURT WILL CONCLUDE THAT IT WAS MERELY FORTUITOUS FROM THE STANDPOINT OF PETITIONER IN THIS CASE THAT THE DISTRICT ELECTED TO DECERTIFY THE BRINE SEIR.

AND, AGAIN, YUCAIPA IS VERY CLEAR. THE LAWSUIT HAD MERIT AND ACHIEVED ITS CATALYTIC EFFECT BY THREAT OF VICTORY, NOT BY NUISANCE AND THREAT OF EXPENSE.

MR. SILVERSTEIN: YOUR HONOR --

THE COURT: WE'RE TALKING CATALYST THEORY HERE, WHICH I'VE RARELY DEALT WITH AND I'M NOT GOING TO DO IT FROM THE BENCH.

MR. SILVERSTEIN: I WOULD SAY THIS IS THE AQUARIUS THEORY. THE DISTRICT IS NOW SAYING THAT OUR LAWSUIT MERELY WAS -- THE MOON WAS IN THE SEVENTH HOUSE AND JUPITER WAS ALIGNED WITH MARS.

IT WAS ALL ACCIDENTAL AND COINCIDENTAL AND I DON'T THINK --

THE COURT: ISN'T AQUARIUS THE WATER CARRIER AND YOU'RE ACWA.

MR. SILVERSTEIN: ACWA, YES.

MR. WAITE: IT IS BASED UPON A SUIT AGAINST A FICTITIOUS AUGMENTED EIR, WHICH DOESN'T EXIST AS THE COURT SO RECOGNIZES.

THE COURT: OKAY. WE'RE ONLY AT STEP ONE, WHICH IS DISMISSAL OF THE LAWSUIT AND FINDING PETITIONER AS PREVAILING PARTY FOR PURPOSES OF COSTS. THAT'S IT.

MR. SILVERSTEIN: THANK YOU, YOUR HONOR.

MR. WAITE: YOUR HONOR, THERE IS ONE HOUSEKEEPING ITEM BEFORE WE CONCLUDE. THE TENTATIVE REFLECTS THAT THERE WAS NO REPLY BRIEF FILED, ALTHOUGH THE REPLY BRIEF IS REFERRED TO IN ONE COMPONENT.

WE DID FILE A REPLY, I JUST WANTED TO MAKE SURE THE RECORD IS COMPLETE.

THE COURT: I DO HAVE THE REPLY AND NOW LET'S SEE IF I READ IT. I DID READ IT.

MR. ZISCHKE: YES. YOU CITED IT IN YOUR TENTATIVE.

THE COURT: OKAY. SO WHAT HAPPENS IS THERE IS AN INITIAL TENTATIVE THAT IS PREPARED BY ME BEFORE THE REPLY COMES IN AND THEN WHEN THE REPLY COMES IN I EDIT THE TENTATIVE, BUT I FORGOT TO

CHANGE THAT.

MR. SILVERSTEIN: SO, YOUR HONOR, WILL THE COURT'S TENTATIVE BE ADOPTED AS THE FINAL?

THE COURT: EXCEPT FOR THE NO REPLY WAS FILED, YES. IT IS ADOPTED AS THE COURT'S ORDER.

THE CASE IS ORDERED DISMISSED AS MOOT.

THE PETITIONER IS THE PREVAILING PARTY FOR PURPOSES OF COSTS.

IF YOU WANT A JUDGMENT OF DISMISSAL --

MR. SILVERSTEIN: I DON'T THINK THAT'S NECESSARY AS LONG AS --

THE COURT: THE ONLY REASON IT WOULD BE NECESSARY IS THE CLERK PUTS THE COSTS ON THE COST LINE OF THE JUDGMENT.

MR. SILVERSTEIN: OKAY.

THE COURT: IF THERE IS NO JUDGMENT, THEN HOW IS THE CLERK GOING TO KNOW WHERE THE COSTS SHOULD GO --

MR. SILVERSTEIN: OKAY.

THE COURT: -- FOR THE COURT OF APPEAL.

MR. WAITE: WE WOULD BE HAPPY TO PREPARE A JUDGMENT, YOUR HONOR, AND CIRCULATE THAT FOR MR. SILVERSTEIN'S REVIEW AND SUBMIT IT TO THE COURT.

MR. SILVERSTEIN: AS THE PREVAILING PARTY, I WOULD ASK TO BE ALLOWED TO BE THE PREPARER OF THE JUDGMENT.

THE COURT: I DON'T CARE WHO PREPARES IT,

BUT IF WE HAVE AN ORDER TO SHOW CAUSE RE JUDGMENT AND THEN YOU ACTUALLY SHOW UP FOR IT I AM GOING TO BE VERY UNHAPPY.

MR. SILVERSTEIN: THIS IS WHY I WAS RELUCTANT TO HAVE A JUDGMENT. I DON'T THINK IT'S NECESSARY. I BELIEVE THAT THE DISMISSAL, WHAT'S HAPPENING TODAY IS ADEQUATE.

THE COURT: IF YOU WANT A MINUTE ORDER THAT DISMISSES THE CASE AS MOOT AND LEAVES A BLANK FOR COSTS --

MR. SILVERSTEIN: YEAH.

THE COURT: -- THAT WILL BE FINE.

MR. SILVERSTEIN: AND WE WILL SIMPLY FILE A COST MEMORANDUM IN --

THE COURT: OF COURSE.

MR. SILVERSTEIN: -- 15 DAYS FROM THIS DATE AND 60 DAYS.

THE COURT: SO I THINK I'M SUPPOSED TO SIGN THE JUDGMENT. SO I'LL SIGN THE MINUTE ORDER THAT SAYS CASE DISMISSED AS MOOT. COSTS AWARDED TO PETITIONER AS BLANK.

MR. SILVERSTEIN: COSTS AWARDED TO PETITIONER AS PREVAILING PARTY IN BLANK.

THE COURT: I'M NOT GOING TO SAY THE PREVAILING PARTY. THE MINUTE ORDER CAN JUST SAY COSTS ARE AWARDED TO THE PETITIONER IN THE AMOUNT OF BLANK.

MR. WAITE: THANK YOU.

MR. SILVERSTEIN: THANK YOU.

MR. ZISCHKE: AND THEN THEY WILL FILE THE NORMAL MEMORANDUM OF COSTS?

THE COURT: YES. ABSOLUTELY. I MEAN, LET'S BE CLEAR. I WILL SIGN THE MINUTE ORDER, YOU KNOW, PROBABLY TOMORROW.

MR. SILVERSTEIN: OKAY.

MS. DURBIN: THANK YOU.

THE COURT: YOU WON'T HAVE IT TODAY.

THE CLERK: RIGHT.

THE COURT: YOU DECIDE WHEN THE CLOCK RUNS FOR PURPOSES OF A MEMORANDUM OF COSTS, WHETHER IT'S FROM TODAY OR TOMORROW.

MR. SILVERSTEIN: OKAY. THANK YOU, YOUR HONOR.

MR. WAITE: THANK YOU, YOUR HONOR.

MR. BECK: THANK YOU, YOUR HONOR.

THE COURT: WANT TO WAIVE NOTICE?

MR. SILVERSTEIN: NOTICE WAIVED.

MR. WAITE: NOTICE WAIVED, YOUR HONOR.

MR. BECK: NOTICE WAIVED, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

(PROCEEDINGS CONCLUDED)

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 85 HON. JAMES C. CHALFANT, JUDGE

AFFORDABLE CLEAN WATER ALLIANCE,	)	
	)	
PETITIONERS,	)	SUPERIOR COURT
	)	
-VS-	)	NO. BS161742
	)	
SANTA CLARITA VALLEY SANITATION DISTRICT,	)	
	)	
RESPONDENTS.	)	

I, PATRICIA ANN THAETE, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 30, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER, REPORTED BY ME ON SEPTEMBER 26, 2017, IN DEPARTMENT 85.

DATED THIS 11TH DAY OF OCTOBER, 2017.

PATRICIA A. THAETE, CSR NO. 8737
OFFICIAL REPORTER

EXHIBIT 10

R

Affordable Clean Water Alliance v. Santa Clarita Valley Sanitation District of Los Angeles County, BS 145869

Tentative decision on motion for order re: enforcement of writ: granted

Petitioner Affordable Clean Water Alliance ("ACWA") moves the court for orders (1) maintaining the writ in force until there is full compliance; (2) compelling Respondent Santa Clarita Valley Sanitation District of Los Angeles ("District") to file an additional return; (3) enforcing the writ; and (4) imposing a fine on District under CCP section 1097.

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioner ACWA commenced this proceeding on November 27, 2013. The operative pleading is the First Amended Petition ("FAP") filed on March 27, 2015.

The FAP alleges in pertinent part as follows. On October 28, 2013, the District's Board of Directors approved the "Santa Clarita Valley Sanitation District Chloride Compliance Facilities Plan" ("Facilities Plan") and certified a FEIR for the Facilities Plan (collectively, the "Project").

The District failed to provide an accurate, stable and finite project description. The plan that was the principal focus throughout the proceedings was "Alternative 4." Yet, at the final hearing on October 28, 2013, the District suddenly announced that the Project was changing to "Alternative 2," which became the approved and adopted Project. Although Alternative 2 was presented in the draft EIR ("DEIR"), it had never been studied at the same required level of disclosure as Alternative 4.

The last-minute change to the Project denied the public and the decision-makers adequate disclosure and information to properly understand, analyze and mitigate the impacts of the Project. The Deep Well Injection ("DWI") of brine as part of Alternative 2 was not adequately studied, and mitigation measures related to Alternative 2 either were not adopted or were improperly deferred. The potential for DWI and injection of hundreds of millions of gallons of brine into subsurface strata may result in an increase in seismicity (often referred to as "induced seismicity"), and this potential was brought to District's attention by its own seismic consultant. Yet, it was not adequately analyzed in the FEIR.

Alternative 2 disposes of the brine waste produced by advanced treatment of wastewater by injecting the brine into substrata layers through wells that are drilled as deep as one to two miles underground. Injection would occur on a round-the-clock basis, seven days a week. DWI requires the drilling of wells, with the resulting disturbance of the surface of the land where the wells are drilled, and the use of heavy drilling equipment, including a 150-foot tall drilling rig that would be onsite for approximately 16 months during construction and removed afterwards. Operation of the wells will require the installation of five to seven permanent well heads and appurtenant facilities such as injection pumps, chemical storage tanks, and electrical switchgear, at least one building near the wellheads for maintenance and servicing purposes, and some road or trail for access to the DWI facilities for use in such maintenance and servicing.

The FEIR's description of Alternative 2 presents two possible sites for installation of the DWI wells. The land on which DWI would be done under the Project as adopted is owned by the Newhall Land and Farming Company ("Newhall Land"), and is located in an area that is designated by the County of Los Angeles' General Plan as Significant Ecological Area 64, an area containing valley oak woodlands and accorded special procedural treatment because of its environmental values. On October 14, 2013, two weeks before the Project was approved, Newhall Land executed a Conservation Easement Deed in favor of the Center for Natural Lands Management, a California non-profit corporation. This deed was recorded with the Los Angeles County Registrar-Recorder on October 22, 2013. The restrictions on land use in the Conservation Easement expressly forbid drilling, which is required for creation of the DWI injection wells, and also prevents the construction of the building and appurtenant facilities needed for operation, maintenance and servicing of the DWI wells. Without wells or support facilities, DWI, an essential part of the Project, cannot be carried out.

The District has admitted that the Project cannot proceed in the form described in the FEIR certified by the District's Board because it is not legal to engage in DWI uses on the land designated in the FEIR. In January 2015, District issued a document entitled Supplemental Environmental Impact Report for Alternate DWI Site ("SEIR"). The stated purpose of the SEIR is to supplement the FEIR by analyzing an alternate site for DWI to be performed. The SEIR states at page 102:

> The specific parcel of land analyzed as the DWI site in the certified FEIR is no longer available for development because of a recently recorded Conservation Easement. Consequently, the [District] proposes to develop DWI on an alternate site located approximately 800 feet north of the location previously analyzed.

The SEIR was expressly developed and issued to analyze the environmental effects of DWI on an alternate site. On March 11, 2015, District withdrew its proposal to locate DWI for the Project at the alternate site, and also withdrew the SEIR without finalizing or certifying it.

The District abused its discretion by failing to decertify or otherwise nullify the FEIR, despite its full knowledge and admission that the adopted Project described in the FEIR cannot be completed due to the Conservation Easement's restrictions on the DWI site identified in the FEIR. Further, the District failed to proceed in the manner required by law and/or abused its discretion by failing to issue, circulate, and certify a SEIR or subsequent EIR for an alternate DWI site that would inform the public of the changed circumstances regarding the Project, and that would allow the public and expert and responsible State and other agencies to properly review and comment on any alternate DWI site.

2. Course of Proceedings

On August 6, 2015, the court granted Petitioner ACWA's motion to augment the administrative record. The court additionally granted permission to the parties to file 20-page briefs.

On February 23, 2016, the court granted the petition for writ of mandate in part on the grounds that (1) the FEIR lacks substantial evidence for its conclusion of no significant impact (no take) on stickleback populations, and (2) since the District has abandoned Alternative 2 and there

is no approved Project for Alternative 3, the Project approvals must be set aside.

B. Applicable Law

CCP section 1097 provides:

> When a peremptory mandate has been issued and directed to any inferior tribunal, corporation, Board, or person, if it appear to the Court that any member of such tribunal, corporation, or Board, or such person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the Court may, upon motion, impose a fine not exceeding one thousand dollars. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned until the writ is obeyed, and may make any orders necessary and proper for the complete enforcement of the writ.

This provision confers ample power to compel obedience with a court's peremptory writ of mandate, to the extent any is necessary. Professional Eng'rs in Cal. Gov't v. State Personnel Board, (1980) 114 Cal.App.3d 101, 109. The trial court has continuing jurisdiction until the writ is fully satisfied. *See* County of Inyo v. City of Los Angeles, (1977) 71 Cal.App.3d 185.

C. Statement of Facts

1. ACWA's Evidence

a. The March 23, 2016 Agenda

On March 18, 2016, the District made available the agenda for the March 23, 2016 District Board meeting by posting it on the District's website. Durbin Decl., Ex. 7. The Agenda stated that the District's Board would consider adoption of resolutions that would: (1) decertify the Original 2013 EIR, as required by the Writ; (2) delete from the Original 2013 EIR the Project component that would have provided treated wastewater for use as recycled water; (3) consider the Original 2013 EIR, as modified by deletion of the recycled water component, together with the uncertified Supplemental EIR ("SEIR"), denominating the combination of the two documents the "Augmented/Modified 2013 EIR," and certify the combined Augmented/Modified 2013 EIR as adequate under CEQA; (4) certify the Final SEIR as a separate document as adequate under CEQA; and (5) approve the Project as modified by the Augmented/Modified 2013 EIR and the Final SEIR. The March 18 posting of the District's agenda for the March 23 meeting was the first notice given of the Augmented/Modified 2013 EIR, which was not circulated for public and public agency review and comment under Guidelines section 15087. Durbin Decl. ¶¶ 9, 25; Lawrence Decl. ¶3, 7.

b. The March 23 Board Meeting

At the March 23 Board meeting, ACWA's counsel asked the Clerk of the Board for a copy of the Augmented/Modified EIR. The Clerk replied that she had no such copy. Durbin Decl. ¶25. In addition, Alan ("Flo") Lawrence, a member of ACWA, asked the Board members during his testimony whether they had a copy of "this amended EIR you're voting on." The Board members did not reply, but the District's counsel stated: "There is no amended EIR, sir." Lawrence Decl., ¶5. The Augmented/Modified EIR has not been circulated or posted on the District's website.

Durbin Decl., ¶¶ 25, 26; Lawrence Decl. ¶¶ 5, 7.

District Counsel stated during the meeting that the water recycling component was not part of the Chloride Compliance Project, and "never was, even though it's in the [Original] EIR, yes it is." Durbin Decl. ¶22. 13. The proposed Findings of Fact attached to the meeting agenda purported to find that the project component of providing Project effluent for recycled water uses was "independent from the other project components" and would be "separately considered by the [District] Board after further environmental review in a separate CEQA document." Durbin Decl. Ex. 7. No time frame for completion of recycled water review process was given. However, the proposed Findings of Fact and the Final SEIR certified by the Board continue to refer to the providing of recycled water to the Castaic Lake Water Agency as a Project "component" (Durbin Decl., Exs. 7, 10), while also asserting that it is not part of the Project and can be analyzed separately. Durbin Decl., Ex. 10. The proposed Findings of Fact cite the Project's "provid[ing] a wastewater treatment and effluent management program that accommodates recycled water reuse opportunities in the community" (*i.e.*, the recycled water component) as a benefit of the Project. Durbin Decl., Ex. 7.

ACWA and the public testified to the Board that deleting the water recycling component of the Project would have significant environmental impacts because it would remove a supply of recycled water that is now planned for and relied upon by various other public agencies, including the Castaic Lake Water Agency, in their plans for use of recycled water and for development generally in the Santa Clarita Valley. Durbin Decl., Ex. 11. The District made no direct response to the possible significant adverse effects of modifying the Original 2013 EIR by deleting the recycled water component of the Project. Durbin Decl. ¶¶22-24.

The proposed Findings of Fact state that the water reuse component of the Project will "be separately considered by the Board after further environmental and public review in a separate CEQA document." Durbin Decl. Ex.7. The "Cumulative and Irreversible Impacts of the Project" section of the Findings contains no finding about the cumulative impacts of the Project that include impacts from the water reuse component that is still considered to be part of the overall Project. Id.

The District Board adopted the Resolution recertifying the Original EIR as supplemented by the Final SEIR and with the recycled water component deleted (the Augmented/Modified EIR), certifying the Final SEIR, and the adopting the proposed Findings of Fact with no changes. Durbin Decl., Ex. 8.

c. The Loan and Retaining Wall Contract

At its February 25, 2016 meeting, the District Board had adopted resolutions authorizing the District's Chief Engineer to apply for funding for the ultraviolet disinfection portion of the Chloride Compliance Project, expressing the District's intent to use loan funding "to Reimburse Certain Expenditures of the Chloride Compliance Project," and pledging to use wastewater revenue (ratepayer fees) to repay the state funding. The Agenda at Item 7 specifically identifies the purpose of the funding as "partial funding for the UV Project," which itself is identified as "[o]ne component of the Chloride Compliance Project." Durbin Decl. Ex. 14, p. 2; Ex. 15, p. 2.

Subsequently, at its March 23, 2016 meeting, the District Board approved a contract for work on a Retaining Wall that would be built between the proposed location for the Project's treatment facilities and the Santa Clara River. Durbin Decl., Ex.7, p. 2; Ex. 8, pp. 6-7. The minutes

of the March 23, 2016 Board meeting describe the location and purpose of the Wall as the "undeveloped area at north end of Valencia [plant] property purpose of the Wall to grade and increase area for future treatment facilities" and "to prevent flooding." Durbin Decl. Ex. 8, p. 6. At the March 23 Board meeting, the District's Chief Engineer stated that the work on the Retaining Wall needed to be authorized without delay, saying:

> What we've said is that we will make our best efforts to continue to progress on the project to try to meet our schedule. So it would be best if we try to move forward tonight as we propose.... Again, we have a very strict schedule and a lot to get accomplished, in terms of implementing the Chloride Compliance Project, and so we want to do everything we can to meet that schedule.... I would recommend moving forward tonight. Durbin Decl. ¶22.

d. The April 18, 2016 Board Meeting

The Agenda for the April 18, 2016 District Board meeting included an Item reporting that the $6,685,250 contract for Construction of the Retaining Wall was executed on March 31, 2016. Durbin Decl. Ex. 13, p.1. In response to a question from a member of the public at the meeting, the District's Chief Engineer stated that the contract was necessary for the Chloride Compliance Project to proceed. Noltemeyer Decl. ¶4.

2. District's Evidence

On March 23, 2016, the District's Board approved a resolution titled "Resolution of the Board of Directors of Santa Clarita Valley Sanitation District of Los Angeles County: (1) Decertifying Santa Clarita Valley Sanitation District Chloride Compliance facilities Plan and Final Environmental Impact Report ("2013 EIR"); Recertifying the 2013 EIR as Augmented by the Final Supplemental Environmental Impact Report ("Final SEIR") for Brine Concentration and Limited Trucking and Certification of the Final SEIR; and (3) Making Findings of Fact, and Adopting Mitigation Monitoring and Reporting Program". Return Ex. B.

The Resolution concluded that the project component in the 2013 EIR concerning recycled water is independent and severable from the other project components needed to comply with the chloride limit. Id., ¶6. The Resolution noted that staff recommended a modified chloride compliance project ("Modified Project") consisting of four components: ultraviolet light disinfection, advanced treatment by microfiltration/reverse osmosis, brine concentration, and limited trucking of concentrated brine. Ex. B, p. 1, ¶4. The environmental impacts of the first two components were addressed as Alternative 2 in the original 2013 EIR and the final two components are addressed in the SEIR. Id., ¶5.

The Resolution contained the Board's determination that the 2013 EIR as augmented by the SEIR has been completed in accordance with the requirements of CEQA and did not identify significant and unavoidable environmental impacts associated with the Modified Project. Id., p. 2, ¶¶ 2-3. The Board also adopted a Mitigation Monitoring and Reporting Program and found that the mitigation measures identified therein reduce the potential impacts from implementation of the Modified Project to less-than-significant levels. Id., 206. The Board certified the Final SEIR and the Augmented EIR (2013 EIR and SEIR) and authorized the filing of a Notice of Determination ("NOD") for the Modified Project. Id., p.2.

At the same time, the Board also approved a Resolution that set aside the approval of the Project and approved the Modified Project. Return Ex. C, ¶9. The Modified Project does not include the recycled water component and changes the method of brine management identified in the Project. Id. The Resolution notes that the recycled water component could have resulted in a one-third reduction in the discharge from the District's treatment plants that could potentially affect the stickleback and it will be the subject of future environmental review by the District in a separate CEQA document that will analyze any potential impacts upon the stickleback. Id.

On March 24, 2016, the District filed with the County Clerk of the County of Los Angeles the Modified Project's NOD pursuant to Public Resources Code section 21152. Return Ex. D, ¶10.

The District decertified the 2013 EIR and rescinded the prior approvals of the previous version of the Project as required by the Writ. Return Ex. E, ¶11. The District also recertified the 2013 EIR in combination with the SEIR to provide CEQA documents analyzing a complete project for chloride compliance modified from that studied in the 2013 EIR. Id. The 2013 EIR in combination with the SEIR has been certified by the District as complying with CEQA, as required by the Writ. Id. The District rescinded its approval of the previous version of the Project and approved the Modified Project. Id., ¶12. The District's second Resolution states that the District will perform further study of the water recycling pursuant to CEQA before implementing that component. Id. This approval fully complies with the requirements of CEQA and the Writ. Id.

D. Analysis

Petitioner ACWA contends that the District's Return falsely claims compliance with the Writ. According to ACWA, District has not complied with the Writ because it certified the Modified EIR without following the requirements of CEQA. Additionally, ACWA argues that District has defied the Judgment and Writ by taking steps to carry out the Project before the Writ was discharged.

The District points out that the Project was the culmination of an extensive environmental review process designed primarily to comply with the Regional Board's orders to reduce chloride levels in the River. AR00273. A second objective of the Project was to "[p]rovide a wastewater treatment and effluent management program that accommodates recycled water reuse opportunities in the community while protecting beneficial uses of the SCR [Santa Clara River." AR00273. The District argues that the recycled water reuse opportunities were not critical to the core Project purpose. The water recycling component only involved an operational change that would make available more recycled water for community reuse with a resulting reduction in discharge of recycled water to the Santa Clara River. This component did not involve construction of any facilities or serve any specific projects. Neither the 2013 EIR nor the SEIR provide for any facilities to transmit recycled water to any end user, nor refer to any specific end use or end user for such water. Such details were to be developed and their potential environmental impacts analyzed if and when specific reuse projects were proposed by water purveyors. Opp. at 5.

According to the District, the court expressly accorded it with the discretion to "fix" the defect in the EIR, and the Petition was granted only because additional evidence was necessary for the impact to stickleback populations Dist. Ex. B, p. 12 ("And, therefore, the tentative is to grant only as to the evidence concerning take or stickleback population and to require that the approvals be set aside until and if such time as an SEIR is adopted and the project is approved using

Alternative 3.") The District contends that it has the discretion to implement that portion of the Project which satisfies its environmental concerns by electing to separate the water recycling secondary component from the Project's core of chloride compliance and then to separately study the recycling impact on the stickleback as required by the court's decision. The water recycling component of the Project does not represent a reasonably foreseeable consequence of the chloride compliance component, and its effects will not change the scope or nature of the chloride compliance component. The District's approval of a chloride compliance project is necessary to ensure compliance with the Regional Board's compliance order and is time-sensitive. The District is entitled to segregate this compliance project from the potential use of the end discharge, which is irrelevant to the impacts of the treatment itself. Continued discharge of the water that is the product of the Modified Project into the Santa Clara River continues the status quo and does not itself create any environmental impact. Opp. at 7.

Much of what the District says may be true, and the court has sympathy for its desire to comply on a timely basis with the Regional Board's directive. But the court cannot ignore the procedural and substantive requirements of CEQA at issue in the District's action.

First and foremost, the District cannot piecemeal a project. *See* Guidelines §15378(a), (c). As ACWA points out and the District admits, the 2013 EIR considered a Project involving both the chlorine compliance and water recycling components. The District now has separated the Project into its two components, contending that they are independent and the water recycling has no bearing on the chlorine compliance component. The District still intends to implement the water reuse component, but now intends to perform a separate environmental analysis on solely that portion. At least on its face, this is classic piecemealing in violation of CEQA. Arviv Enterprises, Inc. v. South Valley Planning Com., (2002) 101 Cal.App. 4th 1333, 1346.

The District relies on Dusek v. Redevelopment Agency ("Dusek") (1985) 173 Cal. App. 3d 1029, 1041, for the proposition that it does not abuse its discretion by "adopting a narrower project than initially envisioned." Opp. at 6.

In Dusek, an EIR and a supplemental EIR were prepared which discussed both the principal objective -- demolition and clearance of petitioner's property (the Pickwick Hotel) – and the redevelopment of the property even though no specific plan was in place. Id. at 1034. In the supplemental EIR, the project was described as "the acquisition and clearance of all existing improvements on Parcel 10 and the construction of up to 350,000 square feet of marketable space." Id. at 1037. The redevelopment agency certified the supplemental EIR but approved only the demolition and clearance portions of the project. Id. at 1035.

The court found that the agency did not abuse its discretion in approving a more limited project than that described in the supplemental EIR. Id. at 1041. The agency had fully disclosed and discussed the demolition of the Pickwick Hotel in the supplemental EIR, which "rang the environmental alarm bell loud and clear." Id. at 1038. An EIR's purpose is "to inform governmental decision makers and to focus the political process upon their action affecting the environment." Id. at 1039 (quoting Karison v. City of Camarillo, (1980) 100 Cal.App.3d 789, 804). "The action approved need not be a blanket approval of the entire project initially described in the EIR. If that were the case, the informational value of the document would be sacrificed." Id. at 1041. Decisionmakers must have the authority to implement that portion of a project that satisfies their environmental concerns. Id.

Dusek does not support the District's position. In Dusek, the agency had before it a

certified supplemental EIR analyzing the environmental impacts of demolition and redevelopment when it decided not to implement the entire project. In this case, the District has no environmental document fully analyzing both the chloride compliance and water recycling components that would permit it to narrow the Project to the Modified Project. Thus, the holding in Dusek, that narrowing the project to include only a fully disclosed option in the EIR was not an abuse of discretion, does not apply.

The court agrees that the District is not necessarily wedded to the 2013 EIR's project description, and may permissibly decide to narrow the Project to the Modified Project under appropriate circumstances. But when it does, the District must explain to the public why a narrowed project description does not "stultify the objectives of the reporting process" by affecting the evaluation of the impacts, mitigation measures, and alternatives. *See* Dusek, *supra,* 173 Cal.App.3d at 1041 (citation omitted). At a minimum, the District must present evidence why the Project is severable into two components and why doing so will not affect the CEQA reporting process. As ACWA argues, the modified CEQA documents must clarify for the public what the deletion of water recycling means for the environment. Reply at 4.[1] In the District's words, it must show that the water recycling component's effects will not change the scope or nature of the chloride compliance component. Yet, the 2013 EIR contained no discussion that the Project could be separated into components, and the Augmented EIR still refers to the water recycling component without discussion of its severability.[2]

Second, the District has violated CEQA's procedural requirements. The District relies on its March 23 resolutions to support the separation of Project components, but these resolutions – which are non-compliant substantively – also were made without public input. At no time prior to the agenda for that March 23 meeting did the District inform the public that the water reuse component was an independent and severable component of the Project. The narrowing of the Project and why it is severable is a matter that required public comment under CEQA. Draft EIRs must be publically circulated for at least thirty days. Pub. Res. Code §21091(a)(d). Public notice must be given when significant new information is added to an existing EIR before it is certified. Pub. Res. Code §21092.1; Guidelines §15088.5(a). The deletion of the water reuse component of the Project is significant new information that required the District to recirculate in compliant environmental review documents before certifying them.

The District's certification of the Modified EIR and SEIR did not comply with CEQA.

2. Violation of the Writ

ACWA further argues that District has violated the Writ by taking actions to further the Project. The District has approved a contract for a retaining wall and begun applying for a loan

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[1] ACWA argues that the District must address how deletion of water recycling from the Project will impact the plans of other public agencies for the use of the District's recycled water (Mot. at 6, 9-10, 12) and must rebalance the impact of the deletion of a Project objective on the Project alternatives (Mot. at 10). The court need not subscribe to ACWA's specific comments to agree that environmental explanation is required.

[2] The District argues that ACWA improperly seeks to litigate the merits of the SEIR, but the court is only interested in the SEIR as it bears on the necessary discussion for separating the Project components.

for the purpose of furthering the Project.

The District contends that the contract for the retaining wall does not violate the Writ because it is designed to provide geotechnical support for the Valencia plant, which is part of a separate project. The retaining wall was subject to CEQA review by the District's Board in the 2015 Santa Clarita Valley Joint Sewerage System Facilities Plan and Final Environmental Impact Report (certified January 29, 1998) and an Addendum to the 2015 Plan and EIR that was approved December 2, 2015. Langpap Decl., Ex. C, ¶3.

The retaining wall does not violate the Writ. While ACWA presents evidence that the District is motivating by the Project to build the retaining wall now (Reply at 8), motive is not enough to prove a violation. The retaining wall is an approved project which the District may pursue for any legitimate reason without violating the Writ. The timing of the District's action is insufficient to show a violation.

However, the District offers no explanation for its application for funding specifically identified as for the Project. *See* Durbin Decl., Ex. 14, p. 2. The writ prohibited the District from undertaking any steps to carry out the Project, and an application for funding is clearly a step to carry out the Project.

The District has violated the writ by taking steps to carry out the Project before the Writ was discharged.

3. Sanctions

ACWA seeks sanctions against the District for refusing or neglecting to obey the Writ without just excuse. District argues that it took all of its actions in good faith, and should not be sanctioned simply because the actions may not have been complete compliant. Opp. at 9-10.

The District acted in good faith in setting aside the 2013 EIR and certifying the Modified EIR. However, the District took action in furtherance of the Project that violated the Writ by seeking Project funding. Those actions could be construed as negligent disregard of the Writ. Nonetheless, sanctions will not be imposed for this violation alone.

E. Conclusion

Petitioner ACWA's motion for an order maintaining the writ of mandate is granted. The District is ordered to reconsider its return to the writ and file an additional Return when it has certified an EIR for the Project in a manner that complies with CEQA. The request for sanctions is denied.

EXHIBIT 11

RESOLUTION OF THE BOARD OF DIRECTORS OF SANTA CLARITA VALLEY SANITATION DISTRICT REGARDING WITHDRAWING NOTICE OF PREPARATION OF SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT FOR RECYCLED WATER PROJECT IN SANTA CLARITA VALLEY

WHEREAS, the Santa Clarita Valley (SCV) Sanitation District's mission is to protect public health and the environment through innovative and cost-effective wastewater management, and to convert wastewater into resources such as recycled water; and

WHEREAS, the SCV Sanitation District owns, operates, and maintains the Saugus and Valencia Water Reclamation Plants (WRPs); and

WHEREAS, the treated wastewater from the Saugus and Valencia WRPs meets the State Water Resources Control Board's Division of Drinking Water standards for disinfected tertiary recycled water and use of this water for various purposes including irrigation is authorized; and

WHEREAS, the SCV Sanitation District has contracted with Castaic Lake Water Agency (now the Santa Clarita Valley Water Agency) to provide recycled water for reuse in the Santa Clarita Valley; and

WHEREAS, the SCV Sanitation District desires to work with the City of Santa Clarita, County of Los Angeles, community leaders, the public, and water agency partners, including Santa Clarita Valley Water Agency (SCVWA) to promote and optimize the use of recycled water in the Santa Clarita Valley, to reduce the total cost of water infrastructure, and to develop greater local water supply sustainability through integrated regional water planning and management including recycled water and stormwater resources; and

WHEREAS, SCV Sanitation District's staff has prepared necessary studies and analysis for a "Recycled Water" Project to reduce recycled water discharges to the Santa Clara River, including those studies in the 2013 SCV Sanitation District Chloride Compliance Project Facilities Plan and Environmental Impact Report (2013 EIR); and

WHEREAS, the 2013 EIR was legally challenged, suspending the Recycled Water Project until further studies are done evaluating impacts to the Unarmored Threespine Stickleback fish are completed; and

WHEREAS, in August 2016, the SCV Sanitation District issued a Notice of Preparation of a Supplemental Environmental Impact Report for Study of Impacts to the Unarmored Threespine Stickleback Fish Under Reduced Discharge Conditions from the Santa Clarita Valley Sanitation District's Water Reclamation Plants; and

WHEREAS, the SCV Sanitation District has concluded that performing the necessary studies to address impacts to the Unarmored Threespine Stickleback fish associated with flow diversions and reduced discharge conditions, and the associated resource agency permitting for such diversions and reduced discharges will be time-consuming and costly to the SCV Sanitation District's ratepayers with an uncertain outcome including the probability of future litigation; and

WHEREAS, the SCV Sanitation District has concluded that the Recycled Water Project, as contemplated in the 2013 EIR, will not yield a timely or cost-effective Project for the SCV Sanitation District's ratepayers; and

WHEREAS, in August 2017, the Board Certified the Recirculated SCV Sanitation District Chloride Compliance Project Environmental Impact Report – Separation of Recycled Water Project, superseding the 2013 EIR; and

WHEREAS, in accordance with State regulations, the water resource management stakeholders have formed groups tasked with developing such plans as: the Integrated Regional Water Management Plan for the Upper Santa Clara River Region; the Urban Water Management Plan; the Salt and Nutrient Management Plan; and a Groundwater Sustainability Plan; and

WHEREAS, these plans are necessary to promote integrated regional strategies for water resources that support management of water supply, water quality, environmental interests, drought protection, and flood protection; and

WHEREAS, SCV Sanitation District recycled water is both a surface and groundwater resource; and

WHEREAS, on January 1, 2018, the SCVWA was formed, combining the Castaic Lake Water Agency and the Newhall County Water District into a single agency to provide integrated regional water management services; and

WHEREAS, in April 2018, the SCVWA Board directed SCVWA staff to review the overall watershed in terms of environmental resources, aesthetics and recreation (a "Watershed Program Approach"); the SCVWA Board has appropriated funds for this purpose; and this review in coordination with other planning efforts may identify potential opportunities for integrated regional water planning and management including recycled water projects that may be initiated or carried out by SCVWA; and

WHEREAS, the SCVWA Watershed Program Approach would be the most efficient and effective planning process for determining the best management of all SCV water resources including recycled water.

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the SCV Sanitation District, as follows:

Section 1. The SCV Sanitation District does hereby cease its planning efforts on the Recycled Water Project and withdraws the Notice of Preparation of a Supplemental Environmental Impact Report for Study of Impacts to the Unarmored Threespine Stickleback Fish Under Reduced Discharge Conditions from the Santa Clarita Valley Sanitation District's Water Reclamation Plants (SCH# 2012011010) and rejects the Recycled Water Project described therein.

Section 2. The SCV Sanitation District anticipates that SCVWA will take primary responsibility for watershed management planning, including consideration, planning and implementation of any recycled water reuse opportunities, and that to the extent SCVWA decides to proceed with any projects, SCVWA will act as lead agency in any such efforts. The SCV Sanitation District will continue to assist SCVWA, as appropriate, in its assessment of recycled water reuse opportunities within the Santa Clara River watershed, will work with the SCVWA as it updates its Recycled Water Master Plan, and will assist SCVWA with its development of recycled water opportunities where determined to be cost-effective and feasible. As part of these efforts, the SCV Sanitation District will support the efforts of SCVWA to obtain funding for recycled water project development.

Section 3. The SCV Sanitation District will coordinate Santa Clarita Valley regional water management organizations, community groups and the public to promote local sustainability of the Santa Clarita Valley's water resources including the use of recycled water.

PASSED AND ADOPTED by the Board of Directors of Santa Clarita Valley Sanitation District on _____, 2019.

_____
Chairperson

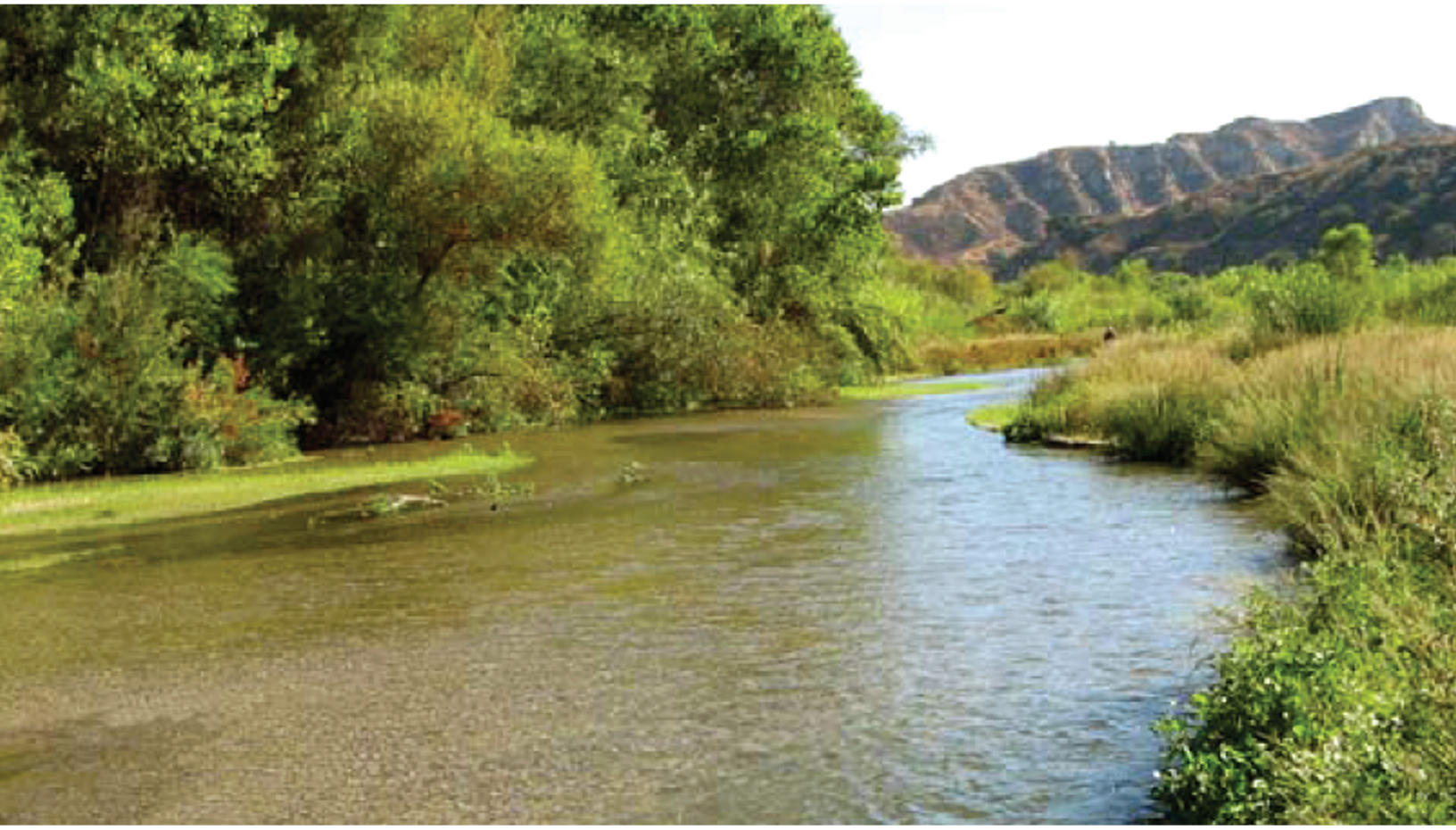
ATTEST:

_____
Secretary

EXHIBIT 12

RECIRCULATED SANTA CLARITA VALLEY SANITATION DISTRICT CHLORIDE COMPLIANCE PROJECT ENVIRONMENTAL IMPACT REPORT— SEPARATION OF RECYCLED WATER PROJECT

FINAL



SANITATION DISTRICTS OF LOS ANGELES COUNTY

www.lacsd.org

SCH# 2012011010

AUGUST 2017

SECTION 2
Recommended Project

2.1 Introduction

The Santa Clarita Valley Sanitation District (SCVSD) provides wastewater (sewage) management services for the businesses and residents in the Santa Clarita Valley. The SCVSD treats wastewater at two water reclamation plants—the Saugus and Valencia Water Reclamation Plants (SWRP and VWRP).

The Recirculated EIR updates prior analyses of impacts of a plan to comply with a State-mandated chloride limit (Chloride Compliance Project) and includes multiple components:

- The Chloride Compliance Project was studied previously in an EIR certified by SCVSD in 2013 (2013 EIR). The 2013 EIR was decertified pursuant to an order by the Los Angeles County Superior Court (Court), but the analysis contained in the 2013 EIR was, for the most part, upheld by the Court. This Recirculated EIR updates the analysis contained in the 2013 EIR where necessary to address new information or changed circumstances, including the SCVSD's subsequent decision to abandon plans to dispose of brine through deep well injection and also to pursue separately plans for the eventual reuse of the treated water (Recycled Water Project). For certain resource areas, no revisions to the prior analysis are required. These sections are described at Section 3, *Resources with No Changes in Impacts*. In those cases, the prior analysis is reproduced at Section 11, *2013 EIR*. For other sections, only limited revisions are required. In those cases, the new section focuses on the new or updated analyses as needed, and both the new section and a cover sheet to Section 11 set forth a list of the parts of the section for which new or updated analysis was provided.
- Since the 2013 EIR was certified, the SCVSD has abandoned its plans to dispose of brine through deep well injection and instead proposes enhanced brine concentration equipment and disposal of the smaller amount of concentrated brine by limited trucking to an existing industrial facility in Carson. The SCVSD certified a Supplemental EIR analyzing the impacts of the new brine disposal plan in 2016 (2016 Trucking SEIR). This Recirculated EIR updates the analysis contained in the 2016 Trucking SEIR where necessary to address new information or changed circumstances, including the SCVSD's subsequent decision to pursue the Recycled Water Project separately. For certain resource areas, no revisions to the prior analysis are required. These sections are described at Section 3, *Resources with No Changes in Impacts*. In those cases, the prior analysis is reproduced at Section 12, *2016 Trucking SEIR*. For other sections, only limited revisions are required. In those cases, the new section focuses on new or updated analyses as needed, and both the new section and a cover sheet to Section 12 set forth a list of the parts of the section for which new or updated analysis was provided.

- At the time the Final Recirculated EIR is certified by the Board, the SCVSD intends for the Board to decertify the 2016 Trucking SEIR, as the Recirculated EIR would be the operative CEQA document for the Chloride Compliance Project, including the plan for brine management.
- SCVSD is proposing to implement its Chloride Compliance Project separately from its Recycled Water Project. This Recirculated EIR analyzes the impacts, if any, of proceeding with the two projects separately.

Under the Chloride Compliance Project, chlorine disinfection will be replaced by disinfection with ultraviolet light (UV disinfection) at the SWRP and the VWRP, and advanced treatment, brine concentration, and truck loading facilities will be added at the VWRP. Collectively, these facilities will reduce chloride levels in the Santa Clarita Valley's treated wastewater to comply with the State-mandated chloride limit for the Santa Clara River (SCR).

2.2 Project Location

The general location of the facilities in the Chloride Compliance Project is shown on **Figure 2-1**. The VWRP and its proposed inbound and outbound truck routes are shown on **Figure 2-2**. The JWPCP, its disposal stations, and its proposed inbound and outbound truck routes are shown on **Figure 2-3**.

2.3 Project Objectives

Only the first project objective from the 2013 EIR, reproduced at Section 11, is still a project objective. Furthermore, the third project objective from the 2016 Trucking SEIR, reproduced at Section 12, is deferred and will become a project objective for the Recycled Water Project, which will be analyzed in a separate CEQA document. Additionally, due to a delay in the project, the first project objective from the 2016 Trucking SEIR, reproduced at Section 12, has been slightly modified. The project objectives that are still relevant are reproduced below:

- Provide compliance with the Chloride TMDL for SCVSD wastewater treatment and discharge facilities in the timeliest manner
- Utilize an existing industrial facility for brine disposal

2.4 Description of Proposed Project

The proposed project, as described in the 2013 EIR, reproduced at Section 11, and 2016 Trucking SEIR, reproduced at Section 12, is summarized below. The proposed project includes the following components:

- UV disinfection facilities at VWRP and SWRP
- Microfiltration/reverse osmosis (MF/RO) facilities at VWRP
- Enhanced brine concentration facilities at VWRP
- Brine disposal system via trucking

SECTION 7
Cumulative Impacts

7.1 Introduction

Sections 15130 and 15065 of the CEQA Guidelines require that an EIR include a cumulative impact analysis. The timing of the Chloride Compliance Project (proposed project) has been altered as a result of the separation of the Recycled Water Project from the proposed project. Therefore, the cumulative impacts from the implementation of the Chloride Compliance Project in conjunction with other spatially and temporally proximate projects are updated and re-analyzed in this section. This analysis is based on a list of projects in the Chloride Compliance Project's area that could potentially contribute to cumulative impacts.

7.2 Cumulative Impacts

A cumulative impact results from impacts from the combination of the Chloride Compliance Project with other projects that cause related impacts. The CEQA Guidelines require that an EIR discuss the cumulative impacts of a project when the project's incremental effect is "cumulatively considerable," meaning that the project's incremental effects are considerable when viewed in combination with the effects of past, current, and probable future projects. According to the CEQA Guidelines (Sections 15130[a] and [b]), the purpose of the cumulative impacts section is to provide a discussion of significant cumulative impacts that reflect "the severity of the impacts and their likelihood of occurrence." The CEQA Guidelines provide that the discussion of cumulative impacts should include all of the following:

- Either: (1) a list of past, present, and probable future projects producing related or cumulative impacts, or (2) a summary of projections contained in an adopted general plan or similar document, or in an adopted or certified environmental document that described or evaluated conditions contributing to a cumulative impact;
- A discussion of the geographic scope of the area affected by the cumulative effect;
- A summary of expected environmental effects to be produced by these projects; and
- Reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

The analysis of cumulative impacts focuses on the effects of concurrent construction and operation of the Chloride Compliance Project with other spatially and temporally proximate projects. This analysis relies on a list of projects that have the potential to contribute to

cumulative impacts in the Chloride Compliance Project area. Related projects located in surrounding jurisdictions may be impacted by the Chloride Compliance Project. Jurisdictions contacted for related project information include the County of Los Angeles, the City of Santa Clarita, and the City of Carson. **Table 7-1** identifies projects located within the vicinity of the VWRP (located in Los Angeles County near the City of Santa Clarita), SWRP (located in the City of Santa Clarita), and the JWPCP (located in the City of Carson). The projects listed in **Table 7-1** are included in the 2013 EIR, reproduced at Section 11, and 2016 Trucking SEIR, reproduced at Section 12. The grey highlighted projects are new projects for which information has been updated since the approximately one-year delay in the project and are now considered in the cumulative analysis in this Recirculated EIR. **Figures 7-1A** and **7-1B** identify the cumulative project locations with reference to the Chloride Compliance Project components. Cumulative Project 3 is a regional project and cannot be represented on **Figure 7-1A** as a single location. Note that construction of Chloride Compliance Project components and the related projects identified in **Table 7-1** may not occur at the same time. In addition, several projects are long-term and are planned to span a number of years. This reduces the likelihood of these projects occurring at the same time as the Chloride Compliance Project.

TABLE 7-1
CUMULATIVE PROJECTS

No.	Project Name	Project Location	Project Type	Proximity to Proposed Project Site	Implementation Status
1.	Via Princessa East Extension Project	Portions of Via Princessa between Golden Valley Road and Sheldon Avenue	New roadway construction	2.3 miles southwest of the SWRP	Final EIR released June 2015; project approved October 2015
2.	McBean Parkway Bridge Improvement Project	McBean Parkway at the Santa Clara River	Bridge Removal and Replacement	1.3 miles west of SWRP	Construction bid awarded December 2016
3.	Castaic Lake Water Agency Recycled Water Master Plan	Castaic Lake Water Agency Service Area	Recycled Water Infrastructure Upgrade	3 miles north of VWRP	First phase to begin no earlier than 2020
4.	Mission Village Project	The Old Road and Commerce Center Drive	Residential, Commercial, and Recreational Development	1.3 miles west of VRWP	Revised EIR released in November 2016
5.	Landmark Village Project	Chiquita Canyon Road, Commerce Center Drive and Highway 126	Residential, Commercial, Recreational, and Open Space Development	1.3 miles west of VRWP	Revised EIR released in November 2016
6.	Entrada South	City of Santa Clarita-West of The Old Road and Magic Mountain Parkway	Mixed Development	1 mile south of VWRP	Draft EIR released April 2015; Project open as of March 2016
7.	VWRP Retaining Wall Extension	VWRP	Retaining Wall Thickening	Within VWRP	Construction bid awarded March 2016

No.	Project Name	Project Location	Project Type	Proximity to Proposed Project Site	Implementation Status
8.	SCVSD Recycled Water Project (Draft Title)	VWRP	Water Reuse	Within VWRP	2018-19
9.	I-5 Improvements in North County	Interstate 5 from State Route 14 to Parker Road	Roadway Improvements to Increase Capacity	Adjacent to VWRP	Construction will begin in summer 2019; completed in 2022
10.	The Old Road Widening Project	Unincorporated Los Angeles County	Road Improvement	Adjacent to VWRP	Ongoing Planning
11.	Sepulveda and Panama Mixed-Use Project	City of Carson – APN 7406-002-039 and 402 E. Sepulveda	Planned Senior Residential Living: 1.22 acres	0.25 mile east of the JWPCP	IS/ MND released in April 2015
12.	Union South Bay	City of Carson – 21521-21600 S. Avalon Boulevard	Planned Community: 5 acres	2 miles northeast of JWPCP	Construction began in November 2016; estimated completion date 2018
13.	Carson Street Master Plan	City of Carson – Carson Street between I-110 and I-405	Street Improvements	1.5 mile north of JWPCP	Construction ongoing as of December 2016 continuing through 2017
14.	Carson Comprehensive Master Bike Plan	Various locations throughout Carson and on JWPCP lot along railroad tracks	Bikeway Improvements	Within JWPCP	Approved in 2013

Sources: Boyer 2015; The Bulletin 2016; City of Carson 2017, 2016a, 2016b, 2013; City of Santa Clarita 2017; Littlejohn 2016; Los Angeles County Metropolitan Transportation Authority 2017; Los Angeles Department of Regional Planning 2016; Los Angeles Daily News 2006; OPR 2017a, 2017b; North America Procurement Council n.d.; Planet Bids n.d.; Santa Clarita News 2015.

7.2.1 Related Projects

Geographic Scope

Cumulative impacts are assessed for related projects within a similar geographic area. This geographic area may vary depending upon the potential impact discussed and the geographic extent of that impact. For example, construction noise impacts would be limited to areas directly affected by construction, while the area affected by the Chloride Compliance Project's construction-related air emissions generally includes the entire air basin. Construction impacts associated with increased noise, dust, erosion, and access limitations tend to be localized and could be exacerbated if other development or improvement projects are occurring within the same or adjacent locations as the Chloride Compliance Project.

Type of Projects Considered

This analysis considers potential cumulative effects of the Chloride Compliance Project's construction and operation with other construction projects in the Chloride Compliance Project's area. For this analysis, other past, present, and reasonably foreseeable future construction projects in the area are identified.

EXHIBIT 13

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

October 20, 2014

Mr. Dan Masnada
General Manager
Castaic Lake Water Agency
27234 Bouquet Canyon Road
Santa Clarita, CA 91350-2173

Dear Mr. Masnada:

Temporary Increase in Recycled Water Allotment for FY 2014-15

County Sanitation Districts Nos. 26 and 32, now the Santa Clarita Valley Sanitation District (Sanitation District), entered into an agreement to sell recycled water to Castaic Lake Water Agency (CLWA) on July 24, 1996. Section 2.1 of that agreement allots 1,600 acre-feet per year (AFY) (on a fiscal-year basis) to CLWA. CLWA has requested a temporary increase in the allotment for construction applications, such as grading and dust control, at the Newhall Ranch residential development.

We understand from CLWA that the construction activity is expected to use approximately 1,700 acre-feet during fiscal year 2014-2015. Existing irrigation use of recycled water delivered by CLWA is approximately 330 AFY, not including the Entrada project, which is expected to start receiving recycled water in the near future. To meet these projected demands, and pursuant to Section 2.2 of the agreement, the Sanitation District hereby authorizes a temporary increase of 600 AFY to CLWA's recycled water allotment, for a total allotment of 2,200 AFY for fiscal year 2014-2015.

If you have any questions regarding this temporary increase in recycled water allotment, please feel free to contact Mike Sullivan at (562) 908-4288, extension 2801, or Earle Hartling at extension 2806.

Very truly yours,
Grace Robinson Hyde

Mike Sullivan
Section Head
Monitoring Section

MS:EH:lmb

#3118266

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

GRACE ROBINSON HYDE
Chief Engineer and General Manager

July 23, 2015

JUL 28 2015

Mr. Dan Masnada
General Manager
Castaic Lake Water Agency
27234 Bouquet Canyon Road
Santa Clarita, CA 91350-2173

Dear Mr. Masnada:

Temporary Increase in Recycled Water Allotment for FY 2015-16

County Sanitation Districts Nos. 26 and 32, now the Santa Clarita Valley Sanitation District (Sanitation District), entered into an agreement to sell recycled water to Castaic Lake Water Agency (CLWA) on July 24, 1996. Section 2.1 of that agreement allots 1,600 acre-feet per year (AFY) on a fiscal year basis to CLWA. We understand from CLWA that the construction activity is expected to use approximately 1,700 acre-feet during fiscal year 2015-2016. Existing irrigation use of recycled water delivered by CLWA is approximately 330 AFY, not including the Entrada project, which has recently started receiving recycled water.

Last year, CLWA requested and was granted a temporary increase in the allotment for construction applications, such as grading and dust control, at the Newhall Ranch residential development through June 30, 2015. To meet these projected demands in the upcoming year, and pursuant to Section 2.2 of the agreement, the Sanitation District hereby authorizes a temporary increase of 600 AFY to CLWA's recycled water allotment, for a total allotment of 2,200 AFY for fiscal year 2015-2016. This temporary increase will be eliminated if a new agreement for the sale of recycled water between our two agencies is reached prior to the end of the subject period. As far as a new agreement is concerned, the Sanitation District needs CLWA's desired contractual recycled water allotment so that we may proceed in drafting a revised agreement.

If you have any questions regarding this temporary increase in recycled water allotment, please feel free to contact Ann Heil at (562) 908-4288, extension 2801, or Earle Hartling at extension 2806.

Very truly yours,
Grace Robinson Hyde

Ann Heil
Section Head
Monitoring Section

AH:EH:lmb

3322936

EXHIBIT 14

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
(858) 467-4201
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

September 7, 2016

Mr. Bryan Langpap
Santa Clarita Valley Sanitation District of Los Angeles
1955 Workman Mill Road
Whittier, CA 90601
mgiljum@lacsd.org

Subject: Comments on the Notice of Preparation of a Supplemental Environmental Impact Report for Study of Impacts to the Unarmored Threespine Stickleback Fish under Reduced Discharge Conditions from the Santa Clarita Valley Sanitation District's Water Reclamation Plants, Santa Clarita, Los Angeles County (SCH# 2012011010)

Dear Mr. Langpap:

The California Department of Fish and Wildlife (Department) has reviewed the above-referenced Notice of Preparation (NOP) for the Supplemental Environmental Impact Report (SEIR) for the study of impacts to the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni)* under reduced discharge conditions from the Santa Clarita Valley Sanitation District's (SCVSD) Valencia and Saugus Water Reclamation Plants (WRPs). SCVSD is acting as the Lead Agency in preparing a SEIR as a follow-up to the 2013 program EIR (PEIR). The Project for this SEIR involves analysis of potential impacts to unarmored threespine stickleback as a result of reductions [3.5 million gallons per day (mgd)] in discharge from the WRPs to annual average flows of 8.5 and 4.5 mgd, respectively. The Department requested and was granted an extension on the comment period to Friday, September 9, 2016. The Department appreciates the extension.

The Department's NOP comments are based on our knowledge of unarmored threespine stickleback and the project area as well as several information sources including a technical study titled, *Reduced Discharge Technical Study, Upper Santa Clara River California* (November 2010) prepared by ESA for SCVSD, and an the Adaptive Management Plan adopted in the PEIR. We appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code (FGC).

The following comments and recommendations have been prepared pursuant to the Department's authority as a Responsible Agency under the California Environmental Quality Act (CEQA) (CEQA Guidelines § 15381) over those aspects of the proposed project that come under the purview of the California Endangered Species Act (CESA; FGC § 2050 *et seq.*), the Native Plant Protection Act (NPPA; FGC §1900 *et seq.*), and lake and streambed alteration program (LSA; FGC § 1600 *et seq.*). The Department is also commenting pursuant to our authority as Trustee Agency with jurisdiction over natural resources affected by the project (CEQA Guidelines § 15386) to assist the Lead Agency in avoiding or minimizing potential project impacts on biological resources. The Department also has jurisdiction over fully-protected species of birds, mammals, amphibians, reptiles, and fish, pursuant to FGC sections 3511, 4700, 5050, and 5515. Except as provided in the FGC (e.g., for necessary scientific

research), take of any fully-protected species is prohibited, and cannot be authorized by the Department unless pursued through a natural community conservation plan (NCCP; FGC § 2800 *et seq.*).

Comments

1. Impacts to unarmored threespine stickleback. Unarmored threespine stickleback is a fish endemic to southern California. The unarmored threespine stickleback is an Endangered Species Act (ESA)-listed and CESA-listed and state fully-protected species that currently persists in a very limited distribution in Santa Clara River (River) and tributaries within the project area. The Department and United States Fish and Wildlife Service (USFWS) have collaborated on a recovery plan for unarmored threespine stickleback (1985, last 5-year review in 2012) that identifies the population in the River as important to the long-term survival of the species. Any change to the quality and/or quantity of water in the River has the potential to affect this population. Decreased rainfall in southern California over the last six (6) years has reduced typical surface flows in the River and its tributaries and has resulted in flows that are not adequate to support unarmored threespine stickleback in some reaches of the River where they have historically occurred.

   The Department considers adverse impacts to a species protected by CESA, for the purposes of CEQA, to be significant unless mitigation to fully offset the direct and indirect impact(s) is provided. As to CESA, take of any endangered, threatened, candidate species, or state-listed rare plant species that results from a project is prohibited, except as authorized by state law [FGC §§ 2080, 2085; California Code of Regulations (CCR) Title 14 §786.9). Consequently, if proposed Project construction, operation, maintenance or any related activity over its lifetime will result in take of a CESA-listed species, the Department recommends that SCVSD seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from the Department may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances [FGC §§ 2080.1, and 2081 subds. (b),(c)]. Early consultation with the Department is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain CESA authorization. Revisions to the FGC, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the project CEQA document addresses all impacts to CESA-listed species and specifies a biological mitigation monitoring and reporting program of sufficient detail and resolution that will meet the requirements of an ITP.

2. Impacts to Least Bell's Vireo (*Vireo bellii pusillus*) and Southwestern Willow Flycatcher (*Empidonax traillii extimus*). The least Bell's vireo and southwestern willow flycatcher are both ESA- and CESA-listed species that are known it occur in the River and tributaries within the project area. Similar to unarmored threespine stickleback, the reduction in surface water flows has the potential to reduce the quantity and quality of suitable nesting and foraging habitat for these listed riparian species.

   The Department considers adverse impacts to a species protected by CESA, for the purposes of CEQA, to be significant unless mitigation to fully offset the direct and indirect impact(s) is provided. As to CESA, take of any endangered, threatened, candidate species, or state-listed rare plant species that results from a project is prohibited, except as authorized by state law [FGC §§ 2080, 2085; California Code of Regulations (CCR) Title 14

§786.9). Consequently, if proposed Project construction, operation, maintenance or any related activity over its lifetime will result in take of a CESA-listed species, the Department recommends that SCVSD seek appropriate take authorization under CESA prior to implementing the Project. Appropriate authorization from the Department may include an Incidental Take Permit (ITP) or a consistency determination in certain circumstances [FGC §§ 2080.1, and 2081 subds. (b),(c)]. Early consultation with the Department is encouraged, as significant modification to a Project and mitigation measures may be required in order to obtain CESA authorization. Revisions to the FGC, effective January 1998, may require that the Department issue a separate CEQA document for the issuance of an ITP unless the project CEQA document addresses all impacts to CESA-listed species and specifies a biological mitigation monitoring and reporting program of sufficient detail and resolution that will meet the requirements of an ITP.

3. Establishing Environmental Baseline. To provide an adequate baseline from which to evaluate potential impacts from the proposed flow reduction, the Department recommends that the SEIR establish an appropriate monitoring program that sufficiently captures and records a range of environmental indicators (data that are scientific, practical, and applicable to the program)[1]. Environmental indicators should have qualities that are measurable/quantitative, sensitive to perturbation, discriminatory, accurate, referential to a benchmark or baseline, and potentially anticipatory. With the establishment of measurable and quantifiable indicators, an appropriate baseline of conditions can be used as a reference to which all future data can be compared.

4. Biological Baseline Assessment. The SEIR should provide a complete assessment of the flora and fauna within and adjacent to the project area, with particular emphasis upon identifying sensitive species (e.g., endangered, threatened, regionally, locally unique, and/or narrow endemic) and sensitive habitats, and include the following:

   a. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region [CEQA Guidelines § 15125(c)];
   b. A thorough, recent, floristic-based assessment of special status plants and natural communities, following the Department's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see http://www.dfg.ca.gov/habcon/plant/);
   c. Floristic, alliance- and/or association-based mapping and vegetation impact assessments conducted at the project site and within the neighboring vicinity. *The Manual of California Vegetation*, second edition, should also be used to inform this

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[1] Intergovernmental Task Force on Monitoring Water Quality. 1995. The nationwide strategy for improving water quality monitoring in the United States. Final Report of the Intergovernmental Task Force on Monitoring Water Quality Technical Appendix E. Open File Report 95-742.

[2] A notification package for a LSA may be obtained by accessing the Department's web site at www.wildlife.ca.gov/habcon/1600.

mapping and assessment (Sawyer et al. 2008[3]). Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions;

d. A complete, recent, assessment of the biological resources associated with each habitat type on site and within adjacent areas that could also be affected by the project. The Department's California Natural Diversity Data Base (CNDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat. The Department recommends that CNDDB Field Survey Forms be completed and submitted to CNDDB to document survey results. Online forms can be obtained and submitted at *http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp*;
e. A complete, recent assessment of rare, threatened, and endangered, and other sensitive species on site and within the area of potential effect, including California Species of Special Concern (CSSC) and California Fully-Protected Species (FGC § 3511). Species to be addressed should include all those which meet the CEQA definition (see CEQA Guidelines § 15380). Seasonal variations in use of the project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service; and,
f. A recent, wildlife and rare plant survey. The Department generally considers biological field assessments for wildlife to be valid for a one (1)-year period, and assessments for rare plants may be considered valid for a period of up to three (3) years. Some aspects of the proposed project may warrant periodic updated surveys for certain sensitive taxa, particularly if build out could occur over a protracted time frame, or in phases.

5. In-stream Flow Analysis. The SEIR should assess the direct and indirect effects of reduced stream flow from the project on unarmored threespine stickleback and its habitat. Studies for environmental flow protection should consider the quantity, timing, and quality of water flow required to protect and sustain riverine habitat that supports the unarmored threespine stickleback. Study methodologies may include, but not be limited to, the following: (1) hydrological studies that evaluate historical flow data to identify flow levels that can be considered safe thresholds within the expected variability given the flow reductions; (2) studies that examine changes in hydraulic variables conducted over timeframes that would capture short- and long-term impacts to unarmored threespine stickleback and their habitat, such as depth, velocity and wetted width, that may be proxies for the overall quantity of unarmored threespine stickleback habitat; (3) water-quality studies to evaluate potential changes to environmental factors, such as water temperature, turbidity, and chemistry, as they may affect unarmored threespine stickleback habitat; and, (4) habitat simulation modelling to examine changes in the amount of physical unarmored threespine stickleback

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[3] Sawyer, J. O., Keeler-Wolf, T., and Evens J.M. 2008. A manual of California Vegetation, 2nd ed.

ISBN 978-0-943460-49-9.

habitat based on selected variables as a function of discharge. The studies should consider the geomorphic aspects of the River as a multi-thread system that is subject to highly variable flows and that has a high potential for channel modifications. Additionally, the studies should consider that the habitat may be particularly sensitive to flow reductions during the low-flow summer months and during periods of prolonged drought. As a product of these studies, measures and mechanisms that assure there will be sufficient streamflow to protect the unarmored threespine stickleback and maintain its habitat should be identified.

6. CESA 2081(a) Permit. Currently, the science is not fully established in assessing and maintaining habitat vitality and function for unarmored threespine stickleback utilizing in-stream flow modelling or other predictive studies based on stream specific habitat parameters. The Department would consider SCVSD's assessment and protective measures in the SEIR for unarmored threespine stickleback relating to the Project's proposed reduction in effluent discharge to be experimental in nature. Therefore other than a no Project alternative, the Department cannot conclude that take of unarmored threespine stickleback would not occur.

   Recognizing data needs that would facilitate further understanding the River dynamics on maintaining unarmored threespine stickleback habitat, the Department recommends SCVSD consider applying for take under FGC section 2081(a) independent of any specific project, which may allow the Department to authorize take under specific scientific purposes. Further, unarmored threespine stickleback habitat baseline assessments and protective measures identified and implemented pursuant to Section 2081 (a) may enable the Department to further consider any SCVSD project proposal in the future.

7. LSA Agreement. The Department has made the determination that the project, as proposed would require notification under the Department's LSA program (FGC § 1600 *et seq.)*. As a Responsible Agency under CEQA, the Department has authority over activities that will divert or obstruct the natural flow, or change or use material from the bed, channel, or bank (including vegetation associated with the stream or lake) of a river, stream and/or lake. Based on this notification and other information, the Department determines whether a LSA agreement with the applicant is required prior to conducting the proposed activities. The Department's issuance of a LSA agreement for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. As a CEQA Responsible Agency, the Department may consider the Negative Declaration or Environmental Impact Report of the local jurisdiction (Lead Agency) for the project. To minimize additional requirements by the Department pursuant to LSA program and/or under CEQA, the document should fully identify the potential impacts to the stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the LSA agreement.

8. Vegetation Survey. The vegetative map (Figure 3-1) that is provided in the November 2010 technical study is not detailed enough to assess habitat[4]. Within each of the habitat types presented, it will be necessary to identify specific vegetation (both coverage and quality). The Department recommends the Biological Assessment for the SEIR update refine the vegetation mapping to a smaller mapping unit, differentiate between patches with differing vegetation and densities, and verify the accuracy of the previous mapping. All unique vegetation patches, or stands, regardless of size, should be mapped on a site-specific vegetation map. Defined minimum mapping units should only be used on very large scale projects, such as mapping the vegetation at the county level. A project level assessment should have 100%, fine scale coverage of vegetation mapped using recent aerial imagery and ground truthing.

   The Department requests the entire project footprint, plus a 500-foot buffer from the high-bank of the riverbed, be mapped using the *Manual of California Vegetation* second edition protocol (https://www.dfg.ca.gov/biogeodata/vegcamp/veg_manual.asp). The method of vegetation classification presented in the *Manual of California Vegetation* second edition represents the vegetation classification standards for vegetation maps adopted by the state that meet the National Vegetation Classification System standards followed by federal agencies. Once the habitat is identified, the Department can provide meaningful feedback regarding impacts to biological resources.

9. Adaptive Management Plan. The mitigation measures (BIO-1) identified in the PEIR Adaptive Management Plan (ADP) document are not sufficient to ensure that impacts to UTS are avoided or minimized. The PEIR ADP states, "[b]otanists will map the vegetation communities within the monitoring area at a macro level (e.g. 1:1800 scale) every three years." As described above in NOP comment #8, working at a scale this small does not provide adequate record of vegetative conditions. Observations should be made on a larger, more site-specific scale (e.g., 1:200) in order to accurately portray changing conditions.

   The PEIR ADP states, "[b]otanists will qualitatively assess the vegetation for visual signs of water stress on an annual basis for the first 6 years following the reduced discharge of treated water." Conducting visual surveys on an annual basis will not sufficiently tell of ecological conditions on the site. If the vegetation is showing outward signs of stress due to hydrologic conditions, it may already be too late to act in a recuperative manner. As described above in NOP comment #8, the Department suggests that botanic surveys be conducted with greater frequency utilizing data collection that goes beyond singular observation. It is likely that both surface and groundwater studies would be needed to give a more holistic view of ecological health of the system.

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[4] Page 3-2 of the Technical Study. Nov. 2010 – "Note that this mapping effort is at a much larger scale than would be typically employed for an individual project or study area."

We appreciate the opportunity to comment on the NOP for the Study of Impacts to the UTS under Reduced Discharge Conditions from the SCVSD's WRPs. Questions regarding this letter and further coordination on these issues should be directed to Andrew Valand at (562) 342-2142 or email at Andrew.Valand@wildlife.ca.gov.

Sincerely,

Edmund Pert
Regional Manager
South Coast Region

ec: Ms. Betty Courtney, CDFW, Santa Clarita
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