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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CALIFORNIA WATER IMPACT NETWORK, Plaintiff and Appellant, v. NEWHALL COUNTY WATER DISTRICT et al., Defendants and Respondents; GATE KING PROPERTIES et al., Real Parties in Interest.	B203781 (Los Angeles County Super. Ct. No. BS098727)
CALIFORNIA OAK FOUNDATION et al., Plaintiffs and Appellants, v. CITY OF SANTA CLARITA, Defendant and Respondent; GATE KING PROPERTIES et al., Real Parties in Interest.	B203782 (Los Angeles County Super. Ct. No. BS084677)

APPEAL from judgments of the Superior Court of Los Angeles County, Dzintra Janavs, Judge. Affirmed.

Law Offices of Babak Naficy and Babak Naficy for Plaintiffs and Appellants.

Lagerlof, Senecal, Gosney & Kruse LLP, Thomas S. Bunn III; Carl K. Newton, City Attorney; Burke Williams & Sorensen LLP, Brian A. Pierik and Gregory M. Murphy for Defendants and Respondents.

Cox, Castle & Nicholson, Anne E. Mudge and Sarah E. Owsowitz for Real Parties in Interest.

This is the second time we address issues associated with a proposal to develop an industrial park in the City of Santa Clarita, the City's environmental impact report (EIR) for the proposed project, and water. Four years ago, we ruled that the City's EIR did not include an adequate discussion on the subject of water supplies for the proposed project. (See *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219 (*California Oak*).) At that time, we directed the trial court to issue a writ of mandate commanding the City to decertify its EIR, and to prepare and recertify an EIR complying with the requirements of the California Environmental Quality Act (CEQA).[1] We further directed the trial court to retain jurisdiction over the cause until the City recertified its EIR.

The consolidated appeals before our court today arise from two judgments which, together, have the effect of approving the City's recertification of its EIR — with a final additional analysis (FAA) — for the proposed project. We agree with the trial court that the City's EIR/FAA now complies with CEQA, and affirm both judgments.

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[1] See Public Resources Code section 21000 et seq. All section references are to the Public Resources Code, except where noted otherwise. All references to the CEQA Guidelines are to the California Code of Regulations, title 14, section 15000 et seq.

FACTS

I. Water

We begin our examination of the current appeal by revisiting some foundational background facts summarized in our prior opinion on the first appeal. The State Water Project (SWP) was authorized in the 1950s, and was envisioned to become a system of reservoirs, dams and other facilities for the storage and delivery of 4.23 million acre-feet of water per year (AFY). The Department of Water Resources (DWR) manages the SWP and operates its facilities. (*California Oak, supra*, 133 Cal.App.4th at p. 1227.)

When the SWP began, DWR entered into a number of long-term contracts with water suppliers (DWR contractors) throughout the state. The central provisions of these long-term contracts were the same: a DWR contractor was allotted an entitlement to a certain amount of water from the SWP each year, in exchange for which the contractor agreed to pay, on a proportionate basis, the costs of financing and maintaining the SWP's facilities. (*California Oak, supra*, 133 Cal.App.4th at p. 1227.) The long-term contracts also included a provision — "Article 18" — outlining the procedures for the reallocation of water among contractors in the event of water shortages within the SWP system. (See generally, *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 898-900 (*PCL*).)

The entitlements to SWP water which were allotted to the contractors under their long-term contracts with DWR were based on the predicate that the state would actually build out the SWP as planned, so that it actually had the capacity and capability to store and deliver 4.23 million AFY of water. The state, however, never completed the SWP as envisioned, and, today, the SWP simply does not have the physical capability to deliver 4.23 million AFY of water to its contractors. On the contrary, the actual, reliable water supply in the SWP is more in the vicinity of 2 to 2.5 million AFY of water. (*California Oak, supra,* 133 Cal.App.4th at pp. 1227-1228.)

With this general background of the state's water resources and some relevant statutory schemes in mind, we move on to other events.

II. The Monterey Agreement and Monterey Amendments

During the late 1980s and early 1990s, ongoing drought conditions in California diminished the supply of water in the SWP, and generated "Article 18 disputes" among state's agricultural water contractors, urban water contractors, and DWR regarding the distribution of water from the SWP. In the fall of 1994, DWR and its contractors met in Monterey to discuss the allocation of SWP water in times of shortage. These so-called "Article 18 negotiations" morphed into an attempt to implement an "omnibus revision of the SWP long-term contracts and their administration" (see *PCL, supra*, 83 Cal.App.4th at p. 901), and, in early 1995, DWR and a number of contractors took the first step toward that end by agreeing to a statement of principles known as the Monterey Agreement.

For purposes of the appeal before us today, the Monterey Agreement embodied two key principles: first, it contemplated that the then-existing long-term contracts with DWR would be amended to allow for the reallocation of the entitlements to SWP water which the state's agricultural contractors and urban contractors had previously enjoyed, and, second, it envisioned that these amendments would authorize contractors to transfer SWP water amongst themselves on a "willing buyer/willing seller" basis. (*California Oak, supra*, 133 Cal.App.4th at p. 1228; *PCL, supra*, 83 Cal.App.4th at pp. 900-902.)

In the years following the Monterey Agreement, various DWR contractors began implementing the agreement's principles by negotiating and purchasing transfers of SWP water. These consummated transfers of entitlements to SWP water became known as the Monterey Amendments. In 1999, the Castaic Lake Water Agency (CLWA) purchased a transfer of an entitlement to 41,000 AFY of SWP water from the Kern County Water Agency (KCWA). (*California Oak, supra*, 133 Cal.App.4th at p. 1228.)[2]

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[2] "CLWA is a public agency created and governed by the uncodified Castaic Lake Water Agency Law. (Stats. 1962, 1st Ex. Sess., ch. 28, §1, p, 208 . . . .) CLWA was formed to provide a . . . supply of imported water to . . . water purveyors of the Santa Clarita Valley. . . . CLWA contracts with [DWR] for water from the [SWP] . . . , treats those supplies at its treatment plants, and delivers the treated water to [local] water

As we will see below, the 1999 transfer of SWP water from KCWA to CLWA is the proverbial seed from which the appeal before us today is grown. With this second part of our story tucked away in mind, we turn to still more events.

III. Related Litigation

A. The CEQA Case Involving the Monterey Agreement/Monterey Amendments

The DWR contractors who negotiated the Monterey Agreement, along with DWR, recognized that implementation of the agreement's principles for the reallocation of water from the SWP might have potential adverse environmental effects, and, thus required the preparation of an EIR, including an opportunity for public input during the environmental review process. To that end, the Monterey Agreement adherents appointed one of their own contractors to serve as the "lead agency" in charge of preparing an EIR. In 1995, the contractor certified an EIR for the Monterey Agreement, and, later that same year, DWR, acting in the role of a "responsible agency," issued findings and adopted the EIR. (*PCL, supra,* 83 Cal.App.4th at p. 902.)

Shortly thereafter, two citizens groups (and others) filed a petition for writ of mandate in the Sacramento County Superior Court, challenging the sufficiency of the EIR for the Monterey Agreement. In 1996, the trial court entered judgment rejecting the

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retailers within [the Santa Clarita Valley] area." (*Friends of the Santa Clara River v. Castaic Lake Water Agency* (2004) 123 Cal.App.4th 1, 4.) CLWA is a statutorily-defined "urban water supplier" under the Urban Water Management Planning Act or UWMPA. (Stats. 1983, ch. 1009, § 1, p. 3555; Wat. Code, § 10610 et. seq.) The UWMPA requires all such water suppliers to prepare an Urban Water Management Plan (UWMP) every five years. Among other elements, a UWMP must provide information on a supplier's water usage, resources, reliability planning, demand management measures, and shortage contingency planning. A UWMP is intended to function as a planning tool to guide broad-perspective decision-making by the management of the water supplier; an UWMP is not a substitute for project-specific planning documents, such as those which are required under CEQA. In *Friends of the Santa Clara River v. Castaic Lake Water Agency*, *supra*, 123 Cal.App.4th 1, the Fifth District Court of Appeal in Fresno addressed challenges to CLWA's 2000 UWMP. In 2005, CLWA prepared its most recent UWMP. CLWA's UWMP envisions use of the transfer of the 41,000 AFY of SWP water purchased from KCWA.

CEQA challenges, ruling that, although the appointed contractor should not have been the lead agency for the preparation of the EIR, the EIR was nonetheless adequate, which meant that the CEQA violation was not prejudicial.

In 2000, the Third District Court of Appeal agreed with the trial court that DWR, not the appointed contractor, should have acted as the lead agency for the preparation of the EIR for the Monterey Agreement, but disagreed with the trial court that the EIR itself was adequate. The Third District reversed the judgment, concluding that the omissions in the EIR mandated preparation of a new EIR for the Monterey Agreement, under DWR's direction. (*PCL*, *supra*, 83 Cal.App.4th at p. 898.)

In June 2003, the Sacramento County Superior Court entered an order approving a settlement agreement in the CEQA case involving the Monterey Agreement. The order provided that the trial court would issue a writ of mandate compelling DWR to prepare a new EIR for the Monterey Agreement, and that the court would retain jurisdiction over the cause until DWR filed a return to the writ of mandate showing that it had complied with CEQA, and the court issued an order discharging the writ of mandate. (*Planning & Conservation League v. Department of Water Resources* (Super. Ct. Sacramento County, 2003, No. 95CS03216.)

The record before us today shows that the parties who are involved in the current appeal are of the understanding that, notwithstanding the passage of more than five years, DWR still has not yet completed its EIR for the Monterey Agreement.

With this summary of the CEQA litigation involving the Monterey Agreement, we turn to still more events.

B. The First CEQA Case Involving the Transfer of 41,000 AFY of SWP Water from KCWA to CLWA

In 1999, while the CEQA case involving the Monterey Agreement as a whole was pending in the Third District, the Castaic Lake Water Agency (CLWA) — in accord with the Monterey Agreement — agreed to purchase an entitlement to 41,000 AFY of SWP water from the Kern County Water Agency (KCWA) for approximately $47 million. The transfer of 41,000 AFY of water was memorialized in an amendment to the water supply

contract between DWR and CLWA, which now reflects that CLWA is entitled to receive its original entitlement of SWP water, and is entitled to receive an additional entitlement of 41,000 AFY of SWP water, i.e. the water KCWA transferred to CLWA. Also in 1999, CLWA certified an EIR for the transfer of the 41,000 AFY of SWP water. (*Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1379 (*Friends I*).)

Shortly after CLWA certified its EIR for the transfer of the 41,000 AFY of SWP water from KCWA, a nonprofit corporation filed a petition for writ of mandate in the Los Angeles County Superior Court, challenging the sufficiency of CLWA's EIR. In 2000, the trial court entered a final judgment denying the petition.

In 2002, Division Four of our court ruled that the decision by the Third District Court of Appeal in *PCL, supra,* 83 Cal.App.4th 892 — decertifying the original EIR for the Monterey Agreement/Monterey Amendments as a whole program — required the decertification of CLWA's "tiered" EIR for the ensuing transfer of the 41,000 AFY of SWP water from KCWA to CLWA. As Division Four explained, "tiering" — meaning the practice of incorporating prior environmental studies — is permitted under CEQA, but had resulted in a "defect" in CLWA's EIR when the original, underlying EIR for the Monterey Agreement as a whole, upon which CLWA's ensuing EIR had been expressly tiered, was decertified. (*Friends I, supra,* 95 Cal.App.4th at pp. 1375-1376, 1384-1387.) In short, Division Four ruled that an EIR may not be "tiered" on a decertified EIR. CLWA's options, suggested Division Four, were to wait until the EIR review process in the CEQA case involving the Monterey Agreement/Monterey Amendments had been completed (see *III., A., ante*), or to prepare its own independent EIR for the transfer of the 41,000 of SWP water from KCWA.

After *Friends I* was remanded to the trial court, the case litigants agreed the trial court should issue a writ of mandate directing CLWA to decertify its EIR, but a "bone of contention" remained whether the trial court should also enjoin CLWA from proceeding with the transfer of the entitlement to the 41,000 AFY of SWP water from KCWA before CLWA completed an adequate EIR for the transfer. (*Friends of the Santa Clara River v.*

Castaic Lake Water Agency (Dec. 1, 2003, B164027) [nonpub. opn. at p. 3] (*Friends II*).) In October 2002, the trial court denied the request to enjoin the transfer, and another appeal ensued. In December 2003, Division Four of our court affirmed the denial of injunctive relief. (*Ibid*.)

In February 2005, the California Water Impact Network (CWIN) dismissed its petition with prejudice.

C. The Second CEQA Case Involving the Transfer of 41,000 AFY of SWP Water from KCWA to CLWA

In 2004 (after Division Four decided *Friends II*), the CLWA certified an EIR for the permanent transfer of 41,000 AFY of SWP water from the Kern County Water District (KCWD). In January 2005, CWIN filed a petition for writ of mandate in the Ventura County Superior Court, challenging the EIR.[3] According to CWIN's petition, the EIR did not adequately discuss the threat posed by the permanent transfer of the water, i.e., the promotion of large-scale urban sprawl in Ventura and Los Angeles Counties, while diverting water forever from Kern County. On the same day that CWIN filed its petition, the Planning and Conservation League filed its own petition in Ventura County Superior Court challenging the transfer of water from KCWD to CLWA. The two petitions in Ventura County were consolidated, and, in June 2005, the consolidated Ventura County petitions were transferred to the Los Angeles County Superior Court and assigned case number BS098724.

On April 2, 2007, the trial court (Hon. James Chalfant) ruled that CLWA properly acted as the lead agency for the preparation of the 2004 EIR for the water transfer from KCWD to CLWA, and that CLWA's 2004 EIR "was properly prepared," except for one element — the EIR did not explain that the availability of water from the SWP "may be

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[3] CWIN filed its petition in the Ventura County Superior Court about one month before it filed its request for dismissal of its action in the Los Angeles County Superior Court (case No. BS056954) in which its request for a preliminary injunction had been denied. (See *III., B.*, *ante*; and see also *Friends II*, *supra*, B164027.)

impacted" by the outcome of DWR's pending preparation of an EIR for the Monterey Agreement/Monterey Amendments as a whole. For this reason, the trial court issued a writ commanding CLWA to set aside its approval of its 2004 EIR for the transfer of the 41,000 AFY of SWP water from KCWD, and to comply with CEQA, either through the preparation of a new EIR or an addendum "addressing the analytic route of the three water allocations." Judge Chalfant expressly ruled that that the transfer itself would not be set aside.

With this part of the related litigation in mind, we can now take a look at the proposed project at the heart of the appeal which is before us today.

IV. The Proposed Industrial Park Project, and the EIR Process for the Project

A. The Proposed Project

In 1999, Gate King Properties submitted a series of project requests to the City of Santa Clarita related to a proposal to develop an industrial/commercial park on a 584-acre site in the southern portion of the City. As described in our prior opinion, Gate King's original proposal envisioned the development of approximately 4.45 million square feet of industrial/commercial structures on 170.1 acres, with another 64.3 acres dedicated to rights-of-way (including public streets) and water wells. The remaining acreage was to include a combination of slopes, trails and open space. (See *California Oak, supra*, 133 Cal.App.4th at p. 1224.)

Gate King's proposed project envisions that the water which will be consumed on site by the industrial park's eventual occupants will be delivered at the retail level by the Newhall County Water District (NCWD). Moving up along the supply channel, NCWD obtains water at the wholesale level from the CLWA, and, as noted above, CLWA obtains water from the SWP, including an entitlement/transfer of an additional 41,000 AFY of SWP water from the KCWA.

B. The EIR Process for Gate King's Proposed Project

In January 2002, the City circulated a draft EIR for Gate King's proposed project. Section 4.10 of the City's draft EIR addressed the subject of "Utilities," including "Water Supplies." The discussion of water supplies explained that the NCWD would supply

water for the Gate King site at the retail level, and that NCWD obtained its water from local groundwater wells and the CLWA. The City's draft EIR also explained that CLWA obtained water from the SWP, and that CLWA's current total water entitlement from the SWP included 41,000 AFY of SWP water which CLWA had purchased from the KCWD. The draft EIR's discussion of water supplies included this broad proviso: "It should be noted . . . that CLWA's . . . entitlement [to SWP water] can fluctuate from year to year based on a number of factors, including hydrologic conditions, the status of [SWP] facilities, construction, environmental requirements, and evolving policies for the Bay-Delta."

During the comment period on the City's draft EIR, the Santa Clarita Organization for Planning the Environment (SCOPE) objected that the discussion of water supplies in the draft EIR for Gate King's proposed project was inadequate because it did not disclose that there was ongoing litigation which might affect the availability of the 41,000 AFY of SWP water transferred from KCWA to CLWA. The City, in turn, prepared a response to SCOPE's comments in which the City explained that the Newhall County Water District (NCWD) had completed a water supply assessment (WSA) for Gate King's proposed project, and that NCWD had concluded that it would have sufficient water to supply the needs of the project.

In October 2002, the City circulated a final EIR for Gate King's proposed project. In June 2003, the City passed a resolution adopting the findings set forth in the EIR, and certifying the EIR as final. The City's final EIR did not make any material alterations in the discussion of water supplies set forth in the draft EIR. SCOPE's comments regarding ongoing litigation involving the transfer of the 41,000 AFY of SWP water from KCWD to CLWA, along with the City's response, were included — along with other comments and responses — in the final EIR as "Appendix H." The final EIR also included a document prepared by NCWD entitled "Additional Water Supply Information" as "Appendix K."

Now, with the basic framework of Gate King's proposed project in mind, and the City's EIR for the project in mind, we may finally turn to the litigation from which the current appeal arises.

V. The Two Cases Giving Rise to the Current Appeal

A. Santa Clarita Oak Conservancy v. City of Santa Clarita (the California Oak case)

In July 2003, shortly after the City certified its final EIR for Gate King's proposed project, the Santa Clarita Organization for Planning the Environment (SCOPE) and other groups filed a petition for writ of mandate seeking to compel the City to decertify its EIR on the ground that it did not include adequate information on the "uncertainties" which were then still attendant to the transfer of the 41,000 AFY of SWP water from KCWA to CLWA. (L.A. Super. Ct. No. BS084677.) In March 2004, the trial court entered judgment denying SCOPE's writ petition, and, shortly thereafter, SCOPE filed an appeal.

In November 2005, we ruled that the information on the subject of water supplies set forth in the City's EIR for Gate King's proposed project was inadequate. There, we determined "the EIR's failure to present . . . an analysis of how demand for water would be met without the 41, 000 AFY entitlement, or of why it is appropriate to rely on the 41,000 transfer . . . render[ed] the EIR defective . . . ." (*California Oak, supra,* 133 Cal.App.4th at p. 1242.) We reversed the judgment, and remanded the cause with directions to the trial court to issue a writ of mandate compelling the City to decertify its EIR for Gate King's project, and to retain jurisdiction over the cause until such time as the City certified an EIR which complied with CEQA. (*Id*. at p. 1245.)

In March 2006, NCWD completed preparation of a new WSA for Gate King's proposed industrial park project. That same month, the City circulated a draft additional analysis for the EIR for Gate King's proposed project. The City's draft additional analysis stated that, "[b]ased on th[e] . . . [new WSA] prepared by NCWD, an adequate supply of water is available to serve the Gate-King project, [and] existing and planned future uses in the Santa Clarita [area]. No significant water supply . . . impacts are expected from supplying available water to meet the demands of both the project and

cumulative development in the [area]." The report went into detail in explaining its conclusions.

In July 2006, the City certified a final additional analysis (FAA) for the EIR for Gate King's proposed project. In August 2006, the City filed a return in the trial court, including requests to discharge the peremptory writ of mandate which had been issued in accord with *California Oak*, and to dismiss SCOPE's petition. In October 2006, SCOPE filed an objection to the City's return to the peremptory writ of mandate.

In June 2007, the adequacy of the City's EIR/FAA was argued to the trial court. On August 15, 2007, the trial court entered a statement of decision setting forth its ruling that the City's EIR/FAA was adequate. On September 5, 2007, the trial court entered judgment accepting the City's return to the court's peremptory writ of mandate, and discharging its preemptory writ of mandate.

In November 2007, SCOPE filed a timely notice of appeal. (case No. B203782.)

B. California Water Impact Network v. Newhall County Water District

In July 2005, about three months before we issued our opinion in *California Oak*, NCWD approved a water supply assessment (WSA) in connection with an application by Gate King to have the site of its proposed industrial park project annexed into NCWD's service territory. In August 2005, the California Water Impact Network (CWIN) filed a petition for writ of mandate, coupled with a complaint for declaratory and injunctive relief, challenging NCWD's WSA for purposes of annexation, and seeking to enjoin NCWD from proceeding with the annexation of the site of Gate King's proposed industrial park. (L.A. Super. Ct. No. BS098727.)

In November 2005, we issued our decision in *California Oak*. As noted above, we directed the trial court to issue a writ of mandate compelling the City to decertify its EIR for Gate King's proposed project on the ground that the EIR's discussion of the subject of water supplies was inadequate, and compelling the City to recertify an EIR after it had complied with CEQA.

In spring 2006, before the adequacy of the City's EIR for Gate King's proposed project had been resolved, CWIN and NCWD agreed on a stipulation for judgment in their parallel annexation case. On June 1, 2006, the trial court entered a judgment on the parties' stipulation. The judgment provided that the trial court would issue a peremptory writ of mandate commanding NCWD to set aside its WSA for the annexation of the Gate King site, and to stay all proceedings to annex the Gate King site, until such time as the City recertified its EIR for Gate King's proposed project in compliance with *California Oak*, and NCWD then "considered the project based on the City['s] certified EIR."

As noted above, the City certified its EIR/FAA for Gate King's proposed project in July 11, 2006. On July 13, 2006, NCWD adopted a resolution approving the City's EIR/FAA, and reaffirming NCWD's annexation of the Gate King site.

In October 2006, NCWD filed a return to the trial court's peremptory writ of mandate in which it requested an order discharging the trial court's writ, and dismissing CWIN's case. Broadly summarized, NCWD's return argued that the trial court's writ should be discharged because CWIN had complied with the writ's command to consider Gate King's project based on the City's recertified EIR/FAA. In November 2006, CWIN filed an objection to the return.

In June 2007, CWIN's objections to NCWD's return were argued to the trial court (on the same day that SCOPE's contentions were argued regarding the adequacy of the City's recertified EIR/FAA). On August 15, 2007, the trial court issued a statement of decision in which it ruled that NCWD had not violated CEQA by incorporating the City's environmental findings regarding Gate King's project. It followed, concluded the court, that its writ should be discharged, and that CWIN's petition should be dismissed.

On September 5, 2007, the trial court entered a formal order discharging its peremptory writ of mandate, and dismissing CWIN's petition.

In November 2007, CWIN filed a timely notice of appeal. (case No. B203781.)

VI. The Consolidation of the Appeals

In January 2008, the Newhall County Water District (NCWD) filed a motion in our court, asking us to consolidate SCOPE's appeal in the *California Oak* case involving the City's EIR/FAA (case No. B203782), and CWIN's appeal in its parallel annexation-related case (case No. B203781). In February 2008, we granted the motion to consolidate the appeals.

DISCUSSION

I. The City's EIR/FAA Includes Adequate Information on the Subject of Water Supplies for the Proposed Project

Picking up where our prior opinion in *California Oak* left off, CWIN contends the City's recertified EIR/FAA for Gate King's proposed project violates CEQA because the City still has not discussed the subject of water supplies adequately.[4] More specifically, CWIN contends the City's EIR/FAA does not adequately inform the public, and/or the appropriate decision-making government officials, that DWR's still-not-yet-completed "programmatic" review of the Monterey Agreement and Monterey Amendments may "undermine" the continuing viability of the transfer of 41,000 AFY of SWP water from the Kern County Water Agency (KCWA) to the Castaic Lake Water Agency (CLWA). This omission, argues CWIN, means that the relevant decision-makers do not have an adequate understanding of the potential problems that might affect the amount of water which CLWA will receive, meaning they do not have an adequate understanding of the potential problems which CLWA may have in delivering water to the Newhall County Water District (NCWD), meaning they do have an adequate understanding of the potential problems which NCWD may have in delivering water to the Gate King project. We disagree with CWIN's contention that the City's EIR/FAA is inadequate.

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[4] Our references to CWIN include both CWIN and SCOPE, which have filed joint briefs on appeal.

A. CEQA and EIRs

As noted above, the "heart" of CEQA lies in its mandate that a government agency shall prepare an EIR before approving a proposed project which may have a significant effect on the environment. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392; and see also § 21100, subd. (a).) An EIR is intended to be an *informational* document; its purpose is to provide public officials, and the public, with information regarding the potential environmental consequences that a proposed project may have on the environment, and to identify ways in which those consequences may be minimized, and to indicate alternatives to the project, including a "no project" alternative. (*California Oak, supra*, 133 Cal.App.4th at p. 1225; and see also § 21061.) Once an EIR is adequately presented, the governing agency may find that the project's environmental effects have been reasonably mitigated, and approve the project; or the agency may find that the unmitigated environmental effects of the project are outweighed by the project's benefits, and approve the project, or the agency may find the adverse environmental effects are so profound that the project should not go forward, in which case something else (or nothing else) must be done in place of the proposed project. (*California Oak, supra*, 133 Cal.App.4th at p. 1225.)

In short, "[t]he purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283.)

B. Analysis

We simply disagree with CWIN's perspective that the City's EIR/FAA for Gate King's proposed project — when viewed as an *informational* document — "never fully admits or explains" the uncertainties which may be attendant with the transfer the 41,000 AFY of water from KCWA to CLWA. In our view, CWIN is just plain wrong that the City's EIR/FAA for Gate King's proposed project fails to *disclose* — and that is the operative word — that DWR may, in preparing its new EIR for the Monterey Agreement, adopt mitigation measures which may undermine the continued availability of the transfer of the 41,000 AFY of water from KCWA to CLWA.

The City's EIR/FAA for Gate King's proposed project expressly discusses the Third District's decision in *PCL, supra*, 83 Cal.App.4th 892 — decertifying the original EIR for the Monterey Agreement — and its aftermath — DWR's pending preparation of a new EIR for the Monterey Agreement. The EIR/FAA also discusses Division Four's decision in *Friends I, supra*, 95 Cal.App.4th 1373 — decertifying the original EIR for the transfer of the 41,000 AFY of SWP water from KCWA to CLWA. The EIR/FAA also discusses our opinion in *California Oak*. And, the EIR/FAA expressly acknowledges that DWR's still-pending preparation of a new EIR for the Monterey Agreement "introduces an element of potential uncertainty" regarding the 41,000 AFY transfer of SWP water from KCWA to CLWA.

The City's EIR/FAA for Gate King's proposed project further sets forth reasons in support of the City's conclusion that DWR's still-pending preparation of an EIR for the Monterey Agreement is not expected to impact the amount of water available to CLWA vis-à-vis the transfer of the 41,000 AFY of SWP water from KCWA to CLWA.

No more is needed in an *informational* document. According to CWIN, the City's EIR/FAA for Gate King's proposed project is deficient because it does not include an "objective analysis" of the potential impacts that may follow when DWR completes its EIR for the Monterey Agreement and Monterey Amendments. We understand CWIN's arguments to embody the proposition that the City's EIR/FAA for Gate King's proposed project will not be adequate until it (1) sets forth, essentially in list form, all of the possible mitigation measures which DWR may adopt in the course of the ongoing EIR review process for the Monterey Agreement and Monterey Amendments, and then (2) sets forth the corresponding amounts of water which will be subtracted from the transfer of the 41,000 AFY of SWP water from KCWA to CLWA.

The cases cited by CWIN in support of its arguments — our decision in *California Oak, supra*, 133 Cal.App.4th 1219, and the Supreme Court's decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 (*Vineyard*) — do not, in our reading, support the proposition that the City's EIR/FAA for Gate King's proposed project must include the intricate specificity demanded by CWIN.

As we explained in *California Oak,* an EIR is adequate when it includes sufficient detail to enable those who did not participate in its preparation to understand and meaningfully consider the environmental issues raised by the proposed project. (See *California Oak, supra,* 133 Cal.App.4th at p. 1237, citing *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 721.) This standard necessarily contemplates a dose of common sense, and a rejection of the proposition that CEQA demands the inclusion of ever more information in an EIR, until the EIR itself becomes so overwhelmingly complex that it becomes essentially meaningless. We are satisfied that the City's decision-making officials were informed by the City's EIR/FAA for Gate King's proposed project that approval of Gate King's proposed project carried with it a number of potential water supply problems.

CWIN's arguments on appeal offer a well-written treatise explaining the rules governing EIRs. But CWIN's arguments then fail, in our view, to connect those rules to its claims of "inadequacy" in the present case. In other words, CWIN correctly states that CEQA jurisprudence requires an EIR to set forth adequate information upon which an agency may make an educated decision, but we see no discussion in CWIN's arguments in which it specifically offers an example of the type of information which it wants to see in the City's EIR/FAA. We see little explanation by CWIN of any possible mitigation scenario which may result from DWR's ongoing EIR review of the Monterey Agreement.

If we may take another tack, we understand CWIN to be arguing that the City's EIR/FAA for Gate King's proposed project is required to state something to this effect: "If DWR adopts _____ (with the City filling in the blank with a possible mitigation measure), then the 41,000 AFY of water from KCWD to CLWA will be diminished by _____ (with the City filling in the blank with the corresponding AFY figure)." CWIN's argument would be more convincing had CWIN explained to us even one possible mitigation measure which DWR may possibly take. We decline to accept CWIN's contention that the City is required to include something more in its EIR/FAA for Gate King's proposed project when CWIN has not offered us a

suggestion about what sort of "something more" might, in the real world, be a realistic possibility.

The City's EIR/FAA for Gate King's proposed project is now adequate.

II. The City's Conclusions Are Supported by Substantial Evidence

CWIN argues the City's recertification of its EIR/FAA for Gate King's proposed project must be vacated because the City's conclusion that the 41,000 AFY of water is reliable for planning purposes is not supported by substantial evidence. We disagree.

A. The Standard of Review

Noticeably absent from CWIN's argument is any acknowledgment of just what the concept of "substantial evidence" means in the context of judicial review of an agency's conclusions in the course of certifying an EIR. We begin our discussion of CWIN's substantial evidence claim by filling in that void.

Substantial evidence challenges in CEQA cases are resolved in the same manner as substantial evidence claims in other settings: a reviewing court, whether at trial court or on appeal, will resolve reasonable doubts in favor of the governing agency's administrative decision, and will not set aside an agency's determination on the ground that the opposite conclusion would have been equally or more reasonable. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945-946, citing *Laurel Heights Improvement Assn. v. Regents of University of California, supra,* 47 Cal.3d at pp. 392-393.) In other words, an appellate court's review of the administrative record for substantial evidence in a CEQA case "is the same" as the trial court's review of the administrative record. (*Vineyard, supra,* 40 Cal.4th at p. 427.) The appellate court reviews the agency's action, not the trial court's decision, and, "in that sense appellate judicial review under CEQA is de novo" insofar as the trial court's findings are concerned, but deferential to the agency's findings where they are supported by substantial evidence. (*Ibid*.) With this standard as our guide, we turn to an examination of CWIN's claim.

B. The Evidence

The City's EIR/FAA for Gate King's proposed project includes a broad overview of the SWP, a review of the historical deliveries of SWP water to CLWA and other local contractors, and DWR's projections of SWP water supplies which will be available for delivery to CLWA (which were projected for "average/normal" conditions, and "a single dry year . . . based on a repeat of the worst-case historic hydrologic conditions of 1977," and "a multiple dry-year period . . . based on a repeat of the worst-case historic four-year drought of 1931-1934").

The City's EIR/FAA for Gate King's proposed project also includes an extensive review of the myriad of litigation arising from the Monterey Agreement and Monterey Amendments, and the transfer of 41,000 AFY from KCWD to CLWA, and includes the accurate observation that "[n]o court has ordered any stay or suspension of the Monterey Agreement pending certification of a new EIR," and that no court has ordered any stay or suspension of the 41,000 AFY from KCWD to CLWA. The City's EIR/FAA further notes (correctly) that DWR and its contracting water agencies "continue to abide by the Monterey Agreement[,] as implemented by the Amendments, as the operating framework for the SWP."

We are satisfied that the evidence summarized above supports the City's finding that the 41,000 AFY of water from KCWD to CLWA is reliable for planning purposes, and we consider CWIN's real objection not to be that there is an absence of substantial evidence in support of the City's conclusions, but that City's conclusions are, themselves, wrong. Where, as here, substantial evidence supports an agency's findings, we will not substitute our conclusions for those of the agency.

Finally, even assuming we were inclined to discard the City's conclusions, and to take it upon ourselves to make our own independent conclusions based on the evidence, our decision would be the same. Although CWIN is abstractly correct that DWR's new EIR for the Monterey Agreement/Monterey Amendments *may* (if and when feasible mitigation measures are adopted) affect the amount of SWP water which will be delivered to CLWA pursuant to the transfer of 41,000 AFY of water from KCWD, that

potentiality must be juxtaposed against what we do know for a *certainty*, and that is that DWR is not now considering whether the transfer itself is valid.[5]

We find the City reasonably concluded — based on substantial evidence — that the 41,000 AFY of SWP water from KCWD to CLWA is reliable for planning purposes.

III. Alternative Water Sources for the Project

CWIN contends the City's EIR/FAA for Gate King's proposed project violates CEQA because it fails to discuss alternative sources of water for Gate King's proposed project in the event that the transfer of 41,000 AFY of water from KCWD to CLWA becomes unavailable. CWIN's argument is based on *Vineyard, supra*, 40 Cal.4th 412. We find CWIN's reliance on *Vineyard* to be unhelpful within the framework of the case before us today.

In *Vineyard*, the Supreme Court addressed the adequacy of an EIR for a proposed mixed-use project in Sacramento County which was to be built out in phases. A group of "objectors" filed a petition for writ of mandate challenging the EIR. The essential issue presented by the objectors' contentions was that, while the EIR may have adequately evaluated an initial phase of development, it was nonetheless inadequate under CEQA because its promise of future environmental analysis as each phase was to be built side-stepped the County's obligation to disclose and consider at the outset the environmental impacts of supplying water to the entire planned development. (*Vineyard, supra*, at p. 427.)

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[5] In this respect, we note Judge Chalfant's conclusions in the CEQA case involving the transfer itself (L.A. Super. Ct. No. BS098724): "Under contract and validation law, the Kern water transfer contract, entered into in 1999, is valid, has been approved by DWR, and Castaic has paid . . . for it. . . . DWR [cannot] terminate the Kern transfer contract. Nothing in CEQA permits a public agency to void a contract. . . . [¶] Thus, in evaluating the environmental effects of the Monterey Agreement, DWR may impose mitigations that are legal. But it cannot invalidate the Kern transfer."

The trial court denied the objectors' petition, and the Court of Appeal affirmed the trial court, but the Supreme Court reversed the Court of Appeal. Broadly summarizing its decision, the Supreme Court ruled that, while the EIR adequately discussed "near-term" water supplies for the project, it did not adequately discuss "long-term" water supplies.

Vineyard has attained a place of importance in CEQA jurisprudence insofar as the Supreme Court identified four elements which must be included in an EIR's discussion of water supplies for a proposed project that envisions development in stages: (1) the EIR must evaluate the pros and cons of supplying the amount of water that the project — in its entirety — will need; (2) the EIR cannot be limited to a discussion of the water supply which is needed for the first stages of the project's development, and cannot state that "information will be provided in the future" as new stages of development commence, (3) the future water supplies which are identified must bear an actual likelihood of being available; and (4) where it is impossible to determine confidently that future water sources will be available, CEQA requires a discussion of possible replacement water sources or alternatives. (*Vineyard, supra,* at pp. 430-432.)

The case before us today does not present a *Vineyard* problem because the full extent of Gate King's proposed industrial park project is described at the outset in the City's EIR/FAA, including the project's ultimate anticipated water consumption, and the anticipated water supplies for the project. In other words, the City's EIR/FAA for Gate King's proposed project does not limit its assessment of water supplies to a "first stage" of the project, with a mere promise of "further analysis" for later stages of the project. We see no *Vineyard* omission in the City's EIR/FAA for Gate King's proposed project.

IV. The CalSim-II Model

As noted above, the City's EIR/FAA for Gate King's proposed project relies on water supply projections from DWR. Those projection are based on data derived from a computer model used by DWR for predicting future availability of water supplies from the SWP — the so-called "CalSim-II model." CWIN contends the City's EIR/FAA for

Gate King's proposed project violates CEQA because the City's discussion and analysis of the CalSim-II model is inadequate. Again, we disagree.[6]

A. The Discussion of the CalSim-II Model

As noted above, the CalSim-II model is a computer program developed and used by DWR to predict future availability of SWP water. This is the information that the City disclosed about the CalSim-II model in the EIR/FAA for Gate King's proposed project:

> "Comments submitted on the [draft additional analysis for the EIR for Gate King's proposed project] state that the CalSim-II computer model is flawed, and provide articles and other attachments that are critical of DWR's use of the CalSim-II model, pointing out that '[a]ll of [the] documents [provided] clearly lay out the problems for anyone who wants to rely on CalSim-II as the predictor of reliability for the SWP.' . . . [O]ther comments . . . have criticized DWR's reliance upon the CalSim-II model, claiming that the model overstates the amount of water the SWP can deliver during average and dry years. Those comments rely on the . . . decision [to grant a preliminary injunction in *Planning and Conservation League v. United States Bureau of Reclamation* (N.D.Cal. Feb. 15, 2006, No. C 05 – 3527 CW)] as authority for limiting future SWP water deliveries because of flaws in DWR's CalSim-II model. The City . . . is aware of the criticisms leveled against DWR's CalSim-II model, including criticisms noted in the following documents:
>
> "• *A Strategic Review of CALSIM[-]II And Its Use For Water Planning, Management And Operations in Central California*, submitted to the California Bay-Delta Authority Science Program Association of Bay Governments, by A. Close, *et al*., dated December 4, 2003;
>
> "• *Musings On A Model: CalSim[-]II In California's Water Community*, San Francisco Estuary and Watershed Science, Vol. 3, Issue 1 (March 2005), Article 1, by Ines C. Ferriera, *et al*;

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[6] We reject respondents' contention that CWIN's arguments regarding the CalSim-II model are barred by the "law of the case doctrine" (see, e.g., *Searle v. Allstate Life Ins. Co*. (1985) 38 Cal.3d 425, 434), and the law of this case as set forth in our prior opinion in *California Oak*. We did not address the validity of the CalSim-II model in *California Oak*. To the extent respondents seem to contend that CWIN should have raised the issue earlier, we are satisfied that CWIN had no meaningful opportunity to address the CalSim-II model until the City filed its return to the trial court's peremptory writ of mandate in 2006.

"• *An Environmental Review Of CalSim[-]II: Defining 'Full Environmental Compliance' And 'Environmentally Preffered' Formulations Of The CalSim[-]II Model*, by Jeffrey T. Payne, *et al.*, dated November 2005;

"• *Gerald Johns' Memo*, prepared by Jan de Leeuw, dated October 23, 2005; and

"• *On The Adequacy Of CALSIM[-]II For Environmental Impact Analysis And SWP Reliability Analysis*, prepared by Arve R. Sjovold, dated August 12, 2004; and *Some Insights On Water Deliveries To Settlement Contractors*, prepared by Arve R. Sjovold, dated October 24, 2004."

"Like any computer model, CalSim-II is subject to criticism, but the City has nonetheless considered DWR's view that CalSim-II is a generally well-rated and accurate model for California's two largest water projects, [the federal Central Valley Project (CVP)] and SWP. DWR has explained that:

'*CALSIM[-]II is a general water resources planning software developed by DWR. CALSIM[-]II, developed through a collaborative effort by DWR and [the United States Bureau of] Reclamation, represents a comprehensive simulation of the SWP and CVP. . . . CALSIM[-]II provides a reasonable planning level simulation of existing project operations, recognizing that the operating environment and regulatory requirements for the projects are in a constant state of transition and change. Since CALSIM[-]II is not a detailed operations model, it does not capture many of the complexities of forecasted and actual operations of project facilities. In determining suitability of these studies to a particular analysis, the user should consult all documentation that accompanies this release and the [Technical Coordination Team] and [Benchmark Study Team] as appropriate*.' [fn. omitted.]

"One of the above articles [fn. omitted.] states that:

'*The CalSim[-]II model is the most prominent water management model in California, and has become central to a variety of water management and policy issues and controversies. . . . CalSim[-]II is a complex model of a complex part of California's changing multi-purpose water system. As such, analytic controversies and misunderstandings are inevitable. . . . While CalSim[-]II is generally seen as a significant improvement over previous models, a wide variety of ideas suggested for improvements*.'

"The City further acknowledges that the CalSim-II model, like other computer models, contains several perceived strengths as well as weaknesses, several of which were noted in the article, *A Strategic Review of CALSIM[-]II And Its Use For Water Planning, Management And Operations in Central California*, [submitted to California Bay-Delta Authority Science Program Association of Bay Governments,] by A. Close,

et al., dated December 4, 2003, pp. 6-9. The City further acknowledges that CalSim[-]II is not a perfect model; no computer model is perfect. However, on balance, and after considering the various articles criticizing the CalSim-II model, the City agrees with DWR's determination that CalSim-II is a 'useful and appropriate tool for assessing the delivery capability of the SWP.' The City further believes that, despite criticisms of CalSim-II, it is still appropriate to rely on DWR for information based on the CalSim-II model, unless and until a new or updated model is known to exist and available for use.

"As stated above, other comments rely on the [federal district court's decision in *Planning and Conservation League v. United States Bureau of Reclamation, supra*] to support the claim that SWP delivery reliability is suspect, because DWR's CalSim-II model is flawed. The City does not believe that the comments properly characterize the *PCL/Bureau* decision.

"In the *PCL/Bureau* decision, the federal court issued an order granting [a] motion for a preliminary injunction . . . which enjoined construction of the 'Intertie' project until the case is decided on the merits. (The Intertie project is a proposed pipeline project that would connect the main delivery canals of two water diversion projects, the federal CVP and the state SWP, in California's Central Valley. The proposed pipeline is known as the 'Delta-Mendota Canal/California Aqueduct Intertie.' At issue is the [*PCL/Bureau* case] is the Bureau's decision to rely on [a negative declaration] for environmental review of the Intertie project under both [federal National Environmental Policy Act (NEPA)] and CEQA *in lieu* of an [Environmental Impact Study] EIS/EIR.)

"In granting the preliminary injunction, the federal court [incorporated its] . . . earlier . . . order granting [an] application for a temporary restraining order . . . In that [prior] order, the court addressed [a] claim that an EIS/EIR was required for the Intertie project because the existing environmental documents that found no significant impacts were based on CalSim-II modeling which [the plaintiff had claimed] was 'too unreliable to rule out the potential for significant impacts.' Order, p. 9. [fn. omitted.] In [addressing] that claim, the federal court did not appear concerned with the perceived shortcomings of the model, but rather the Bureau's failure to *disclose* the shortcomings. In fact, the court specifically stated that the use of CalSim-II 'alone does not show that [the Bureau] was arbitrary and capricious in reaching its finding of no significant impact.' *Id*. at p. 11.

"In short, the federal court did not prohibit the Bureau or any other agency from using or relying on the CalSim-II model, but rather, stated that the Bureau could rely on the model, provided it disclosed relevant shortcomings in the data or model . . . . Here, based on a review of the above reports, the City . . . is apprised of all known, perceived

shortcomings with DWR's CalSim-II model; nonetheless, the City believes that substantial evidence supports is conclusion that the model remains the best available data for assessing SWP operations and constraints."

B. The Discussion of the CalSim-II Model is Sufficient

We are satisfied that the City's EIR/FAA for Gate King's proposed project sets forth a sufficient discussion of the CalSim-II model, including its recognized shortcomings. In our view, the City's EIR/FAA for Gage King's proposed project is adequate because it summarizes points of disagreement regarding the CalSim-II model, and then explains the City's reasons for accepting one set of judgments instead of another. (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390-1391.) A fair review and assessment of the City's EIR/FAA for Gate King's proposed project belies CWIN's contention that the City did not "describe objectively" the expert critiques of the model, and did not explain why, despite those critiques, it elected to consider the model an appropriate predictive tool. The City gave numerous examples of criticisms of the CalSim-II model, and explained that it decided to accept DWR's data based on the CalSim-II model because, for present purpose, the model provides the best available data.

We see nothing in CWIN's arguments which suggests that a better model exists, and, even assuming such a model did exist, the insurmountable problem for CWIN would remain that objections reflecting a conflict amongst conclusions do not show that an EIR is *inadequate.* (See CEQA Guidelines, section 15151 [disagreement among experts does not make an EIR inadequate].) Inadequate means an absence or omission of information needed to make an informed decision, and the City's EIR/FAA for Gate King's proposed project does not suffer from such a deficiency.

V. The State Water Resources Control Board

CWIN contends the City's EIR/FAA for Gate King's proposed project violates CEQA because its does not discuss adequately the potential impact on water supplies

which may result from DWR's compliance with an order issued by the State Water Resources Control Board (SWRCB).[7] Once more we find that CWIN is mistaken.

A. The SWRCB Order

SWRCB is authorized to issue a cease and desist order (CDO) when it determines that a government agency is violating or threatening to violate any condition of a permit or license issued by SWRCB. A CDO may only be issued after notice and an opportunity for hearing. In May 2005, SWRCB issued draft CDOs to DWR and the United States Bureau of Reclamation (USBR) regarding alleged threatened violations of their licenses and permits to divert water from the San Joaquin River and Bay Delta. The water rights granted to DWR and USBR include prescribed salinity standards for water at various specified geographic locations. As we can understand it, salinity levels of the water can be affected by diverting less water, i.e., allowing more water to remain in place, or, alternatively, by building "permanent operable barriers or other equivalent measures along with an operation plan," all designed to prevent salinity-increasing elements from accumulating in the water.

On February 15, 2006, SWRCB issued "Order WR 2006-0006" in the matter of the draft CDOs against DWR and USBR. Relevant provisions of the Order are set forth in the following paragraphs.

B. The EIR/FAA's Discussion of the Order

At about the same time that SWRCB was issuing Order WR 2006-0006, the City was circulating its draft additional analysis for the EIR for Gate King's proposed project. During the comment period on the draft additional analysis, CWIN claimed that Order WR 2006-0006 will require DWR to "shut down its pumps" in the event that prescribed

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[7] As we understand the state's organization structure, DWR and SWRCB appear to function as distinct but co-equal state agencies with possibly overlapping responsibilities. According to its official website, the SWRCB has authority (along with regional boards) over water allocation and water quality protection. According to the official website of its acting director, DWR protects, conserves and manages the state's water supply, which includes, of course, the operation of the SWP.

salinity standards for the San Joaquin River and Bay Delta are not met, and that the result will be "less water pumped to Southern California."

The City's EIR/FAA for Gate King's proposed project provides the following information on Order WR 2006-0006:

> "In . . . Order WR 2006-0006, [SWRCB] issued a cease and desist order requiring . . . DWR and [USBR] to take corrective action under a time schedule to correct threatened violations of their permits and license. *SWRCB Order*, p. 1. Their permits and license require DWR and [USBR] to meet salinity objectives at three locations in the southern Delta between April 1 and August 31 of each year. . . . Starting April 2006, [SWRCB] is now requiring DWR and [USBR] to meet the adopted salinity standards . . . , but not immediately. Instead, it allows the two agencies until July 1, 2009, to meet the adopted salinity objectives. *Id*. at p. 28-29. This is the date by which the agencies now predict completion of a 'permanent barriers project or equivalent measures' that will enable the agencies to meet the salinity objectives. In the interim, the two agencies are required to provide [SWRCB] Board with a detailed plan and schedule for compliance with the conditions set forth in the Order. *Id*. at p. 29-30.
>
> "In the event that DWR or [USBR] project a potential exceedance in the salinity objectives prior to July 1, 2009, the two agencies are required to immediately inform [SWRCB] of the potential exceedance, and describe the corrective actions they are initiating to avoid the exceedance. *Id.*, p. 30. The 'corrective actions' may include, but are not limited to 'additional releases from upstream [CVP] facilities or south of the Delta [SWP] or CVP facilities, modification in the timing of releases from Project facilities, reduction in exports, recirculation of water through the San Joaquin River, purchases or exchanges of water under transfers from other entities, modified operations of temporary barriers, reductions in highly saline drainage from upstream sources, or alternative supplies to Delta farmers (including overland supplies).' *Id.*
>
> "In response to comments, [SWRCB] determined that DWR and [USBR] were partially responsible for the salinity problems at certain locations because of export pumping. Decision 1641, which allocated the responsibility for implementing the salinity objectives of the 1995 Bay-Delta Plan, noted that the implementation of a 'barrier program' could help improve salinity concentrations and that DWR and [USBR] were working together on such a program. (*State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 711.) To the extent that the comment letters on the Gate-King Industrial Park Additional Analysis infer that meeting the salinity objectives will necessarily result in less water to pump to southern California, such an assumption is not accurate because it assumes that the

only way to control salinity is to reduce export pumping. While the reduction of exports is listed as one means of improving salinity concentrations, it is only one of many such methods. As noted above, implementation of a barrier program is another means for improving salinity concentrations and, in fact, DWR and the [USBR] are working on such a program. In addition, the Order itself emphasizes that constructing permanent barriers is not the exclusive method for compliance with the salinity objectives, and that additional potential corrective actions to avoid potential exceedance of the salinity objectives include actions such as additional releases from upstream CVP facilities or south of the Delta SWP or CVP facilities, modifications in the timing of releases from Project facilities, reduction in exports, purchases or exchanges of water under transfers from other entities, modified operations of temporary barriers, and several other options. *Id*. pp. 23, 30.

"Thus, the assertion in comments submitted on the Gate-King Industrial Park Additional Analysis that DWR and [USBR] must 'shut down their pumps if the salinity standards are not met' is not accurate. [SWRCB]'s amended approval of the 'Water Quality Response Plan' (WQRP) requires that DWR and [USBR] be in compliance with the conditions contained in their permits and license, including salinity objectives, in order to enable 'joint points of diversion' (JPOD) operations, and orders that JPOD operations must cease if such conditions are not met. Hence, if the salinity objectives are not met, DWR and [USBR] may not conduct JPOD operations. However, this means that they are only restricted from use of *one another's* facilities – they are not restricted from using their *own* facilities. As such, DWR and [USBR] are not being ordered to 'shut down their pumps.' *Id.*, pp. 25, 32-33.

"As to the Board's Order that DWR and [USBR] take corrective actions under a time schedule to correct threatened violations of their permits and license in order to meet the salinity objectives, it is true that a complete failure to meet the salinity requirements by the time schedule (July 1, 2009) could result in further action by the Board. However, the Order encourages communication by requiring DWR and [USBR] to submit plans and schedules detailing how DWR and [USBR] intend to meet the objectives, periodic updates and progress reports, and notification of the Board if DWR and the [USBR] anticipate a potential exceedance of the salinity objectives, or if an exceedance has occurred. *Id.*, p. 29-31. The Order states that in the event of an exceedance, the Executive Director will *make a recommendation* to [SWRCB] *regarding whether to take enforcement action. Id.*, p. 30. In deciding *whether* to initiate enforcement action, the Executive Director must consider the extent to which the non-compliance was beyond DWR's or [USBR]'s control and the actions taken to correct the exceedance. *Id.*

> "Lastly, the Order provides that upon the failure . . . to comply with the requirements contained in the Order (by July 1, 2009), [SWRCB] Board may request the Attorney General to petition the Superior Court for injunctive relief, as appropriate. *Id.*, pp. 28-32. [SWRCB] also may issue monetary fines. *Id.*, p. 32. However, nowhere does the Order mandate that DWR and [USBR] shut down their pumps."

C. Analysis

In the light of the discussion reproduced above, we reject CWIN's argument that the City's EIR/FAA for Gate King's proposed project "does not provide any discussion or analysis from which the reader could decide the likelihood that meeting the salinity standards will in fact result in a reduction in [SWP] deliveries." Far from not providing "any discussion," the City's EIR/FAA for Gate King's proposed project contains an extensive discussion, and states the City's reasons for its conclusion that there is limited likelihood that measures taken by DWR and USBR to meet salinity standard will reduce SWP deliveries to CLWA.

As with its previous arguments, CWIN's assertions begin with abstractly correct assertions that information must be provided in an EIR, but then just seem to ignore that the City's EIR/FAA does contain information from which the decision-makers could make a reasoned decision on Gate King's proposed project.

VI. The Trial Court' Analysis of NCWD's Annexation Resolution

A. The Resolution

On July 11, 2006, the City recertified its EIR/FAA for Gate King's proposed project. Two days later, on July 13, 2006, the Newhall County Water District (NCWD) adopted a resolution approving the annexation of the Gate King site into NCWD's service territory. Section 2 of NCWD's resolution recites a finding by NCWD to the effect that City had then-recently recertified an EIR which complied with our decision in *California Oak* (i.e., the EIR/FAA), and that, for this reason, NCWD then considered it "appropriate" to annex the Gate King site "based on the [re]certified EIR."

B. The Trial Court's Decision on the Annexation

On August 15, 2007, the trial court entered its statement of decision in which it rejected CWIN's challenges to NCWD's annexation of the Gate King site. The trial court's order expresses the court's conclusion that NCWD — in making its annexation decision — had been required to presume that the City's EIR/FAA complied with CEQA. In other words, the trial court ruled that, for purpose of annexing the site of Gate King's proposed project, NCWD could not independently determine for itself whether the City's EIR/FAA was adequate or inadequate. That determination, the trial court explained, had to be made in a "single forum," i.e., in the context of SCOPE's parallel case directly challenging the City's EIR/FAA for Gate King's proposed project.

C. CWIN's Claim on Appeal

On appeal, CWIN contends the trial court "got it wrong," and that it should have required NCWD to "reach its own conclusions" on the adequacy of the City's EIR/FAA. Although we tend to agree with respondents that "[t]he purpose of [CWIN's] argument is not clear," we construe CWIN to argue that NCWD's reliance on the City's EIR/FAA in July 2006 (when NCWD approved its annexation resolution) must be "undone," and that this means that NCWD should also undo anything and everything which it has already has done in the annexation process, and that NCWD should then start all over again after making its owns determination on whether or not the City's EIR/FAA is adequate. In other words, we understand CWIN to be arguing either (1) NCWD "jumped the gun" by relying on the City's EIR/FAA before it had been approved by the trial court upon the City's return, or (2) NCWD had its own duty to review and pass the City's EIR/FAA for adequacy, and that NCWD did not fulfill that duty. It appears to be CWIN's position (in either event) that NCWD must go back to square one, and that approval of Gate King's proposed project must be delayed accordingly.

D. Analysis

Assuming that CWIN contends NCWD 'jumped the gun" by relying on the City's EIR/FAA prior to judicial review, we find the issue is moot. The trial court approved the City's EIR/FAA, and, for the reasons explained above, we have affirmed the trial court's decision.

Assuming that CWIN contends NCWD had a duty, independent of the trial court's jurisdiction, to review and determine the adequacy of the City's EIR/FAA, we disagree. Section 21167.3, subdivision (b), provides: "In the event that an action or proceeding is commenced [alleging an EIR does not comply with CEQA], but no injunction or similar relief is sought and granted, responsible agencies *shall* assume that the [EIR] . . . for the project does comply with [CEQA] and shall approve or disapprove the project according to the timetable for agency action [prescribed in the Government Code]. Such approval shall constitute permission to proceed with the project at the applicant's risk pending final determination of such action or proceeding [challenging the EIR for the project]."

We agree with NCWD that section 21167.3, subdivision (b), says what it says. A responsible agency must use the EIR prepared by the lead agency, even if the responsible agency believes that the EIR is inadequate. (See *Central Delta Water Agency v. State Water Resources Control Bd*. (2004) 124 Cal.App.4th 245, 274.) A responsible agency with permit authority, however, must still reach its own conclusions on whether and how to approve of the project, regardless of the lead agency's approval the project. (*Ibid*.) We see no error in the trial court's analysis insofar as the determination of the adequacy of the City's EIR/FAA is concerned. We can now turn to CWIN's attacks on NCWD's findings and conclusions.

VII. NCWD's Findings

CWIN contends NCWD violated CEQA and the CEQA Guidelines when it passed its resolution approving the annexation of the Gate King site into NCWD's service territory. More specifically, CWIN contends that NCWD violated CEQA and the CEQA Guidelines in two respects: first, NCWD should not have "incorporated" the City's findings regarding the significant environment effects identified in the City's EIR, and

should not have "incorporated" the City's statement of overriding considerations in favor of Gate King's proposed project, and second, NCWD should have made its own findings, and adopted its statement of overriding considerations. For the most part, the two challenges are corollaries of each other. We find no error in either respect.

A. NCWD's Resolution

Section 3 of NCWD's resolution is entitled "Environmental Impact Findings Required by CEQA." Section 3 sets forth NCWD's finding that the City's EIR/FAA for Gate King's proposed project "identifies and discloses project-specific impacts . . . ." Section 3 also sets forth NCWD's finding that Gate King's proposed project will result in potentially significant environmental impacts, but that the City has imposed mitigation measures and/or changes to the project which the City has determined will eliminate the impacts or reduce them to a level of less significance. Section 3 of NCWD's resolution also includes the following provision which gives rise to CWIN's claim that a responsible agency such as NCWD violates CEQA when it "incorporates" a lead agency's findings:

> "Although . . . NCWD lacks jurisdiction over most of the issues covered in the City's CEQA findings contained in the City's [resolution certifying the EIR for Gate King's proposed project, NCWD now] incorporate[s] by reference, as though fully set forth herein, the City's findings with respect to all significant environmental effects identified in the EIR, including those related to Land Use and Planning, Geology, Hydrology and Water Quality, Air Quality, Transportation and Circulation, Biological Resources, Noise, Human Health and Safety, Public Services, Public Utilities, Aesthetics, Cultural Resources, and Recreation."

B. The CEQA Guidelines

Article 7 of the CEQA Guidelines (§§ 15080–15097) governs the "EIR Process." Broadly summarized, sections 15080 through 15090 prescribe the rules with which the "Lead Agency" for a proposed project must comply during the process of preparing and certifying an EIR for the project.

Section 15091 prescribes the "Findings" which are required in the EIR process. Section 15091(a) provides: "No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are: [¶] (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the final EIR. [¶] 2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency. [¶] 3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR."

CEQA Guidelines section 15092 prescribes the rules governing the Lead Agency's approval of the project; section 15093 governs the Lead Agency's approval of the project with a statement of overriding considerations; section 15094 prescribes the rules under which the Lead Agency files its notice of determination with the appropriate authority; and section 15095 governs the Lead Agency's disposition of a final EIR.

CEQA Guidelines section 15096 specifically addresses the responsibilities of a "Responsible Agency" in the EIR Process. Unfortunately, the section is not a model of internal consistency.

Section 15096(a) provides: "A Responsible Agency complies with CEQA by considering the EIR . . . prepared by the Lead Agency *and by reaching its own conclusions on whether on how to approve the project involved. . . .*" At the same time, however, section 15096(g)(1) states that, "[w]hen considering alternative and mitigation measures, a Responsible Agency is more limited than a Lead Agency. A Responsible Agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects *of those parts of the project which [the Responsible Agency]*

decides to carry out, finance, or approve," and section 15096(g)(2) provides that "the Responsible Agency shall not approve the project as proposed if [it] finds any feasible alternative or feasible mitigation measures *within its powers* that would substantially lessen or avoid any significant effect the project would have on the environment." (Emphasis added.) And then there is section 15096(h), which provides that "[t]he Responsible Agency *shall make the findings required by Section 15091 for each significant effect of the project . . . .*" (Emphasis added.)

C. The CEQA Guidelines Interpreted

We agree with the trial court that the most reasonable interpretation to be given to section 15096's provisions is as follows: section 15096(h)'s mandate that a Responsible Agency must make findings for each significant effect of a proposed project must itself be read in conjunction with section 15096(g), limiting the authority and responsibility of a Responsible Agency to avoid or mitigate only the environmental effects of those parts of the project which the Responsible Agency decides to carry out, finance, or approve. In short, CEQA Guidelines section 15096 requires a Responsible Agency to make findings about alternatives and mitigation measures only in connection with those environmental effects over which it has the jurisdiction to impose alternatives or mitigation measures. Otherwise, the CEQA Guidelines would require a Responsible Agency to make findings regarding matters over which it could no nothing. We decline to interpret the CEQA Guidelines to require such a pointless exercise.

D. NCWD Did Not Violate CEQA by Incorporating the City's Findings

CWIN contends NCWD violated CEQA and CEQA Guidelines section 15091 by "incorporating" the City's findings, instead of independently "adopting" its own findings. We disagree.

CWIN's argument rests (incorrectly) on the predicate that NCWD was required in the first instance to adopt findings regarding the potential adverse environmental impacts identified in the EIR for Gate King's proposed project. We agree with the trial court that NCWD did not have such an obligation, and adopt its reasoning. NCWD acted as a responsible agency for the Gate King project, and, as such, its discretionary authority was

limited to the annexation of the Gate King project into NCWD's service territory, so that NCWD could provide water service to the project. CEQA provides that a responsible agency is responsible for considering only the effect of those activities involved in a project which the agency is required by law to carry out or approve.

NCWD's resolution correctly stated that the City's EIR/FAA for Gate King's proposed project indentified significant effects in the area of air quality, biology, solid waste, and aesthetics. And NCWD's resolution further correctly stated that mitigation measures and alternatives in those areas were the authority and responsibility of the City as lead agency, and not NCWD, whose jurisdictional authority extended only insofar as the annexation of the project site was concerned. Under these circumstances, NCWD did not have a duty to make findings on those issues which were within and under the City's area of control, and thus, cannot be found to have acted inappropriately when it "incorporated" the City's findings. In other words, NCWD's incorporation of the City's findings was, for the most part, a superfluous act, not an act in violation of CEQA.

The bottom line is that the part of the "project" with which NCWD was concerned was the annexation of the Gate King site into NCWD's service territory. It makes no sense in our view to require NCWD to make findings with regard to alternatives and/or mitigation measures which may reasonably be imposed upon Gate King's proposed project when NCWD did not have control over such matters.

E. NCWD Did Not Have a Duty to Make Its Own Independent Findings

In a variation on its "incorporation" theme, CWIN contends NCWD violated CEQA Guidelines section 15091 because it did not make its own independent findings related to the potential adverse environmental impacts posed by Gate King's proposed project. For the reasons explained above, we disagree.

Although NCWD perhaps could have included in its resolution a specific finding that the City's EIR did not identify any project-related environmental impacts associated with NCWD's annexation of the Gate King site into NCWD's service area, we decline to undo the annexation process for no other purpose than to accommodate that technicality. The omitted finding, if any, plainly did not result in any harm under CEQA. By noting

the environmental effects that are attendant with Gate King's proposed project, NCWD's resolution implicitly notes that no other effects pose a significant environmental threat. In short, we find NCWD's findings to be sufficient.

F. NCWD Was Not Required to Adopt an Independent Statement of Overriding Considerations

Section 5 of NCWD's resolution states: "Changes or alternatives to address the significant and unavoidable impacts of the project related to air quality, biology, solid waste, and aesthetics are within the responsibility and jurisdiction of the City . . . , the lead agency under CEQA. NCWD finds that with respect to these impacts, the City has adopted a statement of overriding considerations, which NCWD incorporates herein by reference. Because the [EIR/FAA] identified no significant and unavoidable impacts of the project within the jurisdiction and responsibility of . . . NCWD, no additional statement of overriding considerations is required."

CWIN's objection to NCWD's incorporation of the City's statement of overriding considerations does not include a challenge to the City's decision itself. In other words, CWIN does not dispute that the City obeyed the procedural requirements of CEQA when it decided that the benefits of the project outweigh its environmental impacts. Given this context, we see no showing of harm in NCWD's "incorporation" of the City's statement of overriding considerations. Assuming, NCWD should have included a finding in its resolution to the effect that NCWD itself found that the benefits of the annexation were outweighed by environmental impacts, we find this omission, if any, did not cause any harm under CEQA.

To the extent that CWIN seems to contend that NCWD did not evaluate the City's findings or its statement of overriding considerations, we reject CWIN's claim. NCWD's resolution expressly represents that the City presented its EIR/FAA to NCWD, and that NCWD reviewed and considered the information contained in the City's EIR/FAA. The resolution further states that NCWD's decision to approve the annexation of the Gate King site reflected the independent judgment and analysis of NCWD. In short, NCWD did consider the City's findings and statement of overriding considerations before

incorporating/adopting them. In the absence of evidence to the contrary, we will not presume that NCWD simply rubber-stamped the City's findings and statement of overriding considerations. (Evid. Code, § 664.)

In the final analysis, we see no purpose to be served in requiring NCWD to expend scrivener's ink and paper to restate in rote findings with which it agrees and has adopted after due consideration. (*Fund For Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1552-1553.)

DISPOSITION

The judgment dated September 5, 2007, in case number BS084677, *Santa Clarita Oak Conversancy v. City of Santa Clarita*, is affirmed.

The order dated September 5, 2007, in case number BS098727, *California Water Impact Network v. Newhall County Water District*, is affirmed.

Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BIGELOW, J.

We concur:

RUBIN, Acting P. J.

O'NEILL, J.*

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* Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.