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YOLO SUPERIOR COURT
MAY 31 2024
By F. Deputy

YOLO SUPERIOR COURT FOR THE STATE OF CALIFORNIA

FRIENDS OF THE RIVER, et al. Petitioners, vs. SITES PROJECT AUTHORITY, et al. Respondents.	Case No.: CV-2023-2626 ORDER DENYING PETITION FOR WRIT OF MANDATE

Upon review of the entire record and after oral argument by the parties on the petition and with a complete analysis of the issues presented, the Court issues the following order. For the reasons set forth in the attached memorandum, the petition for writ of mandate is DENIED.

IT IS SO ORDERED.

Signed in Woodland, California on May 31, 2024

The Honorable Samuel T. McAdam

Before the Court is petitioners Friends of the River, Center for Biological Diversity, California Sportfishing Protection Alliance, California Water Impact Network, Save California Salmon, and Sierra Club's (collectively, "petitioners") petition for peremptory writ of mandate. Petitioners challenge respondents Sites Project Authority and Board of Directors of the Sites Project Authority (collectively, "respondents") certification of the Final Environmental Impact Report/Environmental Impact Statement ("FEIR") for the Sites Reservoir Project (the "Project"). Petitioners argue that respondents did not comply with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines.

Respondents oppose the petition.

Project & Parties

Project:

The Project is an off-stream surface water reservoir that would divert water from the Sacramento River to inundate 13,200 acres of land in Glenn and Colusa Counties. The Project includes the construction of eleven dams, a bridge, two regulating reservoirs, new pipelines, and a new conveyance complex. (First Amended Petition ("FAP"), ¶ 18.)

The Project includes 23 Storage Partners that represent local and regional water delivery agencies which serve over 24.5 million people and over 500,000 acres of farmland. (FAP, ¶ 19.)

Water released from the Sites Reservoir will be used to meet local, State, and Federal water use needs of public water agencies, anadromous fish species in the Sacramento River watershed, wildlife refuges and habitats, and the Yolo Bypass to help supply food for delta smelt. (FAP, ¶ 20.)

Petitioners contend the Project will divert additional water out of the Sacramento River basin without ensuring sufficient flows for salmon species and delta smelt. (FAP, ¶ 21.)

The reservoir inundation area will be in rural, unincorporated areas of Glenn and Colusa Counties, and Project components will be located in Tehama County, Glenn County, Colusa County, and Yolo County. (FAP, ¶ 22.)

The Project will use existing infrastructure to divert unregulated and unappropriated flows from the Sacramento River at Red Bluff and Hamilton City and convey the water to a new off-stream reservoir west of Maxwell, California. New and existing facilities will move water into and out of the reservoir, with ultimate release back to the Sacramento River system via existing canals and a new pipeline located near Dunnigan in Yolo County. Some water released from the Sites Reservoir may also be

delivered to local partners off the Tehama-Colusa Canal or the Glenn Colusa Irrigation District Canal downhill of Sites Reservoir. (FAP, ¶ 23.)

The Project includes the following components:

- Improvements to and use of the existing Red Bluff Pumping Plant, Tehama-Colusa Canal, Hamilton City Pump Station, and Glenn-Colusa Irrigation District Main Canal to divert and convey water from the Sacramento River. (FAP, ¶ 24a.)
- Construction of regulating reservoirs and a conveyance complex to control water conveyance between Sites Reservoir, Tehama-Colusa Canal, and Glenn-Colusa Irrigation District Main Canal. These facilities would include the regulating reservoirs, pipelines, pumping generating plants ("PGPs"), electrical substations, and maintenance buildings. (FAP, ¶ 24b.)
- Construction of an administration and operations building and a maintenance and storage building near the existing Funks Reservoir. (FAP, ¶ 24c.)
- Construction of two main dams, the Golden Gate Dam on Funks Creek and the Sites Dam on Stone Corral Creek, to impound water in the new reservoir, and construction of a series of saddle dams and saddle dikes along the northern and eastern rims of the reservoir to close off topographic saddles in the surrounding ridges. The inlet/outlet ("I/O") works for the reservoir would be located near the Golden Gate Dam. (FAP, ¶ 24d.)
- Upgrades to the Tehama-Colusa Canal and construction of a new pipeline (the Dunnigan Pipeline) to convey water from the new reservoir to the Colusa Basin Drain and ultimately to the Sacramento River. (FAP, ¶ 24e.)
- Development of two primary recreation areas and a day-use boat ramp, including the construction of a network of new roads and upgrades to existing roads for maintenance and local access. (FAP, ¶ 24f.)
- The Peninsula Hills Recreation Area would be located on up to 373 acres along the northwest shore of the new reservoir and the Stone Corral Creek Recreation Area would be located on up to 235 acres along the eastern shore of the new reservoir. (FAP, ¶ 24g.)
- These new recreational areas would provide multiple recreational amenities, including campsites, boat access, horse trails, hiking trails, and vista points. Both of the primary recreation areas would have a kiosk, access to electricity and potable water, picnic sites, hiking trails,

vault toilets, and campsites. The day-use boat ramp and parking area would be located on up to 10 acres on the western side of the new reservoir. (FAP, ¶ 24h.)

- Construction of a bridge or bypass road to connect Maxwell with the community of Lodoga. (FAP, ¶ 24i.)
- Construction of approximately 46 miles of new paved and unpaved roads to provide construction and maintenance access to the new facilities, as well as public access to the recreation areas. (FAP, ¶ 24j.)
- Acquisition and maintenance of a 100-foot buffer around the new reservoir and all related facilities, buildings, and recreation areas. (FAP, ¶ 24k.)

The operation and maintenance elements include the following:

- Diversion of water from the Sacramento River at the existing Red Bluff Pumping Plant through the Tehama-Colusa Canal into the existing Funks Reservoir and at the Glenn-Colusa Irrigation District's Hamilton City Pump Station through the Glenn-Colusa Irrigation District Main Canal into a new Terminal Regulating Reservoir. (FAP, ¶ 25a.)
- Water will be pumped into the new Sites Reservoir from the existing Funks Reservoir and a new Terminal Regulating Reservoir, the water would be pumped into the new Sites Reservoir. (FAP, ¶ 25b.)
- Diversions will occur between September 1 and June 15, corresponding with the period that the Sacramento River is not fully appropriated. (FAP, ¶ 25c.)
- Water will be held in storage in the reservoir until requested for release by a Storage Partner. Water releases will generally be made from May to November but may occur at any time of the year depending on the Storage Partner's need and system conveyance capacity. (FAP, ¶ 25d.)
- Water will be released from Sites Reservoir via the I/O Works near the Golden Gate Dam back into a Terminal Regulating Reservoir or back into Funks Reservoir. (FAP, ¶ 25e.)
- Released water can be used along the Glenn Colusa Irrigation District Main Canal, along the Tehama-Colusa Canal, or conveyed to the new Dunnigan Pipeline and discharged to the Colusa Basin Drain and conveyed via the Sacramento River or the Yolo Bypass to a variety of locations in the Delta and south of the Delta. (FAP, ¶ 25f.)

- Operations will be coordinated with the U.S. Bureau of Reclamation ("Reclamation") and California Department of Water Resources ("DWR") to prevent conflicts with the Central Valley Project ("CVP") and State Water Project ("SWP") and exchanges of water may occur with the CVP and SWP. (FAP, ¶ 25g.)
- Water will also be diverted and impounded from Funks and Stone Corral Creeks and releases from Golden Gate Dam and Sites Dam, respectively, will occur into Funks and Stone Corral Creeks to maintain flows to protect downstream water right holders and ecological functions. (FAP, ¶ 25h.)

Petitioners:

Petitioner **Friends of the River** ("FOR") is a non-profit organization dedicated to preserving and restoring California's rivers, streams, and associated watersheds as well as advocating for sustainable water management. FOR accomplishes this goal by influencing public policy and inspiring citizen action through grassroots organizing. FOR currently has nearly 3,000 members. (FAP, ¶ 5.)

Petitioner **Center for Biological Diversity** ("Center") is a non-profit conservation organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has approximately 89,000 members worldwide, including members who live in the Sacramento Valley. (FAP, ¶ 6.)

Petitioner **California Sportfishing Protection Alliance** ("CSPA") is a California non-profit public benefit organization with its principal place of business in Stockton, California. CSPA's organizational purposes are the protection, preservation, and enhancement of fisheries and associated aquatic and riparian ecosystems of California's waterways, including in the Sacramento Valley. (FAP, ¶ 7.)

Petitioner **California Water Impact Alliance** ("C-WIN") is a California non-profit public benefit organization with its principal place of business in Santa Barbara, California. C-WIN's organization purpose is the protection and restoration of fish and wildlife resources, scenery, water quality, recreational opportunities, agricultural uses, and other natural environmental resources and uses of the rivers and streams of California, including the Bay-Delta, its watershed and its underlying groundwater resources. (FAP, ¶ 8.)

Petitioner **Save California Salmon** is a California non-profit public benefit organization. Save California Salmon is dedicated to policy change and community advocacy for Northern California's salmon and fish dependent people. Save California Salmon supports the fisheries and

water protection work of local communities, and advocates for effective policy change for clean water, restored fisheries and vibrant communities. (FAP, ¶ 9.)

Petitioner **Sierra Club** is a California nonprofit membership organization incorporated under the laws of the State of California in 1892. Currently, the Sierra Club has approximately 820,000 members, approximately 180,000 of whom live in California. Approximately 20,000 members belong to the Sierra Club's Motherlode Chapter. The Sierra Club functions to educate and enlist people to protect and restore the natural and human environment, to practice and promote responsible use of the earth's ecosystems and resources, to explore, enjoy, and protect wild places, and to use all lawful means to achieve these objectives. (FAP, ¶ 10.)

Respondents:

Respondent **Sites Project Authority** ("Authority") is a California public entity and joint powers authority subject to California laws. (See Joint Exercise of Powers Act, Gov't Code, § 6500 et seq.) The Authority's primary purpose is to study, promote, develop, design, finance, acquire, construct, manage and operate Sites Reservoir and related facilities such as recreation and power generation. The Authority is the state lead agency for the approval of the Project under CEQA. (FAP, ¶ 11.)

Respondent **Board of Directors of the Sites Project Authority** ("Board") is a body duly authorized under the California Constitution and the laws of the State of California to act on behalf of the Sites Project Authority. (FAP, ¶ 12.)

Factual Background

On November 5, 2001, DWR released a Notice of Preparation ("NOP") for the Project's Environmental Impact Report ("EIR"). (FAP, ¶ 27.)

On February 2, 2017, the Authority assumed the role of CEQA lead agency and released a supplemental NOP. (FAP, ¶ 28.)

On August 14, 2017, the Authority released a draft EIR for the Project.[1] (FAP, ¶ 29.)
On April 22, 2020, respondent Board directed the Authority's staff to prepare and recirculate a Revised Draft Environmental Impact Report ("RDEIR") to address changes to the proposed Project. (FAP, ¶ 30.)

[1] The Authority is the lead state agency responsible for complying with CEQA. (Pub. Resources Code, § 21000, *et seq.*) Reclamation is the federal agency responsible for complying with the National Environmental Policy Act ("NEPA"). (42 U.S.C. § 4321, *et seq.*) The Authority and Reclamation are jointly responsible for preparing an EIR/Environmental Impact Statement ("EIS") for the Project. (FAP, ¶ 30.)

On November 12, 2021, the Authority released the RDEIR for public comment and review. (FAP, ¶ 31.)

On November 2, 2023, the Authority released the FEIR for the Project. The FEIR includes the public and agency comments received on the RDEIR. (FAP, ¶ 32.)

On November 6, 2023, Governor Gavin Newsom certified the Project as a water-related infrastructure project pursuant to Public Resources Code section 21189.82(a)(4)(A). (FAP, ¶ 14.) The Governor's certification qualified the case for judicial streamlining. (FAP, ¶¶ 14-17; Pub. Resources Code, §§ 21189.80-21189.91; Cal. Rules of Court, Rules 3.2220-3.2240.)

On November 17, 2023, the Joint Sites Reservoir Committee and respondent Board held a public hearing to review the FEIR and Project. (FAP, ¶ 33.) At the conclusion of the hearing, the respondent Board approved **Board Resolution No. 2023-02,** which included the following actions:

- Certification of the FEIR for the Project under CEQA;
- Adoption of CEQA findings;
- Adoption of a statement of overriding considerations;
- Adoption of the mitigation, monitoring and reporting program;
- Approval of the Project as described in the CEQA findings;
- Direction to the Executive Director to file a notice of determination and pay all related fees; and
- Authorization for the Executive Director to certify the CEQA record of proceedings.

On November 20, 2023, respondents filed public Notices of Determination to approve the Project with the Tehama County Clerk, Glenn County Clerk, Colusa County Clerk, and Yolo County Clerk, and the Office of Planning and Research as provided by Public Resources Code section 21152. (FAP, ¶ 34.)

Procedural Background

On December 19, 2023, petitioners filed a verified petition for writ of mandate ("petition") and notice of CEQA streamlining provisions.

On December 21, 2023, petitioners filed notice to the attorney general, stating that notice of the petition was provided to the California Attorney General. (Pub. Resources Code, § 21167.7; Code Civ. Proc., § 388.)

On December 29, 2023, petitioners filed a first amended verified petition for writ of mandate.

On January 8, 2024, respondents filed notice of lodging a complete certified copy of the administrative record pursuant to California Rules of Court, rule 3.2225(a). The administrative record was submitted to the Court on two USB thumb drives.

On January 8, 2024, respondents filed a verified answer to the first amended petition.

On January 16, 2024, respondents filed a verified amended answer to the first amended petition.

On January 17, 2024, petitioners filed notice to responsible agencies. (Pub. Resources Code, § 21167.6.5, subd. (c).)

On January 22, 2024, the Court held a case management conference. The Court set the hearing for May 3, 2024, at 9:00 a.m. in Department 14. The Court further directed the parties to continue settlement discussions and set the following briefing schedule:

- Petitioners' opening brief due February 28, 2024, not to exceed 40 pages.
- Respondents' opposition brief due April 5, 2024, not to exceed 40 pages.
- Petitioners' reply brief due April 15, 2024, not to exceed 20 pages.

On February 28, 2024, petitioners filed their opening brief.

On April 5, 2024, respondents filed their opposition brief.

On April 10, 2024, respondents filed a joint appendix of record excerpts. (Cal. Rules of Court, rule 3.2227(a)(4).)

On April 15, 2024, petitioners filed their reply brief.

Relief Requested

Petitioners request that the Court:

1. Issue a peremptory writ of mandate ordering respondents to:
    a. Vacate and set aside Board Resolution No. 2023-02, which included the following actions:
        i. Certification of the FEIR for the Project under CEQA;
        ii. Adoption of the CEQA Findings;
        iii. Adoption of the Statement of Overriding Conditions;
        iv. Adoption of Mitigation, Monitoring and Reporting Program;
        v. Approval of the Project as described in the CEQA Findings; and
        vi. Filing of the Notices of Determination.
    b. Prepare, circulate and consider a new legally adequate EIR for the Project;
    c. Suspend all activity that could result in any change or alteration to the physical environment within the Project site until respondents have taken such actions as may be necessary to bring their determination, findings or decision regarding the Project into compliance with CEQA;
2. Award petitioners costs associated with this action;
3. Award petitioners reasonable attorneys' fees pursuant to Code of Civil Procedure section 2021.5; and
4. For such other and further relief as the Court may deem just and proper.

Legal Analysis

I. The Court grants the request for judicial notice.

Respondents ask the Court to take judicial notice of the following documents:

1. Order Re Motions to Remand Without Vacatur; Stay; and Impose Interim Injunctive Relief issued by the United States District Court for the Eastern District of California in *Pacific Coast Federation of Fishermen's Associations v. Raimondo*, No.1:20-cv-00431-JLT-EPG on March 11, 2022. (Quick decl., ¶ 2, Exhibit A.)
2. Order Re Interim Operations Plan issued by the United States District Court for the Eastern District of California in *Pacific Coast Federation of Fishermen's Associations v. Raimondo*, No.1:20-cv-00431-JLT-EPG on February 28, 2023. (*Ibid.*, Exhibit B.)

Petitioners do not oppose these requests.

Evidence Code section 452 provides:

> Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:
>
> [....]
>
> (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.
>
> (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.
>
> [....]
>
> (h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

Evidence Code section 453 states:

> The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and:
>
> (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and
>
> (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

Here, petitioners do not oppose these requests, and the Orders fall within Evidence Code section 452. Accordingly, the Court grants respondents' request for judicial notice.

II. California Environmental Quality Act Overview.

"CEQA is a comprehensive scheme designed to provide long-term protection to the environment." (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112; see also Pub. Resources Code, §§ 21000, 21001.)

The California Supreme Court in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 ("*Laurel Heights*") provided a comprehensive overview of CEQA, its purpose, and its basic procedures:

> The foremost principle under CEQA is that the Legislature intended the act "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259, 104 Cal.Rptr. 761, 502 P.2d 1049.) More than a decade ago, we observed that, "It is, of course, too late to argue for a grudging, miserly reading of CEQA." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 274, 118 Cal.Rptr. 249, 529 P.2d 1017 [hereafter *Bozung*].) The Legislature has emphasized that "It is the intent of the Legislature that all agencies of the state government which regulate activities ... which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage...." (§ 21000, subd. (g).)
>
> With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. (§ 21100 [state agencies], § 21151 [local agencies], Guidelines, § 15002, subd. (f)(1).) "Project" means, among other things, "[a]ctivities directly undertaken by any public agency." (§ 21065, subd. (a).) " 'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." (§ 21068; see also Guidelines, § 15002, subd. (g).) The Legislature has made clear that an EIR is "an informational document" and that "[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (§ 21061; Guidelines, § 15003, subds. (b)–(e).)
>
> Under CEQA, the public is notified that a draft EIR is being prepared (§§ 21092 and 21092.1), and the draft EIR is evaluated in light of comments received. (Guidelines, §§ 15087 and 15088.) The lead agency then prepares a final EIR incorporating comments on the draft EIR and the agency's responses to significant environmental points raised in the review process. (Guidelines, §§ 15090 and 15132, subds. (b)–(d).) The lead agency must certify that the final EIR has been

completed in compliance with CEQA and that the information in the final EIR was considered by the agency before approving the project. (Guidelines, § 15090.) Before approving the project, the agency must also find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project's benefits. (§§ 21002, 21002.1, and 21081; Guidelines, §§ 15091–15093.)

The EIR is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." (§ 21001, subd. (a).) The EIR is therefore "the heart of CEQA." (Guidelines, § 15003, subd. (a); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810, 108 Cal.Rptr. 377.) An EIR is an "environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Ibid.; Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 822, 173 Cal.Rptr. 602.) The EIR is also intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86, 118 Cal.Rptr. 34, 529 P.2d 66 [hereafter *No Oil*]; Guidelines, § 15003, subd. (d).) Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 842, 115 Cal.Rptr. 67; Guidelines, § 15003, subd. (e).) The EIR process protects not only the environment but also informed self-government.

Section 21168.5 provides that a court's inquiry in an action to set aside an agency's decision under CEQA "shall extend only to whether there was a prejudicial abuse of discretion. 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." As a result of this standard, "The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189, 139 Cal.Rptr. 396.)
This standard of review is consistent with the requirement that the agency's approval of an EIR "shall be supported by substantial evidence in the record." (Guidelines, § 15091, subd. (b).) In applying the substantial evidence standard, "the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." (*Topanga Association for a Scenic Community v. County of Los Angeles,* (1974) 11 Cal.3d 506, 514, 113 Cal.Rptr. 836, 522 P.2d 12.) The Guidelines define "substantial evidence" 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, § 15384, subd. (a).)

> A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable. (*Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 401–402, 200 Cal.Rptr. 237.) A court's task is not to weigh conflicting evidence and determine who has the better argument when the dispute is whether adverse effects have been mitigated or could be better mitigated. We have neither the resources nor scientific expertise to engage in such analysis, even if the statutorily prescribed standard of review permitted us to do so. Our limited function is consistent with the principle that "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind." CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations." (*Bozung, supra,* 13 Cal.3d 263, 283, 118 Cal.Rptr. 249, 529 P.2d 1017.).

(*Id.* at pp. 390–393.)

Also, the Guidelines for the implementation of CEQA (Cal. Code Regs., tit. 14, § 1500 *et seq.*) ("Guidelines") are "binding on all public agencies in California." (Guidelines, § 15000.) The Supreme Court of California has declared that "courts should afford great weight to the Guidelines except when a provision is clearly unauthorized or erroneous under CEQA." (*Laurel Heights, supra,* 47 Cal.3d at p. 391, fn. 2.)

III. Standard of Review.

A party may seek to set aside an administrative decision for failure to comply with CEQA by petitioning for either administrative mandamus or traditional mandamus.[2] (Code Civ. Proc., §§ 1094.5, 1085; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 566. Under either type of relief, this Court must determine whether there was a prejudicial abuse of discretion. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 ["*Vineyard*"]; *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 573; *Laurel Heights, supra,* 47 Cal.3d at p. 392, fn. 5.) Such an abuse is established if either:

- The agency has not proceeded in a manner required by law; or
- The determination or decision by the agency is not supported by substantial evidence.

(*Vineyard, supra,* 40 Cal.4th at p. 426; Pub. Resources Code, §§ 21168, 21168.5.)

The Supreme Court of California in *Vineyard* explained when each standard of review is employed:

[2] Here, petitioners rely on both administrative mandamus and traditional mandamus doctrines. (See, e.g., FAP, ¶ 35.)

> [A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence. (§ 21168.5.) Judicial review of these two types of error differs significantly: while we determine de novo whether the agency has employed the correct procedures, "scrupulously enforc[ing] all legislatively mandated CEQA requirements" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, 276 Cal.Rptr. 410, 801 P.2d 1161), we accord greater deference to the agency's substantive factual conclusions. In reviewing for substantial evidence, the reviewing court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable," for, on factual questions, our task "is not to weigh conflicting evidence and determine who has the better argument." (*Laurel Heights I, supra,* 47 Cal.3d at p. 393, 253 Cal.Rptr. 426, 764 P.2d 278.)
>
> In evaluating an EIR for CEQA compliance, then, a reviewing court must adjust its scrutiny to the nature of the alleged defect, depending on whether the claim is predominantly one of improper procedure or a dispute over the facts. For example, where an agency failed to require an applicant to provide certain information mandated by CEQA and to include that information in its environmental analysis, we held the agency "failed to proceed in the manner prescribed by CEQA." (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236, 32 Cal.Rptr.2d 19, 876 P.2d 505; see also *Santiago County Water Dist. v. County of Orange, supra,* 118 Cal.App.3d at p. 829, 173 Cal.Rptr. 602 [EIR legally inadequate because of lack of water supply and facilities analysis].) In contrast, in a factual dispute over "whether adverse effects have been mitigated or could be better mitigated" (*Laurel Heights I, supra,* 47 Cal.3d at p. 393, 253 Cal.Rptr. 426, 764 P.2d 278), the agency's conclusion would be reviewed only for substantial evidence. Thus, in *Laurel Heights I,* we rejected as a matter of law the agency's contention that the EIR did not need to evaluate the impacts of the project's foreseeable future uses because there had not yet been a formal decision on those uses (*id.* at pp. 393–399, 253 Cal.Rptr. 426, 764 P.2d 278), but upheld as supported by substantial evidence the agency's finding that the project impacts described in the EIR were adequately mitigated (*id.* at pp. 407–408, 253 Cal.Rptr. 426, 764 P.2d 278). (See also *California Oak, supra,* 133 Cal.App.4th at p. 1244, 35 Cal.Rptr.3d 434 [absent uncertain purchase of additional water, as to which the EIR's discussion is legally inadequate, "substantial evidence of sufficient water supplies does not exist"].)

(*Vineyard, supra*, 40 Cal.4th at p. 435.)

However, regarding compliance with CEQA's provisions, "[i]nsubstantial or merely technical omissions are not grounds for relief." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463.)

> CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive. (Guidelines, § 15151.) The absence of information in an EIR does not per se constitute a prejudicial abuse of discretion. (§ 21005.) A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process. (§ 21005; *Laurel Heights I, supra,* 47 Cal.3d at pp. 403–405, 253 Cal.Rptr. 426, 764 P.2d 278.)

(*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26 ["*Dry Creek*"].)

Finally, the burden is placed on the petitioner: "A public agency's decision to certify the EIR is presumed correct, and the challenger has the burden of proving the EIR is legally inadequate." (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 187, citations omitted.)

> In the CEQA arena, plaintiffs bear the burden of proving a prejudicial abuse of discretion by establishing that the agencies' decisions are not supported by substantial evidence or that they failed to proceed in a manner required by law. (*Neighbors of Cavitt Ranch v. County of Placer* (2003) 106 Cal.App.4th 1092, 1099, 131 Cal.Rptr.2d 379; *Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1617, 45 Cal.Rptr.2d 688.)

(*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1029.)

IV. The Merits of the Claims.

Petitioners make four arguments in their opening brief:

1. The EIR relies on an inaccurate environmental baseline.
2. The EIR failed to consider a reasonable range of alternatives.
3. The EIR fails to provide an accurate description of the environmental setting of the Project area.
4. The EIR relies upon an inaccurate project description.

Respondents argue that petitioners have failed to establish any basis for granting the requested writ.

A. Issue #1: The EIR relies on an inaccurate baseline.

Petitioners argue that the EIR improperly uses an environmental baseline that differed from the conditions that existed when the NOP was issued, and from when the RDEIR was released. (Petitioners' Opening Brief ("OB"), p. 23.) Specifically, petitioners contend that the EIR's baseline is deficient because it:

(1) relies on a pair of 2019 biological opinions ("2019 Biological Opinions") issued by the National Marine Fisheries Services ("NMFS") and the U.S. Fish and Wildlife Service ("FWS") pursuant to the Endangered Species Act (16 U.S.C, § 1531 *et seq*) for the coordinated long-term operations of the Central Valley Project ("CVP") and State Water Project ("SWP") that have been withdrawn; and
(2)
(3) omits the State Water Resources Control Board's ("SWRCB") 2018 update of the Bay-Delta Water Quality Control Plan ("Bay-Delta Plan"). (OB, pp. 25-28.)

Respondents contend that substantial evidence supports the Authority's decision to use an existing conditions model that incorporated the 2019 Biological Opinions and also supports the Authority's treatment of the Bay-Delta Plan. (Opposition Brief ("Opposition"), pp. 19-25.)

1. *Standard of review.*

Petitioners argue that the opinions respondents relied upon for determining the Project's existing conditions baseline are inadequate and mislead the public as to the Project's actual environmental impact.

Respondents argue that their determination regarding how to realistically measure and describe the existing physical conditions baseline is a factual determination supported by substantial evidence.

In *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 328, the Court concluded that, because an agency has the discretion to determine how the existing physical conditions are "most realistically measured," the substantial evidence standard of review is appropriate:

> Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra,* 40 Cal.4th at p. 435, 53 Cal.Rptr.3d 821, 150 P.3d 709.)

In *Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 455, the California Supreme Court concluded that using "existing conditions 'will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.' (Cal.Code Regs., tit. 14, § 15125, subd. (a).)" However, a "departure from this norm can be justified by substantial evidence that an analysis based on existing conditions would tend to be misleading or without informational value to EIR users." (*Ibid.*)

Furthermore, "[c]hallenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied, present questions of fact, and so we must uphold the EIR if there is any substantial evidence to support

the agency's reasons for proceeding in the manner that it did." (*Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 850.)

Thus, because petitioners are challenging the factual information respondents relied upon for determining the Project's existing conditions baseline, the Court must employ a **substantial evidence** standard of review.

2. *Merits.*

a. **2019 Biological Opinions.**

Here, petitioners challenge the information respondents relied upon when establishing the EIR's environmental baseline.

The Supreme Court of California summarized the baseline requirement by stating:

> The fundamental goal of an EIR is to inform decision makers and the public of any significant adverse effects a project is likely to have on the physical environment. (§ 21061; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, 53 Cal.Rptr.3d 821, 150 P.3d 709.) To make such an assessment, an EIR must delineate environmental conditions prevailing absent the project, defining a "baseline" against which predicted effects can be described and quantified. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315, 106 Cal.Rptr.3d 502, 226 P.3d 985.)

(*Neighbors for Smart Rail, supra,* 57 Cal.4th at p. 447.)

> The baseline used in an EIR "delineate[s] environmental conditions prevailing absent the project" and it is these conditions "against which predicted effects can be described and quantified." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447, 160 Cal.Rptr.3d 1, 304 P.3d 499 (*Neighbors for Smart Rail*).) More specifically, the potential physical changes to the environment generally are "identified by comparing *existing* physical conditions [(i.e., the baseline)] with the physical conditions that are predicted to exist at a later point in time, after the proposed activity has been implemented. [Citation.] The difference between these two sets of physical conditions is the relevant physical change" to the environment, part of which may be allocated to the project and part of which may be allocated to other causes. (*Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 289, 41 Cal.Rptr.3d 420.) After the project's predicted environmental effects have been quantified, the agency then determines whether those environmental effects are "significant" for purposes of CEQA. Thus, the baseline is a fundamental component of the analysis used to determine whether a proposed project may cause environmental effects and, if so, whether those effects are significant.

> [...]
>
> In sum, the text of CEQA and the Guidelines identify existing conditions as the starting point (i.e., baseline) for determining and quantifying the proposed project's changes to the environment.

(*Association of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708, 724-725.)

Section 15125(a) of the Guidelines outlines this baseline requirement. The baseline is normally the physical environmental conditions existing at the time that the NOP is published, but the agency may deviate from such a baseline in specific certain circumstances:

> An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.
>
> (1) Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record.
>
> (2) A lead agency may use projected future conditions (beyond the date of project operations) baseline as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.
>
> (3) An existing conditions baseline shall not include hypothetical conditions, such as those that might be allowed, but have never actually occurred, under existing permits or plans, as the baseline.

(Guidelines, § 15125, subd. (a).)

"[A]n agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence." (*Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 449; see also *Communities for a Better Environment, supra,* 48 Cal.4th at p. 327 [the date for the baseline "cannot be a rigid one"].)

Here, the Authority released a supplemental NOP on February 2, 2017. (FAP, ¶ 28.) On August 14, 2017, the Authority released a draft EIR for the Project. (FAP, ¶ 29.) According to respondents, "[t]he analysis of large-scale water supply projects in California relies on computer models that replicate the application regional water supply system over a range of hydrological conditions driven by natural and regulatory factors." (Opposition, p. 19; AR01_708.) In the 2017 draft EIR, modeling of baseline water conditions accounted for then-current regulations that governed water system operations as set forth in two biological opinions under the federal Endangered Species Act that were issued in 2008-2009 by NMFS and FWS. (*Ibid*; AR01_23814, 23942.) ("2008-2009 Biological Opinions".) These opinions regulated the coordinated operations of the CVP and SWP. (Opposition, p. 19; AR02_43081-43490, 74158-75904.)

In October 2019, *after* release of the 2017 draft EIR, NMFS and FWS issued the 2019 Biological Opinions, "making substantial changes to the governing regulatory criteria." (Opposition, p. 19; AR01_708-709.) "Once the 2019 [Biological] Opinions were in place, the federal and state water systems in California could no longer be operated in the manner that was previously authorized by the 2008-2009 [Biological] Opinions." (Opposition, p. 19.)
Due to changes to the proposed Project, on April 22, 2020, respondent Board directed the Authority's staff to prepare and recirculate a revised draft EIR ("RDEIR"). (FAP, ¶ 30; AR01_40096). According to respondents, "[t]o determine how to define the changed baseline conditions for the environmental analysis" in the RDEIR, they reviewed multiple modeling options. (Opposition, p. 20; AR01_708-709, 40095-40105.) The Authority chose the "CalSim II 2020 Benchmark Model". (Opposition, p. 20; AR01_708-709, 40102-40103) ("CalSim II".) CalSim II "used the most recent operational assumptions for the CVP and SWP, i.e., actual system operations in accordance with the 2019 [Biological] Opinions." (*Ibid.*) Thus, CalSim II utilized the 2019 Biological Opinions in its modeling.

However, during this modeling phase, the 2019 Biological Opinions were simultaneously being challenged in federal court. (Opposition, p. 20; RJN, Exhibit A.) In early 2021, the parties to that litigation agreed to several limited stays to allow for review of the litigation, in part due to President Biden's Executive Order 13990 (issued January 20, 2021), which called for the reconsideration of decisions under the former Administration that may be considered "inconsistent" with the new Administration's environmental policies. (RJN, Exhibit A, p. 13:16-20.)

In October 2021, the federal wildlife agency defendants in the federal case agreed to revise the challenged 2019 Biological Opinions. (RJN, Exhibit A, p. 14:1-2; AR01_710; OB, p. 27; Opposition, p. 20.)

On November 12, 2021, the Authority released its RDEIR for public comment and review. (FAP, ¶ 31.) According to respondents, because "it was unknown how the new Opinions would change the 2019 Opinions and no new Opinions had been issued . . . the Authority decided to model the existing conditions baseline using conditions that actually existed at the time—meaning operations under the 2019 Opinions." (Opposition, p. 20; AR01_8274.)

In the federal case, in March 2022, at the express request of the federal wildlife agency defendants, the federal court remanded the 2019 Biological Opinions **without invalidating or vacating them** to the federal agencies to proceed with developing revised opinions. (OB, p. 26; Opposition, p. 20; AR01_710; RJN, Exhibit A, pp. 27, 122.) The same defendants further requested the federal court to issue a temporary operations plan for coordinated water systems operations of the CVP and SWP. (*Ibid.*)

On February 28, 2023, the federal court issued an "Order re: Temporary Operations Plan." ("Interim Plan".) (OB, p. 26; Opposition, p. 20; AR01_710; RJN, Exh. B.) The federal court's order states that the Interim Plan was "specific to hydrologic conditions through December 31, 2023, and may not be appropriate for the remainder of Water Year 2024 operations or long-term operations; **and shall expire on December 31, 2023.**" (RJN, Exhibit B, p. 8, ¶ 18, emphasis added; AR01_710; OB, p. 27; Opposition, p. 21.)

On November 6, 2023, the Authority released the final EIR for the Project. (FAP, ¶ 32.) The FEIR included the public and agency comments received on the RDEIR. (*Ibid.*) The Authority addressed the federal court litigation/developments regarding the 2019 Biological Opinions and explained why it decided to rely on the CalSimII model, which factored in the 2019 Biological Opinions into the existing conditions baseline:

> After release of the RDEIR/SDEIS in November 2021, the Court granted these requests, and currently there is an Interim Operations Plan, adopted in February 2023, that is in place until the end of 2023. *See Pacific Coast Federation of Fisherman's Associations v. Raimondo*, Order Re Interim Operations Plan (Feb. 28, 2023) (E.D. Cal. Case Nos. 1:20-cv-00431-JLT-EPG & 1:20-cv-00426-JLT-EPG). However, this recently issued interim plan is only temporary.[1] Accordingly, the environmental baseline in this EIR/EIS incorporates the 2019 ROC on LTO BiOps, 2020 ROD, and 2020 SWP ITP, which have not been vacated or invalidated. Further, the contents and requirements of the future biological opinions are currently unknown and are speculative at this time. At such time when new biological opinions are issued, the Authority and Reclamation will make a determination of what actions are required or warranted with respect to the Project, including any further environmental review. In addition to defining the baseline,

(Opposition, p. 21; AR01_710, 8274, footnote omitted.)

Here, petitioners argue that the EIR fails to use an accurate environmental baseline because it relied upon the 2019 Biological Opinions that have been withdrawn and will not be relied upon in the future. (OB, p. 27.) Petitioners further contend that "[t]o knowingly rely upon the 2019 Biological Opinions that will not be in effect in the future does not constitute a realistic baseline and provides an inaccurate picture of the project's impacts." (*Ibid.*) Additionally, petitioners argue that the EIR's reliance upon the 2019 Biological Opinions results in an "illusory" comparison that can mislead the public as to the Project's actual environmental impact. (*Ibid.*)

Respondents argue that the Interim Plan had not been issued or implemented when the Authority prepared its analysis in the RDEIR, and the interim plan was set to expire in December 2023. (Opposition, p. 21.) Respondents further argue that the 2019 Biological Opinions were not vacated by the federal court. (*Ibid.*) Thus, its respondents' position that "the interim plan was not representative of historic existing conditions" and they were "not required to incorporate into existing conditions uncertain future changes in the governing system criteria." (Opposition, pp. 21-22.)

Petitioners cite two California Supreme Court cases in support of their position: *Communities for a Better Environment*, *supra*, 48 Cal.4th 310; and *Neighbors for Smart Rail*, *supra*, 57 Cal.4th 439.

In *Communities for a Better Environment*, the real party in interest ConocoPhillips operated a petroleum refinery. The dispute arose from ConocoPhillips' project to produce ultra-low sulfur diesel fuel. To comply with new regulations, ConocoPhillips developed plans for ultra-low sulfur diesel fuel and applied to the South Coast Air Quality Management District ("Air District") for a permit to construct the modification. The Air District issued a draft negative declaration and a final negative declaration, concluding that the project did not have the potential to adversely affect the environment. The plaintiffs initiated the action, alleging that the Air District violated CEQA by failing to prepare an EIR before approving the project.

The trial court denied the petition, but the appellate court reversed, finding "that increased use of existing equipment should have been evaluated as part of the Diesel Project, not as part of the baseline and, if the proper baseline had been used, the evidence of significant impact would be sufficient to require an EIR." (*Communities for a Better Environment*, *supra*, 48 Cal.4th at p. 318.) The Supreme Court agreed.

> Section 15125, subdivision (a) of the CEQA Guidelines provides: "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. *This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.*" (Cal.Code Regs., tit. 14, § 15125, subd. (a), italics added.) A long line of Court of Appeal decisions holds, in similar terms, that the impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework. This line of authority includes cases where a plan or regulation allowed for greater development or more intense activity than had so far actually occurred, as well as cases where actual development or activity had, by the time CEQA analysis was begun, already exceeded that allowed under the existing regulations. In each of these decisions, the appellate court concluded the baseline for CEQA analysis must be the "existing physical conditions in the affected area" (*Environmental Planning Information Council v. County of El Dorado,*

supra, 131 Cal.App.3d at p. 354, 182 Cal.Rptr. 317), that is, the " 'real conditions on the ground' " (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,* 87 Cal.App.4th at p. 121, 104 Cal.Rptr.2d 326; see *City of Carmel–by–the–Sea v. Board of Supervisors, supra,* 183 Cal.App.3d at p. 246, 227 Cal.Rptr. 899), rather than the level of development or activity that *could* or *should* have been present according to a plan or regulation.

Applied here, this general rule leads to the conclusion the District erred in using the boilers' maximum permitted operational levels as a baseline. By treating all operation of the boilers within the individual limits of their permits to be part of the environmental setting, or baseline, the District ensured that no emissions from increased boiler operation would be considered an environmental impact so long as no single boiler operated beyond its permitted capacity. Thus, the District's baseline operational level was the collective maximum capacity of the boilers; under the Negative Declaration's analysis, all four boilers could be run at maximum capacity simultaneously without creating any potential environmental impact. Yet the District acknowledged that in ordinary operation any given boiler ran at the maximum allowed capacity only when one or more of the other boilers was shut down for maintenance; operation of the boilers simultaneously at their collective maximum was **not the norm.**

Simultaneous maximum operation, then, is not a realistic description of the existing conditions without the Diesel Project. Indeed, the Negative Declaration does not attempt to justify its maximum permitted capacity baseline as reflecting the actually existing physical conditions without the Diesel Project. Rather, the Negative Declaration reasons that the increased steam production the Diesel Project called for was within the boiler permits' maximum operational levels and "could, therefore, occur even if the proposed project did not commence (exist)." By comparing the proposed project to what *could* happen, rather than to what was actually happening, the District set the baseline not according to "established levels of a particular use," but by "merely hypothetical conditions allowable" under the permits. (*San Joaquin Raptor Rescue Center v. County of Merced, supra,* 149 Cal.App.4th at p. 658, 57 Cal.Rptr.3d 663.) Like an EIR, an initial study or negative declaration "must focus on impacts to the existing environment, not hypothetical situations." (*County of Amador v. El Dorado County Water Agency, supra,* 76 Cal.App.4th at p. 955, 91 Cal.Rptr.2d 66.)

An approach using hypothetical allowable conditions as the baseline results in "illusory" comparisons that "can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts," a result at direct odds with CEQA's intent. (*Environmental Planning Information Council v. County of El Dorado, supra,* 131 Cal.App.3d at p. 358, 182 Cal.Rptr. 317.) The District's use of the prior permits maximum operating levels as a baseline appears to have had that effect here, providing an illusory basis for a finding of no significant adverse effect despite an acknowledged increase in NOx emissions exceeding the Districts published significance threshold.

[...]

None of the cited decisions, therefore, persuades us the preexisting boiler permits, by themselves, establish the proper baseline for CEQA analysis of the Diesel Project. We conclude the District's use of the maximum capacity levels set in prior boiler permits, rather than the actually existing levels of emissions from the boilers, as a baseline to analyze NOx emissions from the Diesel Project was inconsistent with CEQA and the CEQA Guidelines. In the next part, we consider the District's and ConocoPhillips's arguments regarding the proper manner of measuring actually existing emissions.

(*Id.* at pp. 320–322 & 326-327, bold emphasis added.) The Court continued to describe how the Air District should determine the existing conditions baseline:

The District and ConocoPhillips emphasize that refinery operations are highly complex and that these operations, including the steam generation system, vary greatly with the season, crude oil supplies, market conditions, and other factors. ConocoPhillips objects to the Court of Appeal's mandate that annual averages be used to arrive at a baseline of daily emissions, arguing this fails to account for day-to-day fluctuations and neglects to consider the significance of peak production periods.

We do not attempt here to answer any technical questions as to how existing refinery operations should be measured for baseline purposes in this case or how similar baseline conditions should be measured in future cases. CEQA Guidelines section 15125 (Cal.Code Regs., tit. 14, § 15125, subd. (a)) directs that the lead agency "normally" use a measure of physical conditions "at the time the notice of preparation [of an EIR] is published, or if no notice of preparation is published, at the time environmental analysis is commenced." But, as one appellate court observed, "the date for establishing baseline cannot be a rigid one. Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods." (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,* 87 Cal.App.4th at p. 125, 104 Cal.Rptr.2d 326.) In some circumstances, peak impacts or recurring periods of resource scarcity may be as important environmentally as average conditions. Where environmental conditions are expected to change quickly during the period of environmental review for reasons other than the proposed project, project effects might reasonably be compared to predicted conditions at the expected date of approval, rather than to conditions at the time analysis is begun. (*Id.* at pp. 125–126, 104 Cal.Rptr.2d 326.) A temporary lull or spike in operations that happens to occur at the time environmental review for a new project begins should not depress or elevate the baseline; overreliance on short-term activity averages might encourage companies to temporarily increase operations artificially, simply in order to establish a higher baseline.

> Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra,* 40 Cal.4th at p. 435, 53 Cal.Rptr.3d 821, 150 P.3d 709.)
>
> That refinery operations fluctuate over time, however, does not excuse the District from estimating the increase in NOx emissions, if any, the Diesel Project will create. Indeed, the District already made one such estimate in the Negative Declaration, finding the project would increase steam demand to a degree that would result in between 201 and 420 additional pounds per day of NOx emissions from the boilers. The Negative Declaration, though it does not explicitly employ an existing conditions baseline, implicitly uses a baseline—an unstated one—in estimating the increased rate at which the boilers will need to operate and the resulting increase in NOx emissions. The District is not necessarily required to use the same measurement method in the EIR as in the Negative Declaration. Whatever method the District uses, however, the comparison must be between existing physical conditions without the Diesel Project and the conditions expected to be produced by the project. Without such a comparison, the EIR will not inform decision makers and the public of the project's significant environmental impacts, as CEQA mandates. (§ 21100.)

(*Id.* at pp. 327–328.)

In *Neighbors for Smart Rail*, the plaintiffs challenged the approval of a project to construct a light-rail line running from Culver City to Santa Monica. Defendant Exposition Metro Line Construction Authority ("Expo Authority") approved the project. Real party in interest Los Angeles County Metropolitan Transportation Authority ("MTA") would operate the transit line once completed. Filing a petition for writ of mandate in the superior court, the plaintiff challenged the project's EIR under two bases, only one of which being relevant to this analysis: "by exclusively employing an analytic **baseline of conditions in the year 2030** to assess likely impacts on traffic congestion and air quality, the EIR fails to disclose the effects the project will have on *existing* environmental conditions in the project area." (*Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 445, bold emphasis added.)

The plaintiff argued that the Expo Authority abused its discretion as a matter of law by proceeding contrary to CEQA. (*Neighbors for Smart Rail, supra*, 57 Cal.4th at p. 447.) "The Expo Authority and the MTA contend agencies have discretion to choose future conditions baselines if their choice is supported by substantial evidence..." (*Ibid.*) The Supreme Court of California agreed with the plaintiffs:

> While an agency has the discretion under some circumstances to omit environmental analysis of impacts on existing conditions and instead use only a baseline of projected future conditions, existing conditions "will normally

> constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (Cal.Code Regs., tit. 14, § 15125, subd. (a).) A departure from this norm can be justified by substantial evidence that an analysis based on existing conditions would tend to be misleading or without informational value to EIR users. Here, however, the Expo Authority fails to demonstrate the existence of such evidence in the administrative record.

(*Id.* at p. 455.) In reaching this conclusion, the Court summarized *Communities for a Better Environment*, stating:

> In *Communities for a Better Environment,* we relied on Guidelines section 15125(a) and CEQA case law for the principle that the baseline for an agency's primary environmental analysis under CEQA must ordinarily be the *actually* existing physical conditions rather than *hypothetical* conditions that could have existed under applicable permits or regulations. (*Communities for a Better Environment, supra,* 48 Cal.4th at pp. 320–322, 106 Cal.Rptr.3d 502, 226 P.3d 985.) Applying this principle, we held the air pollution effects of a project to expand a petroleum refinery were to be measured against the existing emission levels rather than against the levels that would have existed had all the refinery's boilers operated simultaneously at their maximum permitted capacities. (*Id.* at pp. 322–327, 106 Cal.Rptr.3d 502, 226 P.3d 985.)
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> [...]
>
> *Communities for a Better Environment* provides guidance here in its insistence that CEQA analysis employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts. (*Communities for a Better Environment, supra,* 48 Cal.4th at pp. 322, 325, 328, 106 Cal.Rptr.3d 502, 226 P.3d 985.) It did not, however, decide either the propriety of using solely a future conditions baseline or the standard of review by which such a choice is to be judged. Our holding that the analysis must measure impacts against actually existing conditions was in contrast to the use of hypothetical permitted conditions, not projected future conditions. And our holding that agencies enjoy discretion to choose a suitable baseline, subject to review for substantial evidence, related to the choice of a measurement technique for existing conditions, not to the choice between an existing conditions baseline and one employing solely conditions projected to prevail in the distant future.
>
> Justice Baxter therefore errs in citing *Communities for a Better Environment* for the proposition that an agency's future baseline choice is valid if it is "a realistic measure of the physical conditions without the proposed project...." (Conc. & dis. opn. of Baxter, J., *post,* 160 Cal.Rptr.3d at p. 28, 304 P.3d at p. 522.)
> In *Communities for a Better Environment,* we held an agency's discretionary decision on "exactly how the *existing* physical conditions without the project can most realistically be measured" is reviewed for substantial evidence supporting the measurement method. (48 Cal.4th at p. 328, 106 Cal.Rptr.3d 502, 226 P.3d

985, italics added.) We did **not hold** or imply agencies enjoy equivalent discretion under CEQA and the CEQA Guidelines to *omit* all analysis of the project's impacts on existing conditions and measure impacts only against conditions projected to prevail 20 or 30 years in the future, so long as their projections are realistic.

(*Id.* at pp. 448–449, bold emphasis added.) After reviewing other appellate cases on the subject, the Court concluded:

> We conclude CEQA and the Guidelines dictate a rule less restrictive than *Sunnyvale West* 's but more restrictive than that articulated by the Court of Appeal below. Projected future conditions may be used as the **sole baseline** for impacts analysis if their use in place of measured existing conditions—a departure from the norm stated in Guidelines section 15125(a)—is justified by unusual aspects of the project or the surrounding conditions. **That the future conditions analysis would be informative is insufficient**, but an agency does have discretion to completely omit an analysis of impacts on existing conditions when inclusion of such an analysis would detract from an EIR's effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public.
>
> [...]
>
> [W]e note that in appropriate circumstances an existing conditions analysis may take account of environmental conditions that will exist when the project begins operations; the agency is not strictly limited to those prevailing during the period of EIR preparation. An agency **may**, where appropriate, adjust its existing conditions baseline to account for a major change in environmental conditions that is expected to occur before project implementation. In so adjusting its existing conditions baseline, an agency **exercises its discretion** on how best to define such a baseline under the circumstance of rapidly changing environmental conditions. (*Communities for a Better Environment, supra,* 48 Cal.4th at p. 328, 106 Cal.Rptr.3d 502, 226 P.3d 985.) As we explained in our earlier decision, CEQA imposes no "uniform, inflexible rule for determination of the existing conditions baseline," instead leaving to a **sound exercise of agency discretion** the exact method of measuring the existing environmental conditions upon which the project will operate. (*Ibid.*) Interpreting the statute and regulations in accord with the central purpose of an EIR—"to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment" (§ 21061)—we find nothing precluding an agency from employing, under appropriate factual circumstances, a baseline of conditions expected to obtain at the time the proposed project would go into operation.
>
> [...]

> Is it ever appropriate for an EIR's significant impacts analysis to use conditions predicted to prevail in the more distant future, well beyond the date the project is expected to begin operation, to the exclusion of an existing conditions baseline? We conclude agencies do have such discretion. The key, again, is the EIR's role as an informational document. To the extent a departure from the "norm[ ]" of an existing conditions baseline (Guidelines, § 15125(a)) promotes public participation and more informed decisionmaking by providing a more accurate picture of a proposed project's likely impacts, CEQA permits the departure. Thus an agency **may** forgo analysis of a project's impacts on existing environmental conditions if such an analysis would be uninformative or misleading to decision makers and the public.
>
> Parenthetically, we **stress** that the burden of justification articulated above applies when an agency *substitutes* a future conditions analysis for one based on existing conditions, omitting the latter, and not to an agency's decision to examine project impacts on *both* existing and future conditions. As the *Sunnyvale West* court observed, a project's effects on future conditions are appropriately considered in an EIR's discussion of cumulative effects and in discussion of the no project alternative. (*Sunnyvale West, supra,* 190 Cal.App.4th at pp. 1381–1382, 119 Cal.Rptr.3d 481.) But nothing in CEQA law precludes an agency, as well, from considering both types of baseline—existing and future conditions—in its primary analysis of the project's significant adverse effects. (*Pfeiffer, supra,* 200 Cal.App.4th at p. 1573, 135 Cal.Rptr.3d 380; *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 707, 58 Cal.Rptr.3d 102.) The need for justification arises when an agency chooses to evaluate ***only*** the impacts on future conditions, foregoing the existing conditions analysis called for under the CEQA Guidelines.

(*Id.* at pp. 451–454, bold emphasis added.) The Court also explained the importance of using existing conditions as a baseline:

> The CEQA Guidelines establish the default of an existing conditions baseline even for projects expected to be in operation for many years or decades. That a project will have a long operational life, by itself, does not justify an agency's failing to assess its impacts on existing environmental conditions. For such projects as for others, existing conditions constitute the norm from which a departure must be justified—not only because the CEQA Guidelines so state, but because using existing conditions serves CEQA's goals in important ways.
>
> Even when a project is intended and expected to improve conditions in the long term—20 or 30 years after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement. These costs include not only the impacts involved in constructing the project but also those the project will create during its initial years of operation. Though we might rationally

> choose to endure short- or medium-term hardship for a long-term, permanent benefit, deciding to make that tradeoff requires some knowledge about the severity and duration of the near-term hardship. An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project's impacts in the meantime, does not "giv[e] due consideration to both the short-term and long-term effects" of the project (Cal.Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA's informational purpose well. The omission of an existing conditions analysis must be justified, even if the project is designed to alleviate adverse environmental conditions over the long term.
>
> In addition, existing environmental conditions have the advantage that they can generally be directly measured and need not be projected through a predictive model. However sophisticated and well-designed a model is, its product carries the inherent uncertainty of every long-term prediction, uncertainty that tends to increase with the period of projection. For example, if future population in the project area is projected using an annual growth multiplier, a small error in that multiplier will itself be multiplied and compounded as the projection is pushed further into the future. The public and decision makers are entitled to the most accurate information on project impacts practically possible, and the choice of a baseline must reflect that goal.
>
> [...]
>
> For all these reasons, we hold that while an agency preparing an EIR does have **discretion** to omit an analysis of the project's significant impacts on existing environmental conditions and **substitute a baseline** consisting of environmental conditions projected to exist in the future, the agency must justify its decision by showing an existing conditions analysis would be misleading or without informational value. *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council, supra,* 190 Cal.App.4th 1351, 119 Cal.Rptr.3d 481, and *Madera Oversight Coalition, Inc. v. County of Madera, supra,* 199 Cal.App.4th 48, 131 Cal.Rptr.3d 626, are disapproved insofar as they hold an agency may never employ predicted future conditions as the sole baseline for analysis of a project's environmental impacts.

(*Id.* at pp. 455–457, bold emphasis added; see also *Association of Irritated Residents, supra,* 17 Cal.App.5th at pp. 730–731 [interpreting *Neighbors for Smart Rail* "as applying only to baselines that use hypothetical future conditions," not how to measure existing conditions].)

Neither of these opinions support petitioners' argument. Instead, they better support respondents' position. In *Community for a Better Environment*, the agency preparing the EIR used an artificially high baseline reflecting simultaneous maximum operation of a refinery's boilers as allowed by the facilities' air permit, which never actually occurred. (48 Cal.4th at p. 322.) The court found it was not a realistic representation of actual pre-project refinery emissions, but instead reflected "hypothetical allowable conditions" since the boilers were not

operated simultaneously. (*Ibid.*) Here, the Project's baseline reflected pre-Project water operations and conditions that *actually existed* at the time the Authority conducted its environmental analyses for the Project.

Furthermore, in *Neighbors for Smart Rail*, the agency preparing the EIR used a baseline that reflected future conditions projected to occur 20 years after the agency certified the EIR. (57 Cal.4th at p. 457.) The court ruled that when an agency uses a future conditions baseline as the **sole basis** for analysis, it must meet a heightened standard by demonstrating that use of a existing pre-project baseline would either be misleading or without informative value to the decision makers and the public. (*Ibid.*) This holding has no bearing in this case because the baseline at issue here was not solely based on future conditions, but rather reflected existing pre-Project conditions.

As noted, while conditions existing on the date of the NOP generally will constitute the baseline, CEQA affords agencies preparing an EIR the discretion to deviate from this general principle "[w]here existing conditions change or fluctuate over time, and when necessary to provide the most accurate picture practically possible of the project's impacts." (Guidelines, § 15125, subd. (a)(1).) In that latter situation, "a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence." (*Ibid.*) Furthermore, the Guidelines permit a lead agency to "use baselines consisting of both existing conditions and projected future conditions that are **supported by reliable projections based on substantial evidence in the record.**" (*Ibid,* emphasis added.)

Here, respondents deviated from the general rule, and, in 2021, promulgated "an updated existing conditions baseline that reflec[ed] changes in the existing conditions as of late 2020. . . . because some environmental conditions . . . fluctuated considerably since the [NOP] was issued in March 2017, and because an updated baseline [was] necessary to provide the most accurate picture of the potential near-term and long-term impacts from the Project." (AR01_40099.) [3] After substantial research, the Authority chose the CalSimII model that "reflected pre-Project water operations and conditions that **actually existed** at the time the Authority conducted its environmental analyses for the Project." (Opposition, p. 22; AR01_40102, emphasis added.)

Respondents addressed the on-going litigation involving the 2019 Biological Opinions in the FEIR stating "[a]ny resolution of the pending litigation . . . and how it may affect the Project is **speculative**. . . The Authority and Reclamation **have used the most current decisions** regarding operations of the CVP and SWP for the 2020 environmental baseline and for the reasonably foreseeable future conditions." (AR01_8274, emphasis added.) Furthermore, the 2019 Biological Opinions had been implemented in the past and had not been vacated by the federal court. In addition, the Interim Plan was set to expire in December 2023.

[3] Respondents contend that "[p]etitioners concede that the Authority has discretion to deviate from this general principle as they do not claim that the Authority should have characterized the baseline by using the regulatory conditions that existed in 2001 when DWR issued a Notice of Preparation or in 2017 when the Authority issued an updated Notice of Preparation." (Opposition, p. 19, fn. 8.)

Respondents cite *John R. Lawson Rock & Oil v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, in support of their position that they were not required to incorporate into the existing conditions baseline uncertain future changes in the governing water system criteria. (Opposition, at p. 21.) In that case, the plaintiffs challenged as improper (under both CEQA and California's Administrative Procedure Act) modifications the State Air Resources Board ("Board") made to a set of "Truck and Bus Regulations." When discussing the Board's choice of a baseline, the court found:

> . . . Both parties agree, consistent with the case law, the Board should normally adopt as a baseline "the physical environmental conditions in the vicinity of the project, as they exist ... at the time the environmental analysis is commenced ... ." (CEQA Guidelines, § 15125; see *Communities, supra*, 48 Cal.4th at p. 321 ["[T]he impacts of a proposed project are ordinarily to be compared to the actual environmental conditions existing at the time of CEQA analysis, rather than to allowable conditions defined by a plan or regulatory framework."].) However, according to respondents, the Board "did not employ this standard to its environmental analysis" because it "created a fictional universe in which the Existing Regulations did not exist," measuring the current environment without regard to expected reductions in future pollution based on the existing regulations.
>
> Regardless of where the arguments fall specifically, we do not agree with respondents that the Board either adopted a baseline that was inconsistent with CEQA or erroneously measured the existing conditions by excluding future expected declines. Rather, we conclude the Board was within its discretion to adopt a baseline calculation that measured the current environment without further reducing figures based on regulations that should have taken effect during the course of the analysis.
>
> [. . .]
>
> In line with *Communities,* the administrative record in this case demonstrates that full compliance with the existing regulatory standards would also create an illusory comparison. The record basis for proposing a delay in the regulatory mandates was the recognized fact that limitations in credit and capital had left many small fleet operators unable to comply with the standards as written. There were many who had not yet complied and it takes no unrealistic inference to recognize that future emissions estimates based on full compliance would mislead the public as to the effectiveness of the current regulations. Indeed, the natural unevenness in implementation and enforcement of regulations means regulatory expectations based on full compliance are rarely likely to accurately identify the current environmental conditions relating to those regulations. Nor should such predictions be used. CEQA is not meant to stand as a barrier to appropriate modifications to environmental regulations, whether they tighten or loosen existing regulations, provided the lead agency properly informs the public of the effects of those modifications and no significant environmental impact will arise. (See *Neighbors, supra,* 57 Cal.4th at p. 453 [noting the primary purpose an EIR is

to provide "'public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment'"].) Respondents' insistence that current existing conditions must account for those trucks that should comply with regulations in the future, but as of yet have not, suffers from the same flaw as the decision in *Communities* to rely on permitted standards that have not been utilized previously, differing only in whether the decision artificially inflates or deflates the appropriate baseline. Both metrics assume future potential conditions rather than evaluate the actual current environmental conditions.

. . . As our analysis of *Communities* shows, existing conditions do not properly include expected regulatory reductions. Including such predictions in the baseline adds a potential for gamesmanship and misdirection to the analysis and creates a scenario whereby the relevant conditions are no longer statically defined or tied to the existing circumstances at the beginning of the review.

Likewise, we find substantial evidence supports the Board's decision to measure current existing conditions without reference to future expected reductions based on existing regulations. As a matter of logic, future expected reductions are not inherently relevant to a measurement of existing conditions in the same way that constantly fluctuating conditions, such as existed in *Communities, supra*, 48 Cal.4th at pages 327–328, would be to ensuring decision makers are provided adequate information on the project's impacts. Thus, the Board was within its discretion to determine reliance on such factors when measuring the baseline was not proper. Moreover, the record before us demonstrates that these expected reductions were already in jeopardy due to financial costs associated with upgrading existing vehicles not in compliance and the continued issues with availability of capital for small fleets following the global recession. The Board was considering alternatives to the regulations based on this evidence and we conclude such information constitutes substantial evidence supporting the Board's decision to measure based exclusively on current outputs.

Ultimately, we take no issue with respondents' statement that "[p]lainly, the 'existing environmental conditions' include applicable laws and regulations," but such a recitation does not prove the error respondents pursue. By adopting as a baseline the current environmental conditions, the Board did take into account the applicable laws and regulations as they had affected the environment to that point in time. Indeed, the initial report noted in appendix F the many ways the Board updated its analysis to determine the most current environmental conditions. That the Board properly exercised its discretion when not adjusting its baseline to include speculative future reductions based on expected implementations under those laws and regulations does not mean those laws and regulations were retroactively excluded from the Board's baseline analysis. We find no error in this methodology.

(*John R. Lawson Rock & Oil, supra,* 20 Cal.App.5th at pp. 104-106.)

Here, the Interim Plan ordered by the federal court had not been issued or implemented when the Authority prepared its analysis in the RDEIR, and the interim plan was set to expire in December 2023. Furthermore, the 2019 Biological Opinions were not vacated by the federal court. (*Ibid.*) Similar to *John R. Lawson Rock & Oil*, respondents took "into account the applicable laws and regulations as they had affected the environment to that point in time" and this Court finds that the Authority properly exercised its discretion to not incorporate into existing pre-Project conditions uncertain future changes slated to be made to the 2019 Biological Opinions.

b. **Bay-Delta Plan.**

Petitioners further contend that respondents FEIR fails to use an accurate environmental baseline because it omits the State Water Resources Control Board's ("Water Board") 2018 update of the Bay-Delta Water Quality Control Plan ("Bay-Delta Plan"). (OB, pp. 27-28.) Petitioners argue that respondents environmental baseline "assumes that regulatory obligations that affect diversions from the Bay-Delta will not change in the future. . . ." (OB, p. 28.) Petitioners specifically contend that:

> The EIR's assumption, . . . fails to take into account the ["Water Board's] process of updating the Bay-Delta Water Quality Control Plan in 2008, adopting new regulatory requirements for Phase 1 of the updated Water Quality Control Plan in 2018, issuing framework in 2018 for completing the update of the Water Quality Control Plan, and announcement that it anticipates adopting new water quality standards for the Sacramento River and the Bay-Delta estuary as part of the updated Water Quality Control Plan in 2023. . . The EIR's baseline ignores the [Water Board's] updates to the Water Quality Control Plan and excludes consideration of the forthcoming updates to the Bay-Delta Water Quality Control Plan in the EIR, particularly since the document will purportedly be used by the [Water Board] in its review and consideration of the Authority's water rights application.

(OB, p. 28, cites to record and footnote omitted.)

According to respondents, the 2018 update to the Bay-Delta Plan adopted two types of water quality standards: (1) "it *relaxed* the salinity objective for the southern Delta . . . by allowing *higher* salinity levels from April through August"; and (2) it "adopted minimum flow objectives for the lower San Joaquin River and three of its tributaries, the Stanislaus, Tuolumne, and Merced Rivers." (Opposition, p. 23, emphasis in original.)

With respect to the 2018 Bay-Delta Plan's first updated water quality standard, respondents contend that the FEIR referenced the update as part of the water quality analysis and explained that "the compliance location for the relaxed salinity objective did not apply because Sites Reservoir would not affect the watershed where that compliance location was situated." (Opposition, p. 23; AR01_8601.) Respondents state that instead, the FEIR "used the salinity objective whose compliance location was applicable to Sites Reservoir operations." (Opposition, p. 23; AR01_875-876; AR02_153011.)

With respect to the 2018 Bay-Delta Plan's second updated water quality standard, respondents contend that the FEIR explained that the new minimum flow objectives were "irrelevant to the environmental analysis of the Sites Reservoir because the Reservoir will not affect flows on the lower San Joaquin River or its tributaries." (Opposition, p. 23; AR01_8601.) Respondents argue that CEQA requires the environmental baseline to describe the "'physical environment conditions in *the vicinity of the project,*' but there is no requirement to describe conditions in geographic locations far from the project, that will not be affected by the project." (Opposition, p. 23 [quoting Guidelines, § 15125, subd. (a).] [emphasis added by respondents].)

Guidelines section 15125(a) provides:

> An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.

Petitioners offer no argument as to why the evidence the Authority relied upon in making the decision not to include the updated 2018 Bay-Delta Plan in their baseline analysis is lacking. Instead, petitioners ignore the FEIR's responses to these comments.

With respect to petitioners' argument that the baseline fails to account for *future* Bay-Delta Plan updates, respondents argue that any "updates, beyond those adopted in 2018, were unknown," and therefore the Authority decided "not to incorporate possible future updates into the final EIR's existing conditions baseline." (Opposition, p. 23.) Specifically, respondents again cite to *John R. Lawson Rock & Oil, supra,* 20 Cal.App.5th 77, and contend they made this decision based on the facts that the:

> outcome of the multi-phased process for adopting new water quality standards was uncertain; the modeling required for an environmental analysis based on the unadopted standards had not yet been released; there was insufficient information available to assess how the potential future updates would affect the evaluation of the Reservoir and its water operations; and the Framework for the potential future Plan updates provided only initial estimates without describing the applicable operational objectives or compliance locations or how the system would be operated.

(Opposition, pp. 23-24; AR01_8253-8254, 8275, 8418, 8972.)

For the same reasons discussed earlier in this memorandum regarding the 2019 Biological Opinions, this Court hereby finds that the Authority properly exercised its discretion to *not* include uncertain future Bay-Delta Plan updates in the environmental baseline.

It is petitioners' burden to establish that respondents' choice of existing conditions baseline is not supported by substantial evidence. (*California Clean Energy Committee, supra*, 225 Cal.App.4th at p. 187; *Environmental Council of Sacramento, supra*, 142 Cal.App.4th at p. 1029.) Petitioners have not met this burden. Accordingly, this Court finds that petitioners have failed to show that respondents committed a prejudicial abuse of discretion by establishing that respondents' determination of an existing conditions baseline was not supported by substantial evidence. (Pub. Resources Code, § 21168.5; *Vineyard, supra,* 40 Cal.4th at p. 426.)

B. Issue #2: The EIR fails to consider a reasonable range of alternatives.

Petitioners argue that the EIR fails to evaluate a reasonable range of alternatives, and instead considers only a single operational alternative to the approved project. (OB, p. 28.) Petitioners specifically contend that other operational alternatives could reduce or avoid adverse environmental impacts. (*Id.* at p. 32.) Petitioners further allege that the three alternatives that were carried forward for further analysis are "nothing more than minor variations of the Project and do not constitute a reasonable range of alternatives or meet CEQA's informational requirements." (*Id.* at p. 29.)

Respondents contend that the Authority studied a reasonable range of reservoir sites, components, and operational criteria that were designed to achieve the Project's objectives while reducing the Project's environmental impacts. (Opposition, p. 26.) Respondents further argue that the Authority made a reasoned decision to eliminate from full analysis alternatives that would fail to achieve key Project objectives or that relied on speculative or uncertain criteria. (*Id.* at p. 32.)

1. *Standard of review.*

Petitioners contend that the EIR fails as an informational document because it does not contain a sufficient range of potentially feasible project alternatives as required by CEQA.

Respondents contend that the record supports the Authority's determination that it sufficiently evaluated a reasonable range of operational alternatives for the Project.

In *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986-987, the Court of Appeal discussed the standard of review applicable to challenges to an EIR's consideration and evaluation of alternatives to a proposed project:

> An EIR will be found legally inadequate—and subject to independent review for procedural error—where it omits information that is both required by CEQA and necessary to informed discussion. . . .
>
> On the other hand, it "frequently occurs" that "the major disputes are over whether relevant information was omitted from the EIR." (*National Parks & Conservation Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1353 [84 Cal. Rptr. 2d 563] (*National Parks*).) Many CEQA challenges thus concern the

> amount or type of information contained in the EIR, the scope of the analysis, or the choice of methodology. These are factual determinations. (*Barthelemy v. Chino Basin Mun. Water Dist.* (1995) 38 Cal.App.4th 1609, 1620 [45 Cal. Rptr. 2d 688].) . . . .
>
> To sum up, the omission of required information constitutes a failure to proceed in the manner required by law where it precludes informed decisionmaking by the agency or informed participation by the public. (*Sierra Club v. State Bd. of Forestry, supra*, 7 Cal.4th at p. 1236.) We review such procedural violations de novo. (*Vineyard, supra*, 40 Cal.4th at p. 435.) By contrast, we review an agency's substantive factual or policy determinations for substantial evidence. (*Ibid.*; see also, e.g., *Goleta II, supra*, 52 Cal.3d at pp. 566–567 [substantial evidence supported agency's conclusion that none of the proffered alternative sites "merited extended discussion in the EIR"].)
>
> In this case, appellants contend that the City's choice of alternatives resulted in an analysis that was "merely perfunctory," thereby precluding informed decisionmaking and public participation. But appellants do not tether that claim to any specific informational or procedural requirement of CEQA. (Cf. *Planning & Conservation League, supra*, 83 Cal.App.4th at pp. 898, 916 [EIR failed to discuss the required "no project" alternative].) And as noted above, "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR." (*Goleta II, supra*, 52 Cal.3d at p. 566.)
>
> In any event, we cannot assess appellants' claim without reviewing the evidence in the administrative record. In examining the evidence here, we are not limited to the EIR itself. (*Goleta II, supra*, 52 Cal.3d at p. 569.) Given the circumstances of this case, we "may consult the [entire] administrative record to assess the sufficiency of the range of alternatives discussed in [the] EIR." (*Ibid.*)
>
> In undertaking our review, we bear in mind that it is appellants' burden to demonstrate that the alternatives analysis is deficient. "Where an EIR is challenged as being legally inadequate, a court presumes a public agency's decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530 [78 Cal. Rptr. 3d 1].)

This Court's "role is to determine whether the challenged EIR is sufficient as an informational document, not whether its ultimate conclusions are correct." (*Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 486 [quoting *Laurel Heights Improvement Ass'n, supra,* 47 Cal.3d at p. 407].) "When assessing the legal sufficiency of an EIR [as an informational document], the reviewing court focuses on adequacy, completeness and a good faith effort at full disclosure. . . 'an EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" (*Mount Shasta Bioregional Ecology Ctr. v. County of Siskiyou* (2012)

210 Cal.App.4th 184, 195-196 [quoting *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390-1391].)

Here, petitioners argue that the EIR fails as an informational document because it lacks information necessary for informed decision-making and public participation. However, similar to the petitioners in *California Native Plants Society,* petitioners here "do not tether that claim to any specific informational or procedural requirements of CEQA." (177 Cal.App.4th at p. 987.) Therefore, to adequately review petitioners' claims, this Court may consult the entire administrative record **de novo** to assess whether the EIR included sufficient information regarding operational alternatives to allow for informed decision-making and public participation. If this Court concludes that the EIR satisfies this informational requirement, then this Court need only review "the amount or type of information contained in the EIR, the scope of the analysis, or the choice of methodology" for **substantial evidence**. (*Id.* at p. 986.)

2. *Merits.*

CEQA requires an EIR to include a reasonable range of feasible alternatives that would reduce the significant adverse environmental impacts of a proposed project. (Pub. Resources Code, §§ 21002, 21061, 21100, subd. (b)(4); Guidelines § 15126.6; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 ["[t]he core of an EIR is the mitigation and alternatives sections"].)

Section 15126.6 of the Guidelines sets forth a detailed framework for evaluating the content and scope of alternatives to be examined in an EIR:

> **(a)** Alternatives to the Proposed Project. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 *and Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).
>
> **(b)** Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening

any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.

(c) Selection of a range of reasonable alternatives. The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.

(d) Evaluation of alternatives. The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. If an alternative would cause one or more significant effects in addition to those that would be caused by the project as proposed, the significant effects of the alternative shall be discussed, but in less detail than the significant effects of the project as proposed. (*County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1).

(e) "No project" alternative.

> **(1)** The specific alternative of "no project" shall also be evaluated along with its impact. The purpose of describing and analyzing a no project alternative is to allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project. The no project alternative analysis is not the baseline for determining whether the proposed project's environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).

[. . .]

(f) Rule of reason. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project. The

range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.

> (1) Feasibility. Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site (or the site is already owned by the proponent). No one of these factors establishes a fixed limit on the scope of reasonable alternatives! (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1).

[. . .]

> (3) An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274).

As noted, the Guidelines specify that an EIR must consider a "reasonable range of alternatives" to a proposed Project. "[T]here is no rule specifying a particular number of alternatives that must be included." (*Mount Shasta Bioregional Ecology Ctr., supra,* 210 Cal.App.4th at p. 199.) "CEQA establishes no categorical legal imperative as to the scope of alternatives to be analyzed in an EIR. Each case must be evaluated on its facts, which in turn must be reviewed in light of the statutory purpose." (*Citizens of Goleta Valley, supra,* 52 Cal.3d at p. 566.)

The sufficiency of an EIR's alternatives analysis is subject to a "rule of reason," which requires the EIR "to set forth only those alternatives necessary to permit a reasoned choice" and "to examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the project." (Guidelines, § 15126.6, subd. (f).)

> Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. It is only required that the officials and agencies make an objective, good-faith effort to comply . . . the court does not seek to impose unreasonable extremes or to interject itself within the area of discretion as to the choice of the action to be taken. [Citations]. When the alternatives have been set forth in this manner, an EIR does not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated.

(*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274, 287-288.)

"In determining the nature and scope of alternatives to be examined in an EIR, the Legislature has decreed that local agencies shall be guided by the doctrine of 'feasibility'". (*Citizens of Goleta Valley, supra,* 52 Cal.3d at p. 565.) An EIR need not consider *infeasible* alternatives. (*In re Bay-Delta,* (2008) 43 Cal.4th 1143, 1163; *California Native Plant Society, supra,* 177 Cal.App.4th at p. 981.) For purposes of CEQA review, "feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors." (Pub. Resources Code, § 21061.1; Guidelines, § 15364.)

"The issue of feasibility arises at two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency's later consideration of whether to approve the project." (*California Native Plant Society, supra,* 177 Cal.App.4th at p. 981 [citing *Mira Mar Mobile Community, supra,* 119 Cal.App.4th at p. 489].) However, differing levels of feasibility apply at each stage. "For the first phase—inclusion in the EIR—the standard is whether the alternative is *potentially* feasible. [Citations]. By contrast, at the second phase—the final decision on project approval—the decisionmaking body evaluates whether the alternatives are *actually* feasible. (*Ibid.*, emphasis in original.) At the latter stage, the agency "may reject as infeasible alternatives that were identified as potentially feasible. (*Ibid.*)

"The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency." (*Bay-Delta, supra,* 43 Cal.4th at p. 1163; *Mount Shasta Bioregional Ecology Ctr. v. County of Shasta* (2012) 210 Cal.App.4th 184, 196-197.) "A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings . . . The statement of objectives should include the underlying purpose of the project and may discuss the project benefits." (Guidelines, § 15124, subd. (b).)

Here, the Authority identified five Project objectives:

The Project objectives are as follows:

- OBJ-1: Improve water supply reliability and resiliency to meet Storage Partners' agricultural and municipal long-term average annual water demand in a cost-effective manner for all Storage Partners, including those that are the most cost-sensitive.
- OBJ-2: Provide public benefits consistent with Proposition 1 of 2014 and use WSIP funds to improve statewide surface water supply reliability and flexibility to enhance opportunities for habitat and fisheries management for the public benefit through a designated long-term average annual water supply.
- OBJ-3: Provide public benefits consistent with the WIIN Act by using federal funds, if available, provided by Reclamation to improve CVP operational flexibility in meeting CVP environmental and contractual water supply needs and improving cold-water pool management in Shasta Lake to benefit anadromous fish.
- OBJ-4: Provide surface water to convey biomass from the floodplain to the Delta to enhance the Delta ecosystem for the benefit of pelagic fishes[2] in the north Delta (e.g., Cache Slough).
- OBJ-5: Provide local and regional amenities, such as developing recreational facilities, reducing local flood damage, and maintaining transportation connectivity through roadway modifications.

(AR01_576, 10957, footnote omitted.)

The EIR also identified the purpose of the Project to provide:

- Increased water supply and improved reliability of water deliveries.
- Increased CVP operational flexibility.
- Benefits to anadromous fish by improving CVP operations consistent with the laws, regulations, and requirements in effect at the time of operation.
- Incremental Level 4 water supply for CVP Improvement Act refuges.
- Delta ecosystem enhancement by providing water to convey food resources.

(AR01_517.)

Here, petitioners argue that the EIR's range of alternatives was inadequate because the FEIR only considered one possible way the proposed reservoir could be operated.[4] (Reply, p. 14.) It is petitioners' contention that the EIR should have studied more than one operational alternative. (*Ibid.*) Petitioners focus heavily on the final EIR's lack of operational alternatives that encompass a broader range of bypass flows and diversion criteria. (*Id.* at pp. 32-33.)

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[4] Petitioners segregate the Project's *operational* impacts from its *construction* impacts by arguing "the water withdrawals, bypass flows and other operational criteria will be a primary cause of the Project's operational impacts. . . the operational impacts will be ongoing, where the construction impacts will be time limited." (Reply, p. 14.)

Petitioners specifically argue that the three alternatives contained in the final EIR "do not differ in any respect as to their *operational* details, such as when and how much water is diverted from the Sacramento River system to fill the reservoir, and when and how much water is released from the reservoir. Yet different operational parameter will necessarily have different environmental consequences." (OB, p. 32.)

Petitioners also criticize the Authority's decision to reduce the number of alternatives from five in the 2017 draft EIR to three in the 2021 revised draft EIR. (*Id.* at p. 33.) Petitioners further argue that the Authority does not provide a reasoned explanation why it did not study an alternative that would incorporate the Water Board's 2018 framework for future updates to the Bay-Delta Plan. (*Id.* at pp. 34-36.)

Respondents disagree and argue that respondent "Authority—through an iterative process that began with the 2017 draft EIR and continued with a robust process of public disclosure and environmental analysis informed by expert agency input—considered a reasonable range of alternatives" for the Project. (Opposition, p. 26.) Respondents further argue that substantial evidence supports the Authority's decision not to include an alternative that uses operational criteria based on unapproved possible future regulatory requirements. (*Id.* at p. 33.)

Respondents provide the Court with a timeline that explains the process by which the Authority arrived at the three alternatives that were ultimately included in the final EIR:

> **Draft EIR**. The 2017 Draft EIR analyzed 5 alternatives, in addition to the No Project Alternative: Alternative A with a Reservoir capacity of 1.3 MAF; and Alternatives B through D, each with a Reservoir capacity of 1.8 MAF, but with different diversion, conveyance, and hydropower components. Under the operational criteria analyzed in the 2017 Draft EIR the diversion of water from the Sacramento River would not occur when bypass flows in the Upper Sacramento River at Wilkins Slough dropped below ***5,000 cfs***.
>
> [. . .]
>
> **Revised Draft EIR**. After analyzing comments on the Draft EIR, the Authority decided to eliminate the 1.8 MAF reservoir capacity alternative 'based on anticipated demand, a desire to reduce the overall footprint of the reservoir and related facilities, and the proposed elimination of' a new intake structure. Instead, the Revised Draft EIR focused on alternative reservoir capacities of 1.3 MAF (Alternative 2) and 1.5 MAF (Alternatives 1 and 3).
>
> The Revised Draft EIR also analyzed three operational alternatives, dedicating a maximum of up to ***either 7% (Alternative 1) or 25% (Alternative 3) of Sites Reservoir's capacity to Reclamation***, including for use for Shasta Lake cold pool management benefitting anadromous fish; ***Alternative 2 reserved 0% of Reservoir capacity for Reclamation.***

> The Revised Draft EIR Alternatives' bypass flow criterion provided that diversions to Sites Reservoir would not occur at any time in April or May when Wilkins Slough bypass flows drop below 8,000 cfs and, via Mitigation Measure FISH-2.1, ***prohibited diversions to the Reservoir during March through May when bypass flows at Wilkins Slough drop below 10,700 cfs,*** reducing potentially significant impacts to salmonid species to less-than-significant.
>
> **Final EIR.** At the recommendation of [California Department of Fish and Wildlife] CDFW, the state agency with jurisdiction and special expertise over fish species, and in response to comments that the 10,700-cfs bypass flow criterion for Wilkins Slough in the Revised Draft EIR 'only included the months of March through May and that this would not encompass the full migration period of juvenile migrating salmonids,' the Final EIR analyzed a more restrictive bypass flow scenario, prohibiting (1) all diversions from June 15 to August 31; (2) diversions in September when bypass flows at Wilkins Slough drop below 5,000 cfs; and (3) ***diversions from October 1 to June 14 when bypass flows drop below 10,700 cfs.*** With these further restrictions, the previously identified significant operational impacts to salmonid species from diversions of water from the Sacramento River to the Reservoir (including winter-run, spring-run, fall-run, and late fall-run Chinook salmon, and Central Valley steelhead) would be reduced to less-than-significant without the need for any mitigation. The Final EIR explained that 'the Project alternatives' operational criteria now include Wilkins Slough bypass flow criterion of 10,700 cfs from October 1 to June 14, thereby addressing concerns that the juvenile salmonid migration period is not covered by the criteria.'

(Opposition, pp. 26-29, emphasis original, footnotes and internal citations to record omitted.)

Respondents argue that the Authority ultimately approved Alternative 3, which incorporated CDFW's recommended bypass flow operational criteria, and was the most environmentally friendly among the criteria analyzed. (Opposition, p. 29; AR01_129, 131, 140.) Respondents further contend that "the alternatives in the 2017 Draft EIR that the Authority later eliminated, including a *larger* reservoir, would not provide environmental benefits compared to the alternatives that were carried forward." (Opposition, p. 30.)

Respondents further alert the Court to the fact that after the 2017 draft EIR was released, while the Authority was preparing the revised draft EIR, it was in communication with petitioners Friends of the River and Sierra Club, along with other groups, to model a possible alternative using "operational parameters provided by Petitioners and other groups, including their proposal to establish minimum Wilkins Slough bypass flows of ***15,000 cfs from October to June.***" (Opposition, pp. 26-27, emphasis in original; AR01_47673-47690.)

The Authority ultimately eliminated petitioners proposed alternative from further analysis because it determined that the proposal would fail to meet two of the basic objectives of the reservoir. (*Id.* at p. 27.) Respondents state that "[m]odeling revealed this possible alternative would significantly reduce the Project's environmental benefits while substantially increasing the

cost of water supplied by the Authority on a per-acre foot basis, and that under this alternative Sites Reservoir would be unlikely to qualify for Proposition 1 funding." (*Id.* at p. 27; AR01_2469.)

Thus, respondents attempted to work with petitioners so as to find an operational alternative that would satisfy their wants, needs, and concerns. However, the Authority determined that petitioners proposed alternative did not meet two key Project objectives: (1) Objective 1, "to improve water supply reliability and resiliency for Storage Partners in a cost-effective manner"; and (2) Objective 2, "to use Proposition 1 funds to enhance opportunities for habitat and fisheries management for the public benefit." (Opposition, p. 27; AR01_576.)

Respondents contend that "[o]ver the course of its extensive CEQA review of the Project, the Authority evaluated three different bypass flow scenarios and three alternative operational scenarios for dedicating Reservoir capacity (or not) to Reclamation" thus satisfying the requirement that the EIR describe a range of reasonable alternatives to the Project. (Opposition, p. 31.) Petitioners take issue with that contention and argue that respondents misstate the law. (Reply, p. 16.) Petitioners refer to *their* proposed alternative that was rejected as infeasible by the Authority and argue that "alternatives that were not included in the revised DEIR and final EIR do not qualify as part of the range of alternatives." (Reply, p. 15.) Specifically, petitioners contend that "[m]erely telling decisionmakers that many infeasible alternatives have already been rejected does not contribute to their range of choices." (*Ibid.*)

While petitioners are correct that the Court must look at the alternatives actually chosen to be included in EIR, petitioners' focus is too narrow because a reviewing Court need also examine the journey the agency took along the way to evaluate whether a sufficient range of reasonable alternatives exist.

> The whole point of requiring evaluation of alternatives in the DEIR is to allow thoughtful consideration and public participation regarding other options that may be less harmful to the environment. (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 695 [125 Cal. Rptr. 2d 745] [CEQA's purpose is to encourage project sponsors to consider and adopt "*feasible* alternatives and mitigation measures ... to lessen or avoid adverse environmental impacts"].) 'CEQA does not handcuff decisionmakers .... 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. Decisionmakers should have the flexibility to implement that portion of a project which satisfies their environmental concerns.' (*Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1041 [219 Cal. Rptr. 346].)

(*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 335-336.)

As discussed earlier in this section, an EIR need not study an alternative that does not meet key project objectives. (*Bay-Delta, supra,* 43 Cal.4th at p. 1164.) A lead agency may eliminate

alternatives from detailed consideration if it: (1) fails to meet most of the basic project objectives; (2) is infeasible; and (3) is unable to avoid significant environmental aspects. (Guidelines, § 15126.6, subd. (c).)

In *Citizens of Goleta Valley, supra,* 52 Cal.3d at pp. 568-570, the California Supreme Court explained the way in which a reviewing court may evaluate whether an EIR contains a sufficient range of alternatives:

> As we have frequently observed, it is only the EIR that can effectively disclose to the public the "analytic route the . . . agency traveled from evidence to action." (*Topanga Assn. for a Scenic Community* v. *County of Los Angeles* (1974) 11 Cal.3d 506, 515 [113 Cal.Rptr. 836, 522 P.2d 12]; *Laurel Heights, supra*, 47 Cal.3d at p. 404.) In general "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." (*Concerned Citizens of Costa Mesa, Inc.* v. *32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 [231 Cal.Rptr. 748, 727 P.2d 1029]; *Laurel Heights, supra*, 47 Cal.3d at pp. 404-405.) . . .
>
> Our decisions do not indicate, however, that the administrative record shall play no role, under any circumstances, in evaluating the adequacy of an EIR. As noted earlier, an EIR must discuss and analyze *feasible* alternatives. The local agency, therefore, must make an initial determination as to which alternatives are feasible and merit in-depth consideration, and which do not. (*Com. of Ky.* ex rel. *Beshear* v. *Alexander* (6th Cir. 1981) 655 F.2d 714, 718.) In California, this screening process is known as "scoping." (See Guidelines, § 15083, subd. (a) ["Scoping has been helpful to agencies in identifying the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR and in eliminating from detailed study issues found not to be important."].)
>
> In general, an EIR should set forth the alternatives that were considered by the lead agency and rejected as infeasible during the scoping process, and the reasons underlying the agency's determination. (*Laurel Heights, supra*, 47 Cal.3d at pp. 404-405.) However, the administrative record may be studied "to assess the degree of discussion any particular alternative deserves, based on the alternative's feasibility and the stage in the decisionmaking process it is brought to the attention of the agency." (*Grazing Fields Farm* v. *Goldschmidt* (1st Cir. 1980) 626 F.2d 1068, 1074.) To be sure, agency consideration of otherwise reasonable alternatives in the administrative record cannot replace the CEQA mandated discussion of alternatives in the EIR. (*Laurel Heights, supra*, 47 Cal.3d at pp. 403-404; *Grazing Fields Farm* v. *Goldschmidt, supra*, 626 F.2d at pp. 1073-1074.) "But where potential alternatives are not discussed in detail in the [EIR] because they are not feasible, the evidence of infeasibility need not be found within the [EIR] itself. Rather a court may look at the administrative record as a whole to see whether an alternative deserved greater attention in the [EIR]." (*Com. of Ky.* ex rel. *Beshear* v. *Alexander, supra*, 655 F.2d at p. 719;

accord *Citizens Comm. Against Interstate Rt. 675* v. *Lewis* (S.D.Ohio 1982) 542 F.Supp. 496, 540.)

Thus, where the circumstances warrant, a reviewing court may consult the administrative record to assess the sufficiency of the range of alternatives discussed in an EIR. The circumstances justify such consultation here. Unlike the EIR in *Laurel Heights, supra*, 47 Cal.3d 376, County's environmental review of the Hyatt project discussed a full range of alternatives, including an in-depth discussion of one off-site alternative.

Here, petitioners are asking the Court to put blinders on and simply look at the three alternatives the Authority ultimately included in the final EIR. However, the Court cannot examine the reasonableness of the range unless it evaluates the road the lead agency took to get there. The record is replete with evidence that the Authority extensively evaluated and reviewed several different reservoir sizes and alternative operational criteria over the course of its CEQA review of the Project.

Furthermore, while the 2017 draft EIR included five alternatives, it is evident from the record that the Authority worked closely with pertinent state and federal agencies, and considered and responded to the public's comments and concerns so as to narrow and focus the three potentially feasible alternatives that were ultimately included in the final EIR. (See Master Response 9 for a thorough discussion of the Authority's screening process used to develop the alternatives for inclusion in the 2017 EIR and the 2021 revised DEIR, and the Authority's responses to comments. [AR01_8412-8425, 8440-9150, & Appendix 2B, AR01_2465-2485].)

With respect to petitioners' argument that the Authority does not provide a reasoned explanation for why it did not study an alternative that would incorporate the Water Board's 2018 framework for future updates to the Bay-Delta Plan, respondents argue that "[a]n EIR is not required to evaluate an alternative whose effect cannot reasonably be ascertained and whose implementation is remote and speculative." (Opposition, p. 33.) Specifically, respondents contend that the 2018 framework "contemplated new standards to maintain inflows into the Delta at a level of 55 percent unimpaired flows, with a range from 45-65 percent. But by the time the Authority published the Final EIR, the State Board's potential Plan updates had evolved away from the Framework toward an 'alternative' pathway to update and implement the Bay-Delta Plan' through 'voluntary agreements' with affected agencies and stakeholders." (Opposition, p. 33.)

As noted, "[a]n EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative." (Guidelines, §15126.6, subd. (f)(3).) Furthermore, the Guidelines state that "[t]he EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination." (Guidelines, §15126.6, subd. (c).)

Here, the FEIR explains that future Bay-Delta Plan updates were "uncertain" and "speculative" and that there was not enough information available for the Authority to assess how these future updates may affect the environmental analysis for the Project. (AR01_8253-8254, 8275, 8418,

8972.) The Authority explained its reasons why it did not evaluate in detail an alternative that uses operational criteria based on future Bay-Delta Plan updates, and the Court finds that substantial evidence supports the Authority's decision.

As discussed earlier in this memorandum, this Court must "judge the range of project alternatives in the EIR against a 'rule of reason.'" (*California Native Plant Society, supra,* 177 Cal.App.4th at p. 988; Guidelines, § 15126.6, subd. (f).) Thus, the range of selected alternatives must be upheld by this Court "unless the challenger demonstrates 'that the alternatives are manifestly unreasonable and that they do not contribute to a reasonable range of alternatives.'" (*California Native Plant Society, supra,* 177 Cal.App.4th at p. 988, citation omitted.)

Furthermore, the California Supreme Court advised that "[t]he wisdom of approving . . . [a] development project [is] a delicate task which requires a balancing of interests [and] is necessarily left to the sound discretion of local officials and their constituents who are responsible for such decisions." (*Citizens of Goleta Valley, supra,* 52 Cal.3d at p. 576.)

Additionally,

> Absolute perfection is not required; what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned. It is only required that the officials and agencies make an objective, good-faith effort to comply. That requires a 'hard look' at environmental consequences in recognition of the factors described in sections 21000 and 21001; the court does not seek to impose unreasonable extremes or to interject itself within the area of discretion as to the choice of the action to be taken. (*Mount Sutro Defense Committee* v. *Regents of University of California, supra*, 77 Cal.App.3d at p. 37; *San Francisco Ecology Center* v. *City and County of San Francisco, supra*, 48 Cal.App.3d at p. 594; *Natural Resources Defense Council, Inc.* v. *Morton, supra*, 458 F.2d at pp. 834-838; *Natural Resources Defense Council* v. *Callaway, supra*, 524 F.2d at p. 93.)
>
> When the alternatives have been set forth in this manner, an EIR does not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated. (*Brooks* v. *Coleman* (9th Cir. 1975) 518 F.2d 17, 19; *Monroe County Conservation Council* v. *Adams* (2d Cir. 1977) 566 F.2d 419, 425.)

(*Residents Ad Hoc Stadium Com., supra,* 89 Cal.App.3d at pp.287-288.)

Thus, this Court finds that the EIR's alternatives analysis sufficiently informed decision makers and the public about the different options available for feasibly building and operating the Project. Furthermore, it is petitioners' burden to demonstrate that the alternatives analysis is deficient. (*California Native Plant Society, supra,* at p. 987; *Mount Shasta Bioregional Ecology Ctr. v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 199.) Petitioners have not met this burden. Accordingly, this Court finds that petitioners have failed to show respondents committed a prejudicial abuse of discretion by failing to comply with CEQA's informational

mandates or made determinations that were not supported by substantial evidence. (Pub. Resources Code, § 21168.5; *California Native Plant Society, supra,* 177 Cal.App.4th at pp. 986-987.)

C. Issue #3: The EIR fails to provide an accurate description of the environmental setting of the Project area.

Petitioners argue that the EIR's description of the Project's environmental setting is inadequate because it failed to establish that protocol-level surveys were performed on all appropriate species, and instead relied on outdated, unreliable, and inaccurate habitat and species distribution information. (OB, at p. 38.)

Respondents contend that the FEIR's methodology for characterizing the Sites Reservoir's environmental setting uses reasonably feasible data collection, incorporates the input from multiple resource agencies with jurisdiction over wildlife, vegetation, and wetlands, and represents the reasonable opinions of subject matter experts and jurisdictional agencies. (Opposition, p. 35.)

1. *Standard of review.*

Petitioners argue that the EIR fails as an informational document, and thus subject to de novo review, because the inaccurate and unreliable description of the Project's environmental setting makes it impossible for the public to understand the nature and extent of the Project's impacts and deprives the public of an opportunity to meaningfully comment on alternatives.

Respondents argue that the reliability and accuracy of the data and the methodology the Authority used to characterize the environmental setting are factual determinations subject to review for substantial evidence.

Here, petitioners contend that the Authority used "outdated, inaccurate, and unreliable habitat distribution information", and "failed to conduct appropriate surveys of habitat and species distribution." (OB, p. 37.) In *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 386, the Court of Appeal stated that a reviewing court applies "the substantial evidence test to conclusions, findings, and determinations, **and to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions.**" (Emphasis added.)

Thus, because petitioners are challenging the reliability and accuracy of the data relied upon in the EIR, and the methodology the Authority used to study the Project's environmental setting, the Court must employ a **substantial evidence** standard of review.

2. *Merits.*

"An EIR must contain an accurate description of the project's environmental setting." (*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 874.) Guidelines section 15125 provides, in pertinent part:

> **(a)** An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant. The description of the environmental setting shall be no longer than is necessary to provide an understanding of the significant effects of the proposed project and its alternatives. The purpose of this requirement is to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.
>
> [. . .]
>
> **(c)** Knowledge of the regional setting is critical to the assessment of environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project. The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context.

This Guideline must be broadly interpreted "in order to 'afford the fullest possible protection to the environment.' [Citation]. In so doing, we ensure that the EIR's analysis of significant effects, which is generated from this description of the environmental context, is as accurate as possible." (*Friends of the Eel River, supra,* 108 Cal.App.4th at p. 874.)

Here, petitioners argue that the EIR's environmental setting description is inadequate because the Authority:

(1) did not conduct any new "on the ground surveys regarding vegetation, wetland, or wildlife resources" and instead "relied primarily on desktop modeling of land-cover types based on aerial imagery to describe the location of plant communities and wetlands;"

(2) relies on old wetlands and sensitive species habitat survey data; and

(3) "failed to attempt other approaches to obtain more accurate information."

(OB, p. 38, 40, 41.)

Respondents contend that the FEIR's methodology for characterizing the Sites Reservoir's environmental setting was vast and not simply limited to aerial imagery. (Opposition, p. 35.) Respondents further explain that the methodology used included:

- analyzing previous survey results, including but not limited to surveys of 19,237-acres within the Project area collected by the DWR in the 2000's;
- modeling land-cover types;
- reviewing literature to establish the habitat associations and requirements linked with particular land-cover types;
- database inquiries;
- inventory searches;
- interpreting high-resolution aerial surveys; and
- making close calls about the presence or absence of species or habitat in favor of presence.

(*Ibid.*)

Respondents specifically state:

> To model land use cover, 'qualified biologists conducted extensive literature and data reviews to support the characterization of the environmental baseline using the best available scientific data and resources (e.g., agency databases, scientific literature, aerial imagery, existing reports)' for each resource or species. AR01_8381; AR01_16428-16495; AR01_8391-8395. The study of aquatic resources was equally rigorous: delineation experts spent months interpreting detailed aerial photographs of wetlands and non-wetland waters, using eight different data sets. Desktop delineation of aquatic resources is accepted by both the Regional Water Quality Control Board and U.S. Army Corps of Engineers. AR01_8387.

(Opposition, p. 36, footnote omitted.)

Respondents also state that their "experts used common and reliable methodologies to analyze wildlife habitat, vegetation, and wetlands. These expert analyses were then reviewed by government experts at six resource agencies, whose input was incorporated. AR01_8385. . ." (Opposition, p. 37.)

Petitioners fault the Authority for not conducting updated "on the ground" wetlands and sensitive species habitat surveys pre-certification. (OB, pp. 38-39.) Specifically, petitioners contend that the environmental setting is inaccurate because "[t]he EIR emphasizes multiple times that '[a]ll land cover type acreages are preliminary and subject to revision based on pedestrian surveys once access has been granted to the study area.'" (OB, p. 38.) Thus, petitioners argue that these "preliminary" land cover type estimates that form the basis of the EIR's analysis of impacts on the project areas vegetation, wetlands, and wildlife are "seemingly subject to radical revision based on future field surveys" and are therefore "unreliable." (OB, pp. 38-39.)

a. **Privately-held parcels within the Project area.**

Petitioners contend that the Authority "could have" found a way to access the project area on foot by seeking voluntary access or via a court order, or they "could have" conducted helicopter surveys of privately-held parcels within the Project area. (OB, p. 41.) Specifically, petitioners argue that the record "indicates that the project proponents gained access to survey 75 percent of the study area between 1998 and 2003" via court orders. (OB, p. 40.) Thus, petitioners contend that because the Authority was able to access Project areas in the past, they "could have found a way to access the project area to conduct meaningful surveys" pre-certification. (OB, at p. 41.)

Petitioners cite *Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 692-694, ("*Agoura Hills*") in support of their argument. In *Agoura Hills*, the Court of Appeal held that the use of outdated surveys done on three "rare, threatened, or endangered" plant species were inadequate to mitigate the project's potentially significant impacts on these plants, where the challenged report discussed future surveys, but there was no showing that it was infeasible to perform updated surveys prior to project approval. (*Id.* at pp. 692-693.) Petitioners argue that "nothing in the record indicates that they [Authority] even made an effort to access the proposed project site through gaining voluntary access or seeking a court order." (OB, p. 41.)

Respondents argue that both the Authority and Reclamation tried to access privately-held parcels within the Project area without success. (Opposition, p. 40.) Respondents also contend that *Agoura Hills* is distinguishable because there "[t]he lead agency . . . relied solely on outdated surveys in conditions which, according to CDFW, would make it difficult to detect the plant species in question," whereas here past surveys "were conducted during the appropriate times (i.e., blooming periods) for the special status plan species, in accordance with CDFG protocols at the time." (Opposition, p. 40; AR01_8383.) Respondents further argue that they "did not rely solely on past surveys but used them *in conjunction* with habitat modeling." (*Ibid.*)

In addition, respondents distinguish *Agoura Hills* by arguing that in that case there was no showing "that the developer did not own all the land at issue", and thus there was "no reason to think the developer could not access his own lands to complete protocol surveys." (Opposition, at p. 40.) Furthermore, respondents argue that the project proponent in *Agoura Hills* "simply made 'no showing that it was infeasible for the City to perform these surveys prior to project approval.'" (Opposition, p. 40 [quoting *Agoura Hills, supra,* 46 Cal.App.5th at p. 692].)

Here, on the other hand, respondents contend that "the record explains the surveys could not be conducted absent a court order forcing involuntary access." (Opposition, p. 41.) Respondents cite to *City of Maywood, supra,* 208 Cal.App.4th 362, to further argue that they were "not required to obtain court ordered involuntary access to privately-held lands to perform protocol-level surveys." (*Ibid.*)

In *City of Maywood, supra,* the petitioners challenged the Los Angeles Unified School District's ("LAUSD") decision to certify a final EIR analyzing the environmental consequences of building a new high school. (208 Cal.App.4th at p. 370.) Initial testing indicated possible lead-based paint and termiticide contamination on and off the project site. (*Id.* at p. 375.) The project

site in question included four industrial facilities and several private residences. (*Ibid.*) LAUSD "analyzed hundreds of soil samples" taken from several commercial and residential parcels. However, the draft EIR noted that LAUSD was unable to do any testing on 27 of the residential parcels in the project area because they were not able to access those privately-owned residences. (*Ibid.*) The draft EIR further stated that those privately-owned parcels would be tested when they were able to gain access to them. (*Ibid.*) Gaining access would require a court order. (*Id.* at p. 412.)

In that case, the petitioners argued that the EIR did not adequately assess potential impacts from the contamination because LAUSD had not taken pre-certification soil samples from those 27 privately-owned residences. (*City of Maywood, supra,* 208 Cal.App.4th at p. 409.) The Court of Appeal disagreed and held it was not reasonably feasible for LAUSD to test the properties pre-certification because the property owners would not voluntarily grant access. (*Id.* at p. 412.) Thus, because the record showed that LAUSD had analyzed hundreds of soil samples in the project area, had unsuccessfully attempted to gain voluntary access to the private residences, and the EIR required pre-construction testing/evaluation of these areas once gaining access, the evidence was sufficient to conclude that the EIR satisfied CEQA's environmental setting requirements. (*Id.* at pp. 375, 412.)

Here, respondents argue that the record is replete with evidence that it attempted to gain access to privately-held parcels without success:

> The Final EIR was transparent about the Authority's lack of access, explaining that it could not conduct surveys because of landowner sensitivity and earlier confidentiality commitments. AR01_713; AR01_11082. The Authority's inability to access these parcels was discussed in working groups for the Reservoir. See, e.g., AR01_56501 ("Challenge: Lack of Property Access" slide from Presentation for Sites Project Terrestrial Resources Group Discussion (March 26, 2021)). At a 2021 meeting to which Petitioners Friends of the River and Save California Salmon were invited, the Authority explained the challenges to gaining property access and how its mapping approach and use of data sources would gap-fill where surveys were infeasible. AR01_56490 (agenda, listing invitees).

(Opposition, p. 42.)

b. **Use of pre-construction surveys.**

Respondents further argue that substantial evidence supports the Authority's determination that performing certain surveys prior to Project construction rather than before EIR certification provides a better description of the environmental setting than would surveys that "could become stale" by the time work on the Project begins. (Opposition, pp. 37-38.) Petitioners' argument regarding the Authority's use of preconstruction surveys was raised during the public comment period and addressed directly in Master Response 6 as follows:

> Commenters also stated that the habitat models are not reliable because they require field surveys to ground truth their accuracy. The RDEIR/SDEIS includes numerous mitigation measures that require the Authority to conduct species-specific, protocol-level, and focused surveys prior to construction, which will be used to verify species modeling results. This is standard practice for evaluation of potential project effects in CEQA and NEPA documents because protocol-level and focused surveys can take multiple seasons to complete. Furthermore, the results of surveys may only be valid for a limited period of time per agency requirements (e.g., plant surveys), and thus it is appropriate to conduct the surveys closer to construction start dates as they may no longer be valid by the time construction begins if they are conducted too early.

(AR01_8386; Opposition, p. 38.)

Respondents then cite several California cases in support of their approach to conduct certain surveys closer to the construction start date. (See *The Claremont Canyon Conservancy v. Regents of Univ. of California* (2023) 92 Cal.App.5th 474, 490; *Save Our Capitol! v. Dep't of Gen. Servs.* (2023) 87 Cal.App.5th 655, 687; *Save Panoche Valley v. San Benito Co.* (2013) 217 Cal.App.4th 503, 523; *Oakland Heritage All. v. City of Oakland* (2011) 195 Cal.App.4th 884, 906.) Respondents further argue that the record demonstrates that preconstruction surveys will "provide current data to inform mitigation measure implementation." (Opposition, at p. 38.)

In *The Claremont Canyon Conservancy, supra,* 92 Cal.App.5th at p. 490, the petitioners challenged a large-scale tree removal project, asserting that a pre-certification survey was required to specify the precise trees to be removed. It was the petitioners' stance that they would be unable to "evaluate and review the projects' environmental impacts" without a pre-certification survey. (*Ibid.*) The Court of Appeal disagreed stating:

> When, as here, a project is subject to variable future conditions—for example, unusual rainy weather, tree growth, impact of pests and diseases, changing natural resources, etc.—the "project description must be sufficiently flexible to account for [those] conditions." (*Buena Vista, supra,* 76 Cal.App.5th at p. 580.) . . . So long as the EIR provides sufficient information to analyze environmental impacts—including the objective criteria being used—a project description for large-scale vegetation removal that is subject to changing future conditions need not specify, on a highly detailed level, the number of trees removed. (See *In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1172–1173 [77 Cal. Rptr. 3d 578, 184 P.3d 709]; *Buena Vista,* at p. 590 [rejecting contention that project description setting an "'open-ended limit'" of water was unstable and indefinite; noting a "precise amount of water" could not "be determined because water availability will fluctuate from year to year"].)

(*Ibid.*)

In *Save Panoche Valley, supra,* 217 Cal.App.4th at pp. 523-524, the petitioners challenged a proposed solar power project, asserting that the EIR failed to adequately complete pre-certification biological surveys for certain species, including the blunt-nosed leopard lizard. The Court of Appeal disagreed stating:

Under CEQA, an agency is not required to conduct all possible tests or exhaust all research methodologies to evaluate impacts. Simply because an additional test may be helpful does not mean an agency must complete the test to comply with the requirements of CEQA. (*Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396 [133 Cal. Rptr. 2d 718].) An agency may exercise its discretion and decline to undertake additional tests. (*Ibid.*) Here, the FEIR appears to have addressed the concerns raised by the DFG in its letter, as the FEIR calls for a protocol survey to occur before the commencement of construction on the project site, and further requires a 22-acre buffer zone for each individual blunt-nosed leopard lizard found by the surveyors, a zone determined to be the largest home range of a blunt-nosed leopard lizard by a biological study. Accordingly, there is substantial evidence that the negative impacts will be sufficiently reduced via the adopted mitigation measures.

2. *Deferral of Certain Mitigation Measures.* Save Panoche Valley finds fault with certain mitigation measures meant to reduce impact to some of the biological species in the Panoche Valley, including the blunt-nosed leopard lizard, and claims that the County erred in improperly deferring surveys and significant aspects of mitigation until after project approval. Generally, "[f]ormulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

Despite the general bar against deferred measures, courts have found that "[d]eferral of the specifics of mitigation is permissible where the local entity commits itself to mitigation and lists the alternatives to be considered, analyzed and possibly incorporated in the mitigation plan. [Citation.] On the other hand, an agency goes too far when it simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report." (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275 [15 Cal. Rptr. 3d 176].) "Essentially, the rule prohibiting deferred mitigation prohibits loose or open-ended or performance criteria. Deferred mitigation measures must ensure that the applicant will be required to find some way to reduce impacts to less than significant levels. If the measures are loose or open-ended, such that they afford the applicant a means of avoiding mitigation during project implementation, it would be unreasonable to conclude that implementing the measures *will* reduce impacts to less than significant levels." (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 945 [146 Cal. Rptr. 3d 12] (*Rialto Citizens for Responsible Growth*).)

Here, the mitigation measures adopted by the County were not loose or open-ended. The mitigation measure meant to address the impact on the blunt-nosed leopard lizard specifically required that upon completion of the survey, a set buffer zone, no less than 22 acres, would be set aside for each blunt-nosed leopard lizard. Other mitigation measures are set forth with similar particularity.

> For example, measure BR-6.1, identified by Save Panoche Valley in its reply brief as deficient, provides that Solargen will conduct preconstruction surveys for nesting and breeding birds. BR-6.1 further provides that after a qualified biologist surveys the area, if active breeding nests are found, a 300-foot buffer will be established around the nest. Furthermore, if golden eagles are found, a 0.5-mile no-activity buffer will be implemented, and if condors are found roosting within 0.5 miles of the area, no construction activity will occur between one hour before sunset to one hour after sunrise until all condors leave the area. The mitigation measure further provided for active monitoring and measures for potentially relocating nests.
>
> Another measure, BR-7a.2, provides for a qualified biologist to conduct preconstruction surveys for the San Joaquin coachwhip and coast horned lizard, and to relocate any found specimens. Meaure BR-7c.1 similarly calls for relocation measures to be undertaken for the short-nosed kangaroo rat, San Joaquin pocket mouse, and Tulare grasshopper mouse.
>
> In sum, though the mitigation measures pointed out by Save Panoche Valley in its reply brief do require that a qualified biologist conduct preconstruction surveys, these measures do not improperly defer significant aspects of mitigation. The measures provide for specific actions to be taken upon discovery of a certain species, such as including a set buffer zone. The measures do not call for a mitigation that is simply adopting the recommendations of the survey providers, which would be an improper deferred mitigation. (See *Rialto Citizens for Responsible Growth, supra*, 208 Cal.App.4th 899, 944–945.) The surveys were simply meant to facilitate the completion of these mitigation goals, and we do not find that these measures were designed to allow Solargen to avoid having to mitigate impacts. The mitigation measures did not simply proscribe that Solargen comply with whatever recommendations were made by surveyors after completion of a protocol survey. (See, e.g., *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 669–672 [57 Cal. Rptr. 3d 663] [holding that deferral of significant aspects of mitigation a violation of CEQA].)
>
> In most respects, these preconstruction surveys and mitigation measures were contemplated with the express goal of maintaining certain milestones. We therefore find that the County did not improperly defer mitigation measures.

(217 Cal.App.3d at pp. 524-526.)

In *Oakland Heritage All., supra,* 195 Cal.App.4th at pp. 887-888, the petitioners challenged a project to develop approximately 64 acres along Oakland's Estuary and Embarcadero. The EIR identified various seismic hazards. (*Id.*, at p. 888.) The petitioners argued that the EIR improperly deferred the formulation for mitigation measures for seismic impacts. (*Id.* at p. 906.) The Court of Appeal disagreed stating:

> 'when a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts, the agency

> does not have to commit to any particular mitigation measure in the EIR, as long as it commits to mitigating the significant impacts of the project. Moreover, ... the details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study." (*CNPS, supra*, 172 Cal.App.4th at p. 621, citing *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011 [280 Cal. Rptr. 478] (*SOCA*).) As explained in *SOCA*, " 'for [the] kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process ... , the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated.' [Citations.]' (*SOCA, supra*, 229 Cal.App.3d at pp. 1028–1029.)

(*Ibid.*)

Respondents contend that the FEIR "includes 'numerous mitigation measures that require the Authority to conduct species-specific . . . and focused surveys prior to construction, which will be used to verify species modeling results.'" (Opposition, p. 39; AR01_1095-1208.) For example, section 10.4 of the FEIR is entitled "Impact Analysis and Mitigation Measures." (AR01_1095.) In this section, the Authority discusses the impacts the Project will have on the habitat of vernal pool branchiopod species and the very detailed mitigation measures it plans to implement once preconstruction surveys are complete. (AR01_1096-1102.)

CEQA Significance Determination and Mitigation Measures

Construction of Alternative 1 or 3 would result in significant impacts on vernal pool branchiopods from removal of suitable habitat and loss of individuals. Operational effects on vernal pool branchiopods would be avoided or minimized through implementation of BMP-15, the LMP, and the Recreation Management Plan, and would be less than significant. Construction impacts would be significant because implementation of Alternative 1 or 3 could reduce the local populations of federally listed vernal pool branchiopods through direct mortality and habitat loss.

Implementation of Mitigation Measures WILD-1.1, WILD-1.2, and WILD-1.3 would reduce the level of impact from construction and operation to less than significant because surveys would be conducted to determine occupancy, habitat disturbance would be avoided during the rainy season, the topsoil of vernal pools in permanent impact areas would be removed for use in habitat creation or restoration (if requested by USFWS), and compensation would be provided for impacts on occupied habitat. All modeled habitat would be evaluated, and suitable habitat would be surveyed for the presence of vernal pool branchiopods prior to construction. Direct and indirect impacts on occupied habitat would be mitigated through acquiring and protecting habitat in perpetuity or purchasing mitigation credits in accordance with mitigation ratios and requirements developed during ESA Section 7 consultation with USFWS.

Mitigation Measure WILD-1.1: Assess Habitat Suitability and Survey Suitable Habitat for Vernal Pool Branchiopods

Once property access is granted and prior to the start of construction, the Authority will retain qualified biologists to assess habitat suitability and conduct surveys for vernal pool branchiopods in the Project area and where modeled habitat is within 250 feet of the Project area and indirect effects may occur. Qualified biologists are defined as those who have a recovery permit from USFWS to conduct surveys for listed vernal pool branchiopods. The surveys will be conducted in accordance with the *Survey Guidelines for the Listed Large Branchiopods*, which recommend surveys at 14-day intervals after initial inundation of habitat until the habitat dries or it has been inundated for a minimum

of 90 consecutive days (U.S. Fish and Wildlife Service 2015b). Surveys in accordance with the guidelines take a minimum of 1 year to complete and will be initiated early enough to allow completion before the start of construction. The biologists will submit the results of the surveys in a report to USFWS, per the requirements of the biologists' recovery permits.

Mitigation Measure WILD-1.2: Avoid and Minimize Potential Effects on Vernal Pool Branchiopods and Western Spadefoot

The following steps will be taken to avoid or minimize potential effects on vernal pool branchiopods and western spadefoot.

- Ground disturbance within 250 feet of occupied habitat or suitable habitat that hasn't been surveyed that would not be directly affected will be avoided during the rainy season (approximately October 15 through May 15). Compensation will be provided for habitat occupied by listed vernal pool branchiopods that cannot be avoided during the rainy season (Mitigation Measure WILD-1.3).
- If a portion of occupied vernal pool branchiopod or western spadefoot habitat will be filled (i.e., permanent impacts), the filling will be conducted when the habitat is completely dry.
- If requested by USFWS, the top 3 to 4 inches of soil of pools occupied by listed or unlisted vernal pool branchiopods that would be destroyed or completely filled will be removed and stored in the Project area until ready for placement in created or restored habitat outside of the Project footprint. The topsoil will be covered with tarps or other appropriate material and orange construction barrier fencing or stakes and flagging will be installed around the covered topsoil. A qualified biologist will be on site to monitor the removal and covering of the topsoil during periodic monitoring visits to the Project area. The stored topsoil will be spread over the bottom of created or restored pools prior to the start of the winter rainy season.

Mitigation Measure WILD-1.3: Compensate for Impacts on Occupied Vernal Pool Branchiopod Habitat

The Authority will compensate for direct and indirect effects on occupied vernal pool branchiopod habitat through the purchase of mitigation credits at a USFWS-approved mitigation or conservation bank or through acquiring, creating, restoring and/or protecting habitat in perpetuity at a location approved by USFWS. Direct and indirect effects on occupied habitat will be mitigated by preserving occupied habitat at a 2:1 ratio (habitat preserved : habitat directly or indirectly affected) or by an equivalent or greater amount as determined during ESA Section 7 consultation with USFWS. In addition, direct effects on occupied habitat will be mitigated by creating or preserving occupied habitat at a 1:1 ratio (habitat created : habitat directly affected) or by an equivalent or greater amount as determined during ESA Section 7 consultation with USFWS. The purchase of mitigation credits or the establishment of onsite or offsite mitigation areas (or a combination of these options) would be completed as agreed upon by the Authority, Reclamation, and USFWS.

USFWS-approved conservation banks have long-term adaptive management plans with performance standards. Therefore, if mitigation is through a USFWS-approved conservation bank, the bank's performance standards and success criteria will be applied.

If credits are not purchased at a USFWS-approved conservation bank, the Authority will implement standards for long-term management and protection of conservation areas. The Authority will work closely with USFWS during the planning and development of conservation areas. Once established, conservation areas will be surveyed by a USFWS-approved biologist a minimum of two times per year during the wet season (generally November through April). The biologist will survey for the presence of listed vernal pool branchiopods, evaluate the adequacy of site protection (e.g., fencing, signage) and weed control, assess potential threats to vernal pool branchiopods, and take photographs of the site. The biologist will also survey a set of reference pools to compare to the preserved and created/restored pools. The reference pools should be located in proximity to the conservation area and exhibit characteristics similar to the preserved and created/restored pools.

For non-mitigation bank compensation, the performance standard for occupancy of the created/restored pools by listed vernal pool branchiopods is a minimum of 5% of the total number of created/restored pools supporting listed vernal pool branchiopods over a 10-year monitoring period. A pool must be occupied at least once during the 10-year monitoring period to be considered occupied. If the performance standard cannot be achieved, the Authority and Reclamation will consult with USFWS to determine if the standard is not realistic based on data from other vernal pool surveys in the Project region and/or implement an alternative compensatory mitigation approach.

Working closely with USFWS during planning and development of the conservation area, monitoring the conservation area to ensure performance standards are achieved, and applying adaptive management actions when the performance standard is not achieved will ensure that the compensatory mitigation is effective and compensates for the loss of occupied habitat resulting from the Project.

(AR01_1098-1100.)

Here, the Authority's decision to utilize on-the-ground field tested, species-specific surveys prior to construction is supported by case law and by the record. With the exception of *Agoura Hills,* petitioners cite to no legal authority in support of their position, nor do they attempt to distinguish the cases relied upon by respondents. Instead, petitioners contend that the Authority "could have" found a way to access the project area on foot by seeking voluntary access or via a court order, or they "could have" conducted helicopter surveys. (OB, p. 41.)

It is petitioners' burden to prove a prejudicial abuse of discretion by establishing that the EIR's description of the Project's environmental setting is not supported by substantial evidence. (*Save Panoche Valley, supra,* 217 Cal.App.4th at p. 515.) "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.'" (*Assoc. of Irritated Residents, supra,* 107 Cal.App.4th at p. 1391 [quoting Guidelines, § 15384, subd. (a)].)

Furthermore, "'in applying the substantial evidence standard, 'the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision.'" (*Friends of the Eel River, supra,* 108 Cal.App.4th at p.867 [quoting *Laurel Heights, supra,* 47 Cal.3d at p. 393].) Additionally, "[t]he court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189.)

Petitioners have not met this burden. Accordingly, this Court finds that petitioners have failed to show that the Authority committed a prejudicial abuse of discretion by establishing that the Authority's decision was not supported by substantial evidence.

D. Issue #4: The FEIR relies upon an inaccurate project description.

Petitioners argue that the EIR fails to provide an accurate and stable project description because the "overall project design is not yet final" and because "major project components that will have significant environmental impacts have not been designed." (OB, p. 43.)

Respondents argue that the project description is "adequate for the purpose of evaluating the Project's environmental effects," it "does not omit any key Project component," and "it provided a reasoned basis for a thorough environmental impact analysis to inform the public and decision-makers." (Opposition, p. 48.)

1. *Standard of review.*

Both parties agree that whether an EIR contains an accurate project description is subject to **de novo** review. (Reply, pp. 7-8; Opposition, p. 44; *Rodeo Citizens Ass'n v. County of Contra Costa* (2018) 22 Cal.App.5th 214, 219.)

Respondents further contend that "'underlying factual determinations—including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference.'" (Opposition, p. 44 [quoting *Claremont Canyon, supra,* 92 Cal.App.5th at pp. 484, 490 (deferring to lead agency's conclusion, based on substantial evidence, that 'variable future conditions' supported a 'project description. . . sufficiently flexible to account for' the changing conditions].)

2. *Merits.*

An EIR must contain a description of the proposed project. (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 332; *Washoe Meadows Community v. Dept. of Parks & Recreation* (2017) 17 Cal.App.5th 277, 287.)

> A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other

alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

(*County of Inyo, supra,* 71 Cal.App.3d at pp. 192-193.)

Guidelines section 15124 provides:

> The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.
>
> **(a)** The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.
>
> **(b)** A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project and may discuss the project benefits.
>
> **(c)** A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.
>
> **(d)** A statement briefly describing the intended uses of the EIR.
>
> **(1)** This statement shall include, to the extent that the information is known to the lead agency,
>
> **(A)** A list of the agencies that are expected to use the EIR in their decision-making, and
> **(B)** A list of permits and other approvals required to implement the project.
> **(C)** A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.
>
> **(2)** If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the

> Office of Planning and Research will provide assistance in identifying state permits for a project.

"The project description must contain sufficient specific information about the project to allow the public and reviewing agencies to evaluate and review its environmental impacts. A project description that omits integral components of the project may result in an EIR that fails to disclose the actual impacts of the project." (*Dry Creek, supra,* 70 Cal.App.4th 20, 26.) "A project description that gives conflicting signals to decision makers and the public about the nature of the project is fundamentally inadequate and misleading." (*South of Market Community Action Network, supra,* 33 Cal.App.5th at p. 332.) Furthermore, "[t]he description must include the entirety of the project, and not some smaller part of it." (*Ibid.*)

Here, petitioners argue that the EIR's project description is inadequate because it:

> (1) **fails to adequately disclose the location of new roadways** – specifically, "the EIR provides no meaningful discussion of the impacts of specific roads to specific resources and no explanation of alternate routes that could minimize impacts because specific road locations have not been proposed;"
>
> (2) **fails to identify the location of the recreation areas**—specifically, "the large recreation areas are not yet designed which deprives the public of an opportunity to understand a realistic picture of their impacts and comment on alternative designs that could reduce those impacts;"
>
> (3) **fails to identify the location of the transmission lines**—specifically, the location of the transmission lines is necessary for the public to adequately understand impacts they will have on birds and important landscape features; and
>
> (4) **fails to identify the upgrades to the GCID canal**—specifically, because there are "likely threatened giant garter snakes in the GCID system . . . the location, timing, and method of construction matters greatly for avoiding and minimizing impacts to this sensitive species."

(OB, pp. 43-45.)

Petitioners contend that the Project description should include more specificity regarding the specific locations and scale of these "major project components." (Reply, p. 22.) Specifically, petitioners take issue with the FEIR's description of "broader corridors" to "capture the maximum envelope of potential impacts" in the areas where these project components will be located. (Reply, p. 22.) Thus, because "it is not yet clear what constitutes the project in terms of the scope and location of major components," "is it impossible for the public to understand the environmental impacts of the project and to meaningfully comment." (OB, p. 43.)

Respondents assert that the FEIR's 125-page Project description provides a detailed description of each component of the Project and provided a sufficient basis for evaluating each of

component's environmental impacts. (Opposition, p. 45.) Respondents cite to multiple pages in the record and articulate these detailed descriptions and impacts as follows:

- **Roadway Improvements:**
    1. a table of each existing or proposed roadway, its purpose and anticipated length, and type of improvements. (AR01_653-654)
    2. a figure of anticipated roadway locations. (AR01_652)
    3. a discussion of roadway purposes (construction, local, or maintenance access). (AR01_655-657)
    4. a discussion of the different roadways under the alternatives. (AR01_703)
    5. estimated acreage impacts from roadways on each affected resource. (AR01_1010-1013, 1020-1024, 1028-1029)
    6. impacts to wildlife from roadway construction and operation, including habitat loss, the potential for wildlife-vehicle collisions, roadway noise impacts, and wildlife movement impacts, plus detailed maps to show wildlife corridors and connectivity. (AR01_1087, 1088-1089, 1112, 1176, 1201).

- **Recreation Areas:**
    1. a description of locations, acreage, and specific features such as how many toilets and campsites, including a detailed conceptual map. (AR01_649-651)
    2. construction and operational impacts. (AR01_1006, 1008, 1010-1013, 1015-1016, 1020-1024, 1028, 1035-1036, 1088-1089, 1092, 1094-1095, 1098, 1112, 1129, 1158, 1201-1202).

- **Transmission Lines:**
    1. a description of the north-south transmission connections and the east-west transmission connections, plus several schematic sketches. (AR01_625-630)
    2. permanent and temporary transmission line impacts, including impacts from associated access roads, maintenance roads, and vegetation clearing, wildlife collisions and electrocutions, plus detailed maps with specific impact acreage estimates. (AR01_1005, 1010-1013, 1020-1024, 1029, 1088-1089, 1092, 1148, 1165).

- **Canal Upgrades:**
    1. a description that includes "conservative assumptions about the components of the upgrades and their dimensions and locations," plus numerous figures and aerial photographs. (AR01_596-605)
    2. impacts from GCID canal improvements. (AR01_1069, 1080, 1086, 1087, 1140, 1204-1205, 8590-8591).

(Opposition, pp. 45-46.)

Furthermore, respondents contend that the FEIR details extensive mitigation in place for these impacts. (Opposition, p. 46.) They provide the following as examples:

1. MM WILD-1.15: requires the design and construction of wildlife crossings for new roadways, including a wildlife connectivity assessment prior to final roadway design. (AR01_1124-2216)
2. MM_WILD-1.27: requires transmission lines include wildlife protective devices to prevent injury or mortality to birds. (AR01_1153)
3. Avoidance of wetland and vernal pools, and compensatory mitigation where avoidance is infeasible. (AR01_1038-1042 [jurisdictional waters], 1098-1100 [vernal pools])
4. Measures to minimize impacts to Giant Garter Snakes. (AR01_1141-1143).

The project description should include all integral project components. (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.) The description must also include future actions/activities. (*Laurel Heights, supra,* 47 Cal.3d 376, 399.) Furthermore, the "description must contain sufficient detail to enable the public and the decisionmakers to understand the environmental impacts of the proposed project. The description cannot narrow the scope of environmental review or minimize the project's impacts on the environment." (*Dry Creek, supra,* 70 Cal.App.4th 20, 36.)

Respondents argue that the Project description satisfies these requirements and contains sufficient specific information about the Project's roadways, recreation areas, transmission lines, and canal upgrades to allow the public and reviewing agencies the ability to review and evaluate the Project's environmental impacts. (Opposition, p. 46.) Respondents further argue that the record supports the use of a "conservative, maximum-impact analysis" that will allow for further refinement of the Project components. (Opposition, p. 47.)

Here, petitioners do not argue that the FEIR omitted or failed to describe any necessary Project component. Nor do they attempt to refute the record evidence cited by respondents or offer any contrary case law or statutes. Rather, they simply argue that "a project of this magnitude" "should include more specificity regarding the specific locations of major project components." (Reply, p. 22.) Petitioners further argue that the "broad corridor approach to evaluate impacts . . . defers identifying the actual location of the project component to a future decision that will be outside the public process and public review." (Reply, p. 23.)

As stated above, Guideline section 15124 provides, in pertinent part: "The description of the project shall contain the following information **but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact** . . . (c) A **general description of the project's technical, economic, and environmental characteristics,** considering the principal engineering proposals if any and supporting public facilities." (emphasis added.)

In *Dry Creek, supra,* 70 Cal.App.4th at p. 28, the Court of Appeal interpreted the Guideline's "general description" requirement as follows:

> CEQA requires a 'general description' of the project's technical characteristics. 'General' means involving only the main features of something rather than details or particulars. (Webster's New Internat. Dict. (3d ed. 1986) p. 944.) The 'general description' requirement for the technical attributes of a project is consistent with

other CEQA mandates to make the EIR a user-friendly document. For example, Guidelines section 15140 states that EIR's must be written in plain language so that decisionmakers and the public can rapidly understand them. The general description requirement also fosters the principle that EIR's should be prepared early enough in the planning stages of a project to enable environmental concerns to influence the project's design. (Guidelines, § 15004; *Kings County Farm Bureau* v. *City of Hanford* (1990) 221 Cal.App.3d 692, 738 [270 Cal. Rptr. 650] (*Kings County Farm Bureau*).) A general description of a project element can be provided earlier in the process than a detailed engineering plan and is more amenable to modification to reflect environmental concerns. (Cf. *San Joaquin Raptor, supra*, 27 Cal.App.4th at p. 742; and see *County of Inyo* v. *City of Los Angeles* (1977) 71 Cal.App.3d 185, 199 [139 Cal.Rptr.396] [CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; new and unforeseen insights may emerge during investigation, evoking revision of the original proposal].)

> . . . There must be sufficient information to understand the environmental impacts of the proposed project. (Guidelines, § 15146, discussion.) The EIR must achieve a balance between technical accuracy and public understanding. (Guidelines, § 15147, discussion.)

In *The Claremont Canyon Conservancy, supra,* 92 Cal.App.5th 474, 483, the Court of Appeal provided further guidance on this standard:

> The project description "should not, however, 'supply extensive detail beyond that needed for evaluation and review of the environmental impact.'" (*Tiburon, supra*, 78 Cal.App.5th at p. 738; see Guidelines, § 15124.) Rather, the "'EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is ... reviewed in the light of what is reasonably feasible. ... [C]ourts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.'" (*Tiburon*, at p. 726; see Guidelines, § 15151.)
>
> "Much of what goes into an EIR is left to the discretion of the agency preparing it. ... 'The lead agency has discretion to design the EIR and need not conduct every recommended test or perform all required research. [Citations.] An EIR is not required to address all of the variations of the issues presented. [Citation.] An analysis of every permutation of the data is not required.'" (*Tiburon, supra*, 78 Cal.App.5th at p. 726.) "'Drafting an EIR ... necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.'" (*Id.* at p. 727; see Guidelines, § 15144.) Although an EIR must include "summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by

> reviewing agencies and members of the public" (Guidelines, § 15147), the "degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR." (*Id.*, § 15146.) An "EIR cannot be faulted for not providing detail that, due to the nature of the Project, simply does not now exist. [Citation.] Nor have the courts required resolution of all hypothetical details prior to approval of an EIR." (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1054 [174 Cal. Rptr. 3d 363].)

Here, the Court finds that none of petitioners' contentions demonstrate that the Project description's lack of specificity of the new roadways, recreation areas, transmission lines, and upgrades to the GCID canal was insufficient to understand the environmental impacts of the proposed Project. To the contrary, the voluminous Project description contains tremendous detail about these elements of the Project. For example, the Project description includes detailed conceptual maps, schematic sketches, and aerial photographs that show the area in which the roads, recreational areas, transmission lines will be located. (See AR01_652 [roadways]; AR01_649-651 [recreation areas]; AR01_625-630 [transmission lines]; AR01_596-605 [canal upgrades].) Furthermore, the description contains well-established design criteria for each challenged element.

As noted above, the Guidelines caution that a project description "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact." (Guidelines, § 15124). To require respondents to draft a Project description with the specific details sought by petitioners would be contrary to the Guidelines standard. The court in *Dry Creek,* warned that "[c]ourts should not interpret CEQA to impose procedural or substantive requirements beyond those explicitly required in the statutes or CEQA Guidelines." (70 Cal.App.4th at p. 36.)

Furthermore,

> CEQA requires an EIR to reflect a good faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis to be exhaustive. (Guidelines, § 15151.) The absence of information in an EIR does not per se constitute a prejudicial abuse of discretion. (§ 21005.) A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.

(*Dry Creek, supra,* 70 Cal.App.4th at p. 26.)

Here, the "technical, economic, and environmental characteristics" of the Project are described, articulated, and illustrated in more than general terms in compliance with Guidelines section 15124(c).

Therefore, the Court finds that petitioners have failed to show respondents committed a prejudicial abuse of discretion by not proceeding in a manner required by law. (Pub. Resources Code, §§ 21168.5, 21100; see also Guidelines, § 15124.)

V. Conclusion.

Based on the foregoing, the Court hereby **denies** the petition for writ of mandate in its entirety.