

**B205622**

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION FIVE**

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**CALIFORNIA WATER IMPACT NETWORK, INC., et al.,**  
*Petitioners and Appellants,*

*vs.*

**CASTAIC LAKE WATER AGENCY,**  
*Defendant and Respondent,*

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**BUENA VISTA WATER STORAGE DISTRICT, ROSEDALE-RIO  
BRAVO WATER STORAGE DISTRICT, WATER BANKING AND  
RECOVERY PROGRAM, KERN COUNTY WATER AGENCY,**  
*Real Parties in Interest.*

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APPEAL FROM THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
DZINTRA JANAVS, JUDGE • BS106546

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**RESPONDENT'S BRIEF**

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KERN COUNTY WATER AGENCY,**  
*Real Parties in Interest.*

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**RESPONDENT'S BRIEF**

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**INTRODUCTION**

In this appeal, petitioners and appellants California Impact Network, Inc., and Friends of Santa Clara River (petitioners) challenge an Environmental Impact Report (EIR) for Castaic Lake Water Agency's purchase of water supplies from a groundwater banking program located in the San Joaquin Valley. The trial court rejected all of petitioners' contentions, denied their petition for writ

of mandate, and entered judgment in favor of Castaic. (AA 166, 186, 190-191.)

This court should affirm the judgment. As the trial court found—and contrary to petitioners’ contentions—the EIR properly describes Castaic’s water acquisition project, Castaic was the proper lead agency for the EIR, the EIR properly evaluated the project’s growth-inducing impacts, and the EIR was not predicated on a draft general plan and thus (as well as for other reasons) did not run afoul of *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 (*County of Amador*). (AA 175-179, 181,183.)

## **STATEMENT OF THE CASE**

### **A. Castaic Lake Water Agency.**

Castaic Lake Water Agency (Castaic) is a legislatively created public entity whose primary purpose is to obtain water through various sources—primarily the State Water Project—and to then sell that water within its service area to four local retail water purveyors.<sup>1</sup> (1 Administrative Record (AR) 30-31;<sup>2</sup> AA 169.) Castaic

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<sup>1</sup> The local retail water purveyors are: Castaic’s Santa Clarita Water Division, Los Angeles County Waterworks District No. 36, Newhall County Water District and Valencia Water Company. (1 Administrative Record 30, 175-176.)

<sup>2</sup> According to this court’s on-line docket, petitioners have not yet lodged the administrative record with the court. We assume they will make arrangements to comply with this court’s August 29, 2008 order by lodging the record when they file their reply brief. (See (continued...))

is one of 29 state water contractors that obtain supplies from the State Water Project. (AA 169.) Castaic’s service area encompasses approximately 195 square miles in Northern Los Angeles County and a small portion of Eastern Ventura County. (1 AR 30, 38; see Appendix A [map of Castaic’s service area].)<sup>3</sup> The service area covers the Santa Clarita Valley, including largely urban sites, such as the City of Santa Clarita, as well as largely undeveloped rural and natural areas within the “unincorporated” areas of Los Angeles and Ventura Counties. (1 AR 30, 38, 43-44; Appendix A [map of Castaic’s service area].)

Castaic has a legal duty to purchase sufficient supplemental water supplies to serve the current and reasonably expected future needs of the Santa Clarita Valley.<sup>4</sup> (AA 169.) In the year 2000,

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(...continued)

August 29, 2008 Order [“The court would request that the administrative record be lodged with the opening brief .... If for logistical reasons the administrative record cannot be provided at that time, the administrative record is ordered lodged with the reply brief”]; cf. *Defend Bayview Hunters Point Committee v. City and County of San Francisco* (2008) 167 Cal.App.4th 846, 859 [appellant bears the burden of providing “an adequate appellate record demonstrating the alleged error”].)

<sup>3</sup> Appendix A and B are copies of two maps contained in the administrative record (see 1 AR 36, 38) that Castaic has attached to this brief for the convenience of the court pursuant to rule 8.204(d) of the California Rules of Court.

<sup>4</sup> See Stats. 1961, ch. 28, § 15, p. 216, West’s Ann. Wat. Code—Appen. (1999 ed.) ch. 103, § 103-15, pp. 500-504; *Swanson v. Marin Mun. Water Dist.* (1976) 56 Cal.App.3d 512, 524 [water district has “a continuing obligation ... to exert every reasonable effort to augment its available water supply in order to meet increasing demands”]; see also *Building Industry Assn. v. Marin Mun. Water* (continued...)

Castaic’s service area had a population of approximately 190,000 living in 63,300 housing units. (1 AR 43.) Based on information from local and regional planning agencies, Castaic projects that the population within the Santa Clarita Valley—which includes Castaic’s service area—will be approximately 428,000 by 2030, with a total of 137,436 housing units. (1 AR 43; AA 171.) The current Los Angeles County General Plan projects a population of 270,000 for the Santa Clarita Valley by 2010. (1 AR 141, 143; AA 179.)

Castaic obtains its water supply from both local sources (primarily groundwater) and water it imports from the State Water Project via the California Aqueduct. (1 AR 30-31, 37, 43, 82-83.) Castaic had total estimated average-year water supplies of 112,080 acre feet per year (afy) in 2005.<sup>5</sup> (1 AR 82-84.) However, the

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(...continued)

*Dist.* (1991) 235 Cal.App.3d 1641, 1648-1650 [meeting this obligation requires the “measured exercise of discretion”]; *Glenbrook Development Co. v. City of Brea* (1967) 253 Cal.App.2d 267, 274, 277 [“a county water district has the mandatory duty of furnishing water to inhabitants within the district’s boundaries”]; accord, *Lukrawka v. Spring Valley Water Co.* (1915) 169 Cal. 318, 332 [a water company accepting a franchise to furnish water “assume[s] a public duty to be discharged for the public benefit: ... the duty of providing a service system which would be reasonably adequate to meet the wants of the municipality not only at the time it began its service but likewise to keep pace with the growth of the municipality, and to gradually extend its system as the reasonable wants of the growing community might require”].

<sup>5</sup> An acre-foot is the amount of water that will cover an acre of land to a depth of one foot. (*Central and West Basin Water Replenishment Dist. v. Southern Cal. Water Co.* (2003) 109 Cal.App.4th 891, 900, fn. 5.) It is abbreviated “af”; “afy” means “acre feet per year.” (*Santa Clarita Organization for Planning the*  
(continued...)

137,436 housing units expected by the year 2030 will require water supplies of approximately 129,300 acre feet per year—or more than 17,000 afy above Castaic’s current average-year supply. (1 AR 85; see also 1 AR 48, 189.) Moreover, more than half of Castaic’s current average yearly supply—64,740 afy—is water Castaic imports from the State Water Project. (1 AR 84.) The amount of water Castaic receives from the State Water Project—which is based on its so-called “Table A Amount” of 95,200 afy<sup>6</sup>—is highly variable, depending on climatic, hydrologic and other conditions. (1 AR 30-31 & fn. 3, 32, 80; AA 177.) Thus, although Castaic could receive as much as 95,200 acre feet of water from the State Water Project in a wet year, and is expected to receive 64,740 in an average year, it is possible Castaic could receive as little as 3,808 acre feet in an extremely dry year. (1 AR 30-31 & fn. 3, 32, 80, 84, 136, 148; 15 AR 7724, 8158, 8162.) Consequently, there is a

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(...continued)

*Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 153, 155 (*SCOPE*); see AA 167.)

<sup>6</sup> The maximum amount of water Castaic could receive from the State Water Project is established by the so-called “Table A” amount in its water supply contract with the State Water Project—here, 95,200 afy. (1 AR 30-31 & fn. 3, 32, 79-80; 15 AR 8162-8163; AA 177.) Each State Water Project supply contract contains a Table A which lists all of the contracting water agencies and the *maximum* amount of water the State Water Project has contracted to deliver to each agency. (See *SCOPE*, *supra*, 157 Cal.App.4th at p. 153; 1 AR 30-31 & fn. 3; 15 AR 8162-8163; AA 177.) However, the amount the State Water Project has historically provided ranges from 68% of the Table A amount in an average year, to only 4% of the Table A amount in a single dry year. (15 AR 7724; see generally *SCOPE*, *supra*, 157 Cal.App.4th at pp. 152-153.)

compelling need for Castaic to obtain additional sources of water not only for the long term needs of the Santa Clarita Valley, but also to increase the reliability and stability of its water supply in the short term to serve its existing customers. (1 AR 11, 32, 39, 80, 82, 150, 183; 28 AR 14796, 14839-14841, 14879-14881; 29 AR 15519-15521; AA 169-171.)

In 1988, Castaic completed its Capital Program and Water Plan. (1 AR 30; AA 169-170.) The 1988 Capital Program is a long-term, annually adjusted plan for financing the broad spectrum of purchases, construction and improvements Castaic needs to meet its future water needs. (28 AR 14839-14841; 29 AR 15519-15521; see 1 AR 30; 29 AR 15211-15591.) The plan continues to be implemented to the present day. (1 AR 30; AA 169.) A 1988 EIR evaluated the potential environmental impacts of Castaic's Capital Program. (1 AR 30.) As part of that process, the 1988 EIR evaluated the acquisition of supplemental water sources outside Castaic in order to supplement or increase the reliability of the amount of water Castaic receives from the State Water Project. (*Ibid.*)

Moreover, every five years Castaic must adopt an Urban Water Management Plan (UWMP). (*Friends of Santa Clara River v. Castaic Lake Water Agency* (2004) 123 Cal.App.4th 1, 8 (*Friends of Santa Clara River*); 28 AR 14792.) Under the UWMP Act, water suppliers must develop water management plans that include long-range planning to ensure adequate water supplies to serve existing customers and future demands for water. (*Friends of Santa Clara River*, at p. 8; Wat. Code, § 10610.2.) One purpose of the plan is to

ensure that a water supplier takes advantage of opportunities to enhance the *reliability* (as well as the amount) of its water supply. (AA 170-171; see 28 AR 14796-14797.) The plans must consider “local service agency population projections ... in five-year increments to 20 years or as far as data is available.” (Wat. Code, § 10631, subd. (a).) Castaic adopted its most recent UWMP in 2005 and exceeded the 20-year requirement by making population projections to 2030. (1 AR 146; 28 AR 14797; AA 170-171.) As the Act requires, Castaic based its 2005 analysis on the *most recent* population projection for its service area from the relevant planning agencies—399,387 in 2025 and 428,209 in 2030. (28 AR 14814, 14879-14881; AA 171.) Based on those population projections, the plan identified the water acquisition project under review here as being necessary to meet both current and future water needs in Castaic’s service area. (28 AR 14879-14881; AA 171.)

**B. Castaic’s 2006 water acquisition project.**

The project under review is Castaic’s purchase of 11,000 afy of water from a groundwater banking program that Buena Vista Water Storage District (Buena Vista) and the Rosedale-Rio Bravo Water Storage District (Rio Bravo) operate jointly. (1 AR 9, 12, 39-40; 7 AR 3701, 3709.) Castaic also has a “Right of First Offer” to purchase up to an additional 9,000 afy from the Buena Vista/Rio Bravo banking program from time to time if that water is available in a given year. (1 AR 9, 11, 27, 39, 495, 518; AA 167.)

## **1. The Buena Vista/Rio Bravo Banking Program.**

Buena Vista and Rio Bravo are adjacent water storage districts in the San Joaquin Valley and are located some 60 to 80 miles northwest of Castaic. (1 AR 32, 36; AA 169; Appendix B [map identifying locations of Castaic, Buena Vista, and Rio Bravo service areas].) Each has a right to obtain water from the State Water Project.<sup>7</sup> (AA 169; 7 AR 3701-3708.) Together they operate the Buena Vista/Rio Bravo Water Banking and Recovery Program (the Banking Program). (1 AR 28; 7 AR 3701, 3709; AA 167.) Under the Banking Program, Buena Vista and Rio Bravo “bank” water by percolating it into groundwater basins located within their service areas during wet years, and then sell that water to third party buyers like Castaic. (1 AR 13-14, 28-29; 7 AR 3709-3713; AA 167-168.) The Banking Program obtains most of its water from the Kern River during “high flow” years. (1 AR 13, 28, 486, 490; 7 AR 3710; AA 167.)

The Banking Program can deliver water to its customers in two ways: First, Buena Vista and Rio Bravo—which, like Castaic, import water from the State Water Project—can transfer a portion of their own State Project water to their water bank customers by allowing direct delivery of that water from the State Water Project

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<sup>7</sup> Buena Vista and Rio Bravo actually obtain their State Water Project supplies under contracts with the Kern County Water Agency, which has essentially assigned a portion of its Table A amount to Buena Vista and Rio Bravo. (1 AR 31, fn. 3.)

to those customers. (1 AR 12, 28-29, 39-40, 47, 438-439.) This so-called “in lieu” exchange means that the Buena Vista/Rio Bravo groundwater remains in the ground or is used to service their local customers and the only water that changes hands is State Project water already in the California Aqueduct. (1 AR 12-13, 39-40, 47, 488; 7 AR 3734-3735; AA 167-168; RT 10.) Second, Buena Vista and Rio Bravo can also deliver their stored groundwater directly to water bank customers by pumping it into the California Aqueduct and then transporting that water to the buyer. (1 AR 12, 39-40, 488; 7 AR 3734-3735; AA 167-168; RT 10.) In either case the purchased water must meet the State Water Project’s quality standards before it is placed in and transported via the California Aqueduct. (1 AR 12, 40, 81, 87, 492-493.)

Buena Vista and Rio Bravo evaluated the overall environmental impacts of the Banking Program—including the “in lieu” and direct methods of delivering water—in a 2002 EIR. (1 AR 13, 28, 39-40; 7 AR 3693, 3701-3703, 3709-3713; AA 168; see RT 14-15.) That EIR is final and cannot be challenged in this proceeding. (Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1130 (*Laurel Heights II*); AA 168.)

## **2. Castaic’s contract with the Buena Vista/Rio Bravo Banking Program.**

The specific project under review is Castaic’s contract with the Buena Vista/Rio Bravo Banking Program to purchase 11,000

acre feet of water for each of the next 30 years (from 2007 through 2036),<sup>8</sup> with a “Right of First Offer” to purchase up to an additional 9,000 afy if that water is available in a given year. (1 AR 11, 39, 496, 518; AA 167; see AA 175-176.)

Under the contract, Buena Vista and Rio Bravo may, as their Banking Program allows, deliver water to Castaic either through an “in lieu” exchange of Buena Vista/Rio Bravo’s own State Water Project supplies and/or by actually pumping and delivering their own groundwater to Castaic via the California Aqueduct. (1 AR 11-12, 35, 39-40, 47, 488-489, 492.) For its part, Castaic may store any unused portion of the water it purchases from the Banking Program in any groundwater storage or banking program. (1 AR 491.)

Significantly, unlike Castaic’s right to State Water Project Table A amounts—which are not a guaranteed supply (see *SCOPE*, *supra*, 157 Cal.App.4th at p. 152; *ante*, pp. 4-5 & fn. 6)—Buena Vista and Rio Bravo are obligated to deliver the *entire* 11,000 afy to Castaic regardless of hydrologic and climatic conditions (1 AR 488, 490-491; see 1 AR 31, fn. 3, 32, 80; AA 177; RT 11-13). Thus, the 11,000 afy is a firm water supply that can be used to supplement and increase the reliability of Castaic’s other supplies.<sup>9</sup> In this

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<sup>8</sup> The initial purchase price of the 11,000 afy is \$5,355,350 per year, subject to yearly adjustment based on the Consumer Price Index. (1 AR 497.)

<sup>9</sup> The Buena Vista/Rio Bravo Banking Program had 110,000 acre feet of water banked and stored when Castaic certified its 2006 water acquisition project EIR. (1 AR 13, 490; 7 AR 3701, 3709-3711.)

regard, the 11,000 afy is different from—and superior to—Castaic’s State Water Project supplies. (See AA 177.)

Moreover, the contract under review does not in any way alter Castaic’s, Buena Vista’s, or Rio Bravo’s Table A amounts with the State Water Project, and thus does not require that California’s Department of Water Resources (DWR) approve a transfer of or change in the Table A amounts as no such transfer or change occurred. (1 AR 10, fn. 3, 35, fn. 1; 15 AR 7959; see AA 177; *ante*, p. 5, fn. 6.)

### **C. The annexation sites.**

In its Environmental Setting section, Castaic’s 2006 water acquisition project EIR noted there are currently five identified annexation sites that may be included in Castaic’s service area in the near future. (1 AR 27, 38, 44-46.)<sup>10</sup> Those five sites will require additional water supplies of approximately 4,375 afy if annexation is approved. (1 AR 27, 38, 44-46.) Castaic’s water acquisition project EIR acknowledged that local water retailers might use *some*

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<sup>10</sup> The five identified annexation sites are: Paradise Ranch, a 340 acre site that will require approximately 350 afy per year; Charlie Canyon, a planned development of 150 single-family homes that would require approximately 175 afy; Tapia Ranch, a planned development of 405 detached single-family homes on 329 acres that would require approximately 750 afy; Tesoro del Valle, a planned development of 140 “large lot” residential units and related parks and infrastructure that would require approximately 1,500 afy; and Legacy Village, a proposed 3,467 unit development with commercial space and parks that would require approximately 1,600 afy. (1 AR 38, 44-46; Appendix A [map identifying annexation sites].)

of the water Castaic is purchasing from the Buena Vista/Rio Bravo Banking Program to meet the demand from those new sites or other as yet unidentified future annexations. (1 AR 27.) However, the Banking Program water is needed for Castaic's existing customers (to improve Castaic's current water reliability) and for other anticipated growth, even if those sites are not ultimately included within Castaic's service area. (1 AR 11, 35, 39, 180-181; see *post*, pp. 45-46.)

**D. Castaic's 2006 water acquisition project EIR.**

The 2006 water acquisition project EIR that is the subject of this proceeding is limited to analyzing Castaic's *purchase of water* from the Buena Vista/Rio Bravo Banking Program. (1 AR 9, 15, 27.) It does not purport to analyze the Banking Program as a whole, as that was done in the 2002 EIR that Buena Vista and Rio Bravo prepared for the program. (7 AR 3692-4020; 8 AR 4021-4312; see 1 AR 12-13, 43.)

The project description section of Castaic's 2006 water acquisition project EIR explains that the Banking Program has the *option* of delivering water to Castaic by an "in lieu" exchange of Buena Vista/Rio Bravo's State Water Project supplies *or* via direct delivery of groundwater. (1 AR 28, 39-40, 47; AA 171.) The EIR also explains that the expected "primary" method for delivering water will in fact be "in lieu" exchange of Buena Vista/Rio Bravo's State Water Project supplies, and that groundwater will be used "to make up any shortfall during [State Water Project] shortage years,"

which the EIR estimated would be “no more than 1 to 5 years in a 35 year period.” (1 AR 14, 29.) Thus the EIR clearly advises the reader that the *primary* method for delivery will likely be “in lieu” exchange of State Water Project supplies, while groundwater will be used to make up any “shortfall.” (*Ibid.*; AA 171, 176.)

Because the separate 2002 EIR for the Buena Vista/Rio Bravo Banking Program had fully analyzed the local and statewide impacts of that program, including the “in lieu” exchange component, Castaic’s 2006 water acquisition project EIR simply summarized the EIR for the Banking Program, and noted that a full copy of that EIR was available for review in Castaic’s offices. (1 AR 13-14, 27-29, 576; AA 171; see 1 AR 28, 39; 7 AR 3693, 3701-3703, 3709-3713; AA 168.)

Castaic’s 2006 EIR found that Castaic’s water acquisition contract with the Buena Vista/Rio Bravo Banking Program would not result in any *direct* environmental impacts (1 AR 15), but acknowledged that the additional water could remove an obstacle to growth in the Santa Clarita Valley and the resulting development would cause “indirect” growth-related impacts in Castaic’s service area (1 AR 15, 19-25, 119-137; AA 171-172). Accordingly, the EIR examined these indirect growth-related impacts on a wide range of resources and services: aesthetics; agricultural resources; air quality; biological resources; cultural resources; geology, soils, and minerals; hazards and hazardous materials; hydrology and water quality; land use and planning; noise; population and housing; public services; recreation; transportation/traffic; and utilities and service systems. The EIR concluded that local plans and policies

would reduce all of the indirect environmental impacts on these resources and services to less than significant levels, with the possible exception of growth-related impacts to aesthetics, air quality, biological resources, transportation/traffic, and utilities and service systems. (1 AR 15, 137; AA 172.) The EIR identified the water acquisition project as the environmentally superior alternative to the other possible methods of obtaining additional water supplies available to Castaic or the individual water purveyors within its service area. (1 AR 165-167.)

Castaic's board of directors certified the EIR and approved the project. (1 AR 470-482.) In its Statement of Overriding Considerations outlining how the benefits of the project outweigh its significant and unavoidable environmental impacts, the Castaic board noted that the project will provide water for growth that local planning agencies had projected under their existing general and area plans, and would also provide a reliable source of water that would "firm[] up" Castaic's other supplies. (1 AR 480-481.)

#### **E. The lawsuit and trial court decision.**

After Castaic certified the EIR, the California Water Impact Network and Friends of Santa Clara River (petitioners) filed suit challenging the EIR on the grounds it allegedly: (1) failed to adequately describe the project; (2) was prepared by the wrong lead agency (Castaic) because the project was allegedly the "functional equivalent" of a Table A transfer; (3) inadequately analyzed the project's growth-inducing impacts; and (4) did not properly address

the project's cumulative impacts. (AA 8-18, 29-45, 168.) Petitioners also contended that the project itself was improper under *County of Amador, supra*, 76 Cal.App.4th 931, because it allegedly appropriated water for anticipated growth that was not included or analyzed in a general plan (AA 122-125, 168, 181-183).

The trial court rejected all of petitioners' claims in a detailed statement of decision. (AA 166-186.) In particular, the trial court found that: (1) the EIR properly described the project (AA 175-176); (2) the project was *not* the "functional equivalent" of a Table A transfer (AA 176-177); (3) Castaic was the proper lead agency for the EIR (AA 177-178); (4) the EIR properly evaluated the project's growth-inducing impacts (AA 178-179); and (5) the EIR was *not* predicated on a *draft* general plan and thus (as well as for other reasons) did not run afoul of *County of Amador* (AA 181-183).<sup>11</sup>

The trial court entered judgment denying the petition for writ of mandate and awarding costs to respondents. (AA 191.) Petitioners filed a timely notice of appeal. (AA 190-191.)

## STANDARD OF REVIEW

Public Resources Code section 21168.5 sets forth the standard of review in a traditional mandamus CEQA action such as this one. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 567-568.) Under that statute, the court's inquiry extends only

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<sup>11</sup> The statement of decision also discussed and rejected additional contentions that petitioners have now abandoned on appeal. (AA 183-186.)

to whether the public agency committed a prejudicial abuse of discretion. (Pub. Resources Code, § 21168.5.) Such an abuse of discretion exists only if (1) the agency has not proceeded in a manner required by law or (2) substantial evidence does not support the agency’s findings and decisions. (*Ibid.*; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 (*Vineyard*).

In reviewing the administrative record for a prejudicial abuse of discretion, “[t]he appellate court reviews the agency’s action, not the trial court’s decision.” (*Vineyard, supra*, 40 Cal.4th at p. 427.) In doing so, the court must presume that the agency complied with the law. (Evid. Code, § 664; *Al Larson Boat Shop, Inc. v. Bd. of Harbor Comrs.* (1993) 18 Cal.App.4th 729, 740.) An EIR is presumed adequate (Pub. Resources Code, § 21167.3), and “the party challenging the EIR has the burden of showing otherwise” (*SCOPE, supra*, 157 Cal.App.4th at p. 158).

In determining whether an agency prejudicially abused its discretion, the “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.” (*Vineyard, supra*, 40 Cal.4th at p. 435.) If the dispute is predominately one of fact, the substantial evidence standard applies, and the court must uphold the agency’s determinations to the extent substantial evidence supports those determinations, even if a reasonable person could have reached a different conclusion based on the same evidence. (*Ibid.*; *Laurel Heights Improvement Assn. v. Regents of*

*University of California* (1988) 47 Cal.3d 376, 392-393, 407 (*Laurel Heights I*.)

Under the Supreme Court’s reasoning in *Vineyard*, which distinguishes between the “procedural” and “factual” issues that arise under section 21168.5, a reviewing court should not find that the omission of information amounts to a failure to proceed “in a manner required by law” *unless* the petitioner can point to a clearly ascertainable legal duty that the respondent agency has violated. (Pub. Resources Code, § 21168.5 [“Abuse of discretion is established if the agency has not proceeded in a manner required *by law* . . .” (italics added)].) “Law” in this context must refer to something a diligent party can ascertain with some certainty. In other words, petitioners cannot convert a dispute over the correctness of an agency’s factual conclusions into a legal dispute unless the petitioners can point to a clear duty, derived from statute, regulation, or case law, to disclose particular facts or categories of facts. (See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198 (*Bakersfield Citizens*) [“The substantial evidence standard is applied to conclusions, findings and determinations. It also applies 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”].)

If a court’s inquiry regarding whether an agency “has not proceeded in a manner required by law” were not limited to issues for which clear legal duties can be fairly ascertained through

statutes, regulations, or case law, and such review extended instead to purely factual disputes on which reasonable minds may differ, lead agencies would be unable to predict what specific technical information must be included in their EIRs, leaving the agencies vulnerable to the whims of project opponents arguing to courts that specific information, studies or technical methodologies are required “by law.” Such an approach would be unfair to agencies, and would be unworkable in practice.

As the Supreme Court explained in *Laurel Heights I*, “[a] project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study ... might be helpful does not make it necessary.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 415; see also *SCOPE, supra*, 157 Cal.App.4th at p. 163 [rejecting argument that EIR is deficient for failing to discuss funding for mitigation measures, in part because petitioners could cite to no authority that an EIR is required to discuss funding for mitigation measures]; *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145 [refusing to read into CEQA a requirement that an EIR must speculate about the effects of draft regional plans in evaluating a project]; Guidelines,<sup>12</sup> § 15204.)

In short, the “substantial evidence” standard of review applies where opponents and agencies are simply arguing about factual

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<sup>12</sup> References to “Guidelines” are to the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), which are entitled to “great weight” when a court interprets CEQA (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1048, fn. 3).

statements in an EIR or the adequacy or completeness of particular inquiries that are not clearly and specifically required by statute, regulation, or case law. In those situations, a court must uphold an EIR “if there is any substantial evidence in the record to support the agency’s decision that the EIR is adequate and complies with CEQA. [Citation.] [¶] 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.” (*El Morro Community Assn. v. California Dept. of Parks & Recreation* (2004) 122 Cal.App.4th 1341, 1349 (*El Morro*), quoting *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1265; see Pub. Resources Code, § 21083.1 [courts “shall not interpret [CEQA or its implementing guidelines] in a manner which imposes procedural or substantive requirements beyond those explicitly stated”].)

Moreover, even if an agency omits legally mandated information from an EIR, and even if this amounts to a failure to “proceed[] in the manner required by law” under section 21168.5, that defect is a prejudicial abuse of discretion *only* if the decisionmakers or the public are deprived of information necessary to make a meaningful assessment of a project’s environmental impacts. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236-1237 (*Sierra Club*); *County of Amador, supra*, 76 Cal.App.4th at pp. 945-946; see Pub. Resources Code, § 21005.)

Finally, although an appellate court independently reviews the agency’s decision under the same standard of review that governs the trial court (*Vineyard, supra*, 40 Cal.4th at p. 427), and “in that sense appellate judicial review under CEQA is de novo”

(*ibid.*), this does not mean that the trial court’s written decision is irrelevant. Even where an appellate court’s review of the record is de novo, the trial court’s written decision is still relevant. (See, e.g., *Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 791 [“The fact that we review de novo a grant of summary judgment does not mean that the trial court is a potted plant in that process”].) Indeed, “in many [CEQA] cases, trial courts provide [appellate courts] with a thorough written opinion which helps to clarify issues for appeal.” (*Koster v. County of San Joaquin* (1996) 47 Cal.App.4th 29, 44-45.) That is unquestionably the case here. (AA 166-186.) Thus, in reviewing petitioners’ challenges to Castaic’s 2006 EIR, this court should start with the trial court’s detailed written analysis of those challenges.

Here, there are no procedural defects, the 2006 EIR reflects a good faith effort at full disclosure of the environmental effects of Castaic’s water acquisition project, and substantial evidence supports Castaic’s various factual conclusions in the 2006 EIR.

## LEGAL DISCUSSION

### I. CASTAIC'S 2006 EIR ADEQUATELY DESCRIBES THE WATER ACQUISITION PROJECT.

- A. An EIR adequately describes a project by providing a general description of the project's technical characteristics. CEQA does not require the description to be exhaustive, and the EIR need not analyze every activity carried out in conjunction with the project.

Petitioners first contend that the 2006 EIR does not “adequately describe” the project because it allegedly failed to explain the precise source of the 11,000 afy of water. (AOB 11.) As the trial court found, petitioners are wrong. (AA 175, 177.)

Although “[a] description of the project is an indispensable component of a valid EIR” and “[t]he defined project and not some different project must be the EIR’s bona fide subject,” CEQA does “not mandate perfection, nor does it require that the description be exhaustive.” (*Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 898-899 (*Western Placer Citizens*)). Indeed, the Guidelines warn that the description should not “supply extensive detail beyond that needed for evaluation and review of the [project’s] environmental

impact.” (Guidelines, § 15124;<sup>13</sup> *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1448 (*Round Valley*); *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 444-445 (*Maintain Our Desert*)).

An adequate project description is important because it furthers “CEQA’s goals of providing information about a project’s environmental impacts to government agencies and the public to allow consideration of mitigation measures and alternatives. ...[Citation.] *In this way*, a project description that is ‘accurate, stable and finite ... is the *sine qua non* of an informative and legally sufficient EIR.” (*Maintain Our Desert, supra*, 124 Cal.App.4th at p. 443, first italics added, quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 (*County of Inyo*)).

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<sup>13</sup> Section 15124 of CEQA’s Guidelines governs the information to be included in a project’s description and 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. [¶] (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 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. [¶] (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 ....” (Cal. Code Regs., tit. 14, § 15124.)

But CEQA “does not require an analysis in the EIR of each and every activity carried out in conjunction with a project.” (*Native Sun/Lyon Communities v. City of Escondido* (1993) 15 Cal.App.4th 892, 909-910.) CEQA only requires “a ‘general description’ of the project’s technical characteristics.” (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28, 36 (*Dry Creek Citizens*); AA 175.)

**B. Castaic’s 2006 EIR did not need to analyze the specific source of water for Castaic’s water acquisition project because that analysis was not required to evaluate the environmental impacts of the project.**

Initially, it must be noted that petitioners’ “inadequate description” argument is based on a false premise: that a description of the precise *source* of water for Castaic’s 2006 water acquisition project is necessary to review the environmental impacts of that project. (See AA 88 & fn. 6.)

As noted above, the 2006 EIR that is the subject of this appeal evaluates only Castaic’s purchase of water from the Buena Vista/Rio Bravo Banking Program—it does not evaluate the Banking Program as a whole, as that analysis was performed in the Banking Program’s own 2002 EIR. (1 AR 12-13, 28, 39-40, 43; 7 AR 3693, 3701-3703, 3709-3713; AA 168.) The 2002 EIR identified in detail all sources of water for the Banking Program, and analyzed the environmental effects of the “in lieu” and direct methods of delivery.

(7 AR 3701-3702, 3704-3717; AA 168, 176; RT 14-15; see *ante*, pp. 12-13.) That analysis is final and cannot be challenged in this proceeding. (Pub. Resources Code, § 21167.2; *Laurel Heights II*, *supra*, 6 Cal.4th at p. 1130; AA 168.)

In contrast, Castaic’s 2006 water acquisition project EIR evaluates only the environmental effects of Castaic’s purchase of 11,000 plus afy of water from the Banking Program. (1 AR 9, 13, 15, 43.) The 2006 EIR focuses primarily on the environmental effects of that purchase *within Castaic’s service area*, and concludes that the purchase will not result in any direct environmental impacts, but acknowledges that the additional water could remove an obstacle to growth and the resulting development would cause “indirect” growth-related impacts. (1 AR 15, 19-25, 119-137; AA 171-172.) Because the purchased water—whatever its source—must meet State Water Project quality guidelines (1 AR 12, 40, 81, 87, 492-493), the *source* of that water is wholly irrelevant to the only significant environmental impacts the 2006 EIR identified: growth related-impacts within Castaic’s service area (see AA 88, fn. 6).<sup>14</sup>

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<sup>14</sup> With respect to the project’s impacts on the State Water Project and California Aqueduct—which were already evaluated in the 2002 Buena Vista/Rio Bravo Banking Program EIR (7 AR 3701, 3711-3712, 3725, 3734-3735, 3748, 3792, 3808, 3815-3816; 8 AR 4025, 4081-4088)—Castaic’s 2006 water acquisition project EIR here assumed a worst-case scenario, i.e., that the Banking Program will send *all* water to Castaic by “in lieu” exchange via the California Aqueduct. The 2006 EIR concluded that, even under this worst-case scenario, the project’s impact on the State Water Project and its associated facilities—which transport more than 2.8 *million* acre feet of water per year—would be “immeasurable in the context (continued...)”

Thus, this is a case where detailed analysis of the source of the water for Castaic’s project—whether pumped groundwater or “in lieu” exchange—is “beyond that needed for evaluation and review of the environmental impact[s]” of the project under review. (Guidelines, § 15124; *Round Valley, supra*, 157 Cal.App.4th at p. 1448; see *Maintain Our Desert, supra*, 124 Cal.App.4th at p. 445.) Moreover, since Castaic has no authority to select the method the Buena Vista/Rio Bravo Banking Program chooses to deliver its water, evaluation of the delivery method is not relevant to *Castaic’s* “consideration of mitigation measures and alternatives” because Castaic has no power to choose the delivery method. (*Maintain Our Desert*, at p. 443.)

**C. Castaic’s 2006 EIR properly describes the source of water for the water acquisition project.**

Although Castaic went beyond what CEQA requires by describing the expected source of the water for its acquisition project, petitioners—proving that no good deed goes unpunished—contend that the description of the source of the water is inadequate. As the trial court found, they are wrong. (AA 176.)

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(...continued)  
of normal [State Water Project] operations.” (2 AR 862-863; see AA 88, fn. 6.)

Substantial evidence supports Castaic's description of the project, including the source of the water.<sup>15</sup>

Castaic's 2006 EIR accurately states that the Buena Vista/Rio Bravo Banking Program had the option of delivering water to Castaic by "in lieu" exchange of Buena Vista/Rio Bravo's State Water Project supplies or via direct delivery of groundwater. (1 AR 28, 39-40, 47; AA 171.) The EIR also accurately explained that the expected "primary" method for delivering water would in fact be "in lieu" exchange of Buena Vista/Rio Bravo's State Water Project supplies, and that groundwater would be used "to make up any shortfall during [State Water Project] shortage years," which the EIR estimated would be "no more than 1 to 5 years in a 35 year period." (1 AR 14, 29.) Thus, the EIR clearly advises the reader that the primary method for delivery would likely be "in lieu" exchange of State Water Project supplies, while groundwater would be used to make up any "shortfall." (*Ibid.*; AA 171, 176.)

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<sup>15</sup> Petitioners suggest that whether the project description in Castaic's 2006 EIR is accurate is an issue of procedure over which this court exercises de novo review. (AOB 10; see *Vineyard, supra*, 40 Cal.4th at p. 435.) We disagree. In our view, the issue of whether Castaic has properly described the project is predominantly one of fact—whether the *factual* description is accurate—and thus the substantial evidence standard applies. (*Vineyard*, at p. 435 [courts review CEQA disputes over facts under substantial evidence standard]; see *Bakersfield Citizens, supra*, 124 Cal.App.4th at p. 1198 ["The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the *scope* of an EIR's analysis of a topic ...." (italics added)]; *ante*, pp. 16-19.) Regardless of the standard of review, however, the EIR properly describes the project.

Petitioners apparently agree with this description, and concede that substantial evidence supports it. (See AOB 11, 13.)

In light of this clear explanation of the expected source of the water, it is difficult to understand petitioners' claim that the description is inaccurate or misleading. (AOB 16.) It is true, as petitioners point out, that “[t]he EIR does not contain any [more detailed] facts or analysis to explain the conditions under which [the Banking Program’s] deliveries are likely to consist entirely of banked water or SWP Table A deliveries” (AOB 11)—but nothing in CEQA required that the EIR contain such a detailed analysis. As the Supreme Court has noted, “[a] project opponent or reviewing court can always imagine some additional study or analysis that might provide helpful information. It is not for them to design the EIR. That further study ... might be helpful does not make it necessary.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 415, see *SCOPE, supra*, 157 Cal.App.4th at p. 163 [rejecting argument that EIR is deficient for failing to discuss funding for mitigation measures, in part because petitioners could cite to no authority that an EIR is required to discuss funding for mitigation measures].) Here, the proposed study or analysis would not even be “helpful,” because, as we explained above, it has no bearing on the environmental impacts Castaic’s 2006 water acquisition project EIR actually reviewed.

Moreover, any analysis on this point would have been rank speculation on Castaic’s part. The Buena Vista/Rio Bravo Banking Program—not Castaic—has discretion to determine whether it will deliver water by an “in lieu” exchange, pumped ground water, or

some combination of the two. (1 AR 10, fn. 3, 12, 35, fn. 1, 39-40, 47, 439, 488-489, 492; see AA 88.) Castaic was not required to engage in speculation as to what conditions might cause the Banking Program to decide on a particular allocation of “direct” and “in lieu” deliveries, as that was a decision beyond Castaic’s control. (See *Round Valley, supra*, 157 Cal.App.4th at p. 1450 [EIR for residential development project was not required to analyze possibility that homeowners may build second homes on lots because, even though “Planning Commission retains discretionary authority concerning second dwelling unit applications, the possibility that future lot owners will or will not build a second unit is extremely uncertain, and any impacts of such second units is highly speculative”]; RT 18.) To paraphrase the *Round Valley* court, “an appropriate response to a suggestion that the project description include possible future [water source allocation scenarios based] entirely upon speculation is to simply reject such speculation as such.” (*Round Valley*, at p. 1451.)

Finally, petitioners suggest that the project description is somehow “inconsistent” because, although the EIR twice explained at the outset that the expected “primary” method for delivering water would be “in lieu” exchange of Buena Vista/Rio Bravo’s State Water Project supplies, and that groundwater would be used “to make up any shortfall during [State Water Project] shortage years” (1 AR 14, 29), the EIR did not restate this qualification *every* time it summarized the program (AOB 11, 15-16). However, although CEQA “requires an EIR to reflect a good faith effort at full disclosure[,] it does not mandate perfection ....” (*Dry Creek Citizens*,

*supra*, 70 Cal.App.4th at p. 26.) Petitioners’ claim that the EIR must repeat this unnecessary qualification every time the program is summarized imposes a degree of “perfection” that CEQA does not require.

This immaterial so-called “inconsistency” in the project description stands in stark contrast to the material and misleading inconsistencies in the EIR under review in *County of Inyo, supra*, 71 Cal.App.3d 185, which petitioners cite as their primary authority on this point. In *County of Inyo*, the reviewing court found that the multi-faceted water project the City of Los Angeles ultimately approved represented a “vastly enlarged concept” over the modest groundwater project the EIR initially described. (*Id.* at pp. 190, 193, 195, 197-199.) The *County of Inyo* court rejected the EIR in that case because “[t]he small-scale groundwater project described at the outset was dwarfed by the ‘recommended project’ ultimately ... approved by the board of commissioners,” which contained many features that the initially described project did not contain. (*Id.* at p. 199.) Thus, in *County of Inyo* “some different project” and not “[t]he defined project” was in fact “the EIR’s bona fide subject.” (*Western Placer Citizens, supra*, 144 Cal.App.4th at pp. 898-899.)

That is hardly the case here. In this case, the project Castaic’s 2006 EIR described in its project description section is the *precise* project Castaic ultimately approved. (Compare 1 AR 12-13, 39-40 with 1 AR 471-472.) Thus, there was no misleading or prejudicial inconsistency in the project description.

**D. Castaic’s purchase of a firm supply of 11,000 afy of water from the Buena Vista/Rio Bravo Banking Program is not the “functional equivalent” of a Table A transfer.**

Petitioners next contend Castaic’s purchase of a firm supply of water from the Buena Vista/Rio Bravo Banking Program is the “functional equivalent” of a transfer of State Water Project Table A *water allocation* rights, and should have been described as such. (AOB 12-13.) Again, the trial court properly rejected this argument. (AA 176-177.)

First, as the trial court noted, petitioners’ claim that an “in lieu” exchange is the “functional equivalent” of a State Water Project Table A transfer is in reality an attack upon an operational aspect of the Buena Vista/Rio Bravo Banking Program that was fully analyzed in the 2002 EIR. (AA 176; see also RT 14-15.) Because that EIR was certified in 2002 and never challenged, it is conclusively valid and precludes petitioners from now raising issues related to the operation of the Banking Program, including those related to its “in lieu” exchange component. (AA 176; *Laurel Heights II, supra*, 6 Cal.4th at p. 1130.) Thus, petitioners’ argument is procedurally barred.

But petitioners’ argument is also wrong in substance. As the trial court observed, the State Water Project Table A amount is a contractual right to receive a proportionate *allocation* of the water the State Water Project supplies in a given year—it is not an absolute right to receive a fixed amount of water (in Castaic’s case,

95,200 afy). (AA 177; see *ante*, pp. 4-5 & fn. 6; 15 AR 8155, 8158, 8162-8163.)<sup>16</sup> Thus, a transfer of Table A amounts between state water contractors is not a transfer of a firm quantity of water. Rather, it is a transfer of a contractual right to receive an *allocation* of the water the State Water Project actually supplies in a given year.<sup>17</sup> (15 AR 8123-8130, 8159, 8162-8163; AA 177; RT 11-12.) The actual amount of water the State Water Project delivers each year—that is, what *percentage* of a contractor’s Table A amount it delivers—depends on climatic and hydrologic conditions, operational constraints on the State Water Project, as well as the demands of the other water contractors. (1 AR 30, fn. 3, 32, 80; AA 177; see 15 AR 8162-8163 [actual quantity of Table A amount water delivered by the state each year may vary depending on certain conditions].) Historically, the State Water Project has delivered

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<sup>16</sup> As Castaic’s amended water supply contract with the State Water Project explains: “Annual Table A Amount’ shall mean the amount of project water set forth in Table A of this contract that the state, pursuant to the obligations of this contract and applicable law, makes available for delivery to the Agency.... The term Annual Table A Amount shall not be interpreted to mean that in each year the state will be able to make that quantity of water available to the Agency. The Annual Table A Amounts and the terms of this contract reflect an expectation that under certain conditions the Agency will receive its full Annual Table A amount; but that under other conditions only a lesser amount, allocated in accordance with this contract, may be made available to the agency.” (15 AR 8162.)

<sup>17</sup> To provide a concrete example, the maximum total Table A Amount for all State Water Contractors is 4,185,000 afy. (15 AR 8164.) Castaic’s Table A Amount is 95,200 afy, or approximately 2.27% of the total Table A Amount for all contractors. (15 AR 8155.) Thus, Castaic’s allocation of available water supplies is based on that 2.27% figure.

only 68% of the Table A Amount in an average year, and only 4% in a single dry year. (15 AR 7724; see generally *SCOPE*, *supra*, 157 Cal.App.4th at pp. 152-153.)

Moreover, a transfer of a Table A Amount carries with it burdens as well as benefits, including obligations to pay increased fees to the State Water Project. (RT 12; see, e.g., 15 AR 8078-8086, 8152-8158; see also 15 AR 8100-8103, 8113-8115, 8123-8130.) Castaic did not assume those additional burdens when it agreed to purchase water from the Banking Program. (See RT 12.)

In short, Castaic's purchase of water from the Buena Vista/Rio Bravo Banking Program has none of the indicia of a State Water Project Table A amount transfer. Instead, Castaic's project involves the purchase of a firm amount of water (at least 11,000 afy) which is not dependent on or related to Buena Vista's or Rio Bravo's Table A amount with the State Water Project. No matter how much water Buena Vista and Rio Bravo actually receive from the State Water Project in a given year, they must still deliver at least 11,000 afy of water to Castaic. (AA 177; RT 11-12; see 1 AR 28, 32, 39-40, 47; 7 AR 3701.) Thus, Castaic's purchase of water from the Banking Program is *not* the "functional equivalent" of a Table A amount transfer. (AA 177; see RT 11-13.)

Indeed, if it were, Castaic would have had far less interest in pursuing the project, as part of Castaic's motivation for contracting with the Banking Program was to obtain a *firm* supply of water that it could use to "firm[] up" its less predictable State Water Project supplies. (1 AR 480-481; see 1 AR 32, 35, 39-40.)

**E. Because the water acquisition project is not the functional equivalent of a Table A amount transfer, petitioners' lead agency argument necessarily fails, and, in any event, Castaic is the proper lead agency for the project.**

Petitioners also contend that the DWR should have borne “the primar[y] responsibility” for reviewing Castaic’s water acquisition project. (AOB 17.) As the trial court found, petitioners conceded their argument that Castaic was not the proper lead agency for the 2006 water acquisition project EIR is premised on their assertion that Castaic’s water acquisition project is the “functional equivalent” of a Table A amount transfer. (AA 177; see AOB 13, 17 [acknowledging that petitioners’ argument about the DWR’s role is based on their assertion that the project is “the functional equivalent” of a Table A transfer].) Thus, once this court rejects that premise, the lead agency argument also fails. (AA 177-178.)

But it is worth noting that, even if Castaic had contracted with Rio Bravo or Buena Vista to simply transfer a Table A amount, Castaic would still be the proper lead agency for its own transfer project. The proper lead agency for an EIR is “the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.” (Pub. Resources Code, § 21067.) Here, all factors point to Castaic as the proper lead agency: (1) Castaic is the lead proponent for the water acquisition project; (2) a substantial portion

of the water acquisition project occurs within Castaic's jurisdiction; (3) although the project requires the use of State Water Project facilities, it only involves a sale of water between three water contractors within a limited geographic area; and (4) Castaic alone determines if and when to take delivery of water from the Banking Program and whether to deposit that water in a banking program for future use. (AA 178; 1 AR 27-28, fn. 2.)

Thus, Castaic was unquestionably the proper lead agency for its own water acquisition project.

**F. Any alleged defect in the project description was not prejudicial.**

Castaic believes the adequacy of the project description should be reviewed under the substantial evidence standard. (*Ante*, pp. 16-19, 26, fn. 15.) However, even where an agency omits legally mandated information from an EIR, and this amounts to a failure to “proceed[] in the manner required by law,” that defect is a prejudicial abuse of discretion *only* if it deprives the decisionmakers or the public of information necessary to make a meaningful assessment of the project's environmental impacts. (*Sierra Club, supra*, 7 Cal.4th at pp. 1236-1237; *County of Amador, supra*, 76 Cal.App.4th at pp. 945-946.)

Thus, even if the petitioners can somehow clear the substantial hurdles of showing that (1) this is a procedural issue and (2) the project description is somehow defective, they must still show that the defect in the project description deprives the

decisionmakers or the public of information necessary to make a meaningful assessment of the project’s environmental impacts. (*Sierra Club, supra*, 7 Cal.4th at pp. 1236-1237.) They cannot do so.

None of the alleged “defects” in the project description deprive the decisionmakers or the public of information necessary to make a meaningful assessment of the project’s environmental impacts. Indeed, as we have explained above, the *source* of the water for Castaic’s water acquisition project—which is the only project being reviewed in this proceeding—is wholly irrelevant to the environmental impacts Castaic’s 2006 EIR addresses. (See *ante*, pp. 23-25.) Accordingly, the alleged “defects” in the project description were not prejudicial.<sup>18</sup>

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<sup>18</sup> Petitioners make much of the fact the trial court found, in passing, that the “in lieu” exchange component of the project is a “bona fide exchange” within the meaning of the State Water Project supply contracts. (AOB 14-15; AA 177.) First, as Castaic’s counsel pointed out below, it is not necessary to find that an “in lieu” exchange is a “bona fide exchange” as defined in the SWP contracts in order to conclude that Castaic’s purchase of a firm amount of water from the Banking Program is *not* the “functional equivalent” of a Table A amount transfer. (RT 9-10.) Second, the “*in lieu*” exchange component of the Banking Program does meet the definition of a “bona fide exchange,” which is “an exchange of water involving a contractor and another party where the primary consideration for one party furnishing water to another is the return of a substantially similar amount of water.” (15 AR 8147.) When Buena Vista/Rio Bravo satisfies any portion of its 11,000 afy obligation to Castaic by sending it an equal amount of its State Water Project supplies, there is clearly an exchange of water involving a contractor and another party. Moreover, the primary consideration for one party (Buena Vista/Rio Bravo) furnishing the water to the other (Castaic) is the return of substantially the same amount of water—i.e., Castaic gets a portion of Buena Vista/Rio  
(continued...)

## II. SUBSTANTIAL EVIDENCE SUPPORTS THE 2006 EIR'S CONCLUSIONS AND ANALYSIS REGARDING THE WATER ACQUISITION PROJECT'S GROWTH-INDUCING IMPACTS.

Petitioners next contend that Castaic's 2006 EIR fails to "adequately" review the water acquisition project's growth-inducing impacts. (AOB 18.) The trial court properly rejected this contention. (AA 178-181.) Substantial evidence supports the EIR's conclusions and analysis regarding the project's growth-inducing impacts. (See *Bakersfield Citizens, supra*, 124 Cal.App.4th at p. 1198 ["The substantial evidence standard is applied to conclusions, findings and determinations. It also applies to challenges to the scope of an EIR's analysis of a topic [and] the methodology used for studying an impact"]; see also *ante*, pp. 16-19.)

The CEQA Guidelines require that an EIR discuss the "Growth-Inducing Impact of the Proposed Project." (Guidelines, §§ 15126, subd. (d), 15126.2, subd. (d).) The EIR must do so "even though those impacts are not themselves a part of the project under consideration, and even though the extent of the growth is difficult to calculate." (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 368 (*Napa Citizens*)). But as our Supreme Court recently observed, "[u]nder

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(...continued)

Bravo's State Water Project supplies for that year, and in return Buena Vista/Rio Bravo gets to keep an equal amount of previously banked water in the Banking Program that they would otherwise have to deliver to Castaic. (See RT 9-10; see also 1 AR 440-441.)

CEQA, a public agency is not always ‘required to make a *detailed* analysis of the impacts of a project on [future] housing and growth.’” (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 388 (*Muzzy Ranch*), original italics, quoting *Napa Citizens*, at p. 369.) Indeed, “[n]othing in the [CEQA] Guidelines, or in the cases, requires more than a general analysis of projected growth. The detail required in any particular case necessarily depends on a multitude of factors, including ... the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast the actual effects the project will have on the physical environment. [¶] In addition, it is relevant, although by no means determinative, that future effects will themselves require analysis under CEQA.” (*Ibid.*; see AA 178-79.)

Here, Castaic’s 2006 EIR provided far more detail than the “general analysis of projected growth” that CEQA requires. This is particularly true because any future housing or commercial developments in the Santa Clarita Valley will “themselves require analysis under CEQA,” the growth impacts from the water acquisition project are indirect and difficult to forecast, and Castaic has no power to directly control or mitigate future growth, as it is not a land use agency. (*Napa Citizens, supra*, 91 Cal.App.4th at pp. 369, 370-371 [detailed analysis of growth *not* required where project is not the sole cause of growth and it is unknown where growth will occur]; AA 179; see 1 AR 44, AR 119-137.) Nevertheless, the EIR includes a 19-page chapter that describes the growth related impacts on aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards, hydrology

and water quality, land use and planning, noise, housing, public services, recreation, transportation, and utilities and services. (1 AR 6, 119-137.) The chapter concludes that “[t]he additional water supply provided by the Water Acquisition Project would remove an obstacle to growth, and significant, indirect, growth-related impacts to all environmental resources could result from Project implementation.” (1 AR 137.)

Although petitioners’ precise complaints—other than a general claim of inadequacy—about the growth-inducing impact analysis are difficult to discern from their brief (see AOB 18-21), petitioners appear to raise three basic issues:

First, petitioners contend that the growth-inducing impact analysis is somehow internally inconsistent because the EIR explains at one point that the 11,000 afy acquired by the project is to be used *primarily* to supply water for unspecified future annexations to Castaic’s service area, “but ... *unless and until* any such annexations are actually approved, the supply would be available to meet demands within the existing service area” (1 AR 47, italics added; AOB 19), while in another place the EIR states that the 11,000 afy will be used “to meet the water demands of [the Castaic] service area, and the service area *as it may be extended* ...” (1 AR 120, italics added; AOB 19). These two statements are not inconsistent. Both indicate that the 11,000 afy will be used for both *existing* and *future* customers. Petitioners’ nitpicking contemplates a degree of perfection that CEQA simply does not mandate. (*El Morro, supra*, 122 Cal.App.4th at p. 1349.)

Moreover, contrary to petitioners' implication, Castaic took the analytical position in its EIR that *maximized* the potential growth-inducing impacts of the project. That is, in conducting its growth-inducing impact analysis, Castaic assumed that *all* of the 11,000 afy of water from the Banking Program would in fact be used to foster additional growth within Castaic's present and future service area, resulting in an increase of between 36,290 and 37,850 persons, or 11,340 and 11,830 households. (1 AR 120; AA 179.) Petitioners do not suggest that this figure is unreasonable.<sup>19</sup> (AOB 19-20.) This was the most "conservative" analytical approach Castaic could have taken, informing the public and decisionmakers of the *maximum* growth-inducing impacts from the project.

Second, petitioners contend that the "analysis" of the growth-inducing impacts is not "adequate" because "the EIR fails to analyze whether existing and proposed future water supplies, *excluding the [Water Acquisition] Project*, can already enable the growth anticipated" for Castaic's service area. (AOB 19-20, italics added.) The short answer to this contention is that nothing in CEQA requires such analysis—indeed, petitioners do not cite *any* statutory or regulatory authority to support this argument. (AOB 19-20; AA 178 ["CEQA, however, does not require that an EIR for a water supply project contain the type of information demanded by Petitioners"].) Thus, because petitioners cannot point to a clearly

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<sup>19</sup> The 9,000 afy in *possible* water that might be available periodically cannot support permanent development, and thus was not considered in the analysis of growth-inducing impacts. (1 AR 120.) Again, petitioners have not challenged this conclusion.

ascertainable legal duty that Castaic has violated, petitioners cannot show that Castaic failed to proceed “in a manner required by law.” (Pub. Resources Code, §§ 21083.1 [courts “shall not interpret [CEQA or its implementing guidelines] in a manner which imposes procedural or substantive requirements beyond those explicitly stated”], 21168.5; *Bakersfield Citizens, supra*, 124 Cal.App.4th at p. 1198; see *Western Placer Citizens, supra*, 144 Cal.App.4th at p. 899 [“courts are not authorized to impose [CEQA] requirements not present in the statute”]; *Dry Creek Citizens, supra*, 70 Cal.App.4th at p. 36.) Instead, petitioners are once again contending that Castaic should have conducted “some additional study or analysis” that *petitioners* believe would be helpful. (*Laurel Heights I, supra*, 47 Cal.3d at p. 415.) But, as our Supreme Court has made clear, “it is not for [petitioners] to design the EIR. That further study ... might [allegedly] be helpful does not make it necessary.” (*Ibid.*; see AA 178; RT 25-27 [trial court noted that no law requires the analysis petitioners are demanding].)

Finally, citing *Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 702 (*West Side*), petitioners suggest that “[i]n order to adequately analyze the project’s potential growth-inducing impact, the EIR was required to determine whether the Project would foster growth *beyond* what is anticipated and analyzed in the local and regional plans.” (AOB 20, italics added.) First, Castaic’s EIR *does* contain such an analysis. The Los Angeles County General Plan projects a population of 270,000 for the Santa Clarita Valley by 2010. (AA 179; 1 AR 141-143.) The 2000 population in the Santa Clarita Valley was 190,000. (1 AR 120, 143.) Castaic’s

water acquisition project is expected to have the potential to serve an additional 37,850 persons, bringing the total population to a *maximum* of 227,850, which is well *within* the growth (a total population of 270,000) that local and regional plans anticipate by 2010. (*Ibid.*) Moreover, the projected population for the Santa Clarita Valley is 399,387 in 2025 and 428,209 in 2030 with a total of 137,439 housing units. (1 AR 43; 28 AR 14814; AA 171; see 26 AR 13825-13828, 13874-13877; 27 AR 14299, 14451.) Thus, petitioners are simply wrong when they claim that the EIR failed to analyze whether the project would foster growth beyond what local and regional plans anticipate. The EIR undertook that analysis and concluded that the project would *not* foster growth in excess of that projected by the pertinent planning documents. (1 AR 120, 143, 480-481.) Substantial evidence supports that analysis. (*Bakersfield Citizens, supra*, 124 Cal.App.4th at p. 1198 [“The substantial evidence standard ... applies to challenges to the *scope* of an EIR’s analysis of a topic [and] the *methodology* used for studying an impact” (italics added)].)

Moreover, nothing in *West Side* requires such an analysis. In that case, the court accepted—without analysis—the Sierra Club’s premise that initial studies for a negative declaration should analyze whether a water project would induce growth beyond that already approved in a general plan. (*West Side, supra*, 128 Cal.App.4th at pp. 702-703.) The *West Side* court rejected this claim out of hand *on a factual basis*, stating that “[t]here is no evidence in the record the [project] will induce growth not already planned and evaluated on a macro level in the general plan ....” (*Id.* at p. 703.)

Of course, the same is true in this case: petitioners have pointed to *no* evidence in the record that the project “will induce growth not already planned and evaluated on a macro level in the general plan.” (*Ibid.*) To the contrary, as explained above, substantial evidence supports the *opposite* conclusion.

But more fundamentally, because *West Side* did not find it necessary to address the *legal* issue—that is, whether the analysis was required in the first instance—*West Side* is not authority for the proposition that such an analysis is *required* as a matter of law. (*Advanced-Tech Security Services, Inc. v. Superior Court* (2008) 163 Cal.App.4th 700, 710 [Second Dist., Div. Five] [““an opinion is not authority for a proposition not therein considered””]; *Machado v. Superior Court* (2007) 148 Cal.App.4th 875, 885 [“the court did not ... *analyze* the question of reviewability and therefore is not authority for the proposition” (italics added)].) Thus, petitioners have failed to cite any valid authority to support their legal premise that an EIR *is required* to determine whether a project would “foster growth *beyond* what is anticipated and analyzed in the local and regional plans.” (AOB 20, italics added.)

In short, petitioners have failed to show that CEQA *requires* that an EIR “determine whether the Project would foster growth beyond what is anticipated and analyzed in the local and regional plans” (AOB 20), but, in any event, Castaic’s 2006 EIR in fact did so.

**III. CASTAIC’S 2006 EIR IS NOT INCONSISTENT WITH COUNTY OF AMADOR BECAUSE ITS PROJECTIONS ARE NOT PREDICATED ON A DRAFT GENERAL PLAN.**

**A. The factual premise for petitioners’ argument is false.**

Petitioners contend that Castaic’s EIR is inconsistent with *County of Amador, supra*, 76 Cal.App.4th 931. (AOB 21-24.) As the trial court found (AA 181), *County of Amador* simply holds that an EIR for a water project cannot be predicated on population projections contained in a *draft* general plan (*County of Amador, supra*, 76 Cal.App.4th at pp. 941, 951 [“We hold *only* that ... an EIR predicated on a draft general plan is fundamentally flawed and cannot pass CEQA muster” (italics added)]). As we now explain, neither the EIR nor the water acquisition project itself were predicated on projections in a *draft* general plan, and thus they do not run afoul of the holding in *County of Amador*. (See RT 19-25.)

The basic factual premise for petitioners’ argument is that, by purchasing 11,000 afy of water from the Buena Vista/Rio Bravo Banking Program, Castaic has “secure[d] water supplies for development that is *unaccounted* for in the applicable county or city general plan.” (AOB 23, italics added; see also AOB 22 [Castaic “secur[ed] a new water supply to serve development projects outside its own boundaries without any regard as to whether these proposals were accounted for in the County General Plan”].) This

factual premise is demonstrably false, and substantial evidence supports Castaic's contrary conclusion that "[t]he [Water Acquisition] Project provides the water necessary to meet the needs *projected by local planning agencies in their adopted general plans and area plans ....*" (1 AR 480, italics added.) Because substantial evidence supports the EIR's conclusion, this court must uphold that finding.

In particular, the current Santa Clarita Valley Area Plan of the County of Los Angeles General Plan (updated December 1990) projects a population of 270,000 and 93,400 housing units for the Santa Clarita Valley by 2010. (1 AR 141-143; AA 179.) The 2000 population in the Santa Clarita Valley was 190,000. (1 AR 142-143.) Castaic's water acquisition project is expected to have the potential to serve an additional 37,850 persons, bringing the total population to a *maximum* of 227,850, which is well *within* the growth (a total population of 270,000) that the current Los Angeles general plan anticipates by 2010. (1 AR 120, 143.)

Moreover, Castaic projects that the water demand from the 270,000 residents in 2010 will be 91,440 afy. (1 AR 85.) Although this is within Castaic's total average-year supplies of 112,080 afy as of 2005 (1 AR 84; see 1 AR 30-31, 82-83), more than half of Castaic's current average yearly supply—64,740 afy—is water Castaic imports from the State Water Project (1 AR 84). The amount of water Castaic receives from the State Water Project is highly variable, and has ranged from 95,200 acre feet in a wet year, to as little as 3,808 acre feet in an extremely dry year. (1 AR 30-31 & fn. 3, 32, 80, 84, 148; 15 AR 7724, 8158, 8162-8163; AA 177.)

Consequently, in a dry year, Castaic's supplies could easily drop below the 91,440 afy it will need by 2010. Thus, Castaic needs the 11,000 afy of "firm" water it is purchasing from the Banking Program to ensure that it has sufficient water supplies during years when its State Water Project supplies are insufficient to meet the demand from development (93,400 housing units by 2010) that the current Los Angeles County General Plan projects will be built. (See 1 AR 27, 30-32, 35, 39-40, 143, 472, 480-481; 28 AR 14814; AA 181; see RT 33.)

The local planning agencies also project that the population within the Santa Clarita Valley will be approximately 428,209 by 2030, with a total of 137,436 housing units. (1 AR 43; 28 AR 14814; AA 171.) The 137,436 housing units the planning agencies project by the year 2030 will require water supplies of approximately 129,300 acre feet per year—or more than 17,000 afy above Castaic's 2005 average-year supplies of 112,080 afy. (1 AR 84-85; see 1 AR 30-32, 43, 48, 82-83, 189.)

In sum, the record shows that, as an issue of fact, Castaic needs the 11,000 afy from the Banking Program to provide water for development that the relevant general plan *currently* projects. (See AA 171, 179-181.) Thus, substantial evidence supports Castaic's ultimate conclusion that "[t]he Project provides water necessary to meet the needs projected by local planning agencies in their adopted general plans and area plans ...." (1 AR 480; see also AA 179 [the "population increase [that Castaic's water acquisition project would support] is well within the LA County General Plan's projections of [a total of] 270,000 by 2010"].)

In making their argument, petitioners focus myopically on the five annexation sites that might (or might not) be added to *Castaic's* service area in the relatively near future. (AOB 21-22; see *ante*, pp. 11-12.) However, as the trial court concluded, Castaic needs the 11,000 afy from the Banking Program to service already planned development *regardless* of whether those sites are ultimately included within its service area. (AA 181; see 1 AR 11, 35, 472, 480-481.) Thus, petitioners' focus on those annexation sites is simply irrelevant to whether Castaic has secured water for growth that is "unaccounted for" (AOB 23) in the pertinent planning documents because the water is needed for the already projected population of 270,000 *whether or not* the annexation sites are approved (see RT 29-31; see also 1 AR 11, 35, 472, 480-481).<sup>20</sup>

Indeed, there is some question whether the EIR even needed to address the annexation sites *at all*. It did so, out of an abundance of caution, when it described the Environmental Setting for the

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<sup>20</sup> Petitioners contend that the EIR does not "reflect[]" the fact that Castaic's water acquisition project is necessary to provide Castaic with a reliable supply of water regardless of whether the five annexation sites might be added to Castaic's service area. (AOB 19.) Petitioners are wrong. As Castaic's 2006 water acquisition project EIR explained, "[g]iven the variability of [State Water Project] deliveries," the EIR examines how to increase Castaic's "water supply and water supply reliability" and adopts the water acquisition project "to augment [Castaic's] water supply to meet the water demands of its service area ...." (1 AR 39.) The EIR states that the water acquisition project "would be required regardless of the specific potential Annexation Sites described in this EIR because of the anticipated needs of present and future land uses in [Castaic's] service area ...." (1 AR 11, 35; see also 1 AR 480-481; AA 181.)

project. (AA 180; RT 29-30.) But the fact that Castaic explained in perhaps unnecessary detail the Environmental Setting for the project (AA 180-181) should not—and cannot—be used as a club against it.

**B. *County of Amador* does not support the legal premise of petitioners’ argument.**

The basic legal premise for petitioners’ argument is that a water agency cannot “place[]the proverbial cart before the horse” by securing a water supply that a *general plan* has yet to identify as needed. (AOB 22.) However, *County of Amador*—the only authority petitioners cite to support this legal proposition—does not contain such a broad holding. Rather, the *County of Amador* court took pains to explain that it was holding “*only* that ... an EIR predicated on a *draft general plan* is fundamentally flawed and cannot pass CEQA muster.” (*County of Amador, supra*, 76 Cal.App.4th at p. 951, italics added.) Indeed, the court specifically acknowledged that, where a general plan addressing population growth has been adopted, “a water project to meet those needs would [be] ... appropriate.” (*Id.* at p. 950.)

As even petitioners must concede, in this case neither the project nor the EIR are predicated on a *draft* general plan. Instead, they are predicated on Castaic’s 2005 Urban Water Management Plan as well as other *final* planning documents such as the Santa Clarita Valley Area Plan of the County of Los Angeles General Plan. (See AA 179-182; see also 1 AR 120, 141-143.)

What petitioners’ legal premise fails to acknowledge is that other planning documents—besides a general plan—can also identify the future need for water supplies. Indeed, that is the whole purpose of Castaic’s 2005 Urban Water Management Plan—to predict the future need for water, and to ensure that Castaic has sufficient supplies to meet that demand. (See *ante*, pp. 6-7; RT 19-24, 31-32, 37-38.) Thus, even if there were no applicable general plan, Castaic’s 2005 Urban Water Management Plan would itself ensure that Castaic does not put “the proverbial cart before the horse” by securing a water supply for which there is no identified need. The 2005 plan in fact identifies those needs. (See *ante*, pp. 6-7.)

The facts of *County of Amador* are instructive on this point. There, El Dorado County sought to divert water from three high Sierra lakes to serve anticipated growth in that burgeoning county. (*County of Amador, supra*, 76 Cal.App.4th at pp. 941, 949.) The projections El Dorado County used to justify the need for the water were contained in a single document: a draft general plan for the county. In this context, the court stated that, “[i]n other words, water policy was predicated on the population forecasts of an unadopted general plan, and water projects were tailored to the needs outlined in that still-to-be-finalized document. *In this case*, approving a water program before enacting a general plan places the proverbial cart before the horse.” (*Id.* at p. 949, italics added.)

However, as one commentator has observed: “[T]he *County of Amador* court did not say that the water agency must look only to the general plan for an authoritative statement of need. Under the

Urban Water Management Plan Act, a water agency can use population projections from many sources to support its water demand projections. ... Accordingly, the water agency may not be tied to the general plan at all ....” (Comment, *Addressing California’s Uncertain Water Future by Coordinating Long Term Land Use and Water Planning: Is a Water Element in the General Plan the Next Step?* (2004) 31 Ecology L.Q. 117, 146 (hereafter *California’s Uncertain Water Future*)). Or, as the trial court put it, “an awful lot has happened both in [CEQA] and water law” since *County of Amador* was decided, which provides the context within which that case must be read. (RT 24.)

Thus, even if the need for the project were not demonstrated by an adopted general plan—which it is (see, e.g., 1 AR 141-143)—Castaic’s 2005 Urban Water Management Plan provides the “authoritative statement of need” to ensure that Castaic does *not* put the water horse before the development cart (*California’s Uncertain Water Future, supra*, 31 Ecology L.Q. at p. 146; see AA 181-182).

As the trial court noted, *County of Amador* did not involve a water agency acting pursuant to the Urban Water Management Planning Act. (See AA 182.) Moreover, as the trial court also recognized, in *Vineyard* the Supreme Court noted that water agencies have a duty to plan for the long term needs of their service area and thus to project and plan for water supplies with a “water planning horizon that exceeds the planning horizon of most general plans.” (AA 182, citing *Vineyard, supra*, 40 Cal.4th at pp. 434-435.) Here—in contrast to *County of Amador*—Castaic was acting

pursuant to an Urban Water Management Plan that identified the water acquisition project as necessary to meet the demand for population growth that Los Angeles County and the City of Santa Clarita had already projected. (AA 179-180; 1 AR 120, 143; 28 AR 14814, 14879-14881; see *Vineyard*, at pp. 434-435 [“the Water Code and the CEQA provision requiring compliance with it [citation] contemplate that analysis in an individual project’s CEQA evaluation may incorporate previous overall water planning projections, assuming the individual project’s demand was included in the overall water plan”].)

Finally, as the trial court further found, “the [*Vineyard*] Court ... cited with approval the prior decision by the [C]ourt of [A]ppeal in *Stanislaus National Heritage [Project] v. County of Stanislaus* [(1996) 48 Cal.App.4th 182], that water supply projects may precede land use planning if the EIRs for those projects analyze project related growth-inducing impacts”—which, of course, is the case here (AA 182, citing *Vineyard*, *supra*, 40 Cal.4th at p. 429; see also *id.* at p. 437; *Stanislaus*, at p. 206 [agency must simply “attempt in good faith to fulfill its obligation under CEQA to provide sufficient meaningful information regarding the types of activity and environmental effects that are reasonably foreseeable’ from .... supplying of water”].) Thus, the EIR in this case does not run afoul of the holding or rationale of *County of Amador*. (See RT 20, 22-24 [trial court explaining that California law requires water agencies to plan ahead for water supplies that may be needed due to population growth].)

## CONCLUSION

The court should affirm the judgment for the reasons stated in this brief, and for any other reason the court deems just and proper.

Dated: December 1, 2008

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**CERTIFICATE OF WORD COUNT**

**(Cal. Rules of Court, rule 8.204(c)(1).)**

The text of this brief consists of 11,182 words as counted by the Microsoft Word version 2007 word processing program used to generate the brief.

Dated: December 1, 2008

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Felix Shafir

## **PROOF OF SERVICE**

### **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

On December 1, 2008, I served true copies of the following document(s) described as **RESPONDENT'S BRIEF** on the interested parties in this action as follows:

#### **SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on December 1, 2008, at Encino, California.

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Robyn Whelan

## SERVICE LIST

### **California Water Impact Network v. Castaic Lake Water Agency**

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