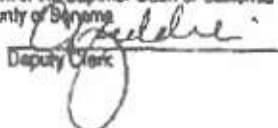


HON. ROBERT S. BOYD
JUDGE OF THE SUPERIOR COURT
Courtroom 17
3035 Cleveland Avenue, Suite 200
Santa Rosa, CA 95403
(707) 521-8725

FILED

JUN 15 2010

Clerk of the Superior Court of California
County of Sonoma
By 
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

MAACAMA WATERSHED ALLIANCE,
et al.,

Case No. SCV-244946

Petitioners,

v.

**ORDER GRANTING PETITION FOR
WRIT OF MANDATE**

COUNTY OF SONOMA, et al.,

Respondents.

JESS S. JACKSON, et al.,

Real Parties in Interest.

The Petition for Writ of Mandate filed April 22, 2009, came on regularly for hearing on March 26, 2010, before the Honorable Robert S. Boyd, Judge Presiding. Counsel Paul V. Carroll was present on behalf of Petitioners. Counsel Gregory T. Dion was present on behalf of Respondent. Counsel Clayton E. Clement was present on behalf of Real Parties in Interest.

Upon consideration by the court of the papers and evidence filed in support of and in opposition to the petition, and having heard and considered the oral argument of counsel, the court makes the following order:

By this petition, Petitioners seek a writ of mandate setting aside Respondents' approval of the Pelton House Winery Project (the Project) and its mitigated negative declaration (MND). The Project is located on two parcels at 16701 and 17705 Hwy 128

1 (the Property) in Knights Valley, Sonoma County, between Ida Clayton Rd. and Spencer
2 Lane. AR 2:541; 4:1120; 9:2436.

3 The court grants the petition for writ of mandate based on every issue which
4 Petitioners raise, finding Petitioners persuasive on all the points discussed herein. The
5 court finds that substantial evidence supports a fair argument that the project may have
6 a significant effect on the environment and thus requires an environmental impact
7 report, while Respondents have improperly deferred both study and mitigation for
8 certain aspects of the wastewater system for the Project or the effects on a potential
9 wetland in the area.

10 Standard of Review

11 In this action, Petitioners challenge Respondent's decision to approve the project
12 with a mitigated negative declaration (MND). Because Respondents approved the MND
13 rather than completing an environmental impact report (EIR), the court finds that the
14 applicable standard of review is the fair-argument test, under which the court must grant
15 the petition if Petitioners demonstrate that substantial evidence in light of the record as
16 a whole supports a fair argument that the Project may have a significant effect on the
17 environment. PRC 21080(c), 21082.2; Guidelines for the Implementation of CEQA
18 (hereinafter, "Guidelines"), 14 CCR section 15064(a)(1), 15384(a).

19 The basic standard of review for CEQA actions under 1094.5 is in PRC 21168.
20 See *Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52
21 Cal.App.4th 1383, 1389. The reviewing court must determine if Respondent abused its
22 discretion by (1) failing to proceed in the manner required by law, or (2) because its
23 decision is not supported by substantial evidence. PRC 21168, 21163.5; *Laurel Heights*
24 *Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392,
25 fn.5. (*Laurel Heights I*).

26 However, an agency may publish a negative declaration or mitigated negative
27 declaration only if no substantial evidence in light of the record indicates that the project
28 as approved may have a significant impact. PRC 21080(c); Guideline 15064(a)(1).

1 Under this "fair-argument" test, an agency must prepare an EIR whenever "it can be
2 fairly argued" based on substantial evidence in the record that the project may have a
3 significant effect on the environment. *Laurel Heights Improvement Ass'n. v. Regents*
4 *of University of California* (1993) 6 Cal.4th 1112, 1113 (*Laurel Heights II*). This is true
5 even if other substantial evidence supports the conclusion that there are no significant
6 impacts. *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of "B"*
7 *Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003.

8 This test does still require substantial evidence to support the fair argument.
9 "[S]ubstantial evidence includes fact, a reasonable assumption predicated upon fact, or
10 expert opinion supported by fact." PRC 21080(e)(1); see also Guideline 15384. It is not
11 "argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly
12 inaccurate or erroneous, or evidence of social or economic impacts that do not
13 contribute to or are not caused by, physical impacts on the environment." *Ibid.* A court
14 thus should generally not find "substantial evidence" based solely on testimony or
15 opinion "unsupported by the facts from which it is derived." *Brentwood Assn. for No*
16 *Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504.

17 Simple absence of evidence in the record on an issue does not per se create a
18 fair argument that there may be significant impacts. See *Silveira v. Las Gallinas Valley*
19 *Sanitary District* (1st Dist.1997) 54 Cal.App.4th 980; *Gentry v. City of Murrieta* (4th
20 Dist.1995) 38 Cal.App.4th 1359.

21 However, courts also should not mechanically require a petitioner to demonstrate
22 substantial evidence of possible significant impacts where the agency has failed even to
23 gather data necessary for an informed decision. *Sundstrom v. County of Mendocino*
24 (1988) 202 Cal.App.3d 296, 311. Thus, "if the ... agency has failed to study an area of
25 possible environmental impact, a fair argument may be based on the limited facts in the
26 record. Deficiencies in the record may actually enlarge the scope of fair argument by
27 lending a logical plausibility to a wider range of inferences." *Ibid.*

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1 Valid, credible expert testimony generally constitutes substantial evidence. See
2 *City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 541-
3 542; *Uhler v. City of Encinitas* (1991) 227 Cal.App.3d 795, 805. Under the fair-
4 argument test, credible expert opinion that a project may have a significant impact, even
5 if disputed, will constitute substantial evidence supporting a fair argument that a project
6 may have significant impacts. See *City of Livermore, supra*, 184 Cal.App.3d 541-542;
7 *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 247-
8 249. On the other hand, an agency need not follow expert opinion lacking sufficient
9 foundation or based solely on speculation and conjecture. *Citizens' Committee to Save*
10 *Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1170-1171; *Lucas Valley*
11 *Homeowners Association v. County of Marin* (1991) 233 Cal.App.3d 130, 157.

12 Petitioners have the burden of proving that the agency has failed to meet its
13 burdens under CEQA. *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners*
14 (1993) 18 Cal.App.4th 729, 740. Because this is a challenge to an MND, Petitioners
15 thus must demonstrate either substantial evidence supporting a fair argument that there
16 may be significant impacts, or that the agency did not meet its burden of conducting
17 environmental investigation, in which case, it "should not be allowed to hide behind its
18 own failure to gather relevant data." *Sundstrom v. County of Mendocino* (1988) 202
19 Cal.App.3d 296, 311.

20 Impacts on Water Supply

21 Petitioners contend that substantial evidence supports a fair argument that the
22 Project may have a significant impact on water supply due to its water demands,
23 affecting groundwater and wells, surface water and the creeks, and ultimately also
24 affecting fish species.

25 Real Parties in Interest (Peal Parties) and Respondents dispute this, pointing to
26 evidence supporting the decision and claiming that Petitioners' evidence is merely
27 speculative because it states only what "might" happen or "might" be the case.

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The RCS Reports

Real Parties rely on the RCS report, the Updated Hydrogeologic Assessment of Groundwater Availability (HAGA), which is the basis for the MND approval and which disposed of these issues in brief, one-paragraph explanations. AR 10:2745-2746. It concluded that the Project's Pelton well would not affect off-site wells because (1) the well will use a low volume of water, about 2.2 gpm¹, (2) the off-site wells draw water from a shallow layer of alluvium whilst the Pelton well draws it from a deeper volcanic rock, and (3) there is "large spacing" between wells. *Ibid.* It also stated that the Project's Pelton well would not impact Yellow Jacket Creek by drawing water from it based on two facts: (1) the well is about 1,000 ft from the creek and 2) the well draws water from a point below the creek.

Real Parties also rely on a report which RCS submitted in reply to criticisms. AR 10:2877-2881. For the above geologic and hydrologic issues, it states that the Pelton well is located in Zone 1, a "major groundwater basin" and otherwise essentially just repeats the same points it had stated originally. AR 10:2879-2880.

Reports from Petitioners' Experts

Petitioners point to two reports and two final responses to RCS's reply, by a total of four authors. These authors are apparent experts holding advanced degrees, including a geologist and hydrologist retired from 45 years teaching for the UC, a one-time Mendocino County Water Agency hydrologist who taught at CSU Monterey Bay, a registered Washington Professional Geologist/Hydrologist, and a registered California Professional Geologist. AR 6:1545, 1546, 1748-1760; AR 7:1781-1787.

The reports on which Petitioners rely provide detailed, lengthy scientific explanation based on the very same data and facts underlying the RCS report. Despite the contentions of Real Parties and Respondents, they are not speculative or lacking in evidentiary foundation, but take the same facts on which Real Parties' own consultants relied and explain that those facts demonstrate a conclusion different from the one

¹ GPM means gallons per minute.

1 which Real Parties' consultants, RCS, reached. Moreover, whereas RCS's conclusion
2 is brief and conclusory with little explanation, the reports on which Petitioners rely
3 explain the conclusions in depth.

4 Petitioners' expert reports in detail refute all of the points on which RCS relied.
5 Regarding the wells, they demonstrate that (1) the Project will use more water than
6 RCS stated [AR 6: 1560-1563]; (2) that the off-site wells draw water from a shallow
7 layer of alluvium whilst the Pelton well draws it from a deeper volcanic rock does not
8 itself indicate that there will be no effects because such mineral strata often are still in
9 "hydraulic connection" and the RCS report is based on uncertain geologic assumptions
10 [AR 6:1564-1566, 1575-1577]; and (3) the "large spacing" between wells may in fact
11 lead the further wells to be more affected. Regarding creek/surface water, the reports
12 explain (1) that again the distance from the creek may lead to greater, rather than
13 lesser, impacts, and (2) because the well draws water from a point below the creek, this
14 also is more likely to have a greater, rather than lesser affect.

15 Regarding the RCS reply assertions, the subsequent expert reports note that
16 although the well is in Zone 1, portions of the Property and the surrounding properties
17 are in Zones 3 (marginal groundwater availability) and 4 (areas requiring proof of water).
18 AR 6:1774. This, the authors conclude, indicates that the basin requires a large
19 geographic area for recharging and indicates a possible water-shortage threat that the
20 RCS report has failed to consider. AR 6:1741, 1774. They further explain that places at
21 a further distance, especially those relying on higher or more shallow water sources, are
22 likely to suffer first and more severely from groundwater drawdown as water is drawn in
23 to the well at issue, and that this may cause various problems such as killing vegetation
24 in such areas. *Ibid.* They point out that the study focuses on the well's pumping
25 performance but fails to study the potential drawdown distance and specifies that not
26 one of the possible tests for exploring the issue was conducted, leaving this issue
27 unexplored. AR 6:1741, 1774-1777. One report adds that no evidence shows "what
28 geologic units the Pelton Well No.1 is drawing water from." AR 6:1741.

1 One expert, Curry, adds that he requested, but was denied access to, the reports
2 on Real Parties' well and other nearby wells that were necessary to determine the exact
3 nature of the circumstances. AR 6:1742.

4 Ultimately here, as on the other issues below, Real Parties and Respondents
5 primarily criticize the findings of Petitioners' experts only because they state that the
6 project "may" rather than "will" have significant impacts. As explained, evidence is
7 sufficient as long as it indicates that a project "may" have a significant impact.
8 Moreover, despite the arguments of Real Parties and Respondent, a conclusion is not
9 speculative merely because it is qualified or recognizes the possibility of a different
10 result: the court must instead look to the nature of the underlying evidence and analysis.

11 Effects on Fish Species

12 Petitioners argue that the water-usage/supply issues could specifically have
13 significant effects on endangered Coho salmon and threatened steelhead trout, relying
14 on a fifth expert, Patrick Higgins (Higgins), a consulting fisheries biologist and expert on
15 threatened and endangered salmon in the central and north coast of California, who
16 provided information of potential impacts on these fish. AR 6:1707-1718.

17 Real Parties point to a Department of Fish & Game (DFG) report at AR 6:1717-
18 1718 on which Higgins relies, contending that this shows no Coho in the Redwood
19 Creek in surveys of 2000-2002. They also point out that Higgins stated that
20 Yellowjacket and Kellogg Creeks are too steep to be habitat for Coho and steelhead.
21 AR 6:1717.

22 However, Higgins' discussion and very specific data are completely contrary to
23 Real Parties' assertions and in fact do strongly support a finding of possible significant
24 impacts on these fish. AR 6:1707-1712, 1717-1718. Contrary to Real Parties' assertion
25 that the DFG found no Coho, the DFG surveys which Higgins cites in detail clearly
26 indicate that it in fact did find Coho and steelhead in Redwood Creek, albeit in small
27 numbers. AR 6:1717-1718. Specifically, in 2001, the DFG found two Coho and four
28 steelhead. Higgins notes that in previous surveys, larger umbers of Coho and especially

1 steelhead were found, explaining that these cold-water fish were now diminished and
2 greatly outnumbered by other, warm-water species compared to the past, a fact which
3 itself indicates a reduction in water and warming of the water due to impacts of
4 agriculture and water usage. AR 6:1717-1718. He adds that although Yellowjacket and
5 Kellogg Creeks are not themselves suitable habitats, they supply spawning gravels,
6 large wood, and cold water to help maintain Coho in Redwood Creek, with any water
7 impacts on these creeks directly affecting the fish habitat on Redwood Creek. *Ibid.*

8 Mercury Contamination

9 Petitioners contend that the Project may cause or add to local mercury
10 contamination, pointing to old nearby mercury mines. They assert that the MND never
11 addressed this issue.

12 Real Parties argue that no evidence shows that mercury mining ever took place
13 on the Property or that the Property has been identified as contaminated.

14 Petitioners rely on substantial evidence, again including explanations from the
15 experts, showing that there may be significant impacts from mercury contamination
16 even though no mercury mining ever took place on the Property itself and even though
17 there has been no affirmative demonstration that the Property itself is in fact
18 contaminated with mercury.

19 The Regional Water Quality Control Board provided information on mercury
20 contamination and recommended full disclosure on this issue. AR 6:1653-1654. It
21 noted that "monitoring programs ... continuously reveal unknown sources of mercury in
22 the watershed. We are especially concerned with non-point sources of mercury
23 pollution county wide. The Project site is located in a historically mined, mercury laden
24 area, which[,] when disturbed[,] could pose as a hazard for human and aquatic life."
25 *Ibid.*

26 The record demonstrates that the Project is located between two old mercury
27 mines with one, the Yellowjacket Mine, being right along the boundary of the Project
28 Property next to Yellowjacket Creek and the other in the Kellogg Creek drainage.

1 AR 6:1578. Petitioners' experts relied on this and noted that the two mines shared a
2 furnace for extracting mercury, explaining that this process "spreads toxic materials over
3 a broad area" while USGS studies generally demonstrate "elevated mercury
4 contaminations" in mining areas; mining tailings may be blown around the area, with
5 rainfall leaching the toxins into the groundwater, whence they may be drawn out by
6 heavy groundwater usage. AR 6:1578-1579.

7 Asbestos Contamination

8 Petitioners also argue that evidence indicates a possibility of asbestos
9 contamination. They assert that evidence shows the Franciscan Formation, underlying
10 at least parts of the Property, contains high levels of serpentinite and blueschist,
11 themselves typically containing high levels of naturally occurring asbestos (NOA) and
12 heavy metals. Petitioners demonstrate that drilling into Franciscan rock pulverizes the
13 mineral, releasing their toxic elements and creating health risks. AR 6:1577.

14 Real Parties assert that no evidence supports this claim because the well is not
15 drilled in the Franciscan Formation or other geologically old rocks.

16 Evidence demonstrates that the Franciscan rock underlies at least much of the
17 Property and has been found at levels high enough to be disturbed by the Clegg Well
18 an old well on the Property, so evidence clearly shows it to be in the area. AR 6:1577,
19 1779. This Franciscan extends towards the Project's Pelton House Well, but the exact
20 location vis-à-vis the Pelton House Well is not known.

21 First, the evidence on which the approval and Real Parties and Respondents
22 rely, though couched in concrete, absolute terms is based on mere assumption without
23 any knowledge of the actual location of the Franciscan. One RCS figure on which Real
24 Parties rely has question marks, purportedly showing the Franciscan to be beyond the
25 Pelton House Well depth, but with a boundary marked "?" and noted to mean
26 "approximate geologic contact queried where uncertain." AR 13:4040.

27 Second, one expert on whom Petitioners rely noted that another of RCS's own
28 images shows that "large thicknesses of serpentinite in the subsurface ... extend

1 laterally towards the Pelton House Well" and yet has question marks on the figures,
2 indicating uncertainty over the rock's extent and location. AR 6:1779. The result is that
3 although Real Parties have an affirmative statement that the Pelton Well is not in the
4 Franciscan, this is based on data that admits that they do not know the actual location
5 of the Franciscan and admits that the Franciscan may be under the Project's well, and
6 may potentially be within the well depth.

7 Finally, Petitioners point out that Real Parties would not allow access to the
8 Pelton House Well boring log that might indicate what materials the boring has
9 contacted, so that the public must rely only on Real Parties' promises that the log shows
10 it has not dug into Franciscan. Real Parties admit this, contending that it is
11 meaningless because of their statements in the record and because it is mere
12 "conjecture" that the secret boring log may contain evidence of Franciscan in the well.

13 This conflicts directly with the ultimate mandate of CEQA "to provide public
14 agencies and the public in general with detailed information about the effect [of] a
15 proposed project" and to minimize those effects and choose possible alternatives. PRC
16 21061. After all, the public and public participation hold a "privileged position" in the
17 CEQA process based on fundamental "notions of democratic decision-making."
18 *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Association* (1986)
19 42 Cal.3d 929, 936. As stated in *Laurel Heights Improvement Association v. Regents of*
20 *the University of California* (1988) 47 Cal.3d 376, at 392, "[t]he EIR process protects not
21 only the environment but also informed self-government."

22 In addition, Real Parties and Respondents may not rely on evidence that is not
23 provided to the public or in the record. *Lighthouse Field Beach Rescue v. City of Santa*
24 *Cruz* (2005) 131 Cal.App.4th 1170, at 1202. In citing to an assertion allegedly based on
25 the data from the Pelton House Well's boring results, Real Parties in effect are relying
26 on evidence that is not part of the record and thus cannot be considered.

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Wastewater System

The final area of potential significant impacts raised is the Project wastewater system. Petitioners argue that their experts assert that the system has not been designed or reviewed for environmental effects, arguing that the system was approved after only "preliminary testing" on a "preliminary concept" with no study at all of the final system design.

Real Parties and Respondents assert that Petitioners' experts commented on the original system proposal, not the current version, the system is a "standard" type, and that it is improper to require review of a detailed plan before permit approval.

One problem that Petitioners demonstrate is that the record does not actually contain any of the data from the "preliminary" or any other testing, or any analysis or review of it. Real Parties assert that a staff report states that "[t]est results and County review support the preliminary conclusion that adequate areas exist to construct [sufficient] leachfields" AR 2:546. However, the record contains no data or analysis to support these statements. A report states that "preliminary" testing has been conducted and found the soil suitable but contains no actual information to support the assertion. AR 10:2873-2874.

A related problem is that the record indicates only a "preliminary" study, with neither plans, wastewater capacity, nor actual soils analyses completed or determined. AR 5:1234; 6:1554-1555; 9:2487. It states only what "may" be involved or requirements that "shall" be imposed but which are vague and undefined, specifically noting that the system "may require design by a Registered Civil Engineer" or various soils and percolation studies, "shall" meet peak flow discharge; if a permit for a system necessary to meet peak flow discharge cannot be obtained, Real Parties shall reduce the Project; and shall obtain a water board discharge permit or waiver. *Ibid.*

At the same time, Petitioners' experts demonstrate that the soils at both wastewater sites have "significant limitations" and that disposal may not even be possible on the Property. AR 6:1555-1556. They note that the single leach field at the

1 upper site, apparently to be used to treat both the domestic and winery waste before the
2 winery waste is piped to the lower site, is "in a site listed as unsuitable on the County
3 soils maps." AR 6:1555. They also include charts from the National Resources
4 Conservation Service surveys showing that the proposed wastewater sites are in areas
5 identified as having "significant limitations." AR 6:1556-1559.

6 Finally, Real Parties are not persuasive that Petitioners are trying to reverse the
7 order of approvals with ministerial ones first, leading to illegal segmentation. Petitioners
8 are not advocating either a reversal of the permitting process or segmentation but
9 merely demonstrate that Respondents have approved a project that will involve a
10 wastewater system without engaging in any study of the wastewater plans or the ability
11 of the land to maintain one.

12 Mitigation Measures

13 In addition to claiming that substantial evidence supports a fair argument that the
14 Project may have the above significant impacts, Petitioners contend that Respondents
15 improperly deferred mitigations measures for wetlands and wastewater systems.
16 Petitioners further argue, after raising the point at oral argument, that this deferral is not
17 merely a deferral of mitigation measures but a complete deferral of environmental
18 review.

19 An agency cannot find a significant impact to be mitigated to a less-than-
20 significant level based on a deferred mitigation measure. *Sundstrom v. County of*
21 *Mendocino* (1988) 202 Cal.App.3d 296; see *Gentry v. City of Murrieta* (1995) 36
22 Cal.App.4th 1359.

23 Mitigation Measures for Wetlands

24 Petitioners here argue that there is a seep or wetland in the south-central part of
25 the Project site and that Respondents improperly approved the Project based on a
26 mitigation measure consisting of undefined future study of the seep and possible
27 impacts.

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1 Real Parties and Respondents contend that this is proper because a mitigation
2 measure requires a 50 foot setback from the seep and avoidance during construction.
3 AR 2:598-597; 5:1243; 9:2469. They contend that this would inherently negate any
4 possible effect.

5 However, Petitioners are persuasive on this point. The measure which
6 Petitioners attack states that it forbids grading and building permits "if the seep ... will
7 be impacted by the ... project, until the project biologist has delineated the seep ... and
8 completed the delineation process with the U.S. Army Corps of Engineers, who will
9 determine the extent of the impact." AR 9:2469. Although ostensibly a mitigation
10 measure, this is effectively a deferral of all study of the seep or wetland, the approval is
11 based upon it, and it is unclear and uncertain. As for the reliance on the setback and
12 the avoidance during construction, nothing in the record supports Real Parties'
13 contention that this necessarily avoids or reduces impacts to less than significant while
14 neither the seep itself nor the extent of potential impacts have been evaluated.

15 Mitigation Measures for Wastewater Disposal

16 Petitioners finally argue that Respondents also improperly deferred mitigation
17 measures for, and in fact meaningful review of, the wastewater disposal.

18 Real Parties contend that no mitigation measure is necessary for wastewater
19 because the system will not result in a significant effect on the environment. They
20 contend that this finding was based on three factors: (1) "conditions of approval,"
21 including the Regional Water Board's subsequent review and approval of the
22 wastewater system; (2) "preliminary" testing showing the fields and soils to be
23 adequate; and (3) "conditions of approval." Ibid; AR 9: 2483-2484.

24 The "preliminary" study on which Respondents and Real Parties rely is not only
25 insufficient as discussed, but apparently is not in the record and was not made public.

26 The "conditions of approval" on which Real Parties and Respondents rely as
27 showing that there will be no significant impacts are apparently themselves the very

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1 mitigation measures which Petitioners claim are insufficient because they are deferred.
2 AR 9:2484.

3 Finally, a "condition" imposed consists of future review of the system plans,
4 potential and undetermined requirements for what the plans "may" require, potential
5 future determination of the actual soil and water characteristics to determine if the area
6 can handle a system and, if so, what size and what plan of system, and a potential
7 determination to reduce the Project in some unspecific manner should some possible
8 tests indicate such a need. AR 5:1234; 6:1554-1555; 9:2487. This is not only an
9 improper deferral of mitigation measures, but an improper failure even to study the
10 possible effects.

11 Conclusion

12 As a result, the court hereby issues a writ of mandate requiring Respondents to
13 prepare and certify an environmental impact report. The court finds not only that
14 Respondents failed properly to study certain issues but that substantial evidence
15 supports a fair argument that the project may have significant effects on the
16 environment. As a result, the court finds that this is not an instance where the parties
17 may simply cure the mitigated negative declaration by completing studies. Petitioners
18 have demonstrated that the project instead requires an environmental impact report.

19 **IT IS SO ORDERED.**

20 DATED: June 15, 2010



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22 ROBERT S. BOYD
23 Judge of the Superior Court
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