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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 FRIENDS OF THE SANTA CLARA RIVER,
13 SCOPE (SANTA CLARITA ORGANIZATION
14 FOR PLANNING AND THE ENVIRONMENT),
15 PETITIONERS,

16 v.

17 COUNTY OF LOS ANGELES,
18 LOS ANGELES COUNTY BOARD OF
19 SUPERVISORS, DOES 1 TO 10,
20 RESPONDENTS,

21 AND

22 NEWHALL LAND AND FARMING COMPANY,
23 INC., DOES 11 TO 20,
24 REAL PARTIES IN INTEREST.
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Superior Court of California
County of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk of Court
By Kristina Vargas Deputy
Kristina Vargas

CASE NO. BS170568

Assigned for all purposes to
Hon. Richard L. Fruin

PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Table of Contents

I. INTRODUCTION	1
II. ARGUMENT.....	1
A. Respondent's procedural-bar arguments are wrong.	1
1. This case is not limited to review of the County's writ returns.	1
2. None of SCOPE's claims are barred by doctrines of preclusion or finality. 2	
a. Res judicata, or claim preclusion, does not bar SCOPE's claims.	2
b. SCOPE's claims are not barred by a principle of "finality."	3
B. The Recirculated Analysis's greenhouse gas analysis violates CEQA.	4
1. The Recirculated Analysis adopted the existing low baselines as the	
significance threshold for GHG impacts.....	4
2. The County has failed to require all feasible mitigation in violation of	
CEQA, since the Projects will have significant GHG impacts.....	4
3. Mitigating only 30 years of operational GHG emissions leaves substantial	
emissions unmitigated, violating CEQA.	6
4. Mitigation Measures 2-1 and 2-2, which purport to reduce the GHG	
emissions from the operation of residential and commercial buildings to	
zero, do not ensure that goal will be accomplished.	7
5. Mitigation for construction-related GHG emissions is improperly vague	
and deferred.	8
C. The Recirculated Analysis does not contain the energy analysis required by	
Guidelines Appendix F.	9
D. The Recirculated Analysis does not analyze significant water supply impacts	
resulting from changed circumstances and new information.	10
1. There is strong evidence of changed circumstances and new information	
regarding drought and climate change, which required the County to	
conduct further analysis of water supply impacts.	11
2. Neither the record nor the Opposition presents substantial evidence or	
adequate justification for the County's decision not to undertake further	
water supply analysis.	12
E. The County violated Water Code § 10910 by failing to include a new Water	
Supply Assessment in the Recirculated Analysis.	16
III. CONCLUSION	17

Table of Authorities

Cases

<i>A Local & Regional Monitor v. City of Los Angeles</i>	
(1993) 12 Cal.App.4th 1773	5-6
<i>Ballona Wetlands Trust v. City of Los Angeles</i>	
(2011) 201 Cal.App.4th 455	3
<i>California Clean Energy Committee v. City of Woodland</i>	
(2014) 225 Cal.App.4th 173	10
<i>Citizens for Open Government v. City of Lodi</i>	
(2012) 205 Cal.App.4th 296	3, 16
<i>Citizens for Responsible Equitable Environmental Development v. City of San Diego</i>	
(2011) 196 Cal.App.4th 515	16
<i>Daniels v. Select Portfolio Servicing, Inc.</i>	
(2016) 246 Cal.App.4th 1150	2
<i>DKN Holdings LLC v. Faerber</i>	
(2015) 61 Cal.4th 813	2
<i>Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.</i>	
(2016) 1 Cal.5th 937	4
<i>Lotus v. Dept. of Transportation</i>	
(2014) 223 Cal.App.4th 645	5
<i>People v. County of Kern</i>	
(1976) 62 Cal.App.3d 761	10
<i>Planning & Conservation League v. Castaic Lake Water Agency</i>	
(2009) 180 Cal.App.4th 210	2, 3
<i>Rialto Citizens for Responsible Growth v. City of Rialto</i>	
(2012) 208 Cal.App.4th 899	7, 8
<i>Sacramento Old City Assn. v. City Council</i>	
(1991) 229 Cal.App.3d 1011	7
<i>San Franciscans for Reasonable Growth v. City of San Francisco</i>	
(1989) 209 Cal.App.3d 1502	5
<i>San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus</i>	
(1994) 27 Cal.App.4th 713	9
<i>Sierra Club v. State Bd. of Forestry</i>	
(1994) 7 Cal.4th 1215	10

1	<i>Ukiah Citizens for Safety First v. City of Ukiah</i>	
2	(2016) 248 Cal.App.4th 256	10
3	<i>Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova</i>	
4	(2007) 40 Cal.4th 412	17

Statutes

Water Code

7	§ 10910	3, 16, 17
8	§ 10911	3

Public Resources Code

10	§ 21000(b)(3)	10
11	§ 21080.1	16
12	§ 21081(a)(1)	5
13	§ 21100(b)(3)	5
14	§ 21166	3, 11, 12, 16
15	§ 21177(a)	4

Regulations

Cal. Code Reg. title 14

18	§ 15090(a)(1)	9
19	§ 15091(a)(1)	5
20	§ 15162	3, 11, 17
21	§ 15126.4(a)(1)	5, 7, 10
22	Appendix F	9, 10
23	Appendix G	4

Other Authorities

25	Am. Heritage Dict. (2011)	6
26	Castaic Lake Water Agency, Acre-foot, https://clwa.org/glossary/acre-foot [last visited	
27	July 13, 2018]	15

I. Introduction

This case concerns the adequacy of the Recirculated Analysis done by the County of Los Angeles (**County**) for the Landmark and Mission Projects.¹ Those Projects were changed after the courts found that the greenhouse-gas (**GHG**) analysis in their respective 2011 EIRs was not based on substantial evidence. Newhall Land and Farming Company, Inc. (**Newhall**) modified the Projects so that it can claim their GHG emissions will be fully mitigated or offset. But as Petitioners Friends of the Santa Clara River and Santa Clarita Organization for Planning and the Environment (collectively, **SCOPE**) demonstrate in the Opening Brief (**Op.Br.**) and in this Reply, the Recirculated Analysis of GHG effects violates CEQA.

Furthermore, since 2011, when the Landmark and Mission EIRs were originally certified, new information has come to light showing that drought conditions caused by climate change will reduce the groundwater supply in the Santa Clarita Valley. These changed circumstances are significant enough to require the County to re-analyze water supply before certifying the Recirculated Analysis, which the County failed to do.

Additionally, the County failed to provide a required energy analysis for the modified Projects or to require new Water Supply Assessments for the re-approved Projects.

Respondents argue in the Opposition (**Opp.**) that all the County must do in approving the new Projects and the Recirculated Analysis is comply with the writ issued by this Court. But the County must also comply with CEQA, which it has failed to do.

II. Argument

A. Respondent's procedural-bar arguments are wrong.

1. This case is not limited to review of the County's writ returns.

Respondents assert that this action challenges the County's returns to the writs in the Landmark Project litigation (*Friends of the Santa Clara River v. County of L.A.*, LASC Case No. BS136549), and Mission Project litigation (*California Native Plant Society v. County of L.A.*, LASC Case No. BS138001), and as a result, the Court's review is limited to whether the County complied with the writs. (*Opp.* 19:16-22.) But that is not true.

This lawsuit does not challenge the returns to the writs in the prior lawsuits, as those returns are not before the Court—they are not even part of the administrative record or the Court's record of proceedings. Nor is judicial review limited to whether the County complied with the writs. In response to court orders, the County did additional

¹ A Case Chronology for this action, including both Landmark and Mission Projects, appears as Exhibit A to Respondents' Opposition.

1 environmental review of the Landmark and Mission Projects, in the form of the
2 Recirculated Analysis, and re-approved the Projects. This suit challenges the County's
3 compliance with CEQA in those actions, a broader question than just compliance with
4 the writs.

5 **2. None of SCOPE's claims are barred by doctrines of preclusion or finality.**

6 **a. *Res judicata*, or claim preclusion, does not bar SCOPE's claims.**

7 Respondents assert that the doctrine of *res judicata* bars SCOPE's claims regarding
8 the Recirculated Analysis's failure to contain the energy analysis required by CEQA, to
9 analyze water supply impacts in the face of new information and changed circumstances,
10 and to contain a new Water Supply Assessment. (Opp. 31:13-32:18.) That assertion is
11 based on mischaracterizing SCOPE's claims in this action as challenges to the original
12 environmental analysis in the 2011 Landmark and Mission EIRs.

13 The term "*res judicata*" sometimes refers only to claim preclusion, and sometimes is
14 used more broadly to refer to both claim preclusion and issue preclusion, or collateral
15 estoppel. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823-24.) The Opposition
16 refers specifically to claim preclusion. (Opp. 31:23-25.) Also, Respondents argue SCOPE's
17 claims are barred because SCOPE could have pursued its claims on energy, water supply,
18 and Water Supply Assessments in the prior suits but did not. (Opp. 32:10-11.) "Only
19 claim preclusion bars claims that could have been raised in the first proceeding; issue
20 preclusion requires actual litigation of issues." (*Daniels v. Select Portfolio Servicing, Inc.*
21 (2016) 246 Cal.App.4th 1150, 1164.) Thus, only claim preclusion is at issue.

22 Claim preclusion will bar relitigation of a claim if the "second suit involves (1) the
23 same cause of action (2) between the same parties (3) after a final judgment on the merits
24 in the first suit." (*DKN Holdings LLC v. Faerber, supra*, 61 Cal.4th at p. 824.) "As a cause
25 of action is framed by the facts in existence when the underlying complaint is filed, *res*
26 *judicata* 'is not a bar to claims that arise after the initial complaint is filed.' [Citations.]
27 For this reason, the doctrine may not apply when 'there are changed conditions and new
28 facts which were not in existence at the time the action was filed upon which the prior
29 judgment is based.' [Citations.]" (*Planning & Conservation League v. Castaic Lake Water*
30 *Agency* (2009) 180 Cal.App.4th 210, 227 [*Planning & Conservation League*].)

31 In *Planning & Conservation League*—which involved an agreement for a water
32 transfer between two water agencies—after one suit challenging an EIR resulted in a writ,
33 the defendant water agency certified a second EIR, which was in turn challenged in a new
34 suit. (180 Cal.App.4th at pp. 221-22, 224.) The court reasoned that although the prior and
35 present actions both involved "the same general subject matter" (the right to a CEQA-

1 compliant EIR for the water transfer), the two actions involved “distinct episodes of
2 purported noncompliance,” and thus different causes of action. (*Id.* at p. 228.)

3 Viewed in the light of these legal principles, SCOPE’s claims are plainly not the same
4 as claims in the prior lawsuits. First, SCOPE claims that the Recirculated Analysis does
5 not contain a required analysis of energy impacts and conservation measures. (Op.Br. 13-
6 14.) SCOPE argues the Recirculated Analysis analyzes Projects with substantially different
7 energy impacts than the Projects addressed in the 2011 EIRs, as a result of new GHG
8 emissions estimates, building efficiency standards, and so forth. (Op.Br. 14:1-4.) In other
9 words, the present challenge is based on a set of facts that was not in existence until the
10 County modified the Projects in response to the outcome of the prior lawsuits.

11 Second, SCOPE contends that the County failed to analyze significant water supply
12 impacts resulting from changed circumstances and new information that came to light
13 after the 2011 EIRs’ certification. (Op.Br. 14-24.) That claim is based on evidence of
14 drought and climate-change effects that arose after the petitions in the prior lawsuits were
15 filed in 2012, as well as after the 2011 certification of the EIRs. Because the present claim
16 is premised on the existence of “changed conditions and new facts” materially different
17 from those on which the prior lawsuits were based (*Planning & Conservation League*,
18 *supra*, 180 Cal.App.4th at p. 227), it necessarily cannot be barred by the prior lawsuits.

19 Third, SCOPE contends that the County was required to include new Water Supply
20 Assessments in the Recirculated Analysis. (Op.Br. 25-28.) That claim also arose after the
21 prior petitions were filed, because it is based on the County’s preparation of the
22 Recirculated Analysis, which triggered requirements set forth in SB 610, Water Code
23 §§ 10910 and 10911. Because that claim asserts a failure to comply with the Water Code
24 after the writ issued in the prior lawsuits, it is a different cause of action.

25 ***b. SCOPE’s claims are not barred by a principle of “finality.”***

26 Respondents also assert that SCOPE’s claims are barred by the principle of “finality.”
27 (Opp. 10:26-11:2, 19:18-20:14, 33:13-23.) Most of the authority Respondents cite with
28 respect to finality concerns res judicata, discussed above. (*Citizens for Open Government*
29 *v. City of Lodi* (2012) 205 Cal.App.4th 296, 324-27 [*Citizens for Open Government*];
30 *Ballona Wetlands Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 479-81.)

31 Finality also applies to a certified EIR. Once an EIR has been certified, no subsequent
32 or supplemental environmental impact report is required unless certain criteria are met.
33 (§ 21166(a); Guidelines § 15162(a).)² “These limitations are designed to balance CEQA’s
34

35 ² Undesignated section references are to the Public Resources Code. “Guidelines”
refer to the CEQA Guidelines, 14 Cal. Code Regs. §§ 15000-15387 plus appendices.

1 central purpose of promoting consideration of the environmental consequences of public
2 decisions with interests in finality and efficiency.” (*Friends of College of San Mateo*
3 *Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 949.)

4 But SCOPE is not challenging the 2011 EIRs here; instead, it challenges the County’s
5 certification of the 2017 Recirculated Analysis layered on top of the 2011 EIRs as a
6 complete EIR that complies with CEQA.

7 **B. The Recirculated Analysis’s greenhouse gas analysis violates CEQA.**

8 **1. The Recirculated Analysis adopted the existing low baselines as the**
9 **significance threshold for GHG impacts.**

10 The Opposition argues that the Recirculated GHG Analysis did not adopt the
11 existing GHG-emissions baseline as the significance threshold. (Opp. 22:12-24:2.) In
12 support of this argument, Respondents point to the two thresholds the EIRs incorporated
13 from CEQA Guidelines Appendix G. (Opp. 23:2-7; SR 1643; 30937.) But as the Opening
14 Brief shows (Op.Br. 7:14-19), the Recirculated Analysis’s consideration of the significance
15 of the Projects’ GHG emissions just analyzes the emissions against the baseline. The
16 discussion of whether the Projects’ emission are significant under Threshold 2.1-1 (SR
17 1643; 30937 [“Would the Project generate GHG emissions, either directly or indirectly,
18 that may have a significant impact on the environment?”]) states that emissions will not
19 be significant because they will be below the baseline, but offers no other numeric GHG
20 significance threshold or other analysis showing why the Projects’ GHG emissions will
21 not be significant. (SR 1645-48; 30939-41.)³ Even though the Recirculated Analysis does
22 not expressly adopt the current baseline emissions as the significance threshold, it uses
23 the baseline as the threshold in its analysis and thus effectively adopts it as a threshold.
24 SCOPE is not required to have exhausted administrative remedies on this issue because it
25 is not a “grounds for noncompliance with [CEQA].” (§ 21177(a).)

26 **2. The County has failed to require all feasible mitigation in violation of**
27 **CEQA, since the Projects will have significant GHG impacts.**

28 The County did not follow the procedure required by CEQA: determine whether the
29 Projects’ GHG effects will be significant and then, if they would be significant, adopt all
30 feasible mitigation to minimize the effects. The County’s findings simply state that
31 “potentially significant GHG impacts of the [] Project[s] are reduced to less-than-
32

33
34 ³ Citations to the record in the present action are designated “SR,” those to the
35 original Landmark record are designated “LV,” and those to the original Mission record
are designated “MV.” Citations to corresponding portions of the record for Landmark
and Mission are separated by a semicolon.

1 significant levels with the implementation of [Mitigation Measures 2-1 through 2-13].”
2 (SR 52; 119.) What the County has done is to analyze whether the Projects, *as mitigated*,
3 will have significant GHG effects, but this process violates CEQA by shortcutting the
4 analysis of whether the Projects, without mitigation, would have significant GHG effects.
5 (*Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 658.) The County’s failure
6 to follow procedures required by CEQA is a failure to proceed in the manner required by
7 law, and is therefore reviewed de novo.

8 There is plenty of evidence that the Projects’ GHG emissions will be significant
9 without mitigation, and the Opposition does not argue this is not so. The Recirculated
10 Analysis is noncommittal, admitting only that “the Unmitigated Project[s]’ numeric
11 increase of approximately 57,695 [for Landmark; 79,202 for Mission] MT CO₂e per year
12 in 2024 could have a potentially significant impact on global climate change.” (SR 1646;
13 30940.) The County violated CEQA by not making a finding of significance one way or
14 the other for the Projects’ unmitigated GHG impacts. (*Lotus, supra*, 223 Cal.App.4th at p.
15 658.)

16 If unmitigated impacts would be significant—and Respondents do not argue they
17 would not be here—then an EIR must list “[m]itigation measures proposed to minimize
18 significant effects on the environment....” (§ 21100(b)(3).) “An EIR shall describe feasible
19 measures which could minimize significant adverse impacts....” (Guidelines
20 § 15126.4(a)(1).) CEQA thus requires significant impacts to be mitigated to *minimize*
21 them, not to reduce them to zero, or to a level where they are insignificant.

22 Respondents argue mitigation measures must only, where feasible, reduce impacts to
23 less than significant. (Opp. 24:12-13.) But the authorities cited in support of this
24 proposition just state that a public agency must make findings, for each significant
25 impact, that changes have been made to the project that “mitigate or avoid the significant
26 effects on the environment.” (§ 21081(a)(1); Guidelines § 15091(a)(1).) These authorities
27 do not require a particular level of mitigation. The Opposition cites *San Franciscans for*
28 *Reasonable Growth v. City of San Francisco* (1989) 209 Cal.App.3d 1502, 1519-20, as
29 holding that “if adopted mitigation measures will substantially lessen a significant
30 environmental impact, the lead agency need not take further steps to mitigate that
31 impact.” (Opp. 24:15-18.) It says no such thing. The “substantially lessen” language in
32 that case is contained in a statement that the public agency must not adopt mitigation
33 measures that do not substantially lessen the related significant impacts. (*Id.* at p. 1519.)
34 The other case the Opposition cites is also off-point because it deals with whether the
35 agency is required to adopt all of the mitigation measures proposed by petitioners. (A

1 *Local & Regional Monitor v. City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1810-11.)

2 The CEQA statute and Guidelines, as quoted above, require that mitigation measures
3 minimize significant impacts. "Minimize" means "to reduce to the smallest possible
4 amount, extent, size, or degree." (Am. Heritage Dict. (2011) p. 1121.) The word's
5 meaning has no limitation that would prevent an effect being minimized to be reduced
6 below zero. The County has violated CEQA by failing to minimize GHG emissions.

7 **3. Mitigating only 30 years of operational GHG emissions leaves substantial**
8 **emissions unmitigated, violating CEQA.**

9 As discussed just above, CEQA requires that the County *minimize* GHG impacts by
10 requiring feasible mitigation. Limiting GHG mitigation to a 30-year window is
11 inconsistent with this requirement for minimization. The Opposition's arguments against
12 the 30-year mitigation limit are essentially the same as arguments in the topical responses
13 on this issue in the Recirculated Analysis (SR 1776-89; 31069-82).

14 As discussed in the Opening Brief, the two letters the California Air Resources Board
15 (CARB) sent to the California Department of Fish and Wildlife (CDFW) regarding the
16 GHG mitigation proposed for the RMDP/SCP Project (SR 29243, 28917; 38945, 39271)
17 do not address the 30-year analysis or mitigation window, so they do not support it.
18 (Op.Br. 9:3-19.) The other arguments in the Opposition and the Recirculated Analysis
19 support a 30-year analysis window for calculating the Projects' total GHG emissions, but
20 not a 30-year limitation on GHG mitigation. (Op.Br. 8:18-10:8.)

21 The Ramboll Environ 50-year study cited in the Opposition (Opp. 28:18-29:1) and
22 discussed in the Recirculated Analysis (SR 1787-88; 31080-81) is based on the optimistic
23 assumptions that, by 2050, California will achieve an 80 percent Renewable Portfolio
24 Standard, will reduce emissions from handling solid waste to zero, and will increase zero-
25 emissions-vehicle penetration. (SR 1787; 31080.) This raises the possibility—but does not
26 demonstrate with anything approaching certainty—that the Recirculated Analysis may
27 have conservatively overestimated the Projects' GHG emissions. That possibility does not,
28 however, allow Newhall to fail to mitigate the Projects' long-term GHG effects.

29 A common thread through Respondents' arguments supporting the 30-year
30 mitigation limit is that 30 years hence is as far out as we can make reliable predictions
31 concerning GHG emissions and the regulatory environment. (Opp. 26:24-27:2.) The
32 Opposition argues that, because emissions estimates that far out are uncertain (i.e.
33 "speculative"), there is no need to mitigate the emissions. (Opp. 28:15-17.) The
34 uncertainty does not, however, eliminate the County's requirement under CEQA to
35 minimize future GHG emissions. If accurate estimates for the Projects' future GHG

1 emissions are difficult to come by now, the Mitigation Monitoring and Reporting Plans
2 could be modified to require ongoing accounting of the Projects' overall GHG emissions
3 and corresponding mitigation, until the programs determine that the Projects will,
4 without any further mitigation, emit net-zero greenhouse gases.

5 **4. Mitigation Measures 2-1 and 2-2, which purport to reduce the GHG**
6 **emissions from the operation of residential and commercial buildings to**
7 **zero, do not ensure that goal will be accomplished.**

8 Mitigation Measures 2-1 and 2-2 constitute deferred mitigation. They require
9 Newhall, before building permits are issued for residential and commercial construction,
10 to prepare a "ZNE Report" that will show how the residential and commercial portions of
11 the Projects will comply with the California Energy Commission's definition of "zero net
12 energy" (ZNE). (SR 1659-62; 30952-55.) The ZNE Report is required to show that the
13 development will comply with Title 24, Part 6 building standards that are operative at the
14 time of the building-permit application. (*Ibid.*) But, in addition, the ZNE Report must
15 "identif[y] additional measures or building performance standards that shall be relied
16 upon to achieve the ZNE standard...assuming ZNE is not already achieved by meeting
17 the operative Title 24, Part 6 building standards." (*Ibid.*) The formulation of this second
18 part of Mitigation Measures 2-1 and 2-2 is deferred.

19 CEQA allows deferral of the formulation of a mitigation measure when it is not
20 feasible to formulate the measure in the EIR. In such a case, CEQA requires a
21 performance standard for the mitigation measure. (Guidelines § 15126.4(a)(1)(B).)
22 [F]or kinds of impacts for which mitigation is known to be feasible, but where
23 practical considerations prohibit devising such measures early in the planning
24 process...the agency can commit itself to eventually devising measures that will
25 satisfy specific performance criteria articulated at the time of project approval.
(*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-29.)

26 Loose or open-ended performance criteria are not allowed when deferring
27 mitigation. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208
28 Cal.App.4th 899, 945 [*Rialto Citizens*].)

29 The ZNE standard, which functions as a performance criterion for Mitigation
30 Measures 2-1 and 2-2, is loose and open-ended, as discussed in the Opening Brief.
31 (Op.Br. 11:15-12:24.) The role of Measures 2-1 and 2-2 is to reduce the GHG emissions
32 from residential and commercial buildings the amount required by the Recirculated
33 Analysis: 2,034 MTCO₂e/year for residential, and 3,458 MTCO₂e/year for commercial, for
34 Landmark (SR 1648), and 5,043 MTCO₂e/year for residential, and 5,112 MTCO₂e/year
35 for commercial, for Mission (SR 30941.) But it is far from certain that complying with the

1 ZNE standard will result in these reductions, because of uncertainties in the standard.

2 The mitigation measures cite the 2015 Integrated Energy Policy Report (IEPR) as the
3 source of the definition of the ZNE standard. (SR 1659; 30952.) The ZNE standard in the
4 IEPR is not an adequate standard for deferred mitigation because it depends so strongly
5 on uncertain future energy economics. It requires the value of the “energy produced by
6 on-site renewable energy resources [to be] equal to the value of the energy consumed
7 annually by the building.” (SR 51464.) The idea behind the standard is that energy is
8 more valuable at peak times, so developments should be rewarded for contributing
9 renewable energy at peak times, when its economic value is highest. But if the Projects,
10 for example, generated energy at times when its value was high, and consumed at times
11 when the value was low, they could achieve ZNE under the definition even if total GHG
12 emissions attributable to the Projects were lowered a great deal less than the amounts
13 claimed in the Recirculated Analysis. The Recirculated Analysis would have complied
14 much better with CEQA law on deferred mitigation if it had used a specific performance
15 standard denominated in MTCO₂e/year instead of an economics-based performance
16 standard. The Court should hold that Measures 2-1 and 2-2 are improperly deferred
17 mitigation, violating CEQA.

18 **5. Mitigation for construction-related GHG emissions is improperly vague**
19 **and deferred.**

20 This issue was framed slightly more narrowly in the Opening Brief, as whether the
21 California Cap-and-Trade Program exempts GHG sources from CEQA. (Op.Br. 12:25-
22 13:24.) It was framed that way because there are documents included in the Recirculated
23 Analysis that claim such an exemption: the Greenhouse Gas Emissions Technical Report
24 (SR 438; 29659-60), and the Recirculated Analysis chapter on Global Climate Change and
25 Greenhouse Gases (SR 1639-40; 30932-33).

26 The problem is that it’s not clear whether Mitigation Measure 2-10 relies on the cap-
27 and-trade exemption when determining which construction-related emissions must be
28 mitigated. The measure requires that, “[p]rior to issuing grading permits for village-level
29 development within the [] project site, Los Angeles County shall confirm that the project
30 applicant or its designee shall fully mitigate the construction and vegetation change GHG
31 emissions associated with each such grading permit.” (SR 1665; 30958.) This mitigation
32 measure is impermissibly vague and deferred because it does not set any performance
33 standard for how much GHG emissions must be offset. (*Rialto Citizens, supra*, 208
34 Cal.App.4th at p. 945 [loose or open-ended performance criteria are not allowed when
35 deferring mitigation].)

1 The Newhall Ranch GHG Reduction Plan requires only that the “project applicant
2 shall provide documentation for the Incremental Construction GHG Emissions, based on
3 the parameters set forth in the applicable Village-Level CEQA Documentation, which will
4 identify the GHG reduction needed to ensure the Incremental Construction GHG
5 Emissions will be reduced to net zero as identified in the AEA.” (SR 28929.) It then gives
6 an “example,” where the GHG emissions to be offset are 108.89 MTCO₂e per residential
7 unit and 506.86 MTCO₂e per thousand square feet of commercial space (SR 28930.) But
8 the Recirculated Analysis contains no standard for how the construction-related
9 emissions will be calculated under MM 2-10, leaving open the possibility that the
10 construction-related emissions covered by Cap and Trade will not be mitigated.
11 Mitigation Measure 2-10 is therefore an improper deferred mitigation measure because it
12 lacks an adequate performance standard.

13 This issue was exhausted: Mitigation Measure 2-10 “suffers from...deficiencies—
14 including vagueness, lack of a performance standard, inadequate demonstration of
15 additionality, and inadequate assurance functioning, valid mitigation programs exist.”
16 (SR 3696.) It was covered in the First Amended Petition, as part of the CEQA-claim
17 subsection headed “Failure to Mitigate Project’s GHG Effects,” ¶¶ 105-108.

18 **C. The Recirculated Analysis does not contain the energy analysis required**
19 **by Guidelines Appendix F.**

20 In adopting the Recirculated Analysis, the County certified on July 18, 2017, that “the
21 2017 [Landmark and Mission] Village Final Recirculated Portions of the Environmental
22 Impact Report (EIR), in combination with the 2011 [Landmark and Mission] Village
23 Final EIR, is adequate and complete under the California Environmental Quality Act.”
24 (SR 41762; 41765.) Such a certification of completeness and compliance with CEQA is
25 required by law. (Guidelines § 15090(a)(1).) But, because the Recirculated Analysis lacks
26 an energy analysis consistent with the revised Landmark and Mission Projects, the
27 Recirculated Analysis combined with the 2011 EIRs, as certified on July 8, 2017 (the 2017
28 EIRs), violates CEQA. Any energy analysis in the 2011 EIRs is inconsistent with the
29 version of the Projects approved in 2017.

30 Inconsistencies in an EIR undermine the analysis and can violate CEQA by
31 precluding informed decision-making. (See *San Joaquin Raptor/Wildlife Rescue Center v.*
32 *County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-35 [finding abuse of discretion by
33 County certifying EIR inconsistent with second EIR relating to same project].)

34 This Court’s order voiding the certification of the 2011 EIRs’ GHG analysis did not
35 prohibit the County from amending other portions of the EIRs. And it did not exempt

1 the County from complying with CEQA when it recertified the 2017 EIRs, as quoted in
2 the preceding paragraph. CEQA requires an EIR to be complete and consistent, so the
3 County was required, before certifying the Recirculated Analysis as an amendment
4 together with each Project's 2011 EIR, to ensure that the whole package formed a
5 complete, consistent EIR that complies with CEQA.

6 The County failed to include an energy analysis that is consistent with the new
7 Projects, which have considerably different energy usage than the projects analyzed in the
8 2011 EIRs, because of the new measures adopted to reduce GHG emissions, many of
9 which reduce GHG emissions by reducing energy usage.

10 This claim is not an attack on the 2011 EIR, which would be time-barred. It is not
11 subject to res judicata from the previous Landmark and Mission litigation because the
12 claim could not have been brought when those actions were filed. The claim arose when
13 the County certified the 2017 EIRs for the Projects on July 18, 2017.

14 Under CEQA, an EIR is "fatally defective" when it fails "to include a detailed
15 statement setting forth the mitigation measures proposed to reduce wasteful, inefficient,
16 and unnecessary consumption of energy." (*People v. County of Kern* (1976) 62 Cal.App.3d
17 761, 774.) Section 21000(b)(3), Guidelines § 15126.4(a)(1)(C), and Guidelines Appendix
18 F require a robust discussion of a project's energy use and energy-related impacts and
19 mitigation measures. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248
20 Cal.App.4th 256, 264-67 [EIR set aside for failure to calculate energy effect of vehicle trips
21 and for reliance on Title 24 compliance to mitigate building energy impacts, without
22 further discussion of Appendix F factors]; *California Clean Energy Committee v. City of*
23 *Woodland* (2014) 225 Cal.App.4th 173, 212 [EIR failed to comply with Appendix F
24 guidelines requiring discussion or analysis of the energy impacts of the project or
25 renewable energy options].)

26 The 2017 EIRs, as certified, do not contain such a discussion or analysis, and violate
27 CEQA. This is a failure to proceed in the manner required by law, evaluated
28 independently by this Court. A failure to comply with mandatory CEQA procedures is
29 presumptively prejudicial. (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215,
30 1236.) The EIR's failure to comply with CEQA's energy-analysis requirements is serious
31 enough that the Court should order the County to prepare an energy analysis for the
32 Projects and re-approve them.

33 **D. The Recirculated Analysis does not analyze significant water supply**
34 **impacts resulting from changed circumstances and new information.**

35 Since the Landmark and Mission EIRs were certified, circumstances have changed

1 dramatically with regard to climate conditions both throughout California and in the
2 Santa Clarita Valley specifically. Climate-change effects including higher temperatures
3 and unprecedented dry conditions have ushered in a new era. The extreme drought and
4 temperatures experienced after 2011, and their effect on groundwater levels in the Valley,
5 were not anticipated or accounted for in the 2011 EIRs.

6 Under § 21166, further environmental review may be required as a result of changes
7 to a project, changes in the circumstances under which the project is to be undertaken, or
8 new information unknown at the time of the prior EIR's certification. (§ 21166,
9 Guidelines § 15162 (a), see Op.Br. 15-17.) The Landmark and Mission Projects were
10 changed to comply with court decisions after the original EIRs were certified. (Opp.
11 12:25-13:4.) But there were other changes besides changes to the Projects: substantial
12 changes in the circumstances under which the Projects are undertaken, and new
13 information showing future conditions will be markedly different from past patterns of
14 drought, and will significantly affect water supply. For that reason, when the County
15 made changes to the Projects and undertook further discretionary approvals, it was
16 obligated to conduct further environmental review of water-supply impacts. The fact that
17 this claim is "outside the scope of the court directives" (Opp. 34:25-27) is irrelevant
18 because circumstances triggering additional review under § 21166 have occurred.

19 **1. There is strong evidence of changed circumstances and new information**
20 **regarding drought and climate change, which required the County to**
21 **conduct further analysis of water supply impacts.**

22 SCOPE's Opening Brief set forth evidence showing that since the 2011 EIRs'
23 certification, climate change has become a much greater driver of conditions in California
24 and the Santa Clarita Valley. This evidence reveals both that circumstances have changed
25 substantially, leading to new or more severe significant impacts on water supply, and that
26 there is now substantially important new information that was not and could not have
27 been known in 2011 about water supply impacts, which the prior EIRs failed to analyze.
28 CEQA therefore requires further analysis of the Project's water-supply impacts. (§ 21166,
29 Guidelines § 15162(a)(2), (3); see Op.Br. 17:31-21:28.)

30 Since 2011, California has experienced a prolonged "drought of extreme
31 proportions." (SR 7022.) This drought is unlike any other droughts in the historical
32 record. The precipitation between 2011 and 2014 was a record-breaking low. (*Ibid.*) In
33 the Sierra Nevada, 2015 was the driest year since records had been kept. (SR 7048.)
34 Following multiple drought years, the extreme dryness of 2015 resulted in Sierra
35 snowpack so low that it would not be expected to occur more than once in 600 years.

1 (Ibid.) This deficit was almost double any other in the historical record. (SR 7049.)

2 During the same period, California has suffered the hottest years ever. (SR 7022,
3 7051.) This trend will accelerate in the future: average temperatures will increase up to 5
4 degrees by 2050 statewide, and up to about 7 degrees by the end of the century in the
5 Upper Santa Clara River region specifically, unlike anything in the past. (SR 51293-94.)

6 Higher temperatures exacerbate drought and increase water demand. (SR 7056,
7 51299.) And drier conditions resulting from climate change can affect water supply in
8 many ways. Significantly, more intense drought can interfere with recharge of the
9 region's groundwater basins, and decrease imports from other regions. (SR 50087.)

10 Multiple impacts on sources of water, coupled with impacts on demand, create the
11 potential for significant effects on water supply in the Santa Clarita Valley. Some evidence
12 already exists of impacts to groundwater supply: Monitoring wells at the Whittaker
13 Bermite facility in Santa Clarita have experienced water-level declines of over 70 feet (SR
14 43426), and a 2014 study by GSI Water Solutions, Inc., showed that in 2014 the Valley's
15 retail water purveyors experienced a shortfall in water pumped compared with target
16 amounts, with even greater shortfalls expected for the next year. (SR 3973-74; 33273-74.)

17 Because of the potential for water supply to be compromised, the foregoing evidence
18 about the unprecedented levels of drought and high temperatures from the period after
19 2011 shows that the climate conditions under which the Projects are being undertaken
20 have changed substantially, in such a way that groundwater supplies for Valley water uses
21 will be more precarious than in the past. Because of those changed circumstances, the use
22 of groundwater for the Landmark and Mission Projects will deplete groundwater supplies
23 by using water that would be available for other uses, potentially causing significant
24 effects on water supply that the prior 2011 EIRs did not address. This information is thus
25 both evidence of changed circumstances and new information meeting the § 21166
26 standard and requiring supplemental analysis of water supply.

27 **2. Neither the record nor the Opposition presents substantial evidence or**
28 **adequate justification for the County's decision not to undertake further**
29 **water supply analysis.**

30 The Landmark and Mission Projects will obtain potable water primarily from the
31 Alluvial aquifer, one of two aquifers underlying the Santa Clarita Valley, via Valencia
32 Water Company (VWC). (LV 10813, 10938; MV 6043, 6171.) The 2011 EIRs found that
33 adequate water supply is available for the Projects while maintaining the groundwater
34 basin in a sustainable condition, based on a "groundwater operating plan" developed by
35 Castaic Lake Water Agency (CLWA) and retail purveyors including VWC over several

1 years before the 2011 EIRs were produced, and updated in 2008. (LV 16205-06; LV
2 10842-44; MV 6070-73.) The Opening Brief set forth how new information concerning
3 climate-change effects shows less groundwater will be available than projected in the 2011
4 EIRs and in the groundwater operating plan on which their analysis was based. (Op. Br.
5 22:22-23:27.)

6 Respondents characterize the climate-change-driven drought and temperature
7 conditions since 2011 as “neither new nor unexpected.” (Opp. 35: 2-5, 8-9.) But they are
8 wrong that these conditions are the same as in the past. The Opposition itself highlights
9 that, by stating that water planning documents “explain that periods of drought in the
10 Santa Clarita Valley tend to be followed by periods of average to above-average rainfall
11 which recharges the groundwater aquifers.” (Opp. 39:3-7.) Although in the *past*, dry and
12 wet cycles fell in a certain pattern that allowed for aquifer recharge (MV 6159-60), the
13 new information presented by SCOPE shows those cycles are changing, with longer dry
14 periods, which are so much more extreme that it will take longer to recover than in the
15 past. (SR 7049.) That is, the balance between dry and wet periods has changed so that
16 recharge will not occur as reliably as in the past.

17 Respondents are also wrong to claim that the prior analysis took into account the
18 new information and changed circumstances presented by SCOPE. They point to Urban
19 Water Management Plans (UWMPs) from 2005 and 2010, on which the 2011 EIRs’
20 water-supply analyses were based, to say water planners anticipated the “very drought
21 conditions” SCOPE identifies as new information. (Opp. 35:17-20.) The UWMPs show
22 *some* drought conditions were planned for, but don’t show planners took into account the
23 *same* drought conditions SCOPE has pointed to, which are new and unprecedented. The
24 Opposition cites to pages of the UWMPs showing that the plans provided information
25 about water supplies and demands during normal years, single-dry years (based on 1977),
26 and multiple-dry years (based on 1931-34), and to a topical response in the 2011 EIRs
27 that summarized the 2010 UWMP—which again noted that planning is done in normal
28 year, single-dry year, and multiple-dry year scenarios. (LV 16254, 16257, 8441, 8456; see
29 LV 2256-57, 2264; MV 2673-74, 2681.) But the UWMPs and topical response do not
30 show those scenarios adequately forecast the extreme, prolonged drought conditions
31 experienced since 2011.

32 Respondents also claim the 2010 UWMP evaluated the exact climate-change issues
33 SCOPE cites as new information and changed circumstances, and claim the water
34 purveyors were aware of the water-supply challenges posed by climate change. (Opp.
35 35:21-28.) They claim the 2010 UWMP and 2011 EIRs forecast that drought conditions

1 may worsen as a result of climate change. (Opp. 37:3-9.) Respondents miss the point.
2 Although the 2010 UWMP identified potential climate-change effects including higher
3 temperatures, reduced snowpack, and greater variance in precipitation, and noted them
4 as of concern for water planners (LV 8393-94, 8419), it did not actually include climate-
5 change effects in its analysis of water supply. Tellingly, the 2010 UWMP acknowledged
6 that as a result of climate change, "changing hydrological conditions could affect future
7 planning efforts, which are typically based on historic conditions." (LV 8394.) In other
8 words, the UWMP recognized that water planning is based on historical patterns, but that
9 using historical patterns will not work if conditions change as a result of climate change.
10 That is what has happened. The fact that past water-supply planning documents
11 recognized that *might* happen does not mean the information that is *has* happened is not
12 new or that circumstances haven't changed. The Projects are being undertaken in
13 different, drier and hotter conditions than those analyzed in the 2011.

14 Respondents also point to topical responses in the Landmark and Mission records
15 (Opp. 35-28-36:14), but like the UWMPs, those responses only acknowledge the fact of
16 climate change, without addressing known, existing climate-change effects in an adequate
17 water-supply analysis. In fact, the "Global Climate Change and its Effects on California
18 Water Supplies" topical response in the 2011 Landmark EIR makes SCOPE's point: It
19 explained that the model for groundwater supplies was "designed to have a long-term
20 volume of rainfall equal to the historic long-term average rainfall" (LV 2390-91), but
21 recognized that "California's future hydrologic conditions will likely be different from
22 patterns observed over the past century." (LV 2380.) It explained that CLWA and the
23 purveyors were "relying upon the best available information." (LV 2391.) The County
24 therefore determined that climate-change effects on water supplies were "too speculative
25 at this time for any further evaluation" (LV 2380), and found it "appropriate to terminate
26 any further analysis of potential future global climatic changes and their effects on
27 California's water supplies." (LV 2394.) It did not include climate change in its analysis.

28 While that may have been appropriate in 2011, given the new facts about the
29 extremity of drought, reduced rainfall, and increased temperatures since then, there is no
30 justification for refusing to conduct further water-supply analysis. (See also Op.Br. 23:14-
31 27.) The new information shows the assumptions lying at the foundation of the prior
32 water-supply analysis, based largely on historical trends, are no longer reliable for water
33 planning. (See, e.g., "Groundwater Supplies and Overdraft Claims" topical response, LV
34 2459-85 [analysis based on groundwater operating plan and groundwater flow model].)

35 Respondents also dispute the significance of evidence cited in the Opening Brief that

1 the multi-year drought since the 2011 EIRs' certification has already resulted in a decline
2 in water levels in Santa Clarita Valley wells. (Op.Br. 18:24-31; SR 43426 [wells at former
3 Whittaker Bermite facility], SR 3972-76; 33272-76 [2014 study by GSI Water Solutions].)

4 First, Respondents claim the water-level decline of more than 70 feet in wells near the
5 Whittaker Bermite facility is due to clean-up of perchlorate through a "pump and treat"
6 program in which the wells are pumped continuously. (Opp. 37:22-38:5.) The claim is not
7 true. The only wells involved in the "pump and treat" program are the supply wells
8 Saugus 1 and Saugus 2. (LV 2310-12; LV 8482; SR 50199-201.) The graph cited in the
9 Opening Brief (SR 43426) does not include those wells, but instead presents water levels
10 for monitoring wells in a report produced as part of a monitoring program for
11 contaminants including perchlorate. (SR 43327-28, 50210.)⁴ The decline in water levels in
12 those wells simply cannot be attributed to the "pump and treat" program.

13 Second, Respondents challenge the significance of the 2014 GSI Water Solutions
14 study. (Opp. 38:6-39:7.) The GSI study contains significant information that was not
15 available when the 2011 EIRs were certified. It examined all 33 wells owned by three
16 water purveyors in the Santa Clarita Valley, including VWC. (SR 3972; 33272.) The target
17 production for those wells under the groundwater operating plan was 27,500 afy,⁵ but the
18 total actual water pumped in 2014 was about 10 percent less. (SR 3973; 33273.) The study
19 concluded that in 2015, the amount that could be pumped would be even lower, between
20 17,100 and 21,800 afy. (SR 3974, 33274.) This means a shortfall of between 5,600 and
21 10,300 afy total (between 20 and 37 percent). (SR 3976; 33276.) In other words, the
22 amount of water that can be pumped in dry years per the groundwater operating plan is
23 overstated by an amount that could serve between 11,200 and 20,600 households. That is
24 significant new information showing substantially changed circumstances that have
25 arisen since the 2011 EIRs were certified. It fatally undermines the County's conclusion
26 that sufficient water supplies are available to serve Landmark and Mission as well as other
27 uses in the Santa Clarita Valley. (LV 10928, 4681; MV 6159, 6062.)

28 Respondents contend that the 2014 GSI study shows merely anticipated pumping
29 difficulties, because the wells experiencing difficulties were those in the eastern portion of
30 the Alluvial aquifer, where groundwater levels vary from year to year. (Opp. 38:6-24.) The
31

32 ⁴ A table in the report identifies the wells listed in the graph's legend as monitoring
33 wells. (SR 43347-49, 43353.)

34 ⁵ Afy = acre-feet per year. One acre-foot serves two typical California households per
35 year. (Castaic Lake Water Agency, Acre-foot, <https://clwa.org/glossary/acre-foot> [last
visited July 13, 2018].)

1 contention does not stand up to scrutiny. GSI's conclusions about shortfalls were not
2 limited to wells in the eastern area, but spoke to overall shortfalls in pumping by all three
3 purveyors. (SR 3976; 33276.) Municipal wells lie throughout the aquifer. (LV 10856; MV
4 6084.)

5 In discussing groundwater level declines since winter 2010, the GSI report noted that
6 declines in groundwater levels occurred during past drought periods. (SR 3974; 33274.)
7 But the GSI report did not quantitatively compare the amount of the decline in the
8 drought that started in 2010 and continued after the GSI report was drafted with those
9 previous droughts. (*Ibid.*) So Respondents' assertion that the water-level declines
10 observed in 2014 are "consistent with" (Opp. 38:26-28) previous declines is incorrect.

11 Finally, Respondents' attempts to analogize the present facts to other cases are
12 unavailing. In *Citizens for Responsible Equitable Environmental Development v. City of*
13 *San Diego* (2011) 196 Cal.App.4th 515 (Opp. 36:27-37:2), the petitioner had failed to
14 fairly present evidence to the agency. (*Id.* at pp. 521, 530.) Here, SCOPE has presented
15 specific evidence of changed circumstances. (Op.Br. 17:31-21:28.) In *Citizens for Open*
16 *Government, supra*, 205 Cal.App.4th 296 (Opp. 13-22), the petitioners challenged a
17 revised EIR's water supply analysis, asserting that the city had exceeded the safe yield of
18 the aquifer for approximately 10 years. (*Id.* at pp. 325-26.) The court concluded that was
19 not new evidence because the city had known its water supply was inadequate for years.
20 (*Id.* at p. 326.) Here, SCOPE has presented new information that new climate change and
21 drought conditions exist, different from past conditions and unaccounted for.

22 SCOPE's evidence shows groundwater supplies are at risk because of an
23 extraordinary and unforeseen acceleration of climate change and drought conditions. The
24 evidence requires supplemental water supply analysis under § 21166.

25 **E. The County violated Water Code § 10910 by failing to include a new Water**
26 **Supply Assessment in the Recirculated Analysis.**

27 In response to SCOPE's argument that SB 610 requires the County to request a new
28 Water Supply Assessment (WSA) for each Project in connection with the Recirculated
29 Analysis, Respondents argue that this requirement applied only when the 2011 EIRs were
30 being prepared and don't apply to the Recirculated Analysis. (Opp. 39:23-42:18.)

31 Water Code § 10910(b) requires the County, "at the time that it determines whether
32 an environmental impact report, a negative declaration, or a mitigated negative
33 declaration is required" for the Projects, to request a WSA from the relevant "water
34 system," which in this case is VWC. Water Code § 10910(c) restates that the County, "at
35 the time it makes the determination required under [CEQA §] 21080.1," shall request a

1 WSA from the relevant public water system. The County, in response to the writ in each
2 case, prepared a Recirculated Analysis, not a full new EIR or a negative declaration. That
3 decision triggered the requirement for a new WSA under Water Code § 10910(b) and (c).

4 The Opposition argues that the *Vineyard* case held these provisions apply only “at
5 the outset of the CEQA process.” (Opp. 41:6-12; *Vineyard Area Citizens for Responsible*
6 *Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 433.) But “at the outset” is
7 just the Court’s interpretation of the portions of Water Code § 10910 quoted above, and
8 does not mean that, when a project is to be re-approved, a WSA need be obtained only
9 before the very first CEQA document is prepared. Here, in response to the writ, the
10 County is conducting a new CEQA process, at the outset of which it was required to
11 request new WSAs from VWC.

12 Respondents wrongly argue that the only exception to the rule in Water Code
13 § 10910(h)—that no additional WSA need be prepared for a project for which a WSA has
14 already been prepared—is when there have been changes in the project. (Opp. 41:15-17.)
15 The exception in Water Code § 10910(h)(3) for new information applies, and is much
16 broader than the corresponding exception in Guidelines § 15162. The Water Code
17 exception for significant new information requires only significant new information “that
18 was not known and could not have been known at the time when the assessment was
19 prepared” (Water Code § 10910(h)(3)), while CEQA requires that the new information
20 show significant effects not discussed in the previous EIR or that significant effects
21 examined in the prior EIR will be substantially more severe than shown in the prior EIR.
22 (Guidelines § 15162(a)(3).) As argued above, significant new information about the effect
23 of climate change and drought on water supplies in the Santa Clarita Valley has come to
24 light after the 2011 EIRs were certified, requiring a new WSA under Water Code § 10910.

25 This issue was exhausted by a comment submitted by SCOPE. (SR 42380; 46182.)
26

27 **III. Conclusion**

28 The County, in re-approving the Projects, has violated CEQA by adopting
29 improperly deferred and unreliable mitigation measures for the Project’s GHG impacts,
30 by failing to include the required energy analysis in the re-approved EIR, and by ignoring
31 new, important evidence that groundwater supplies near the Projects have been and will
32 continue to be severely impacted by climate change. The County has also violated the
33 Water Code by failing to request a new Water Supply Analysis. The Court should order
34 the Recirculated Analysis set aside, and should order the County to comply with CEQA
35 and the Water Code before re-approving the Project.

1
2 Dated: July 16, 2018
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4

Respectfully Submitted,
ADVOCATES FOR THE ENVIRONMENT
Counsel for Petitioners

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6 By 
7 Dean Wallräff
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