SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

COUNTY OF MONO et al, Petitioners, v. CITY OF LOS ANGELES, et al. Respondents.	Case No. RG18-923377 ORDER GRANTING PETITION FOR WRIT OF MANDATE. DATE 2/11/21 TIME 1:30 PM DEPT 15

The petition of the County of Mono et al. (collectively "Mono") for a writ of mandate directing the Los Angeles Department of Water and Power ("LADWP") to comply with CEQA came on for hearing on 2/11/21, in Department 15 of this Court, the Honorable Evelio Grillo presiding. After consideration of the briefing and the argument, IT IS ORDERED: The petition of Mono for a writ of mandate directing the LADWP to comply with CEQA is GRANTED.

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SUMMARY OF ORDER

The LADWP owns 6,400 acres in Mono County. In 2010, the LADWP entered into leases that recognized the LADWP's obligations under a 1997 MOU with various entities regarding "the goal of sustainable agriculture" and had sections on "Water Supply" and "Irrigation Water." (AR 168432-0055 - 168432-0057.) The historical availability of water was an average of 1.9 AF/Acre on a 5-year average (2013-2018), 2.9 AF/Acre on a 10-year average (2008-2018), and 3.9 AF/Acre on a 26-year average (1992-2018).

In 2018 the LADPW proposed a change in the use of water on the 6,400 acres. The LADWP proposed new leases that stated: "At no time shall water taken from the well(s) be used for irrigation or stockwater purposes" (Section 9.1.2) and "Lessor shall not furnish irrigation water to Lessee or the leased premises, and Lessee shall not use water supplied to the leased premises as irrigation water (Section 10.1). The LADWP then announced that the 2018-1019 allocation would be 0.7 AF/Acre. The question in this case is whether the LADWP's proposed and then implemented change in water use through the proposed new leases and the 2018-1019 allocation was a CEQA "project."

The LADPW's proposed change in water use was a CEQA "project." (PRC 21065; 14 CCR 15378.) It is "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The court makes this finding based on its independent review of the evidence. (*Union of Medical Marijuana Patients, Inc. v. City of San* Diego (2019) 7 Cal.5th 1171, 1196-1199.)

The LADPW argues that the proposed change in water use is an extension of its prior practice. Changes in a project that has had prior environmental review do not require additional

environmental review unless there are "substantial changes." (PRC 21166; 14 CCR 15162.) That analysis does not apply in this case because there was no prior environmental review.

Mono was not required to exhaust any CEQA administrative process. The LADPW did not have any public CEQA administrative process.

Mono's claim is not barred by the statute of limitation. The LADPW initiated the project without a formal CEQA decision, so the 180-day statute of limitation applies. (PRC 21167(d).) The "commencement of the project" was the LADWP's 5/1/18 notice of the 2018-2019 allocation, which was action implementing the LADPW's 3/1/18 letters announcing the proposed change in the use of water. On 8/15/18, Mono filed the complaint. Mono filed the case within 180 days of the 5/1/18 letters.

The court ORDERS that the LADPW must follow the CEQA administrative process because the LADPW's change in the use of water on the 6,400 acres is a CEQA "project."

The court ORDERS that until the LADPW completes its environmental review the LADPW must continue providing water to the 6,400 acres consistent with annual fluctuations and variation in runoff around the 5-year historical baseline for 2016-2021 of 3.2 AF/Acre.

SUMMARY OF FACTS

The LAWPD owns 6,400 acres in Mono County and owns the water rights. The land at issue is ranch land and is the habitat of the Bi-State Sage Grouse. The LADWP historically provided water to the acres for habitat management and wildlife (including the Bi-State Sage Grouse), for the maintenance and restoration of native vegetation, and for agricultural irrigation. (AR 47, 116-117)

Over the past 26 years, LADPW has provided the acres with approximately 3.9 AF/Acre of water per year. (AR 86772-86773 [data 1992-2018].) There has been annual variation based on precipitation, runoff, and other factors. (AR 41, 165021-165022, 169018-19.) (LADWP brief, Exh A.) Drought conditions have required variation. (AR 169901-169913 [1960 dry findings]; 169668 [1965 letter]; 168946-168954 [1976 letters re 50% reduction].) Over the five years from 2013-2018, LADPW has provided the acres with approximately 1.9 AF/Acre of water, with similar annual variations. (LADWP brief, Exh A.)

In 2010 the LADPW leased the land to various ranchers. (AR 168432.0009, AR168432.1403.) The 2010 leases had sections on "Water Supply" and "Irrigation Water." (AR 168432-0019 - 168432-0021.) Regarding "Irrigation Water", the leases stated at para 8.1.1: "[W]ater supplies to all land classified for irrigation (alfalfa and pasture) will be delivered in an amount not to exceed five (5) acre-feet per acre per irrigation season, subject to conditions stated in this lease in Article I, Section 7 *(Water Supply).*" (AR 168432-00012.) Article I, Section 7, states: "It is 'understood and agreed to by Lessee that this lease is given upon and subject to the paramount rights of Lessor with respect to all water and water rights … The amount and availability of water, if any, shall at all times be determined solely by the Lessor." (AR 168432-0019 - 168432-0021.) The 2010 leases had no category for "Water Spreading."

A 1/19/10 staff report captioned "LADWP Board Approval Letter" states "Ranch leases are categorically exempt under Article III, Class 1, Paragraph (14) of the City of Los Angeles Guidelines for the Implementation of the California Environmental Quality Act of 1970." (AR 168432-8.) On 2/2/10 the LADWP Approval Board Letter was adopted by the LADWP Board. (AR 168432-0001.) The 2010 leases have sections related to water rights. The most directly pertinent state:

Article I, section 7.1: "The amount and availability of water, if any, shall at all times be determined solely by the Lessor."

Article I, section 8.1.1: "[W]ater supplies to all land classified for irrigation (alfalfa and pasture) will be delivered in an amount not to exceed five (5) acre-feet per acre per irrigation season ... The water supply for a specific lease is highly dependent upon water availability and weather conditions."

In the 5 years from 2013-2018, the LAWPD provided approximately 1.9 AF/Acre to the 6,400 acres. This was below the 10-year average of 2.9 AF/Acre. This was below the 26-year average of 3.9 AF/Acre. The LADWP's provision of water varied annually based on rainfall, snowpack, and other factors (AR 62, 168432-598.)

On 12/10/13, the LADWP approved a Resolution adopting a Conservation Strategy to protect the sage grouse. (AR 167024.) The parties on occasion refer to this as the MOU. The LADWP adopted the Conservation Strategy to avoid having the US Fish and Wildlife Service declare the LAWPD lands a critical habitat, which would give the US Service the ability to determine land management practices. (AR 166994; AR 166996-167023.) The Conservation Strategy set requirement for LADWP water policy for the pastures in Long Valley. (AR 167006.) The Conservation Strategy document states:

"LADWP lands within the Conservation Strategy Area include LADWP lands used for livestock grazing and irrigated agriculture." (AR 166997.)

Nesting and brood-rearing habitat. ... Because of the necessity of insects to sage-grouse chicks, brood-rearing habitats generally have a wide variety of plant species that support a variety of insects Important during this life stage. (AR 166999)

"LADWP lessees receive a water allotment of up to 5 acre-feet of water per acre to irrigate pastures in Long Valley, which is currently done by flood irrigation. Decisions regarding which fields will be irrigated within a season and the specific timing of that Irrigation are up to the discretion. of the lessee. The irrigation season is May 1 through October 1 in most years. with some adjustments for weather. Minimum flows must be maintained in the creeks to maintain aquatic life, and no irrigation is allowed when creek flows are at or below these minimum flows. As part of LADWP's standard operating procedures, irrigation is also shut off temporarily during spring runoff. Thus in dry years with low flow, irrigation of pastures may be restricted due to the need to keep water in the creeks and because decreased head reduces the ability to irrigate. (AR 167006)

Irrigated Agriculture. LADWP does not expect surface water management practices to change from current practices as described above. Thus, livestock operators will be allotted 5 acre-feet of water per acre per year to irrigate land previously designated as irrigated pasture. In some years, irrigation of some pastures will not be possible due to minimum flow requirements in creeks or due to a lack of head to effectively irrigate. (AR 167012 [emphasis added].)

Irrigated pastures comprise the only agriculture on LADWP land in the Conservation Strategy Area. The condition of these pastures is monitored and

rated using the NRCS *Guide to Pasture Condition* Scoring system (NRCS 2001) to monitor and rate their condition. Forage assessments are performed at the start of the season before livestock are put on pastures, at the peak forage supply periods, at low forage supply periods, as plant stress-appears and near the end of the season to help determine when to remove the livestock. Lessees are required to maintain irrigated pastures in good to excellent condition. If a Pasture rates below 80 percent, changes to pasture management will be implemented. Indicators of pasture health which rate low will be evaluated in terms of developing management strategies that will improve the health of the Pasture. Strategies to improve pasture health will be developed and implemented in a combined effort between the-lessee and LADWP. Once the management change has been implemented, the pasture will be evaluated on an annual basis until conditions improve to a point where the pasture rates 80 percent. or higher. Pastures that rate 80 percent or higher will be rated every third year. Pastures in good condition to excellent will continue to provide a diverse variety of forbs[1] and insects during brood-rearing for Greater Sage Grouse. (AR 167012-167013)

(See also AR 166996-167023.)

On 3/1/18, the LADWP sent the ranchers proposed new five-year leases. (AR 95002-95052.) The cover letter stated: "All Mono county ranch lessees will be invited to attend a meeting that will be held within the first half of March. A meeting announcement with the date

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[1] A "forb" is "an herb other than grass." (www.merriam-webster.com/dictionary/forb)

and time will be forthcoming. ... Lessees will have the opportunity to comment and ask questions regarding the proposed changes to the lease." (AR 95004.)

The proposed new leases stated: "At no time shall water taken from the well(s) be used for irrigation or stockwater purposes" (Section 9.1.2) and "Irrigation Water. Lessor shall not furnish irrigation water to Lessee or the leased premises, and Lessee shall not use water supplied to the leased premises as irrigation water (Section 10.1). The proposed new leases also created a new category of water use called "Water spreading." The proposed leases state: "Water spreading is defined as Lessor's occasional need to disperse excess water onto the leased premises at any time, to satisfy Lessor's operational needs. From time to time, based solely on Lessor's operational needs, Lessor may spread water or instruct Lessee to spread water onto the leased premises. (Section 10.2)

On 4/12/18, the LADPW sent a letter stating: "The Los Angeles Department of Water and Power (LADWP) is performing an Environmental evaluation of the proposed Mono County ranch leases. Until this evaluation is completed and the new leases are in effect, the current leases are in holdover. Based on LADWP's operational needs water will be spread on the leased property. Currently LADWP Operations staff is evaluating the results of the latest snow surveys and anticipated runoff throughout the Eastern Sierra, and will determine what amount of water will be available for spreading on your lease. (AR 135.)

On 4/19/18, Mono sent a letter to the LADWP. (AR 91608-90173.) The letter stated in part: "Mono County also seeks your assistance in making sure that LADWP understands that its proposal to permanently eliminate irrigation and stock water from its agricultural leases in Mono County threatens the environment." The letter later states:" Moreover, the complete dewatering of these ranch properties will have significant environmental and wildlife impacts that jeopardize

LADWP's continued water and power operations in Mono and Inyo Counties. LADWP's proposal will dry up ranches and increase the risk of wildfire on those properties and potential liability to adjacent property owners if such fires were to spread. Similarly, eliminating irrigation and stock water will significantly reduce, if not entirely eliminate, wetlands and other watercourses on the ranch properties. Impacts to wetlands and watercourses require analysis under CEQA and possibly permitting under Clean Water Act Section 404 and California Fish and Game Code Section 1602. Drying up wetlands will also limit the properties' ability to support the endangered and threatened species and species of special concern identified in LADWP' s habitat conservation plan (HCP) prepared in support of a wildlife permit application for its ongoing water and power operations in Mono and Inyo Counties."

On 5/1/18, the mayor of Los Angeles sent a letter to Mono. (AR 124-125.) Regarding long term planning, the letter states: "As you know, water supply in the southwest has become increasingly unpredictable. ... Changing environmental circumstances, including the most recent five-year drought, requires us to reevaluate our current water uses, including the water historically provided to eastern Sierra ranches. Over the next six months, LADWP will analyze the potential environmental impacts of reducing water on leased ranch land in Mono County and will discuss the findings with you and the ranchers before any new lease language is proposed." Regarding 2018, the letter states: "In the interim, I have directed staff to inform you this week of the amount of water available for operational spreading to the lessees this year based on snowpack and anticipated runoff. Staff has indicated that the amount of water provided will likely be similar to 2016, which was also based on snowpack conditions."

On 5/3/18, Mono sent a letter to the mayor of Los Angeles. (AR 121-122.) Mono's 5/3/18 letter addressed the short term issue of water in 2018, stating "[R]anchers expect to

receive up to five (5) acre-feet (AF) of water per acre, which equates to a total of 30,000 AF, proportionally offset as needed in drier years. ... This year LADWP has estimated anticipated runoff to be 78 percent of normal. Accordingly, we ask that you work with LADWP to ensure that ranchers receive 3.9 AF per acre or 23,900 AF in total."

Mono's 5/3/18 letter then addressed the long-term issue, stating: "LADWP's plan to eliminate irrigation and stock water from Mono County ranch leases appears to be part of a larger plan by the City to completely discontinue water deliveries to the Eastern Sierra. Your May 1 letter explains that the City is reevaluating its current water uses, "including the water historically provided to eastern Sierra ranches." Under the circumstances, we take this to mean that the City plans to increase exports of Eastern Sierra water by reducing or completely discontinuing deliveries to Mono County ranches and habitat. We appreciate that supplies are becoming increasingly unpredictable, that the cost of water is escalating, and that there is a need to diversify the City's water portfolio." (AR 122.)

On 5/17/18, the California Natural Resources Agency sent a letter to LADPW regarding what it described as "the proposal to dewater Mono County ranchlands and the potential impacts to wetlands, species, and their habitat." The letter referenced "potentially devastating impacts to the natural environment, habitat and wildlife if the Los Angeles Department of Water and Power (LADWP) pursues its proposal to upend 70 years of water management policy and practice by eliminating irrigation and stock water from its ranch leases." (AR 116-117)

From 7/6/18-7/9/18, the LADPW sent a series of letters to persons who expressed concern. (AR 82-101) The 7/6/18 letters state:

> It is important to note, LADWP is not de-watering Mono County. LADWP will continue to provide water to protect the environment in Inyo and Mono counties.

The free water LADWP has provided to commercial ranchers is separate and unrelated to the water LADWP provides to serve the region's environment - in fact, diverting less water for commercial ranching may have additional environmental benefits for Mono County. ...

The Mono County ranchers are asking LADWP to divert more water away from streams and riparian habitats to send to meadows for grazing - this request is inconsistent with the California Department of Fish and Wildlife's approach to environmental protection and preservation. As you know, diverting less water for artificial irrigation to benefit the commercial ranchers could help restore natural flow patterns in the creeks and streams located within Long Valley, which could substantially benefit the fisheries and riparian habitat found along the waterways.

Prior to approving new leases that exclude the provision of free irrigation water for commercial ranchers, LADWP will carefully evaluate any potential environmental impacts and will complete a full Environmental Impact Report that will solicit stakeholder input, like yours. LADWP will fully evaluate any impacts to the Sage Grouse habitat and ensure that those impacts are fully mitigated.

LADWP is currently diverting water to protect the Sage Grouse habitat, while simultaneously working with local environmental organizations to establish a working group. Our department is already underway in collaboration with Audubon California, Eastern Sierra Audubon, Eastern Sierra Land Trust, U.S.

Fish and Wildlife, U.S. Bureau of Land Management, and California Fish and Wildlife to ensure enough water is provided for Sage Grouse habitat. We expect that effort to kick off this month.

AR 82-83.)

Regarding water for 2018, the 7/6/18 letters state: "At the height of the drought, LADWP necessarily began to carefully assess the highest and best use for our supplies. Subsequently, in 2015 and 2016 LADWP offered 0 acre-feet and 4,400 acre-feet of irrigation water, respectively. LADWP notified the ranchers on May 1, 2018, shortly after this year's final runoff was calculated, that they would receive 4,200 acre-feet for this irrigation year, approximately the same number of acre-feet per acre of water provided in 2016 from similar runoff conditions. Lessees are provided this information at this time every year." (AR 83.) This is equivalent to 0.7 AF/Acre for 2018-2019.

On 6/29/18, the LADWP had conversations suggesting that for 2018 it would provide 500 AF to the entire 6,400 acres targeted at areas where the Bi-State Sage Grouse resided. (AR 84194, 84197, 86464.)

On 7/30/18, LADPW (James Yannotta) sent an email that states: "I want this process of working with the agencies to be 100% science/biology based. … LADWP will provide water to support reasonable sage grouse habitat. And with the engagement of the agencies we hope that we can come up with a collective view on this." (AR 072418.)

On 8/13/18, a LADWP staff member (David Martin) stated to another LADPW staff member (James Yannotta) that for 2018 that the water use for the sage grouse would be "around 876 AF." (AR 71740.)

The LADPW did not initiate or complete any public administrative process or CEQA review before sending the proposed new five-year leases to the ranchers. That said, the LADWP's cover letter on 3/1/18 stated that the ranchers would be invited to a meeting "within the first half of March" where the ranchers "will have the opportunity to comment and ask questions regarding the proposed changes to the lease." (AR 95004.) In addition, LADPW was engaging with Mono and various agencies and trying to reach some agreement about the use of water. (AR 22-26.)

Letters to the LADPW assert that the LADPW's proposed change in the use of water might result in significant impacts to wildlife, including the Bi-State Sage Grouse. (AR 16 [Mono], 19 [Mono], 37 [Mammoth Lakes], 62 [Mono].) Other documents suggest that the LADPW's proposed change in the use of water also might result in significant impacts to vegetation wildfire risk, and other environmental matters. (AR 67 [Mono County Counsel], 110 [former member of Congress], 116 [Cal Nat Res Agency], 118-119 [Mono].) Mono and the LADPW rely on different expert and different studies that reach different conclusions.

On 8/15/18, the LADPW issued a notice of Preparation of Draft Environmental Impact Report. (AR 40-43.) The Notice states:

> LADWP anticipates that, under the proposed Project, it will spread water deliveries to lands covered by the leases less frequently, and in smaller average volumes, than in the past, due to enhancement/mitigation requirements and reductions in water deliveries that have greatly reduced the occurrences of surplus water in the LAA. The proposed Project will aid LADWP to restore natural hydrology in Mono County streams and maintain the best use of water as a

resource for municipal purposes. LADWP's existing practice of spreading water for the sage grouse would not be affected by the proposed project.

(AR 41.)

On 9/27/18, Mono filed this case. The First Amended Petition filed 10/9/18 alleges that the LADPW had made a decision and taken action to significantly reduce the water deliveries to the 6,400 acres. (1AP, para 25-31, 52-53.) The alleged decision and action are the LADWP's proposed new leases and the 2018 allocation of water. (1AP, para 25-31.) The single cause of action under CEQA alleges that the actions to significantly reduce the water deliveries to the 6,400 acres was a "project" under CEQA (PRC 21065), that this required CEQA review, and that the LADPW had not conducted CEQA review. (1AP, para 42-53.)

MOTION TO AUGMENT THE RECORD

On 1/20/21, after the court had issued its tentative decision for the hearing on 1/21/21, the LADWP filed the Declaration of Eric Tillemans, which contained information from the irrigation years 2019-2020 and 2020-2021 regarding runoff and release. The LADWP's filing was an effort to augment the administrative record. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559.) (See also CCP 1094.5(e); *Evans v. City of San Jose* (2005) 128 Cal.App.4th 1123, 1144.)

The motion to augment the administrative record is DENIED regarding the resolution of the case on the merits. Procedurally, the motion was made after the briefing was complete and was in response to the court's tentative decision. This is too late. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.)

Substantively, the information is not relevant to whether the LADWP's proposal in 2018 to change long term water allocation and water use through the proposed new leases was a CEQA "project." The information about the water allocations in irrigation years 2019-2020 and 2020-2021 are independent of and post-date the LADWP's proposal for new leases in 2018.

The information is not relevant to whether the LADWP's annual allocation in 2018-2019 was a change in water use policy that the LADWP was implementing though the annual allocations. Although each annual allocation in isolation might appear to be a reasonable annual variation, if the annual allocations are consistently lower than the historical baseline year over year then might have a cumulative impact that might then trigger the existence of a CEQA "project" and require CEQA review. (14 CCR 15065(a)(3), 15130, 15355.) The claim is framed by the petition, Mono filed the petition in 2018, and the LADWP's actions after Mono filed the petition are not relevant to the merit of the claim in the petition.

The motion to augment the administrative record is GRANTED regarding the remedy. The court orders that the LADWP maintain the status quo remains until the LADWP completes its environmental review. For determining the status quo, the court considers the most up-to-date information, which includes the allocations in irrigation years 2019-2020 and 2020-2021.

CEQA GENERALLY

CEQA requires that public agencies making discretionary approvals of projects consider the environmental consequences of their decisions. CEQA is focused on informed decision making and self-government. CEQA requires that a public agency conduct environmental review when a public agency proposes or reviews a CEQA "project." After preliminary review (14 CCR 15060), the public agency can determine that the project is exempt and, if not exempt,

must study the matter and consider alternatives, feasible mitigation, and whether there are overriding considerations. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 383.) (See also *Golden Gate Land Holdings LLC v. East Bay Regional Park Dist.* (2013) 215 Cal.App.4th 353, 365.)

The LADPW's proposed changes in water use are driven by the appropriate goal of planning for how the LADWP will adapt to the challenges of climate change, which is referred to in the record as "Recent and Future Water Scarcity" and "California's Climate Reality." (AR 95-96; AR 99-100.) (See also AR 34 [letter of Mono stating "We understand that climate change is and will continue to impact water supply availability throughout the State"].) The LADWP letters and studies suggest that adapting to a changing climate will require thoughtful planning and some difficult decisions by legislatures and public agencies. (*Juliana v. United States* (9th Cir., 2020) 947 F.3d 1159, 1165 ["the plaintiffs' impressive case for redress [regarding climate change] must be presented to the political branches of government"]; *Bay Area Citizens v. Association of Bay Area Governments* (2016) 248 Cal.App.4th 966 [CEQA review of Bay Area Plan compliance with mandate to reduce emissions from automobiles and light trucks in its region].) (See also 14 CCR 15064.4 [CEQA review must consider greenhouse gas emissions].)

CEQA requires a public process to address projects with environmental impacts. CEQA requires consideration of competing interests, alternatives, mitigation, and overriding interests. CEQA does not necessarily call for disapproval of a project having a significant environmental impact. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 383.) CEQA does not compel any result in any given situation.

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FRAMEWORK FOR ISSUES IN THIS CASE

The issue in this case is whether the LADWP "approved" a "project" without conducting any CEQA review. More specifically, Mono assets that LADWP was required to conduct environmental review before it proposed the new 2018 leases with their change in water use and simultaneously implemented the 2018 water allocation consistent with the new leases. This is different from the usual CEQA case where a public agency has conducted CEQA environmental review and the question is the adequacy of the environmental review. The court considers the interrelated issues of timing, approval, and project.

TIMING

CEQA requires environmental review before a public agency carries out a public project or approves a private project. Starting with the statute, PRC 21100(a) states: "All lead agencies shall prepare ...and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment." The environmental review takes place when the "project" is a proposal, not after it has been approved.

A public agency must conduct environmental review "Before granting any approval of a project subject to CEQA." (14 CCR 15004(a) [Time of Preparation].) The key word is "before." A public agency must conduct CEQA review before "approval" of a "project." A public agency "must first determine whether an activity is subject to CEQA before conducting an initial study." (14 CCR 15060(c).) Based on the "preliminary review", the agency can then determine whether a project is exempt (14 CCR 15061), whether to start an initial study (14 CCR 15063, 15102),

and from there whether the environmental review will proceed to a negative declaration or an EIR.

"Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." (14 CCR 15004(b).) (See also *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 128-139 [timing of EIR preparation].)

On the facts of this case, when the LADWP proposed the 2018 leases and announced the 2018 water allocation it was at or past the point when it was possible "to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." Viewed from a different perspective, if Mono had delayed and filed the CEQA lawsuit two years after the LADWP had signed the 2018 leases with the ranchers and after two years of decreased water deliveries, then the LADWP could have reasonably argued that Mono was aware of the LAWDP's new water policy in 2018 and the delayed CEQA lawsuit was time barred. (PRC 21167(d); 14 CCR 15112(c)(5).)

APPROVAL

CEQA review must be before approval of a project. "Approval" is defined in 14 CR 15352, which states: "(a) "Approval" means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person."

At the hearing on 2/11/21, counsel for LADWP argued that CEQA review was not required because the LADWP had not made a decision that committed the agency to a definite course of action. The LADWP argued that a proposal was not a project.

On the facts of this case, when the LADWP proposed the 2018 leases and announced the 2018 water allocation it committed to a definite course of action. On 3/1/18, the LADWP announced the proposed leases and sent them to all the ranchers. When it sent the new proposed leases, the LADWP had revised the terms to change the water use on the 6,400 acres. The LADWP set a short timeline for discussion of the proposed new leases – the LADWP proposed the new leases on 3/1/18 and stated the meeting would be in mid-March 2018. On the issue of the 2018-1019 water allocation, the 5/1/18 letter from the mayor of Los Angeles to Mono stated that "Staff has indicated that the amount of water provided will likely be similar to 2016, which was also based on snowpack conditions." (AR 124-125.) The 2016-2017 water allocation was 0.7 AF/Acre. (LADWP Oppo, Appendix A.) The anticipated one-year 2018-1019 water allocation reflects the first year of a plan to decrease in water allocations that the proposed leases would implement on a multi-year basis.

The court has considered the evidence that the LADWP's actions did not represent an "approval" because the LADWP was not committed to a definite course of action. As of 3/1/18 the leases were only proposed, the leases were not yet the offer of contract terms that could be accepted, and that the 3/1/18 cover letter invited the ranchers to a meeting where they could comment and ask questions regarding the proposed changes to the lease." (AR 95004.) (AR 95002-95052.) As for the 2018-2019 water allocation, it was arguably just the water allocation of a single year that reflected the normal variation in rainfall, runoff, and other factors. Weighing the evidence, the court finds that the proposal of the 2018 leases and the actual 2018-

2019 water allocation demonstrates that the LADWP was committed to a definite course of action and had therefore "approved" the alleged decision/action to significantly reduce or eliminate water deliveries. The LADWP issued a Notice of Preparation of Draft Environmental Impact on 8/15/18 (AR 40-43), indicating that it thought that it had committed to a definite course of action.

PROJECT

CEQA defines "project" as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency." (PRC 21065.) (See also 14 CCR 15002(d), and 14 CCR 15378.)

"[A] local agency's task in determining whether a proposed activity is a project is to consider the potential environmental effects of undertaking the type of activity proposed, without regard to whether the activity will actually have environmental impact. … This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. … The somewhat abstract nature of the project decision is appropriate to its preliminary role in CEQA's three-tiered decision tree. … If the proposed activity is the sort that is capable of causing direct or reasonably foreseeable indirect effects on the environment, some type of environmental review is justified, and the activity must be deemed a project. (*Union of Medical Marijuana Patients*, 7 Cal.5th at 1197-1198.)

The court evaluates whether a proposed action is a CEQA "project" "as a question of law, rather than fact." "Given the often disputed nature of the real-world environmental impacts of a

typical project and the discretion invested in an agency to make related factual findings, the environmental effects of a proposed activity can be reviewed as a matter of law only if the analysis is restricted to the effects that the activity is capable of causing, rather than those it actually will cause if implemented." (*Union of Medical Marijuana Patients*, 7 Cal.5th at 1198.)

The LADPW's proposed change in water use is a CEQA "project." It is "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (PRC 21065.) (See also 14 CCR 15378.) The court makes this finding based on its independent review of the evidence.

The most relevant evidence is:

1. The water released for irrigation purposes from 1992-2018. The City's opposition, Exhibit A, suggests an annual averages of 1.9 AF/Acre for the past 5 years, 2.9 AF/Acre for the past 10 years. and 3.9 AF/Acre for the past 26 years.
2. The 12/10/13 Conservation Strategy, which documents the water requirements to protect the sage grouse. The Conservation Strategy document notes the necessity of insects to sage-grouse chicks, that irrigated pastures are part of the Conservation Strategy, that pastures will be monitored and rated, and that pastures in good condition to excellent will continue to provide a diverse variety of forbs and insects during brood-rearing for Greater Sage Grouse. (AR 166994-167023.) The LADPW's proposed change in the use of water also might result in significant impacts to vegetation wildfire risk, and other environmental matters. (AR 67, 110, 116, 118-119.)
3. The proposed five-year leases that stated: "At no time shall water taken from the well(s) be used for irrigation or stockwater purposes" and "Lessor shall not furnish

irrigation water to Lessee or the leased premises, and Lessee shall not use water supplied to the leased premises as irrigation water." (AR 95014-95014, Sections 9.1.2 and 10.1).

4. On 5/1/18, the LADWP notified the ranchers that they would receive 4,200 acre-feet for irrigation year 2018. (AR 83.) This is equivalent to 0.7 AF/Acre for 2018-2019.

These pieces of evidence establish the historical irrigation water baseline, suggests that there are significant environmental benefits to maintaining the historical irrigation water baseline, and that the LADWP was both proposing to substantially decrease the amount of water long-term and actually substantially decreasing the water for 2018 short term.

Case law states that changes in water allotments and use can be a CEQA project. In *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 695-695, a transfer of water credits was a CEQA "project." In *County of Inyo v. City of Angeles* (1977) 71 Cal.App.3d 185, 195, the court held that a proposed change in water acquisition and use can be a CEQA project. In *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, the court held that the court should read the word "project" broadly and that a change in plans for water acquisition can be a new CEQA project.

PROJECT – BASELINE

The LADPW argues that the proposed change in water use is not a "physical change in the environment" because under the 2010 leases the LADWP had total discretion regarding the availability of water at the ranches. The phrase "physical change in the environment" is in the

CEQA definition of "project." (PRC 21065.) (See also 14 CCR 15002(d), and 14 CCR 15378.) This presents two questions: (1) "how much of a change" and (2) a "change from what."

Regarding "how much of a change", the definition of "project" in the statute and the CEQA regulations both use the phrase "physical change in the environment" without a qualifying word such as material, significant, or substantial. A public agency's preliminary review to determine whether a project is subject to CEQA considers whether there will be a "physical change in the environment." (14 CCR 15060.) If there is a "physical change in the environment," then a public agency considers whether a CEQA exemption applies. (14 CCR 15061.) If no exemption applies, then then the public agency conducts an "initial study." (14 CCR 15063.) The initial study is where the phrase "physical change in the environment" is replaced with the phase "significant effect on the environment." CEQA defines the phase "significant effect on the environment." (PRC 21068; 14 CCR 15382.) CEQA's standard for environmental analysis repeatedly uses the phrase "significant effect on the environment." (PRC 21080(d); 14 CCR 15064, 15064,7, 15065, 15091.)

A proposal by a public agency or an application by a private person can be a CEQA "project" even if the proposal or application has only the potential to cause a minimal change in the environment. As a matter of textual statutory construction, the absence of the word "significant" in PRC 21065 and 14 CCR 15378 strongly suggests that a "physical change in the environment" does not need to be significant. The legislature clearly knows how to use the word "significant" given that it defines the phrase and uses it repeatedly in CEQA. As a matter of giving effect to the purpose of CEQA, the determination of whether a proposal or application is a CEQA "project" is the earliest, most preliminary, determination and as a result the definition of "project" appropriately has a very low standard. A finding that a proposal or application is a

CEQA "project" is only the first step in the analysis of whether the public agency even has to consider whether an exemption applies, whether there might be a "significant effect on the environment", and what environmental review is appropriate to the situation.

Regarding "change from what", the court has found no express direction in the statute, the regulations, or in case law. The court holds as a matter of statutory interpretation for purposes of the definition of "project" under PRC 21065 and 14 CCR 15378, the "change" in the phrase "physical change in the environment" is measured from the environmental setting as it exists at the time of the proposal or application. The court bases this definition on 14 CCR 15125, which defines environmental setting for purposes of an EIR. As a matter of statutory consistency, the baseline for "change" would logically be the same for both (1) determining whether there is the potential for "physical change in the environment" for purposes of determining whether a project exists and CEQA applies (14 CCR 15060, 15378) and (2) determining whether a project "may have a significant effect on the environment" for purposes of the subsequent environmental analysis (14 CCR 15064).

The environmental setting, or baseline, is the historical practice regarding water allocation and not the contractually permitted water allocation. In *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310 ("*CBE*"), the project proponent, ConocoPhillips, argued that "the analytical baseline for a project employing existing equipment should be the maximum permitted operating capacity of the equipment, even if the equipment is operating below those levels at the time the environmental analysis is begun." (*CBE,* 48 Cal.4th at 316.) The Supreme Court disagreed and held that CEQA requires that the baseline should reflect "established levels of a particular use," and not the "merely hypothetical conditions allowable under the permits...." (48 Cal.4th at 322.) (See also

Woodward Park Homeowners Assn., Inc. v. City of Fresno (2007) 150 Cal.App.4th 683, 706-711 [baseline is not a permissible, but hypothetical, environmental setting].)

The proposed change in water use is therefore measured from the environmental setting as it exists at the time of the proposal or application (14 CCR 15125), which is the "established levels of a particular use" (*CBE*, 48 Cal.4th at 322). The proposed change is not from the hypothetical 5.0 AF/Acre in the leases, which is the maximum irrigation water in Section 8.1.1 of the 2010 leases. The proposed change is not from the hypothetical 0.0 AF/Acre in the leases, which is what the LADPW reserved the right to allocate under Section 7.1 of the 2010 leases.

On the facts of this case, and for purposes of determining whether the is a "project", the appropriate environmental setting is a five-year baseline. In selecting a five-year baseline rather than a longer baseline, the court takes judicial notice that climate change is likely already affecting rainfall and runoff. (Evid Code 452(h).) (See also *Juliana v. United States* (9th Cir., 2020) 947 F.3d 1159, 1166 ["The record leaves little basis for denying that climate change is occurring at an increasingly rapid pace. … The hottest years on record all fall within this decade, and each year since 1997 has been hotter than the previous average."]; *Cole v. Collier* (S.D. Texas, 2017) 2017 WL 3049540 at *31, fn 27 [Judicial notice that "climate scientists forecast with a high degree of confidence that average temperatures in the U.S. will rise throughout this century and that heat waves will become more frequent, more severe, and more prolonged"].)

The Court of Appeal has approved the use of three to five-year baselines in EIRs. (*San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 218-219, 194 Cal.Rptr.3d 880 [five-year average of mining volumes was appropriate baseline]; *Save Our Peninsula v. Monterey* (2001) 87 Cal. App.4th 99, 123 ["the 51 acre-feet per year figure selected by the Board was an average of water meter readings in the past three years"]; *San Joaquin*

Raptor v. County of Merced (2007) 149 Caal.App.4th 645, 658 [a four-year average of mine operations (i.e., 240,000 tons per year) as the baseline of the existing mine operations at the 90–acre site.].) This suggest that similar baselines are appropriate for determining whether there is a CEQA "project" in the first place.

The court considered the use of 10-year and 26-year baselines and finds that they are not appropriate because they likely do not reflect the availability of water in the current environmental setting. In addition, a 26-year baseline would be somewhat arbitrary because it is based on the LADPW's litigation decision about what data to include in Appendix A to its opposition brief.

In this case, the relevant change in 2018 was from the 5-year historical average of 1.92 AF/Acre to the level in the proposed terms of "At no time shall water taken from the well(s) be used for irrigation or stockwater purposes" and "Lessor shall not furnish irrigation water to Lessee or the leased premises, and Lessee shall not use water supplied to the leased premises as irrigation water." (AR 95014-95014, Sections 9.1.2 and 10.1). This was coupled with the action to set water allocation for 2018-2019 at 0.7 AF/Acre. This is "an activity which *may* cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (PRC 21065 [italics added].) This is "an action, which has *a potential* for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (14 CCR 15378 [italics added].)

PROJECT – WITHIN SCOPE OF PRIOR APPOVAL

The LADPW argued that there is no new "project" because the proposed change in water use was within scope of prior environmental review. (Oppo at 24-26.) This argument is based

on PRC 21166 and 14 CCR 15162, which limit the circumstances under which a public agency must conduct subsequent or supplemental environmental review.

The issue in this case is the preliminary issue of whether the proposal of the 2018 leases was a CEQA "project." As a matter of statutory construction, PRC 21166 and 14 CCR 15162(a) apply only when a public agency has determined that there is a CEQA "project", that no exemption applies, and is evaluating whether the project is within the scope of the prior EIR or a negative declaration. There is no indication that the LAWPD undertook the PRC 21166 analysis before distributing the proposed 2018 leases. The LAWPD's argument is therefore on the lines of "Even if the proposed 2018 leases were a CEQA project, we still would not have prepared an EIR because if we had conducted the PRC 21166 analysis then we would not have needed to prepare an EIR." This argument that environmental review would have had no effect on the ultimate result is inconsistent with the law that CEQA is focused on informed decision making and self-government. (*California Building Industry,* 62 Cal.4th at 383; *Golden Gate Land Holdings*, 215 Cal.App.4th at 365.)

Assuming that the PRC 21166 analysis were analytically and chronologically before the PRC 21065 determination of a CEQA project, the PRC 21166 analysis would not apply on the facts of this case. PRC 21166 and 14 CCR 15162(a) apply only when the prior approval was an EIR or a negative declaration. PRC 21166 refers to an "environmental impact report." The implementing regulations state that PRC 21166 applies "When an EIR has been certified or a negative declaration adopted for a project..." (14 CCR 15162(a).) The plain language of the statute and the regulation is that RPRC 2116 does not apply when a prior approval was based on a categorical exemption.

Looking next to case law, *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 949, explains that the PRC 21166 analysis applies only when "the original environmental document retains some informational value despite the proposed changes." (*Friends of College*, 1 Cal.5 at 952.) If the original environmental document was a finding of categorical exemption, then the prior ultimate finding that the project was exempt has no informational value to any subsequent analysis of proposed changes in the project.

Concerning CEQA policy, PRC 21166 and 14 CCR 15162 "are designed to balance CEQA's central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency." (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 949.) (See also *Willow Glen Trestle Conservancy v. City of San Jose* (2020) 49 Cal.App.5th 127, 133.) The policy of finality and efficiency presumes prior environmental review. A public agency cannot invoke the interest of finality and efficiency when there was no prior environmental review.

In addition, it would be absurd to apply PRC 21166 to a prior categorical exemption. The court gives deference to EIRs and negative declarations because there has been environmental review. In contrast, the court "must construe the [categorical] exemptions narrowly in order to afford the fullest possible environmental protection. ... "[E]xemption categories are not to be expanded or broadened beyond the reasonable scope of their statutory language." ...These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review." (*Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.) Applying PRC 21166 to a prior

categorical exemption would permit a public agency to convert a project that was approved based on a narrow exemption into something that might not fit in that narrow exemption.

On the facts of this case, the LADPW's review of the 2010 leases was limited to an implied finding that the leases were a CEQA project and an express determination that the project was categorically exempt. (AR 168432-8.) Even if as a matter of law the PRC 21166 analysis were before the PRC 21065 determination of a CEQA project, on the facts of this case the LADPW could not use the prior categorical exemption in 2010 as the basis for a PRC 21166 determination that an EIR was not required in 2018.

THE FINDING OF A CEQA "PROJECT" IS NOT ENFORCEMENT OF THE 2010 LEASE AGREEMENTS OR ENFORCEMENT OF A 5.0 AF/ACRE WATER ALLOTMENT

The CEQA analysis does not address or decide whether the ranchers on the 6,400 acres have a contractual right to 5.0 AF/Acre. CEQA is focused on informed decision making and self-government. (*California Building Industry,* 62 Cal.4th at 383; *Golden Gate Land Holdings*, 215 Cal.App.4th at 365.)

The issues of environmental review and property rights are distinct. For example, a public entity seeking to develop a shore path must separately address the CEQA issues related to construction of the path and the condemnation of the real property on which the path will be built. (*Golden Gate Land Holdings LLC v. East Bay Regional Park Dist.* (2013) 215 Cal.App.4th 353, 367-380 [CEQA compliance is distinct from eminent domain].) Mono brings this action asserting that the LADWP's proposed change in water use is a CEQA project that requires the LADWP to conduct environmental review. If the ranchers assert that the LADWP's

water allocations are breaches of the 2010 leases then they must separately bring actions for breach of contract.

THE FINDING OF A CEQA "PROJECT" IS NOT REVIEW OF OR JUDICAL APPROVAL OF ANY RESULTING CEQA REVIEW.

The CEQA analysis in this order does not address or decide whether any resulting CEQA review will be adequate. This order is limited to the issue of whether the proposal to change water allocation through the terms of the proposed new leases is a CEQA "project" that therefore requires review under CEQA.

The court specifically does not address or decide what might be an appropriate environmental baseline in any EIR. "Environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods. ...[n]either CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline." (*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 615.)

The court specifically does not address or decide whether the LADWP is using the distinction in the proposed new leases between "Irrigation Water" and "Water Spreading" as a subterfuge to avoid the commitments in the Conservation Strategy and to avoid CEQA by using a water use category that has no historical baseline or whether the LADWP is using the new terminology to more accurately reflect historical practice but with no actual change from the historical practice.

These are issues for the public administrative CEQA analysis and are not for the court at this initial stage of deciding whether the LADWP must conduct a CEQA analysis.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

The LADPW did not conduct any public CEQA environmental review. There was no CEQA public notice and public comment administrative process. As a result, Mono was not required to exhaust any CEQA administrative process. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1210.)

STATUTE OF LIMITATION - 2018

Mono's claim is not barred by the statute of limitation.

The LADPW did not initiate or complete any public administrative process before or as part of its decision to cease the 5-year historic practice of providing approximately 1.9 AF/Acre and to change to terms of the leases regarding the availability of water for irrigation purposes. Therefore, the court applies the 180-day CEQA statute of limitations. A lawsuit must be filed "within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project." (Pub Res. Code §21167(d); 14 CCR 15112.)

The CEQA statute and regulations do not provide a definition of "commencement." The Supreme Court's analysis in *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 939, strongly suggests that "the commencement of the project" is when the petitioner knew or reasonably should have known that the project may have a significant effect on the environment. *Concerned Citizens* states: "By providing in section 21167, subdivision (a) that the 180-day limitation period begins to run from the time a project is

commenced, the Legislature determined that the initiation of the project provides constructive notice of a possible failure to comply with CEQA." *Communities for a Better Environment v. Bay Area Air Quality Management District* (2016) 1 Cal.App.5th 715, 724, applies *Concerned Citizens* and states, "an action accrues on the date a plaintiff knew or reasonably should have known of the project only if no statutory triggering date has occurred."

Determining the "date of commencement of the project" is a fact question. The LADWP letter of 3/1/18 announced the proposed leases and stated that there would be a meeting in the near future for discussion. The 3/1/18 letter was not the "date of commencement of the project" because at that time the project was a proposal but the LADWP had not yet taken action to implement the project. Furthermore, as a matter of policy, if a letter making a proposal and soliciting input started the statute of limitations, then that would invite premature CEQA lawsuits before. The 5/1/18 letter from the mayor of Los Angeles stated that the LADWP would be informing the ranchers of the 2018 water allocation. The referenced 5/1/18 letter from the LADWP informed the ranchers that they would receive 4,200 AF/Acre in 2018, which is 0.71 SF/Acre. This is arguably the "date of commencement of the project" because this is the announcement of a specific action by the LADWP to implement the project that the LADWP suggested when it proposed the 2018 leases.

The commencement of the project was the 5/1/18 letter. (14 CCR 15004(b); *Save Tara, supra.)* Mono filed the case on 9/27/18, which as within 180 days. (14 CCR 15004(b).)

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STATUTE OF LIMITATION - 2010

The City asserts that the 5/1/18 decision was not a new project and was instead a continuation of the City's 2010 decision to approve the Ranch Leases and related Resolution. (Oppo at 22:20-28; 24:14-16.)

The court starts with *Concerned Citizens of Costa Mesa v. 32nd Dist Agricultural Assn* (1986) 42 Cal.3d 929, 937-939, which addressed the statute of limitation issues if a public agency completes an EIR and then constructs a building that is different from the one disclosed in the EIR and previously approved by the agency. The California Supreme Court held, "We conclude that an action challenging noncompliance with CEQA may be filed within 180 days of the time the plaintiff knows or should have known that the project under way differs substantially from the one described in the initial EIR." (42 Cal.3d at 933.) *Concerned Citizens of Costa Mesa* then states: "[T]he phrase "commencement of the project" in subdivision (a) of section 21167 refers to the project described in the EIR and approved by the agency. However, if the agency makes substantial changes in a project after the filing of the EIR and fails to file a later EIR in violation of section 21166, subdivision (a), an action challenging the agency's noncompliance with CEQA may be filed within 180 days of the time the plaintiff knew or reasonably should have known that the project under way differs substantially from the one described in the EIR." That is the situation in this case.

The LADPW cites to *City of Chula Vista v. County of San Diego* (1994) 23 Cal.App.4th 1713, 1720, which cites to *Concerned Citizens of Costa Mesa* and restates the law. In *Chula Vista*, a hazardous waste contractor had a state permit to store 3,490 drums, in 1989 the Board approved up to 2,000 barrels, and in 1992 the Board entered into a lease that permitted 2,000 barrels. *Chula Vista* states, "Based upon the factual allegations in the City's petition as

supplemented by the County's administrative record and the agreement which are judicially noticed, the agreement executed on January 29, 1992 was not materially different from the "project" (i.e., the proposed agreement) approved by the Board of Supervisors on November 28, 1989." (23 Cal.App.4th at 1721.)

The LADPW cites to *Van de Kamps Coalition v. Board of Trustees of Los Angeles Community College Dist.* (2012) 206 Cal.App.4th 1036, 1045-1051, which also cites the relevant law on "substantial changes." In *Van De Kamps*, the execution of a lease was not "substantial changes." *Van De Kamps* states, "the previously identified traffic impacts ... had already been identified in connection with the Resolutions, and the execution of the lease therefore did not constitute a substantial change in the original project triggering a new limitations period." (206 Cal.App.4th at 1048.)

The facts of this case are similar to *Concerned Citizens of Costa Mesa* only in that the proposed change in water use is a "substantial change." Unlike *Concerned Citizens of Costa Mesa,* there was no prior EIR in this case and as a result the LADWP cannot use the PRC 21166 procedure and examine whether it is a "substantial change." The facts of this case are similar to *Chula Vista* and *Van De Kamps* only because they concern lease agreements. There is a world of difference between (1) executing a lease agreement that is consistent with prior environmental review and (2) proposing lease agreements that represent a significant change in historical water use and the water use in the prior lease agreements was itself not subject to environmental review.

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MOOTNESS

On 8/15/18 (five weeks before Mono filed this case on 9/27/18) the LADPW issued a Notice of Preparation of an EIR for the proposed lease project. (AR 40-43.) Mono's reply brief filed 12/14/20 asserts that in the over two years after the Notice of Preparation of an EIR the LADWP has not issued a draft EIR. (Reply at 14:24-26.)

The court will not find that the need for environmental review is moot in the absence of evidence that the LADWP's preparation of an EIR is complete, or proceeding on a predictable schedule, or proceeding at all.

The LADWP's issuance of a Notice of Preparation of an EIR before Mono filed this lawsuit presents questions regarding (1) whether a Notice of Preparation alone has any significance (PRC 21080.4, 21092.3; 14 CCR 15082, 15103, 15373); (2) whether a Notice of Preparation obligates a public agency to proceed with the noticed EIR; (3) whether the LADWP's Notice of Preparation, which used the phrase "will be prepared" (AR 40), obligated the LADWP to proceed with an EIR; and (4) how those affect whether there was any necessity for private enforcement of CEQA and whether this lawsuit was a catalyst for the LADWP's actions after 9/27/18 (CCP 1021.5; *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.) The court does not address or decide these legal issues. The court can conclude that the case is not moot from the uncontradicted statement that two years after the Notice of Preparation of an EIR the LADWP has not issued a draft EIR. (Reply at 14:24-26.)

REMEDY

PRC 21168.9 sets out the requirements of a court order for noncompliance.

The court can void a "determination, finding, or decision." (PRC 21168.9(a)(1).) There is nothing to void.

The court can order that a public agency "suspend any or all specific project activity or activities … that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with [CEQA]. (PRC 21168.9(a)(2).) An order under this subsection is appropriate to maintain the status quo until LADWP completes its environmental review regarding the proposed change in water use.

For purposes of maintaining the status quo, the court uses the water allocations from 2016-2021 because they are the most current information. For this limited purpose the court considers the information in LADWP's motion to augment the record with the more recent water allocation information. The water allocations are 0.7, 5.0, 0.7, 6.6, and 3.0, resulting in a five-year average of 3.2 AF/Acre.

The court can order that "the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with [CEQA]." (PRC 21168.9(a)(3).) An order under this subsection is appropriate to ensure that LADWP acts consistent with the court's finding that the proposed change in water use for the 6,400 acres is a CEQA "project."

CONCLUSION

The petition of Mono for a writ of mandate directing the LADWP to comply with CEQA is GRANTED.

The LADPW's proposed a change in water use from the 5 year historical 1.9 AF/Acre to the proposed five-year leases on the 6,400 acres that stated, "At no time shall water taken from the well(s) be used for irrigation or stockwater purposes" and "Irrigation Water. Lessor shall not furnish irrigation water to Lessee or the leased premises, and Lessee shall not use water supplied to the leased premises as irrigation water." The LADWP then set the 2018-1019 water allocation at 0.7 AF/Acre. This change by a public entity is a CEQA "project." (PRC 21065; 14 CCR 15378.)

The court ORDERS that the LADPW must follow the CEQA administrative process. The court does not direct the LADPW's discretion regarding the nature of the process or the result of the process. (PRC 21168.9(c).)

To ensure that the status quo remains, the court ORDERS that until the LADWP completes its environmental review the LADPW must continue providing water to the 6,400 acres consistent with annual fluctuations and availability of runoff around the 5-year historical baseline (2016-2021) of approximately 3.2 AF/Acre.

Dated: March 8, 2021

Evelio Grillo
Judge of the Superior Court

AMENDED
CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: COUNTY OF MONO v CITY OF LOS ANGELES, et al.
ACTION NO.: RG18-923377

I certify that the following is true and correct: I am the clerk in **Dept. 15** of the Superior Court of California, County of Alameda **ORDER GRANTING PETITION FOR WRIT OF MANDATE** by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Stacey Simon, County Counsel
Jason Canger, Deputy County Counsel
COUNTY OF MONO
P.O. Box 2315
Mammoth Lakes, CA 93546

Attorneys for Petitioner
COUNTY OF MONO

Donald B. Mooney, Esq.
LAW OFFICES OF DONALD B. MOONEY
417 Mace Blvd. Suite J-334
Davis, CA 95618

Attorneys for Petitioner
COUNTY OF MONO

Laurens Silver, Esq.
CALIFORNIA ENVIRONMENTAL LAW PROJECT
P.O. Box 667
Mill Valley, CA 94942

Attorneys for Petitioner
SIERRA CLUB

Nhu Nguyen
Deputy Attorney General
Office of the Attorney General
1300 I Street, Suite 125
Sacramento, CA 95814-2919

Attorneys for Real Party in Interest
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Adam L. Levitan
Deputy Attorney General
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013-1256

Attorneys for Real Party in Interest
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

Michael N. Feuer, City Attorney
Joseph A. Brajevich, General Counsel, Water and Power
Julie C. Riley, Assistant City Attorney
David Edwards, Deputy City Attorney
221 N. Figueroa Street, Suite 1000
Los Angeles, CA 90012

Attorneys for Respondents
CITY OF LOS ANGELES, CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER, and LOS ANGELES DEPARTMENT OF WATER AND POWER BOARD OF COMMISSIONERS

Amrit S. Kulkarni
Julia L. Bond
Edward Grutzmacher
MEYERS, NAVE, RIBACK, SILVER & WILSON
707 Wilshire Blvd., 24th Floor
Los Angeles, CA 90017

I declare under penalty of perjury that the following is true and correct
Executed on March 10, 2021 at Oakland, California.

Chad Finke
Executive Officer/Clerk of the Superior Court

By Pam Williams
Pam Williams - *Deputy Clerk*