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6 IONE VALLEY LAND, AIR,

7 AND WATER DEFENSE ALLIANCE, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF AMADOR**

10 IONE VALLEY LAND, AIR,
11 AND WATER DEFENSE ALLIANCE, LLC

) CASE NO.: 15-CV-9240

)

) **PETITIONER'S OPENING BRIEF**

)

12 Petitioner,

) (California Environmental Quality Act; Planning
) and Zoning Law)

13 v.

)

14 COUNTY OF AMADOR

) Judge: Hon. Leslie Nichols

)

15 Respondent.

) Petition Filed: April 21, 2015

)

16 NEWMAN MINERALS, LLC; WILLIAM
17 BUNCE, an individual; FARALLON CAPITAL

) Hearing Date: March 4, 2015

)

18 MANAGEMENT; JOHN TELISCHAK, an
19 individual; EDWIN LANDS, LLC;

) Time: 10:00 a.m.

)

20 GREENROCK RANCH LANDS, LLC and DOES
21 1 to 10;

) Department: 2

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22 Real Parties in Interest.

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1 **I. INTRODUCTION.**

2 The County of Amador previously approved a quarry and asphalt processing plant called the
3 Newman Ridge Project (“Project”) in 2012. Petitioner Ione Valley Land Air and Water Defense
4 Alliance (“Ione Valley LAWDA”) successfully challenged the County’s certification of the
5 environmental impact report (EIR) for the Project. (*Ione Valley Land, Air, and Water Defense Alliance*
6 *v. County of Amador*, Amador County Superior Court Case NO. 12-CVC-08091, hereinafter “*Ione*
7 *Valley I*”.) In response to the Judgment and Writ of Mandate issued by the Superior Court of Amador
8 County in March 2013, the County withdrew its approval of the Newman Ridge Project and released a
9 Partially Recirculated Draft EIR for only the transportation and circulation chapter of the EIR. The
10 Partially Recirculated Draft EIR contained new information in the form of a revised traffic analysis that
11 showed potential traffic and congestion impacts on a greater area than was disclosed in the prior EIR.
12 This new analysis also revealed that the Project will have a greater reliance on train transport. Separate
13 information showed such rail transport will require the construction or rehabilitation of 20 rail bridges,
14 each with potential environmental impacts.

15 The County’s most recent 2015 environmental review process includes new analyses and
16 information contained in the 2015 Partially Recirculated environmental impact report (“PREIR”),
17 comments made on the Partially Recirculated EIR. Many of these comments highlighted the changed
18 circumstances since the County’s defunct 2012 approval of the Project, such as the County’s approval of
19 the expansion of the Jackson Valley Quarry, state approval of Mule Creek Prison expansion, and the
20 passage of the 2014 Sustainable Groundwater Management Act, which could not have been considered
21 in the County’s previous review process. Additional new information came to light regarding the
22 potential interconnectedness of local aquifers and the drying of wells near the Project. However, despite
23 requests from LAWDA, key agencies, and the public, the County refused to address new information
24 that undercut the validity of its environmental analysis. The County certified the Partially Recirculated
25 Final EIR in March 2015.

26 **II. STATEMENT OF FACTS.**

27 Many of the relevant facts are set forth in the “Statement of the Case” set forth in the Court’s
28 “Order Filed February 6, 2014” in *Ione Valley I*.

1 The Project site lies within the foothills of the Sierra Nevada range, and topography in the area
2 is rolling hills and valleys. (Administrative Record (hereafter “AR”) Volume 2, page 469 (hereafter
3 “volume:page”).) The existing site consists of open space and lands used for cattle grazing. (AR
4 2:384.) It is part of a historic ranch called Arroyo Seco Ranch, one of the few remaining large open
5 grasslands in the state of California. (AR 2:591.) Both the Quarry area and the Edwin Center contain
6 aquatic features, including seasonal wetlands. (AR 2:421.)

7 The Newman Ridge Project includes two components: the proposed 278-acre Newman Ridge
8 Quarry and the 113-acre Edwin Center. (AR 2:367.) The Newman Ridge Quarry (“Quarry”) is a
9 proposed quarry with an estimated production level of five million tons of rock per year, to be extracted
10 for approximately 50 years. (*Ibid.*) Final reclamation of the Newman Ridge Quarry would occur after
11 all mineral extraction is completed, which would occur in approximately 2063. (AR 2:999.) Various
12 material processing facilities, including an aggregate plant, hot asphalt concrete plant, ready-mix
13 concrete plant, an asphalt and concrete recycling plant, and a rail loading facility for finished products
14 would be located at the Edwin Center. (AR 2:367.)

15 The General Plan designation of various portions of the Project site is Mineral Resource Zone
16 (MRZ) and Agriculture-General (A-G). (AR 2:368.) However, the site’s zoning designation was
17 entirely Single Family Residential and Agricultural District (R1-A) prior to the County’s approval of
18 the Project. (AR 2:426; 2:428.) Numerous residences are located adjacent to the Project site in other
19 R1-A zones. (AR 2:717; 2:847.)

20 The Project included a quarry Conditional Use Permit and Reclamation Plan, the Edwin Center
21 North General Plan Amendment, Zone Change, and various use permits but did not include an air
22 quality, wastewater, or water drilling permits. (AR 2:458.) The Project was proposed under the
23 County’s outdated General Plan, some of which is over 40 years old. (*See, e.g.*, AR 6:3638 et seq.;
24 6:3675 et seq.; 6:3741 et seq.) The proposed zone change for the Edwin Center North site would
25 convert land designated as “single family residential-agricultural” to “manufacturing.” (AR 2:457.)

26 The County claimed impacts to visual character and from toxic air contaminants would be
27 reduced below a level of significance, while admitting impacts to long-term operational air quality
28 impacts, cumulative impacts to regional air quality, impacts related to greenhouse gas emissions, and

1 cumulative impacts to City of Ione intersections remained significant. (AR 2:383.)

2 Numerous agencies and individuals commented on the original draft EIR. (AR 1:178-188;
3 1:168-173; 1:201-204; 1:268-272.) When the Final EIR was released (AR 1:118), Ione Valley learned
4 that significant alterations to the analysis occurred after the comment period closed, without public
5 review. Ione Valley appealed the Planning Commission's approval to the Board of Supervisors. (AR
6 6:3450.) A memorandum dated February 22, 2012 from a company called Air Permitting Specialists
7 noted because "the proposed project is located near another source of emissions [the ISP/SGI quarry]
8 ... the cumulative impact would be higher than suggested by the [emissions rates set forth for the
9 Project]." (AR 13:8159.) This memo continued, "This cumulative impact would affect homes east of
10 the quarry and Edwin Center." (AR 13:8159-8160.)

11 Despite the objections of various state agencies, Ione Valley, the long-established local Foothill
12 Conservancy, and hundreds of members of the public directly affected by the Project, the Board of
13 Supervisors voted to approve the Project and certify the EIR as adequate. (AR 6:3590.)

14 Petitioner challenged the County's approval by seeking a petition for writ of mandate. The
15 Superior Court of Amador County agreed with a key claim of Ione Valley, finding the inaccuracy in the
16 EIR's traffic data was significant and deprived the public of the ability to comment about traffic
17 impacts. (Order filed February 6, 2014 in *Ione Valley Land, Air, and Water Defense Alliance v. County*
18 *of Amador*, Amador County Superior Court case no. 12-CVC-8091, p. 18.) The Court further found the
19 EIR's information regarding rail impacts was not reasonably calculated to inform the public about
20 increased rail traffic impacts. (*Id.* at 20.)

21 After the County revoked the approval of the original project, the County grudgingly complied
22 with the Court's order by recirculating an isolated section of the EIR related to traffic. Ione Valley and
23 others, including the California Farm Bureau and Caltrans, objected to the County's further certification
24 because the changes in the traffic and circulation section affected other sections of the EIR that were
25 not recirculated. (SAR 1:140-44, 349.) Commenters requested that the full EIR be recirculated in light
26 of new information. (*Ibid.*) However, the County obstinately refused to recirculate the entire EIR or
27 meaningfully respond to the comments of Caltrans, the Regional Water Board, and others. Instead, the
28 County re-approved the Project. (Supplemental Administrative Record (hereafter "SAR"), 1:1.)

1 **III. STANDARD OF REVIEW.**

2 In reviewing the County’s actions under CEQA, the standard of review is to determine whether
3 there was “a prejudicial abuse of discretion.” (Pub. Resources Code § 21168.5.) “An abuse of
4 discretion occurs where the agency has not proceeded in a manner required by law, or its decision that
5 the EIR is adequate is not supported by substantial evidence.” (*Santa Clarita Organization for Planning*
6 *the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 721.)

7 Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the
8 failure to adequately analyze the Project, omitting information necessary for informed public review,
9 failing to respond to comments, and failure to mitigate a project’s significant adverse impacts, are
10 subject to a less deferential standard than challenges to an agency’s substantive factual conclusions.
11 (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412,
12 435.) A lead agency must provide a complete and accurate assessment of potential environmental
13 impacts. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 954.) The
14 detailed statements in an EIR are reviewed for “adequacy, completeness, and a good-faith effort at full
15 disclosure.” (Tit. 14, Cal. Code Regs. (hereinafter “Guidelines”), § 15003, subd. (i).) Where necessary
16 information is omitted or inaccurate, a lead agency fails to comply with the procedures required by law,
17 and thus its error or omission is presumptively prejudicial. (*Sierra Club v. State Board of Forestry*
18 (1994) 7 Cal.4th 1215, 1236.)

19 CEQA requires the lead agency to evaluate comments it receives on the draft EIR and prepare
20 written responses to those comments that will be included in the FEIR. (Pub. Resources Code §
21 21091(d)(2); Guidelines §§ 15088(a), 15132(d).) The responses must contain a “good faith, reasoned
22 analysis.” (Guidelines § 15088(c).) The lead agency must provide specific, detailed reasons when it
23 chooses not to implement recommendations or does not make changes to the project based on specific
24 objections received in comments. (*Ibid.*) Detailed reasoning is of particular importance when critical
25 comments have been made by other public agencies or experts. (*People v. County of Kern* (1974) 39
26 Cal.App.3d 830, 842.) The lack of an adequate response to comments in a Final EIR indicates the
27 inadequacy of the EIR as a whole. (*People v. County of Kern, supra*, 39 Cal.App.3d at 841-842.)

28 Where significant new information is added to an EIR before its certification, the EIR must be

1 recirculated. (Pub. Resources Code § 21092.1; *Save our Peninsula Committee v. Monterey County*
2 *Board of Supervisors* (2001) 87 Cal.App.4th 99, 131.) Although there is no prior certified EIR involved
3 in this case because the 2012 EIR was decertified, it bears noting that where the circumstances of a
4 project change after an EIR’s certification, adequate environmental review of those new changed
5 circumstances must be undertaken before the agency approves another portion of the project. (Pub.
6 Resources Code § 21166.)

7 No public agency shall approve a project for which an environmental impact report has been
8 certified which identifies one or more significant environmental effects unless specific economic, legal,
9 social, technological, or other considerations make the mitigation measures or alternatives identified in
10 the EIR infeasible. (Pub. Resources Code § 21081.) “CEQA does not authorize an agency to proceed
11 with a project that will have significant, unmitigated effects on the environment, based simply on a
12 weighing of those effects against the project's benefits, unless the measures necessary to mitigate those
13 effects are truly infeasible.” (*City of Marina v. Board of Trustees of the California State University*
14 (2006) 39 Cal.4th 341, 368–369.)

15 ARGUMENT

16 IV. THE COUNTY FAILED TO ADEQUATELY ANALYZE AND MITIGATE THE 17 PROJECT’S SIGNIFICANT ADVERSE IMPACTS.

18 The 2012 EIR was decertified in the 2012 *Ione Valley I* case, and the County was required to
19 prepare a revised and legally adequate EIR. The PREIR contains new and revised analysis regarding
20 numerous impacts derived from the Project’s vehicular and train traffic generation. As discussed in
21 more detail below, the PREIR included a revised traffic analysis, which in turn affects the Project’s
22 potential environmental impacts on air quality (due to changes in the numbers of cars and trains
23 reported) and on biological resources (due to needed bridges for train tracks). The PREIR chapter was
24 also approved after state approval of the Mule Creek Prison expansion, which affects traffic on local 2-
25 lane roads and 2-lane highways. The EIR was also approved after the County approved the expansion of
26 the 60-year-old Jackson Valley Quarry, located 5 miles from Ione, which fulfills the production goal of
27 the Newman Ridge Project, affects the availability of alternatives, and undermines the statement of
28 overriding considerations that relies upon the non-existence of feasible alternatives.

1 **A. The Recirculated EIR Fails to Adequately Address Water Supply and Water Quality.**

2 Analysis of surface water and groundwater supplies is critical to the legal sufficiency of an EIR.
3 The Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40
4 Cal.4th 412 (*Vineyard Area Citizens*) stated, “An EIR evaluating a planned land use project must . . .
5 analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project.
6 [Citation.]” (*Id.* at 431.) *Vineyard Area Citizens* held that the EIR prepared by the City of Rancho
7 Cordova was inadequate because it failed to identify the long-term water sources for a project and failed
8 to analyze the environmental impacts of providing water to the project from the anticipated sources. (*Id.*
9 at 441.) Where groundwater is a potential source of water for a project, the impact of the increased
10 groundwater pumping at peak production on other water users must be analyzed. (*San Joaquin Raptor*
11 *Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 663.)

12 The County did not establish that groundwater supply would be available for the Project without
13 detrimental impacts to adjacent ranchers. The EIR indicates that the Project would primarily utilize
14 groundwater from on-site wells. (AR 2:743.) The water wells of farmers and ranchers near the Project
15 site have been running dry since 2013. (SAR 2:453) Based on information prepared before 2012, the
16 FEIR asserts, “surrounding users are not pulling groundwater from the same source as the project.” (SAR
17 2:466.) The FEIR failed to address the new circumstances of the Project where local water users would
18 find new supplies to replace those that had gone dry after 2013. An EIR must use the best information
19 available. (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439,
20 455 [“public and decision makers are entitled to the most accurate information on project impacts
21 practically possible”].)

22 Available groundwater supply is projected based on yield estimates from a test boring, estimates
23 of the volume of groundwater within the Basal Ione Aquifer Sand underlying the Project site, and
24 published yield estimates for the Cosumnes Subbasin. (AR 2:752.) The Project Site is located in the
25 Ione Basin. (AR 2:654) However, the EIR uses data from the larger Cosumnes Subbasin to estimate
26 groundwater yield, not data for the Ione Basin. (*Ibid*; AR 2:657.) The EIR’s estimates based on a
27 different basin are misleading.
28

1 **B. The County Failed to Evaluate Groundwater Usage As Required by the Sustainable**
2 **Groundwater Management Act.**

3 In addition to violating CEQA by approving the Project without adequate analysis, the County
4 violated the Sustainable Groundwater Management Act of 2014 (SGMA). SGMA provides that any
5 substantial amendment to the General Plan requires an update to the groundwater sustainability plan or
6 groundwater management plan. Specifically, this law (effective in 2015) requires:

7 Before the adoption or any substantial amendment of a city's or county's general plan, the
8 planning agency *shall review and consider all of the following*:

9 (a) An adoption of, or update to, a groundwater sustainability plan or groundwater
10 management . . . or groundwater management court order, judgment, or decree.

11 (b) An adjudication of water rights.

12 (c) An order or interim plan by the State Water Resources Control Board

13 (Govt. Code § 65350.5, emphasis added.) The County failed to comply with this requirement before it
14 adopted a major amendment to the County General Plan to allow industrial uses of the Edwin Center
15 site. In fact, the County did not comply with *any* of the three requirements of this section: the County
16 did not consider the adoption of a groundwater sustainability plan, an adjudication of water rights, or an
17 interim plan by the Central Valley Water Board. Instead, the County asserted the Sustainable
18 Groundwater Management Act does not restrict groundwater use by the Project or in any way affect the
19 project-specific analysis. (SAR 2:466.) Neither the County nor project proponents included drawdown
20 tests to evaluate the effects that the quarry and asphalt plant water usage and wells would have on
21 agricultural water. Instead of analyzing the potential for the Project to deprive other water users of
22 water, the County chose to deny the recent new legislation would affect its analysis.

23 **C. The County Failed to Address How the Project Could Affect the Quality of Local**
24 **Water Supplies.**

25 **1. The County Violated CEQA.**

26 In October 2014, the Central Valley Water Board stated that a Waste Discharge Requirement
27 permit and coverage under the General Permit for Storm Water Discharges were required for the Project.
28 (SAR 1:125, 127.) However, instead of providing the information necessary for the Regional Board to
 proceed with reviewing stormwater and waste discharge requirements, the County responded that the
 Water Board only made “general statements” regarding requirements and that it did not address the
 sufficiency of the EIR. (SAR 1:129.) According to the EIR, “The project will not discharge

1 wastewater” but rather store it on site. (AR 1:206.) However, even if water is stored onsite, WDRs are
2 required. (AR 11:7058 [*“When waste is stored on or disposed to land, Waste Discharge Requirements*
3 *(WDRs) are required. This applies to aggregate wash water, concrete wash water, returned/rejected*
4 *concrete, and uncured concrete in recycling piles.”*]) Furthermore, at the end of Project operation, the
5 water stored onsite would have to be discharged even if not discharged during operation. (AR 12:7221
6 [*“Most abandoned mining pits in the area hold water.”*]) The County thus violated CEQA’s requirement
7 to respond to sister agencies and to address foreseeable impacts.

8 **2. The County Violated SGMA.**

9 SGMA requires local agencies to examine ways to apply “conjunctive” management of ground
10 and surface water — treating rivers, streams and lakes, along with aquifers, as a connected hydrological
11 system. (SGMA Uncodified Findings (a) [*“Sustainable groundwater management in California*
12 *depends upon creating more opportunities for robust conjunctive management of surface water and*
13 *groundwater resources.”*]) “Conjunctive” use is “[t]he coordinated and planned management of both
14 surface and groundwater resources in order to maximize the efficient use of the resource; that is, the
15 planned and managed operation of a groundwater basin and a surface water storage system combined
16 through a coordinated conveyance infrastructure.”

17 (http://www.water.ca.gov/groundwater/groundwater_basics/groundwater_glossary.cfm.) The
18 connection between ground and surface water was explicitly acknowledged under California law.
19 However, the County took no steps to reexamine the effects on local surface water of the Project’s
20 extensive use of groundwater. Specifically, impacts to Loch Lane Lake, Sutter Creek, Dry Creek and
21 Arroyo Seco creeks were not examined.

22 Furthermore, the County failed to refer the proposed general plan amendment portion of the
23 Project to the Regional Water Board or the local water agency (the Amador Water Agency) for a 45-
24 day review period as required by Government Code section 65352. (Gov. Code § 65352 [*“Before a*
25 *legislative body takes action to adopt or substantially amend a general plan, the planning agency shall*
26 *refer the proposed action to all of the following entities. . . .”*].)

1 **D. The Recirculated EIR Fails to Adequately Analyze and Mitigate Traffic Impacts.**

2 **1. The County’s Response to Caltrans’ Concerns Regarding Safety and Operational**
3 **Impacts Is Deficient.**

4 A lead agency must respond to the comments of sister agencies with particular areas of expertise.
5 (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1367
6 [“where comments from responsible experts or sister agencies disclose new or conflicting data or
7 opinions that cause concern that the agency may not have fully evaluated the project and its alternatives,
8 these comments may not simply be ignored. *There must be good faith, reasoned analysis in response.*”])

9 In its comment letter on the Partially Recirculated Draft Environmental Impact Report
10 (PRDEIR), Caltrans expressed concerns regarding safety and traffic impacts of the proposed access to
11 the Edwin Center North project site. (SAR 5:1373-74.) The DEIR’s project description identifies
12 access via an existing easement onto SR 104. (AR 2:458.) However, Caltrans explained that the
13 existing easement, a 20-foot-wide opening provided for agricultural use of the property, is not of
14 adequate width to support a driveway for the Edwin Center North. (SAR 5:1373.) Caltrans concluded
15 that “the project access is infeasible; the Department cannot support this proposal for access to SR 104.”
16 (SAR 5:1373-74.)

17 On July 22, 2013, Caltrans denied a request to approve the purchase of access rights for a 50-
18 foot-wide opening in access control for the Edwin Center North, citing the inadequacy of the Traffic
19 Impact Study (TIS). (SAR 5:1378.) On August 4, 2014, the applicant requested approval of the
20 purchase of access rights for a 70-foot-wide opening to allow shared access to the ISP Granule facility
21 and the Edwin Center North. (SAR 5:1374, 1380.) This request included preliminary design drawings
22 showing turn lanes, acceleration and deceleration lanes, and “lowering of the highway profile by as
23 much as eight feet for approximately one-quarter mile.” (SAR 5:1374.)

24 Caltrans “considers the proposal for shared use of the driveway to be new information of
25 substantial importance.” (SAR 5:1374.) When significant new information is added to the EIR, it must
26 be recirculated. (Pub. Resources Code § 21092.1.)

27 Driveway and potentially highway improvements would be needed to provide a wider access
28 opening for the Edwin Center North, and this information is absent from the EIR. Caltrans stated:
 The Department recommends that, in order for the PRDEIR to address the whole of the
 proposed action, the project description should be revised to include the above described

1 actions and improvements. The Department recommends that the TIS should address joint
2 use of the driveway and should evaluate *potential safety impacts as well as level of*
3 *service/operational impacts at the project entrance.*

4 (SAR 5:1374, *emphasis added.*)

5 The County's response to Caltrans' concerns is inadequate. The County repeatedly references
6 Master Response I (SAR 1:122-123), which claims that certain comments are beyond the scope of the
7 Court's February 6, 2014 Order (SAR 1:96). Yet, as Master Response I recognizes, transportation
8 issues are within the scope of the Court's Order. (SAR 1:96; SAR 3:653.) Rather than conducting any
9 new analysis of safety and traffic impacts of the proposed shared entrance, the County relies on its prior
10 2012 analysis and summarily concludes that the "applied-for access point does not constitute new
11 information or a change in circumstances ..." (SAR 1:123.)

12 **2. The EIR Failed to Account for Mule Creek State Prison Expansion in Its**
13 **Cumulative Impacts Analysis of Traffic Impacts.**

14 The Mule Creek State Prison Expansion Project was approved after the April 2012 Traffic
15 Impact Study and after the County's October 2012 approval of the quarry project. (SAR 3:660.) The
16 County's traffic consultant confirmed that the approval of the Mule Creek Project is a "substantial
17 change in the area that is relevant to traffic." (SAR 3:660.) While the Buena Vista Casino was added to
18 the PRDEIR, the Mule Creek Project was not included in the list of approved projects assumed in the
19 baseline analysis. (SAR 3:602.) The consultant stated that the addition of the Mule Creek project traffic
20 would increase peak hour traffic at the SR 104 intersection with the project driveway by 65 peak hour
21 trips, and would increase peak hour traffic "at the critical intersections on Preston Avenue in downtown
22 Ione" by "about 80 trips." (SAR 3:661.) The consultant explained "the Mule Creek project will have
23 trip generation similar to the Newman Ridge project." (SAR 3:660.) However, the EIR stated the
24 Newman Ridge Project traffic impact study conclusions "would remain the same even with these
25 increased volumes." (SAR 3:661.)

26 The consultant arrived at this conclusion by speculating that all of the study intersections except
27 for the downtown Ione intersections, which would remain at LOS F, "are so far below the thresholds of
28 significance that we can conclude with certainty that there would be no change to impact conclusions
with the Mule Creek Project included." (SAR 3:661.) No facts or analysis support this conclusion.
Agency findings under CEQA must be supported by substantial evidence based on CEQA's narrow

1 definition of the term. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.)
2 Speculation is not substantial evidence. (Pub. Resources Code § 21082.2(c).) The EIR should have
3 included accurate information projecting peak hour trips that included the Mule Creek expansion
4 project, rather than jumping to the conclusion that impacts would remain the same.

5 **3. The EIR Failed to Respond to the City of Galt’s Concerns Regarding Rail Impacts.**

6 The City of Galt, which had not previously commented on the draft EIR in 2012, submitted a
7 letter noting that “impacts to railroad crossings with Cherokee Lane, Marengo Road, Carillion Blvd., N.
8 Lincoln Way and Elm Ave.” in the City of Galt “were not addressed.” (SAR 1:131.) Galt stated the
9 additional trains generated by the project “will significantly impact traffic operation at those crossings”
10 and requested an analysis of the impacts and mitigation measures for them. (*Ibid.*) The County’s
11 response noted that the City of Galt’s General Plan called for grade separated crossings. (SAR 1:133.)
12 However, the County did not require the Project to contribute any fair share funding to build such
13 overcrossings to address the impacts created by the trains generated by the Project.

14 The City of Galt also objected, as Caltrans did, that the EIR only analyzes impacts on seven
15 intersections in the Ione vicinity, but does not analyze the impacts on intersections of the SR 104 and
16 State Highway 99. (SAR 1:132.) The PRDEIR indicates in a figure that 25% of the 495 daily trips will
17 travel SR 104/Twin Cities Road to Highway 99. (SAR 3:598.) However, no analysis was provided as
18 to how the 25% assumption was derived. The County claimed that such issues were previously
19 addressed and no further analysis was necessary. (SAR 1:134.) The County summarily concludes,
20 “Based on the market area information and discussions with the applicant, it was concluded that 25
21 percent of the trips would generally use SR 104 to access the region located to the west.” (AR 2:197.)
22 The EIR should have disclosed what “market area information” was used and what information the
23 applicant provided that supports the 25% assumption. The County’s analysis is deficient.

24 **E. Biological Resource Impacts of Increased Rail Usage Were Not Adequately Analyzed.**

25 Public comments noted that the Project’s use of rail transportation will require the reconstruction
26 or rehabilitation of 20 new bridges to satisfactorily upgrade the area’s rail infrastructure. (SAR 1:146,
27 1:206-207; 2:454.) A representative of the Department of Fish and Wildlife (DFW) “objected to the
28 complete lack of mitigation” provided in the now decertified EIR and stated that if the railway line was

1 going to be used as revealed in the Recirculated EIR, DFW “would need to be deeply involved due to
2 the stream crossings.” (SAR 2:455.) DFW’s concerns about the Project’s analysis of the biological
3 impacts of bridge construction over Dry Creek relates to these new rail bridges as well as to the
4 cumulative impacts of bridge construction. The County should have considered and resolved every fair
5 argument that could be made about the possible environmental effects of the project. (*Protect the*
6 *Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

7 In response to the original EIR, which failed to adequately disclose the extensive use of rail lines,
8 DFW had requested information about the Project’s potential impacts to the 459 linear feet and 1.5 acres
9 of Dry Creek that pass through the Project site. (AR 1:268.) Dry Creek drains into the lower
10 Mokelumne River, and eventually into the San Joaquin River (AR 2:654), both of which are listed as
11 impaired water bodies under the Clean Water Act, in part due to pollution from resource extraction
12 activities. (AR 4:2191; AR 7:4381; AR 7:4276.) The construction of the bridge across Dry Creek and
13 others, or repair or improvement of those railway bridges, has the potential to cause environmental
14 impacts, including fill that results in increased flood risk and sedimentation. Despite comments
15 requesting information about bridge impacts (AR 1:172), the EIR provided no information about the
16 proposed bridge, its size, materials, or construction, aside from noting that it will use only a single pier.
17 (AR 2:678.) With regard for the potential for new bridges, the FEIR stated an existing rail line was
18 already in use, but failed to note that the single rail line cannot accommodate the number of rail cars
19 needed to alleviate truck traffic. (SAR 2:468.) However, the FEIR did not address public comments
20 documenting the need for 20 new or reconstructed stream crossings or bridges. (SAR 1:146, 1:206-207,
21 2:454.) The scale, and therefore the frequency and weight of ISP usage of the rail line simply does not
22 compare to that projected for the Project, which would increase operations thirteenfold. (*Compare SAR*
23 *1:93 [1 train per week] with SAR 3:595-569 [1.88 trains per day = 13.16 trains per week].*)

24 **F. The County Did Not Adequately Disclose or Mitigate Air Quality Impacts.**

25 A public agency has a duty to find out and disclose all that it reasonably can with regard to
26 potentially significant environmental impacts. (Guidelines § 15144.) With regard to air quality impacts,
27 addressing health effects is especially important. (*Bakersfield Citizens for Local Control v. City of*
28 *Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.) Guidelines section 15126.2, subdivision (a)

1 requires an EIR to discuss, among other things, “health and safety problems caused by the physical
2 changes” that the proposed project will precipitate.

3 While the County disclosed some information in the EIR’s air quality section and acknowledged
4 some significant impacts that it claimed were unavoidable (AR 2:506-527), the County failed to conduct
5 a thorough investigation, to respond to public agency and public requests for specific information, and to
6 mitigate impacts as much as it feasibly could have. The County is already a designated non-attainment
7 area for its failure to meet existing air quality standards for ozone. (AR 2:509; AR 2:510.) These
8 standards “represent safe levels that avoid specific adverse health effects.” (AR 2:506-507.) Approval
9 of the Project will worsen Amador County’s unhealthy air quality situation and ozone nonattainment.

10 **1. The County Did Not Conduct Air Quality Analysis Reflecting its New
11 Disclosures of Increased Traffic Impacts.**

12 The 2015 Partially Recirculated EIR’s traffic analysis discloses greater impacts at seven
13 important intersections, higher traffic volumes, and changes in the predicted use of trains and trucks at
14 the facility. Public comments also pointed out likely increases in traffic from the construction of the
15 Mule Creek State Prison expansion (SAR 2:449) and the approval of expansion of the Jackson Valley
16 Quarry (SAR 2:446.) Petitioner requested that the County update portions of the EIR that would be
17 affected by the updated traffic analysis; the County refused (SAR 1:96-97, 140-44, 233-36,448, 459.)

18 By failing to acknowledge the significant impact to Intersection 4 in the Draft EIR, the County
19 also failed to conduct the required air quality analysis for hotspots created by congested intersections.
20 These are required when an intersection is degraded to LOS E or worse. (AR 2:522.) Intersection 4
21 would be degraded to LOS F. Therefore, a hotspot analysis should have been conducted but was not,
22 despite requests from the public. (SAR 2:451.)

23 **2. The County Did Not Answer Comments Requesting Cumulative Impact
24 Analysis Be Updated to Reflect Current Conditions.**

25 The Amador Air District’s consultants identified that significant health impacts could be
26 expected from the Project for a two-mile radius around it, but the County never shared that information
27 with the public through the EIR. In private correspondence to the Amador Air District, Air Permitting
28 Specialists stated, “*Adverse health impacts would be most significant at locations within 1 to 2 miles
from the project sites. Cumulative impacts would also be significant for both air quality and public*

1 *health.*” (AR 5:2642, emphasis added; AR 13:8158.) Numerous sensitive receptors sit within this 2-
2 mile radius, including schools, housing for veterans and retirees, ranches, farms, and homes.

3 The County acknowledged that significant air quality impacts would result from Project
4 implementation, including long-term operational air quality impacts, impacts related to emissions of
5 toxic air contaminants (TACs), and cumulative impacts related to regional air quality. (AR 2:380.) The
6 EIR concluded that the Project would have significant and unavoidable adverse impacts on air quality
7 with regard to nitrogen dioxide and particulate matter (PM₁₀). (AR 2:520.) The EIR did not disclose
8 information about potential PM_{2.5} emissions. It is well known that air pollution adversely affects human
9 health. (AR 12:7684; AR 2:940.) However, the EIR does not acknowledge the health consequences
10 that necessarily result from the identified adverse air quality impacts. (AR 12:520-521.) The EIR does
11 not disclose where the likely highest concentrations of nitrogen dioxide and PM₁₀ pollutants would
12 occur. There is no acknowledgement or analysis in the FEIR of the well-known connection between
13 reduction in air quality and increases in specific respiratory conditions and illnesses. A statement of the
14 Court of Appeal in another context requiring a legally adequate air quality analysis applies equally well
15 here: “After reading the EIR[], the public would have no idea of the health consequences that result
16 when more pollutants are added to a nonattainment basin.” (*Bakersfield Citizens for Local Control v.*
17 *City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20.) In 2014, in an unpublished opinion, now
18 pending before the California Supreme Court, the Court of Appeal determined the failure to address
19 public health impacts in a similar context was an abuse of discretion. (SAR 1:182-184.)

20 **3. The County Refused to Adopt Feasible Air Quality Mitigation Measures.**

21 Despite the existence of mitigation measures that would reduce significant air quality impacts,
22 these measures were not adopted. Commenters called for operational limitations more restrictive than
23 the Project applicant’s desire for the “ability to operate on a 24-hour basis.” (AR 2:935.) The reduced
24 production alternative would reduce the number of truck trips and thus air quality impacts. (AR 2:829.)
25 At 5 million tons per year, PM₁₀ emissions would be 1,744 pounds per day, but at 230,000 tons per year
26 production rate, PM₁₀ emissions would only be 314 pounds per day. (AR 2:520.) Thus, this rate would
27 be below the level of significance of 384 pounds per day. (*Ibid.*) However the County did not adopt
28 these feasible measures.

1 **G. The EIR Must Be Revised to Consider the Jackson Valley Quarry Approved In**
2 **2013 As a Feasible Alternative.**

3 An EIR must be revised and recirculated when significant new information is added to the EIR.
4 (CEQA Guidelines § 15088.5.) Significant new information includes the availability of a feasible
5 project alternative that would clearly lessen the significant impacts of the project. On July 30, 2013,
6 after all of the briefing in the original case was completed, the Amador County Board of Supervisors
7 approved the Jackson Valley Quarry Expansion Project. The alternative of relying on the Jackson
8 Valley Quarry would produce the aggregate identified as necessary by the County without creating the
9 impacts identified in the EIR. The EIR claimed that Jackson Valley Quarry is an infeasible alternative.
10 (AR 5:2738.) However, since the County approved the expansion of the Jackson Valley Quarry, this
11 claim of infeasibility is clearly false.

12 **H. The Approval of the Jackson Valley Quarry Undermines the Justifications for**
13 **Adopting a Statement of Overriding Considerations.**

14 A public agency can approve a project with significant environmental impacts only if it finds such
15 effects can be mitigated or concludes that unavoidable impacts are acceptable because of overriding
16 concerns. (Pub. Resources Code, § 21081; Guidelines, §§ 15091 and 15092.) The benefits of
17 “establish[ing] a hard rock quarry to produce high quality construction aggregate materials to meet local
18 and regional market demand” and “creat[ing] new jobs in Amador County” (AR 1:429) were two of the
19 primary considerations used to conclude that the benefits of the project outweigh the environmental
20 effects of the project that remain unmitigated or are considered unavoidable. However, the approved
21 expansion of the existing Jackson Valley Quarry achieves these benefits. Thus, the Statement of
22 Overriding Considerations must be reviewed in light of the Jackson Valley Quarry approval.

23 **V. CONCLUSION.**

24 Because the County violated both CEQA and SGMA, a writ of mandate should be granted.

25 Date: December __, 2015

26 Respectfully Submitted,

27 CHATTEN-BROWN & CARSTENS LLP

28 By: _____

 Douglas Carstens