

Maywan Krach  
July 16, 2015  
Page 11

**B. The DEIR’s Analysis of and Mitigation for the Impacts of the Proposed Project Are Inadequate.**

The discussion of a proposed project’s environmental impacts is at the core of an EIR. See CEQA Guidelines §15126.2(a) (“[a]n EIR shall identify and focus on the significant environmental effects of the proposed project”) (emphasis added). As explained below, the DEIR’s environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the County and the public to make informed decisions about the Project. An EIR must effectuate the fundamental purpose of CEQA: to “inform the public and responsible officials of the environmental consequences of their decisions before they are made.” *Laurel Heights Improvement Ass’n v. Regents of University of California* (1993) 6 Cal.4th 1112, 1123 (“*Laurel Heights II*”). To do so, an EIR must contain facts and analysis, not just an agency’s bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA’s informational mandate.

09-22

Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts. CEQA Guidelines §15126.4. Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . . .” Pub. Res. Code § 21002.

Although it is clear that the proposed Project has the potential to cause extraordinarily environmentally degradation, neither the public nor decision-makers have any way of knowing the magnitude of this harm. As we explain below, the DEIR simply fails to provide decision-makers and the public with detailed, accurate information about the Project’s significant environmental impacts and to analyze mitigation measures that would reduce or avoid such impacts.

**1. The DEIR’s Analysis of the Project’s Impacts on Water Supply Resources Is Inadequate.**

*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 imposes four primary obligations on the water supply analysis in EIRs for long-range plans:

09-23

SHUTE, MIHALY  
& WEINBERGER LLP

Maywan Krach  
 July 16, 2015  
 Page 12

- The EIR must identify and analyze water supply for the project. “CEQA’s informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project.” 40 Cal.4th at 431. This analysis must include consideration of the environmental impacts of tapping that supply.
- The EIR must consider the water demands of the entire project, through all phases of development. “An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project.” *Id.*
- “[T]he future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations (‘paper water’) are insufficient bases for decision-making under CEQA.” *Id.* at 432. The EIR’s determination concerning the likelihood of the availability of these supplies must be supported by substantial evidence.
- “Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.” *Id.*

09-23  
 cont.

The DEIR fails to meet the minimum standards set forth in *Vineyard*. First, the DEIR fails to adequately describe the environmental and regulatory context in which to consider the Project’s water supply impacts. Instead, it takes a myopic view of water supply, ultimately skewing the analysis. Second, as detailed in the attached Technical Report from Sierra Watch’s hydrologic consultant, Dr. Tom Myers, the DEIR’s groundwater analysis has several fatal flaws. *See* Exhibit 1. These flaws result in a gross overestimation of the amount of groundwater that is available to the Project as well as a gross underestimation of the Project’s water demand. *Id.* It is only in reliance on these errors that the DEIR concludes the Project’s water supply impacts will be less than significant. *Id.* The overwhelming evidence demonstrates that “it is impossible to confidently determine that anticipated future water sources will be available.” *Vineyard*, 40 Cal.4th at 432. Thus, when the DEIR is recirculated to correct the water supply analysis, it must also discuss “possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.” *Id.*

SHUTE, MIHALY  
 & WEINBERGER LLP

Maywan Krach  
July 16, 2015  
Page 13

**(a) The DEIR’s Description of the Environmental Setting for Water Supply Is Inadequate.**

As discussed previously, the environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” Guidelines § 15125(a). This requirement is crucial to a valid EIR: “Knowledge of the regional setting is critical to the assessment of environmental impacts. . . . The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered *in the full environmental context.*” Guidelines § 15125(c) (emphasis added). In other words, it is impossible for an EIR to fulfill its informational purpose when it is only revealing part of the picture for a potential environmental impact.

09-24

This requirement is particularly important in the water supply context, given the interconnectedness of water systems. Thus, the Court of Appeal in *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 875 readily invalidated an EIR that narrowly focused on the direct water source for a proposed project and failed to acknowledge a potential curtailment in a connected river system. The DEIR here suffers from the same flaw as it fails to provide the full environmental context from which to evaluate the Project’s water supply impacts. The DEIR must be recirculated to correct, at a minimum, the following crucial omissions from the environmental setting.

To begin, the DEIR inexplicably makes scant mention of current drought conditions in California. Ongoing drought since 2012 rendered 2014 one of the driest water years in California history. *See* Exhibit 9 (Martineau, P. California Water Year 2014 Among Driest Years on Record). Studies have shown that Southwestern United States, which includes California, is either in or will very likely soon enter a megadrought over the length of 10 years due to climate change. *See* Exhibit 10 (Ault, T.R., et al. Assessing the Risk of Persistent Drought Using Climate Model Simulations and Paleoclimate Data); *see also* Exhibit 11 (Rice, Doyle. California’s 100-year Drought: Megadroughts a Threat to Civilization). Additionally, there is an 80% chance that the Southwest will experience an unprecedented megadrought that would last more than three decades, between 2050 and 2099. *See* Exhibit 12 (Cook, B.I., et al. Unprecedented 21st-Century Drought Risk in the American Southwest and Central Plains). In the meantime, this region will experience additional droughts leading up to that looming megadrought. *Id.*

09-25

SHUTE, MIHALY  
& WEINBERGER LLP

Maywan Krach  
 July 16, 2015  
 Page 14

A recent study of droughts in California concluded that anthropogenic climate change has and will continue to cause the co-occurrence of warm and dry periods in California, which in turn will exacerbate water shortages, groundwater overdraft, and species extinction. *See* Exhibit 13 (Diffenbaugh, N.S., et al. Anthropogenic Warming Has Increased Drought Risk in California, 2015, Proceedings of the National Academy of the United States of America). Recognizing the current and projected impacts of climate change on reducing California's snowpack, Governor Brown declared a drought state of emergency in California in January 2014, which called for a 20% reduction in statewide water use. *See* Exhibit 14 (Office of Governor Edmund G. Brown Jr., A Proclamation of a State of Emergency). Both the Placer County Water Agency and Squaw Valley Public Service District have instituted measures to reduce water consumption by up to 30%.<sup>1</sup> Additional deep cuts and curtailments are being made all over the State. *See, e.g.*, Exhibit 15 (Ca.Gov California Drought).

The DEIR recognizes that the Olympic Valley Groundwater Basin ("OVGB" or Basin) only recharges its groundwater through rain and snow melt, which greatly decreases in drought years. Further, in its section on greenhouse gas emissions, the DEIR recognizes that climate change could result in up to 40 percent less snow pack in the Sierras by 2050. DEIR at 16-2. Yet—despite overwhelming scientific evidence of the on-going drought crisis, as well as action at both the state and county levels to address water shortages and reevaluate water use planning in the face of a new reduced-water reality—the DEIR's analysis of water supply impacts barely mentions the current drought. Indeed, the studies upon which the DEIR relies utilize a study period of 1993 to 2011, which is prior to the current drought and includes nothing like it. This omission directly skews the results of the DEIR. It is impossible for the public and decision-makers to make an informed decision about the proposed Project without adequate information about the drought and this environmental context in mind. Even if in the past there has been plenty of water in the aquifer, as the DEIR claims, the drought raises serious questions, such as how much water is in the aquifer now? How long will the groundwater last? Are there other uses to which the groundwater should be put, rather than approving new high rises, a massive indoor aquatic park,<sup>2</sup> and commercial

09-26

<sup>1</sup> The DEIR mentions a recent Executive Order calling for water cut-backs as well as local conservation programs, but it does so only to claim there may be a "demand reduction." DEIR at 14-34.

<sup>2</sup> The Mountain Adventure Camp alone requires 32,170 gallons of water per day. *See* Village at Squaw Valley Water Supply Assessment, 17 June 2014, Table 1 at pdf p. 84.

SHUTE, MIHALY  
 & WEINBERGER LLP

Maywan Krach  
July 16, 2015  
Page 15

development? Will there be adequate snowpack in the coming years or decades to justify and supply this new development? Furthermore, as the timing and form of snowpack change to earlier snowmelt and more rainfall rather than snow, why should new development receive priority for water, rather than existing uses and users that are having to suffer drastic cutbacks in Placer County and all over the State?

09-26  
cont.

While the DEIR mentions that Squaw Creek is part of the Truckee River watershed and also acknowledges that the OVGB draws directly from Squaw Creek, the DEIR’s information regarding the larger water supply context stops there. The DEIR takes a very narrow view that essentially claims that any water needs or issues that may arise outside the Basin are irrelevant to the DEIR’s analysis. Similarly, the DEIR presents as a given, without information or analysis, that the Project would have access to Basin groundwater so long as the pumping standards set forth in the DEIR are met.

This myopic view is ill-advised. The DEIR must acknowledge that additional drawdown from Squaw Creek ultimately means less water for downstream users. Moreover, given the current scarcity of water in the State described above, there is a very real possibility that the State Water Resources Control Board could issue curtailments of diversions from Squaw Creek, as it has done in other watersheds. Likewise, the Department of Fish and Wildlife may impose additional conditions on significant water diversions from Squaw Creek that could further limit water supply availability. *See Siskiyou County Farm Bureau v. Department of Fish and Wildlife* (2015) 237 Cal.App.4th 411. Because the pumping of water from the Basin results in a diversion from Squaw Creek, the DEIR must provide information on possible curtailments in order to adequately “set the stage” for the Project’s potential water supply impacts. *Friends of the Eel River*, 108 Cal.App.4th at 875. As discussed below, the Project would result in the drawdown of Squaw Creek, an important local and regional resource, but the DEIR ignores the impacts on stream flows and downstream users.

09-27

Further, the DEIR fails to reveal that the groundwater in the Basin is flowing in a subterranean stream. A subterranean stream flowing in a known or definite channel, as opposed to percolating groundwater, is defined by the presence of four physical criteria enumerated by the State Water Resources Control Board in *In re Garrapata Water Co.*, State Water Res. Control Bd. Dec. No. 1639 (June 17, 1999) and affirmed by *North Gualala Water Co. v. State Water Res. Control Board* 43 Cal.Rptr.3d 821, (Cal. Ct. App. 2006). The criteria are:

09-28

- A subsurface channel must be present;

SHUTE, MIHALY  
WEINBERGER LLP

Maywan Krach  
July 16, 2015  
Page 16

- The channel must have a relatively impermeable bed and banks;
- The course of the channel must be known or capable of being determined by reasonable inference; and
- Groundwater must be flowing in the channel.

09-28  
cont.

As Dr. Myers’ explains, the OVGB meets all four of these criteria. Exhibit 1 at 9. This is relevant because, as with above ground streams, water rights to subterranean streams are within the purview of the State Water Resources Control Board. Should the Board assume jurisdiction over the water within the OVGB, the applicant would need to “get in line” for a water rights permit and is not guaranteed access to the (underestimated) 234 acre-feet of water per year necessary for the Project.

The failure to recognize the appropriate regulatory context and the interaction with the Truckee River system leads to direct flaws in the DEIR’s analysis. Most critically, the DEIR fails to properly acknowledge the uncertainties regarding the availability of water. The DEIR also ignores some Project impacts that would be relevant if the DEIR acknowledged the proper environmental context. For example, the DEIR overlooks the impacts of adding 4.24 acres of impervious surface on the East Parcel, claiming it is “not in a recharge zone of importance to the OVGB.” DEIR at 13-53. However, the loss of pervious surface in this area could “decrease baseflow in the Truckee River during the time of year that groundwater discharge to the river is most important.” Exhibit 1 at 13.

09-29

Furthermore, the DEIR incorrectly dismisses the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Pub.L. No. 101-618, Title II [Nov. 16, 1990]) (the Settlement Act) and Truckee River Operating Agreement, both of which are likely to come into effect later this year, as potential barriers to well development in Olympic Valley. DEIR at 14-12, 14-13. The DEIR’s analysis is predicated on the incorrect assertion that new wells in Olympic Valley draw from groundwater outside of the State Board’s jurisdiction rather than from a subterranean stream and the surface waters of Squaw Creek. As a result, any water developed in Squaw Valley may be counted against California’s 10,000 acre feet per year allotment of surface water from the Truckee River Watershed and, as California approaches this limit, be subject to curtailments.

09-30

Finally, the DEIR fails to provide an adequate description of current baseline conditions in the OVGB. Rather, the DEIR describes baseline in terms of an operational standard of “saturated thickness” at existing wells. However, as set forth in Dr. Myers’ Report, such an operational standard for certain well points is irrelevant to the overall

09-31

SHUTE, MIHALY  
WEINBERGER LLP

Maywan Krach  
July 16, 2015  
Page 17

status and health of the whole groundwater basin. Exhibit 1 at p. 13. Much of the information in the DEIR regarding the status of the Basin flows from varying simulations based on data from these well points, even though the DEIR acknowledges that this narrow focus could lead to an underestimation of water supply. *See, e.g.*, DEIR at 13-73 (“The model may underestimate extreme lows.”).

The baseline should instead be described by a hydrograph of water levels throughout the Basin at the time of the Notice of Preparation, with a total of the amount of water in the Basin versus the capacity, as well as a description of current recharge/discharge. *See Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 91-93 (EIR failed to provide adequate environmental setting for groundwater basin because it lacked information about the amount of water in the basin at baseline conditions). This is especially important given that new wells would be in different areas than current wells (and therefore subject to different baseline conditions), and the final location of the new wells has not yet been confirmed. As noted by Dr. Myers, “[t]he Olympic Valley aquifer is small compared to the demand imposed on it.” Exhibit 1 at 1. The DEIR must provide an accurate portrayal of the entire groundwater Basin, rather than just pumping ability at a few select locations.

09-31  
cont.

The failure of the DEIR to provide adequate information on the environmental setting, including information on the drought, the full regional regulatory and environmental context regarding water diversions, and a complete picture of the current health of the groundwater Basin undermines the integrity of the water supply analysis. This flaw alone requires recirculation of the EIR.

09-32

**(b) The DEIR’s Groundwater Analysis Is Fatally Flawed.**

Dr. Myers reviewed and evaluated the groundwater analyses utilized in the June 2014 Village at Squaw Valley Water Supply Assessment (“WSA”) and relied upon in the DEIR and found several flaws that invalidate the DEIR’s water supply analysis. *See* Exhibit 1. Of critical concern, the groundwater model is flawed and allows both the WSA and DEIR to overstate groundwater availability and understate the Project’s impacts on water supply and other environmental resources. The WSA also underestimates the Project’s water demand which causes the DEIR to further underestimate the Project’s environmental impacts. The most egregious flaws in the DEIR’s analysis of groundwater impacts are discussed below.

09-33

SHUTE, MIHALY  
WEINBERGER LLP

Maywan Krach  
July 16, 2015  
Page 18

**(i) The DEIR Overestimates Groundwater Availability.**

The hydrogeologic analyses and groundwater model used to prepare the WSA and the DEIR are based on flawed data and methodology. Consequently, both documents overstate groundwater availability in several respects. First, the model uses a grossly inaccurate precipitation figure, which figure is repeated in the WSA and DEIR. The DEIR states that mountain precipitation is estimated at 263 inches per year in snow-melt equivalent. DEIR at 13-7. The standard conversion is 1 inch of snowmelt translates to 10 inches of snow (1:10). See Exhibit 1 at 9. Thus, the DEIR claims that, even assuming conservatively that only half of the mountain precipitation falls as snow, average mountain snowfall is 110 feet! The WSA claims this figure is derived from data at the Snotel site. However, Dr. Myers examined the actual data, which is about a third of that listed in the DEIR. “The annual average [as reported at the Snotel site] for 1993-2001 is 80.6 in/y and since 1981 is 71 inches.” *Id.* at 9. This fatal flaw – overestimating annual precipitation by a factor of 3.7 to 1 – clearly calls into question the accuracy of the entire water supply analysis.

09-34

The groundwater model uses the incorrect 263 inches per year precipitation figure to calculate recharge to the Basin, which results in a gross overestimation of water available in the Basin. For example, recharge used in the groundwater model increased from about 680 acre feet per year in previous studies to about 3,800 acre-feet per year in the current version of the model. Exhibit 1 at 2, 34. Utilizing over five times the amount of recharge in the model clearly leads to skewed results. As stated by Dr. Myers, because the precipitation drives the recharge estimate for the Project, this error means that *every impact due to groundwater production has been underestimated. Id.* at 9 (emphasis added).

09-35

This error also leads the model to minimize the impacts from pumping additional wells because aquifer transmissivity and conductivity—essentially how easily water moves within and through the basin—was calibrated in order to accommodate the artificially inflated precipitation totals. The result is that localized pumping impacts from individual wells are underestimated, minimizing drawdown, associated environmental impacts, and the potential for the water table to fall below operational well constraints. Exhibit 1 at 33.

09-36

Second, the model fails to analyze water supply under likely continued drought conditions or climate change scenarios. As discussed previously, the model relies on studies from the 1993 to 2011 period, which contains nothing like the current extended

09-37

SHUTE, MIHALY  
& WEINBERGER LLP

Maywan Krach  
July 16, 2015  
Page 19

dry period or likely warming trends and changes in precipitation patterns anticipated under global climate change. As explained in Dr. Myers' Report, such changes can "lengthen the dry, or no-recharge period of a year. As the snow shifts to rain and snowmelt occurs earlier, there will likely be longer periods during the summer during which there is no runoff recharging the aquifer, which will increase the seasonal period during which drawdown can affect the aquifer." Exhibit 1 at 35.

09-37  
cont.

The DEIR attempts to minimize the potential impacts from climate change by stating that "in current conditions only a small portion of the snowmelt is captured as groundwater recharge." DEIR at 14-35. This is incorrect. As explained above, when snowmelt precipitation estimates were improperly inflated, the model resulted in over a five time increase in recharge, demonstrating that the model very much relies on snowmelt for recharge. Further, the DEIR's statement is contradicted elsewhere in the DEIR, where the document acknowledges that in years with below average precipitation "water levels in late summer and fall are dependent on the amount of snowmelt that flows through Squaw Creek during the spring and summer." *Id.* at p. 14-7.

09-38

Moreover, drought and climate change will likely not only impact snowpack but, also, alter precipitation patterns, decrease overall precipitation levels, and increase evaporation rates. These factors threaten to combine to reduce the amount of water that percolates into the groundwater aquifer. The DEIR completely glosses over this fact, and baldly claims drought events "are expected to be limited." DEIR at pp. 14-7, 14-35. The DEIR cites no evidence, nor is there any, that the drought events will "be limited", irresponsibly relying not on science but, instead, offering a hope. Rather, drought is expected to be the norm rather than the exception in California.

09-39

Indeed, recognizing the severity of the drought, the SVPSD plans to amend the WSA to "reassess the sufficiency of the Project's supply of water." See SVPSD Newsletter, Summer 2015, attached as Exhibit 16. We can find no logical explanation for the County's decision to circulate this DEIR before the WSA is amended to take into account accurate water supply data. The DEIR may not simply rely on a best case scenario; rather it must disclose accurate facts. CEQA Guidelines § 15151. The document must provide a sufficient degree of analysis to inform the public about the proposed Project's adverse environmental impacts and to allow decision-makers to make intelligent judgments. *Id.* Consistent with this requirement, the information regarding the Project's impacts must be "painstakingly ferreted out." *Env't'l Planning & Info. Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357 (finding an EIR for a general plan amendment inadequate where the document did not make clear the effect on the physical environment). This approach provides further evidence of the DEIR's

09-40

SHUTE, MIHALY  
& WEINBERGER LLP

Maywan Krach  
 July 16, 2015  
 Page 20

strategy to withhold information and to encourage decision-makers to accept the decision that the applicant wants. Extensive revision of the DEIR, adding accurate information about the drought and climate change, is only the first step toward remedying this indifference toward the Project’s impact on groundwater resources.

09-40  
 cont.

Third, the groundwater model averages pumping over 9 new wells, even though only 6 new wells are planned to be built for the Project. By spreading pumping out over more wells than would actually exist, the drawdowns appear less than they would actually be at any given well. The DEIR acknowledges this potential underestimation (at 14-34) but does not quantify it or otherwise analyze how it may affect the DEIR’s significance determination regarding water supply impacts. Instead, the DEIR relies on a presumed “margin of safety.” *Id.* In reality, the DEIR offers no evidence of what the effects of increased pumping at fewer locations would be. This could make a significant difference, especially in locations near the Creek.

09-41

Fourth, as discussed above, the model reflects only operational data at various well points. As the DEIR acknowledges, this method could result in an overestimation of water availability because the water level at well locations is impacted by well operations and presents skewed results. *See, e.g.*, DEIR at 13-73 (“The model may underestimate extreme lows.”), 14-7 (“During periods of increased pumping from the municipal well field, the flow pattern is modified by drawdown cones surrounding the wells.”). But again, the DEIR does not quantify this overestimation or otherwise analyze how it could impact the significance conclusion. The mere recognition of a potentially skewed result is not enough. The EIR must rely on accurate information for its analysis – either by using a method in the first instance that does not over or under-estimate results, or by quantifying any biases in the method and then analyzing how that bias effects results. CEQA Guidelines § 15064(b) (significance determinations must reflect “careful judgment . . . based to the extent possible on scientific and factual data.”); *Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17 (“[C]onclusory statements do not fit the CEQA bill.”). Further, CEQA requires interpretation of its requirements to maximize protection of the environment. Thus, the EIR should always err on the conservative side when presenting data and information.

09-42

**(ii) The DEIR Underestimates the Project’s Water Demand.**

The DEIR also severely underestimates water demand from the Project, primarily by relying on occupancy and per capita rates that are too low. As an initial matter, the DEIR is not at all forthcoming about the way it calculates demand for the Project. The

09-43

SHUTE, MIHALY  
 & WEINBERGER LLP