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*California Water Impact Network, et al. v. Castaic Lake Water Agency,*  
Appellate Court 2d Civil No. B177978  
(Second District Court of Appeal's unpublished decision)

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CALIFORNIA WATER NETWORK et al.,

Plaintiffs and Appellants,

v.

CASTAIC LAKE WATER AGENCY,

Defendant and Respondent;

SEMITROPIC WATER STORAGE  
DISTRICT et al.,

Real Parties in Interest and Respondents;

VALENCIA WATER COMPANY,

Intervener and Respondent.

2d Civil No. B177978  
(Super. Ct. No. 215327)  
(Ventura County)

CALIFORNIA WATER NETWORK et al.,

Plaintiffs and Appellants,

v.

CASTAIC LAKE WATER AGENCY,

Defendant and Respondent.

2d Civil No. B181463  
(Super. Ct. No. 215327)  
(Ventura County)

Appellants California Water Network and Friends of Santa Clara River (collectively "CWN") appeal from a judgment denying their petition for a writ of mandate. (Code Civ. Proc., § 1094.5.) CWN asserts the trial court erred in finding a negative declaration prepared by respondent Castaic Lake Water Agency (Castaic) for a groundwater banking project (the "Project") complies with the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.) (CEQA).<sup>1</sup> CWN contends that Castaic violated CEQA because it is not the proper lead agency and it prepared a negative declaration instead of an environmental impact report (EIR) for the Project. CWN also contends Castaic violated the Urban Water Management Planning Act (Water Code, § 10610 et seq.) and the public trust doctrine. CWN separately appeals a judgment awarding costs to respondent Castaic for preparing the administrative record. We affirm.

#### *FACTS AND PROCEDURAL HISTORY*

Castaic is a public water agency and water wholesaler that treats water and delivers it to water retailers. Castaic's service area covers approximately 192 square miles, including portions of the Santa Clarita Valley and unincorporated Ventura County. Respondent Valencia Water Company (Valencia) is a water retailer that receives water from Castaic. Under agreements with respondent Department of Water Resources (DWR), Castaic is entitled to annual water allotments from the State Water Project (SWP).<sup>2</sup>

Castaic determined that its 2002 SWP allotment would exceed by 24,000 acre-feet the amount needed to serve its customers. To preserve the excess water for use in years of drought, Castaic proposed to enter into a contract with respondent Semitropic Water Storage District (Semitropic) to deposit and store the excess water in Semitropic's groundwater storage bank. The contract requires Castaic to reclaim the entire 24,000 acre-feet within 10 years or forfeit the unused portion to Semitropic.

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<sup>1</sup> All statutory references are to the Public Resources Code unless otherwise specified.

<sup>2</sup> For a detailed history of the SWP, see *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 897-902 (*PCL*).

On August 5 and 22, 2002, Castaic posted and published a notice of intent to adopt a negative declaration for the Project. Numerous individuals and entities, including CWN, submitted written comments and objections. On September 27, Castaic circulated its written responses to comments. On October 2, additional objections to the Project were submitted.

At a public hearing on October 3, further comments and objections were submitted. After the hearing, Castaic approved a resolution adopting the negative declaration and approving the Project. A notice of determination was filed October 8, 2002.

CWN filed a petition for writ of mandate naming Castaic as respondent and Semitropic and DWR as real parties in interest. Valencia was granted leave to intervene as a respondent.

The petition alleged the Project violates CEQA because DWR, not Castaic, is the appropriate lead agency; Castaic prepared an inadequate initial study; and an EIR rather than a negative declaration should have been prepared. The petition also alleged the Project violates the Urban Water Management Planning Act (Water Code, § 10610 et seq.) and the public trust doctrine. In addition, the petition asserted that three appellate decisions decertifying EIR's prepared for three other projects--the "Monterey Agreement," the transfer of 41,000 acre-feet of water from Kern County Water Agency to Castaic, and Castaic's 2000 Urban Water Management Plan (UWMP)--preclude Castaic from approving the Project.<sup>3</sup> Respondents filed opposition to the petition.

The trial court entered judgment against CWN on all causes of action. Castaic filed a memorandum of costs for preparing the administrative record in the amount of \$40,667.49. CWN filed a motion to tax costs. The trial court awarded costs of \$26,921.07. CWN appealed both judgments, and the appeals were consolidated. On appeal, CWN raises the same issues it raised in the trial court.

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<sup>3</sup> *PCL, supra*, 83 Cal.App.4th 892, *Friends of Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373 (*Friends I*), and *Friends of Santa Clara River v. Castaic Lake Water Agency* (2004) 123 Cal.App.4th 1 (*Friends II*).

## *DISCUSSION*

### *CEQA*

#### *A. Lead Agency Designation*

Section 21067 defines a "lead agency" as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." The lead agency is responsible for preparing an EIR or negative declaration for a project subject to CEQA. (§ 21165; *City of Redding v. Shasta County Local Agency Formation Com.* (1989) 209 Cal.App.3d 1169, 1174.) A "responsible agency" is "a public agency, other than the lead agency, which has responsibility for carrying out or approving a project." (§ 21069.) Responsible agencies have the duty to review and comment on the draft environmental documents prepared by the lead agency. (§ 21153.)

The Guidelines<sup>4</sup> establish criteria for selecting a single lead agency among two or more contenders. If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency. (Guidelines, § 15051, subd. (a).) If more than one agency meets the lead agency criteria, the agency that is to act first on the project will be the lead agency. (Guidelines, § 15051, subd. (c).)

If two or more public agencies have a "substantial claim" to serve as lead agency for a project, the agencies may designate one agency as lead agency by agreement. (Guidelines, §15051, subd. (d).) However, an agreement cannot designate a lead agency contrary to CEQA. (*PCL, supra*, 83 Cal.App.4th at p. 903.)

Respondents agreed that Castaic would serve as lead agency, and DWR, Semitropic and Valencia were designated responsible agencies for the Project.

CWN asserts the Project has statewide impacts and that DWR, rather than Castaic, is the proper lead agency. The propriety of a lead agency designation is a question of law that we review de novo. (*PCL, supra*, 83 Cal.App.4th at pp. 905-906.)

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<sup>4</sup> The administrative regulations in title 14 of the California Code of Regulations are referred to as "Guidelines."

CWN relies primarily on *PCL* to support its argument. In *PCL*, the appellate court ordered that an EIR prepared for the Monterey Agreement be decertified. The Monterey Agreement reallocates SWP entitlements between agricultural and urban users. Despite the broad scope of the project and the involvement of all 29 of the state's local water agencies, one of the local agencies was selected as lead agency and prepared the EIR. The court held that DWR should have acted as lead agency because the project affects all SWP contracts and will have statewide impacts. (*PCL, supra*, 83 Cal.App.4th at p. 907.)<sup>5</sup> The court ordered that the EIR be decertified and a new EIR be prepared by DWR. (*Id.* at p. 926.) The court did not enjoin the parties from proceeding with the project during the preparation of the new EIR. (*Id.* at p. 926, fn. 16.)

*PCL* does not support CWN's argument. The Monterey Agreement is an "omnibus revision of the long-term contracts between the Department of Water Resources . . . and local water contractors governing the supply of water under the State Water Project." (*PCL, supra*, 83 Cal.App.4th at p. 897.) In contrast to the Monterey Agreement, the Project is narrow in scope and effect. It involves a single local water agency and a portion of that agency's SWP entitlement for one year. While DWR must approve the project, it has no jurisdiction over the management of Castaic's water supply--it merely responds to Castaic's request to schedule delivery by determining whether the times and amounts Castaic has requested are within the overall delivery capability of the California Aqueduct.

Castaic's designation as lead agency does not violate CEQA.

#### *B. The Initial Study and Negative Declaration*

An initial study is a preliminary analysis prepared by the lead agency to determine whether to prepare an EIR, a negative declaration or a mitigated negative declaration for a proposed project. (Guidelines, §§ 15162, 15153, subd. (d).) The initial study documents the factual basis for the lead agency's findings of environmental impact.

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<sup>5</sup> The court held the Monterey Agreement EIR also violated CEQA because it failed to discuss a "no project" alternative, an issue not involved here. (*PCL, supra*, 83 Cal.App.4th at p. 916.)

(*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.)

CEQA permits the initial study to be in the form of a checklist and provides a form to be used in the Guidelines. The lead agency must augment the checklist with a discussion of each environmental impact it finds to be potentially significant and explain the basis for its conclusions. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 305.) An inadequate initial study does not automatically make an EIR necessary. (*Silveira v. Las Gallinas Valley Sanitary Dist.* (1997) 54 Cal.App.4th 980, 992.)

In preparing the initial study, the lead agency may use an EIR prepared and certified for an earlier project if the "circumstances of the projects are essentially the same." (Guidelines, § 15153, subd. (a).) Agencies are encouraged to reduce delay and paperwork by reusing a previously prepared EIR when it adequately addresses the impacts of the proposed project. (*Id.*, §§ 15006, subd. (f); 15084, subd. (d)(5).)

If a project falls within the scope of a previous EIR, the initial study is used to decide whether there are new impacts that were not discussed in the prior EIR and to focus on whether those new impacts warrant further environmental review. (§ 21094, subd. (c); Guidelines, § 15063, subd. (b)(1)(C); *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 704, fn. 11 (*Santa Teresa*).)

A previous EIR may not be used for a later project if: (1) Changes in the project would result in new impacts not considered in the previous EIR, or (2) changes in the circumstances under which the project is undertaken lead to significant new impacts, or (3) new information is available that was not known and could not have been known when the previous EIR was certified. (§ 21166; Guidelines, § 15162.) The existence of any of these conditions requires preparation of a subsequent or supplemental EIR, rather than a negative declaration. (Guidelines, § 15162.)

A negative declaration is a written statement adopted by the lead agency if it concludes the project will not have a significant effect on the environment. (§ 21064; Guidelines, § 15371.) A negative declaration can be used in two ways. First, it can serve as the original CEQA document for a project, if there is no substantial evidence

supporting a fair argument that the project may have a significant effect on the environment. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1134-1135.) Second, a negative declaration can be used if a proposed project falls within the scope of an earlier EIR and the lead agency finds on the basis of the initial study that there is no substantial evidence that the project will have a significant effect on the environment. (*Ibid.*; Guidelines, § 15074, subd. (b).)

In preparing the initial study, Castaic relied on an EIR prepared and certified in 1994 by Semitropic for a groundwater banking program to store one million acre-feet of water for California water purveyors, including Castaic, in its groundwater banking facility. The 1994 EIR concluded that the project would increase the level of water in Semitropic's groundwater basin and generally improve groundwater quality. As a mitigation measure, the EIR requires that all deposits into the bank meet current water quality standards established by DWR.

Castaic concluded the Project would not have any significant environmental effects not already discussed in the 1994 EIR and prepared and circulated the initial study and a draft negative declaration for public review. After reviewing and responding to comments and objections submitted by CWN, other environmental groups, and the responsible agencies during the public comment period and at a public hearing, Castaic adopted a final negative declaration and findings of no significant environmental impact.

CWN's attorney submitted a letter objecting to the initial study and proposed negative declaration on the ground that the 1994 EIR is outdated because "profound changes in the environmental context of your proposed action have occurred, triggering the need for preparation of a subsequent or supplemental EIR or EIR addendum . . . ." Neither CWN nor any other member of the public submitted factual data supporting the assertion that information relied on by Castaic in the 1994 EIR was outdated.

Two recent cases rejected arguments similar to those made by CWN. In *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2004) 126 Cal.App.4th

1180, petitioner argued the city violated CEQA because it relied on an EIR prepared more than 10 years earlier in approving a statement of overriding considerations for a revised general plan. The court stated: "Petitioners cite no authority for their argument. They do not explain what more current information was available to the city, how that information differed from the projections that the city relied on, or how the more current information might have affected the city's decision." (*Id.* at p. 1206.) Most recently, in *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598 (*CREED*), the court held an agency's reliance on a 10-year-old EIR did not violate CEQA.

*C. Standard of Review of a Negative Declaration*

The parties dispute the standard of review to be applied in reviewing the negative declaration. CWN asserts the "fair argument" standard applies. Under this standard, an EIR must be prepared if there is substantial evidence sufficient to support a fair argument that there is a reasonable possibility that the project will have a significant effect on the environment. (Guidelines, § 15063.)

Respondents counter that the fair argument standard only applies when the negative declaration is the initial environmental document for a project. They assert that where, as here, a negative declaration relies on a previously prepared EIR, the more deferential substantial evidence test applies. We agree.

In *Laurel Heights*, our Supreme Court said: "[T]he 'fair argument' test has been applied *only* to the decision whether to prepare an original EIR or a negative declaration." (*Laurel Heights Improvement Assn. v. Regents of University of California*, *supra*, 6 Cal.4th at p. 1135; see also *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1481-1483 [rejecting use of fair argument test to review whether second negative declaration proper for modified project]; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1071-1073 [rejecting use of fair argument test to review decision under § 21166].)

In *Santa Teresa*, the court explained: "When the public agency has already prepared an EIR, no SEIR [supplemental or subsequent EIR] is required unless there are

substantial changes in the project or the circumstances surrounding the project, or if new information becomes available. (§ 21166.) The reviewing court upholds an agency's decision not to require an SEIR if the administrative record as a whole contains substantial evidence to support the determination that the changes in the project or its circumstances were not so substantial as to require major modifications of the EIR. [Citation.] This deferential standard is a reflection of the fact that in-depth review has already occurred." (*Santa Teresa, supra*, 114 Cal.App.4th at p. 703; accord, *CREED, supra*, 134 Cal.App.4th at p. 610.) Most recently in *CREED*, the court stated: "[T]he fair argument standard does not apply to review of an agency's determination that a project's potential environmental impacts were adequately analyzed in a prior program EIR." (*Id.* at p. 611.)

Accordingly, we review the record to determine if substantial evidence supports Castaic's findings that the project will not have significant effects on the environment not discussed in the previous EIR.

#### *D. Exhaustion of Administrative Remedies*

Appellate review of an administrative decision requires exhaustion of administrative remedies. Exhaustion of administrative remedies is jurisdictional, not a matter of judicial discretion. (*Santa Barbara County Flower & Nursery Growers Assn. v. County of Santa Barbara* (2004) 121 Cal.App.4th 864, 876.)

The exhaustion doctrine is codified in section 21177. That section provides in part: "(a) No action or proceeding may be brought pursuant to Section 21167 unless the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing by any person during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination. [¶] (b) No person shall maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the issuance of the notice of determination." In other words, any person who objected to a project on CEQA grounds at an administrative

hearing may raise any ground asserted by any objecting party. (*Maintain Our Desert Environment v. Town of Apple Valley* (2004) 120 Cal.App.4th 396, 439.)

"The essence of the exhaustion doctrine is the public agency's opportunity to receive and respond to articulated factual issues and legal theories *before* its actions are subjected to judicial review." (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1198.) The purposes of the doctrine are not satisfied if the objections are not sufficiently specific so as to allow the agency the opportunity to evaluate and respond to them. (*Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1447.)

CWN argues that it had no administrative remedy to exhaust, relying on *Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 590 (*Tahoe Vista*); *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 489 (*Fall River*); and *California Aviation Council v. County of Amador* (1988) 200 Cal.App.3d 337, 348 (*California Aviation*). These cases do not support CWN.

In *Tahoe Vista*, the court held that the trial court cannot consider issues not raised before the administrative body. Holding otherwise "would enable litigants to narrow, obscure, or even omit their arguments before the final administrative authority because they could possibly obtain a more favorable decision from a trial court. Such a result would turn the exhaustion doctrine on its head." (*Tahoe Vista, supra*, 81 Cal.App.4th at p. 594.)

CWN's reliance on *Fall River, supra*, 70 Cal.App.4th 482 and *California Aviation, supra*, 200 Cal.App.3d 337 is similarly misplaced. In *Fall River*, the court held that individual petitioners in a case challenging a negative declaration were not barred for failure to exhaust administrative remedies because the agency had not given legally required notice of the public's right to raise objections to a project. (*Fall River*, at pp. 489-490.)

In *California Aviation*, the court majority said: "[T]o be excused from their failure to exhaust administrative remedies plaintiffs here must show one of the following:

(1) one of the plaintiffs is an organization formed after the approval of the project and a member of the organization objected to the approval of the project orally or in writing (§ 21177, subd. (c)); (2) there was no public hearing prior to the approval of the project, or the public agency failed to give the notice required by law (§ 21177, subd. (e)); or (3) they are members of the public addressing a public wrong and no notice of the proceeding was given them in any form." (*California Aviation, supra*, 200 Cal.App.3d at p. 343.)

CWN cannot and does not argue that it was an organization formed after the Project was approved or that there was no public hearing or that it failed to receive the notices required by law. Therefore, it was required to exhaust administrative remedies.

Not every comment submitted before or at an administrative hearing satisfies the exhaustion requirement. To fulfill the exhaustion requirement, public comment must meet several criteria. Generalized environmental comments are not sufficient. (*Tahoe Vista, supra*, 81 Cal.App.4th at p. 594.) A project opponent cannot make a skeletal showing during the administrative process and then obtain a hearing on expanded issues in a reviewing court. (*City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1019-1020.)

Comments by members of the public must be supported by an adequate factual foundation. An adequate foundation may be established by relevant personal observations. (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 875.) Members of the public may provide opinion evidence in appropriate circumstances. (See *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402.) But information asserted to be common knowledge does not satisfy the doctrine if it is not based on personal observation or experience. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417; *Newberry Springs Water Assn. v. County of San Bernardino* (1984) 150 Cal.App.3d 740, 749-750.) In other words, public controversy is not a substitute for substantial evidence. (§ 21082.2, subd. (b); see *Leonoff v. Monterey County Bd. of*

*Supervisors* (1990) 222 Cal.App.3d 1337, 1359 [public controversy cannot trigger an EIR if record does not contain substantial evidence that project may have significant effect].)

Complaints, fears, suspicions and speculation about a project's potential environmental impact do not satisfy the exhaustion requirement. (*See San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 624-625 [conclusory statement about cumulative impacts]; *Lucas Valley Homeowners Assn. v. County of Marin* (1991) 233 Cal.App.3d 130, 154-155 [expressions of generalized concerns and fears about traffic and parking impacts and anecdotal statements about parking problems at another facility]; *Leonoff v. Monterey County Bd. of Supervisors*, *supra*, 222 Cal.App.3d at p. 1352 [subjective concerns and unsubstantiated opinions about dangerous traffic conditions]; *Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 434-435 [unsubstantiated fears and concerns about project's impacts]; *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1020 [assumption of competitive impact from retail tenant speculative]; *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 580 [comment letter submitted by counsel for opponents consisting almost exclusively of "mere argument and unsubstantiated opinion"]; *Citizen Action To Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 757 [speculation and generalizations about traffic, parking, economic effects and earthquake safety].)

Respondents assert CWN failed to exhaust administrative remedies concerning many of the issues raised in its petition either by failing to raise the issue at all or making only general comments unsupported by a factual foundation during the administrative process. As indicated below, we agree that many of CWN's objections do not satisfy the exhaustion doctrine and thus are not proper subjects of appeal.

#### *E. Allegations of Significant Impact*

CWN asserts the project will have significant impacts on water quality, urban growth, traffic congestion, air quality, biological resources, noise, public services, aesthetics, and utilities and service systems not discussed in the 1994 EIR. "We independently review the administrative record. [Citation.] We resolve reasonable

doubts in favor of the administrative decision. [Citation.] "We do not judge the wisdom of the agency's action in approving the Project or pass upon the correctness of the EIR's environmental conclusions. [Citations.] Our function is simply to determine whether the agency followed proper procedures and whether there is substantial evidence supporting the agency's determination that the changes in the Project (or its circumstances) were not substantial enough to require an SEIR." [Citation.]" (*CREED, supra*, 134 Cal.App.4th at p. 615.)

(1) *Water Quality*

During the public review period, CWN correctly observed that some of the wells in Semitropic's water facility are contaminated with perchlorate. CWN asserts the project will cause the perchlorate to spread beyond the area of the contaminated wells and ultimately result in degrading the quality of water in the California Aqueduct. Neither CWN nor any other opponent provided factual support for these assertions.

The initial study/negative declaration acknowledges the contamination and states the perchlorate can be removed by several approved methods used successfully by Orange County and the Jet Propulsion Laboratory. In addition, the initial study/negative declaration contains the following discussion of groundwater quality submitted by DWR as a responsible agency for the project:

"The IS/ND [initial study/negative declaration] recognizes the issue of water quality of the California Aqueduct. Before introducing the stored groundwater in the Aqueduct, [Kern County Water Agency] and Semitropic must comply with the existing agreement allowing the introduction of local or banked water into the Aqueduct. The quality and quantity of groundwater introduced into the Aqueduct may not interfere with the operation of the SWP and must meet the Department's then current water quality criteria in effect at the time of delivery. [Castaic], at its expense, shall pay all costs for water quality sampling and analysis associated with monitoring the input of groundwater into the Aqueduct."

In *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219 (*California Oak*), opponents of a proposed residential development

raised a similar objection to an EIR prepared for the project. Although ultimately finding the EIR violated CEQA, the court determined the EIR's discussion of perchlorate contamination complied with CEQA. The court said:

"The draft EIR did not mention perchlorate contamination. However, it relied upon UWMP 2000's projections of water supply and usage. UWMP 2000 identified the discovery of perchlorate in Southern California as a water quality problem that could affect groundwater supply availability, stated that perchlorate can be treated and removed from groundwater, and mentioned two possible treatment programs. UWMP 2000 concluded: 'The few wells affected have been shut down, effective treatment technologies have been developed, and a plan is being worked out to remove the contamination from the groundwater.' [Petitioner's] comments on the draft EIR asserted the Saugus Formation could not be relied on until it is remediated, and observed that the UWMP 2000 was in litigation 'due to the over-statement of water supply and understatement of demand.' [Petitioner] also submitted expert testimony, reports and memoranda which extensively discussed the contamination.

"The City's response acknowledged that perchlorate has been a concern since its discovery in 1997, and stated that operation of the four contaminated wells was suspended, testing for perchlorate was continuing in all active wells, and treatment technologies were currently available. . . . [T]he City and the public were fully informed. While we may not agree with the City's decision to rely on the conclusions in the UWMP 2000 rather than the conclusions flowing from [Petitioner's] evidence, this court's inquiry extends only to the EIR's sufficiency as an informative document, not to the correctness of its environmental conclusions. . . .

"[Petitioner] points out that Castaic's UWMP 2000 was recently invalidated by the court of appeal in *Friends II, supra*, 123 Cal.App.4th at pp. 14-15, and suggests that we remand the case to the City for re-evaluation of its analysis. [Petitioner] is mistaken. It is well-established that once a project is approved, new information does not require reopening the approval." (*California Oak, supra*, 133 Cal.App.4th at pp. 1242-1243.)

The discussion of groundwater quality in the environmental documents for the Project is sufficient. Substantial evidence in the record supports the finding that the Project will not have a significant impact on water quality.

*(2) Urban Growth*

CWN asserts that the Project will have growth-inducing impacts that were not discussed adequately in the environmental documents.

The initial study/negative declaration states that the groundwater will not be used for new development. The negative declaration also points out that the water cannot be relied on by developers proposing future projects because the contract between Semitropic and Castaic permits the water to be stored for no longer than 10 years and applicable building regulations require a developer to demonstrate the availability of a 20-year water supply for new development.

In addition, the initial study/negative declaration contains the following comment by DWR:

"The draft IS/ND makes conflicting statements regarding whether the proposed project would increase reliability of water supply, have a growth inducing effect, and/or enable [Castaic] to use its full Table A allocation when it otherwise would not. The proposed project would provide for storage in a single year, and the Department assumes return of the water would be over a period of up to 10 years (this is consistent with other similar arrangements approved by the Department). The project description in the IS/ND should clarify the length of the proposed return period. Based on a 10-year return period, it appears that [Castaic] could conclude that the project will produce a short-term increase in reliability and no growth-inducing impacts, but this issue should be clarified in the IS/ND. Any proposal for a long-term program for storage of [Castaic] Table A allocations in Semitropic over multiple years, with a longer return period, will require additional environmental review."

In response to DWR's comment about the length of the proposed return period, Castaic modified the initial study/negative declaration to clarify that the project

involves a 10-year return period. Castaic's response reiterated that all water returned to the California Aqueduct would be tested to ensure it met current DWR standards.

This information is sufficient to support a finding that the Project will not cause significant growth-inducing impacts. (See *Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 702-703 ["The initial study clearly states the water was to be assigned only to those areas already subject to the City's general plan. . . . The discussions of growth-inducing impacts in the general plan EIR were properly incorporated into the initial studies, and that was sufficient under these circumstances"].)

### (3) *Air Quality*

CWN alleges the Project will have significant impacts on air quality. The initial study/negative declaration noted it was possible an "air quality effect from the project would occur from the indirect impact of air emissions due to the generation of project electricity demands. The proposed project would result in a shift in the timing of electrical energy usage for groundwater pumping within [Semitropic]. Specifically, the project would reduce energy use for pumping along the [SWP] when water is stored in [Semitropic] and increase energy use when the water is returned to [Castaic]. The net project effect would be an increase in the use of electricity needed to inject and recover the stored water at [Semitropic], compared to the direct delivery of this water to [Castaic]."

The initial study concludes this shift in energy use would have less than significant impacts on air quality because the small amount of air emissions from generating any extra electricity would not cause the air quality in the San Joaquin Valley air basin to exceed ambient air quality standards. In any event, power plants are required to effectively mitigate air emissions under the conditions of their operating permits.

Guidelines, section 15064, subdivision (h)(3) specifically authorizes Castaic to rely on this mitigation measure: "A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the

cumulative problem (e.g. . . . air quality plan[s] . . .) within the geographic area in which the project is located." (See *Gentry v. City of Murrieta*, *supra*, 36 Cal.App.4th at p. 1394 [an agency may rely on another agency's regulations and standards if it has "meaningful information" that would reasonably justify an "expectation of compliance"].) The initial study's discussion of air quality was adequate.

Moreover, CWN does not challenge the initial study's basic conclusion on the air quality issue. Instead, CWN complains the initial study did not go into sufficient detail to support its analysis. However, complaining that the initial study is not sufficiently detailed does not meet a petitioner's burden of providing a sufficient factual basis to refute Castaic's conclusion. (See *Citizen Action to Serve All Students v. Thornley*, *supra*, 222 Cal.App.3d at p. 755 [agency could disregard expert's opinion because it addressed ultimate issue of whether specified increase in traffic should be treated as "significant" and merely disagreed with city's standard of significance].)

#### (4) *Other Impacts*

CWN's remaining contentions, that the Project will cause impacts on traffic congestion, biological resources, noise, public services, aesthetics, and utilities and service systems, are based on the faulty premise that the Project would induce urban growth and were not raised with the specificity required by CEQA. Further discussion is unnecessary.

#### *F. The Decisions in PCL, Friends I and Friends II*

CWN contends that the decisions in *PCL*, *supra*, 83 Cal.App.4th 892, *Friends I*, *supra*, 95 Cal.App.4th 1373, and *Friends II*, *supra*, 123 Cal.App.4th 1, preclude Castaic from approving the Project.

As discussed above, in *PCL*, the appellate court ordered that an EIR prepared for the Monterey Agreement be decertified because environmental review should have been conducted by DWR as lead agency.

In *Friends I*, the appellate court ordered an EIR decertified that was prepared for the purchase by Castaic of SWP water entitlements from Kern County Water

Agency. The court found the EIR defective because it tiered off the decertified EIR for the Monterey Agreement.<sup>6</sup>

In *Friends II*, the appellate court ordered that approval of an UWMP prepared for parts of the Santa Clarita Valley pursuant to the Urban Water Management Planning Act, Water Code section 10610 et seq., be vacated because it contained an inadequate discussion of the time needed to implement methods for treating contaminated groundwater and for ensuring the reliability of the groundwater supply during the implementation period.

In approving the initial study/negative declaration, Castaic did not rely on the EIR for the Monterey Agreement. While it did rely on information contained in the 2000 UWMP, the information relied on by Castaic was held to be adequate in *Friends II*. The decertification of the EIR for the Monterey Agreement and invalidation of the 2000 UWMP does not preclude use of information in those documents. (See *California Oak, supra*, 133 Cal.App.4th at pp. 1242-1243.)

#### *Urban Water Management Planning Act*

CWN asserts the Project violates the Urban Water Management Planning Act because Castaic's approval of the Project is based "on an unlawful UWMP that fails to adequately address known contamination of Castaic's water supplies." This assertion of error is substantially similar to that asserted in connection with CWN's CEQA challenge and with an argument raised by petitioner in *California Oak, supra*, 133 Cal.App.4th 1219.

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<sup>6</sup> CEQA permits "tiering." Tiering refers to "the coverage of general matters in broader EIRs (such as on general plans or policy statements) with subsequent narrower EIRs or ultimately site-specific EIRs incorporating by reference the general discussions and concentrating solely on the issues specific to the EIR subsequently prepared." (Guidelines, § 15385.)

For the reasons stated in our previous discussion of water quality impacts and those stated in *California Oak*, we reject CWN's argument.

*Public Trust Doctrine*

CWN contends the Project violates the public trust doctrine. We disagree.

The public trust doctrine holds that the state, as sovereign, owns all of the navigable waterways and the lands lying beneath them "as trustee of a public trust for the benefit of the people." (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 434.) "Under the public trust doctrine, the state has title as trustee to all tidelands and navigable lakes and streams and is charged with preserving these waterways for navigation, commerce, and fishing, as well as for scientific study, recreation, and as open space and habitat for birds and marine life. [Citation.] . . . [T]he doctrine has no direct application to groundwater sources." (*Santa Teresa, supra*, 114 Cal.App.4th at p. 709; see also *Golden Feather Community Assn. v. Thermalito Irrigation Dist.* (1989) 209 Cal.App.3d 1276, 1284-1285 [public trust doctrine does not extend to nonnavigable waterways in the absence of some impact on navigable waters].)

No further discussion is required as CWN's challenge in this respect is founded upon Castaic's alleged failure to address environmental effects under CEQA. We have already discussed, and dismissed, those allegations as unsupported by the record.

*Cost Award (Case No. B181463)*

CWN argues that Castaic is not entitled to recover any costs because it prepared the administrative record without responding to CWN's requests that the parties discuss its preparation.

Section 21167.6<sup>7</sup> governs preparation of the administrative record in CEQA cases. Statutory construction is a question of law that we review de novo. (*Fishback v. County of Ventura* (2005) 133 Cal.App.4th 896, 902.) "Section 21167.6 authorizes only three ways to prepare a CEQA record . . . . The three alternatives are (1) that the public agency prepare and certify the record; (2) that the petitioner prepare the record, subject to certification by the public agency; or (3) that the parties agree to an alternative method of preparing the record, subject to certification by the public agency." (*Hayward Area Planning Assn. v. City of Hayward* (2005) 128 Cal.App.4th 176, 183.)

Generally, the law requires a petitioner for a writ of mandate to bear the cost of preparing the administrative record. (§ 21167.6, subd. (b)(1); Code Civ. Proc., §§ 1094.5, subd. (a), 1094.6, subd. (c).) The burden is on the petitioner because "taxpayers . . . should not have to bear the cost of preparing the administrative record in a lawsuit brought by a private individual or entity." (*River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 182 (*River Valley*)). Ordinarily, the agency approving the project prepares the administrative record. (§ 21167.6, subd. (b)(1).) CEQA provides that a petitioner may elect to prepare the record if it notifies the agency of its election within 10 days of filing the petition. (*Id.*, subd. (b)(2).)

The record contains no evidence that CWN notified Castaic that it elected to prepare the administrative record within 10 days of filing its petition or at any time at

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<sup>7</sup> Section 21167.6 states in part: "(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. . . . [¶] (b)(1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. . . . The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court. [¶] (2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision. . . . [¶] (f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record."

all. We agree with the trial court that Castaic is not precluded from recovering reasonable costs for preparing the administrative record.

In the alternative, CWN contends that Castaic is entitled to recover only the cost of preparing one copy of the administrative record for filing with the court.

"Whether a particular cost to prepare an administrative record [is] necessary and reasonable is an issue for the sound discretion of the trial court. [Citations.] Discretion is abused only when, in its exercise, the court 'exceeds the bounds of reason, all of the circumstances being considered.' [Citation.] The appellant has the burden of establishing an abuse of discretion." (*River Valley, supra*, 37 Cal.App.4th at p. 181.)

In *River Valley*, the court rejected the contention that section 21167.6 permits recovery of photocopying and transcription costs only. "[A] commonsense reading of section 21167.6, subdivision (b)(1) requires time spent to prepare the record be included. An interpretation such as that urged by [petitioner] allowing reimbursement for only photocopying and transcription costs would defeat the purpose of the statute by shifting the financial burden to the public agency preparing the record." (*River Valley, supra*, 37 Cal.App.4th at p. 182.)

The *River Valley* court also said: "The history and complexity of this case required a complete, organized and adequately indexed administrative record for the court's proper review, necessitating the expense of physical and organizational skills to accomplish this result. [The agency] was entitled to select the appropriate personnel to perform the particular task. Having done so, it was then for the trial court to determine whether the costs were necessarily incurred and reasonable." (*River Valley, supra*, 37 Cal.App.4th at p. 181; see also *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 447-448 [court impliedly approved a public agency's use of its own private law firm to prepare the record, subject to review for reasonableness].)

The trial court awarded the costs it found necessarily incurred and reasonable. The court did not abuse its discretion.

The judgment denying the petition for writ of mandate and the order awarding costs are affirmed. Costs on appeal are awarded to respondents.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Henry J. Walsh, Judge

Superior Court County of Ventura

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