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EXEMPT FROM FILING FEE [GOV. CODE § 6103]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT, a California water district,

Petitioner,

vs.

CITY OF TEHACHAPI, a California municipal corporation; and DOES 1 through 20, inclusive,

Respondent.

GREENBRIAR CAPITAL CORPORATION, a British Columbia corporation; GREENBRIAR CAPITAL HOLDCO, INC., a Delaware corporation; GREENBRIAR CAPITAL (U.S.), LLC, a Delaware limited liability company; JEFFREY CIACHURSKI, an individual; and DOES 21 through 40, inclusive

Real Parties in Interest.

CASE NO.: 34-2022-80003892-CU-WM-GDS

PETITIONER'S REPLY BRIEF

Judge: Hon. Stephen Acquisto
Dept.: 36

Petition filed: September 16, 2021

Trial Date: March 22, 2024

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I. INTRODUCTION

Even using its own best-case scenario, the City admits it runs out of water in 2035, and is short 407.5 AFY of water by 2040. (City's Opposition Brief ("Opp."), p. 20:25-26; AR 643, 1792.) Once the City's groundwater pumping allocation is considered, the City still must account for an additional 1,653.3 AFY of water to satisfy its needs over the 20-year horizon. (AR 1792.) The City claims it will meet this demand with: (a) 1,153 AFY from its M&I Agreement, (b) 175 AFY of water from the project applicant, and (c) some combination of fees to purchase either groundwater pumping rights or more water from the District. (AR 1663, 1669, 1761, 1747, 1792-93, 1825 3304, 3307-09, 5722.) Each of these sources is "paper water" – the type of unrealistic approach that for decades served as the foundation of misguided land use planning and water management policies, which led to the Legislature's enactment of "show me the water" statutes.

At the state level, California faces both a water shortage and a housing shortage.[1] The state's needs are great, and the tensions are real. But the City's desire to promote more housing is no justification for its cavalier decisions regarding water supply. The solution to the problem cannot be simply to ignore it. The City's wishful thinking and magical math are addressed in detail in the District's Opening Brief ("Opening"), and the District does not intend to belabor the points in this Reply. To summarize the key points:

- The M&I Agreement (terminable on December 31, 2026 and expiring on December 31, 2039, unless extended) limits reliance as a long-term water supply due to its express term, the variable nature of the District's SWP allocations and the District's other commitments. The District has "no obligation to sell [the City] more than 1,153" AFY, subject to available SWP supplies. (AR 14917, ¶B, 1; 14201, ¶ 10.) Even if the District was able to supply the full 1,153 AFY, the City's supply is still short 407 AFY. (AR 1792; see Opening, pp. 3:23-27, 5:3-6:21, 11:2-7, 12:16-14:9, 14:26-28, 15:3-19, 23:25-26, 28:11-28, 30:2-8.)

- The City has not demonstrated any reasonable probability of accessing additional water through an asserted "commitment" by Greenbriar Capital Corporation ("Greenbriar"), to procure groundwater pumping rights of 175 AFY. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444 ("*Vineyard*").) Characterizing it as a "condition of approval"

[1]/ The headlines abound: "Build more houses! Use less water! California, can you have it both ways?" (Sforza, Mercury News (July 18, 2022); "More housing and more drought calls for more thought" (Johnson, CalMatters (July 28, 2021); "Water and Housing Needs Collide in California's Severe Drought" (Dooley, Bloomberg News (June 28, 2021).

does nothing to transform the paper on which that condition is written into water that flows through the City's pipes. (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 158-159 ("*Santa Clarita*"); see Opening, pp. 3:23-27, 14:16-15:19, 19:20-20:15, 29:3-14.)

- Even with the full 1,153 AFY and 175 AFY, a gap of 232.3 AFY remains. The City attempts to bridge this gap by either collecting fees to buy unspecified groundwater rights, or to buy more water from the District. (AR 1704.) Payment of fees alone does not secure long-term water supply. (*Anderson First Coalition v City of Anderson* (2005) 130 Cal.App.4th 1173, 1188-1189 ("*Anderson*"); see Opening, pp. 15:3-19, 22:14-23:3.)

- The City anticipates an almost sixfold increase in its demand, ballooning from 270.4 AFY in 2020 to 1,560 AFY in 2040, and erroneously assumes that the District would receive "average SWP deliveries at 60% [11,580 AFY] longterm" that the City believes could and should serve its needs. (AR 1734.) The District's 20-year average of actual water is 41.08% (7,908 AFY). (AR 14210, 14268; see Opening, pp. 2:6-4:8, 4:13-5:9, 7:5-15, 16:3-21.)

The City did not draft its documents to reflect reality and did not consult with the District to coordinate its approach to the water supply assessment or otherwise acknowledge that water supply to serve Sage Ranch over the 20-year horizon was uncertain or deficient. Instead, the City determined that its growth trumps the environment and every other user in the District, and that the District should meet the City's expansive new demands to the detriment of the District's existing customers. CEQA, the Water Code, the Government Code, contract law, and common sense all dictate that the City's EIR, WSA, and project approvals be set aside.

II. THE CITY MISREPRESENTS BASIC FACTS AND LAW

A. The District Is a Responsible Agency

A responsible agency has "permitting authority or approval power over some aspect of the overall project for which a lead agency is conducting CEQA review." (*Riverwatch v. Olivenhain Municipal Water District* (2009) 170 Cal.App.4th 1186, 1201; see Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) While the District does not "have the ability to approve or deny development projects," the City admits the District "will need to approve an application for use of any District Water." (Opp., p. 11:25-26; AR 1663.) District water supplies are part of the project and the District is a responsible agency despite the City's failure to treat it as one. (AR 1663; *Riverwatch*, *supra*, 170 Cal.App.4th at pp. 1205-06 [water district was responsible agency for

county's land use action because district water deliveries were part of county's project]; *Save Our Carmel River v. Monterey Peninsula Water Management District* (2006) 141 Cal. App. 4th 677, 701 [water district was responsible agency for city's decision to approve water credit transfer].)[2]

B. The City Projects It Will Run Out of Water in 2035

By 2040, the City projects it will need 3,550.3 AFY. (AR 1792.) After taking out the 1,897 AFY of groundwater pumping allocation, the City still must obtain 1,653.3 AFY of water. (AR 1792.) The City claims it will need 1,560 AFY of District-supplied SWP water, but this amount: (1) is variable pursuant to the M&I Agreement; and (2) is 407 AFY *above* the theoretical maximum contained in that terminable agreement, leaving the City short 407 AFY. (AR 1792, 1798, 14197.) To make ends appear to meet, the City relies on a condition that Greenbriar will obtain groundwater pumping rights – initially "93 acre-feet of pumpable water rights," and then later, "175 acre-feet of pumpable water rights," from unidentified and unanalyzed sources. (AR 87, 1747.) This too is "paper water." (*Santa Clarita*, *supra*, 157 Cal.App.4th at pp. 152, 158-159.) Furthermore, even with the full 1,153 AFY (M&I Agreement) and 175 AFY (Greenbriar), a deficit of 232.3 AFY remains. (AR 1792, 1781.) The City attempts to close this gap by collecting a fee to buy unspecified groundwater rights, or buying more District water. (AR 1704, 1740, 1747, 1761, 1793.) But the District has not committed to sell more water and the payment of fees is insufficient to demonstrate a firm commitment to provide sufficient water. (AR 9910, 14173; *Anderson*, *supra*, 130 Cal.App.4th at pp. 1188-89; *Vineyard*, *supra*, 40 Cal.4th at p. 444.) The City has acknowledged that the amount of fees is not likely to be sufficient to purchase the necessary additional water supplies, and the source of those supplies is unknown. (AR 501, 632, 1740, 1793.) Thus, the City failed to "show its work" on water supply, despite its contrary claims. (See Opp., pp. 19:8-10, 20:22-30:1, 30:14-22.)

C. The District Never "Approved" a 2% City Growth Rate

The City's Opposition relies repeatedly on the unfounded assertion that the District approved a 2% growth rate. (Opp., pp. 15:6-8, 15:13-15, 16:6-9, 24:10-16, 26, fn. 3, 34:26-35:2,

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[2]/ As court-appointed Watermaster, the District also is a trustee agency with "jurisdiction by law over natural resources affected by [the] project." (Pub. Resources Code, § 21070; CEQA Guidelines, §§ 15366(a)(3), 15386.)

37:25-26.) In support of its assertion, the City points to nothing more than an e-mail string on November 9 and 10, 2020 (AR 11543), where the City purports to summarize a meeting between City staff, the District's General Manager ("District GM"), and its Operations Manager:

- City: The District GM "agreed that he supports some reasonable growth in the City. He placed this value at 2% year-over year beginning in 2020."
- District GM: "This has been the historical growth rate in RUWMP. The 2% rate will be reviewed and verified during the 2020 RUWMP process."
- "Don asked [District GM] how he plans to supply the water for this 2% growth and [he] agreed that this is [the District's] problem."
- District GM: "I have more thoughts on this, but your comment is accurate."

This exchange confirms only that the City claimed it presented a 2% historical growth rate. (AR 11543.) The District stated unequivocally that the City's claimed growth rate would need to be "reviewed and verified." (*Ibid*.) The City's assertion that this exchange demonstrates the District "agreed to provide water to this end" is a grotesque exaggeration and directly refuted by the record. (See, e.g., AR 11650, 11786, 14193, 14214.) Nine days after this exchange, the City acknowledged it understood the District had *not* "agreed to provide water." (Opp., p. 15:7; AR 11650, 14214).) The City wrote that the District "does not anticipate providing any imported water to the project and that the 'imported water supply is variable and outside the control of [the District].'" (AR 11650.) It was "now unclear how the applicant intends to obtain the necessary water supply to meet the project's water demand." (AR 11650; see AR 11652-55.) Since District water would not be available, the City offered the applicant a choice – purchase water rights or proceed with the City's Groundwater Sustainability Project. (AR 11651.)

On January 7, 2021, the City responded to the same e-mail chain on which it now relies, with an analysis the City claimed supported its contention that a 2.3% growth rate was reasonable. (AR 11786.) The District's GM responded that he needed "to wrap [his] head around the RUWMP data prior to committing to any growth projections." (AR 11786.) Later, the District expressly rejected the City's projection, stating "[the District] has not accepted the City's proposed 2.3% growth rate." (AR 14214.) The District never accepted or confirmed this

growth rate or otherwise represented that it would supply water to support the City's growth estimates. Rather, the record is replete with instances in which both the District and the City understood that the 350 AFY of water demand for Sage Ranch would need to come from other sources.[3] (AR 6072, 6573, 6621, 6625-27, 6757, 7321-24, 7860-63, 8532-33, 8538, 8545-48, 9838, 9906-10, 10142, 11195, 11211-13, 11303-07, 11542-46, 11805.)

D. The M&I Agreement Does Not Establish a Long-Term Water Supply

The City repeatedly attempts to re-cast the M&I Agreement as being perpetual and non-terminable and on that basis argues it was appropriate for the City to rely on it for long-term water supply. (Opp., pp. 12:18-13:23, 37:22-23.) The City's mischaracterization of the contract ignores its express language and limiting conditions. The plain language of the M&I Agreement, which provides for termination on December 31, 2026 (AR 5726, ¶ 11.), cannot be contradicted or interpreted by use of evidence outside the contract's four corners that is offered to show the language means the opposite of what it says. (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343.) While evidence may be admitted to explain the written terms of a contract, it may not be admitted to contradict or vary the terms, as the City seeks to do here by interpreting the plain termination language out of the M&I Agreement entirely. (Civ. Code, §§ 1625, 1638, 1639.) The City attempts to do precisely that which the law prohibits. (Opp., pp. 12:25-13:2.)

The City offers evidence that the District has generally renewed its M&I Agreements in light of the infrastructure built to transfer that water to end users, and that the District has adopted a water priority ordinance that makes existing M&I customers high priority in times of shortage. (Opp., pp. 12:18-13:23.) Neither of these points overcomes the express language in the agreement, the term of the agreement, the District's right to terminate under the contract, and the

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[3]/ The City quotes the District GM as saying he believed it was "possible to find a water solution for Sage Ranch." (AR 6072.) The full quote makes it clear that the District believed *the City* would be "key to any solution," and the full e-mail demonstrates that the District believed securing additional water supply in the form of *groundwater rights* (not District SWP water) could allow the project to proceed with sufficient water. (AR 6072-75, see also AR 11195.) Moreover, the District's observation that solutions could be found did not excuse *the City* from its duties under CEQA, the Water Code, and the Government Code *to find them*. (*Vineyard*, *supra*, 40 Cal.4th at p. 443 ["The question is . . . not whether the project's significant environmental effects *can* be clearly explained, but whether they *were*"] (italics in original); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521 [same].)

hard 2039 ending date. (AR 14199-201, ¶¶ 4, 7, 10; AR 14192, ¶ 4.) The M&I Agreement is clear that the District has no obligation to provide the City water unless it has enough water for all District customers. (AR 14201, ¶ 10.) All provision of water to the City under the M&I Agreement is qualified by each party's right to terminate. (AR 5726, ¶ 10.) If the City makes demands the District cannot or will not meet, the District has the right to terminate the contract and negotiate new language appropriately addressing the issues the City declined to analyze here, including the District's actual capacity to provide water, the rights of other water users, and the environmental harm to be caused by whatever ultimate source will be used to provide millions of gallons of new water to the City.[4] (AR 14201, ¶ 11.) On the other hand, if the City believes, for example, that the contractual requirement to maintain its Banked Water Reserve Account ("BWRA") is too onerous, it can terminate the contract. (*Ibid.*) The plain language dictates that the contract is expressly terminable, and the City cannot contradict that term with evidence extrinsic to that agreement. (*Casa Herrera, Inc., supra,* 32 Cal.4th at p. 343.)

The City also argues that it is obligated to purchase "all of its M&I water" from the District, arguing that the District "cannot require the City to purchase imported water from the District and at the same time disclaim an obligation to sell water to the City." (Opp., p. 13:7-9.) The City cites no support for this proposition because there is none. The M&I Agreement does not restrict the City from obtaining water from other sources; indeed, this much is evident from the City's own filings in this case – the City may turn, and in this case apparently has turned, to other sources of water including groundwater rights, recycling of its water, or others. (AR 11651, 1793, 3294, 3314, 6756-57, 7322, 7862, 8538; Opp., pp. 21-22.) The M&I Agreement simply says that if the City is purchasing surface water over and above local water available to the City, defined as being available from a variety of other enumerated sources, it must first turn to the District. (AR 14197-98, ¶¶ 1, 2(a), 2(d).) The M&I Agreement also says that the District may

[4]/ Assuming for argument's sake that the District GM had agreed to a 2% growth rate, the District cannot be estopped from enforcing the terms of the M&I Agreement by anything done or said by any employee, staff member, or other agent – the District may be bound only by a contract in a writing approved by its board. (AR 5592, 5594; *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transportation Authority* (2000) 23 Cal.4th 305, 316; *Parmar v. Board of Equalization* (2011) 196 Cal.App.4th 705, 717.)

decline to sell water if it does not have enough for all of its users.[5] (AR 14201, ¶ 10.)

To the extent the City argues it can utilize its drought protection bank of water, or BWRA, to compensate for *any* SWP shortages, this is directly contrary to its M&I Agreement with the District. (Opp., p. 13:11-13.) The express contractual language only allows for the City to use its BWRA during drought or in the event of damage to District facilities, or other similar event. (AR 14198, ¶ 3.) Mining the City's emergency bank to supply planned but unsustainable growth is not contemplated or permitted by this clause, nor has the City analyzed the environmental impacts of doing so. (*Nygard, Inc. v. Uusi-Kerttula* (2008) 159 Cal.App.4th 1027, 1045-46; AR 484-502, 1787-88, 9910.) With the City's projected increase in demand, the amount required to be banked in the BWRA for emergencies increases from 1,307 AF in 2021 to 6,670.8 AF in 2040 (five times annual average from 2035-2030). (AR 1787, 1792, 5723, 14198, ¶ 3.)

The City apparently believes its contract requires the District to meet the City's "present and future water needs," without regard to the contract's limiting provisions and the District's *other* 31,000 residents,[6] existing customers, and communities, and regardless of how rapid and unrestrained the City's water-consuming growth might be. (See, e.g., Opp., p. 13:14-23.) The City is mistaken. (AR 3303, 4111:2-10; see AR 3242-69; see also *Abatti v. Imperial Irrigation District* (2020) 52 Cal.App.5th 236, 280, fn. 34; Opening, pp. 12:21-13:28.)

III. ARGUMENT

A. The Project Description Violates CEQA Because It Fails to Adequately and Accurately Describe the Project's Water Supply

An EIR must include a "description of the project's technical, economic, and environmental characteristics." (CEQA Guidelines, § 15124(c); see *San Joaquin Raptor Rescue Ctr. v County of Merced* (2007) 149 Cal.App.4th 645, 654 ("*San Joaquin Raptor*").) The City

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[5]/ The City half-heartedly argues that Water Code section 1254 gives the City a higher priority to use the District's water. (Opp., p. 13:16-23.) Section 1254 adds nothing to the City's contentions because it applies to surface water appropriations subject to regulation by the State Water Resources Control Board and has no application to the District or the M&I Agreement. Further, it declares that irrigation is the next highest use. (Wat. Code, § 1254.)

[6]/ The City measures 7.5 square miles with about 9,000 residents. (AR 558, 5452-53.) The District serves 415 square miles and about 40,000 residents. (AR 5386, 5390-2, 4128:15-24.)

glosses over the requirements of section 15124(c), characterizing it as requiring only a "[g]eneral description of the Project's characteristics." (Opp., p. 18:7-10.) According to the City, it satisfied CEQA by sketching out the number of units, housing types, and other banal details of the project site. But the law is clear. The technical characteristics of a residential project of this size include its sources of water supply. (CEQA Guidelines, §§ 15124(c), 15155; Wat. Code, § 10910(a)-(d), (f); Gov. Code, § 66473.7; AR 500-01, 631, 1698-99, 1704.) The City's project description violates CEQA because it omits this essential information. (*Ibid.; Sierra Club, supra,* 6 Cal.5th 502, 512, 515; see Opening, pp. 11:9-15, 14:10-19, 19:8-20:15.) "[T]he Project description set forth in the DEIR is unstable and misleading because it indicates, on the one hand," that water demand for the Sage Ranch project was met, "while on the other hand," it indicates that project water demand will exceed supply. (*San Joaquin Raptor*, *supra*, 149 Cal.App.4th at p. 655; AR 499-501, 643, 1168, 1670, 1781, 1787-88, 1792, 1825, 3307, 3313, 9910, 14194.)

The City uses the EIR to obscure and mislead the public on the availability of water by: (1) asserting that the terminable M&I Agreement requires the District to provide the City water *in perpetuity* (AR 1699; 1788; AR 5726, ¶ B, 11); (2) asserting the M&I Agreement provides for a "maximum amount" of 1,153 AFY, and yet relying on 1,560 AFY (AR 1699, 1792); and (3) asserting that if: (a) the District supplies 1,153 AFY of water; *and* (b) the project proponent supplies 93 AFY of water, then this "will meet the demand resulting from the Sage Ranch Project" – when in reality, even with these supplies, the City will run out of water in 2035. (AR 643, 1699-05, 1738, 1792.) "By giving such conflicting signals to decision makers and the public about the nature [of the project's water supply], the Project description was fundamentally inadequate and misleading." (*San Joaquin Raptor*, *supra*, 149 Cal.App.4th at pp. 655-56.)

B. The City Failed to Analyze Project Impacts

An EIR's purpose "is to provide public agencies, and the public, with detailed information about the effect a proposed project is likely to have on the environment; to list ways in which the significant effects of a project might be minimized; and to indicate alternatives to a project." (*California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1225.) The City's brief parrots this standard, but pivots to the straw-man argument that the City satisfied

various aspects of the Water Code that the District does not challenge. (Opp., pp. 35:15-23, 36:2-37:8.) Embedded in the City's narrative is the damning admission that the Sage Ranch WSA accurately forecast future water needs, projecting that from 2035 to 2040, the City will need "an additional 35.9, 106.8, 179.5, 253.8, 329.8, and 407.5 AFY respectively." (Opp., pp. 20:16-21:1.) In other words, the City admits that the WSA failed to provide a firm assurance of water supplies over the 20-year horizon. (*Vineyard*, *supra*, 40 Cal.4th at pp. 433-34; see also Wat. Code, §§ 10910-10915; Gov. Code, § 66473.7; AR 14329 [City admits it cannot satisfy requirement of firm assurance of water].) The City's brief concludes in the same manner the WSA does, "with implementation of the mitigation measures identified herein, the City would have adequate water supplies to serve the proposed Project." (Opp., pp. 20:28-21:1, quoting AR 1793.) Neither the payment of fees nor the City's unilateral demand that the District supply water over and above 1,153 AFY (the theoretical maximum contemplated by the M&I Agreement) is sufficient to demonstrate adequate water for the project. (*Vineyard*, *supra*, 40 Cal.4th at pp. 433-34, 444.)

The City then engages in a series of "what if" propositions – what if the City acquired additional water rights, what if the City used water in its BWRA account that exceeds its minimum balance, what if the project consumed less water than assumed, and what if the City stopped watering the project's public landscaping? (Opp., p. 21:6-16.) None of these "what if" measures were analyzed in the EIR or WSA, nor do they meaningfully demonstrate any ability for the City to satisfy its water demand over the 20-year horizon. (See AR 1761, 1781, 1793, 1825, 14329.) In a final salvo, the City argues that the applicant will provide 175 AFY (instead of the 93 AFY contemplated by the EIR), and if the applicant does not provide that water, then "*the Project will not proceed*." (Opp., p. 21:17-21 [emphasis in original].) The City thus concedes it has no defense. (*Vineyard*, *supra*, 40 Cal.4th at pp. 429-431, 444-46.) The Supreme Court's opinion in *Vineyard* left no room for doubt:

> Nor can the unanalyzed impacts of unknown water sources be mitigated by providing that if water proves unavailable, the project's future phases will not be built: "While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built."

(*Vineyard*, *supra*, 40 Cal.4th at p. 429, quoting *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 206 ("*Stanislaus*") [holding that this approach to water supply defeats CEQA's fundamental informational purpose]; see *Sierra Club*, 6 Cal.5th at p. 516 ["reviewing court must decide whether the EIR serves its purpose as an informational document"]; *id*. at pp. 515-516, 520-521.)

The City analyzed none of the impacts of supplying sufficient water to satisfy its demands. (AR 494-503, 1686-1708.) It proceeded to rely on District SWP water despite the District affirming that it could not supply that water, nor was the District obligated to do so. (AR 14193, ¶ 10-14194, ¶¶ 13-20, 14210.) The City never analyzed whether Greenbriar actually could be expected to acquire 175 AFY (or the 93 AFY in the EIR), where it would come from, or the impacts of delivering it as required by CEQA. (*Vineyard*, *supra*, 40 Cal.4th at pp. 430-34.)

1. The EIR Substantially Overstates Average Surface Water Allocations and Employs an Unlawful Ratio Theory to Trivialize Project Impacts

The City's EIR, based on the outdated 2015 RUWMP,[7] assumed the District will receive average SWP deliveries at 60% of the District's contractual water supply of 19,300 AFY, which amounts to 11,580 AFY. (AR 1172, 1778, 1811.) The District's projections, informed by the Department of Water Resources (operator of the SWP), indicate it will only receive 41.08% (7,928.44 AFY) of its contractual water supply using a 20-year average, which is optimistic. (AR 4134:10-17, 14210, 14193, ¶ 12, 14268.) The City thus overstated the District's average allocations by 3,651.56 AFY (11,580 – 7,928.44), the equivalent of over ten Sage Ranch projects. (AR 14193, ¶ 11; 14210, 14214, ¶ 3(f); 14217-19; see also AR 11086-87; Opening, pp. 2:6-4:8.)

The City never rebuts this evidence and instead argues: (1) the 175 AFY needed for Sage Ranch is "only" 2.7% of the District's 10-year average supply of SWP water (6,411 AFY); and (2) the difference between the District's position and the City's position amounts to "a

[7]/ The City asserts that the District is responsible for delays in adopting an updated RUWMP. (Opp., pp. 12:13-16, 14:20-21, 24:27-25:3, 29:18-20, 36:15-17, 37:17-20.) The City's assertions are unsupportable and are legally irrelevant. (Wat. Code, § 10910(c)(3).) Further, the "evidence" the City submitted to support its assertions is improper, should be disregarded, and even were it admitted into evidence, only demonstrates that the District agreed to manage the 2020 RUWMP process. (City's Request for Judicial Notice ("City RJN"), p. 4; Exh. A thereto, p. 8.) The District does not have unilateral authority to adopt a 2020 RUWMP, a fact that Exhibit A to the City's RJN recognizes. (City RJN, pp. 10-12.)

disagreement between experts." (Opp., p. 22:18; see also Opp., p. 23:20-23; AR 3308, 3313.) The City's contentions are nonsensical. The City violated CEQA by employing an improper ratio theory to downplay project impacts, and by couching the City's water needs as "de minimis." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-721 [EIR improperly focused on individual project's relative effects and omitted facts relevant to analysis of collective effect this project and other uses would have on the resource]; *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025-26 ("*L.A. Unified*") [city's ratio theory "'trivialize[d] the project's impact' by focusing on individual inputs, not their collective significance"];[8] *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 117-118 ("*CBE*") [CEQA prohibits use of a "de minimis" rationale].)[9]

In any event, 175 AFY is not "de minimis." It represents half the project's demand – sufficient water to supply 500 homes and about 1,300 people in a City of 9,064 residents. (AR 498.) The City nevertheless argues that 175 AFY represents a "mere 2.7% of the District supply," but this figure is designed to obscure the City's actual demand. (AR 3308.) By 2040, the City would consume a whopping 24% of the District's 10-year average allocation, and 19.7% of its 20-year average. (AR 1792, 14210.) This is not "a disagreement among experts,"[10] or even a proper topic of expert opinion, but rather the City's wholesale abdication of its duty to ensure it

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[8]/ The Court of Appeal in *L.A. Unified*, *supra*, 58 Cal.App.4th at pp. 1025-26, explained the analytical defect as follows:

> [T]he relevant issue to be addressed in the EIR on the plan is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools. We do not know the answer to this question but, more important, neither does the City; and because the City does not know the answer, the information and analysis in the EIR regarding noise levels around the schools is inadequate.

[9]/ In *CBE*, the court struck down amendments to the CEQA Guidelines that attempted to codify a "de minimis" standard for a project's incremental effects, because "the de minimis approach," while appearing reasonable on its face, "contravene[s] the very concept of cumulative impacts." (*CBE*, *supra*, 103 Cal.App.4th at pp. 117-18, 121; Opp., p. 23:20-23.)

[10]/ The City has not established that Jay Schlosser, the City's Development Services Director, is an expert in District water supply, nor can it. (AR 3295-3315.)

will have sufficient water for the 20-year horizon. (*Vineyard*, *supra*, 40 Cal.4th at pp. 430-434; Wat. Code, § 10910(c)(3)-(4).) The parties do not disagree that 175 AFY is 2.7% of the District's 10-year average SWP supply. The City's "expert opinion" is that the District has enough water to serve the City's needs, while disingenuously arguing that those needs are only 175 AFY.[11] (AR 3307-10.) Cumulative analysis of water supply impacts must include at least the following: (1) 1,560 AFY; (2) 181.5 AFY (550 entitled but undeveloped City lots); (3) about 500 AFY (entitled but undeveloped lots in Golden Hills, Bear Valley, and Stallion Springs); (4) unanalyzed current demand from Golden Hills, Bear Valley, and Stallion Springs; and (5) unanalyzed current demand from agricultural users. (AR 1792, 3309-10, 14193, ¶ 8 – 14194, ¶ 17.)

2. The City's Status as an Existing M&I Customer Is Immaterial

Even if the District supplied the City with the full theoretical maximum of 1,153 AFY of water under the M&I Agreement: (1) it is inappropriate for the City to rely on this amount for long-term planning; and (2) the City is still short 407 AFY of water (the needs of about 1,160 homes) by 2040. (AR 1792, 5726.) Instead of confronting this reality, the City argues that it is not required to "analyze the policy or political implications of a water district having to honor its contractual obligations." (Opp., p. 25:10-11.) The City's contentions are outrageous and assume that the District must be cowed by the City's unfounded interpretation of the M&I Agreement, yet also should ignore the express terms of all the District's other M&I and contractual agreements. The City's duties under state law remain: to assess actual available water supply and provide *firm assurances* of future supplies before approving a subdivision map for a large residential project. (*Vineyard*, *supra*, 40 Cal.4th at pp. 433-34; see Opening, pp. 12:3-13:24, 29:15-30:8.) The City instead sought to force the District to provide water it does not have and water that is legally used by others. (AR 1792, 3295, 3315, 14193, ¶ 6; 14195, ¶ 21.)

According to the City, because it is an "existing customer" under the M&I Agreement,

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[11]/ The City attempts to demonstrate, via improper extra-record evidence, that the District "owns 22,494 AF of water in various water banks," and again employs monopolistic tunnel vision in asserting that the City needs only 17,994.3 AFY of water over the next 20 years. (Opp., p. 22, fn. 2.) The City has failed to demonstrate that this "banked water" is available to satisfy the City's demands in any way. (City RJN, pp. 3, 14-17; District's Opposition to City RJN ("Oppo. to RJN"), filed concurrently herewith, pp. 7-9.)

future Sage Ranch residents enjoy priority in the event of a water shortage (when the District must adopt a Water Priority Ordinance). (Opp., p. 26:13-22.) The City is wrong. State law requires the City to coordinate with the District to determine whether adequate and sustainable water supplies exist to serve the project *before it can be approved*, and the City must support that determination through rigorous and detailed documentation. (Opening, pp. 9:21-28, 12:3-13:24, 25:9-26:1, 26:2-25, 29:15-30:8.) The City's own documents show that *even with* the full theoretical 1,153 AFY of variable supply contemplated by the M&I Agreement at 2040, the City runs out of water in 2035, when its demand (3,178.7 AFY) exceeds even its inflated available supply (3,143 AFY). (AR 1792; see AR 643.) By 2040, the City has a deficit of 407.5 AFY by its own calculations. (*Ibid*.) The City's mischief is precisely the type of illogical disconnection between land use planning and water supply analysis that led to the Legislature's commands that large residential projects must "show us the water." (Wat. Code, §§ 10910-15; Gov. Code, § 66473.7.)

3. Greenbriar's Commitment of Water Is Illusory

An EIR cannot rely on "paper water" by simply stating, as the City's EIR does, that "[t]he applicant will be required to secure/purchase water rights to serve the Project and/or pay in-lieu fees as determined by the City (for the City to purchase additional water for recharge)" or, as its condition of approval states, "the developer shall convey… up to a total of 175 acre-feet of pumpable water rights… to the City to meet the water demands of the Project."[12] (AR 87, 500, 631, 1685-706, 1793.) The City must show a reasonable probability of accessing an identified source of "wet water."[13] (*Vineyard*, *supra*, 40 Cal.4th at p. 432; *California Oak*, *supra*, 133 Cal.App.4th at pp. 1241-42; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 720-23 ("*SCOPE*"); *Santa Clarita*, *supra*, 157

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[12]/ The condition provides no details that would allow a factfinder to ascertain if this water is worth more than the paper the condition is printed on, and the City's EIR and WSA are deficient for this reason. (AR 87; *Vineyard*, *supra*, 40 Cal.4th at p. 432; see *id*. at pp. 444-446.)

[13]/ The District's Opening Brief (p. 19:13-16) listed factors that could demonstrate that the applicant had identified water to serve the project, and though the City takes issue with the "level of detail" in that list, the City points to nothing in the record demonstrating that Greenbriar identified actual, available water. (Opp., p. 26:24-28:1; see also Oppo. to RJN, pp. 9-11.)

Cal.App.4th at pp. 158-59.) Whether the City relies on the option contract or the condition of approval, neither satisfies the City's duty to identify the project's water sources and "include a reasoned analysis of the circumstances affecting the water's availability." (*Vineyard*, *supra*, 40 Cal.4th at p. 432; see also *Stanislaus*, *supra*, 48 Cal.App.4th at p. 206 [project involving "the supplying of water to a large development" required county "'to fulfill its obligation under CEQA to provide sufficient meaningful information regarding the types of activity and environmental effects that are reasonably foreseeable' from that supplying of water"].)

4. The City Failed to Analyze Cumulative Impacts

The City expects the District to meet the City's surging demands by reducing water deliveries to other existing legal users of water. (AR 3295-315, 14179, 14914, ¶¶ 15-17.) Not only does the City expect to purchase 1,560 AFY of District water by 2040, it has approximately 550 undeveloped entitled lots that expect District water service. (AR 1792, 3309, 8538, 14192-94, 14318-19.) The District's other M&I customers also use District SWP water, and Bear Valley CSD, Golden Hills CSD, and Stallion Springs CSD also have significant numbers of undeveloped entitled lots. (AR 8538, 14194, 14318-19, 14194; see also AR 5439; AR 5492.) The City's EIR fails to acknowledge these other users or the consequences of the City's expectation that the District should simply take water from the District's other customers and communities to serve the City. (AR 639, 642-43, 1677, 1792, 3309-10, 14250, ¶ 5 – 14253, ¶ 21.) The EIR is deficient for this reason alone. (CEQA Guidelines, §§ 15130(a), 15355; *Ocean Street Extension Neighborhood Association v. City of Santa Cruz* (2021) 73 Cal.App.5th 985, 1019-21; Opening, pp. 21:7-15.) Instead of directly confronting its failure to address the impacts of its expected water demand, the City attempts to punt its responsibilities to the District, arguing that because the 2015 RUWMP's data regarding other M&I users was outdated, it was somehow the District's responsibility to generate updated information.[14] (Opp., p. 29:19-30:2.) Quite the opposite is true. The City must ensure that substantial evidence supports its conclusions. (*Vineyard*, *supra*,

[14]/ It is unclear what the City means by the statement that the District "has never quantified a differing opinion." (Opp., p. 29:18-19.) To the extent the City argues the District never provided updated information, the first time the City quantified the amount of District water it intended to use – 1560 AFY – was in the Final EIR. (AR 1168, 1173-74 [Draft EIR], 1703 [Final EIR].) The District's comments on that document described these concerns. (AR 14177, 79, 88, 94-95.)

40 Cal.4th at pp. 434-35; Pub. Resources Code § 21168.) Here, the City failed to include even minimally sufficient evidence that would inform an appropriate cumulative impacts analysis, let alone enable it to make an informed significance determination. (*Ibid*.; CEQA Guidelines, § 15130; *Stanislaus*, *supra*, 48 Cal.App.4th at p. 206; AR 1789-91, 3309-10, 14193-95.) Moreover, the Water Code expressly contemplates a situation in which the RUWMP is no longer relevant and in such circumstances requires the City to find out and disclose the necessary information. (Wat. Code, § 10910(c)(3).)

C. The City Failed to Identify and Adopt Proper Mitigation

The City argues that the fee requirement of Mitigation Measure HYD-3 satisfies CEQA under the *Anderson* case because it is "part of a reasonable, enforceable plan or program that is sufficiently tied to the actual mitigation, at issue," but fails to articulate how the fee will translate into actual water, and otherwise fails to tie its position to *any* statutory or case law. (Opp., p. 30:9-22.) A commitment to pay fees does not by itself establish an adequate water supply, nor is it adequate mitigation for water supply impacts if there is no evidence that mitigation will actually result. (AR 14173; *Anderson, supra,* 130 Cal.App.4th at pp. 1188-89; *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 197-98; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1122.) A fee requirement is not adequate or effective mitigation where, as here, the City has acknowledged that payment of fees is not likely to be sufficient to purchase the necessary additional water supplies, and where the source of those supplies is unknown. (AR 501, 632, 1740, 1793.) The bald assertion that the City "can and does use the fees to purchase pumpable water rights" does nothing to satisfy its legal obligation to demonstrate that the fees will provide water for future residents of the City of Tehachapi. (Opp., p. 30:21-22.) Similarly, the applicant's promise to purchase water rights – whether it is 93 AFY or 175 AFY – does not satisfy CEQA's requirement that the EIR demonstrate a reasonable probability of accessing an identified source of "wet water." (*Vineyard*, *supra*, 40 Cal.4th at p. 432-34, 444-46; *California Oak*, *supra*, 133 Cal.App.4th at pp. 1241-42; *SCOPE*, *supra*, 106 Cal.App.4th at pp. 720-23; *Santa Clarita*, *supra*, 157 Cal.App.4th at pp. 158-59.) The City otherwise fails entirely to address the District's arguments regarding mitigation of the project's impacts on water supply.

(Opening, pp. 19:7-23:3.) The District therefore does not repeat them here, but accepts the City's failure to address the arguments as an admission the arguments are meritorious.

D. The City Failed to Consider Reasonable Alternatives

The City argues its EIR considered a reasonable range of alternatives to the proposed project and that it properly rejected them all. (Opp., pp. 31:3-32:20.) On the contrary, the single alternative evaluated in the City's EIR, other than "no project," and "alternative location" (both routinely dismissed out of hand as "infeasible" for failure to meet basic project objectives) was the "Reduced (50%) Project," which met project objective 1, most of objectives 2, 3, and 4, and would have "decrease[d] potable water impacts generated by the Project." (AR 652, 655.) The City nevertheless rejected its only reduced development alternative – which is environmentally superior to the proposed project even in light of the City's superficial environmental review (AR 658; see AR 650-658) – because it allegedly would "not meet the City's goal of having diverse housing." (AR 656, 658; see Opp., p. 32:15-18.) Why then, did the City not consider a project of reduced size that maintains similar relative percentages of diverse housing types? (AR 404, 656, 658, 2645-46; *Habitat Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1304-05 ("*Habitat Watershed*").) The answer is obvious – *that* project alternative would have met all the project objectives *and* reduced impacts, but a 500-unit project allegedly was not as "economically viable" as a 1,000-unit project – though the City's record offers *no evidence* supporting such a conclusion. (AR 651-658; *City of San Diego v. Board of Trustees* (2015) 61 Cal.4th 945, 955 [findings of economic infeasibility must be supported by relevant economic evidence]; *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 600 [same].) The City's approach considered no "potentially feasible" alternative and instead reflects a straw-man setup of alternatives designed to fail from the outset. (CEQA Guidelines, § 15126.6(a).) As such, the EIR's range of alternatives is manifestly unreasonable. (*Ibid.*; *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, 415.)

E. The City's Responses to Comments Violate CEQA

When credible expert opinion suggests that the EIR's assessment of a significant impact is flawed and that further study is needed, then the EIR is fatally deficient unless the final EIR

responds with further evaluation or a reasonable explanation, supported by evidence, for not doing so. (*Flanders Foundation v. City of Carmel-by-the-Se*a (2012) 202 Cal.App.4th 603, 616-17; *California Oak*, *supra*, 133 Cal.App.4th at pp. 1237-38.) Here, the City's response to comments and subsequent analysis were designed to mislead rather than inform, and obscured significant issues associated with the City's inability to provide water for Sage Ranch over a 20-year horizon. (AR 1662-73, 3295-3315; Wat. Code, § 10910-15 [requires City to determine project's water supply sufficiency for a 20-year projection in addition to the demand of existing and other planned future uses].) For example, the District noted an internal discrepancy in the documents because the EIR and WSA represented that project demand will exceed supply, but also represented that the City would be able to meet that demand. (AR 499-501, 643, 1168, 1173, 9910; see also AR 1670.) The District also noted that the WSA "must include a discussion of whether the total projected water supplies are sufficient to meet Project demand over a 20-year period." (AR 9907.) In response, the City asserted:

> [T]he Sage Ranch Project water demand will exceed the supply of SWP water available through the City/TCCWD Term M&I agreement (including the 2.3% growth discussed in the WSA and EIR) by 93 acre-feet. However, it is anticipated that with implementation of the mitigation measures identified in the EIR, the City would have adequate water supplies to serve the proposed Project … and other projected demands within the City's service area through the year 2040.

(AR 1670.) The City's response and accompanying WSA analysis are designed to mask the fact that by the year 2040, the City is short 407 AFY of water (the needs of about 1,160 homes). (AR 1788 [admits theoretical maximum of 1,153 AFY], 1739 [assumes District will supply 1,560.5 AFY], 1825 [unfounded conclusion of "sufficient supply"].) The City's conclusion that Sage Ranch only needs 93 AFY is sleight of hand – comparing the project to an inflated future baseline: (1) based on a 2.3% growth rate without the project, against (2) its growth rate with the project. (AR 1792, see Opening, p. 11, fn. 19.) The City says the rest of the water demand will be met through mitigation measures, which consist of collecting fees to purchase water *if available* and in amounts which the City concedes would be inadequate to purchase it even if water were available. (AR 501, 632, 1740, 1747, 1793.) The City's remaining responses to the District are similarly deficient, and rely on information that is insufficient, inaccurate, and

misleading. (AR 1662-73, 3295-3315; Opening, pp. 24:4-28, 25:27-28.)

F. The City Failed to Consult with Other Public Agencies in Good Faith

The City claims it "consulted" with the District in "good faith" throughout the process. (Opp., pp. 34:26-35:8.) The record belies the City's claims and demonstrates that at a minimum, the City made faulty assumptions about District supplies (AR 1787-88, 1792, 1825, 9908-10, 14192-95, 14210, 14213-15), dismissed the District's (and other public agencies') concerns (AR 1640, 1657-73, 11545), deliberately delayed responding to the District's comments to stifle further input (AR 1636, 1658, 1703, 3295-3315), and failed entirely to consider the District's *actual* water supply, as well as the needs of the District's other customers and communities. (AR 3309-10, 14192-95, 14210.) Had the City consulted with the District in *good faith*, it would have engaged the District on its issues with water supply, and incorporated District limitations into its analysis of the project. (AR 14192-95, 14210, 14212-15; Wat. Code, §§ 10910-10915; Gov. Code, § 66473.7; see CEQA Guidelines, §§ 15082, 15083, 15155.) The City's characterization of its failure to hold a statutorily-mandated scoping meeting – the basic purpose of which is to consult with other public agencies regarding environmental review of the project – as omission of a purely administrative exercise demonstrates its dismissive attitude toward CEQA, the District, and other "outside agenc[ies]."[15] (AR 11545.) In the City's view, "[g]iven that [the District] repeatedly has professed its only concern is water… [the District] cannot reasonably claim… that it was prejudiced." (Opp., p. 34:14-21.) Absent from the City's brief is any discussion of the Supreme Court's rule that CEQA's procedural requirements must be scrupulously enforced. (*Sierra Club*, *supra*, 6 Cal.5th at p. 512; *Vineyard*, *supra*, 40 Cal.4th at p. 435.) "[W]hen an agency fails to proceed [as CEQA requires], harmless error analysis is inapplicable." (*Sierra Club*, *supra*, 6 Cal.5th at p. 515; see also *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 492-493 [failure to notify and consult with other public agencies is prejudicial error regardless of outcome of CEQA process, because it is "impossible" to "know

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[15]/ The City argues that the District is barred from litigating the City's failure to conduct a scoping meeting by the exhaustion doctrine. (Opp., p. 34:4-7.) The District fully raised the issue of the City's failure to consult the District and other public agencies as CEQA requires, of which the scoping meeting was a mandatory part. (AR 14165-66, 68, 76, 84-85, 90; *Center for Biological Diversity v. County of San Bernardino* (2010) 184 Cal. App. 4th 1342, 1363.)

what effect these expert criticisms" or other input "would have had on public comments, presentations, and official reaction"].)

G. The City's WSA Violates the Water Code

Substantial changes that occur after the RUWMP is adopted must be addressed in the WSA and CEQA analyses. (*Friends of Santa Clarita River v. Castaic Lake Water Agency* (2004) 123 Cal.App.4th 1, 9, 13-15; Opening, pp. 26:26-28:6.) The City failed to do so, and its defense appears to be that because the District did not update the RUWMP (see fn. 7, *supra*), the City "had no choice but to use the 2015 RUWMP." (Opp., p. 14:21.) Again, the City ignores clear legal principles as well as the fact that the RUWMP is a multi-agency effort. (AR 5386, 5721.) In the absence of a current RUWMP that accounts for the project's water demand, it is the City's responsibility to prepare accurate and complete analyses in its EIR and WSA to ensure its decision is supported by substantial evidence. (*Vineyard*, *supra*, 40 Cal.4th at pp. 434-35; Wat. Code, § 10910(c); Gov. Code, § 66473.7(c); CEQA Guidelines, § 15155(e)-(f).)

Instead, the City – relying on the fact that the project site was physically located within the geographic boundaries of the 2015 RUWMP – copied and pasted large sections of an outdated document. (AR 1170, 1782, 1794; Wat. Code, § 10910(c)(1); see, e.g., AR 1786 [relying on 2015 RUWMP to assert "the City anticipates having groundwater supplies available to meet demands during the normal, single dry year, and multiple dry year scenarios"]; AR 1796 [similar]; AR 1800-19 [pasting pages 2-2 through 2-20 from the 2015 RUWMP directly into the WSA in "satisfaction of Water Code, sections 10910(A)(1) and 10910(D)(2)"]; AR 1820 [pasting pages 2-24 through 2-28 from 2015 RUWMP directly into WSA].) The 2015 RUWMP did not anticipate the project water demand, however, and it projected that the City would use 378 AFY of District SWP water by 2035. (AR 5465.) The WSA instead projects the City would use 1,188.8 AFY of District SWP water by 2035 and 1,560 AFY by 2040. (AR 1792.) Most egregiously, to prop up its calculations of groundwater supply, the WSA misrepresented Table 4:6-9 from the 2015 RUWMP. (Compare AR 1797 [WSA] to AR 5465 [2015 RUWMP].) The table includes "sources that are not available as deliverable, drinking water sources" that should "be excluded from this calculation." (AR 14213.) The City's misleading totals are cited throughout the EIR

and WSA. (See, e.g., AR 1696, 1732, 1785, 1797-98.)

H. The Project's Water Supply Is Not Verified

The City must make "written verification" of adequate water to meet the project's demand. (Gov. Code, §§ 65867.5, 66473.7; see Opening, pp. 29:16-30:8.) The City asserts that its resolution approving the tentative tract map is sufficient. (AR 20-21; Opp., p. 38:13-18.) The resolution baldly states that the applicant "has demonstrated that a sufficient water supply will be available to serve the subdivision." (AR 20-21.) The City's resolution verifies nothing other than that the City either (1) wholly misconstrued its duty under the Government Code; or (2) ignored it. (*Ibid.*) The City thus concedes its failure to comply with this statutory requirement. (Gov. Code, § 66473.7(a)(2); *Vineyard*, *supra*, 40 Cal.4th at pp. 433, 444.)

IV. CONCLUSION

The City's justifications reek of a bygone era of "will serve" form letters, vague conditions, and other paper promises. Its outdated thinking does a disservice to its existing residents and harms the future residents it hopes to attract, as well as harming the environment and other stakeholders. The District respectfully requests the Court grant its petition and issue a writ commanding the City to vacate and set aside its certification of the EIR, WSA, and approval of the project.

DATE: March 7, 2024

Respectfully submitted,

PIONEER LAW GROUP, LLP

By: _____

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Re: *Tehachapi-Cummings County Water District v. City of Tehachapi*
Sacramento County Superior Court Case No. 34-2022-80003892-CU-WM-GDS

PROOF OF SERVICE

I, Jean Seaton, declare:

I am a citizen of the United States, employed in the City and County of Sacramento, California. My business address is 1122 S Street, Sacramento, California 95811. I am over the age of 18 years and not a party to the within action.

I am familiar with the practice of Pioneer Law Group, LLP, for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in the United States Postal Service.

On March 7, 2024, I served the following:

PETITIONER'S REPLY BRIEF

☒ (VIA U.S. MAIL) I placed such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at the Pioneer Law Group, LLP, Sacramento, California, following ordinary business practices as addressed as follows, and/or

☐ (VIA PERSONAL SERVICE) I caused each such envelope to be delivered by hand to the addressees at the addresses listed below; and/or

☐ (VIA FEDERAL EXPRESS) I caused each such envelope to be delivered via Federal Express service to the addressees at the addresses listed below; and/or

☒ (VIA EMAIL) I caused each such document to be sent by electronic mail to the addressees at the email addresses listed below.

See attached Mailing List.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on March 7, 2024, at Sacramento, California.

Jean Seaton

Re: *Tehachapi-Cummings County Water District v. City of Tehachapi*
Sacramento County Superior Court Case No. 34-2022-80003892-CU-WM-GDS

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