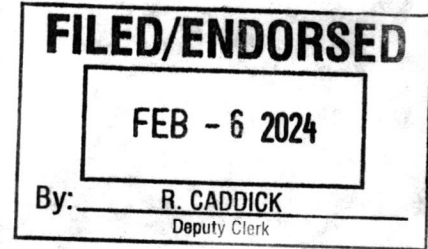


By Fax

Andrea A. Matarazzo, SBN 179198
Daniel A. King, SBN 258524
Kathryn L. Patterson, SBN 266023
PIONEER LAW GROUP, LLP
1122 S Street
Sacramento, CA 95811
Telephone: (916) 287-9500
Emails: andrea@pioneerlawgroup.net
dan@pioneerlawgroup.net
kathryn@pioneerlawgroup.net

Attorneys for Petitioner TEHACHAPI-
CUMMINGS COUNTY WATER DISTRICT



**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 OPENING BRIEF

Judge: Hon. Stephen Acquisto
Dept.: 36

Petition filed: September 16, 2021

Trial Date: March 22, 2024

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1 **I. INTRODUCTION**

2 Petitioner TEHACHAPI-CUMMINGS COUNTY WATER DISTRICT (“District”) brings
3 this action because the Respondent CITY OF TEHACHAPI (“City”), with a population of only
4 9064, approved a 138-acre development including nearly 1,000 residential units, known as “Sage
5 Ranch,” heavily dependent on the District’s water supply without adequately considering the
6 water supply, associated impacts and mitigation.

7 The District is a county water district and the court-appointed Watermaster for three
8 adjudicated groundwater basins within its service area – Tehachapi Basin, Brite Basin and
9 Cummings Basin. As a county water district, the District supplies imported State Water Project
10 (“SWP”) water to a variety of municipal, agricultural and industrial customers, including the City.
11 As the court-appointed Watermaster, the District administers the Tehachapi Basin Judgment and
12 monitors groundwater pumping to ensure a stable, reliable, and safe groundwater supply to
13 stakeholders within the Basin. In light of the District’s mission, regional responsibilities, and key
14 role in relation to the City’s public water system, state law expects the City to coordinate closely
15 with the District regarding large development proposals, especially those proposals reliant on the
16 District’s water, to ensure informed decision-making regarding the limited water resources,
17 significant water supply impacts, and mitigation for those impacts.

18 The Sage Ranch project is dependent on the District for most of its water supply. The
19 District raised significant concerns regarding the adequacy of the project’s Water Supply
20 Assessment (“WSA”) and environmental impact report (“EIR”), resulting impacts within the
21 District and the groundwater basin, and impacts on other water users who depend on the District’s
22 limited water supplies. Days before the City certified the EIR, the applicant presented an option
23 contract purporting to commit additional water supplies to the project – supplies never analyzed
24 in the EIR or WSA, and which never materialized. The City approved Sage Ranch without an
25 adequate water supply and without first informing itself, other agencies, and the public generally,
26 about the environmental impacts resulting from its water supply decisions.

27 The District brings this action to enforce the City’s mandatory duties under the California
28 Environmental Quality Act (“CEQA”), Water Code, Government Code, and its own policies to

1 clearly identify project water supplies, and to analyze the environmental consequences of such
2 supplies before approving expansive growth dependent on an inadequate water supply and
3 potentially harmful to other lawful water users. The Court should issue a writ of mandate
4 directing the City to set aside the EIR and WSA and vacate its project approvals.

5 **II. FACTUAL BACKGROUND**

6 **A. The District's Water Supply and Management Role and Capacity Constraints**

7 The District was formed in 1965 to address persistent groundwater basin overdraft in the
8 greater Tehachapi area, and shortly thereafter commenced and completed separate groundwater
9 adjudications for three adjacent, but hydrologically separate, groundwater basins within the
10 District – Brite, Cummings, and Tehachapi basins.¹ (AR 4149, 5390.) Since then, the District's
11 duties have expanded to provide a SWP imported water supply, water resource management, and
12 limited flood control protection to the agricultural, municipal, and industrial customers within the
13 District's boundaries, which include about 40,000 residents and 266,000 acres.² (AR 5386, 5390-
14 2, 4128:15-24, 12012-13.) These residents are located throughout the District, and concentrated
15 in the City and the Community Services Districts ("CSDs") of Golden Hills, Bear Valley, and
16 Stallion Springs. (AR 2811, 14194, ¶ 19; see also AR 4134:18-4135:18.) The District's mission
17 includes managing groundwater extractions from the adjudicated groundwater basin and ensuring
18 its customers the most reliable, cost-effective and highest quality water supply. (*Id.*, see also AR
19 14174-75, citing District website.) The City is in the Tehachapi Basin. (AR 484, 5401.)

20 The District currently: (1) performs groundwater recharge and recovery projects for the
21 basins, (2) protects groundwater resources within the basins by administering the judgments and
22 physical solutions under continuing court jurisdiction, (3) acts as the court-appointed
23 administrator for any water rights ownership change, and (4) provides annual reports to the Kern
24 County Superior Court in accordance with the Cummings and Tehachapi basin judgments. (AR
25 484-85, 5393; see, e.g., AR 12008-80.) The District is charged with carrying out its Watermaster

26
27 ^{1/} Brite Basin's Natural Safe Yield ("NSY") is 500 acre-feet per year ("AFY"), Cummings
Basin has a NSY of 2,990 AFY, and Tehachapi Basin has a NSY of 5,500 AFY. (AR 5401-03.)

28 ^{2/} The incorporated City within the District's service area includes approximately 9,000
residents and 4,800 acres. (AR 558, 5452-53.)

1 duties, powers, and responsibilities in an impartial manner without favor or prejudice to any
2 party. (See, e.g., *Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th 992, 1053.)

3 The District supplements natural water supplies by importing SWP water (sometimes
4 called surface water) delivered south from the Sacramento-San Joaquin Delta via the California
5 Aqueduct. (AR 5390, 5409, 5550.) The District has two SWP contracts with the Kern County
6 Water Agency (“KCWA”) for a total contractual supply of 19,300 AFY.³ (AR 5399, 14192,
7 ¶1(c), 14193, ¶12.) KCWA, in turn, has a SWP supply contract with the California Department
8 of Water Resources (“DWR”). (*Ibid.*) The difference between SWP contracted supply and actual
9 annual allocation is well documented. The amount of SWP water actually delivered is
10 constrained by a host of factors outside the District’s control, including climate and
11 environmental restrictions. “[A] huge gap” exists “between what is promised and what can be
12 delivered,” rendering SWP contracted supplies “nothing more than hopes, expectations, water
13 futures or, as the parties refer to them, ‘paper water.’”⁴ (*PCL, supra*, 83 Cal.App.4th at p. 908,
14 fn. 5; *Vineyard, supra*, 40 Cal.4th at p. 430.) Over the past 15+ years, DWR has dramatically
15 reduced SWP water deliveries through KCWA to the District, and the District’s 15-year average
16 of SWP allocations is 44.67%.⁵ (AR 4129:19-4130:18, 4134:10-17, 14193, ¶ 11, 14268.)

17 Once SWP water is allocated and delivered into the Aqueduct, the District’s system
18 capacity to pump SWP water uphill is limited to a maximum of 10,000 AFY. (AR 14193-94,
19 14210, 14214.) This is because the District pumps SWP water from the Aqueduct on the San
20 Joaquin Valley floor, and through a series of enormous pumps, lifts the water about 3,500 feet

21
22 ³ / 1 AF = 325,851 gallons, enough to cover one acre of land one foot deep in water.

23 ⁴ / The term “paper water” describes the disparity between water that is claimed and water
24 that actually exists – phantom water found in legal and government documents but not found in or
25 accessible from the reservoirs, rivers, and basins. (*Santa Clarita Organization for Planning the
26 Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722 (“SCOPE”); *Vineyard
27 Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 432
28 (“*Vineyard*”).) It is fantasy water that for decades served as the foundation of misguided land use
planning and water management policies and led to the Legislature’s enactment of “show me the
water” statutes. (*Planning & Conservation League v. DWR* (2000) 83 Cal.App.4th 892, 914, fn. 7
29 (“PCL”); Wat. Code, §§ 10910-10915; Gov. Code, § 66473.7.)

30 ⁵ / Given the implications of climate change and difficult drought conditions, a 40% average
annual SWP allocation is optimistic. (AR 14193, ¶11; 14210; 14214, ¶3(f); 14217-19.)

1 into the Tehachapi Mountains. (AR 5419, 5593, B ¶2(ii).) Due to system limitations, even
2 though the District's SWP contract allocation is 19,300 AFY, the District cannot import more
3 than 51.8% of that amount (10,000/19,300) in a given year.⁶ (AR 14176, 14210.) From a water
4 supply planning perspective, any surface water quantities above the District's maximum import
5 level are paper water that may not come to fruition. (AR 5594, ¶15; 14194, ¶15; see fn. 4 *supra*.)
6 When SWP allocations are adjusted to factor in the District's pumping capacity, actual SWP
7 deliveries into the District are reduced to 33.22% on a 10-year average and 37.51% on a 15-year
8 average.⁷ (AR 14210, 14214, ¶3(f), AR 4134:10-17, 14268; see fn. 6 *supra*.)

9 **B. The 2015 Regional Urban Water Management Plan ("RUWMP")**

10 The 2015 RUWMP is a regional water planning document that includes the District, the
11 City, Bear Valley CSD, Golden Hills CSD, and Stallion Springs CSD. (AR 5386.) In 2015, the
12 City had 3,085 municipal connections. (AR 5451.) The 2015 RUWMP projected population
13 growth of 1.1% for the City and 1% for the unincorporated areas.⁸ (AR 5392, 5453.) Table 4:6-9
14 in the RUWMP projected the City's *total* water supplies through 2035, which anticipated that the
15 City would maintain the same groundwater allocation and slowly increase its demand for SWP
16 water supplied by the District from 45 AFY to 378 AFY in 2035. (AR 5465.)

17 **C. The Term M&I Agreement**

18 The City is just one of the District's many SWP water customers. (AR 14194, ¶14, 19.)
19 The terms under which the District supplies the City SWP water are governed by their "Term

20 ^{6/} Over the last 10 years (2012-2021), the District was allocated an average 40.50% of its
21 contractual SWP water supply, but the District *actually* imported only 33.22% due to the
22 District's limited pumping capacity. (AR 14210, 14214, ¶3(f), 14268.) The District has imported
23 an average of: (1) 7,928.44 AFY on a 20-year average, (2) 7,239.43AFY on a 15-year average,
24 and (3) 6,411.46 AFY on a 10-year average. (AR 14193, ¶12; 14210.)

25 ^{7/} Attachment 3 to the Declaration of Tom Neisler indicates that the District's 2021 SWP
26 allocation was 10%. (See AR 14268.) The amount ultimately allocated was 5%, and these
27 averages would be slightly less based on that adjusted amount. (AR 4134:10-17.)

28 ^{8/} Though the City's WSA purportedly relied on the 2015 RUWMP, the WSA projected a
2.3% *growth rate*. (AR 5453, 5465, 1792, 11543.) Thus, the 2015 RUWMP's projection that the
City would only import 378 AFY of District water by 2035 ballooned in the WSA, which expects
the City to import 1,188.7 AFY by 2035. (AR 1792, 5465.) By 2040, the City plans to import
1,560.3 AFY, but the City never analyzed whether that water is actually available, and which
current District customers the City expects to go without in order to satisfy the City's outsized
demand. (AR 1792, 3309-10; see fn. 37, *infra*.)

1 Municipal & Industrial (M&I) Agreement.” (AR 14197-202.) The City and the District entered
2 into their most recent Term M&I Agreement on January 1, 2017 (“M&I Agreement”). (AR 5722-
3 27, 14197.) The M&I Agreement provides for a 10-year term, after which either party may
4 terminate the agreement at-will and without cause. (AR 14201, ¶ 11.) The 10-year term limits
5 reliance on the M&I Agreement as a long-term water supply due to the variable nature of the
6 District’s SWP allocations and the District’s other commitments. (AR 5594, ¶14 14192, ¶ 4.)⁹
7 While the M&I Agreement requires the City to buy water, the District is only required to sell the
8 City 5 AFY. (AR 14199, ¶ 6.) Any additional supply the District makes available is expressly
9 conditioned upon availability of sufficient SWP water. (AR 14197, B, ¶1; 14201, B, ¶10.) Under
10 the M&I Agreement, supplies above 5 AFY may be made available as follows:

11 District shall have no obligation to sell to Water User more than 1,153 acre feet
12 per year¹⁰ [insert Water User’s 2040 projected SWP demand from Table 2-13 of
13 the 2010 RUWMP] and (b) sufficient water to establish and maintain Water
User’s BANKED WATER RESERVE ACCOUNT.¹¹ (AR 14197, B, ¶1.)

14 ^{9/} In the context of water supply planning, a 10-year term is not “long-term.” State law
15 requires each urban water management plan to include a water supply and demand assessment
16 that compares the “total water supply sources available to the water supplier with the total
17 projected water use *over the next 20 years*, in five-year increments” for various water year types.
(AR 005493 (italics added); Wat. Code, § 10631, subds. (a), (d), & (h) [analysis must occur “in
five-year increments to 20 years or as far as data is available”].) In this context, a 20-year
horizon therefore marks the threshold of “long-term” water supply planning.

18 ^{10/} The 1,153 AFY in the M&I Agreement was “the City’s projected 2040 SWP demand as
19 included in the 2010 RUWMP.” (AR 11087; 14197.) If requested today, the District could not
20 supply this amount and it “is impossible to estimate what our capabilities will be in 2040.” (*Ibid.*)
21 In 2020, for example, under the Water Sales Priority Ordinance, the District had “implemented
restrictions on deliveries for Priorities D.6 through G to date,” and cautioned that “[m]ore
restrictions may be required due to our 20% [SWP] allocation.” (AR 11087, 3256-8.)

22 ^{11/} To supplement available supply in periods of shortage, the M&I Agreement requires that a
23 5-year supply of imported water supply (based on a 5-year rolling average) be recharged by the
24 District and credited to the City’s Banked Water Reserve Account (“BWRA”). (AR 5459, 14198,
25 B, ¶3.) This requirement is common to all the District’s M&I Agreements. (AR 5459, 5487,
26 5518, 5594, § 1; 5627-32; see also 3248.) The City can recover water from its BWRA whenever
27 SWP supplies are unavailable for purchase, in the event of a drought, damage to District facilities,
28 or other event. (*Ibid.*) In 2015, given the City’s 1.1% growth rate, projected water usage,
projected SWP purchases, and the fact that the City stored at least a 5-year supply in its BWRA,
the 2015 RWUMP anticipated that the City could provide 100% of average supplies in every year
type. (AR 5467.) If the City increases its purchase of SWP water through the District, then it
must allocate additional supplies to its BWRA account. (AR 1792, 14198, B, ¶3.) The City
failed to account for this required increase in BWRA banking and it was not analyzed or
contemplated in the EIR or WSA. (*Ibid.*)

1 Because the District has many customers, its “obligation to supply water is... conditioned
2 upon the availability of sufficient SWP water... to enable the District to meet all of its
3 Customers’ water demands.” (AR 14201, ¶10.) In years when the District expects its SWP
4 supply will be insufficient to meet those demands, the District adopts a Water Sales Priority
5 Ordinance, establishing delivery priorities. (AR 14192, ¶5, 14169-70, fn. 8; see also AR 3251.)
6 The District adopted such an ordinance in April 2021, which provides that existing M&I users
7 have highest priority (after fire protection) for direct delivery SWP supplies. (AR 14206, § 2.)
8 The District has consistently prioritized deliveries in this manner. (AR 14192-93, ¶5.) In the
9 City’s cavalier view, the priority afforded existing municipal customers means it can expand its
10 demand for the limited SWP supply at will and burden the District with the responsibility to
11 determine how this additional water supply will be found, and at what environmental and
12 economic cost. (AR 1665, 1698, 3302-05, 3308, 3310-12, 4132:7-16.) The City insists its
13 unprecedented demands and resulting impacts are not the City’s problem to analyze or solve:

14 The City agrees that future water desires from the myriad of TCCWD customers
15 may exceed available supply. As TCCWD noted, it has prepared a Water Priority
16 Ordinance to govern precisely who will receive this supply. As an existing M&I
17 customer, the City is, by TCCWD’s direct admission and own document, to
18 receive “highest priority.” Representing a mere 2.7%^[12] of the District’s supply,
19 it is reasonable for the City to expect to receive the needed water. It is
20 unreasonable for the District to attempt to burden the Sage Ranch Project with the
21 District’s potential future difficulties in addressing its broader water supply issues
22 unrelated to the Project. (AR 3308.)

23 The City’s response ignores the District’s similar commitment to other Term M&I
24 Agreement holders and the limiting language in the Agreement, and the City’s obligations under
25 CEQA and the Water Code.

26 **D. The Sage Ranch Project**

27 Sage Ranch has the stated goal to “provide a variety of housing opportunities with a range
28 of densities, styles, sizes, and values that will be designed to satisfy existing and future demand

12 / The City’s “mere 2.7%” rationalization of the alleged reasonableness of the project’s demands is a per se prejudicial violation of CEQA (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 (“*Kings County*”)) [EIR’s impermissible use of “ratio theory” violates CEQA because it trivializes project impacts and masks seriousness of environmental concerns]; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123 [same].)

1 for quality housing in the area.” (AR 410.) Because Sage Ranch is a 138-acre project totaling
2 995 residential units projected to be built in phases over seven years, the City was required to
3 prepare a water supply assessment showing that sufficient water exists to meet a 20-year
4 projection, in addition to the City’s existing and planned future uses. (Wat. Code, § 10910(c)(3)-
5 (4); see also AR 374, 2642.) The Sage Ranch WSA mistakenly assumes that the District will
6 receive an average of 60% of its contracted SWP allocation. (AR 1172, 1778.) It states that the
7 “City anticipates that sufficient supplies will be reasonably available for purchase from the
8 [District] and will have been previously recharged for recovery during the average, single dry,
9 and multiple dry years.” (*Ibid.*) CEQA requires more than an “anticipated” water supply. The
10 District will not likely have sufficient water available to provide the necessary 1,560.3 AFY for
11 the City and also meet the requirements of the District’s other existing customers. (AR 1792,
12 4128:15-24, 4134:18-4135:18, 14194, ¶15.) Further, because the City does not operate a water
13 treatment facility, it relies on the District to spread and recharge SWP water into the basin for
14 later extraction by the City. (AR 499-500, 14194, ¶19-20.) The City did no analysis of the
15 District’s ability to recharge 1,560.3 AFY for later recovery by the City. (*Ibid.*)

16 **E. The City’s CEQA Process**

17 On July 3, 2019, the City published a Notice of Preparation (“NOP”) of a Draft EIR for
18 Sage Ranch.¹³ (AR 6484.) The NOP did not give notice that any scoping meeting would be held,
19 even though the project is, by definition, one of regional and/or areawide significance under
20 CEQA, for which at least one scoping meeting is a mandatory procedural requirement that must
21 be scrupulously enforced. (Cal. Code Regs., tit. 14 (“CEQA Guidelines”), §§ 15206(b),
22 15082(c)(1) and (c)(2); AR 374; 2642, 6484.)

23 On March 4, 2020, the City released the Sage Ranch Draft EIR for public review. (AR
24 9742-43.) The District submitted comments on the Draft EIR on April 17, 2020 (AR 9906-10),
25 which raised the following concerns:

26 ^{13/} Early project review concluded Sage Ranch would have potentially significant impacts on
27 the basin’s hydrology and water quality. (AR 2041-42.) On July 8, 2019, the District advised the
28 City that it agreed the Sage Ranch project could significantly impact the basin’s hydrology, and
that it looked forward to reviewing the project’s EIR and WSA. (AR 6485.)

1
2 (1) Project water demand was not accounted for in the 2015 RUWMP, so the
3 City was required to ensure that projected water supplies were sufficient to meet
4 project demand over a 20-year period (Wat. Code, § 10910(c)(1); AR 1170, 1179,
5 5392, 9907);¹⁴

6 (2) Mitigation Measure HYD-3 required the project applicant to procure water
7 rights, but did not identify or analyze those water rights (AR 501, 631-32, 1168-
8 69, 9908);

9 (3) The City had not appropriately analyzed water supply for public areas,
10 landscaping, and irrigation (AR 498-99, 9909);

11 (4) The “projected AFY of available water supply assumes alternate sources,”
12 but the water sources were not identified, and the District was unaware of
13 alternate sources (AR 499-501, 629-32, 1168, 9910);

14 (5) The statement that project water demand will exceed the available supply,
15 is contradicted by other statements in the documents indicating that the City
16 anticipates being able to meet the project demand (AR 499-501, 643, 1168, 1173,
17 9910; see also 1670); and

18 (6) Paying in-lieu water supply fees does not equate to real wet water to meet
19 the project demand – the “source of all supplies must be clearly identified and
20 documented.” (AR 9910.)

21 These foundational shortcomings in the Draft EIR impacted the conclusions in the WSA,
22 which would “need to be reevaluated” in light of these comments. (AR 9910.) The City claimed
23 that it had prepared responses to the District’s April 2020 comments by July 2020 (AR 11152),¹⁵

24 ^{14/} The City’s own 2019 Water Model Report highlighted these issues well in advance of
25 completion of the Draft EIR. “[T]he City is deficient in available pumping allocation from the
26 Tehachapi Groundwater Basin to serve existing and future demand conditions. It is recommended
27 that the City plan and budget for acquiring additional water from TCCWD to recharge/extract
28 groundwater or acquire another supply source to serve existing and future demands.” (AR 9929;
9953-54 [991 AFY deficit in 10 years, not inclusive of Sage Ranch]; 10015 [growth projections
based on the 2015 RUWMP as well as daily water production information, monthly water billing
information, and daily influent flow data for 2013 to 2018.]) The City’s demand also was already
outstripping the demand planned for in the 2015 RUWMP. The City’s 2019 Water Model
projected 10-year (approximately 2029) demand at 2,509 AFY, while the 2015 RUWMP had
projected only 2,083 AFY of water use, a difference of 426 AFY. (AR 9944; see AR 5454.)

^{15/} In September 2020, the City emailed that it had reviewed the District’s input and “wanted
to let you know that we don’t think there is anything else to discuss at this time.” (AR 11333.)
The City concluded, “[w]e have made the adjustments to the water supply components of [the
Address and Sage Ranch projects] as [the District’s] letters requested,” but the City failed to
consult with the District as to these asserted “adjustments.” (AR 11333, 11545-7.) The District
remained concerned that the City failed to identify water supply for both projects. (AR 11545-6.)

1 but the City did not provide such responses until it released the Final EIR a year later in July
2 2021. (AR 13490.) The District emailed the City on July 12, 2021, noting that the City only
3 afforded the District *three* days to review the City's responses and provide any necessary input
4 before the City's Planning Commission hearing.¹⁶ (AR 14150.) The District also made
5 preliminary comments expressing its concerns that: (1) the EIR and WSA still failed to identify
6 water sources for Sage Ranch, including the source of water potentially being provided by the
7 project applicant; (2) the WSA relied on water that is unavailable to the project by
8 misrepresenting Table 4.6-9 from the 2015 RUWMP, which projected that the City's SWP water
9 supply would only be 45 AFY in 2020; and (3) the WSA did not address the water supply
10 demands of homes on entitled subdivision lots outside of Sage Ranch that have yet to be
11 constructed. (AR 14150; see also AR 1792, 14193, ¶8.) The District requested an extension of
12 time to review and assess the Final EIR, and to "work with city staff to resolve [the District's]
13 concerns." (*Ibid.*) The City ignored the District's request. The District's water supply concerns
14 were never addressed and District representatives appeared at the City Council hearing on
15 August 16, 2021, to submit further comments. (AR 4127:11-4139:10.) At that same hearing, the
16 City Council certified the Sage Ranch EIR (and WSA) and approved the project. (AR 74-89.)

17 **F. The Project Applicant's Last-Minute Water Offer**

18 On July 29, 2021, about two weeks before the City Council hearing to approve Sage
19 Ranch, the project applicant wrote to the City claiming to have purchased 114 AFY of Tehachapi
20 Basin groundwater rights which, because of the 2/3 pumping restriction, equates to 76.4 AFY of

21 ^{16/} Despite the City's desire to rely on District water supply for Sage Ranch and the
22 Legislature's express purposes in mandating coordination of land use and water supply planning
23 (see, e.g., *Vineyard, supra*, 40 Cal.4th at pp. 432-433), the City disavowed any obligation to
24 consult with the District or other public agencies, stating that while the City was willing to
25 "dialogue" in "some cases as a courtesy," it was "not prepared to allow any outside agency to
26 have extra ordinary [sic] consideration in the planning of our community." (AR 11545.) The
27 District responded to the City's missive as a whole, and to this assertion in particular:

28 I'm not asking for any courtesy, nor is [the District] an outside agency asking for
consideration in the planning of our community. What I am stating is that [the
District] has responsibility and authority over aspects of projects that impact
groundwater extractions within adjudicated basins, imported water supply and
allocation and our flood control facilities. Those are our areas of concern that
these projects impact and my comments are limited to same. (AR 11545.)

1 wet water.¹⁷ (AR 3271, 12050.) Putting aside that these claimed water rights were never
2 considered in the WSA or EIR, the offer fell short of satisfying the 93 AFY requirement set out in
3 “Mitigation Measure HYD-3.” (AR 14188-89, 14914, ¶18.)

4 The applicant’s letter attached something it characterized as a “binding agreement” to
5 purchase a total 304 AFY of water rights allowing for up to 5 purchases, each with a particular
6 “Closing Date.” (AR 3275-78.) The submitted agreement is structured so that the buyer must
7 timely purchase the preceding “Buyer Right” before having a right to purchase the next one (i.e.,
8 the right to purchase the “Second Buyer Right” is conditioned on timely purchase of the “First
9 Buyer Right,” and so on). (*Ibid.*) If the buyer does not timely purchase a particular Buyer Right,
10 then (a) the right to purchase that Buyer Right “shall terminate”; and (b) the “Agreement shall
11 terminate, and, thereafter, Buyer shall have no right to purchase any further portion of the Seller
12 Total Right, and neither party shall have any further rights, duties or obligations under this
13 Agreement.” (*Ibid.*) *Thus, all purchases made under the agreement are voluntary. (Ibid.)*

14 The applicant asserted that as of July 29, 2021, it had purchased 114 AFY of gross water
15 rights, which represents the total of the First and Second Buyer Rights (38 AFY + 76 AFY = 114
16 AFY). (AR 3275.) The deadline to purchase the Third Buyer Right of an additional 76 AFY was
17 on July 15, 2021. (AR 3275.) Nothing in the record supports the conclusion that the applicant
18 met this contractual deadline, and indeed, it is appropriate to infer that it did not. (AR 3271.) As
19 of July 21, 2021, the applicant had only purchased the First and Second Buyer Rights, and the
20 remainder of the agreement to purchase water had terminated. (AR 3276.) To date, the applicant
21 has never acquired adequate water rights to service the Sage Ranch project.

22 The District submitted its further comments on July 28, 2021. (AR 3214-69.) On August
23 16, 2021, the City submitted a response to those comments in the form of a staff memorandum
24 dated the same day as the City Council hearing. (AR 3295-3315.) That staff report primarily
25 argued that with an additional eleventh-hour “written commitment” to provide 175 AFY of

26
27 ^{17/} Groundwater rights holders in the Tehachapi Basin are assigned “Base Water Rights,” but
28 are only allowed to pump 2/3 of their base rights as a pumping allocation. (AR 14194, 12050.)
The sum total of annual pumping allocations is approximately equivalent to the Natural Safe
Yield of 5,500 AFY. (AR 12031.)

1 water,¹⁸ the applicant had demonstrated that “there is available water to meet the Project’s
2 demands.” (AR 3296.) This is incorrect. By 2040, the WSA projects that, with Sage Ranch, the
3 City will need 1,560.3 AFY. (AR 1792.) In concluding that there is sufficient water, the WSA
4 assumes¹⁹ that the City can purchase and rely on the full theoretical maximum (1,153 AFY)
5 contained in the M&I Agreement. (AR 1788, 92.) Even accounting for this water, the City will
6 have a deficit of 407.3 AFY of water by 2040, which the applicant’s belated and unanalyzed 175
7 AFY does not satisfy. (AR 1792 [Column P [1560.3 - 1153 = 407 AFY]; see fn. 18, *supra*.)

8 **III. STANDARD OF REVIEW**

9 The standard of review for the District’s claims under CEQA, the Water Code, and the
10 Government Code is abuse of discretion. (Code Civ. Proc., §§ 1085, 1094.5; Pub. Resources
11 Code, §§ 21168, 21168.5; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512.) “Such an
12 abuse is established ‘if the agency has not proceeded in the manner required by law or if the
13 determination or decision is not supported by substantial evidence.’” (*Vineyard, supra*, 40 Cal.
14 4th at p. 426.) In determining whether an agency “employed correct procedures,” the court will
15 exercise de novo review. (*Sierra Club, supra*, 6 Cal.5th at p. 512.)

16 **IV. ARGUMENT**

17 Special care must be taken to properly assess strained surface water or groundwater
18 supplies before committing to projects that rely on them. The Supreme Court’s opinion in
19 *Vineyard, supra*, 40 Cal.4th at 432, summarizes the requirements of water supply analysis and
20 ///

21 ^{18/} On August 11, 2021, just days before the City Council hearing, the applicant purported to
22 commit “175 AF of pumpable water allocation” to the project. (AR 14317.) This submittal fails
23 to cure the City’s failures, both because the environmental impacts of providing water through
24 this new source were not analyzed and because the amount allegedly committed is insufficient to
meet project demand. (*Vineyard, supra*, 40 Cal.4th at p. 445; AR 1792; 14188-89; 14194, ¶ 18.)

25 ^{19/} The City also assumes that it need only provide sufficient water to meet the difference
26 between its unrealistic 2.3% growth rate without the project and that growth with the project, thus
27 using an inflated future baseline. (AR 1793.) The City anticipates that by 2040 it will need a
28 total of: (1) 3,457.5 AFY without the project; and (2) 3,550.3 AFY with the project. (AR 1792,
Columns F and M.) The difference between the two numbers is the 92.8 (93) AFY the applicant
was required to provide. (AR 1793.) This is improper. (AR 4095:6-19; see AR 1792; see also
CEQA Guidelines, § 15125; *Neighbors for Smart Rail v. Exposition Metro Line Construction
Authority* (2013) 57 Cal.4th 439, 447; *San Franciscans for Livable Neighborhoods v. City &
County of San Francisco* (2018) 26 Cal.App.5th 596, 616.)

1 mitigation. While the Court recognized the element of uncertainty in evaluating long-term water
2 supply, it emphasized that CEQA requires a rigorous examination of water supply at all stages,
3 and planning for that supply prior to approving development. The City's EIR and WSA fall far
4 short of these requirements and failed to provide a "plainly stated, coherent analysis of how the
5 supply is to meet the demand" for Sage Ranch.²⁰ (*Vineyard, supra*, 40 Cal.4th at p. 445.)

6 **A. The Project EIR Violates CEQA**

7 The City violated CEQA by assuming that the applicant will provide paper water in the
8 future and by treating this assumption as sufficient to represent actual, physically available water.
9 (*PCL, supra*, 83 Cal.App.4th at p. 913; see AR 388, 497-501, 1685-706, 1793.)

10 **1. The Project Description Is Incomplete, Inaccurate, and Misleading**

11 The project description is the analytical foundation of the entire EIR; as such, an accurate,
12 well-conceived, stable and finite project description is essential. (*County of Inyo v. City of Los*
13 *Angeles* (1977) 71 Cal.App.3d 185, 192-193; see also CEQA Guidelines, §§ 15124, 15125.) In
14 this case, however, the EIR's descriptions are incomplete, inaccurate, and misleading. (AR 484-
15 503, 1675-1738.) The EIR acknowledges that Sage Ranch expects to rely on District water. (AR
16 484, 612, 709, 1696-99, 1792.) The EIR and WSA misrepresent the nature of this supply in a
17 host of ways, however, not the least of which is the following statement in the EIR:

18 Governed by the City/[District] Term M&I Agreement (See Attachment C of the
19 WSA), [District] has agreed to provide State Water Project water to the City of
Tehachapi in **perpetuity**. (AR 1699, 1788 [emphasis added].)

20 The City's characterization is directly contrary to the M&I Agreement. (AR 14198, ¶3;
21 14199, ¶6; 14201, ¶11; 14192, ¶4.) First, the City's M&I Agreement does not prioritize new

22 ^{20/} Sage Ranch is a large subdivision of defined size and projected water use with a buildout
23 schedule of 7 years. (AR 374, 2642.) After a tentative subdivision map such as this one is
24 approved, remaining activities such as final map recording and building permit issuance are
largely ministerial and new conditions cannot be imposed. (See, e.g., CEQA Guidelines, §
25 15369; *Anthony v. Snyder* (2004) 116 Cal.App.4th 643, 660, 664.) At this late planning stage, the
City's review must meet *Vineyard's* standards (derived under CEQA and the Water Code) for
26 project-specific analysis and cannot be satisfied with a "conceptual EIR." (*San Diego Citizenry*
Group v. County of San Diego (2013) 219 Cal.App.4th 1, 22-23 [winery zoning ordinance
27 "conceptual EIR" adequately addressed water supply at early planning stage]; *Watsonville Pilots*
Association v. City of Watsonville (2010) 183 Cal.App.4th 1059, 1090-1092 ("*Watsonville*")
[city's "conceptual" general plan only required to meet standards for "conceptual EIR"].) At the
28 "subdivision approval stage," as is presented here, state law requires "*firm assurances* of future
water supplies." (*Vineyard, supra*, 40 Cal.4th at pp. 433-434 [italics added]; see also AR 14329.)

1 municipal water users above existing legal water users in the District.²¹ (AR 14170, 14192, ¶4;
2 14193, ¶6.) The M&I Agreement, by its terms, is subject to SWP supply availability, the demands
3 of the District's other customers, and the ability of the District to recharge sufficient water for
4 indirect delivery. (*Ibid.*) Second, the M&I Agreement does not assure water service to the City
5 of Tehachapi "in perpetuity" as represented in the EIR and WSA.²² (AR 1699, 1788.) Rather,
6 the 2017 M&I Agreement has a 10-year term that automatically renews on an annual basis for
7 one additional year, unless either party provides notice that the M&I Agreement will not be
8 extended:

9 11. This agreement shall have a term ending December 31, 2026; provided,
10 however, that each year on the anniversary date of this agreement, this agreement
11 shall extend one additional year, unless, at least 90 days prior to such anniversary
12 date either party provides notice to the other that it will not consent to such further
13 extension(s) of this agreement and further provided, however, this agreement shall
14 terminate upon termination of the KCWA WATER SUPPLY CONTRACTS
15 (December 31, 2039) unless and to the extent the terms of such agreements are
16 extended. (AR 14201, ¶11.)

17 The District may terminate the M&I Agreement after the 10-year term. (AR 14201, ¶ 11.)

18 ^{21/} Sage Ranch is a new subdivision consisting of nearly 1,000 additional service connections
19 that would dramatically increase the City's population and associated water consumption. (AR
20 1792, 3220-1, 3242, ¶5.) Because the City in general is an existing M&I customer of the District,
21 it argues that these 1,000 connections are also existing M&I customers. (AR 3302-03, 3305-07,
22 3309.) The City is wrong. (AR 3220-1; 3242, ¶5.) State law requires the City to identify water
23 supplies sufficient to satisfy the project's needs that have a likelihood of actually being available;
24 it must analyze the circumstances affecting the likelihood of the water's availability, and it must
25 discuss replacement sources if the primary source proves to be unavailable. (*Vineyard, supra*, 40
26 Cal.4th at pp. 431-432; see *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th
27 200, 249-251 [water agency could provide "firm assurance" of 20-year water supply to new city
28 residents notwithstanding its "first come, first served" obligations, because the water supplier
gave "written certification that it currently has sufficient water for this project and all other
developments contemplated for the next 20 years"]; see also *Western Placer Citizens v. County of
Placer* (2006) 144 Cal.App.4th 890, 906-909 [EIR's water supply analysis provided adequate
assurance of existing, available, and sufficient sources of water for 100-year mining plan; long-
term "guarantee" was impossible and not required].) The District cannot appease – and neither
state law nor the parties' contract authorizes – the City's desire to monopolize the District's SWP
water supply to the detriment of all other District customers.

^{22/} The City apparently believes its contract requires the District to meet the City's "present
and future water needs," no matter how rapid and unrestrained the City's water-consuming growth
might be. (AR 3303, 4111:2-10.) The City's belief is mistaken. (AR 3242-69; see also *Abatti v.
Imperial Irrigation District* (2020) 52 Cal.App.5th 236, 280, fn. 34 [water supplier cannot take on
new customers without limit, and before new water users may be approved and any service priority
established, adequate CEQA compliance is required].) Even if the City's monopolistic view could
prevail, the City must study and disclose the impacts of shifting substantial supplies to new City
residents and away from existing District customers. (*Vineyard, supra*, 40 Cal.4th at pp. 427, 434.)

1 One purpose of the 10-year term was to prevent the City's reliance on the M&I Agreement as a
2 long-term water supply. (*Ibid.*; AR 14192, ¶4.) State law requires the City to coordinate with the
3 District to determine whether adequate and sustainable water supplies exist to serve the project,
4 and to support that determination through rigorous and detailed documentation. (See, e.g.,
5 *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 282-286.) Yet, the City's
6 own documents provide that *even with* the full 1,153 AFY of variable supply contemplated by the
7 M&I Agreement at 2040, the City runs out of water by 2036, when its demand (3,178.7 AFY)
8 exceeds even its inflated available supply (3,143 AFY). (AR 1792.) By 2040, the City has a
9 deficit of 407.3 AFY by its own calculations. (*Ibid.*)

10 **2. The EIR Failed to Adequately Analyze Project Impacts**

11 The EIR was required to disclose, analyze, and avoid or substantially lessen the impacts of
12 supplying water to the project, such as: (1) effects of reduced surface water supplies on
13 agricultural resources and other existing District water users, (2) impacts of the use of private
14 water rights as supplemental water sources or the use of City fees to obtain supplemental water
15 sources, (3) water quality issues, (4) adverse impacts to air quality from increased dust and
16 particulate matter, (5) impacts of requiring the applicant to "procure 93 acre-feet²³ of pumpable
17 water rights sufficient to compensate for increased demand associated with the Project above the
18 baseline growth assumed in the RUWMP and Term M&I agreement" and (6) social and
19 economic impacts of reduced water supplies on local communities. (*Vineyard, supra*, 40 Cal.4th
20 at pp. 432-434; *Preserve Wild Santee, supra*, 210 Cal.App.4th at pp. 282-286; AR 1704, 1792.)

21 The City's EIR fails to meet CEQA's standards and instead simply assumes that a solution
22 to anticipated water supply shortages will be found. (AR 631-32, 642-43, 1740-41, 1792-93.)
23 Uncertainties regarding future water supplies must be fully examined under CEQA. (*Vineyard*,
24 *supra*, 40 Cal.4th at p. 434; *Napa Citizens for Honest Government v. Napa County Board of*
25 *Supervisors* (2001) 91 Cal.App.4th 342, 372-375 ("*Napa Citizens*") [EIR must disclose not only

26
27 ^{23/} CEQA also requires the same analysis for the 175 AFY promised by the project applicant
28 at the eleventh hour. (AR 87, 3294, 4130:18-4131:21; see *California Oak Foundation v. City of*
Santa Clarita (2005) 133 Cal.App.4th 1219, 1244 ("*California Oak*") [absent uncertain purchase
of additional water, as to which EIR's discussion is legally inadequate, "substantial evidence of
sufficient water supplies does not exist"]; see also *id.* at pp. 1241-1242.)

1 possible water supplies, but also environmental consequences of using them];²⁴ *Preserve Wild*
2 *Santee, supra*, 210 Cal.App.4th at pp. 283-285 [same].)

3 An EIR cannot rely on “paper water” by simply stating, as the City’s EIR does, that “[t]he
4 applicant will be required to secure/purchase water rights to serve the Project and/or pay in-lieu
5 fees as determined by the City (for the City to purchase additional water for recharge).” (AR 500,
6 631, 1685-706, 1793.) A reasonable probability of accessing an identified source of “wet water”
7 must be shown. (*Vineyard, supra*, 40 Cal.4th at p. 432; *California Oak, supra*, 133 Cal.App.4th
8 at pp. 1241-42; *SCOPE, supra*, 106 Cal.App.4th at pp. 720-723 [EIR cannot either ignore
9 problem of supplying water to development or assume solution]; *Santa Clarita Organization for*
10 *Planning the Environment v. County of Los Angeles* (2007) 157 Cal.App.4th 149, 158-159
11 [“future water supplies identified and analyzed must bear a likelihood of actually proving
12 available; speculative sources and unrealistic allocations (‘paper water’) are insufficient bases for
13 decisionmaking under CEQA”].) If there is uncertainty about the availability of identified future
14 water supplies, CEQA requires examination of possible alternative sources and the environmental
15 consequences of using such sources, including the impacts of taking it away from others.
16 (*Vineyard, supra*, 40 Cal.4th at p. 432; *Stanislaus Natural Heritage Project v. County of*
17 *Stanislaus* (1996) 48 Cal.App.4th 182, 206 [decision-making body must be “informed of the
18 intended source or sources of water for the project, ‘what the impact will be if supplied from a
19 particular source or possible sources and if that impact is adverse how it will be addressed’”].)

20 The City’s approval of nearly 1,000 new connections for Sage Ranch (in a City of
21 approximately 3,000 existing connections) occurred against the backdrop of extreme (indeed,
22 “exceptional”) drought conditions in the region and in the State. (AR 5451, 14186, 4129:19-
23 4130:18.) The EIR and WSA failed to address the incremental and cumulative (in combination
24 with other past, present, and future planned uses) effects of the Sage Ranch project on water

25
26 ^{24/} When uncertainty exists as to whether the identified water supplier will have enough
27 water to serve a proposed project and there is a realistic possibility that water supplies will have
28 to be obtained from another source, the EIR must examine whether other sources exist and
describe the environmental consequences of using those sources. (*Napa Citizens, supra*, 91
Cal.App.4th at p. 371.) In this case, the District has made clear to the City that adequate water is
not available to serve the Sage Ranch project. (AR 3214-69, 4129:19-4130:18, AR 4132:7-16,
9907-10, 10142, 10166-67, 11802-05.)

resources and water supply, and therefore violate CEQA. (AR 482-503, 3221-29; see fn. 12, *supra.*)

a. The City Substantially Overstated Available Surface Water

The District can expect to receive only about 40% of its contractual water supply from the SWP in an average water year, and even this may be optimistic. (AR 14193, ¶11; see fn. 5, *supra.*) Yet, the WSA persisted in its erroneous assumption that the District will receive “average SWP deliveries at 60% long-term.” (AR 1172, 1778.) The WSA relies on an outdated long-term average, and incorrectly assumes that SWP allocation is equivalent to deliveries in the Tehachapi Basin.²⁵ (AR 14175; see AR 1172, 1778.) While the 25-year average for SWP allocations from 1997 to 2021 was 61.04%, ongoing environmental restrictions in the Delta, climate change, and other factors make the 25-year average an unreliable predictor of future allocations. (AR 11305, 14192-95, 14210; see *California Oak, supra*, 133 Cal.App.4th at pp. 1241-42 [past deliveries of SWP water are not reliable indicator of future deliveries].)

Furthermore, and perhaps more critical, the District’s pumping capacity is limited to a maximum of 51.8% of its SWP allocation (10,000 AFY) in any given year. (AR 14193, ¶12.) Estimated deliveries must consider the acute restriction on the District’s ability to import water. (*Ibid.*) When the SWP allocations are adjusted to factor in District pumping capacity, actual SWP deliveries are reduced to 33.22% on a 10-year average; 37.51% on a 15-year average; and 41.08% on a 20-year average. (AR 4134:10-17, 14210, 14268.) In other words, there is at least a 20% disparity between the theoretical amount of SWP water the City claims the District can deliver and the amount of SWP water that actually exists for delivery within the District. (AR 14210.)

b. The EIR Failed to Consider Potential Injury to Legal Water Users and Resulting Environmental Impacts

The District does not have sufficient water supplies to meet the City’s anticipated demand.

^{25/} The WSA purports to rely on the 2015 RUWMP and the City’s 2019 Water and Sewer Systems of Modeling, Planning, and Fee Studies Update. (AR 1768.) Neither document reflects the project’s actual demand. The 2015 RUWMP applied a 1.1% growth rate, projecting a 2030 City population of 10,387, and an imported water use of 261 AFY. (AR 5392, 5465, 1792.) The City-prepared document assumed over the next 10 years that only 150 single-family units and 350 multi-family units will be built – approximately half the number of units the project proposes to build over a period of 7 years – excluding existing permitted lots. (AR 631, AR 9916-10118.)

(AR 14193, ¶¶6-1495, ¶21.) No reliable surplus water exists in the system, and as the District repeatedly informed the City, this is not some speculative future event – the District’s supply is already strained. (*Ibid.*) Simply put, the City is attempting to commit the District to provide – and prioritize recharge and delivery of – water it does not have. (*Ibid.*; AR 1792, 3295, 3315, 11881; see fn. 24, *supra.*) As a result, implementation of the project as proposed will have significant and unavoidable impacts on water resources and public utilities²⁶ that the EIR fails to disclose; it will decrease supplies for existing District water users and exacerbate shortages. (AR 14194, ¶16.) The EIR fails to analyze the significant adverse environmental consequences of supplying the City with water while substantially reducing water deliveries to the District’s other customers. (*Ibid.*) For example, alternative water supplies for agricultural use are limited, and the need for new supplies is likely to exceed available alternatives. (*Ibid.*) Fallowing of agricultural lands and potential permanent loss of agricultural resources have attendant environmental impacts such as soil erosion, loss of topsoil, particulate emissions, and other air quality impacts. (CEQA Guidelines, App. G, §§ II(a), (e), III(a)-(c), VII(b).)

“‘CEQA requires more than a reference to a water supply management practice as water supply analysis.’ How much groundwater, existing and new, will be used with how much new surface water? In what combinations will these sources be used during wet and dry years, respectively?” (*Vineyard, supra*, 40 Cal.4th at p. 440.) The City’s EIR, like the faulty EIR in the *Vineyard* case, provides “[n]o such description of planned future water use.” (*Ibid.*; see AR 482-503, 1675-1708, 14192-6.) Here, as in *Vineyard*, “[t]he conjunctive use program ... lacks quantification, with no analysis that would disclose whether the program will produce sufficient supplies and storage capacity to meet expected demands.” (*Ibid.*)

When confronted with these very real impacts on the District’s ability to supply water, the City’s response encapsulates its reckless indifference to water supply issues:

To provide clarity, the following is a brief cumulative analysis of all of the District’s concerns: (1) 20-year water demand increase for the entire City of Tehachapi = 1,213 AF (this includes the mitigated Project per the WSA); (2) 550

^{26/} CEQA updates in 2019 placed water supply resiliency into the “Utilities and Service Systems” section of CEQA Guidelines Appendix G, the checklist of significance thresholds for proposed land use planning and development projects. (CEQA Guidelines, App. G, § XIX(b).)

1 entitled but undeveloped lots within the City of Tehachapi= 550 x 1/3 (AF/lot) =
2 181.5 AF; (3) 1000 entitled but undeveloped lots in Golden Hills, Bear Valley, &
3 Stallion Springs = 1000 (1/2 (AF/lot) = 500 AF; (4) Total = 1,894.5 AFY
4 compared with an average annual supply of 6,407.6 AFY; (5) The total impact of
5 all of the District's M&I customers, existing and potential, (including 2.3%
6 growth for the entire City of Tehachapi)^{27/} drawing water from TCCWD in the
7 next 20 years remains below 1/3 of the water available to the District; and (6)
8 Conclusion: water is available. (AR 3309-10.)

9 The City's short-sighted analysis is devoid of any consideration given to the District's
10 existing customers who depend on the same water supply that the City purports to earmark for
11 Sage Ranch. The City concludes that, even with an *increase* in annual surface water demand by
12 1,894.5 AFY, the District obtains an annual supply of 6,407 AFY, so "water is available." (AR
13 3310, 4115:21-4116:13.) In other words, if the District simply takes water from its other
14 customers there is plenty of water for Sage Ranch. The City's dismissive response and
15 conclusory "analysis" rely on an erroneous foundational assumption – that the City's analysis
16 need only concern itself with "the District's M&I customers."²⁸ (AR 3310, 4128:15-24.) Unlike
17 the city in *Habitat Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277,
18 1291-1292 ("*Habitat Watershed*"), the City here failed to confront the "harsh reality" that its
19 increased demand would directly result in less water for other users, the impacts of that demand,
20 and whether that impact could be appropriately mitigated. (*Vineyard, supra*, 40 Cal.4th at pp.
21 441-42 [city's EIR had no evidence "regarding the uses that might be expected to compete with

22 ^{27/} No water supply planning or management analysis has ever demonstrated that a 2.3%
23 annual growth rate for the City is sustainable absent the development of new water sources, and
24 the 2015 RUWMP shows that it is not. (AR 5392, 5453, 5458, 5465.)

25 ^{28/} The City also failed to assess impacts on *other* M&I users. (AR 484-503, 1636-1962.)
26 The City concluded that even with the District restricted to an average annual supply of 6,407.6
27 AF, sufficient water remains. (AR 3309-10.) But this analysis captured only the M&I *expansion*
28 and failed to capture *existing* demand on District water. For example, the 2015 RUWMP
projected Bear Valley CSD to have a growth rate of 1%, and in 2035, a population of 6,484. (AR
5428.) Its projected 2035 purchase of SWP supplies was 627 AFY. (AR 5439.) The City never
analyzed this outdated number, nor solicited up to date information to properly perform a
cumulative impacts analysis. The City's analysis also failed to make any mention of impacts to
agricultural use other than to say that future water desires may exceed supply, alleging that the
City can add new connections at will with the "highest priority," such that it is "unreasonable for
the District to attempt to burden the Sage Ranch Project with the District's potential future
difficulties." (AR 3308, 14330.) The EIR and WSA fail to serve their informational purposes
because the City failed to determine how its outsized water use will impact *all* users. (AR 14194.)

1 [the proposed project's water demands] over the next 20 or more years"]; see also *id.* at p. 444;
2 *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829 (“*Santiago*”
3 [EIR deficient for failing to include “facts from which to evaluate the pros and cons of supplying
4 the amount of water” needed].) The Sage Ranch EIR fails to analyze the significant impacts of
5 the City’s approach – that the District should meet the City’s surging demands while substantially
6 reducing water deliveries to the District’s other existing customers. (AR 3244, ¶16-17.)

7 **c. The Project’s Impacts on Water Resources and Public Utilities**
8 **Are Significant and Unmitigated**

9 An EIR “must include a reasoned analysis of the circumstances affecting the likelihood of
10 the water’s availability.” (*Vineyard, supra*, 40 Cal.4th at p. 432.) If “it is impossible to
11 confidently determine that anticipated future water sources will be available, CEQA requires
12 some discussion of possible replacement sources or alternatives to use of the anticipated water,
13 and the environmental consequences of those contingencies.” (*Ibid.*) The City’s EIR and WSA
14 violate these basic principles because the information provided about the ability of the applicant
15 to obtain water rights – and therefore any additional water – is pure speculation, without regard to
16 the timing, sufficiency, quality, or sustainability of acquiring such rights, or whether there may be
17 competing claims for them.²⁹ (AR 627-32, 1704-06, 1793.) The documents the City relied on
18 merely state that “[t]he Applicant will be required, as a mitigation measure, to secure/purchase an
19 additional 93 acre-feet of water rights to serve the Project. The Applicant has identified
20 sufficient/available water rights for purchase to accommodate the additional 93 acre-feet.” (AR
21 632, 1704, 1740, 1761, 1793.) Shortly before the City Council hearing, the applicant promised an
22 increase to 175 AFY. (AR 3294.) But as of August 16, 2021, the applicant only secured 76.4
23 AFY of water, and the Water Rights Purchase Agreement, which purportedly was entered to
24 secure the remainder, had terminated. (AR 3271, 3274.)

25 Moreover, no indication is given as to where or how these rights have been or will be
26 exercised, or as to the actual availability of any additional water, or any evaluation of the

27 ^{29/} The shallowness and lack of information in the City’s EIR and WSA are stunning. (See,
28 e.g., AR 499-501, 642-3, 1795-8, 1792-4, 1803.) The documents fail, on their face, to satisfy
statutory and industry standards for determining and verifying water supply sufficiency. (*Ibid.*;
see Wat. Code, §§ 10910-10915; Gov. Code, § 66473.7; Pub. Resources Code, § 21151.9.)

1 environmental consequences of acquiring, delivering, and using it. (AR 627-32, 1704-06, 1740-
2 41, 1793.) This approach violates the Water Code, the Government Code, and CEQA. (See Wat.
3 Code, § 10910; Gov. Code, § 66473.7; Pub. Resources Code, § 21151.9; *Center for Biological*
4 *Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 887 [water supply analysis is
5 inadequate when it fails to evaluate and disclose actual availability of potential water sources].)
6 The last-minute submissions by the applicant – which, at best, are of uncertain effectiveness,
7 questionable enforceability, and were never described or analyzed in the EIR or WSA – of an
8 insufficient amount of water do not satisfy CEQA’s strict mandates. Rather, the last-minute
9 offering is an admission that the project lacks an adequate water supply. “The EIR must contain
10 facts and analysis, not just the bare conclusions of a public agency.” (*Santiago, supra*, 118
11 Cal.App.3d at p. 831.) Under CEQA, the City owes the public a full and accurate accounting of
12 the project’s elements, its environmental impacts, mitigation measures, and potential alternatives,
13 for review on a timeline that makes such disclosure meaningful. (*Sierra Club, supra*, 6 Cal.5th at
14 p. 512; *California Building Industry Association v. Bay Area Air Quality Management District*
15 (2015) 62 Cal.4th 369, 382.) The EIR fails to meet these standards.

16 **d. The Project’s Contributions to Cumulative Impacts on Water**
17 **Resources, Water Supply, and Public Utilities Are Significant,**
18 **Unanalyzed, and Unmitigated**

19 The City expects that it will need to purchase 1,506 AFY of water to meet its projected
20 2040 demand. (AR 1792, Columns H and P.) In addition, the City has approximately 450
21 undeveloped entitled lots that expect to draw from the District. (AR 1792, 3309, 8538, 14192-94,
22 14318-19.) Bear Valley CSD and Stallion Springs CSD have about 1,000 undeveloped entitled
23 lots. (AR 8538, 14318-19.) The City did not account for any of this demand (or for similar
24 demand in Golden Hills CSD, which the City did not document in the record) in its CEQA or
25 WSA analyses. (See Wat. Code, § 10910 [must consider existing and planned future uses].) The
26 District simply does not have sufficient water supplies and recharge capacity to meet the City’s
27 anticipated demands with the Sage Ranch project and also meet the planned (and approved)
28 demands of the District’s other customers. (AR 14193, ¶7-14194, ¶15; 14212-15.) The EIR fails
to analyze the consequences of the City’s expectations – that the District should meet the City’s

1 surging demands by reducing water deliveries to other legal users of water. (AR 3295-315,
2 14179, 14194, ¶¶15-17; see fn.12, *supra*.) Instead, the WSA states that the “City anticipates that
3 sufficient supplies will be reasonably available for purchase from the District and will have been
4 previously recharged for recovery during the average, single dry and multiple dry years[.]” (AR
5 1788.) The City’s assumption is misguided and unsupported. (AR 14179, 14195.) In reality, the
6 District is unlikely to have sufficient water available to recharge 1,560 AFY for the City and meet
7 the recharge requirements of the District’s other existing customers. (*Ibid.*) These “harsh
8 realities” and the impacts of “calibrat[ing] demand to supply by depriving users of water” must be
9 addressed in the EIR. (*Habitat Watershed, supra*, 213 Cal.App.4th at pp. 1291-1292.) The
10 project’s impacts are cumulatively considerable and the City’s approach to their analysis and
11 mitigation violates CEQA. (CEQA Guidelines, §§ 15130(a), 15355; *Ocean Street Extension*
12 *Neighborhood Association v. City of Santa Cruz* (2021) 73 Cal.App.5th 985, 1019-21 [EIR may
13 not conclude project’s contribution to shortages is not significant if project was not accounted for
14 in water supplier’s most recent urban water management plan, would not be subject to same
15 curtailments as supplier’s other customers, and would cause supplier to increase curtailments].)

16 3. The City Failed to Identify and Adopt Proper Mitigation Measures

17 CEQA does not permit the City to conclude that significant impacts will be mitigated by
18 vague, incomplete, speculative or untested mitigation measures. (*Federation of Hillside &*
19 *Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260 [speculative
20 measures do not constitute mitigation]; *Kings County, supra*, 221 Cal.App.3d at p. 727
21 [mitigation agreement calling for purchase of replacement groundwater supplies without
22 specifying whether water was available violated CEQA].)

23 Most, if not all, of the City’s mitigation measures regarding water resources, water supply,
24 and public utilities attempt to patch serious information gaps in the EIR and WSA and are
25 inadequate, either because they do not constitute mitigation as defined under CEQA, are vague
26 and uncertain, or are improper deferral of analysis and mitigation to some future point – after
27 project approval – without any performance standards or specific criteria to ensure effectiveness
28 and enforceability. (AR 1747-48; Pub. Resources Code, § 21100(b)(3); CEQA Guidelines, §§

1 15126(e), 15126.4, 15370.) The “mitigation measures” regarding water supply are not tethered to
2 any enforceable program or standard and fail to address the significant impacts of the project.
3 (AR 1747-48.) CEQA requires much more, particularly at the mapping stage. (CEQA
4 Guidelines, §§ 15144, 15151; *Kings County, supra*, 221 Cal.App.3d at pp. 727-28; see fn. 20,
5 *supra*.) The information presented is too general to enable decision-makers to determine whether
6 measures purporting to ensure water supply for Sage Ranch would be effective and enforceable,
7 much less whether they would be feasible. (AR 1747-48; see, e.g., *King & Gardiner Farms, LLC*
8 *v. County of Kern* (2020) 45 Cal.App.5th 814, 869, 838, 852-53 (“*King & Gardiner Farms*”).)

9 Mitigation Measure HYD-3, for example, uses a circular argument to avoid addressing the
10 project’s water shortfall. (AR 1747-48.) Paraphrased, the EIR says that the primary source of
11 water for Sage Ranch is from the District – the assumed 1,153 AFY (a theoretical maximum in
12 2040) stated in the M&I Agreement. (AR 1699, 1734, 1788.) Additionally, the project applicant
13 will purchase 93 AFY of rights to meet demand above “baseline growth assumptions.”³⁰ (AR
14 1669-70, 1704; see also, e.g., AR 388, 501, 632.) Then, for each housing unit not “covered by the
15 93 acre-feet of water supplied by the Applicant” the Applicant shall pay a City fee to purchase
16 water rights available within the value of the fee or “import a 20-year supply of water through
17 [the District].”³¹ (AR 1704, 1740, 1747, 1761, 1793.) Since the EIR and WSA expressly list 93
18 AFY as a necessary component of the Sage Ranch water supply, however, it is not appropriately

19
20 ^{30/} As discussed above in sections IV.A.2 and IV.A.3, even if Sage Ranch “only” represents a
21 92.8 AFY increase in demand over City growth projections without the project, this does not
22 obviate the need for the City to analyze the project *in relation to the baseline of existing*
conditions and disclose how the deficit of 407.3 AFY of water needed by 2040 will be satisfied.
(AR 1792-93; see fn. 12, 19, 28, *supra*.)

23 ^{31/} A commitment to pay fees does not by itself establish an adequate water supply, nor is it
24 adequate mitigation for water supply impacts if there is no evidence that mitigation will actually
25 result. (AR 14173.) Fees must be paid in connection with a reasonable, enforceable plan for
26 mitigation that is sufficiently tied to actual mitigation of the project impact at issue. (*Anderson*
First Coalition v City of Anderson (2005) 130 Cal.App.4th 1173, 1188-1189; *California Clean*
Energy Committee v. City of Woodland (2014) 225 Cal.App.4th 173, 197-198; *Gray, supra*, 167
27 Cal.App.4th at p. 1122.) A fee requirement is not adequate or effective mitigation where, as here,
28 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.)

1 characterized as a “mitigation measure.”³² (*Ibid.*; AR 1792 [WSA, Table 4-1 [columns N and P];
2 AR 1739 [FEIR Table 3.19-1 (same)]; CEQA Guidelines, § 15126.4(a)(1)(A); *Lotus v. Dept. of*
3 *Transportation* (2014) 223 Cal.App.4th 645, 656, fn. 8, 656-57.)

4 **4. The City Failed to Analyze Reasonable Alternatives**

5 The Sage Ranch EIR considered three alternatives: (1) No Project; (2) Alternative
6 Location; and (3) Reduced (50%) Project. (AR 652.) The range of alternatives presented in the
7 EIR reflects the “straw man” set-up that CEQA prohibits. (*City of Maywood v. Los Angeles*
8 *Unified School District* (2012) 208 Cal.App.4th 362, 415.) It involves only an alternative
9 location that the EIR advocates against rather than evaluates, and a reduced density alternative
10 that eliminates 50% of the development (which still results in 500 new homes in a very small city)
11 so that the EIR can assert, without any evidence, that “economic considerations” eliminate it from
12 discussion.³³ (AR 653-58.) Based on several pages of boilerplate and advocacy in favor of the
13 project and very little else, the EIR concludes, “[a]fter this full, substantial, and deliberate
14 analysis, the proposed Project remains the preferred alternative.” (AR 658; see AR 651-58.) The
15 EIR’s puffery omits at least one obvious alternative – a project of reduced size that maintains the
16 same or similar relative percentages of diverse housing types as are presented within the proposed
17 project. (See AR 404, 2645-46; *Habitat Watershed, supra*, 213 Cal.App.4th at pp. 1304-05
18 [EIR’s failure to consider limited-water alternative violated CEQA].) The EIR’s approach to
19 alternatives violates CEQA because it is designed to thwart rather than to foster informed
20 decision making and public participation. (CEQA Guidelines, § 15126.6(a)-(f); *Habitat*
21 *Watershed, supra*, 213 Cal.App.4th at p. 1303; see *Laurel Heights Improvement Association v.*
22 *Regents of University of California* (1988) 47 Cal.3d 376, 400-01 [EIR must provide adequate

23
24 ^{32/} The City has not demonstrated that there are sufficient water rights for purchase to satisfy
25 the project’s anticipated water needs. If Tehachapi Basin groundwater rights are not available for
26 purchase, the next “mitigation measure” is simply a restatement of the primary source of water –
buy water from the District – without any analysis of whether the water is actually available. (AR
1747.) As explained above, moreover, the M&I Agreement has a 10-year term, and the District’s
policies do not contemplate longer term commitments. (AR 14180-81, 14192, ¶4.)

27 ^{33/} The EIR’s discussion of alternatives skirts important environmental issues and is framed
28 to advocate and build support for the project rather than to meaningfully consider
environmentally superior alternatives. (AR 651-58; see *Habitat Watershed, supra*, 213
Cal.App.4th at p. 1305; *PCL, supra*, 83 Cal.App.4th at p. 918.)

1 information about options to reduce or avoid environmental impacts, including both mitigation
2 measures and alternatives]; *Watsonville, supra*, 183 Cal.App.4th at pp. 1087-90 [EIR's failure to
3 consider reduced development alternative violated CEQA].)

4 **5. The City's Responses to the District and SWRCB Violate CEQA**

5 The City's EIR fails to provide reasoned responses to comments from the District and the
6 State Water Resources Control Board ("SWRCB") based on accurate data.³⁴ (AR 1658-73;
7 CEQA Guidelines, § 15088(c); see *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202
8 Cal.App.4th 603, 616.) Adequate responses to comments on the Draft EIR are of particular
9 importance where, as here, significant environmental issues are raised in comments submitted by
10 experts or by regulatory agencies with specialized expertise. (See *Banning Ranch Conservancy v.*
11 *City of Newport Beach* (2017) 2 Cal.5th 918, 940 ("*Banning Ranch*").) When credible expert
12 opinion suggests that the EIR's assessment of a significant impact is flawed and that further study
13 is needed, then the EIR is fatally deficient unless the final EIR responds with further evaluation or
14 a reasonable explanation, supported by evidence, for not doing so. (*Flanders Foundation, supra*,
15 202 Cal.App.4th at pp. 616-17; *California Oak, supra*, 133 Cal.App.4th at pp. 1237-38.) Broad
16 statements and conclusions unsupported by factual information are not an adequate response;
17 questions raised about significant environmental issues must be addressed in detail. (CEQA
18 Guidelines, § 15088(c); *City of Maywood, supra*, 208 Cal.App.4th at p. 391; see *SCOPE, supra*,
19 106 Cal.App.4th at p. 723 ["the EIR does little more than dismiss [commenters'] concerns about
20 water supply. Water is too important to receive such cursory treatment."].) Here, the City's
21 responses to comments from the District and SWRCB rely on information that is insufficient,
22 inaccurate, and misleading.³⁵ (AR 1662-73, 3295-3315.)

23 ^{34/} The SWRCB submitted comments on the NOP stating that the Sage Ranch EIR must
24 "demonstrate enough water source capacity to support the Project and that an amended permit"
25 from the SWRCB may be required. (AR 484, 6511-12.) The EIR and WSA failed to include the
requested information and failed to respond adequately to the comments of this regulatory
agency, in violation of CEQA. (CEQA Guidelines, § 15088(c).)

26 ^{35/} The District's comments did not merely dispute the EIR's analysis or conclusions; rather,
27 they demonstrated that the EIR omitted basic information, contained numerous data errors, and
28 failed to evaluate fundamental environmental issues. (AR 14164-219; CEQA Guidelines, §
15088.5; see *King & Gardiner Farms, supra*, 45 Cal.App.5th at p. 869; *Banning Ranch, supra*, 2
(continued...)

1 **6. The City Failed to Conduct at Least One Public Scoping Meeting**

2 CEQA requires the agency preparing an EIR for a project of statewide, regional, or
3 areawide significance to conduct at least one scoping meeting to ensure adequate input from other
4 public agencies. (CEQA Guidelines, § 15082(c)(2).) The City failed to do so even though the
5 Sage Ranch project is “significant” by definition under CEQA, which required at least one
6 scoping meeting – a mandatory procedural CEQA requirement that must be scrupulously
7 enforced. (CEQA Guidelines, §§ 15082(c)(1) and (c)(2), 15206(b); *Sierra Club, supra*, 6 Cal.5th
8 at p. 512; *Vineyard, supra*, 40 Cal.4th at p. 435.)

9 **7. The City Failed to Consult with the District in Good Faith**

10 The City identifies the District as a significant source of water for the project, and then
11 inexplicably refused to engage with the District regarding the water supply. By failing to
12 meaningfully and genuinely engage with the District regarding the water supply analysis in the
13 EIR and WSA, and by disregarding the District’s concerns regarding the uncertainty of, and
14 impacts associated with, supplying water to Sage Ranch, the City has subverted both the letter
15 and intent of CEQA as well as Senate Bills (“SB”) 610 and 221 – statutes in the Water Code
16 aimed at improving communication between local planning agencies, developers, and the public
17 water systems that serve them. (Wat. Code, §§ 10910-10915; Gov. Code, § 66473.7; see CEQA
18 Guidelines, § 15155.) Under these statutes, cities and counties generally cannot make the
19 determination of adequate and sustainable water supplies on their own but must instead obtain
20 this information from the local water utility that would be serving the project. While the City
21 provides water service connections to its residents, the District is the sole source of the City’s
22 imported water supply. (AR 484, 612, 1696-99, 1709, 1796.) The City did not consult with the
23 District in the preparation of the Draft EIR. When the District submitted comments in April
24 2020, the City did not provide a response to those comments until it released the Final EIR on
25 July 7, 2021. (AR 9907-10, 11152, 13490.) The City’s failure to consult in good faith with the
26 District is prejudicial because it resulted in a deeply flawed EIR and WSA that effectively

27
28 Cal.5th at p. 935; *Vineyard, supra*, 40 Cal.4th at p. 426.) The City’s failure to revise and
 recirculate the EIR thwarted CEQA’s informational purposes. (AR 14181.)

1 presume the District can summon water to serve the City that does not exist. (AR 14164-219.)

2 **B. The City's WSA Violates the Water Code**

3 Project WSAs are required to address a broad range of issues relating to existing water
4 supply allocations, water rights, and water service contracts supporting the water supply
5 identified for the proposed project, with accurate descriptions of the quantities of water received
6 in prior years under those existing allocations, rights, and contracts. (Wat. Code, § 10910(c), (d),
7 and (e).) To provide a realistic assessment, the evaluation also should identify other parties that
8 receive water or have allocations, water rights, or contracts giving them rights to the same source
9 of water. (Wat. Code, § 10910(e); see, e.g., *Madera Oversight Coalition, Inc. v. County of*
10 *Madera* (2011) 199 Cal.App.4th 48, 104 [WSA rejected for failing to evaluate information
11 showing that water allocation relied on in assessment was uncertain].) The lead agency cannot
12 merely assume, as the City has done here, that additional supplies will be acquired by either the
13 applicant or the City from unidentified sources at unknown cost or quality. (Wat. Code, § 10911;
14 see, e.g., AR 388, 501, 632, 1704-05, 1740-41, 1761, 1793, 14194, ¶18; see also fn. 30, *supra*.)

15 An adequate WSA is necessary to inform the EIR's analysis, which must include: (1)
16 sufficient information on water demand and water supplies for the lead agency to evaluate the
17 pros and cons of supplying the project with the water it will need; (2) analysis of the reasonably
18 foreseeable impacts of supplying the water; (3) analysis of the circumstances affecting the
19 likelihood that sufficient water will be available, and the degree of uncertainty involved; and (4)
20 if the lead agency cannot determine that a particular water supply will be available, an analysis of
21 alternate available water sources, or project alternatives that could be served with available water.
22 (CEQA Guidelines, § 15155(f).) As discussed in further detail below, the WSA for Sage Ranch
23 is inadequate to inform the EIR because it glosses over each of these critical issues to conclude,
24 without evidence, that projected water supplies will be sufficient for the Sage Ranch project in
25 addition to existing and planned future uses. (Wat. Code § 10911(b), (c); see AR 14192-95.)

26 **1. The WSA Relied on Outdated Information**

27 To facilitate water supply planning, adopted RUWMPs may be used as source documents
28 only to the extent they are relevant to the project under consideration and the information in them

1 remains reliable. (Wat. Code, § 10651; see Wat. Code, §§ 10610-10656; *Friends of Santa Clarita*
2 *River v. Castaic Lake Water Agency* (2004) 123 Cal.App.4th 1, 9.) Substantial changes that occur
3 after the most recent RUWMP is adopted must be addressed in the WSA and CEQA analyses.
4 (*Friends of Santa Clarita River, supra*, 123 Cal.App.4th at pp. 13-15.) The City's WSA and EIR
5 analyses borrowed heavily from the 2015 RUWMP, incorporating much of the same language
6 and many of its tables, yet failed to explain why such reliance is appropriate given that: (1) the
7 2015 RUWMP did not account for the Sage Ranch project's demand in its analysis (AR 1782, 90,
8 94-95 [conceding that project's demand was not included in 2015 RUWMP and stating only that
9 project site is located within 2015 RUWMP's boundaries]);³⁶ and (2) even if the 2015 RUWMP
10 had accounted for the project's demand, the information in the 2015 RUWMP fails to reflect
11 substantially changed circumstances and exceptional drought conditions. (See Wat. Code, §
12 10910(c)(2); see also Pub. Resources Code, § 21151.9; *Vineyard, supra*, 40 Cal.4th at pp. 434-
13 435 [previous overall water planning projections may inform project's water supply assessment if
14 individual project's demand was included in overall water plan]; AR 4129:19-22, 14193-94.)

15 The 2015 RUWMP presented a significantly different water scenario than the one
16 confronting the City six years later as it considered the Sage Ranch project. (AR 5392, 5451-78.)
17 The 2015 RUWMP projected 1.1% growth, but the City grew at about 2% and the City projected
18 additional growth at 2.3% into 2035 and beyond.³⁷ (AR 1792, 5392, 5465; see fn. 8, *supra*.) The
19 2015 RUWMP anticipated the City's 2035 population to be 10,971, while the WSA projects a

20 ^{36/} In response to the District's April 2020 comments, the City argued that because the Sage
21 Ranch project was geographically located within the area map in the 2015 RUWMP, it was
22 therefore included in "the land use/population area covered by the City's [2015 RUWMP]." (AR
23 1794.) This is directly contrary to Water Code section 10910(c)(2), which only allows a
RUWMP to be utilized if "the projected water demand associated with a proposed project was
included as part of the most recently adopted urban water management plan."

24 ^{37/} The City has argued that at a November 9, 2020, meeting, District manager Tom Neisler
25 agreed that a 2% growth rate was "reasonable." (AR 3304, 4107:42:23-25.) But the
26 correspondence concerning this meeting belies the City's claim. (AR 11543.) Therein, Mr.
27 Neisler noted that the City had been growing at a rate of 2%, and that "[t]he 2% rate will be
28 reviewed and verified during the 2020 RUWMP process." (*Ibid.*; see also AR 11650-51 [City
knew that District's water supply was strained and "it [was] now unclear how the applicant
intends to obtain the necessary water supply to meet the project's water demand"].) The City
never analyzed the impact of its assertedly "reasonable" growth rates of either 2 or 2.3% as
required under CEQA. (AR 1704, 1792-93; see fn. 8, *supra*.)

1 population of 15,743, with increases largely due to Sage Ranch. (AR 1792, 5392.) The 2015
2 RUWMP anticipated that by 2035, the City would purchase 379 AFY of SWP water from the
3 District, while the WSA projected 1,188.7 AFY – an amount in excess of the upper limit in the
4 M&I Agreement, and a nearly 300% increase of the 2015 RUWMP’s projections. (AR 1792,
5 5465, 14197.) These significant differences highlight the defects in the City’s water supply
6 analysis for having relied on an outdated RUWMP. (*Ibid.*; AR 14188.)

7 **2. The WSA’s Assumptions Are Erroneous**

8 Sage Ranch, and future City growth, rely almost exclusively on the District for water.
9 (AR 632, 1168-69, 11881, 1747, 1792, 11542, 1768-69, 14193.) The District’s obligation to
10 supply water is expressly “conditioned upon the availability of sufficient SWP water under the
11 KCWA Water Supply Contracts *to enable the District to meet all of its Customers’ water*
12 *demands.*” (AR 5631, ¶ 10 [italics added]; 14201, ¶10.) The M&I Agreement is not a firm
13 commitment to supply the City a specified quantity of water for 20 years. (AR 14188; 14192, ¶4;
14 14201, ¶11.) Further, the District lacks sufficient water to meet the City’s asserted “baseline”
15 water demand as shown in Table 4-1 of the WSA, let alone the additional demands of Sage
16 Ranch. (AR 1792; see *Buena Vista Water Storage Dist. v. Kern Water Bank Authority* (2022) 76
17 Cal.App.5th 576, 592 [environmental baseline is existing physical conditions]; CEQA Guidelines
18 § 15125; see also fn. 12, 19, 28, *supra*.) Even if the District could provide the City with 1,153
19 AFY (the theoretical maximum available under the M&I Agreement), the City is still short an
20 estimated 407 AFY over the 20-year horizon. (*Ibid.*) Table 4-1 in the WSA, columns H and P,
21 estimate the City will need 1,560 AFY to meet 2040 demand. (AR 1792.) By its own estimates,
22 *the City will run out of water by 2034.*³⁸ (*Ibid.*)

23 **3. The WSA Lacks Sufficient Data**

24 The WSA states that “the Applicant will be required, as a mitigation measure, to
25 secure/purchase an additional 93 acre-feet of water rights to serve the project. The Applicant has

26
27 ^{38/} Even without Sage Ranch, the City runs out of water by 2035, when its demand (3,085.9
28 AFY) exceeds even its inflated estimate of available supply (3,050 AFY). (AR 1792.) By 2040,
the City’s deficit is 407 AFY *by its own estimation, without the addition of Sage Ranch.* (*Ibid.*)

1 identified sufficient/available water rights,” to serve the project. (AR 1793.) The Tehachapi
2 Basin is small and the available supply of water rights for sale is extremely limited. (AR 14194,
3 ¶18.) Neither the EIR nor the WSA identifies the source of the claimed 93 acre-feet of water
4 rights, nor is there any evidence in the record that the water rights are the subject of an
5 enforceable commitment to serve Sage Ranch through the conditions of approval. (See AR 78-
6 89, 484-503, 1639-1749, 1750-64, 1765-1825.) The record demonstrates only that the applicant
7 had purchased 76.4 AFY of water rights. (AR 3271-89; 14194, ¶18.) Immediately before the
8 City acted on the project, the applicant claimed to commit 175 AFY of water, but the purchase
9 agreement for that water was conditional, not “binding” as represented. (AR 3271-3289,
10 4130:18-4131:21.) None of these alleged water amounts – the 76.4 AFY, 93 AFY, or 175 AFY,
11 all of which remain insufficient to address the City’s deficit – were analyzed in the EIR or WSA,
12 and the WSA thus lacks sufficient data to conclude that the project’s significant impacts related to
13 water resources, water supply, and public utilities will be mitigated to less-than-significant levels.
14 (AR 484-503, 1639-1749, 1765-1825.)

15 **C. The Project’s Water Supply Cannot Be Verified Based on the City’s Analysis**

16 To approve a subdivision of this size, the City is required to provide a “written
17 verification” that adequate water will be available to meet the project’s demand.³⁹ (Gov. Code,
18 §§ 65867.5, 66473.7.) A “sufficient water supply” means that total water supplies available
19 during normal, single-dry and multiple-dry years within a 20-year projection will meet the
20 proposed subdivision’s demand, in addition to existing and planned future uses, including
21 agricultural and industrial uses. (Gov. Code, § 66473.7(a)(2).) If the verification relies on
22 supplies not yet available, then it must be “based on firm indications the water will be available in
23 the future, including written contracts for water rights, approved financing programs for delivery
24 facilities, and the regulatory approvals required to construct infrastructure and deliver the water.”
25 (*Vineyard, supra*, 40 Cal.4th at p. 433; see also AR 6756-57, 14329.) If this condition is not
26

27 ^{39/} The project is a subdivision because: (1) it is a “proposed residential development of more
28 than 500 dwelling units”; and (2) the water agency has fewer than 5,000 service connections, and
the project increases those connections by more than 10%. (Gov. Code, § 66473.7(a)(1).)

1 satisfied, then the final map cannot be recorded.⁴⁰ (Gov. Code, §§ 65967.5(c), 66473.)

2 The project's water supply cannot be verified based on the City's analysis in the WSA and
3 EIR because they merely assume that the applicant and/or the City will acquire additional water
4 without identifying any likely source or giving any reasoned indication that the water will be
5 available. (Gov. Code, § 66473.7; *Vineyard, supra*, 40 Cal.4th at p. 433; see AR 388, 501, 632,
6 1704, 1740, 1793.) The City violated its mandatory duties under the Government Code by failing
7 to require, as a condition of approval of the project, a water supply verification prior to finalizing
8 the subdivision map as required by SB 221. (Gov. Code, §§ 65867.5(c), 66473.7.)

9 **V. CONCLUSION**

10 The City has a legal and civic obligation to plan its growth in line with reality. Its
11 approach to water supply planning through fantasy and coercion (i.e., forge ahead blindly to build
12 hundreds of houses and attempt to burden the District with the obligation to serve them with
13 water as a "priority" use), through its dismissive and fragmented relationships with other public
14 agencies, through its novel and unsupportable notions of adequate and available water, and
15 through its procedural shortcutting, has escalated the parties' dispute that essentially involves one
16 simple question – Where will they get the water? Until the City answers this question in the
17 manner required by state law – by recognizing the limits of water supply, the rights of all
18 stakeholders, and the necessity of environmental sustainability – the project cannot be approved.

19 The District respectfully requests the Court grant its petition and issue a writ commanding
20 the City to vacate and set aside its certification of the EIR and approval of the project.

21 DATE: February 6, 2024

Respectfully submitted,

22 PIONEER LAW GROUP, LLP

23
24 By: 

25 ANDREA A. MATARAZZO
26 DANIEL A. KING
27 KATHRYN L. PATTERSON
Attorneys for Petitioner TEHACHAPI-
CUMMINGS COUNTY WATER DISTRICT

28 ^{40/} Sage Ranch is not "infill" and does not qualify for the infill exemption from the
verification requirement. (Gov. Code, § 66473.7(i); see AR 1775.)

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

3 **PROOF OF SERVICE**

4 I, Jean Seaton, declare:

5 I am a citizen of the United States, employed in the City and County of Sacramento,
6 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.

7 I am familiar with the practice of Pioneer Law Group, LLP, for collection and processing
8 of correspondence, said practice being that in the ordinary course of business, correspondence is
9 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.

10 On February 6, 2024, I served the following:

11 **PETITIONER'S OPENING BRIEF**

12 ☒ (VIA U.S. MAIL) I placed such sealed envelope, with postage thereon fully prepaid for
13 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

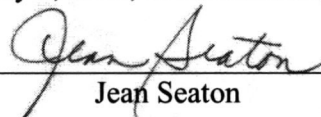
14 ☐ (VIA PERSONAL SERVICE) I caused each such envelope to be delivered by hand to
15 the addressees at the addresses listed below; and/or

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

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

20 See attached Mailing List.

21 I declare that I am employed in the office of a member of the bar of this Court at whose
22 direction the service was made. Executed on February 6, 2024, at Sacramento, California.

23 
Jean Seaton

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

3
4 **MAILING LIST**

5 Ginetta L. Giovinco
6 RICHARDS, WATSON & GERSHON
7 350 South Grand Avenue, 37th Floor
8 Los Angeles, CA 90071
9 Telephone: (213) 626-8484
10 Email: ggiovinco@rwglaw.com

Attorneys for Respondent
CITY OF TEHACHAPI

11 Joseph D. Hughes
12 KLEIN, DeNATALE, GOLDNER,
13 COOPER, ROSENLIB & KIMBALL, LLP
14 10000 Stockdale Hwy, Ste. 200
15 Bakersfield, CA 93311-3603
16 Telephone: (661) 395-1000
17 Fax: (661) 326-0418
18 Email: jhughes@kleinlaw.com

19 Carissa M. Beecham
20 Buchalter, APC
21 500 Capitol Mall, Suite 1900
22 Sacramento, CA 95814
23 Telephone: (916)945-5170
24 Email: cbeecham@buchalter.com

Real Parties in Interest
GREENBRIAR CAPITAL CORPORATION
GREENBRIAR CAPITAL HOLDCO, INC.
GREENBRIAR CAPITAL (U.S.), LLC
JEFFREY CIACHURSKI

25 Courtesy Copy
26 *Via Electronic Mail only*

27 Sacramento County Superior Court
28 Department 36
Honorable Judge Stephen Acquisto
Dept36@saccourt.ca.gov