C090840

In the Court of Appeal of the State of California
Third Appellate District

WE ADVOCATE THOROUGH ENVIRONMENTAL REVIEW, INC.; and WINNEMEM WINTU TRIBE,

Plaintiffs and Appellants,

v.

COUNTY OF SISKIYOU; and SISKIYOU COUNTY BOARD OF SUPERVISORS,

Defendants and Respondents.

CRYSTAL GEYSER WATER COMPANY, INC.
Real Party in Interest/Respondent.

RESPONDENTS' AND REAL PARTY IN INTEREST'S JOINT BRIEF

Siskiyou County Superior Court No. SCCV-CVPT-2018-41

Honorable Karen Dixon

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INTRODUCTION

This action stems from the County of Siskiyou's ("County") certification of an Environmental Impact Report ("EIR") prepared by the County for the operation of the Crystal Geyser Bottling Plant ("Plant") and all ancillary uses for the Plant ("Project"). Appellants We Advocate Thorough Environmental Review and the Winnemem Wintu Tribe (collectively, "Appellants") argue that the County's EIR did not adequately address significant impacts to water supply, noise, air quality, aesthetics, and land use. Appellants rely on bald allegations and speculation to support many arguments set forth in their opening brief.[1]

The Plant is located on property zoned heavy industrial and, while the operation of a bottling facility is a permitted use at the Project site *as a matter of zoning*, the proposed operation of the Plant would require a series of discretionary permits from various local and state agencies, including the County. For purposes of the California Environmental Quality Act ("CEQA"), the County acted as the lead agency for the Project because, following Crystal Geyser Water Company's ("Crystal Geyser") submission of an application for a conditional use permit ("CUP")

[1] Appellants also made minimal arguments in the lower court that the County's EIR did not sufficiently address impacts to groundwater quality. Appellants appear to have abandoned any argument related to groundwater quality, as it is not addressed in Appellants' Opening Brief, other than a minor notation in the Introduction. (AOB, p. 11.)

for a caretaker's residence, the County became the first public entity to consider a discretionary permit for the Project. As lead agency, the County was tasked with preparing a comprehensive environmental document that could be relied upon, not only by the County in considering its CUP, but also by all other responsible agencies in their discretionary permitting decisions related to other Project components.

The County's comprehensive environmental review of the Project, which was based on conservative assumptions and analyzed all foreseeable impacts of Plant operations, resulted in a voluminous record, including numerous studies by seasoned experts, providing the substantial evidence necessary for certification of the EIR, and supported approval of the CUP. Appellants challenge the County's decisions to certify the EIR and approve the CUP based on erroneous assertions that have been considered throughout the County's lengthy and robust public environmental review process, and which were thoroughly reviewed and properly decided upon by the lower court.

Following the release of the Draft EIR, the County spent more than seven months reviewing, evaluating, and drafting responses to the comments it received. The Final EIR reflects the County's meticulous consideration of, and comprehensive response to, public comments to the Draft EIR. Unfortunately, Appellants cherry picked now-obsolete comments to support their

arguments. For example, Appellants argue that the EIR's air quality impacts are improperly based on a table that appeared in the Draft EIR but Appellants disregarded the subsequently revised table found in the Final EIR. (Appellant's Opening Brief ("AOB"), pp. 44-45.)

Beyond the Final EIR resolving ambiguities in the Draft EIR identified by public comments, where warranted, the County further responded to public comments by undertaking additional studies to ensure that, as an informational document, the EIR and its conclusions were supported by reasonable scientific certainty. Specifically, in response to public comments challenging the Draft EIR's conclusions on the impacts of Crystal Geyser's pumping of groundwater, an additional study was undertaken, which included a pump test with continuous pumping of a well at the Plant for 72 hours and a total monitoring period of 10 days. The data, collected in May of 2017, is the most recent evaluation of the current state of the groundwater aquifer underlying this area, and it further supported the Draft EIR's hydrogeology analysis.

Without acknowledging this additional testing, Appellants alleged in the lower court proceeding that the EIR's analysis is improper because it relies on outdated data. (See, e.g. Appellants' Appendix ("AA"), 313:12-14, 324-327, 327:18-19.) Appellants not only double-down on their allegations that the County used

outdated data (see, e.g. AOB, pp. 41-42, 67), but also make an underwhelming attempt to correct their oversight in the lower court by arguing the additional testing conducted by the County was insufficient. (AOB, pp. 71-75.)

Again, Appellants cherry-pick data from the Final EIR to improperly support their speculative and conclusory statements, such as the assertion that testing conducted by the County was "overly brief," without anything more. (AOB, p. 74.) Further, Crystal Geyser anticipates its groundwater pumping will be consistent with the pumping conducted by the previous Plant operator, resulting in no additional impact.[2]

The public process for adoption of the EIR was equally thorough, with a series of public hearings being held before the County Planning Commission and the County Board of Supervisors from September 20, 2017 through December 12, 2017. Both the public meetings before the Planning Commission and the Board of Supervisors were continued to allow the Commission and the Board, respectively, to consider, and the staff to address, public comments that were received at the hearings before a decision was made on a second day. The record establishes that the County provided an environmental review of

[2] In California, groundwater pumping by an overlying property owner is a matter of right. (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 278.) Therefore, groundwater pumping and use is not regulated by the County.

the Project that served the goal of CEQA: to inform decision makers and the public of the impacts from the Project.

STATEMENT OF THE CASE

A. STATEMENT OF FACTS

1. Project Background

The EIR that serves as the basis for the County's decision analyzes operation of the Plant and all ancillary uses to the Plant, including the building and use of a caretaker's residence, on a 118-acre site located in Siskiyou County, outside of the City of Mt. Shasta ("City"). (Administrative Record ("AR") 01624.) Crystal Geyser's proposed operation of the Plant follows Dannon Waters of North America's ("Dannon") operation of the Plant from approximately 2000 to 2010. (*Ibid*.) Crystal Geyser purchased the site in 2013. The planned use of the Plant is to bottle sparkling water, flavored sparkling water, juice beverages, and tea. (AR 01624-25.) The Plant would operate 24-hours per day, Monday through Friday, with a shift on Saturday from 7:00 a.m. to 3:30 p.m., depending on demand. (AR 01632.) Trucking activities would be limited to the hours of between 7:00 a.m. and 10:00 p.m. (*Ibid*.) But for the operation of the Plant, there would be no requirement for the caretaker's residence.

Operationally, Crystal Geyser would begin with one bottling line at the Plant to produce sparkling water, juice

beverages, and tea. (AR 01632.) Depending on demand and market conditions, production could be expanded to a second bottling line. (*Ibid*.) A third production line cannot be accommodated within the existing footprint of the Plant. (*Ibid*.) Any previous plans that show a third production line are from a previous draft iteration of the Project that is not considered or proposed under the EIR. (AR 01160, 07451.) A third bottling line would require expansion of the existing footprint of the Plant and additional discretionary approvals along with the associated environmental analysis required for such an expansion. (AR 01160.)

Consequently, Appellants' assertion that there is "nothing to prevent [Crystal Geyser] from adding [a] third line" is disingenuous. (AOB, p. 20.) With the clear operational plan to operate two production lines in place, the EIR evaluates impacts that result from two production lines operating at 90% capacity. (AR 01633.) The 90% capacity projection takes into account reductions in capacity due to routine maintenance, sanitation, cleaning, and project changeovers, but is a conservative estimate based on reports from other Crystal Geyser facilities that generally operate at "30 to 80 percent of their maximum production capacity at any one time." (*Ibid*.)

The water for the Plant would be provided by two onsite wells, one for production and one for domestic supply. (AR

01633.) Dannon's operation of the Plant also relied on these water sources. (*Ibid*.) The production well is located in the northern portion of the site and is commonly referred to as DEX-6. (AR 01629.) The Plant would use approximately 80 gallons per minute ("gpm") on a monthly average basis with one production line in use and 150 gpm on a monthly average basis with two production lines in use. (AR 01633.)

While Dannon was operating the Plant, with two production lines, it used approximately 160 gpm on a monthly average basis, based on expert analysis of electrical use and review of DEX-6 pump specifications. (AR 01428, 01624.) While Dannon originally trucked in water to the facility from another location, that practice ceased during Dannon's operation of the Plant, contrary to Appellants' assertion. (AR 00800; AOB, p. 31.)

2. Site History and Project Approvals

The Plant is located in an area that was predominantly used for lumber mill operations between approximately 1958 and 1990. (AR 01624.) Dannon constructed the Plant from 1998 through 2000. (*Ibid*.) At the time the Plant was constructed, the site was zoned heavy industrial and the County determined that operation of the Plant was by right, not requiring a permit, given the site's zoning designation. (*Ibid*.) The site's zoning was changed to heavy industrial in 1980, well before Dannon and Crystal Geyser were involved with the Plant. The Project site is

surrounded by varying land uses, including residential, commercial, and industrial use, with the commercial and industrial land uses generally occupying larger lots to support automotive and trucking based businesses. (AR 01625.)

Operation of the Plant is allowed by right under the Plant's heavy industrial zoning designation. The County is vested with the authority to review the issuance of a CUP for the caretaker's residence, a residential use in an industrial zone, and to issue a building permit for an additional building for a pH Neutralization system. (AR 01662.) Additional public agency review and approvals of the Project include the City for a wastewater discharge permit, the Central Valley Regional Water Quality Control Board ("CVRWQCB") for permits related to wastewater discharge, and the Siskiyou County Air Pollution Control District ("SCAPCD") for permits related to the operation of three propane generators and four boilers. (AR 01664.)

The County, as the agency taking the first discretionary action on the Project, is the appropriate agency to perform the environmental review of the Project. (Cal. Code Regs., tit. 14[3], § 15051, subd. (c).) Appellants' implication that the City was originally considered the appropriate lead agency for CEQA review of the Project is unfounded and irrelevant to the issues in this case. (AOB, pp. 14-17.)

[3] Hereinafter "CEQA Guidelines."

3. The Record and the County's Decision to Certify the EIR

On December 12, 2017, when the County Board of Supervisors approved the Project and certified the EIR, it relied on a voluminous record. The Final EIR alone consists of "7,220 total pages, which include 5,494 pages of technical appendices and 392 pages of responses to comments." (AR 31745.) Throughout the environmental review and certification process, public comments were received, and specific studies were done in addition to responses being provided to those comments. (See, e.g. AR 31733-48 [providing responses to comments from the November 16, 2017 Board of Supervisors hearing], 31955-32164 [providing responses to comments on the Final EIR].) Many times, despite the County's responses to the comments, the County continued to receive the same repetitive assertions that Appellants' Opening Brief now relies upon, such as continued allegations of Crystal Geyser relying on old pumping data when a pump test to determine if the modeling was correct was completed in May 2017. (AOB, pp. 41-42, 67; AR 32660, 7372-7430.)

The "expert analysis of the local groundwater elevation" Appellants allege the County ignored was groundwater elevation data that was collected from the last quarter of 2013 through the last quarter of 2016; data that is older than the pump test run in

May of 2017. (AOB, p. 70; AR 38836-90.) The County did not ignore this data; it was addressed and found to be unhelpful and unreliable due to the method of collection and other factors.

B. PROCEDURAL HISTORY

On January 11, 2018, Appellants timely filed their Petition for Writ of Mandate, challenging the County's certification of the Final EIR prepared for the Project.

A hearing on the merits of Appellants' Petition for Writ of Mandate was heard by Honorable Karen L. Dixon of the Siskiyou County Superior Court on May 10, 2019.

The lower court issued its Statement of Decision on August 29, 2019 and Judgment was entered on September 18, 2019.

On November 7, 2019, Appellants timely filed their Notice of Appeal.

STANDARD OF REVIEW

The Court of Appeal reviews CEQA actions de novo. It reviews the agency's action, not the trial court's decision, and resolves reasonable doubts in favor of the administrative finding and decision. (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1162; *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 393 ("*Laurel Heights*").)

On review of an EIR's sufficiency, under CEQA, the court considers whether the public agency committed a prejudicial

abuse of discretion, either by failing to proceed in a manner required by law or by making conclusions unsupported by substantial evidence. (Pub. Resources Code, §§ 21168.5, 21005; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512.)

In reviewing an agency's decision for consistency with its own general plan, the court must give great deference to the agency's determination. (*Pfeiffer v. City of Sunnyvale City Council* (2012) 200 Cal.App.4th 1552, 1563.)

A. SUBSTANTIAL EVIDENCE

Substantial evidence means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines, § 15384, subd. (a).) A court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

A court "must resolve reasonable doubts in favor of the administrative finding and decision," even though other conclusions might be reached from the same body of evidence. (*Laurel Heights, supra*, 47 Cal.3d at p. 422, internal quotations omitted.) "[A]n appellant challenging an EIR for insufficient evidence must lay out the evidence favorable to the other side

and show why it is lacking. Failure to do so is fatal." (*Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 934.)

A court's task is not to weigh conflicting evidence and determine who has the better argument. These questions are left to the discretion of the agency and its environmental consultants; it is they who decide how best to prepare an EIR to achieve CEQA's informational purpose. The decision makers can rely upon the expertise of staff and its consultants. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 901; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1380.)

The County's determinations regarding disputed questions of fact are entitled to the same deference appellate courts give to the factual findings of trial courts. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570-573; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1042.)

Appellants argue the substantial evidence test was improperly applied by the lower court and that an independent review of legal and prejudicial error should have been employed. (AOB, p. 23-25.) Appellants infer that, by applying the substantial evidence test, the lower court gave "blind deference" to the County's determinations to compensate for their failure to meet their burden to show a lack of sufficient evidence. (*Ibid.*)

This is incorrect. A court does not "independently review the record" when a petitioner fails to provide evidence of its claims challenging the sufficiency of an EIR. (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 206.)

B. ABUSE OF DISCRETION

Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence. (*Laurel Heights, supra,* 47 Cal.3d at p. 392.) "The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 189.)

C. BURDEN OF PROOF

A petitioner "bears the burden of demonstrating that the record does not contain sufficient evidence." (*Latinos Unidos de Napa v. City of Napa*, *supra,* 221 Cal.App.4th at p. 206; *see also, Tracy First v. City of Tracy, supra,* 177 Cal.App.4th at p. 934.) "[A]n appellant must set forth in its brief all the material evidence on the point … [and] failure to do so is deemed a concession that the evidence supports the findings." (*Latinos Unidos de Napa v. City of Napa, supra,* 221 Cal.App.4th at p. 206, citing *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 112-113.) A court does not

"independently review the record" when a petitioner fails to carry its burden. (*Ibid.*)

ARGUMENT

A. DEFICIENCIES IN APPELLANTS' OPENING BRIEF

1. Appellants' Statement of Facts Does Not Fairly Summarize the Underlying Facts of the Case.

As an initial matter—and consistent with their failure to show that the record does not contain substantial evidence—Appellants' fail in their basic duty to "[p]rovide a summary of the significant facts" in their opening brief. (Cal. Rules of Court, rule 8.204(a)(2)(C).) Not only do Appellants sprinkle their Statement of Facts with legal conclusions, Appellants make little effort to accurately and fairly summarize the facts critical to this action. (See *Silva v. See's Candy Shops, Inc.* (2016) 7 Cal.App.5th 235, 260, disapproved on other grounds by *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58; see AOB, pp. 12, 15-17, 19-20.) Appellants' version of the facts is entirely one-sided, ignoring any facts that do not support their position. (*In re Marriage of Davenport* (2011) 194 Cal.App.4th 1507, 1530-1531.) "Such conduct is not to be condoned." (*Ibid.*)

While accusing the County of manipulating data and expert analyses to fit its findings in the EIR, Appellants cherry-pick and distort the facts of the Administrative Record to fit their own

narrative. Moreover, many "facts" are stated without any citation to the record whatsoever. (See e.g., AOB pp. 12, 14-16, 19.) Statements of fact that are not supported by references to the record should be disregarded by the reviewing court. (*McOwen v. Grossman* (2007) 153 Cal.App.4th 937, 947; *Fierro v. Landry's Restaurant Inc.* (2019) 32 Cal.App.5th 276, 281, fn. 5 ["appellate courts 'ignore' factual statements without record references"].)

2. Appellant Fails to Present "Enforceability" as a Distinct Legal Argument.

California Rules of Court, rule 8.204(a)(1)(B), requires each issue to be addressed "under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority." Appellants' Opening Brief does not present the County's ability to enforce the mitigation measures imposed by the EIR as a distinct legal argument. Rather, as a further distraction for this Court, Appellants weave their argument that the mitigation measures in the EIR are not enforceable by the County into their misleading project description argument, air quality impact argument, and general plan compliance argument. (AOB, pp. 28, 30, 33, 60-61, 78-79.)

Further, Appellants' arguments related to the County's ability to enforce mitigation measures applicable to the Project are vague and unsupported, and therefore have been forfeited. (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975, 984-985

[declining to examine legal argument made without meaningful analysis or citation to authority]; *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [legal argument without citation to authority may be treated as forfeited].)

This Court need not consider Appellants' arguments related to the County's ability to enforce mitigation measures, as these separate arguments are appended to other arguments, rather than distinctly raised in Appellants' Opening Brief. (See, e.g., *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 470, citing Cal. Rules of Court, rule 8.204(a)(1)(B).)

B. THE EIR CONTAINS A PROPER PROJECT DESCRIPTION OF THE WHOLE PROJECT THAT IS ACCURATE, STABLE, AND FINITE.

An accurate, stable, and finite project description is the indispensable prerequisite to an informative and legally sufficient EIR, but the description "should not supply extensive detail beyond that needed for evaluation and review of the environmental impact." (CEQA Guidelines, § 15124; *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1448.)

Section 3.5 of the EIR describes the Project as "the operation of a bottling facility through modifications to the former Dannon which became Coca Cola Dannon ('CCDA Water')

bottling plant for the production of sparkling water, flavored sparkling water, juice beverages, and teas." (AR 01632.) The County revised the Final EIR to clarify and provide a more consistent description of the Project. Any references to "water bottling facility" were revised to "beverage bottling facility" or "botting facility" as the facility will produce juices and teas as well. (AR 01158.) With this revision, and as set forth below, the EIR contains an accurate, stable, and finite description of the whole Project as required by CEQA.

1. The Project Description May Include More Than the Lead Agency's Approval.

Appellants contend that the EIR contained an overly broad or unstable Project description because the County only approved the caretaker's residence, while the EIR analyzed a larger scope than the County's approval. (AOB, pp. 26-27.) Appellants improperly conflate the term "project" as described in the EIR with the "project" referred to as part of the County's CUP. (See, e.g., AOB 33.) These are not the same "projects." There is no requirement that the "project" in the EIR be the same as the County's discretionary approval; in fact, the opposite is true. "The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." (CEQA Guidelines, § 15378,

subd. (c); see also *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271.)

Thus, the "project" described in the EIR may be more than what any one agency approves. In this case, the following agencies have discretionary approvals related to the Project: (1) County - certification of the EIR with the Mitigation Monitoring Reporting Plan, issuance of a CUP, encroachment permits, and a building permit for a pH Neutralization System building; (2) City – industrial waste discharge permit; (3) CVRWQCB – transfer and modification of waste discharge permit; and (4) SCAPCD – air district permit. (AR 01662-64, 31736-37.)

The entire project being proposed (and not some smaller aspect of it) must be described in the EIR. (See *Nelson v. County of Kern, supra,* 190 Cal.App.4th at p. 271.) This requirement reflects the CEQA Guidelines' definition of a project as "the whole of an action" that may result in either a direct physical environmental change or a reasonably foreseeable indirect change. (CEQA Guidelines, § 15378, subd. (a).)

To analyze a narrower project description, as Appellants suggest, would likely subject the County to a challenge for failure to analyze the "whole" Project. Project descriptions which artificially narrow the project description, minimize the project's impacts, and undermine public review are inadequate under CEQA. (See, e.g., *Laurel Heights, supra,* 47 Cal.3d 376.) Thus,

the EIR properly analyzed the Project as a whole, which included issues related to discretionary approvals from other agencies and Plant operations.

2. The Project Description is Not Required to Include Speculative Uses of Groundwater Pumped by Crystal Geyser.

Appellants argue that because there is no stated limit to Crystal Geyser's pumping, the EIR should have included speculative scenarios where Crystal Geyser extracts an unlimited amount of groundwater or transports extracted groundwater offsite for bottling at another facility. (AOB, pp. 29, 32, 34.) Appellants' assertion is misplaced, as an EIR must analyze possible future expansion or other action related to a project if: "(1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." (*Laurel Heights, supra,* 47 Cal.3d at p. 396.) However, an EIR need not evaluate the possibility that a project might be expanded when there is no credible and substantive evidence in the record that the expansion and the impacts that might result are reasonably foreseeable. (*Save Round Valley Alliance v. County of Inyo, supra,* 157 Cal.App.4th at p. 1451.)

In this case, the Record establishes the exact opposite of Appellants' claims; there is no future expansion being considered. Section 4.8 (AR 01807-01837) and Appendix P (AR 04818-04953) of the EIR describe the projected average pumping rate for the Project during the full production phase (two bottling lines) as 243 acre-feet per year. (AR 01831.) Crystal Geyser submitted information to the County regarding the Plant's maximum operational scenario based on the personal experience of Richard Weklych, who has over three decades of experience in the bottling industry. (AR 07486-87; see also AR 09025-26.) Representations by the Project proponent—namely, Mr. Weklych's production estimates—are substantial evidence upon which the County may rely despite Appellants' claim otherwise. (See Pub. Resources Code, § 21080, subd. (e)(1); AOB, pp. 30-31.) As pointed out in the responses to comments, any plans for a third bottling line were abandoned by Crystal Geyser. (AR 01160 ["The expansion plans referenced and provided by commenters were one of several preliminary design options that were considered by CGWC shortly after acquiring the property, but were ultimately not a part of the project application submitted to the County."]; see also AR 01160, 01632, 07451 ["[Crystal Geyser] has no foreseeable plans or intent to enlarge the building footprint to add a third bottling line."].) It is not reasonably foreseeable that the Project will extract groundwater beyond the maximum demand nor that

Crystal Geyser will transport water to an off-site bottling facility. (AR 01166-67, 01184, 01496.) Thus, the EIR was not required to discuss nor analyze the speculative impacts suggested by Appellants.

Appellants claim that Crystal Geyser is contemplating a third line and, through circular reasoning, impermissibly cite to their own attorney's comment letter in support. (*York v. City of Los Angeles* (2019) 33 Cal.App.5th 1178, 1191 [citations to assertions of attorneys are *argument*, not evidence]; AOB, p. 20 [citing AR 00937].) Appellants have presented no credible evidence, beyond mere conjecture, to support their contentions of speculative expansions. (See *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 297 ("*East Sacramento*")["Unsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence … ."].) To install a third bottling line, the existing Plant would have to be physically expanded and Crystal Geyser would be required to seek additional discretionary approvals. (AR 01160, 07486.) A statement in a letter from legal counsel "is not, in itself, substantial evidence" unless that statement is supported by a citation to factual information or evidence. (*Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 297, disapproved of

on other grounds by *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279; CEQA Guidelines, § 15384, subd. (a).)

Finally, Appellants claim that there is nothing preventing Crystal Geyser from pumping "unlimited quantities" of water and transporting it to "an off-site facility for processing and bottling elsewhere" without environmental review. (AOB, p. 32.) This assertion is speculative with nothing in the record to support it. An EIR need not evaluate the possible activities when there is no credible or substantive evidence in the record to support such an assertion. (*Save Round Valley Alliance v. County of Inyo, supra*, 157 Cal.App.4th at p. 1451; *East Sacramento, supra,* 5 Cal.App.5th at p. 297 .)

3. The Project Objectives Are Proper Under CEQA.

A project's objectives are used to "help the lead agency develop a reasonable range of alternatives to evaluate in the EIR" and should "include the underlying purpose of the project" and may discuss the project benefits. (CEQA Guidelines, § 15124, subd. (b).) A lead agency has broad authority to establish a Project's objectives. (See *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 272-74 ("*California Oak*").) The Project objectives here include both business goals for Crystal Geyser and economic development opportunities for the County. (AR 01631-32.)

Appellants allege that the Project objectives focused on Crystal Geyser's business ends were included to "preclude any alternative other than the Project." (AOB, p. 35.) Those Project objectives include the need to "meet increasing market demand for Crystal Geyser beverage products" and to "initiate operation of the Plant as soon as possible to meet increasing market demand for Crystal Geyser beverage products." (AR 01631.)

Despite Appellants' allegations, the record demonstrates that these objectives were identified and included in the Project based on market research that shows Crystal Geyser's product, bottled water, sparkling waters, and flavored beverage products will experience its strongest growth through 2020, but "it is expected to slow as market penetration climbs." (AR 07506.) These objectives were identified to ensure that Crystal Geyser is able to participate in and take advantage of the current business opportunities in the bottled water and beverage market, with increasing competition, not to unduly limit the alternatives to the Project. (AR 01472-73.)

The statement of objectives should include the underlying purpose of the project and may discuss the project benefits. (CEQA Guidelines, § 15124, subd. (b).) While Appellants allege that the Project objectives benefitting Crystal Geyser are "the core objectives" of the Project, the other Project objectives are just as integral to the Project, highlighting the unique nature of the

Project site and the benefit to the County of the use of the site as a water bottling facility. (AOB, p. 35.)

This category of Project objectives focuses on "taking advantage of existing building, production well, and availability and high quality of existing spring water on the property," utilizing "the full production capacity of the existing Plant," minimizing "environmental impacts related to construction activities and grading by utilizing existing facilities and infrastructure to the extent possible," and to "create new employment opportunities for local and nearby communities … to contribute to the County's tax base." (AR 01631.) These objectives were identified to address the County's ability to "utilize existing facilities and infrastructure" and "create new employment opportunities within the County." (AR 01985-86.)

The objectives were identified and used to evaluate the Project based on the specific characteristics of the Project site, not to unnecessarily foreclose the alternatives to the Project.

The Project objectives demonstrate that other Project alternatives do not offer feasible solutions to the Project's goals. Project alternatives must be evaluated based on the whole of the proposed project and achieving project objectives. (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1000-1001.)

Appellants assert that the County rejected the no Project alternative for "three reasons: (1) 'existing facilities within the project site would remain vacant and non-operational;' (2) it 'would not utilize existing facilities and infrastructure to the extent possible;' and (3) it would not 'create new employment opportunities in the County.' AR 1985-1986[]" and those reasons are "conclusory assertions." (AOB, pp. 38-39.)

To the contrary, the findings supporting certification of the EIR establish that the County rejects the no Project alternative for its "failure … to achieve any project objectives." (AR 00273-74.) "CEQA does not require the lead agency to choose the environmentally best alternative identified in an EIR if (1) through the imposition of feasible mitigation measures identified in the report the environmental damage from a project can be reduced to an acceptable level [cite], or (2) the agency finds specific economic, social or other considerations make alternatives infeasible." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 730-731, citing Pub. Resources Code, § 21081, subd. (c).)

The proposed, but rejected alternatives, including the no Project alternative (environmentally best alternative), do not allow the County to enjoy the full economic development opportunities of the Project and reduces Crystal Geyser's ability to participate in the beverage products market at a time when

that market is growing. (AR 00273-75, 31832.) The Project objectives are consistent with CEQA requirements and make clear that the Project, as a whole, is the most feasible alternative. (AR 01631-32 [EIR Project Description], 1163-73 [EIR Response to Comments and Master Response] 1979-97 [EIR Analysis of Alternatives].)

C. THE EIR PROPERLY CONCLUDED THAT ANY PROJECT IMPROVEMENTS WILL HAVE A LESS THAN SIGNIFICANT IMPACT ON AESTHETICS.

Appellants contend that the EIR improperly described the Plant as a prominent visual feature, instead of a dominant visual feature. (AOB, p. 42.) The EIR focused on the manner in which the development could alter the visual elements or features that exist in or near the Project site under baseline conditions. (AR 01675.) Thus, the EIR was not required to analyze the aesthetic impacts of the existing Plant. Nevertheless, the EIR provided a discussion of how the Plant affects various views in the area. (See AR 01669-80.)

While Appellants cite to various personal observations, those observations are not determinative. (*Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274-275 [unsupported lay opinions and observations of residents did not overcome City's finding that CEQA exemption applied, based on traffic engineer's

study]; see also, *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928 [lead agency has discretion to determine whether evidence offered by the citizens claiming a fair argument exists meets CEQA's definition of "substantial evidence"].) A lead agency may also exercise its own judgment in determining an appropriate standard of significance for aesthetic impacts. (*Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 242-243; CEQA Guidelines, § 15064, subd. (b).) When an agency evaluates aesthetic impacts in an EIR, courts are generally deferential to agency positions on questions about the significance of impacts and the exercise of an agency's judgment in making those significance determinations. (*North Coast Rivers Alliance v. Marin Mun. Water Dist*. (2013) 216 Cal.App.4th, 614, 627 ("*North Coast*"); *Clover Valley Found., supra,* 197 Cal.App.4th at p. 243-244 [upholding EIR's conclusion that although residential project on ridgetop would be visible, impact would be less-than-significant due to topography and existing visual character of area].)

Here, the EIR does not describe the Plant as a dominant visual feature in long-range views of the valley when compared with its surroundings, contrary to Appellants' assertion that it is the dominant visual feature. (AR 01670; AOB, p. 42.) The Draft EIR and responses to comments establish that the "most prominent non-natural features in the region are the urbanized

areas in and adjacent to the City and Interstate 5," which includes the existing Plant on the Project site. (AR 01183; see also 01669.) "Other visual features are more prominent than the plant building, including the mountainous terrain and snowcapped mountains surrounding the City." (AR 31845.)

The Plant is part of baseline conditions and Crystal Geyser does not propose to modify the appearance of the existing building. (AR 01161, 01164, 01675.) The EIR did not analyze the existing Plant, instead focusing "on the manner in which development could alter the visual elements of features that exist in or near the project site under baseline conditions." (AR 01164, 01675.) An analysis of aesthetics is largely subjective and "may vary with the setting." (AR 01675; *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358, 376; see also, *Taxpayers for Accountable School Bond Spending v. San Diego Unified Sch. Dist.* (2013) 215 Cal.App.4th 1013, 1042 [individualized complaints regarding the aesthetic merits of a project do not raise the possibility of significant adverse environmental impact].)

The EIR analyzed impacts on local aesthetics based on a number of settings in the area including the Project's impacts on long-range scenic vistas of the valley floor, local views of the Project site, and the impact of off-site sewer improvements. (AR 01677-78.) The EIR found that the Project alterations would not

be visible from scenic vistas and would be consistent with the location, scale, and color scheme of the existing Plant. (*Ibid*.) Substantial evidence supports the EIR's findings that the Project would not have a significant impact to local aesthetics.

1. Any Violations of the Prior 1998 Mitigation Agreement Must be Considered Part of the Baseline for Purposes of Impact Assessment.

In 1998, the County and then applicant CCDA Water entered into a mitigation agreement as part of the construction of the Plant ("1998 Mitigation Agreement"). (AR 01653.) As successors in interest to CCDA Water, Crystal Geyser committed to implementing applicable measures of the 1998 Mitigation Agreement. (*Ibid*.) Appellants assert that the existing facility does not comply with the 1998 Mitigation Agreement. (AOB, p. 43.)

The 1998 Mitigation Agreement required that the building and free-standing signage will be constructed of non-reflective materials and will not be internally illuminated. (AR 01655.) The Plant building is painted with reflective white color that can produce glare during daytime hours. (AR 01673.) The County interprets "non-reflective materials" as it relates to the existing Plant building to be a limitation on material type (metal, glass, etc.) and not on paint color. (AR 01161.) The materials used to construct the existing Plant building are not reflective and

therefore are not in conflict with the 1998 Mitigation Agreement. (AR 01162.)

Nevertheless, any previous violations of the 1998 Mitigation Agreement prior to Crystal Geyser purchasing the property become part of the environmental setting baseline. (See generally *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1452-1453; *Eureka Citizens for Responsible Gov. v. City of Eureka* (2007) 147 Cal.App.4th 357, 370 ("Eureka"); *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1280-1281.) Even if the paint color is in violation of the 1998 Mitigation Agreement, it becomes part of the baseline analysis as an existing condition. Crystal Geyser is not responsible for remedying any prior violations of the 1998 Mitigation Agreement.

Appellants further contend that the Plant is in violation of the conditions of approval for the caretaker's residence CUP, which incorporated portions of the 1998 Mitigation Agreement. (AOB, pp. 43-44.) Appellants appear to want to have it both ways, first the CUP is incapable of providing enforceable conditions to regulate the Plant and now argue that Crystal Geyser is violating the CUP through activities at the Plant. In its entirety, Condition of Approval No. 19 states: "Building and free-standing signage will be constructed of non-reflective materials and will not be internally illuminated." (AR 00016.) The wording of Condition of

Approval No. 19 repeats the language of the 1998 Mitigation agreement, but as incorporated into the CUP applies prospectively, i.e., it applies to future construction of the caretaker's residence and other improvements—it does not apply to the existing Plant. (See AR 01161-62.) The existing Plant construction does not violate the 1998 Mitigation Agreement, nor does it violate the conditions of approval. (*Fat v. County of Sacramento, supra,* 97 Cal.App.4th at pp. 1280-1281.)

D. THE EIR PROPERLY ANALYZED AIR QUALITY IMPACTS.

1. The EIR Used Appropriate Methodology and Thresholds of Significance In Analyzing Air Quality Impacts.

CEQA does not require that lead agencies use specific methodologies or standards established by various guidance documents to assess a project's air quality impacts. (See generally *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 205-206.) A lead agency may use other methodologies and standards as long as they are supported by substantial evidence. (*Ibid*.; see also *San Francisco Baykeeper, Inc. v. State Lands Com*. (2015) 242 Cal.App.4th 202, 228.) An EIR also may use ambient air quality standards to assess the significance of a project's air pollution effects. (See *Cadiz Land Co. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 106.)

The EIR utilized the California Emissions Model ("CalEEMod") to estimate emissions from all construction-related sources and projected-related emissions from mobile sources, and area sources, including landscaping equipment, maintenance of architectural coatings, and cleaning products. (AR 01689-90.) Section 4.2 of the EIR presented the emissions results from CalEEMod, while Appendix M listed all the inputs of the model and provided an explanation of their source, as well as CalEEMod output files, and spreadsheets illustrating how stationary source emissions were calculated. (AR 01175.) For the Project, the County defined a numerical threshold of significance for stationary source emissions of criteria air pollutants ("CAPs") based on SCAPCD's rules for new source siting, which includes thresholds for new stationary sources. (AR 01693-94, Table 4.2-2.) No numerical thresholds for mobile source emissions were defined nor was such required.

The Draft EIR concluded that the Project air quality impacts, with the exception of operational toxic air contaminants to on-site receptors, would be less than significant. (AR 26170-79.) In response to public comments, the County revised its air quality and greenhouse gas emissions estimates. (AR 01176.) The air quality analysis in the Final EIR was revised based on: (1) more conservative assumptions regarding fleet mix assuming default mix for Plant operations and employee trips, and

assuming all of the truck trips would be heavy heavy duty trucks (versus a mix of medium heavy duty and heavy heavy duty); (2) the elimination of brine waste haul trips due to the elimination of Option 4 for Wastewater Treatment; (3) the addition of propane fuel delivery trips; (4) reduction in recycling rate from 75 percent to 50 percent; and (5) corrections to the electricity demand estimates. (AR 01176.) Further, calculations for other emission sources in Appendix M were adjusted to: (1) use more conservative assumptions regarding the hours of operation for HVAC equipment; and (2) to include the addition of emissions from propane forklifts and operations of the pumps on the propane delivery trucks when filling tanks and propane forklifts. (*Ibid*.)

For this Project the EIR utilized Project-specific data in the CalEEMod to improve the degree of accuracy of the Project's emissions estimates. (AR 01177-78.) In situations where site-specific data is available and supported by substantial evidence, the site-specific data should be used instead of the model defaults to improve the "degree of accuracy of the Proposed Project's emission estimates." (AR 01176.)

The results of the revised emission estimates establish that stationary source emissions would continue to be well below the SCAPCD thresholds and mobile source emissions would continue to be less than significant. (AR 01176, 01697, 01698.) The

revisions to the Final EIR do not result in a change in exceedance of the thresholds of significance as alleged. (AR 01177, 01694-01704.)

2. The Final EIR Did Not Abandon Thresholds of Significance for Mobile Source Emissions.

Appellants claim that the Final EIR abandoned thresholds of significance to bootstrap a less-than-significant finding for its air quality analysis. (AOB, pp. 49-50.) While a numerical threshold was not established for mobile emission sources, qualitative thresholds of significance were analyzed. (AR 01693-94, 01177, 26169.) CEQA does not require a quantitative threshold of significance; a qualitative threshold is sufficient. (CEQA Guidelines, § 15064.7, subd. (a).)

Previously, Table 4.2-4 of the Draft EIR showed both stationary source and mobile source emissions in the same table. (See AR 26173.) As presented in the Draft EIR, Table 4.2-4 may give the impression that the numerical thresholds apply to both stationary and mobile emissions sources. However, the Draft EIR clearly states that the numerical thresholds only apply to stationary sources. (See AR 26169 ["Stationary source emissions of CAPs are considered significant if they exceed the thresholds presented in Table 4.2-2."]; see also Table 4.2-2 [titled "Stationary Source Thresholds"].)

Appellants' assertion that the Draft EIR applied the numerical thresholds to all emissions is exactly the type of confusion that the County sought to prevent in revising the EIR—as argued in their Opening Brief: "the County applied Rule 6.1 threshold to *all* Project CAP emissions in the Draft EIR, but … abandoned it." (AOB p. 49, italics in original.) This is simply not true. Addressing this confusion, the Final EIR states: "The Final EIR, Volume II, Section 4.2.4, Impact 4.2-1 has been revised to further clarify the applicability of the thresholds within the Final EIR by separating the emissions from stationary sources and mobile and area sources into two separate tables." (AR 01177.) To reduce confusion, the Final EIR drew out the distinction between stationary and mobile sources by providing separate tables for each. No new significant air quality impacts resulted from the revised emissions estimates. (AR 01177, 01698.) The EIR properly analyzed the Project's mobile source emissions against the defined qualitative thresholds of significance.

3. The County Was Not Required to Revise the Health Risk Assessment Based on the Revised Emissions Analysis.

The County conducted a health risk assessment ("HRA"), as recommended by the California Air Resources Board ("CARB") Handbook, to "assess the potential impacts to receptors from

toxic air contaminants emitted during facility operations, which include operation of stationary sources, diesel trucks transporting materials and product from the project site, and diesel truck idling at the loading docks." (AR 01692.) Appendix M of the EIR contains the HRA. (AR 04722-45.)

The scope of such an HRA in an EIR will be upheld as long as it is supported by substantial evidence. (*Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 204-206.) Appellants contend that the HRA should have been re-analyzed in accordance with the revised emissions estimates. (AOB, p. 50.) As explained by County staff at the December 12, 2017 public hearing, there was no need to re-analyze the HRA because it already used the heavy-heavy duty truck assumption for its fleet mix and was based on different models than the CalEEMod model used to evaluate the criteria air pollutants and greenhouse gas ("GHG") emissions. (AR 31734; see also AR 32941-42 [memorandum from County's HRA consultant explaining why suggested revisions to HRA from Andrew Gray, Gray Sky Solutions, were inappropriate].)

Further, the HRA was based on very conservative assumptions. (AR 31734, 32090-91.) If the HRA were re-analyzed with more current 2018 emissions factors, "the resulting diesel emissions would be at least 30% lower" because emissions improvements mandated by CARB's new Truck & Bus Rule,

beginning January 1, 2018, would require "all heavy-duty diesel trucks operating within the State of California be equipped with either factory or retrofit diesel particulate filters." (AR 31734.) As a result of the HRA's conservative assumptions, "the HRA effectively indirectly accounts for the emissions resulting from the 24 medium and 23 light duty truck trips associated with local deliveries as noted in the Final EIR fleet mix." (*Ibid.*) Thus, the HRA analysis is valid and not affected by the fleet mix emissions analysis, despite the revised emissions estimates.

4. The County Properly Resolved Disagreements Between Data or Methodology Based on Substantial Evidence.

A lead agency's analysis will be upheld if supported by substantial evidence, even in the face of conflicting methodologies, data, or conclusions. (See *North Coast, supra*, 216 Cal.App.4th at pp. 642-643.) The lead agency is free to reject criticism from an opposing expert or a regulatory agency on a given issue as long as its reasons for doing so are supported by substantial evidence. (*Assn. of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1398.) Merely highlighting opposing evidence is not enough to show that an agency's analysis or findings are not supported by substantial evidence. (See *North Coast, supra*, 216 Cal.App.4th at p. 643.) The petitioner bears the burden to "*affirmatively show* there was no

substantial evidence in the record to support" the findings, and petitioner cannot "carry that burden by simply pointing to portions of the administrative record that favored its position." (*Native Plant Society, supra*, 172 Cal.App.4th at p. 626, italics in original; *see also, Latinos Unidos de Napa v. City of Napa, supra,* 221 Cal.App.4th at p. 206 ["[A]n appellant must set forth in its brief all the material evidence on the point … [and] failure to do so is deemed a concession that the evidence supports the findings"].)

Appellants rely on comments and technical memoranda in the administrative record to show that the HRA underestimated cancer risks. (AR 33119-32.) By citing a contrary evaluation of the HRA, Appellants have created a battle of the experts. Neither the County nor this Court is required to resolve this dispute. (*Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 413.) Appellants have failed to establish that the record contains no substantial evidence to support the County's position.

E. THE EIR PROPERLY CONCLUDED THAT THE PROJECT'S GREENHOUSE GAS IMPACTS WOULD BE SIGNIFICANT AND UNAVOIDABLE.

CEQA requires that the EIR "determine whether the impact of the project's emissions of greenhouse gases is cumulatively considerable." (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 219.) The Project

must be "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (*Ibid*., citing Pub. Resources Code, § 21083, subd. (b)(2); CEQA Guidelines, § 15064, subd. (h)(1).) While a single project is unlikely to have any appreciable impact on global climate change, a project is likely to contribute to the significant cumulative impact caused by greenhouse gas ("GHG") emissions from other sources around the globe. (*Ibid*.) Since there is no consensus on thresholds of significance for analyzing GHG emissions, courts are deferential to the agency's analysis as long as it is supported by substantial evidence. (See generally *Cleveland Nat. Forest Foundation v. San Diego Assn. of Gov.* (2017) 3 Cal.5th 497, 511-12; *Center for Biological Diversity v. Dept. of Fish & Wildlife, supra*, 62 Cal.4th at p. 228.)

The EIR defined thresholds of significance for GHG impacts as: (1) generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment; and (2) conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs. (AR 01786.) The County selected a Project-specific numerical threshold of significance of 10,000 metric tons of carbon dioxide equivalent per year ("MT of CO2e/yr") for stationary sources, a standard adopted by the Sacramento Metropolitan, Bay Area, and South Coast Air Quality

Management Districts. (AR 01786; *Citizens for Responsible Equitable Environmental Dev. v City of Chula Vista* (2011) 197 Cal.App.4th 327, 335-336, citing CEQA Guidelines, § 15064, subd. (b) [a lead agency may exercise its discretion on what criteria to use].)

Upon analyzing the Project's construction and operational GHG emissions with the CalEEMod model, the EIR found that the Project's GHG emissions would exceed the 10,000 MT of CO2e/yr threshold and thus be significant. (AR 01788-89; see also Table 4.6-2 at AR 01789.) The EIR required mitigation measures 4.6-1 and 4.6-2 to reduce potential impacts of the Project from GHG emissions. (AR 01790-91.) However, "[d]ue to the current disparity between the amount of existing global GHG emissions and the goals of [Executive Order ("EO")] B-30-15 and EO S-3-05 for target years 2030 and 2050, even with mitigation measures incorporated, the Proposed Project would contribute to cumulatively considerable global GHG emissions; therefore, this is a **significant and unavoidable** impact." (AR 01790, bold in original.) The County's methodology for analyzing the Project's GHG emissions is supported by substantial evidence.

1. The EIR Was Not Required to Analyze Bottle Preforms.

As part of the bottling operations, the Project will utilize bottle preforms and a blow molding process to inflate bottles on-

site. (AR 01632.) Blow molding is the process by which hollow plastic parts are formed from existing plastic materials into bottles. (AR 01158.) The bottle preforms will be delivered to the Project site, not created on-site. (AR 01690; see also AR 01158, 01173.)

Despite Appellants' insistence otherwise, CEQA does not require a lifecycle analysis; it only requires analysis of impacts that are directly attributable to the Project or may be reasonably foreseeable indirect impacts. (CEQA Guidelines, § 15064, subd. (d); *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175 [rejecting the life cycle analysis for a ban on plastic bags because "increased use of the product is an indirect and uncertain consequence"]; see also AR 01173.) The EIR did analyze "full production," which includes blow molding of the bottle preforms and emissions from transporting unblown preform bottles to the site. (AR 01174, 01372.) These impacts from blow molding and transportation are foreseeable and the extent of analysis that CEQA requires.

Appellants argue that the Project *may* result in increased carbon dioxide emissions from the manufacturing of bottle preforms. (AOB 57-58.) Contrary to Appellants' bare speculation, the Project is "not expected to significantly increase market demand for disposable beverage containers." (AR 01174.) Thus,

the EIR was not required to analyze aspects of producing the bottle preforms. (*Ibid.*)

2. The Final EIR Revised the HVAC Analysis as Suggested by Commenters.

The Draft EIR included an analysis of the Plant's HVAC system under the assumption that it would run two hours a day and 160 days annually. (AR 26167.) Some comments to the Draft EIR suggested that the operational assumptions for the HVAC system were underestimated. (See, e.g., AR 00579.) The Plant will be Leadership in Energy and Environmental Design (also known as LEED) certified and significantly insulated to reduce operational time of the HVAC system. (AR 01181.) Nevertheless, the Final EIR revised the HVAC analysis under the assumption that it would run for 18 hours each day for six months a year, which Appellants once again failed to recognize in their Opening Brief. (AR 01181, 01691; AOB 59-60.)

The revised HVAC analysis did not affect the significance conclusions within the EIR for the Project's impacts. (AR 01181.) The HVAC assumptions were properly revised and analyzed in the EIR.

3. The County Included Enforceable Mitigation Measures to Compensate for the Additional GHG Emissions From the Revised Analysis.

As discussed above, the County and Crystal Geyser request that this Court disregard all appended, non-distinct arguments regarding enforceability of mitigation measures included in the Final EIR.(See *supra*, Argument, A.(2) at pp. 27-28.)

As a result of the revised emissions analysis, GHG emissions increased. Contrary to Appellants' claims that "mitigation measures to reduce the significant GHG emissions identified in the new GHG analysis" were not included in the Final EIR (AOB, p. 60), Mitigation Measure 4.6-1 was revised to require an equal increase in the amount of off-set mitigation required. (AR 01177.) Consequently, after mitigation, the severity of the GHG effects did not change between the Draft EIR and the Final EIR.

F. THE COUNTY WAS NOT REQUIRED TO RECIRCULATE THE EIR BASED ON THE REVISED AIR QUALITY AND GHG EMISSIONS ANALYSES.

CEQA requires recirculation of an EIR when significant new information is added between the Draft and Final EIRs. (Pub. Resources Code, § 21092.1; CEQA Guidelines, § 15088.5.) Recirculation is generally required when the addition of new information deprives the public of a meaningful opportunity to comment on substantial adverse project impacts or feasible

mitigation measures or alternatives that are not adopted, but is not required when the changes merely clarify, amplify, or make insignificant modifications to an adequate EIR. (CEQA Guidelines, § 15088.5; *Laurel Heights, supra,* 6 Cal.4th 1112.)

After receiving comments on the Draft EIR, the County revised the emissions estimates for the Project. (AR 01157, 01690-91, 01697-98, Table 4.2-5.) The revised emissions modeling resulted in greater stationary source, mobile source, and GHG emissions. (AR 01156-57.) For GHG emissions, Mitigation Measure 4.6-1 was revised to require an equal increase in the amount of off-set mitigation. (AR 01157, 01790-91.) In both the Draft and Final EIR, the Project's contributions to GHG emissions were found to be significant and unavoidable even with mitigation due to the disparity between the amount of existing global GHG emissions and the goals of EO B-30-15 and EO S-3-05 for target years 2030 and 2050. (AR 01157, 01787-90, 26262-64.)

Similarly, the results of the revised emission estimates show that stationary source emissions would continue to be well below the SCAPCD thresholds and mobile source emissions would continue to be less than significant. (AR 01176, 01697, 01698.) The revisions to the emissions estimates do not result in any change to the significance findings in the EIR for air quality or GHG impacts.

The revisions to the EIR merely clarify or amplify previously identified impacts and mitigation measures. The County was not required to recirculate the EIR based on the revised operational emissions analysis.

G. THE FINAL EIR PROPERLY ANALYZED NOISE IMPACTS.

The noise data presented in the EIR relied upon both the County's and the City's noise ordinances as well as a graduated scale known as Federal Interagency Committee on Noise standards to address and evaluate the noise impacts of the Project. An EIR must evaluate the noise impacts based on "the existing noise level." (See *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 891-893.) The EIR did just that in its conclusion that an increase of only 1 decibel exceedance of a daytime noise level standard would not "have led to any appreciable additional findings of adverse noise impacts." (AR 01196-98, 01204, 37354.)

This finding is based on extensive review and analysis of the ambient noise conditions and requirements under the City and the County's noise ordinances to address sensitive receptors and the existing noise environment, including monitoring of over 15 sensitive receptors across multiple years of the environmental review process. (AR 01196, 01200, 37354-56.)

Appellants offer a competing interpretation of the data, asserting that a different noise standard, "developed by the

Federal Transit Administration ("FTA")" should be used. (AOB, p. 62.) However, the existence of differing opinions arising from the same pool of information is not a basis for finding an EIR to be inadequate. (*Eureka, supra,* 147 Cal.App.4th 357.) An analysis of every permutation of the data is not required. (CEQA Guidelines, §§ 15151, 15204, subd. (a)*; Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396.) Therefore, the County's reliance on an expert's analysis of the data is proper where substantial evidence supports the methodology relied upon, as it does here. (*North Coast, supra,* 216 Cal.App.4th at p. 622.)

The EIR relied upon "objective, numeric noise level thresholds which are consistent with noise standards utilized extensively in the State of California" and did not simply limit its inquiry to City and County noise thresholds. (AR 37350; AOB, pp. 63-64.) Where the receptors were located within the City, the evaluation of noise impacts complied with the required adjustment to account for ambient conditions. (AR 37350.) However, even if the analysis of noise impacts had relied upon Appellants' preferred FTA guidelines to assess both traffic and on-site mechanical equipment, the noise threshold still would not have been exceeded. (AR 31835.)

Appellants also allege that an underlying assumption in the EIR that the industrial noise associated with the Project is

broadband in nature is incorrect. (AOB, p. 63.) Again, Appellants ignore the facts, the EIR specifically includes data demonstrating "that the sound energy of the project noise sources is widely disbursed between the 250 through 4,000 Hertz frequency bands, similar to traffic noise" which establishes that the noise associated with the Project is in fact broadband. (AR 31893.)

Finally, the exceedance of the noise standard by one decibel is not significant based on the standards used to evaluate noise given the "the existing noise level" around the Plant. (*Mission Bay Alliance v. Office of Community Investment & Infrastructure, supra,* 6 Cal.App.5th at p. 205, 204-206; AR 01200, 31896.) The existing environmental setting is treated as the baseline for gauging the changes to the environment that a project will cause. (CEQA Guidelines, §§ 15125, subd. (a), 15126, subd. (a); *Save our Peninsula Comm. v. Monterey County* (2001) 87 Cal.App.4th 99, 125.) A lead agency's choice of baseline must be based on scientific and factual data, to the extent possible. (CEQA Guidelines, § 15064, subd. (b); *Cleveland Nat. Forest Foundation v. San Diego Assn. of Gov., supra,* 3 Cal.5th at p. 515.) The standards of significance can come from a number of sources, including the judgment of experts, lead agency policies, regulatory agencies, and the CEQA Guidelines.

Here, the EIR identifies its baseline and standard of significance based on the judgment of an expert, lead and

responsible agencies policies, and the policies of other regulatory agencies. (AR 01200, 31896.) Appellants challenge that standard adopted in the EIR, instead seeking an audibility standard of significance, but provide no authority for that argument. (AOB, p. 35.) The standards adopted in the EIR establish that a 1 decibel increase is not significant based on the existing ambient noise conditions of industrial uses, Interstate 5, and nearby train tracks.

H. THE EIR PROPERLY ANALYZED HYDROGEOLOGY IMPACTS

1. Impacts to Neighboring Wells Were Studied.

An EIR may rely on the informed judgment by the experts who prepared it. (*National Parks & Conservation Assn. v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1362.) The existence of differing opinions arising from the same pool of information is not a basis for finding the EIR to be inadequate (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1069; *Native Plant Society, supra*, 172 Cal.App.4th at p. 626.)

The EIR includes several studies regarding impacts to hydrogeology as a consequence of the Project, including Appendix P to the Final EIR, Slade's report ("Appendix P") and Appendix W to the Final EIR, Slade's Supplemental Hydrogeologic Report that was developed in 2017 ("Appendix W"). (AR 04819, 07372, 31735-36.)

Appellants repeatedly insist that the County did not properly analyze any impacts to "the many nearby off-site residential wells" and did not address reports from neighboring property owners that the use of Project wells impacts their domestic wells located in the upper aquifer. (AOB, pp. 68, 69.) This is simply untrue. Both Appendices P and W address these very issues. (AR 31735.) Appendix P addressed potential impacts to adjacent wells in the upper aquifer from groundwater withdrawal from the lower aquifer by the DEX-6 well as a consequence of the Project, and "assumed full connection between the Upper and Lower Aquifer" despite modeling establishing that the connection is "less than complete." (*Ibid*.) Appendix W was specifically prepared, including a 10-day pump test consisting of a 72-hour period of continuous pumping "at an average rate of 247 gallons per minute" conducted in May 2017 to directly address the comments received from neighboring well owners. (AR 01185-86, 31735.)

The pump test is exactly what Appellants allege that the County did not do. Both Appendices P and W concluded that "the proposed Project would result in drawdowns of less than one foot in the immediate vicinity of DEX-6 and the Domestic Well, with potential drawdowns decreasing as the distance from the pumped well increased." (AR 01186; 31735.) The neighboring wells are highly unlikely to be impacted by this drawdown because the

area of drawdown is not large and the wells that are near the Project are generally upgradient from the Project wells. (AR 01186, 31736.)

The expert analyses in Appendices P and W are more than the required substantial evidence to establish that the neighboring landowners' wells will not be impacted by the Project. A lead agency may reject lay or non-expert criticism on an issue as long as its determination is supported by substantial evidence. (*East Sacramento, supra*, 5 Cal.App.5th at p. 297.) There is "no document to show when such events [the complained of dry wells] might have occurred" and "available water level data indicated that several years of drought caused only a 2 foot decline … in the Lower Aquifer System below the Plant." (AR 01188.)

Not only does expert opinion support the EIR's finding, the record of water levels in the area demonstrate it is likely that there is no "direct cause and effect … between pumping of the wells at the Plant, and any residential wells that have 'gone dry' during the same period." (*Ibid*.) Consequently, there is no significant impact to mitigate.

Appellants, again, improperly expect this Court to rely on speculative depletion of groundwater over many years and, without proffering any alternative method or explanation as to the alleged deficiency of the duration of the test, snubs the

County's pump testing due to its "overly brief" duration. (AOB, p. 74; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 368.

2. Use of the PUMPIT Model is Proper.

Appendix P and comments submitted on that study establish that substantial evidence exists allowing the County to rely on the PUMPIT model for evaluating the impact on groundwater from the Project. The use of an industry standard, such as the PUMPIT model to assess the impact of a project is appropriate under CEQA. (*Eureka, supra,* 147 Cal.App.4th 357; AR 04859, 07434.) The PUMPIT model tends to "represent a maximum" relative to potential groundwater drawdown (AR 04859). Impacts to nearby wells caused by other groundwater pumping in real-world conditions are often significantly less than impacts estimated using the PUMPIT model. (*Ibid*.)

Contrary to Appellants' insistence that the PUMPIT model is "obsolete and oversimplified," a peer review of Appendix P by Geosyntec Consultants supported the use of PUMPIT and noted that the model relies upon conservative assumptions, meaning that the "drawdowns predicted by the PUMPIT Model in the nearest wells will be too large and, therefore, conservative for determining potential impacts to neighboring wells." (AR 07480; AOB, p. 37.) Once again, Appellants' argument that Geosyntec somehow does not qualify as a "peer" and attempt to discredit

Geosyntec with no legal support is unpersuasive and should be disregarded. (AOB, p. 75.)

Substantial evidence shows that the use of PUMPIT modeling is an acceptable approach to conservatively analyze groundwater impacts from the Project.

3. The Threshold of Significance and Lack of a Limit on Crystal Geyser's Pumping is Proper.

The County's determination of a threshold of significance will be upheld so long as there is substantial evidence for that threshold. (*Save Cuyama Valley v. County of Santa Barbara, supra*, 213 Cal.App.4th at p. 1072.) The standards of significance can come from a number of sources, including the judgment of experts, lead agency policies, regulatory agencies, and the CEQA Guidelines.

The EIR relies on Appendix G of the CEQA Guidelines to establish its threshold of significance for impacts to hydrogeology. (AR 01823.) The threshold highlighted in Appellants' Opening Brief is one of nine thresholds included in the EIR for impacts to hydrogeology. (AOB, p. 67; AR 01824.) Several of those thresholds apply to groundwater impacts including impacts that would alter the course of a stream or river and impacts that would substantially degrade water quality. (AR 01823-24.) The County's reliance on that standard of significance is proper.

In this case, all of the studies discussed above establish that Crystal Geyser's pumping will not result in significant groundwater drawdowns. (AR 07480.) There is no substantiated evidence that Crystal Geyser's pumping will impact any nearby domestic wells. (AR 01188; 31735.) There simply is no basis for a maximum pumping limit.

Moreover, despite Appellants' repeated insistence that there is no clear amount of pumping associated with the Project, the EIR includes conservative estimates for Crystal Geyser's anticipated use: approximately 80 gpm on a monthly average basis with one production line in full use and 150 gpm on a monthly average basis with two production lines in full use, assuming 24-hour per day operation. (AR 01632-33.) This is similar to Dannon's stated maximum use of 150 gpm during its operation of the Plant. (AR 01428, 55996.) Crystal Geyser's projected maximum use is less than Dannon's calculated rate of use of 160 gpm on an average monthly basis from early 2006 to late 2007. (*Ibid.*)

This substantial evidence is contrary to Appellants' assertion of uncertainty with regard to the Project's amount of water use. (AR 01428, 55996; AOB, p. 67.) Appellants also allege that the pumping numbers are inaccurate because Dannon trucked in water from another source. (AOB, p. 31.) Appellants are misleading in this assertion by failing to acknowledge what

the comment letter Appellants rely upon does: Dannon "did stop trucking in water … and began drawing all water from DEX-6". (AR 800.) Appellants are again cherry-picking from the record.

I. THE EIR PROPERLY ANALYZED THE PROPOSED PLANT OPERATIONS AND CARETAKER'S RESIDENCE IN ACCORDANCE WITH THE COUNTY'S GENERAL PLAN.

Appellants' allegations regarding general plan inconsistency are muddled and have no merit. The County adopted detailed consistency findings when it approved the CUP for the caretaker's residence, finding that the CUP is consistent with the Siskiyou County General Plan ("General Plan"). In addition, the EIR clearly explained that the proposed Plant operations are consistent with the General Plan as a permitted use, and that the CUP would not result in any significant impact to the environment due to any potential inconsistencies with the General Plan.

1. Appellants Failed to Allege How the County's Consistency Findings Lack Substantial Evidence.

For most land use approvals, general plan consistency findings are required, when specified by statute, in connection with the adoption of zoning ordinances and amendments (Gov. Code, § 65860), development agreements (Gov. Code, § 65867.5), and tentative subdivision maps (Gov. Code, § 66473.5). Courts

have also ruled that the approval of a CUP requires consistency findings. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184-90.) Perfect consistency, however, is not required. To be consistent, the discretionary approval must be "in agreement or harmony with" the applicable general plan. (*Sequoyah Hills Homeowners Assn. v. City of Oakland, supra,* 23 Cal.App.4th at p. 718.)

In this case, the County made consistency findings in connection with its discretionary approval of the CUP (AR 32380-84), and the County clearly noted that the proposed Plant operations are consistent with the General Plan as a permitted use under the existing zoning for the Plant property. (AR 01843, 01845.) The County's conclusions that Plant operations and the CUP are consistent with the General Plan carry a strong presumption of regularity that can only be overcome by showing an abuse of discretion. (*Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 816.) Appellants' claims fail to meet this burden, most notably because Appellants' Opening Brief ignored these express findings. Appellants' failure to challenge these findings is binding on them and on this Court. *Risam v. County of Los Angeles* (2002) 99 Cal.App.4th 412, 420-422 [administrative decision that is not challenged binds the parties on the issues litigated in subsequent proceedings].)

2. The EIR Properly Concluded that the Project Would Not Result in Any Substantial Inconsistency With the County's General Plan.

As noted above, most land use approvals require general plan consistency findings. For purposes of CEQA, however, an EIR is only required to identify and analyze any inconsistencies between the Project and the County's General Plan. (*Pfeiffer v. City of Sunnyvale City Council, supra*, 200 Cal.App.4th at p. 1566, citing *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 918.) Under CEQA, no further analysis is required if the Project is consistent with the General Plan. (*Ibid.*) Moreover, if substantial evidence supports a local agency's findings regarding general plan consistency, an EIR should not be deemed inadequate on the theory that it failed to discuss any alleged inconsistencies with the general plan. (*Greenebaum v. City of Los Angeles, supra* 153 Cal.App.3d at p. 413.)

The Draft EIR noted that Plant operations are a permitted use under the County's zoning for Light Industrial ("MM") and Heavy Industrial ("MH") Districts. (AR 01843, 01845.) Because the Plant would not require a site rezone or General Plan amendment, the Draft EIR found that the Plant would not implicate any of the County's General Plan Land Use Policies, zoning code, or Woodland Productivity Overlay. (AR 01848-49).

The Draft EIR therefore properly concluded that Plant operations are consistent with the County's General Plan.

The Draft EIR clearly demonstrates that the caretaker's residence is consistent with the County's General Plan. (AR 01838-52, 26323-26.) In addition, although the caretaker's residence does not lie within the City's jurisdiction, the City's local goals and polices were evaluated in both the Draft and Final EIR. (AR 01845, 01846.)

Lastly, Appellant claims that the EIR failed to identify inconsistencies between the Project and certain noise standards. The revised noise analysis conducted by Bollard Acoustical Consultants, however, provided an extraordinary amount of data to document how changes to the location of equipment, and the installation of additional louvers and sound reduction, would result in lower noise impacts, which also included an analysis against the Siskiyou County General Plan Noise Element and the City of Mt. Shasta General Plan. (AR 07137-43.) Noise impact findings were therefore properly revised in the Final EIR. (AR 01881-86.) Much of this data was based on actual operations of Plant machinery, in addition to modeling. (AR 01870, 01881-86; see, supra, at AR 07511-15.) As substantial evidence supports the County's revised findings regarding noise impacts, no General Plan inconsistency may be found as to Appellants' alleged noise impacts.

J. THE MITIGATION MEASURES INCLUDED IN THE EIR ARE ENFORCEABLE.

As discussed above, the County and Crystal Geyser request that this Court disregard all appended, non-distinct arguments regarding enforceability of mitigation measures included in the Final EIR.(See *supra*, Argument, A.(2) at pp. 22-23.)

In establishing mitigation measures under CEQA, a lead agency must rely on its authority under state law, outside of CEQA. (Pub. Resources Code, § 21004; see also *Sierra Club v. California Coastal Com.* (2005) 35 Cal.4th 839, 859.) The County is both a land use authority and a subdivision of the state with police powers. (Cal. Const., art. XI, §§ 1, 7; Gov. Code, § 65100.) Consequently, the County has the authority to impose mitigation measures under CEQA through both land use approvals and with the enforcement authority from its police powers.

Despite the Plant being a use by right in the heavy industrial zone, the County is vested with the authority to issue a CUP for the caretaker's residence because it is a residential use in an industrial zone. (AR 01162-64, 31737.) The County's approach to the CUP and evaluating the Project under CEQA was to assess "the impacts associated with the entire activity, not just the caretaker's facility." (AR 31737; Gov. Code, § 65901.) The CUP includes conditions that address groundwater and surface water, air quality, transportation, noise, and aesthetic resources. (AR 00223-25.)

Despite Appellants' desperate and inexplicable attempts to uncouple Crystal Geyser from the conditions of its CUP that are protective of the environment, Crystal Geyser agreed to the conditions imposed in the CUP, and Crystal Geyser, and its successor landowners, are bound by them. (*County of Imperial v. McDougal* (1977) 19 Cal.3d 505, 510-511 (a landowner or his successor in title is barred from challenging a condition imposed upon the granting of a special permit if he has acquiesced therein by either specifically agreeing to the condition or failing to challenge its validity and accepting the benefits afforded by the permit).

Throughout their Opening Brief, Appellants allege that all conditions of the CUP will be "conditions of the caretaker's residence permit." (AOB, pp. 33, 34.) Contrary to Appellants' position, with the approval of the CUP, the mitigation measures that are included as conditions are enforceable not only through the permit itself, but also through the County's police power as expressed through the County Code. As explained in the December 12, 2017 Supplemental Staff Report to the County Board of Supervisors based on comments received at the November 16, 2017 Board of Supervisors meeting, Crystal Geyser cannot defeat the mitigation measures by "ignoring them or by 'attempting to render them meaningless by moving ahead with the project in spite of them' (*Lincoln Place Tenants Assn. v. City*

of Los Angeles (2007) 155 Cal.App.4th 425, 450.)" (AR 31737.) The County has numerous enforcement mechanisms in its County Code to enforce the mitigation measures. (*Ibid*.) For example, Siskiyou County Code sections 1-5.05 and 1-2.01 each provide an enforcement vehicle of all of the mitigation measures adopted in the CUP. (AR 31737-38; AA 419-422.) Section 1-5.05 establishes that violating a provision of a permit through the exercise of that permit is an infraction of the Siskiyou County Code and Section 1-2.01 establishes that any condition that violates the Siskiyou County Code is a public nuisance subject to administrative enforcement. (*Ibid*.)

The Project is still subject to the discretionary permitting authority of the City, the CVRWQCB, and SCAPCD. (AR 01662-64, 31736-37.) In order for Crystal Geyser to secure each of these permits, it must comply with the mitigation measures in the EIR. The County, reviewing the Project as a whole and through its duties as the lead agency, has the responsibility to adopt mitigation measures for the impacts that are associated with the Project and establish a monitoring program for the mitigation measures. (Pub. Resources Code, §§ 21081, 21081.6, subd. (a); CEQA Guidelines, § 15091, subd. (b); *Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260.) The County did just that. (AR 00007-08, 00018-73, 01546-59.) Crystal Geyser, as the Project applicant, has the

responsibility to comply with those mitigation measures and the monitoring program or face the legal and practical complications of attempting to secure additional permits for the Project without the requisite mitigation and while violating the County Code.

CONCLUSION

For the reasons set forth above, the Court should affirm the trial court's judgment denying the Petition for Writ of Mandate.

Respectfully submitted,

DATED: June 21, 2021

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DATED: June 21, 2021

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to rule 8.204(c) of the California Rules of Court, the enclosed "Respondent's Brief" was produced using 13-point Century Schoolbook type, and including footnotes, but excluding the tables, the Certificate of Service, and this certificate, contains 12,969 words. Counsel relies on the word count of the computer software used to prepare this brief.

DATED: June 21, 2021

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CERTIFICATE OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in this action. I am employed by White Brenner LLP and my business address is 1414 K Street, 3rd Floor, Sacramento, CA 95814. I caused to be served the following document(s):

RESPONDENTS' AND REAL PARTY IN INTEREST'S JOINT BRIEF

☒ By United States Mail. I enclosed the DOCUMENTS in a sealed envelope or package addressed to the PERSON's at the addresses set forth below.

☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepared.

☐ By Express Mail or another method of overnight delivery to the person/entity at the address set forth below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ By electronically transmitting a true copy to the persons/entities via electronic filing submission.

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(Via e-submission through the TrueFiling web page at www.truefiling.com)

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 21st day of June 2021, at Sacramento, California.

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