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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FRIENDS OF THE SANTA CLARA
RIVER et al.,

Plaintiffs and Appellants,

v.

COUNTY OF LOS ANGELES et al.,

Defendants and Respondents;

THE NEWHALL LAND AND
FARMING COMPANY,

Real Party in Interest and
Respondent.

B296547

(Los Angeles County
Super. Ct. No. BS170568)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard L. Fruin, Jr., Judge. Affirmed.

Advocates for the Environment, Dean Wallraff and Kathleen R. Unger, for Plaintiffs and Appellants.

Office of the County Counsel, Mary C. Wickham, County

Counsel, Elaine M. Lemke, Assistant County Counsel, and
Keever Rhodes Muir, Deputy County Counsel, for Defendants
and Respondents.

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Hanelin, for Real Party in Interest and Respondent.

In 2011, the County of Los Angeles (County) certified environmental impact reports (EIRs) for the first two phases of the Newhall Ranch development in the northwestern part of the County. The EIRs considered, among other things, whether the projects would significantly impact the region's water supply under various climate scenarios. Several years later, following litigation that resulted in a writ directing the County to decertify the EIRs' analyses of greenhouse gas emissions, the County issued recirculated analyses of greenhouse gas emissions, certified these in combination with the 2011 EIRs, and reapproved project permits. Petitioners in this case, Friends of the Santa Clara River (FSCR) and Santa Clarita Organization for Planning and the Environment (SCOPE), contend post-2011 reports and data concerning climate change warranted supplemental review of water supply impacts as well. We consider whether substantial evidence supports the County's determination that no new information or changed circumstances warranted supplemental environmental review under the California Environmental Quality Act (CEQA).

I. BACKGROUND

This case concerns the County's environmental review of the first two phases of the Newhall Ranch development, Landmark Village and Mission Village. To provide context for this dispute, we briefly discuss the Newhall Ranch Specific Plan and litigation concerning the Department of Fish and Wildlife's (Fish and Wildlife) analysis of this project's greenhouse gas emissions. As we shall explain, this litigation had consequences for challenges to the County's certification of EIRs for Landmark Village and Mission Village in 2011, which prompted the County

to revise its analyses of greenhouse gas emissions for these projects in 2017.

A. The Newhall Ranch Specific Plan

Newhall Ranch, located in an unincorporated area of the Santa Clarita Valley in northwestern Los Angeles County, is owned by real party in interest the Newhall Land and Farming Company (Newhall). Its nearly 12,000 acres have historically been used for oil and natural gas production, cattle grazing, and agricultural activities. The Santa Clara River, which runs approximately 100 miles from the San Gabriel mountains to the Pacific Ocean between Oxnard and Ventura, crosses the site.

The County's Newhall Ranch Specific Plan contemplates more than 20,000 dwelling units, commercial and business space, several schools, a library, a golf course, a lake, parks, and other infrastructure and amenities. Landmark Village and Mission Village are two of the five villages that will compose the Newhall Ranch community. Plans for Landmark Village include, among other things, more than 1,400 dwelling units and approximately one million square feet of commercial uses. Plans for Mission Village include, among other things, more than 4,000 dwelling units and approximately 1.5 million square feet of commercial uses.

The Newhall Ranch Specific Plan includes several mitigation measures related to water resources. Most pertinent to this case is mitigation measure 4.11-15, which provides that "[g]roundwater historically and presently used for crop irrigation on the Newhall Ranch Specific Plan site and elsewhere in Los Angeles County shall be made available by [Newhall], or its assignee, to partially meet the potable water demands of the

Newhall Ranch Specific Plan. The amount of groundwater pumped for this purpose shall not exceed 7,038 [acre-feet per year¹]. This is the amount of groundwater pumped historically and presently by [Newhall] to support its agricultural operations. Pumping this amount will not result in a net increase in groundwater use in the Santa Clarita Valley. . . .”

B. The EIRs Approved in 2010-2011

1. Landmark Village and Mission Village project EIRs

After the County approved the Newhall Ranch Specific Plan and certified a program EIR in 2003, Newhall prepared project EIRs for Landmark Village and Mission Village.² The County certified the project EIRs in late 2011. Two of the potential environmental impacts analyzed in these EIRs are

¹ “An acre-foot is 43,560 cubic feet. Colloquially, it is an irrigation-based measurement equaling the quantity of water required to cover an acre of land to a depth of one foot.” (*Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 182, fn. 1.)

² “A project EIR is typically used for a specific development project. ([Cal. Code Regs., tit. 14], § 15161.) In contrast, ‘[a] program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related’ in specified ways, including ‘[a]s individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.’ ([Cal. Code Regs., tit. 14], § 15168, subd. (a).)” (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 664.)

relevant to this case: water service, and to a lesser degree, greenhouse gas emissions.

The County's analysis of greenhouse gas emissions is relevant for present purposes only as background for litigation driving subsequent action by the County. Both EIRs concluded the projects would not impede compliance with state emissions reduction goals. Greenhouse gas emissions associated with the projects would therefore not be "cumulatively considerable" under CEQA.

With respect to water service, the EIRs explained Landmark Village and Mission Village's water needs will be satisfied by local groundwater and recycled water without any significant impact on Santa Clarita Valley water resources. More specifically, groundwater pumped from the Alluvial aquifer by Valencia Water Company will be the sole source of *potable* water for the projects, while recycled water will satisfy *non-potable* water demand.³ Potable water demand is projected to exceed non-potable water demand in both projects: Landmark Village will require 608 acre-feet per year of potable water and 364 acre-feet per year of non-potable water; Mission Village will require 1,676 acre-feet per year of potable water and 1,243 acre-feet per year of non-potable water. According to the EIRs, Newhall has rights to 7,038 acre-feet per year of groundwater from the Alluvial aquifer, which is "already used to support [Newhall's] existing agricultural uses, [so] there is not expected to be any significant environmental effects resulting from the use of such

³ The Alluvial aquifer is alternatively referred to as the Alluvium.

water to meet the potable demands of [Landmark Village and Mission Village]”

The EIRs also addressed whether the Alluvial aquifer can satisfy the potable water needs of Landmark Village and Mission Village without any significant impact on other existing and planned water users in the Santa Clarita Valley.⁴ The reports concluded the aquifer was sufficient, based in part on the groundwater operating plan developed by the Castaic Lake Water Agency (the Water Agency) and retail water purveyors. Under the groundwater operating plan, water users in the Santa Clarita Valley can sustainably pump between 30,000 and 40,000 acre-feet of water from the Alluvial aquifer in normal/wet years and between 30,000 and 35,000 acre-feet of water in each of three succeeding dry years.⁵

⁴ The EIRs state the projects “would normally have a significant impact on water resources if [they] would,” among other things, “[s]ubstantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted).”

⁵ By contrast, the groundwater operating plan provides for *increased* pumping from the neighboring Saugus aquifer during dry years to compensate for diminished supplies of Alluvial and imported water relied upon by other Santa Clarita Valley water users. The Alluvial and Saugus aquifer systems together make up the east sub-basin of the Santa Clara River Valley Groundwater Basin.

The EIRs explain that reduced production during dry years “is a result of practical constraints in the eastern part of the Basin, where lowered groundwater levels in dry periods have the effect of reducing pumping capacities in that shallower portion of the aquifer.”⁶ The Mission Village EIR further explains that “although the Alluvial aquifer can experience periods of declining groundwater levels during the relatively dry periods that occur between large-scale rainfall events, (1) the dry-year conditions are not permanent, because wet-year rainfall and runoff rapidly recharge the Alluvial aquifer to an extent that groundwater levels return to their historical high levels; and (2) because these periodic large-scale recharge events naturally refill the aquifer to a ‘full’ condition . . . , there is no long-term overdraft of the Alluvial aquifer, even along the upper reaches of the [Santa Clara] river.”

Both the EIRs and the Water Agency documents on which they rely account for periods of drought and include caveats concerning the potential impact of climate change. For example, the EIRs observe that the Santa Clarita Valley saw extended dry periods from 1971 to 1976, 1984 to 1991, and 1999 to 2003. The EIRs caution that “future conditions cannot be projected with any degree of certainty,” and although the groundwater operating

⁶ A topical response included in the Landmark Village EIR states that, “[d]uring the last 20 to 30 years, depending on location, Alluvial groundwater levels have remained nearly constant (generally toward the western end of the basin), or have fluctuated from near the ground surface when the basin is full, to as much as 100 feet lower during intermittent dry periods of reduced recharge (generally toward the eastern end of the basin).”

plan appears to be sustainable “under a range of potential climate change trends,” climate change may render it unsustainable: “The range of potential climate change impacts extends from a possible wet trend to a possible dry trend over the long term. The trends that range from an approximate continuation of historical average precipitation, to something wetter than that, would appear to result in continued sustainability of the 2008 Operating Plan, again with intermittent constraints on full pumping in the eastern part of the basin. The potential long-term dry trend arising out of climate change would be expected to decrease local recharge to the point that lower and declining groundwater levels would render the 2008 Operating Plan unsustainable.”

According to the Water Agency’s 2010 Urban Water Management Plan,⁷ the groundwater operating plan is sustainable based on an 86-year historical analysis. The 2010 Urban Water Management Plan analyzes water supply and demand in the Water Agency’s service area while accounting for fluctuations in the supply of imported State Water Project⁸ water

⁷ An urban water supplier must update its urban water management plan every five years (Wat. Code, § 10621, subd. (a)), projecting water demand and resources in its service area in five-year increments to 20 years or as far as data is available. (Wat. Code, § 10631, subds. (a)-(d).)

⁸ The State Water Project “is a water storage and delivery system of reservoirs, aqueducts, power plants and pumping plants extending more than 700 miles.” (Department of Water Resources, *State Water Project* <<https://water.ca.gov/Programs/State-Water-Project>> [as of Dec. 23, 2019], archived at <<https://perma.cc/ZA47-TB9U>>.) “It supplies water to more than 27 million people in northern

during normal, single-dry, and multiple-dry year events. (The multiple-dry year event is assumed to last four years based on the drought that occurred between 1931 and 1934.) It also discusses “probable impacts” of climate change upon water supply and demand, including decreased snowpack and earlier melting,⁹ rising sea levels,¹⁰ greater extremes in flooding and droughts, and increased demand for water for landscaping and irrigation purposes.

The Landmark Village EIR includes a topical response to comments addressing global climate change and its effects on California water supplies. Summarizing various reports, and relying in particular on reports prepared by the Department of Water Resources, the County acknowledges “California’s future

California, the Bay Area, the San Joaquin Valley, the Central Coast and southern California. SWP water also irrigates about 750,000 acres of farmland, mainly in the San Joaquin Valley.” (*Ibid.*)

⁹ Although the Sierra Nevada snowpack and other sources of imported water are not directly relevant to natural recharge of the Alluvial aquifer, the availability of imported water—which accounts for “approximately 55 percent of the demands within [the Water Agency’s] service area”—impacts other Santa Clarita Valley water users’ demand for water from the Alluvial and Saugus aquifers.

¹⁰ Rising sea levels “endanger[] the functions of the [State Water Project], which can depend on movement of water through the low-lying channels of the low-lying Sacramento-San Joaquin Delta. Sea level rise could also require the [State Water Project] to release additional storage water to avoid sea water intrusion into the Delta.”

hydrologic conditions will likely be different from patterns observed over the past century,” but ultimately “agrees with [the Department of Water Resources] that it would be speculative at this time to quantify the effects of climate changes on the [State Water Project] system or the local groundwater basin.” Therefore, the County concludes, “it is appropriate to terminate any further analysis of future global climatic changes and their effects on California’s water supplies, consistent with Section 15145 of the *State CEQA Guidelines*.”¹¹

2. *State and federal environmental review*

Around the same time the County was preparing the Landmark Village and Mission Village project EIRs, Fish and Wildlife and the United States Army Corps of Engineers (the Corps) were preparing a joint environmental impact statement/environmental impact review (EIS/EIR) for two natural resource plans related to the Newhall Ranch Specific Plan.¹² (Fish and Wildlife was the lead agency under CEQA; the

¹¹ References to the “Guidelines” that follow are to the CEQA Guidelines. (Cal. Code Regs., tit. 14, § 15000 et seq.) “In interpreting CEQA, we accord the Guidelines great weight except where they are clearly unauthorized or erroneous.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, fn. 5 (*Vineyard*).) Section 15145 of the Guidelines states “[i]f, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.”

¹² These are the Newhall Ranch Resource Management and Development Plan and the Spineflower Conservation Plan.

Corps was the lead agency under the National Environmental Policy Act (42 U.S.C. § 4321 et seq.).) In late 2010, Fish and Wildlife certified the EIR portion of the EIS/EIR and issued final approvals for the natural resource plans, including a master streambed alteration agreement and two incidental take permits.¹³ The EIS/EIR concluded, among other things, that “the project’s likely greenhouse gas emissions will not impede achievement of [state emissions reduction] goals and are therefore less than significant for CEQA purposes.” (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 218 (*CBD*).)

C. Legal Challenges to the EIRs Succeed As to Their Analyses of Greenhouse Gas Emissions on the Environment, Which Necessitates Further Review of That Issue

The County’s project EIRs and Fish and Wildlife’s EIS/EIR were all subject to legal challenges.

In the Fish and Wildlife litigation, the trial court issued a writ of mandate requiring decertification of the EIS/EIR, this court reversed, and the California Supreme Court granted review. (*CBD, supra*, 62 Cal.4th at p. 214.) The Supreme Court ruled the EIS/EIR was deficient under CEQA because the conclusion that greenhouse gas emissions would not have a significant impact on the environment was not supported by substantial evidence. (*Id.* at p. 240.) On remand from this court, the trial court issued a writ of mandate directing Fish and

¹³ The Corps subsequently approved the EIS portion of the EIS/EIR. The Corps’ actions are not pertinent to this case.

Wildlife to decertify the portions of the EIS/EIR “that address the significance of the project’s greenhouse gas emissions” and another issue not pertinent to this case.¹⁴ (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2017) 17 Cal.App.5th 1245, 1251.)

At the same time the Fish and Wildlife litigation was pending, FSCR, SCOPE, and others challenged the County’s certification of the Landmark Village and Mission Village EIRs. The plaintiffs and others alleged, among other things, that the County violated CEQA by failing to adequately analyze the projects’ greenhouse gas emissions.¹⁵ In both cases, the trial court denied the plaintiffs’ petitions and this court affirmed. Our Supreme Court granted review and transferred the matters back to this court with directions to vacate the decisions and reconsider the matters in light of its ruling in *CBD, supra*, 62

¹⁴ This court affirmed the trial court’s judgment on appeal. (*Center for Biological Diversity v. Dept. of Fish & Wildlife* (2017) 17 Cal.App.5th 1245, 1260.) All but two of the appellants—FSCR and SCOPE—agreed to a settlement after argument. (*Id.* at p. 1249, fn. 1.) FSCR and SCOPE subsequently challenged Fish and Wildlife’s reapproval of the program EIR, but did not appeal when the trial court denied their petition.

¹⁵ The plaintiffs also raised concerns about the projects’ impacts on water supply, but not the specific concerns raised in this case. The plaintiffs alleged the County violated the Subdivision Map Act (Gov. Code, § 66410 et seq.) by approving the projects without “substantial evidence of a sufficient water supply to serve the [p]roject[s].” With respect to CEQA, the plaintiffs focused on the projects’ potential to exacerbate existing groundwater issues relating to perchlorate and PCE contamination.

Cal.4th 204. We did so, and reversed the trial court judgments with directions to issue writs of mandate stating the County's greenhouse gas emissions findings were not supported by substantial evidence and reasoned discussion. We emphasized the plaintiffs' petitions for writs of mandate and complaints for declaratory and injunctive relief were "to be denied in all other respects," and the greenhouse gas emissions issue was the only remaining challenge to the EIRs.

On remand, the trial court issued peremptory writs of mandate ordering the County to void certification of those portions of the EIRs that found the projects' greenhouse gas emissions would have no significant impact on the environment, to suspend all project activity (including construction) until the County addressed the greenhouse gas deficiency, and to suspend those project approvals "that relate directly to the [EIRs'] determination regarding the significance of the [projects'] greenhouse gas emissions." FSCR and SCOPE appealed,¹⁶ contending the trial court erred by partially decertifying the EIRs but leaving the project approvals intact. This court combined the two appeals for decision and affirmed.

In response to the trial court's writs ordering partial decertification of the EIRs for Landmark Village and Mission Village, the County prepared recirculated analyses addressing greenhouse gas emissions for each project. The recirculated analyses concluded 13 mitigation measures would reduce the projects' net greenhouse gas emissions to zero and the projects would therefore have no significant impact on global climate

¹⁶ The other plaintiffs settled with Newhall after the notice of appeal was filed.

change.¹⁷ In July 2017, the County certified the recirculated analyses in combination with the 2011 EIRs and reapproved project permits.

D. Petitioners Attack the EIRs' Discussion of the Development's Water Supply Impacts, Claiming Circumstances Changed and New Information Emerged in the Years During Which CEQA Litigation Has Been Ongoing

In their first amended petition for writ of mandate, petitioners contended, among other things, that the County violated CEQA in 2017 by not undertaking environmental review of the projects' water supply impacts in addition to the recirculated analyses of greenhouse gas emissions.¹⁸ As we will

¹⁷ The County also prepared errata to mitigation monitoring and reporting plans to avoid a "take" of the unarmored threespine stickleback, an endangered fish. This was one of the grounds on which the Supreme Court held the EIS/EIR for the Newhall Ranch Specific Plan to be deficient. (*CBD, supra*, 62 Cal.4th at p. 240.) This issue was not raised in the Landmark Village and Mission Village litigation.

¹⁸ Petitioners also alleged several other CEQA violations they do not raise on appeal. These included the County's purported failure to analyze the impacts of the continued operation of a landfill near the project sites, the declining population of a protected fish species, and increased traffic; failure to mitigate greenhouse gas emissions; failure to adequately respond to comments; and a lack of substantial evidence for bottom-line findings weighing the projects' benefits against their adverse environmental impacts and assessing the availability of feasible alternatives or mitigation measures.

discuss in more detail, petitioners argued a prolonged drought that began in 2011, and the warming climate more generally, undermine the EIRs' projections of future water supplies based on "historical patterns of wet and dry years." They further contended post-2011 data regarding climate change and its effects on Santa Clarita Valley water resources constitute new information and changed circumstances requiring further analysis under CEQA.

Petitioners' writ petition additionally asserted that, in addition to a supplemental EIR addressing water supply, the County should have prepared updated water supply assessments (WSAs) for Landmark Village and Mission Village under both CEQA and the Water Code. According to petitioners, new WSAs were required for the same reasons they contended supplemental EIRs were necessary to analyze the impact of the planned development on the region's water supply, i.e., new information and changed circumstances. (Wat. Code, § 10910, subd. (h).) In the alternative, petitioners contended new WSAs were independently required when the County determined what type of CEQA documents to prepare in response to the trial court's writ—here, the recirculated analyses as opposed to mitigated negative declarations—and when it issued those documents. (Wat. Code, §§ 10910, subd. (c)(1), 10911, subd. (b).)

The trial court denied the petition. With respect to petitioners' primary CEQA claim, the trial court observed "[t]he 2011 EIRs contain data to show the cyclical patterns of rainfall in Southern California." Petitioners, in the trial court's view, did not carry their burden to demonstrate that the information they highlighted was indeed "new [or] inconsistent with the cyclical pattern recognized in the 2011 EIRs." Moreover, information

concerning drought conditions after 2011 is “too short-term to support broad conclusions that climate change will drastically reduce water availability for the projects or for Santa Clarita Valley”—particularly because any such conclusion is “undercut by . . . ‘heavy rainfall in the winter of 2016-2017.’”

The trial court further ruled that petitioners waived the claim concerning WSAs because they failed to raise it during the public comment period for the recirculated portions of the EIRs. In any event, the trial court found the WSA argument failed on the merits because there was no new information and the Water Code does not require new WSAs when a city or county decides to recirculate its analysis of an environmental impact but “otherwise le[aves] the [prior] EIRs in place.”

II. DISCUSSION

California experienced a historic drought and record high temperatures in the years following the County’s 2011 certification of the Landmark Village and Mission Village EIRs. Petitioners contend these events, and accumulating data regarding the broader regional and global effects of climate change, required the County to prepare supplemental analyses of the projects’ potential impacts on Santa Clarita Valley water resources. But the County was well aware of the threat posed by climate change when it certified the EIRs in 2011. It understood that rising temperatures will increase demand for water and that prolonged and extreme droughts could interfere with both local groundwater recharge and the supply of imported water. The concrete reality of increased heat and drought in succeeding years does not make this information new. Because post-2011

data are consistent with the range of projections considered in 2011, no further analysis is required under CEQA.

Petitioners' further contention that the County was required to prepare new WSAs in 2017 is barred because they failed to exhaust their administrative remedies. During the public comment period for the recirculated analyses, SCOPE suggested new WSAs were required due to a conflict of interest between Newhall and Valencia Water Company, which prepared WSAs in 2010. Petitioners have now abandoned this argument in favor of entirely different theories that were not presented to the County.

A. *Substantial Evidence Supports the County's Decision Not to Undertake Supplemental Review of Water Supply Impacts*

1. *Legal framework*

"The [EIR] is "the heart of CEQA" and the 'environmental "alarm bell" whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.' [Citation.] It is intended, further, "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." [Citation.]" (*Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1229.) CEQA "creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted" in the first instance. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317.) "The test is markedly different, however, if a project is evaluated after an

initial environmental review has occurred.” (*Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041, 1049 (*Moss*).)

When an EIR has been prepared for a project, “no subsequent or supplemental [EIR] shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: [¶] (a) Substantial changes are proposed in the project which will require major revisions of the [EIR]. [¶] (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the [EIR]. [¶] (c) New information, which was not known and could not have been known at the time the [EIR] was certified as complete, becomes available.” (Pub. Res. Code,¹⁹ § 21166.) Petitioners hang their hat on subdivisions (b) and (c) of the statute.

According to the Guidelines, changed circumstances requiring further environmental review under subdivision (b) (substantial changes in circumstances) are those that “will require major revisions of the previous EIR . . . due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (Guidelines, § 15162, subd. (a)(2).) As to subdivision (c) (new information requiring further environmental review), the Guidelines state we should look in the record for “any of the following: [¶] (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration; [¶] (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR; [¶] (C)

¹⁹ Undesignated statutory references that follow are to the Public Resources Code.

Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or [¶] (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.” (Guidelines, § 15162, subd. (a)(3).) A supplement to an EIR—as opposed to a subsequent EIR—is sufficient if any of the conditions described in Guidelines section 15162 apply but “[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation.” (Guidelines, § 15163, subd. (a).)

The limited circumstances under which section 21166 and the Guidelines require additional environmental review “are designed to balance CEQA’s central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency. [Citation.]” (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 949 (*San Mateo*).) “Section 21166 effectively creates a presumption against further environmental review after a project has been previously subjected to environmental review. . . . “[S]ection 21166 comes into play precisely because in-depth review has already occurred, the time for challenging the sufficiency of the original EIR has long since expired [citation], and the question is whether circumstances have *changed* enough to justify *repeating* a substantial portion of the process.” (*Moss, supra*, 162

Cal.App.4th at p. 1050[].)” (*Save Our Heritage Organisation v. City of San Diego* (2018) 28 Cal.App.5th 656, 666-667.)

“[W]hen a court reviews an agency decision under section 21166 not to require a subsequent or supplemental EIR on a project, the traditional, deferential substantial evidence test applies. The court decides only whether the administrative record as a whole demonstrates substantial evidence to support the determination that the changes in the project or its circumstances were not so substantial as to require major modifications of the EIR.’ [Citations.]” (*Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192, 200-201.) “A party challenging an agency’s decision under section 21166 has the burden to demonstrate that the agency’s decision is not supported by substantial evidence and is therefore improper. [Citation.] The court defers to the agency as finder of fact, . . . indulges all reasonable inferences from the evidence that support the agency’s findings, and resolves conflicts in the evidence in favor of the agency’s decision. [Citations.]” (*Com. for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1247.)

“An appellate court’s review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court’s: The appellate court reviews the agency’s action, not the trial court’s decision; in that sense appellate judicial review under CEQA is *de novo*.” (*Vineyard, supra*, 40 Cal.4th at p. 427.)

2. Application

When the County concluded in 2011 that the Santa Clarita Valley groundwater operating plan is sustainable under many

climate change models and based on nearly nine decades of historical data (including multiple-year dry periods), it recognized the “potential long-term dry trend arising out of climate change” might render it unsustainable. The County understood how this might happen: Higher temperatures and reduced local precipitation could increase demand for water, reduced local precipitation could prevent recharge of local aquifers, and a smaller and earlier-melting snowpack could reduce the supply of imported water. Nonetheless, historical data suggested the Landmark Village and Mission Village projects would not significantly impact water resources and the County concluded attempts to quantify the effects of climate change were speculative.

The 2015 Urban Water Management Plan largely echoes the County’s 2011 conclusions concerning the long-term sustainability of Santa Clarita Valley water resources. For instance, in an appendix addressing climate change vulnerability, the 2015 Urban Water Management Plan states that “[n]atural recharge to the local groundwater aquifers is likely to be affected by projected changes in precipitation pattern and amount (a long-term reduction of about 10%^[20] by 2050), increased evaporative

²⁰ The 2015 Urban Water Management Plan assumes a “precipitation reduction of 10 percent” and a resulting “10 percent reduction in the operational range” of local aquifers. The report characterizes these as “very broad and conservative” assumptions, but cautions that, because “the extent to which climate change will change the natural recharge processes and the impact of that change [is] not exactly known and [is] difficult to quantify, simplifying assumptions were applied to provide initial estimates.” Petitioners claim there is “no justification for choosing 10 percent instead of 20 percent or 30 percent.” By the

losses, and warmer and shorter winter seasons. The overall impact on groundwater resources could be significant. Reduced natural recharge would affect the amount of groundwater available in the long-term. Reductions in the [State Water Project] imported water imposed by climate change would lead to more reliance on local groundwater. However, with potential reductions in natural recharge, groundwater may only make up a portion of reduced [State Water Project] supply. Future planned projects need to meet the water demand to accommodate the effects of climate change on water demand and water supplies.” Nonetheless, based on historical data and the Department of Water Resources’ projections for State Water Project imports through 2035 accounting for “the effects of climate change and accompanying sea level rise,” the Water Agency concludes in the main text of the 2015 Urban Water Management Plan that there is an adequate supply of groundwater and imported water “to meet . . . service area demands during normal, single-dry, and multiple-dry year periods throughout the 35-year planning period.”

The Water Agency was no more willing in the 2015 Urban Water Management Plan to base its bottom-line conclusion about the sustainability of Santa Clarita Valley water resources on “very broad and conservative” assumptions about climate change than the County was in its 2011 EIRs. The Water Agency’s conclusion, informed by historical data and climate-driven

same token, nothing in the record justifies assuming reductions as *high* as 10 percent. Either way, as we shall explain, it is the main text of the 2015 Urban Water Management Plan, not the appendix, that supports the County’s determination not to conduct additional environmental review.

projections of State Water Project imports, is substantial evidence supporting the County’s decision not to further analyze water supply impacts. Even if portions of the 2015 Urban Water Management Plan—and similar information the County had before it in 2011—might *also* have supported a contrary decision to conduct further environmental review, this is not the test under section 21166. (See *San Mateo, supra*, 1 Cal.5th at p. 953 [in assessing whether an agency’s decision is supported by substantial evidence, “[a] court’s task . . . ““is not to weigh conflicting evidence and determine who has the better argument””]; see also *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393 (*Laurel Heights*) [“The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations”].)

Other post-2011 reports updating the issues the County considered in 2011 do not raise novel concerns or suggest the projects’ water supply impacts will be more severe than anticipated in 2011. The Intergovernmental Panel on Climate Change’s²¹ 2014 Synthesis Report states that “[c]limate change over the 21st century is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions (*robust evidence, high agreement*), intensifying competition for

²¹ The Intergovernmental Panel on Climate Change is “the United Nations body for assessing the science related to climate change.” (Intergovernmental Panel on Climate Change, *About the IPCC* <<https://www.ipcc.ch/about>> [as of Dec. 10, 2019], archived at <<https://perma.cc/YTE2-3A52>>.)

water among sectors (*limited evidence, medium agreement*). In presently dry regions, the frequency of droughts will *likely* increase by the end of the 21st century . . . (*medium confidence*)." (Intergovernmental Panel on Climate Change, Climate Change 2014 Synthesis Report (2014) p. 69
<https://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf> [as of Dec. 3, 2019], archived at <<https://perma.cc/4WE9-VVWL>>.) Although the County recognized climate change might exacerbate historical drought cycles in the Santa Clarita Valley, it regarded attempts to "quantify the effects of climate change[] on the [State Water Project] system or the local groundwater basin" as "speculative" in 2011. Petitioners do not identify any new information in the IPCC report that would enable a concrete, non-speculative accounting of climate change's likely impact on the Santa Clarita Valley water supply.

Similarly, the Unincorporated Los Angeles County Community Climate Action Plan 2020 warns that "[t]he region's mountains could see a 42% reduction in annual snowfall by mid-century," with the "winter snowpack . . . melt[ing] 16 days earlier," which could "exacerbate drought-like conditions, reducing water supplies and water security for all end users throughout the County." (Los Angeles County Community Climate Action Plan 2020 (2015) p. 1-7
<http://planning.lacounty.gov/assets/upl/project/ccap_final-august2015.pdf> [as of Dec. 3, 2019], archived at <<https://perma.cc/U7FP-ZV3N>>.) The County was aware in 2011 of the manner in which a reduced snowpack and early melting might impact the supply of imported water. Although the Community Climate Action Plan quantifies these phenomena, it

does not purport to quantify their impact on the amount of water available for import to the Santa Clarita Valley.²²

An “environmental research letter” projecting a substantial increase in water use in the County between 2012 and 2062 also fails to engage the County’s fine-grained analysis of water resources in the Santa Clarita Valley. The observation that, *statewide*, “[w]ater use in 2012 was already proven unsustainable given the ongoing multi-year drought, which lead [sic] to mandated municipal use restrictions in 2015” is not necessarily relevant to County water resources.

Petitioners also point to a December 2014 memorandum by GSI Water Solutions, Inc. (GSI) evaluating “the achievability of target production volumes identified by the local retail water purveyors for groundwater pumping during 2015 from the local

²² Petitioners also cite an interview with a researcher explaining that the Sierra Nevada snowpack deficit in 2015 “was almost twice as large as any other deficit on record” and recovery would be a “multi-year” process. The researcher is cautious, however, about the inferences that can be drawn from his findings, emphasizing that 2015 was “an odd year in at least a couple ways. In terms of the amount of snowfall, it was the lowest on record. It was just a very, very dry year. But it also happened to be the warmest year on record. [¶] . . . [¶] This study was not about climate change *per se*. It’s implicit, of course, in everything. But 2015, you could argue, maybe, that it’s a sign of things to come in the sense that it had most of the snowpack at the higher elevations. Temperature played a role, but it was just such a dry year.” The interview does not fatally undermine—or even specifically critique—the models of future State Water Project imports on which the County relies.

Alluvial Aquifer system in the Santa Clarita Valley”²³ There is no denying the GSI study’s relevance to local groundwater supplies, but its focus on retail water purveyors does not undermine the County’s conclusions regarding the Alluvial aquifer as a whole. For instance, GSI found that between fall 2013 and fall 2014, retail water purveyors pumped “about 10 percent less than the 27,500 [acre-feet per year] target production volume . . . identified in the Groundwater Operating Plan . . . during locally dry years,” in part because wells “located in the upper reaches of the watershed (where groundwater levels and groundwater recharge rates are highly sensitive to year-to-year variations in rainfall and streamflow)” did not achieve target volumes. Decreased production from certain wells during dry years, however, is built into the groundwater operating plan. And without more information about how the retail water purveyors’ target pumping volume relates to the target pumping volume for the aquifer as a whole, we cannot reliably conclude this study says anything about the sustainability of the groundwater operating plan. Indeed, GSI does not suggest its observations are inconsistent with historical patterns: “[L]ittle to no recharge has occurred to the Alluvial Aquifer since the winter of 2010/spring of 2011 rainfall season,” causing groundwater levels to decline “at a fairly steady rate since that time, as has been observed in other past periods of local drought conditions

²³ The memorandum is marked “draft.” No party has identified a “final” version in the record.

(such as occurred in 1984 through 1992 and again in 1999 through 2004).”²⁴

In light of our summary thus far of the evidence in (and absent from) the record, petitioners’ comparison of this case to *Moss, supra*, 162 Cal.App.4th 1041 is inapt. In *Moss*, Humboldt County approved a subdivision based on a mitigated negative declaration finding, among other things, that “although the project would reduce the surface water in Luffenholtz Creek ‘slightly,’ it would not cause a substantial reduction in the amount of water available” to a city downstream. (*Id.* at p. 1046.) This finding was based in part on a study that determined the creek “could accommodate approximately a 74 percent increase over the current number of water users” in the downstream city. (*Id.* at p. 1059.) When, after the county’s approval of the subdivision map expired, the developer filed for reapproval, the county concluded an EIR was required. (*Id.* at p. 1047.) The county determined the EIR was required because it received new information that, among other things, the downstream city had “increased its water production by 74 percent.” (*Id.* at p. 1060.) This determination was supported by substantial evidence because the “evidence of increased water usage [was] new and

²⁴ In a related vein, petitioners cite data tracking the water level elevation in monitoring wells at the perchlorate-contaminated Whittaker Bermite facility near the Landmark Village and Mission Village sites. The water level elevation in at least some of these wells declined (sometimes with seasonal variation) consistently between 2006 and 2016. The parties dispute whether this decline is the deliberate result of cleanup efforts, but a steady decline beginning in 2006 is not information that “could not have been known” in 2011. (§ 21166.)

could not have been known at the time the project was previously reviewed” and, given that demand had reached “the critical ‘maximum capacity’” identified in an earlier study, “even . . . a slight increase in demand from the project could have significant environmental impacts downstream.” (*Ibid.*)

Crucially, the new information identified in *Moss* was not merely *additional* evidence in support of an argument that the downstream city made or could have made when the county first approved the subdivision. Nothing in the opinion suggests the downstream city’s increased water usage was anticipated at that time. In this case, by contrast, the County extensively discussed how climate change might impact its water supply analysis in 2011. Petitioners do not suggest the data recorded in the ensuing years—and to be recorded in years to come—could not have been anticipated in 2011. (See *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 532 [“The effect of greenhouse gas emissions on climate could have been raised in 1994”]; *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1319 [“[T]he impact of greenhouse gases on climate change was known at the time of the certification of the EIR in November 2002”].)

If the experience of a prolonged drought and record temperatures in recent years suggest the County’s conclusion was wrong, the EIRs set forth “the basis on which [the County approved the projects], and the public, being duly informed, can respond accordingly to action with which it disagrees.” (*Laurel Heights, supra*, 47 Cal.3d at p. 392.) As a “document of accountability” (*ibid.*), an EIR prevents public officials from pleading ignorance if potential environmental impacts are realized. The County recognized the risks of climate change in

2011 and, for better or worse, there is substantial evidence indicating these risks were substantially the same in 2017. If petitioners want to seek *political* remedies for decisions they believe clash with climate science, the EIRs provide an adequate record of the County’s views on the matter. But no legal remedy is available under section 21166, subdivisions (b) and (c) in these circumstances.

B. The County Was Not Required to Prepare New WSAs in 2017

“Under provisions of the Water Code enacted in 1995 and amended in 2001, [w]hen a proposed development is subject to CEQA, and it is also a “project” within the meaning of Water Code section 10912,²⁵ a WSA is required.’ [Citations.] The WSA is intended to assist local governments in making the discretionary decision of whether to approve a proposed development project. [Citation.]” (*The Inland Oversight Com. v. City of San Bernardino* (2018) 27 Cal.App.5th 771, 782.) The lead CEQA agency (in this case, the County) “must request a WSA from the water supplier most likely to serve the project.” (Wat. Code, § 10910, subd. (b).)” (*Cal. Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1480.) Compliance with the Water Code provisions requiring a WSA is also required under CEQA. (§ 21151.9 [“Whenever a city or

²⁵ Water Code section 10912, subdivision (a) defines “project” to include various types of development (residential, commercial, industrial, etc.) exceeding certain occupancy, rooms, or square footage thresholds. There is no dispute that Landmark Village and Mission Village qualify as “projects” under Water Code section 10912.

county determines that a project, as defined in Section 10912 of the Water Code, is subject to this division, it shall comply with Part 2.10 (commencing with Section 10910) of Division 6 of the Water Code”].)

Among other things, the WSA must “include a discussion with regard to whether the total projected water supplies, determined to be available by the city or county for the project during normal, single dry, and multiple dry water years during a 20-year projection, will meet the projected water demand associated with the proposed project, in addition to existing and planned future uses” (Wat. Code, § 10910, subd. (c)(4).)

Petitioners do not dispute that the WSAs prepared for Landmark Village and Mission Village in 2010 contain all required information.²⁶ Instead, they contend the County was required to request new WSAs in 2017 for three separate reasons: *first*, Water Code section 10910, subdivision (c) requires an agency to request a WSA when determining whether to prepare an EIR, a negative declaration, or a mitigated negative declaration for a project; *second*, Water Code section 10911, subdivision (b) requires that a WSA be included in “any environmental document” prepared under CEQA; and *third*,

²⁶ Petitioners insinuate the WSAs are flawed because Newhall owned Valencia Water Company, which prepared the WSAs, and “rigged the system to ensure its projects will be given priority in water allocation.” Petitioners concede, however, that “Newhall’s contractual or other right to the water is irrelevant” to the WSAs’ assessment of whether there is sufficient water to satisfy demand within Valencia Water Company’s territory generally.

Water Code section 10910, subdivisions (h)(2) and (h)(3) require a new WSA based on new information and changed circumstances.

We do not reach the merits of petitioners' Water Code arguments, however, because they were not presented to the County during the public comment period for the recirculated analyses.²⁷ “Where an administrative remedy is provided by statute, this remedy must be exhausted before the courts will act. [Citations.] This “is not a matter of judicial discretion, but is a fundamental rule of procedure laid down by courts of last resort, followed under the doctrine of stare decisis, and binding upon all courts.’ [Citations.]” [Citation.] The rationale for the rule is that an agency is entitled to learn the contentions of interested parties before litigation arises, so it will have an opportunity to address the contentions and perhaps render litigation unnecessary. [Citation.] To advance this purpose an interested party must present the exact issue to the administrative agency that is later asserted during litigation or on appeal. [Citation.] General objections, generalized references or unelaborated comments will not suffice. [Citation.] “[T]he objections must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them.’ [Citation.]” [Citation.] [¶] “The petitioner bears the burden of demonstrating that the issues raised in the

²⁷ Respondents contend petitioners have forfeited any challenge to the trial court’s ruling that they failed to exhaust administrative remedies because they do not discuss this ruling in their opening brief. Respondents cite no authority, however, holding that an appellant’s opening brief must discuss an adverse ruling on the respondent’s affirmative defense in an administrative mandamus case. Giving petitioners the benefit of the doubt, we explain why the trial court’s ruling was correct.

judicial proceeding were first raised at the administrative level. [Citation.]” [Citation.]’ [Citation.]” (*Greene v. Cal. Coastal Com.* (2019) 40 Cal.App.5th 1227, 1237-1238; § 21177, subd. (a) [an action alleging an agency’s environmental review shall not be brought “unless the alleged grounds for noncompliance with [CEQA] were presented to the public agency orally or in writing by any person during the public comment period provided by [CEQA] or before the close of the public hearing on the project before the issuance of the notice of determination”].)

Petitioners contend SCOPE raised their WSA arguments in a letter to the County dated July 15, 2017.²⁸ The SCOPE letter reports “new information” relating to the relationship between Newhall and Valencia Water Company, which prepared the WSAs, that SCOPE suggested “undermine[d] the veracity of the [WSAs].” It also emphasizes that “[a]ccurate water reporting and water supply assessments are especially important now in this time of climate change,” citing data suggesting “the predicted yield from the Santa Clara River will be less than anticipated during a drought” and indicating “a substantial drop in [A]lluvial ground water” between 2004 and 2016.

The SCOPE letter does not suggest the County’s decision to issue recirculated analyses meant it was required to prepare a new WSA under Water Code section 10910, subdivision (c). Nor does it suggest the County was required to include a new WSA in the recirculated analyses under Water Code section 10911, subdivision (b). And although it mentions new information regarding the relationship between Newhall and Valencia Water Company, it does not frame climate change and anticipated

²⁸ SCOPE submitted the same letter for both projects.

groundwater yield as new information requiring new WSAs. Rather, the letter suggests climate change is a reason to take seriously the new information about a purported conflict of interest. Petitioners point out that “less specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding’ because, although not the case here, parties in such proceedings generally are not represented by counsel.” (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1395.) But the problem with the SCOPE letter is not that it raises concerns about climate change in a general manner. The problem is that it raises these concerns as *incidental* to other concerns and in a passing manner insufficient to satisfy settled exhaustion principles.²⁹

²⁹ Although we do not reach the merits, it is not clear whether even petitioners believe a new WSA is required *whenever* new information or changed circumstances emerge. Water Code section 10910, subdivisions (h)(1) and (h)(2) define exceptions to an exception: The preceding subdivisions, setting forth the conditions under which a WSA is generally required, do not apply in the case of “subsequent projects that were part of a larger project” *unless* new information or changed circumstances emerge. These subdivisions do not say anything about whether new information or changed circumstances call for a new WSA in other contexts. Petitioners appear to concede as much in their reply brief.

DISPOSITION

The judgment is affirmed. The County and Newhall shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.