Filed 6/1/20 Granville Homes, Inc. v. City of Fresno CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

GRANVILLE HOMES, INC., et al.,

Plaintiffs and Appellants,

v.

CITY OF FRESNO et al.,

Defendants and Respondents.

F077870

(Super. Ct. No. 17CECG01669)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. James Petrucelli, Judge.

Wanger Jones Helsley, Timothy Jones, John P. Kinsey, Nicholas R. Cardella; Powell Slater and Michael P. Slater for Plaintiffs and Appellants.

Aleshire & Wynder, Anthony R. Taylor, Michael C. Huston and Christine M. Carson for Defendants and Respondents.

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INTRODUCTION

Generally, water capacity fees are one-time fees charged to new or expanded connections to a water system designed to recover the costs of infrastructure, assets, and water supply benefitting new development.

In 2017, the City of Fresno (City) revamped its fee scheme, replacing a medley of various charges with a single water capacity fee. In calculating one aspect of the new capacity fee, the City used cost estimates for the possible, future expansion of one of its surface water treatment facilities.

This appeal concerns whether the City's actions violate the Mitigation Fee Act (MFA; Gov. Code, § 6000 et seq.) and/or the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.).

MFA

The MFA imposes several requirements on certain government exactions, including that capacity charges (1) "shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed" (Gov. Code, § 66013, subd. (a)), and (2) must be "of proportional benefit to the person or property being charged" (*id.*, subd. (b)(3)). (All statutory references are to the Government Code unless otherwise stated.) Appellants contend the City's capacity charges violate these and other requirements of the MFA.

CEQA

In many circumstances, CEQA requires preparation of an environmental impact report (EIR) when a local agency approves a project. (See Pub. Resources Code, § 21100, subd. (a).) Appellants argue the City's enactment of the capacity charges constituted approval of a project under CEQA. They also contend the City has effectively approved the expansion of the water treatment facility referenced in the capacity fee calculations. Therefore, appellants argue, the lack of substantive environmental review in this case violates CEQA.

For the reasons set forth herein, we reject appellants' contentions and affirm.

FACTS

Water Situation

The City serves the daily water needs of over 100,000 ratepayers. Prior to 2004, the City relied entirely on groundwater to supply its ratepayers.

In 2014, the state Legislature passed the Sustainable Groundwater Management Act (SGMA). (Wat. Code, § 10720 et seq.) The SGMA sought to establish minimum standards for sustainable groundwater management, to avoid or minimize subsidence, and to increase groundwater storage, among other goals. (Wat. Code, § 10720.1.)

In the 2015 calendar year, the City pumped 83,360 acre-feet of groundwater to its distribution system, but only recharged 19,778 acre-feet through recharge basins, resulting in a net overdraft of the aquifer of 63,582 acre-feet.

In January 2015, the State Department of Water Resources identified the Kings Subbasin—in which the City is located—as one of 21 top-priority basins (out of 515) requiring corrective action for overdraft conditions. The director of the Department of Water Resources confirmed in a letter to the City that "in the event a local agency, such as the City of Fresno, fails to exercise its responsibilities as stipulated in the SGMA, the State will intervene on an interim basis."

Recharge Fresno

In cooperation with the State Water Resources Control Board, the City developed a "corrective action plan" under SGMA. The plan involved $429 million in capital investments to address declining groundwater levels, groundwater contamination, and the requirements of SGMA. This corrective action plan was branded, "Recharge Fresno."

The corrective action plan had several components. The City planned to utilize its surface water entitlements at Pine Flat Reservoir and Millerton Lake, which total 180,000 acre-feet per year during a normal precipitation year. The plan also included construction of a new 80-million-gallon-per-day (mgd) water treatment facility (the Southeast Surface Water Treatment Facility; SESWTF), and water pipelines to deliver surface water to the

City's treatment facilities.[1] The purpose of these capital improvements, according to the City, was to support the water supply and reliability needs of *existing* ratepayers.

According to the City, the plan would reduce its groundwater extractions to 18,000 acre-feet per year; increase surface water production to 110,000 acre-feet per year; and allow the City to recharge the aquifer with approximately 32,000 acre-feet of water per year. As of April 2017, the City's water demands totaled approximately 128,000 acre-feet per year. Given the then-current water demands of 128,000 acre-feet per year, the plan would result in a net contribution to the aquifer of 14,000 acre-feet per year.

The plan was financed 100 percent by the State of California and paid for by existing ratepayers.

Expansion of the Northeast Surface Water Treatment Plant

The City also planned to expand the capacity of another one of its surface water treatment facilities—the Northeast Surface Water Treatment Facility—from 30 mgd to 60 mgd. The City said the purpose of this expansion was to generate additional surface water supply and reliability for *future* development.

Water Capacity Fees

Because the first phase of Recharge Fresno projects was purportedly designed to benefit *existing* customers, the City planned to fund them through water rates. However, because the City concluded that subsequent water system improvements—including the expansion of the NESWTF—were to benefit *future* development, the City concluded they "should be funded by the City's water capacity fees to ensure these costs are equitably recovered from new development."

As a result, the City concluded that its existing water fee programs—which were last updated in 2003—"require an update." The City noted the existing water fee programs did not recover (1) costs for capacity in *existing* infrastructure and benefits to

[1] In addition to the newly proposed SESWTF, the City had an existing water treatment facility, operational since 2004, called the Northeast Surface Water Treatment Facility (NESWTF).

new development, nor (2) costs for *future* infrastructure and water supply projects needed to meet the demands of growth. The City also noted the existing water fee programs "fail" to recover costs from non-Urban Growth Management (UGM) areas and were administratively burdensome because there were almost 150 separate UGM funds. Moreover, the existing fee regime involved several different types of water capacity fees. These fees included UGM fees for 21 areas, wellhead treatment fees for five areas, transmission grid main charges and related bond debt service charges, recharge area fees, and 1994 bond debt service fees.

The City retained Bartle Wells Associates (BWA) to prepare a study detailing how the City should update its water capacity fees (the Fee Study).

The Fee Study ultimately recommended the City transition to a single water capacity fee, to be applied uniformly to all future development. The Fee Study also calculated a recommended capacity fee designed to recover a proportional share of (1) groundwater and distribution system facilities and assets benefitting projected growth, and (2) future surface water improvements required to support a sustainable and reliable water supply to meet the next 30 mgd of water demand for growth.

To calculate a recommended fee, the Fee Study first determined the recoverable cost of facilities and assets benefitting new development that will be recovered by the capacity fee. Those facilities and assets fell into two categories: (1) groundwater and distribution system assets that would benefit new development through 2035, and (2) expanding the NESWTF from 30 mgd capacity to 60 mgd capacity. The Fee Study then divided the costs attributed to new development by the anticipated increase in demand/capacity to arrive at a per acre-foot figure. Each of these steps are described more fully below.

Groundwater and Distribution System

The groundwater and distribution system assets category was further broken down into (1) existing assets and (2) future improvements to serve growth.

Existing Groundwater System Assets

The City calculated the asset replacement costs of the existing groundwater and distribution system assets to be $1,160,980,050. The City excluded additional existing groundwater and distribution system assets from recovery by the water capacity fees. The City estimated 20 percent of the existing groundwater and distribution system was "available" to serve new growth. According to the City, this was a "conservative" estimate. Consequently, the Fee Study's calculated new growth "buy-in" to the existing groundwater and distribution system was approximately $232,196,010.

Improvements to Groundwater System

The Fee Study relied on the City's January 2011 "Metro Plan Update Phase 3 Report," which identified $561,119,789 in groundwater system improvements "required" to serve future growth. These improvements were based on a projected future demand for potable water of 234,300 acre-feet. That projection was subsequently lowered in a report finalized in June 2016. The new report projected a potable water demand of 190,500 acre-feet—an 18.7 percent reduction from the 2011 projection. Accordingly, the Fee Study reduced the groundwater improvement cost line item by 18.7 percent from $561,119,789 to $456,224,156.

The Fee Study then sought to allocate the $456,224,156 in improvement costs between existing customers and future growth based on each group's share of total potable water demand through 2035. Using actual production numbers, the study allocated 68.5 percent of the potable water demand through 2035 to existing customers and allocated the remaining 31.5 percent to future growth. (Percentages are rounded to the nearest tenth.) As a result, the Fee Study allocated $143,865,079 (i.e., 31.5 percent of $456,224,156) of the total groundwater and distribution improvement costs to new growth.

Total Groundwater System Costs (Existing Assets & Improvements) Attributable to Growth

When the allocated costs from existing groundwater and distribution system assets (i.e., $232,196,010) is added to the allocated costs from improvements to the groundwater and distribution system assets (i.e., $143,865,079), the total is $376,061,089. When this sum is divided by the estimated increase in water demand from new growth—i.e., 60,072 acre-feet—the result is $6,260 per acre-foot.

Surface Water System

In addition to the *groundwater* system costs described above, the Fee Study looked to estimate the cost of improving the City's *surface water* system to satisfy the next 30 mgd of demand from new development. Specifically, the Fee Study estimated the cost of expanding the NESWTF from 30 mgd capacity to 60 mgd capacity to be $82,419,000. Constructing regional transmission mains would cost an additional $78,600,000. Thus, the total cost of surface water system improvements attributed to new growth was $161,019,000. The Fee Study also listed several "Phase 1" surface water improvements undertaken for the benefit of *existing* customers, including groundwater recharge facilities, raw water pipelines, surface water treatment facilities, finished water distribution pipelines and pipeline/well rehabilitation and replacement. The total cost of these projects (i.e., $429,100,000) was attributed solely to existing customers.

When the total cost is divided by the increase in capacity intended to serve new growth (30 mgd or 33,604 acre-feet), the result is a cost of $4,792 per acre-foot.

Total Cost Attributable to New Growth (Groundwater & Surface Water Systems)

By adding the $6,260 per acre-foot for groundwater and distribution assets (existing assets and improvements), to the $4,792 per acre-foot for surface water system improvements attributable to growth, the Fee Study concluded that the City could appropriately charge a maximum water capacity fee of $11,052 per acre-foot.

Reduced Capacity Fee

However, the Fee Study then noted that these calculations included costs related to existing groundwater facilities that were previously funded by the City. The Fee Study provided an alternate capacity fee calculation that would exclude cost recovery for facilities "that have already been paid for." The study called this calculation the "reduced capacity fee." The reduced capacity fees were calculated to limit growth's "buy-in" to existing groundwater facilities to "the proportionate sharing of outstanding future debt service payments for facilities that benefit new development."

These calculations resulted in a reduced allocation of groundwater and distribution system assets and improvements to new growth from $6,260 per acre-foot to $2,607 per acre-foot. The surface water system improvement allocation of $4,792 per acre-foot was unaffected by the reduction. Therefore, the new reduced cost totaled $7,399 per acre-foot—a reduction of approximately 33 percent.

The Fee Study concluded that reducing the capacity fees in this manner was not required by the Government Code, but nonetheless recommended that the City adopt the reduced fees.

Water Capacity Fees

In accordance with the recommendations of the Fee Study, the City enacted an ordinance amending its municipal code in 2017 to replace the prior fee scheme with a new citywide water capacity fee program (the ordinance). This enactment is the subject of the present appeal.

According to the ordinance, the new water capacity fees were designed to recover costs for (1) facilities needed to address water supply and reliability needs of new development and (2) a share of costs for existing assets benefitting new development. Additionally, the new water capacity fees "will not pay for facilities required to serve existing ratepayers."

Litigation

Appellants filed a joint complaint and petition for writ of mandate against the City, among others, on May 11, 2017 (the petition). The petition challenged the fees, asserting their adoption violated the MFA and CEQA, among other allegations.

After a hearing on May 18, 2018, the trial court denied the petition. Appellants appeal the judgment denying their petition.

DISCUSSION

I. Appellants Have Not Established a Violation of the MFA

A. The MFA

The MFA establishes standards for certain monetary exactions imposed by local governments. (*Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 297.) Important here, the MFA defines and regulates water capacity charges. The statute "'was passed by the Legislature "in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects."'" (*Boatworks, supra*, at p. 297.)

Under the MFA, a capacity fee is "a charge for public facilities in existence at the time a charge is imposed or charges for new public facilities to be acquired or constructed in the future that are of *proportional benefit* to the person or property being charged." (§ 66013, subd. (b)(3), italics added.) With one inapplicable caveat, the MFA also provides that water capacity charges "shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed." (§ 66013, subd. (a).)

The local agency receiving payments of water capacity charges must deposit them "in a separate capital facilities fund with other charges received, … and shall expend those charges solely for the purposes for which the charges were collected." (§ 66013, subd. (c).) Each year, the agency must provide the public certain information, including the amount of charges collected that year, and the public improvements on which the charges were spent. (See § 66013, subd. (d)(3) & (d)(4)(A)–(B).)

B. Standard of Review

An ordinance promulgating or changing a section 66013 capacity charge is a legislative or quasi-legislative act. (*N.T. Hill v. City of Fresno* (1999) 72 Cal.App.4th 977, 986–987; see *California Psychiatric Transitions, Inc. v. Delhi County Water Dist.* (2003) 111 Cal.App.4th 1156, 1162–1163.) When a litigant challenges such an act, "judicial review is limited to an examination of the proceedings before the [c]ity to determine whether its action was arbitrary, capricious, or entirely lacking in evidentiary support." (*Home Builders Assn. of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 561 (*Home Builders*).)[2]

To the extent we must interpret a statute, we do so de novo. (*Rincon Del Diablo Municipal Water Dist. v. San Diego County Water Authority* (2004) 121 Cal.App.4th 813, 818.)

C. Burdens of Production and Proof

The burdens of production and proof in an MFA case can be summarized as follows:

> "[T]he local agency has the initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development. If the local agency does not produce evidence sufficient to avoid a ruling against it on the validity of the fee, the plaintiff challenging the fee will prevail. However, if the local agency's evidence is sufficient, the plaintiff must establish a requisite degree of belief in the mind of the trier of fact or the court that the fee is invalid…." (*Home Builders*, *supra*, 185 Cal.App.4th at p. 562.)

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[2]Appellants insist the trial court utilized an incorrect standard of review. But in mandamus, the appellate court "exercises 'independent judgment' in determining whether the agency action was 'consistent with applicable law.' [Citation.] The trial court and appellate court apply the same standard; the trial court's determination is not binding on us." (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1004.) Therefore, the standard applied by the trial court is not material, so long as we apply the correct one on appeal. Similarly, we do not defend the trial court's ruling from appellants' other attacks, but instead independently review appellants' contentions.

Thus, while the City has the initial burden of producing *evidence* in support of its determination, appellants bear the burden of proving the fee is invalid. (*Home Builders*, *supra*, 185 Cal.App.4th at pp. 561–562.)

D. Appellants Have Not Shown the Water Capacity Fees Violate the MFA's Proportional Benefit Requirement

Appellants contend the fees imposed here fail to satisfy the proportional benefit aspect of the MFA's definition of a capacity charge. (§ 66013, subd. (b)(3) [capacity charges are "charges for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged"].)

1. The City Satisfied Its Initial Evidentiary Burden

We first look to whether the City satisfied its "initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development." (*Home Builders*, *supra*, 185 Cal.App.4th at p. 562.) We conclude the City satisfied this burden.

The Fee Study's methodology, outlined above, is a reasonable approach for estimating the appropriate, proportional charge for new development. It calculated the total costs of improving the groundwater system and then allocated only a portion of it to new development based on its share of projected water demands. The Fee Study then estimated the cost of providing the next 30 mgd of surface water to new development. The Fee Study appropriately avoids attributing to new development the cost of $429,100,000 in surface water system improvements benefitting existing ratepayers.

We find the City has met its "initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development." (*Home Builders*, *supra*, 185 Cal.App.4th at p. 562.) We next turn to

whether appellants can "establish a requisite degree of belief in the mind of … the court that the fee is invalid…." (*Ibid*.)

2. Appellants Have Failed to Carry Their Burden of Proving the Fee Is Invalid

a. Nothing in the MFA Requires the City to Select a Particular Water Source for Servicing New Development

(i) Appellants' Contention

First, appellants argue that while the cost of the NESWTF was allocated to new development, that facility was not "necessary" or "required"[3] and therefore provided no proportional benefit to new development.

In support of this contention, appellants cite the Fee Study's figures that potable water demand was projected to be 190,500 acre-feet per annum (afa) in 2035; and the reasonably available volume of groundwater to satisfy demand in 2035 was projected to be 144,300 afa. Therefore, appellants assert, the City only needed 46,200 afa (i.e., 190,500 afa minus 144,300 afa) of surface water treatment capacity to satisfy future demand. And, the City already had that capacity through the existing SESWTF (capacity of 80 mgd), and the pre-expansion of the NESWTF (capacity of 30 mgd). As a result, there was no need to expand the NESWTF's capacity from 30 mgd to 60 mgd, and the cost therefore should not be charged to new development.

As the City notes, 80 mgd is the *design* capacity of the SESWTF *after* an anticipated rerating of its finish filters. Until then, the SESWTF operates at a permitted capacity of 54 mgd. The parties also go back and forth about whether the SESWTF can operate at its capacity every day of the year. However, while the City argues it is impossible for water treatment plants to run at full capacity 365 days/year, it does not quantify the effect of this fact. Ultimately, we conclude appellants' approach is flawed

[3]Section 66013 does not require that any particular facility funded by capacity charges be "necessary" or "required" in the sense that people would have no water without the facility. Rather, the statute merely requires that the facility be "of proportional *benefit* to the person or property being charged." (§ 66013, subd. (b)(3), italics added.)

regardless of whether the SESWTF is operating at 80 mgd capacity, 54 mgd capacity, or some other level.

(ii) Analysis

Appellants' calculations incorrectly assume the City must use all reasonably available groundwater before resorting to surface water to supply new development. This is also the basis for appellants' claim the capacity fees exceeded the reasonable cost of the service for which they were imposed. (See § 66013, subd. (a).) But the City has apparently decided that it wants to supply the next 30 mgd of demand from new development with surface water. Thus, the City has essentially concluded that the NESWTF expansion is "beneficial" to new development not just for the volume of water it provides (i.e., 30 mgd), but also the *type* of water being provided (i.e., surface water instead of groundwater).[4] The fact that the City *could have* chosen to exhaust its groundwater supplies instead of expanding surface water capacity is immaterial. Section 66013 does not mandate any particular water policy. As relevant here, it merely imposes a proportionality requirement on whatever water capacity charges are ultimately imposed. The City was entitled to conclude the NESWTF expansion benefitted new development and calculate the capacity fees accordingly, even if it could have satisfied the water demands of new development in a different way.

On a more technical note, appellants' identification of the safe groundwater yield as 144,300 afa in 2035 is inaccurate. The safe groundwater yield in 2035 is actually estimated at 80,500 afa. The figure of 144,300 afa comes from taking the safe groundwater yield (80,500 afa), and adding intentional recharge by the City of 63,800 afa.

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[4]Appellants may have a policy disagreement with the City with respect to how beneficial it is to further reduce the water system's reliance on groundwater. But the proper forum for that contention was the city council, not this court. We are only concerned here with whether the water capacity fee was related to the proportional benefits to new development.

Appellants observe that "safe yield" only includes groundwater available from natural recharge and subsurface inflow, but excludes groundwater available from intentional recharge. Thus, appellants argue, the 144,300 afa figure still reflects the amount of groundwater the City can draw from the aquifer without overdrafting. That is correct, but immaterial. Avoiding overdraft is not the only legitimate water policy goal the City is entitled to pursue. To the contrary, nothing in the MFA prohibits the City from implementing a policy of avoiding overdraft *and also* intentionally recharging the aquifer. By insisting that the City use the full 144,300 afa of "available" groundwater, appellants would *require* the City to wipe out the benefits of its intentional recharge efforts before resorting to surface water. Nothing in the MFA requires the City to do that. Therefore, it is immaterial whether—as appellants argue—the City and trial court incorrectly concluded that the City was *required by law* to recharge 19,050 afa into the aquifer for drought resiliency. The MFA merely requires that the capacity charges for whatever water policy the City does pursue are appropriately apportioned.

b. Section 66013, Subdivision (b)(3)'s Reference to Proportional "Benefit[s]" Does Not Include Every Amorphous, Attenuated "Benefit" that May Result from Construction of a New Public Facility

(i) Appellants' Contention

Appellants next contend the City's reliance on expanded surface water capacity for the next 30 mgd of demand (instead of groundwater capacity), also benefits *existing ratepayers*. They argue that even assuming the City's choice to rely more on surface water increases supply reliability, this reliability would benefit *everyone*, not just new development. Similarly, appellants note that while relying on surface water brings the City into "regulatory compliance" with state directives, this also benefits *everyone*, not just new development. Therefore, allocating the cost of the NESWTF expansion to new development violates section 66013's proportional benefit requirement. (§ 66013, subd.

(b)(3) [capacity charges are imposed for new public facilities that are "of proportional benefit" to the person or property being charged].)

(ii) Analysis

Appellants' argument relies on a definition of "benefit" that is too broad, immeasurable and far reaching. Nearly every sustainable or environmentally friendly decision made by local agencies have benefits that reverberate throughout the economy and ecosystem. Here, the City has chosen to rely on what it views to be a more sustainable water portfolio to service new development than it has historically used for existing ratepayers. This decision directly and measurably benefits new development by providing an additional 30 mgd from a more sustainable source. To be sure, in literal terms, the sustainable management of the aquifer also confers a "benefit" of sorts on many other people and entities as well. But nearly everyone "benefits" from environmentally sustainable choices by local agencies. It would be impractical (perhaps impossible) to trace, measure, and apportion every literal "benefit" flowing from an environmentally-sustainable decision by a local agency. Therefore, we will not read section 66013's use of the word "benefit" in that fashion. (See *Dakin v. Department of Forestry & Fire Protection* (1993) 17 Cal.App.4th 681, 686 ["Consistent with the intent of the Legislature, a statute should be accorded a reasonable and commonsense interpretation avoiding … impractical results"].)

Moreover, even if the City's efforts to create a more reliable water sourcing portfolio constituted a "benefit" (§ 66013, subd. (b)(3)) that needed to be allocated between existing ratepayers and new development, appellants have not established a violation. The expansion of the NESWTF was only one of several projects the City planned to improve the surface water system and to more sustainably manage the aquifer. Specifically, the City allocated $6,400,000 for groundwater recharge facilities, $98,400,000 for two raw water pipelines, $186,400,000 for other surface water treatment facilities, $55,400,000 for finished water distribution pipelines, and $82,500,000 for

pipeline and well rehabilitation/replacement. These projects—which totaled $429,100,000—were allocated *entirely* to existing ratepayers, with no allocation to new development. Thus, the cost of providing the amorphous benefit of a more sustainably managed aquifer was not borne solely by new development.

Appellants respond that this approach is flawed because it includes improvements designed to support the water reliability needs of *existing* customers. But that is the point: existing customers are arguably bearing *their own* proportionate share of improving water supply reliability, so new development can bear the cost of providing its own supply in a reliable way.

Appellants try to characterize the City's reliance on surface water for the next 30 mgd of demand as a means of addressing *historic* overreliance on groundwater, not to achieve a sustainable approach to "future" uses. Appellants cite the ordinance itself, which contains recitals detailing the historic overdrafting of the Kings Subbasin.

Appellants fail to appreciate that the *historic* overdrafting is what has led the City to make different decisions about how to supply *future* water demand. The City is not seeking to undo past water sourcing mistakes, but to avoid *repeating* those mistakes as it sources future capacity. Thus, the recitals do not alter the fact that the anticipated NESWTF expansion is meant to serve and benefit *new* development.[5]

In sum, the clear and direct benefit of expanding the NESWTF is an increased capacity to treat an additional 30 mgd to satisfy the demands of new development. That

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[5]Appellants cite legal briefing in the trial court in arguing the City has asserted the capacity fees were necessary to address *existing* overdraft. The citations do not support appellants' contention. For example, the City had argued: "It is hard to conceive of a more urgent necessity than the necessity for clean healthful drinking water for *new* residents and the *avoidance* of depletion of the groundwater basin from *increased development*." (Italics added.) Similarly, in the City's 2016 impact fee update, two bullet points about the water capacity fee are mentioned: "Provides surface water supply, treatment, distribution, and recharge facilities *to serve new or expanded water service connections and create a net-positive GW Impact*"; and "Provides water supply reliability, redundancy, and drought resiliency benefits *for new or expanded water service connections*." (Italics added.) In other words, using the capacity fees to expand surface water capacity provides *new development* with a more reliable water supply.

benefit was appropriately apportioned to new development. The fact that the project happens to confer on others the nebulous benefit of a more sustainably managed aquifer does not alter this conclusion.

c. Appellants' Claim that City Could Expend Fees in Violation of MFA Is Not Ripe for Review

Section 66013, subdivision (c) requires that the City deposit payments of the water capacity fee into a separate capital facilities fund. (§ 66013, subd. (c).) The City "shall expend those charges solely for the purposes for which the charges were collected." (§ 66013, subd. (c).) Appellants contend that certain provisions in the ordinance violate this restriction on expenditures.

(i) Background

Before the water capacity fees at issue in this case were enacted, the City had in place several types of fees, including UGM fees. The fees were imposed on "everyone who developed in a UGM area" and required them to "pay their share of UGM fees for the cost of the infrastructure, improvements, and services to provide City services to the development." Under the UGM fee regime, the City sometimes required developers to construct water supply facilities as a condition precedent to approval of the development project. The City would reimburse some of the cost paid by the developer in accordance with reimbursement agreements issued under UGM regulations.

The new ordinance, which replaced the UGM fees with the current water capacity fees, also established a "Water Capacity Fund." This fund was created for deposit of the water capacity fees. Deposits would be used to fund public facilities reasonably necessary to provide water capacity service to new or expanded connections to the City water system.

When the new ordinance replaced UGM fees with the current water capacity fees, there were still funds in the UGM accounts. The new ordinance provided that those funds would remain in the separately designated UGM accounts and used for the purposes for which they were collected, including reimbursing developers. Once all the

developers with UGM reimbursed agreements were fully reimbursed, any excess funds in the UGM accounts would be deposited into the Water Capacity Fund. On the other hand, the ordinance also provided that monies from the Water Capacity Fund shall be made "available" to honor UGM fee reimbursement agreements. However, the ordinance provided that in no event could anyone be reimbursed more than he or she would have under the UGM regulations.

(ii) Analysis

Section 66013, subdivision (c) requires that the City deposit payments of the water capacity fee into a separate capital facilities fund. (§ 66013, subd. (c).) The City "shall expend those charges solely for the purposes for which the charges were collected." (§ 66013, subd. (c).) The City must provide an annual accounting identifying how the moneys in the fund were spent. (§ 66013, subd. (d).)

Appellants contend: "The Capacity Fees are not consistent with" section 66013, subdivision (c)'s requirement that payments of the fees be expended solely for the purposes for which they were collected. As appellants note, the City ordinance permits the expenditure of water capacity fee funds for reimbursements under the UGM regulations. Appellants contend such reimbursements are not "purposes for which" the water capacity fees were imposed. But even assuming that is all true, the City would not violate section 66013, subdivision (c)'s expenditure provision until it actually spent money from the Water Capacity Fund in that fashion. Appellants' challenge, however, is not based on any actual expenditures from the Water Capacity Fund. Rather, it is based on a claim that the ordinance *allows for the possibility* the water capacity fee revenue *could* be spent improperly. We agree with the City that such a challenge is premature. The City may never actually expend money from the Water Capacity Fund to reimburse developers under UGM regulations. (See *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582–1584 [claim based on potential future action by city that may never occur held not yet ripe for judicial resolution].) As the City notes, if

at some point the funds from the capacity fees are actually expended for an improper purpose, "then a member of the public can file a petition for writ of mandate to compel the City to properly use the funds and reduce the fees." Until then, no actual violation of section 66013, subdivision (c)'s expenditure provision has been shown.

d. Appellants Have Not Shown City Violated MFA by Commingling Funds

(i) Appellants' Contention

Appellants next argue the City's ordinance violates commingling restrictions in the MFA.

Section 66013, subdivision (c) provides, in pertinent part:

> "A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected."

Appellants argue that because the water capacity fee was based on two components—i.e., the groundwater/distribution system component and the surface water component—it is "in effect" two separate capacity charges that must be deposited into two separate accounts. Appellants complain that the ordinance improperly provides that all water capacity fee revenue is to be deposited into a single account, "regardless of the purpose for which the fee was imposed."

(ii) Analysis

Appellants' argument improperly assumes the statute requires segregation of funds by purpose (e.g., groundwater system improvements vs. surface water system improvements). That assumption is incorrect.

Section 66013, subdivision (c)'s pluralization of "facilities" and "purposes" shows that funds need not be segregated for every separate facility, or even every separate purpose for which the funds were collected.

Moreover, a water capacity charge may be based on a number of things—supply contracts, real property interests, etc. (§ 66013, subd. (b)(3).) Section 66013, subdivision (c) expressly contemplates that when a local agency receives a "payment of a [capacity] charge," it shall be placed in a fund "*with other charges received*." (Italics added.) Thus, the MFA does not require segregation of each aspect of a capacity charge as appellants suggest. Rather, the statute expressly envisions a single fund for water capacity charges which must only be separated from *other* moneys of the City. Therefore, section 66013, subdivision (c) permits the water capacity charges in this case to be placed in a single account even though they are based on costs related to multiple aspects of the water system. Because the text of the statute is clear, we need not look to policy arguments.

e. Appellants Have Not Shown a Violation of Section 66013 Based on the Ordinance's Failure to Commit Capacity Charges to a Specific Future Facility

Appellants next argue that the ordinance violates section 66013 because it fails to identify the specific project or public improvements to be funded by the water capacity fees. But nothing in section 66013 requires the ordinance establishing a capacity fee to identify every future project the fees will be used to fund. Instead, it requires the local agency to provide an annual report of how the fees were spent "for *that* fiscal year." (§ 66013, subd. (d), italics added.) In that annual report, the local agency must identify each public improvement on which charges were expended that year (§ 66013, subd. (d)(4)(A)) or for which construction was completed that year (§ 66013, subd. (d)(4)(B)). The annual report must also disclose each public improvement that is anticipated to be undertaken in the following fiscal year. (§ 66013, subd. (d)(4)(C).) However, nothing in section 66013 indicates that the ordinance initially establishing the capacity fee must identify all future public improvements for which the fees will be used. And we decline to read any such requirement into the statute.[6] (See Code Civ. Proc., § 1858.)

[6]Because the text of the statute is clear, we need not look to arguably "analogous" authorities. (E.g., § 66006; *Home Builders, supra,* 185 Cal.App.4th 554.)

Section 66001 Is Not Materially Analogous to Section 66013

Appellants point to another part of the MFA dealing with fees imposed as a condition of approval of a development project, which *requires* the local agency imposing such fees to "[i]dentify the use to which the fee is to be put." (§ 66001, subd. (a)(2).) Specifically, that statute provides:

> "[The local agency shall] [i]dentify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged." (§ 66001, subd. (a)(2).)

Appellants say that the fact the MFA allows for identification of facilities "by general reference" in section 66001, but not in section 66013, suggests the Legislature did not intend to permit identification of facilities by general reference in section 66013. But this argument ignores that section 66001 is also different from section 66013 in another important way: it expressly requires identification of the facilities to be funded by the fee. (§ 66001, subd. (a)(2) ["If the [fee's] use is financing public facilities, the facilities shall be identified"].) Only after imposing that requirement does section 66001 permit the identification to be made in other documents. Section 66013 contains no such provision expressly requiring identification of new facilities to be constructed in the future, except in the annual reporting requirements described above. (See § 66013, subd. (d).) It is no surprise section 66013 does not have a provision permitting identification of facilities by "general reference," because it does not require identification at all.

II. Appellants Have Not Established a CEQA Violation

Appellants contend the City violated CEQA by enacting the capacity fees without performing environmental review.

A. CEQA

The heart of CEQA is its requirement that local agencies prepare an EIR before undertaking certain "projects." (*State Water Resources Control Bd. Cases* (2006)

136 Cal.App.4th 674, 784.) "The purpose of an [EIR] is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (Pub. Resources Code, § 21002.1, subd. (a).)

With some exceptions, CEQA requires lead agencies to prepare "an [EIR] on any project which they propose to carry out or approve that may have a significant effect on the environment." (Pub. Resources Code, § 21100, subd. (a).) As a result, the concepts of "project" and "approval" are often important in determining whether and when environmental review is required. Indeed, the central CEQA issue in this case is whether the City's enactment of the water capacity fee ordinance constituted an approval of a project.

1. Projects Under CEQA

Under CEQA, a "project" is "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Pub. Resources Code, § 21065.) The activity must also involve the government—either because the activity is being directly undertaken by a public agency, the activity is supported by assistance from a public agency, or the activity involves the issuance of an entitlement by a public agency. (*Id.*, § 21065, subds. (a)–(c).) A project is the "*whole* of an action." (Cal. Code Regs., tit. 14, § 15378, subd. (a), italics added.) In other words, agencies may not "chop[] a large project into many little ones." (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 193.)

2. Approvals Under CEQA

An "approval" of a project refers to "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." (Cal. Code Regs., tit. 14, § 15352, subd. (a).)

Approval occurs when an agency's action significantly furthers a project "'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part

of CEQA review of that public project.'" (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138 (*Save Tara*).) Courts should look to "whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project." (*Id*. at p. 139.)

Approval is *not* equivalent to an agency's "mere interest in, or inclination to support, a project." (*Save Tara, supra,* 45 Cal.4th at p. 136.) Approval must involve *commitment* to the project. (*Ibid*.; Cal. Code Regs., tit. 14, § 15352, subd. (a).)

On the other hand, an agency can "commit" to a project "as a practical matter" even before it has legally and/or irreversibly bound itself to move forward with the project. For example, "[a] public entity that, in theory, retains legal discretion to reject a proposed project may, by executing a detailed and definite agreement … and by lending its political and financial assistance to the project, have as a practical matter committed itself to the project." (*Save Tara, supra,* 45 Cal.4th at p. 135.) Moreover, an agency may be deemed to have committed to a project "even though future discretionary governmental decisions would be needed before any environmental change could occur." (*Id.* at p. 134.)

3. Government Funding Mechanisms

The guidelines provide that CEQA does apply to a local agency's increase of rates to fund capital projects to expand an infrastructure system. (Cal. Code Regs., tit. 14, § 15273, subd. (b).) However, the provision applies when a *specific* capital project is at issue. (*Id*., § 15273, subd. (b) [referencing environmental documents for "*the* capital project" (italics added)].) Moreover, for the provision to be consistent with California Code of Regulations, title 14, section 15378, subdivision (b)(4), it must not apply to rate increases that do not involve commitment to a specific project.

Applying these principles to the context of government funding, it becomes clear that the mere "creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any *specific* project which may result in a potentially significant physical impact on the environment" does not constitute a project under CEQA. (Cal. Code Regs., tit. 14, § 15378, subd. (b)(4), italics added.) Thus, even when a funding mechanism is enacted with certain specific projects in mind, it is not subject to environmental review when the "proposed projects … may be modified or not implemented." (*Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Assn. of Governments* (2009) 179 Cal.App.4th 113, 123 (*Sustainable Transportation Advocates*); see *Citizens to Enforce CEQA v. City of Rohnert Park* (2005) 131 Cal.App.4th 1594, 1600–1601.)

B. Standard of Review

Appellants argue the enactment of the water capacity fees constituted approval of a CEQA project. They also contend that the City has committed itself to (and thereby "approved") the NESWTF expansion, and was therefore required to perform environmental review of that project before enacting the water capacity fees.

"A claim … that the lead agency approved a project with potentially significant environment[al] effects *before* preparing and considering an EIR for the project 'is … to be decided by the courts independently.'" (*Save Tara, supra,* 45 Cal.4th at p. 131.)

Determining whether "a particular agency action is in fact a 'project' for CEQA purposes" is a question of law. (*Save Tara, supra,* 45 Cal.4th at p. 131.) While appellants insist the trial court applied the incorrect standard of review, we review "the agency's action, not the trial court's decision." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.) Thus, we need not parse the trial court's analysis.

C. Analysis

For the reasons explained below, we conclude that the City's enactment of the water capacity fees was not an "approval" of a "project," nor did it constitute an "approval" of the NESWTF expansion project or any other specific project. The capacity fees themselves are merely a government funding mechanism, and their enactment is not a CEQA project. (See Cal. Code Regs., tit. 14, § 15378, subd. (b)(4).) And, while the NESWTF expansion will almost certainly qualify as a CEQA project if it is ever undertaken, appellants have not shown the City has "approved" that project.

First, we look to the ordinance itself, which included the following text:

> "[T]he Water Capacity Fee program is intended to fund *as-yet unknown*, future projects and programs, which may include potential infrastructure related to growth. These fees *do not commit the City to approve any particular project, program, or capital improvement*, but will be placed in a separate fund for potential unidentified future projects. Any activities, including infrastructure improvements, which may be funded by these Water Capacity Fees *will be subject to future environmental review under CEQA*, as applicable, prior to Council approval." (Italics added.)

The ordinance further provides:

> "[T]he Water Capacity Fees, in and of themselves, do not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and therefore are not considered a 'project' under CEQA. (Pub. Resources Code, § 21065, 14 Cal. Code Regs., § 15378, subd. (a).) Further, the Water Capacity Fees are considered a government funding mechanism that do not involve any commitment on behalf of the City to any specific project which may result in a potentially significant physical impact on the environment. (14 Cal. Code Regs., § 15378, subd. (b)(4).) Even with adoption of the fee structure, projects that may be funded by the Water Capacity Fees *may never be built* and in this way, remain speculative. As such, adoption of the Water Capacity Fee *involves no commitment whatsoever to any project* which may result in a significant physical impact on the environment." (Italics added.)

Appellants argue that no cases support the City's assertion that its burden was satisfied by legislatively enacted findings. But appellants acknowledge that whether the City adequately considered all relevant factors *is* relevant to our determination. The

ordinance enacted by the City can shed light on what factors it considered, and is therefore relevant. These provisions expressly disavow commitment to any specific project, and provide for applicable CEQA review before infrastructure improvements occur. Both factors militate against a finding the City approved a CEQA project.

Certainly, the lack of a binding, unconditional agreement to complete the NESWTF expansion is not absolutely dispositive. However, it is *relevant* to determining whether the City committed itself as a practical matter.

Appellants argue the City's "statements" are not entitled to deference, citing *Save Tara*. However, it is the City's legal conclusion (i.e., that no approval occurred) to which we do not defer. But the local agency's "public statements, and other actions by its officials" are relevant to whether an approval has occurred. (*Save Tara, supra,* 45 Cal.4th at p. 122.)

Appellants counter that even if the City has not formally committed to the NESWTF expansion, it has done so as a practical matter. They contend that under section 66013, the City is required to spend the capacity fees "solely for the purposes for which [they] were collected." (§ 66013, subd. (c).) And, the Fee Study repeatedly makes its fee calculations based on anticipated costs of expanding the NESWTF. By subsequently enacting the fees as recommended and calculated by the Fee Study, the City has "committed itself" to spending the revenue from the capacity fees on the NESWTF expansion. This, in turn, forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review. (See *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 725 [passage of resolution precluding adoption of alternatives constituted approval of the project].)

We disagree. While the City has "committed" to the water capacity fees, it has not "committed" to funding the NESWTF expansion with those fees.[7] And while section

[7]During a public hearing, the city attorney explained to city councilmembers:

66013 would not permit the City to spend those funds on something other than improving the water system for the benefit of new development (§ 66013, subd. (c)), the City retains wide latitude to choose what type of water system improvements to fund down the road. If a subsequent EIR identified smaller, less costly alternatives to the NESWTF expansion, the City would be free to consider such options because of latitude granted by section 66016. Subdivision (a) of section 66016 provides that if actual costs are less than revenues generated by the fees, then the revenues shall be used to "reduce the fee or service charge creating the excess." (§ 66016, subd. (a); see § 66013, subd. (h).) Therefore, the City could select a less costly alternative to the NESWTF expansion, and use excess funds to reduce the water capacity fees.[8] Because the City retains its flexibility to consider alternatives that could be proposed in a subsequent EIR, it has not crossed the threshold of "'foreclos[ing] alternatives or mitigation measures that would ordinarily be part of CEQA review.'" (*Save Tara*, *supra*, 45 Cal.4th at p. 138.)

We find helpful the case of *Sustainable Transportation Advocates*, *supra*, 179 Cal.App.4th 113. That case involved a local agency's approval of Measure A, which was subsequently adopted by voters. Measure A had two components: an ordinance and a

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"When you're adopting a fee, you have to come up with the best estimate of what you would spend that money on, and that's what they do when they do the fee study, and there has to be a nexus between that fee study and the fee that you adopt.

"So you have to do that to justify the number that you come up with for the fee. That's been done.

"That is not a legal commitment to build whatever you estimated that you would build. I know that's a fine legal nuance, but it's a big difference.

"So, today, you are not committing to build whatever is contained in that fee study. That's an estimate to come up with what you need for the fee. Then in the future, when it's time to build those facilities, it may be different than what is being proposed for the fee study. There's that possibility."

[8]Nor does anything in section 66013 prevent the City from considering a *more* costly option than expanding the NESWTF. Of course, this option may prove unattractive if it requires contributions from the City's general fund, or a further increase in the capacity fees. But the point is that the City retains flexibility to consider a full range of alternatives to the NESWTF expansion when (and if) the time comes.

document called the "Transportation Investment Plan." The ordinance extended a local transportation sales and use tax. The Transportation Investment Plan listed the transportation projects to be funded by the tax revenue generated by the ordinance. The ordinance also "'adopted'" the Transportation Investment Plan as the County's "'Transportation Expenditure Plan … for the expenditure of revenues expected to be derived from the tax imposed pursuant to this Ordinance.'" However, the ordinance provided that any necessary environmental review under CEQA must be completed prior to the commencement of any project listed in the Transportation Investment Plan.

A group filed a CEQA lawsuit, arguing the agency should have conducted CEQA environmental review before approving Measure A. The trial court concluded that Measure A "'does not constitute a binding commitment to construct the projects set forth in the investment plan.'" (*Sustainable Transportation Advocates, supra,* 179 Cal.App.4th at p. 117.) Instead, Measure A was merely a "government funding mechanism" and therefore was not a project under CEQA. (Cal. Code Regs., tit. 14, § 15378, subd. (b)(4).)

The Court of Appeal affirmed. The court acknowledged that the Transportation Investment Plan describes particular projects. For example, one of the projects in the plan was to spend $140 million to widen Highway 101 from four to six lanes between Carpinteria and Santa Barbara. However, the court concluded that these descriptions of the future projects were broad enough to provide sufficient flexibility for the agency to impose any mitigation measures that could be set forth in a subsequent EIR.[9]

[9]Appellants cite a document entitled "Opinion of Probable Capital Costs" and dated February 2015, which lists line items for the potential expansion of the NESWTF. The line items include filters, finished water storage, sludge dewatering beds, etc. Appellants contrast these "detailed specifications" with the arguably more flexible project descriptions in *Sustainable Transportation Advocates*. This argument is unavailing. The City has not "committed to" the line items in the Opinion of Probable Capital Costs. Indeed, as explained above, it has not committed to the NESWTF expansion at all.

Additionally, the court noted that the ordinance permitted the agency to amend the Transportation Investment Plan by deleting a project. This, the court concluded, was further evidence that the agency had not "'committed itself to [any] project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project.'" (*Sustainable Transportation Advocates*, *supra*, 179 Cal.App.4th at p. 120.)

The present case is similar in several key respects. Here, the Fee Study identifies particular projects the fees were calculated to fund (e.g., the NESWTF expansion, construction of regional transmission mains), much like the Transportation Investment Plan in *Sustainable Transportation Advocates*. However, the ordinance in the present case specifically provided that the City was not committing to "any specific project," much like the ordinance in *Sustainable Transportation Advocates*, which permitted deletion of planned projects from the Transportation Investment Plan. Moreover, the ordinance in the present case provided that any future infrastructure improvements funded by water capacity fees would "be subject to future environmental review under CEQA, as applicable, prior to Council approval," which is similar to the CEQA provision in the ordinance in *Sustainable Transportation Advocates*.

As in *Sustainable Transportation Advocates*, there is evidence in the record that the City is favorably disposed to the proposed NESWTF expansion.[10] However, "[i]f

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[10]For example, the Fee Study says the City "plans to construct" the NESWTF expansion. Additionally, the 2014 Metro Plan Update identified the NESWTF "upgrades" as a "Proposed Near-term Project."

Appellants also cite a portion of the Metro Plan Update stating the timing of its individual infrastructure components—which would include the NESWTF expansion—"will ultimately depend on the need for additional water supply capacity and the availability of funding." This actually supports the City's view that the NESWTF expansion is not set in stone, but rather dependent on future supply needs.

Appellants also cite a contract between the City and the Fresno Irrigation District dated December 2016. The agreement provides that the City must construct two raw water pipelines to serve the City's surface water treatment facilities. Appellants claim these pipelines "would not

having high esteem for a project before preparing an [EIR] nullifies the process, few public projects would withstand judicial scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed toward it." (*Save Tara*, *supra*, 45 Cal.4th at pp. 136–137.) While City officials may view the NESWTF expansion favorably and consider it likely to occur, the City has not *committed* itself to the project by foreclosing potential alternatives and mitigation measures. If someday the City does commit itself to the project, environmental review will almost certainly be required.

In seeking to distinguish *Sustainable Transportation Advocates,* appellants latch onto the court's statement that it "also consider[ed]" the fact that the implementation of projects from the Transportation Investment Plan was conditioned upon the receipt of substantial matching funds from other sources. (*Sustainable Transportation Advocates*, *supra,* 179 Cal.App.4th at p. 121.) The court observed that since the projects required matching funds, "the adoption of Measure A by the electorate does not assure that the proposed projects will be implemented." (*Ibid*.) Appellants argue that, in contrast, the water capacity fees will fully fund the NESWTF expansion. We find this to be an immaterial distinction. The Transportation Investment Plan's reliance on matching funds was simply additional evidence that the adoption of Measure A would not inexorably lead to the construction of the identified projects. We are convinced, for the reasons explained above, that the same can be said here: the adoption of the water capacity fees

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be necessary but-for the NESWTF Expansion." It supports this claim with a "[s]ee generally" citation to the entire contract, without further explanation. This argument is not sufficiently developed, and we deem it forfeited. (See *Jefferson Street Ventures, LLC v. City of Indio* (2015) 236 Cal.App.4th 1175, 1196, fn. 2.)

We note that elsewhere in the record, it is suggested that the construction of the raw water pipeline from the Friant-Kern Canal to the NESWTF was to "improve delivery reliability and to protect the source water from deleterious impacts from environmental and other malicious acts." The raw water pipeline will also enable the NESWTF to operate "year-round." Additionally, the Fee Study identifies the Friant-Kern Raw Water Pipeline as a surface water improvement benefitting *existing* customers. While appellants may have explanations or counterarguments with respect to these aspects of the record, the fact remains that their "but-for" assertion is unexplained and insufficiently supported.

does not "assure" that the 30 mgd expansion of the NESWTF will occur. The fact that this conclusion is based on factors other than a matching funds requirement is not dispositive.

For these reasons, we conclude no CEQA violation has been shown.

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal.

PEÑA, J.

WE CONCUR:

DETJEN, Acting P.J.

MEEHAN, J.