

LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

February 1, 2019

Santa Barbara County Board of Supervisors
105 E. Anapamu Street
Santa Barbara, CA 93101

*By email to sbcob@co.santa-barbara.ca.us
and by hand delivery*

RE: Harvard Appeal of the Planning Commission's Action Requiring a Focused Environmental Impact Report for the North Fork Ranch Frost Ponds Project

Dear Chair Lavagnino and Honorable Supervisors,

This office represents Roberta Jaffe and Stephen Gliessman, Cuyama Valley residents and farmers of a 5-acre dry-farming operation called Condor's Hope Ranch. Ms. Jaffe and Mr. Gliessman timely appealed the Zoning Administrator's September 25, 2017 approval of the North Fork Ranch Frost Ponds Conditional Use Permit (CUP) ("Project") and adoption of a Mitigated Negative Declaration (MND) for the Project to the Planning Commission.

The Project at issue requires a discretionary CUP¹ for the construction and operation of three water storage reservoirs and frost control system to protect Harvard's² recently planted Cuyama Valley vineyard from frost damage. (Board Letter, p. 4.) The reservoirs have the capacity to hold 49 acre feet (AF) of water each, which is 1 AF below the 50 AF threshold to be regulated by the Department of Water Resources as a "dam" (*see* Cal. Water Code § 6002). In the critically overdrafted Cuyama Groundwater Basin, a Project that utilizes 31 acre feet per year (AFY) or more of groundwater exceeds the County's threshold for a significant impact for California Environmental Quality Act (CEQA) purposes. The MND however found the Project's groundwater impact to be insignificant by considering only the amount of water lost to evaporation from the surface of the reservoirs, ignoring the full amount of water needed to operate the frost protection system, which is an impact resulting directly from the approval of the reservoirs themselves. Water currently being pumped to irrigate the vineyard is not part of the Project and properly excluded from the CEQA analysis.

The Cuyama Valley is known for spectacular native wildflower displays that appear in the spring provided the previous winter brought sufficient rain. Together the three lined reservoirs would eliminate approximately 15.6 acres of potential native plant habitat. The MND found the Project's impact to native plant species and their habitats to be less than significant, however it

¹ Water storage reservoirs greater than 50,000 square feet are a conditionally permitted use in the AG-II zone and require the approval of a Minor Conditional Use Permit (LUDC Section 35.21.030). (Board Letter, p. 5.) The reservoirs at issue are well over 200,000 square feet each.

² The Applicant Brodiaea, Inc. is a wholly owned subsidiary of Harvard's \$3.9 billion endowment fund.

relied on biological surveys conducted during a prolonged drought, when most native plant species would not have been visible.

The Jaffe/Gliessman appeal challenged the MND's adequacy, and urged preparation of an Environmental Impact Report (EIR) to fully disclose, analyze, and avoid or mitigate the Project's potentially significant impacts including impacts to groundwater and biological resources.

The Planning Commission heard the appeal on September 12, 2018³, hearing testimony from Harvard's representatives, from appellants Jaffe and Gliessman, and from a number of farmers and Cuyama valley residents. The Planning Commission also heard from attorneys for Harvard, from attorneys from this office, and from County Counsel regarding the applicable legal standards and CEQA requirements. After considering this evidence and information and deliberating carefully, the Planning Commission voted to require a *focused* EIR based on the existence of substantial evidence supporting a fair argument of potentially significant environmental impacts in the areas of biological resources, groundwater resources, and flooding. (CEQA's legal standard for requiring an EIR).

Substantial evidence of these impacts presented to the Planning Commission included, among other things, expert opinion supported by facts⁴ including a report by Professional Hydrologist Dennis Gibbs who has 20 years of experience monitoring and reporting on water conditions in the Cuyama Valley, a review of the biological surveys prepared by Dr. Gliessman who has almost 50 years of experience in botany and ecology in addition to direct personal knowledge of Cuyama Valley flora and ecology, and a letter from the California Department of Transportation (Caltrans) identifying the potential for significant impacts to state facilities from flood-related hazards.

Although Harvard's representatives said to the Planning Commission at the hearing that they agreed to have a focused EIR prepared, Harvard changed course and appealed the Commission's decision on questionable legal grounds. As articulated in the Board Letter, **the Board may only grant the appeal if it determines that *no* substantial evidence has been presented to support a fair argument that the project's impacts would be significant after mitigation** (Board Letter, p. 4.) Discussed below, at most Harvard presents conflicting evidence, which under CEQA's applicable "fair argument" standard, does not relieve the County of its obligation to prepare an EIR. The law is clear that if a lead agency is presented with substantial evidence supporting a fair argument that a project may have a significant effect on the environment, "the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." (CEQA Guidelines § 15064 (f)(1) (emphasis added.) Importantly, "[i]t is a question of law, not fact, whether a fair argument exists, and the courts owe

³ The ZA appeal originally set for Feb 28, 2018 was delayed due largely to Harvard's failure to timely provide planning staff with all requested information.

⁴ Substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (CEQA Guidelines § 15384 (b)).

no deference to the lead agency's determination.” (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.)

To the extent there are questions about the proper scope of the EIR’s analysis including how the County’s 31 AFY threshold should be applied, the proper place to address them is in the draft focused EIR which will be circulated for public and agency review and comment. It would be premature and counterproductive for the Board to attempt to constrain the EIR’s scope at this time.

For the reasons articulated herein, we respectfully ask the Board to deny Harvard’s appeal, and direct Staff to commence preparation of a focused EIR.

1. Harvard’s Appeal Fails to Establish that No Substantial Evidence Supports a Fair Argument of Potentially Significant Groundwater Impacts

The Cuyama Groundwater Basin is in a state of Critical Overdraft, with groundwater extraction proceeding at twice the rate of groundwater recharge. Groundwater is the exclusive source of water in the Cuyama Valley, and without adequate groundwater agriculture and human habitation would not be possible. Before Harvard began irrigating the North Fork Ranch, the western Cuyama Valley was almost entirely unirrigated pastureland. Since Harvard began pumping groundwater to irrigate its vineyards, the groundwater level in the western subbasin has dropped by over 60-80 feet.⁵ Wells on nearby properties, including Condor Hope Ranch’s well, that have been stable for decades have experienced groundwater levels dropped as much as 4 feet according to Santa Barbara County Water Agency since Harvard began pumping to irrigate 850 acres of grapes on these arid lands. (See Jaffe-Gliessman letter⁶, September 10, 2018, p. 2, see also section 1.d, below.)

While this established agricultural irrigation is not part of the instant CDP or a subject in this appeal, the observed impact from the pumping helps demonstrate the vulnerability of this portion of the Cuyama groundwater basin to increased extraction given low rates of recharge. The discretionary reservoir project entails substantial additional groundwater extraction for the frost protection system, with a total consumptive water use estimated at roughly 400 AFY.

Harvard argues that the County is compelled to limit its analysis to only whether the evaporative losses from the surface of the reservoirs exceed the County’s 31 AFY threshold (which was adopted 25 years ago). At the Planning Commission hearing, County Counsel advised the Commissioners that they have discretion regarding how to address this issue, and they elected to

⁵ The 60 to 80 foot drops in Harvard’s wells is documented in hydrographs presented to the GSA by consultants Woodard and Curran on December 18, 2018.

⁶ Available at <http://sbcountyplanning.org/PDF/boards/CntyPC/09-12-2018/17APL-00000-00017/Public%20Comment%20Letters.pdf> and incorporated herein by reference.

include impacts from the whole frost protection system.⁷ The Planning Commission's chosen approach comports with CEQA's requirement that the environmental analysis consider the *whole of the Project*, which in this case includes the consumptive water use for the frost protection system. However, even when only evaporative losses are considered, substantial evidence nonetheless supports a fair argument of potentially significant groundwater impacts.

- a. The Project's full consumptive water use must be considered in the EIR's impact analysis

The MND describes the project as "a request to construct and operate three frost ponds (reservoirs) that would store water to be used for frost protection at the North Fork Ranch Vineyards. The project also includes the construction of new underground pipelines that would extend between each of the proposed reservoirs and the existing vineyard irrigation system." (MND p. 1.) A key issue in this appeal is whether it was proper for the MND to constrain its analysis of the Project's groundwater impacts to consider only the water lost from the surface of the frost ponds through evaporation, rather than the full consumptive water use of the frost protection system including water used to fill the frost ponds and protect the grapes from frost. When only surface evaporation is considered, the MND calculates that the Project will utilize 26.28 AFY, which is less than the 31 AFY of groundwater required to trigger a significant impact pursuant to the County's CEQA thresholds. (MND pp. 38-39.) Discussed below and in Exhibit 1, CEQA requires disclosure of all of a Project's impacts, including the water use needed to operate the frost protection system that cannot function without the frost ponds themselves. The MND calculates that the frost protection system consumes approximately 25 AF per 3-hour frost event to protect the grapes from frost (MND p. 37), meaning the County's 31 AFY threshold would be exceeded after only two frost events.

Central to this issue is CEQA's definition of a "Project" that is subject to environmental review. "CEQA's conception of a project is broad, and the term is broadly construed and applied in order to maximize protection of the environment." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271). A CEQA "project" is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . ." CEQA Guidelines § 15378(a) (emphasis added), Pub. Res. Code §21065.) "A project refers to 'the whole of an action', not each individual component." (*County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 385, citing CEQA Guidelines § 15378 (a) (emphasis added).) "The scope of the environmental review conducted for the initial study must include the entire project. Specifically, '[a]ll phases of project planning, implementation, and operation must be considered in the initial study of the project.'" (*Tuolumne County Citizens vi City of Sonora* (2007) 155 Cal.App.1214, 1222 (quoting CEQA Guidelines § 15063(a)(1)).) "Where an agency fails to provide an accurate project description, or

⁷ See Board Letter Attachment 1, Planning Commission Action Letter.

fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate.” (*Nelson*, 190 Cal.App.4th at 270).

Moreover, dividing a whole project into component parts for piecemeal consideration is prohibited by CEQA. (*Id.*, at 272; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal. App. 4th 1209, 1222.) *Nelson* is particularly instructive on this point, explaining:

Since County's analysis of potential environmental impacts in its initial study was limited to the reclamation plan and did not extend to Carlton's mining operations, County failed to review the *entire* project as required by CEQA and thereby abused its discretion. To put it another way, when County focused on the reclamation plan alone, it committed the “fallacy of division” whereby a larger, whole project was improperly divided into component parts for piecemeal consideration. That was error, and the error was clearly prejudicial because County decision makers and the public were thereby deprived of the essential information and environmental analysis that CEQA mandates.

(*Nelson*, 190 Cal.App.4th at 272.)

Even if Harvard could theoretically secure the same volume of water for frost protection without the discretionary CUP (e.g. by increased pumping from their existing wells, drilling new wells, or some combination), that is not a legitimate basis to exclude water used for frost protection from the Frost Ponds Project’s groundwater impact analysis (*County of Ventura*, 24 Cal.App.5th at 386 (“even if the beach restoration could be completed without the agreement, the two became inextricably linked when the agreement was incorporated into the coastal development permit.”)); *Tuolumne County Citizens* (155 Cal.App.4th at 1230 (“[t]heoretical independence is not a good reason for segmenting the environmental analysis”).)

Pursuant to this clear authority, the “Project” that should have been evaluated in the Initial Study and MND is the whole frost protection system, and the environmental document must analyze all aspects of the Project that have the potential for resulting in a direct or reasonably foreseeable indirect physical change in the environment, which necessarily includes the full volume of water needed to provide frost protection for the vineyard.

The County’s Environmental Threshold for the Cuyama groundwater basin can be interpreted in a manner wholly consistent with this CEQA authority. The Threshold provides:

A project is determined to have a significant effect on water resources if it would exceed established threshold values which have been set for each overdrafted groundwater basin. These values were determined based on an estimation of a basin’s remaining life of available water storage. If the project’s net new consumptive water use [total consumptive demand adjusted for recharge less discontinued historic use] exceeds the threshold adopted

for the basin, the project's impacts on water resources are considered significant. The water demand threshold for the Cuyama Valley Groundwater Basin is 31 AFY. The adopted threshold applies only to projects subject to discretionary review by the County, and do not apply to uses, such as agricultural operations, that do not require approval of a discretionary permit.

(MND, p. 35 (emphasis added).) The underlined text indicates that if a project is not subject to discretionary review, it is not subject to the threshold. It appears that Harvard has interpreted this language to mean that it applies to some uses within one Project, and not to others. However, a more reasonable interpretation that is wholly consistent with CEQA is that the term "uses" was likely chosen to distinguish an exempt use to which the threshold does not apply from a "project" subject to CEQA, not to distinguish between uses included in one discretionary project.

CEQA is clear that the determination of whether or not a Project is exempt from environmental review is made before the initial study is prepared, and unless the entire project is exempt, the entire project undergoes environmental review.⁸ In other words, either the whole Project is exempt, or the whole Project is subject to CEQA review. There is no authority in CEQA, its Guidelines or caselaw – either cited by Harvard or the County – that would allow the environmental document to exempt one component of a Project from its environmental analysis.⁹ Indeed, that would amount to prohibited piecemealing. (*See Nelson*, 190 Cal.App.4th at 272.) The interpretation that the County's threshold can apply to some uses contemplated by a discretionary permit application and not others is utterly lacking in legal support.

When the *whole of the Project* is considered, as CEQA requires, the County's groundwater threshold is exceeded, resulting in potentially significant Project-specific and cumulative impacts (*see* MND p. 38, clarifying that the 31 AFY threshold also applies to determining whether the Project has a cumulatively considerable impact) that must be addressed in a focused EIR.

- b. Substantial evidence supports a fair argument that evaporative losses exceed the 31 AFY threshold

Even if the full consumptive water use of the frost protection system is not included in the analysis, there are additional evaporative losses not considered in the MND that, when considered together with evaporation from the surface of the reservoirs clearly exceed the County's 31 AFY threshold. Specifically, the MND significantly understates the quantity of water that will be lost to evaporation by failing to include evaporative losses that occur from spray irrigating for frost-

⁸ An in depth discussion of this issue with all relevant authority is included in our 9/7/18 letter to the Planning Commission (Exhibit A).

⁹ Our 9/7/18 letter to the Planning Commission (Exhibit A) explains in detail why the exemption authority that Harvard relies on is inapplicable.

protection. According to the MND's reasoning, water not directly or indirectly used in support of the existing vineyards, such as evaporative losses, must be considered for the County's 31 AF threshold. (See MND pp. 37-38.) When the full amount of water lost through evaporation is considered, it results in a clear exceedance of the County's threshold. A memorandum attached to our September 10, 2018 letter to the Planning Commission ("Evaporative Loss Memo")¹⁰ includes evaporative loss calculations, supported by data and references, for the entire frost protection system, and concludes that an additional 18.14 AF would be lost to evaporation from the frost sprinklers. Combined with the 26.28 AF in reservoir surface evaporation, the total evaporative loss from the frost protection system is 44.42 AF, clearly exceeding the County's threshold of 31 acre feet of evaporative losses per year and resulting in a potentially significant impact.

- c. Evaporative losses from the surface of the reservoirs results in a potentially significant impact

Even if the County concludes that the 31 AFY threshold only applies to surface evaporation, substantial evidence still supports a fair argument of potentially significant groundwater impacts. CEQA is clear that "a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant." (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342.) Discussed below, the Gibbs Report (Exhibit B) includes substantial evidence supporting a fair argument that the evaporative losses from the surface of the reservoirs alone may result in potentially significant groundwater impacts.

The County's 31 AFY threshold was calculated based expressly on a lesser level of overdraft using 1992 data showing an overdraft of 28,525 AFY, whereas the MND identifies a current overdraft of at least 30,000 AFY. (Gibbs Report, p. 3; MND p. 35.) Mr. Gibbs observes that the thresholds are "severely out of date (25 years old)" and concludes "[t]he 31 AFY Threshold should be recalculated to reflect more current data on the status of the Cuyama Groundwater Basin." (Gibbs Report, p. 3.) Discussed in section 2.i below, the County also has an action item in its Groundwater Resources policies requiring that the County update its groundwater thresholds as new data becomes available and as overdraft conditions persist (*see* Comprehensive Plan, Conservation Element Groundwater Resources Section, **ACTION 3.10.1.**)

Moreover, as explained in the Gibbs Report, according to the County's CEQA Thresholds and Guidelines Manual,

Groundwater supplies are limited in terms of the annual amount of water which can be withdrawn without causing a long term drop in water levels ("Safe Yield") and in the amount of total storage of a basin which can be removed without significant environmental effects ("Available Storage"). These limits make conservative use of water a necessary

¹⁰ Available at <http://sbcountyplanning.org/PDF/boards/CntyPC/09-12-2018/17APL-00000-00017/Public%20Comment%20Letters.pdf> and incorporated herein by reference.

policy in Santa Barbara County in order to avoid or minimize significant and lasting adverse environmental effects.

(Gibbs Report, p. 3, citing the County CEQA Thresholds Manual, pp. 67-68.) Based on this language in the County's thresholds, and his considerable knowledge and expertise regarding the Cuyama Groundwater Basin, Mr. Gibbs concludes:

Based on the overdrafted condition of the Greater Cuyama Groundwater Basin, which per CDWR Bulletin 118 includes the Cottonwood Sub-basin, I believe that the project could result in Potentially Significant Impacts in these areas of Water Resources [subsections a, and g-j of the MND].

(Gibbs Report, p. 3.)

This expert opinion supported by facts that the Project may result in potentially significant impacts to groundwater resources is independent grounds for requiring an EIR. (*See* Pub. Res. Code, § 21082.2 (c); Guidelines, § 15384; *see also* Guidelines § 15064 (g).) This is the case even if an adopted significance threshold is not triggered. (*See Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342 (a public agency cannot apply a threshold of significance or regulatory standard in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.)) Nothing in Harvard's appeal undermines the validity of this substantial evidence.

Additionally, several Planning Commissioners made comments at the September 12th hearing¹¹ acknowledging the potential significance of evaporative losses below the 31 AFY threshold. For example, Commissioner Cooney stated:

with respect to the construction of these ponds, which um—er, reservoirs, which I believe are, uh, without doubt impactive as to, uh, the water basin. And uh, without respect to what crop is benefiting from the water, I think every drop comes out of—of the basin at this point is critical for the future welfare of, uh, the Cuyama Valley, both, uh, western and—and uh, eastern portions.

(9/12/18 Planning Commission hearing; see Exhibit D, p. 2.) Commissioner Brown stated:

I think, primarily for me, it's about the interests of the—of the residents who live in Cuyama Valley. And, if I were one of those, and my well was dropping, 28 acre-feet of water that evaporates would be a lot of water. I think that there is...that there can be a focused EIR, on

¹¹ A transcription of the Planning Commission's deliberations on 9/12/18 between recording marks 3:54:12.6 to 4:36:04.2 is attached hereto as Exhibit D.

those—on those issues where experts disagree and where there are opposing views. As we can see, there’s—there’s quite a few of those.

(9/12/18 Planning Commission hearing; see Exhibit D, p. 4.) These comments add to the substantial evidence supporting a fair argument that even just surface evaporation may result in a potentially significant impact to groundwater. (*See Pocket Protectors*, 124 Cal.App.4th at 931-932, citing *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 155 (“planning commissioner's fact-based opinions, stemming from commission's experience in planning and development, are substantial evidence for a fair argument.”))

d. Inconsistencies with County groundwater policy

In addition to the substantial evidence of physical groundwater impacts discussed above, substantial evidence also supports a fair argument that the Project will violate County groundwater protection policies. “[I]f substantial evidence supports a fair argument that the proposed project conflicts with policies [adopted for the purpose of avoiding or mitigating an environmental effect] this constitutes grounds for requiring an EIR.” (*Pocket Protectors*, 124 Cal.App.4th at 930; CEQA Guidelines, App. G, § IX (b).) Specifically, the County’s Conservation Element includes a Groundwater Resources Section, which sets forth various policies and actions that are directly applicable to this Project, but were not analyzed in the MND or Staff Report. The Project results in numerous inconsistencies with the applicable policies and actions in the Groundwater Resources Section, including the following:

The most relevant of these Groundwater Resources provisions, and the evidence supporting inconsistencies, are discussed below.

Action 3.3.2: The County shall conserve waters to the extent feasible through exercise of the County's discretionary land use planning and permitting decisions, and shall promote such conservation through related public and private actions.

The use of spray irrigation for frost protection is contrary to the County’s groundwater conservation goals and specifically Action 3.3.2. More efficient irrigation methods (finer spray), as well as other alternatives such as wind machines or late pruning (*see e.g. [https://www.kj.com/blog/frost-protection-vineyards.](https://www.kj.com/blog/frost-protection-vineyards)*) should be identified and evaluated as feasible alternatives to the Project through the EIR process.

POLICY 3.4: The County's land use planning decisions shall be consistent with the ability of any affected water purveyor(s) to provide adequate services and resources to their existing customers, in coordination with any applicable groundwater management plan.

With the Cuyama groundwater basin’s state of critical overdraft, and limited recharge, the ability of existing customers to obtain adequate groundwater is not assured as Policy 3.4 requires. The Gibbs’ report explains that groundwater extracted from the Cuyama Groundwater Basin is tens of

thousands of years old and that the “mining of groundwater” is occurring. “Given residential wells in the area are shallower than agricultural wells, this mining of groundwater could result in severe implications for residents and farmers using residential-scale wells like Condor’s Hope Ranch.” (Gibbs Report, p. 2.) The level of water in Appellants’ own well in the Cottonwood Canyon area has shown steady declines, explained in Appellants letter of September 10, 2018 and supported by well data. Specifically, the Appellants letter states:

Santa Barbara County has been monitoring several wells in the Cottonwood Canyon area since September 2016. While data is too short-term to show permanent trends, our own well (data available from Santa Barbara County Water Agency) has shown a worrisome downward trend:

(Numbers are depth to static groundwater level)

October 2016: 119.4 feet (at end of 5 years of drought)

September 2017: 120.5 feet (at the end of an above average wet year)

September 2018: 123.3 feet (at the end of a drought year)

While more study is needed to verify the cause of this downward trend, it correlates with the increased pumping by the North Fork Vineyards.

(Jaffe-Gliessman letter, September 10, 2018, p. 2.)

Action 3.4.3: In areas without a groundwater management plan accepted by the County, County land use plans and decisions shall account for a prudent "margin of safety" against errors in supply/demand estimates, safe yield and available storage estimates, changes in any other relevant conditions in a basin, and other possible unforeseen circumstances. (emphasis added.)

The County has not taken a prudent approach to this Project. Even when only evaporation from the surface of the reservoirs is considered, 26 AFY is close to the 31 AFY threshold. As explained in the Gibbs’ report, there are many uncertainties affecting the future availability of water in this area including the effect of increasing climatic uncertainty on groundwater recharge. (Gibbs Report, pp. 2-3.) In Mr. Gibbs’ professional opinion based on his extensive knowledge regarding this particular groundwater basin, “[u]ntil water augmentation and recharge projects are planned, funded and undertaken to increase percolation to ‘offset further degradation’ and examine ‘sustainability’ as contemplated by SGMA, ***no projects which increase extraction of groundwater should be approved.***” (Gibbs Report, p. 2 (emphasis added).)

POLICY 3.5: In coordination with any applicable groundwater management plan(s), the County shall not allow, through its land use permitting decisions, any basin to become seriously overdrafted on a prolonged basis.

POLICY 3.6: The County shall not make land use decisions which would lead to the substantial over commitment of any groundwater basin.

ACTION 3.5.1: Based on input from the County Water Agency and P&D, the Board, in coordination with the responsible water purveyor(s), shall designate any basins within the county as "seriously overdrafted" if the following conditions are present: Prolonged overdraft which results or, in the reasonably foreseeable future (generally within ten years) would result, in measurable, unmitigated adverse environmental or economic impacts, either long-term or permanent. Such impacts include but are not limited to seawater intrusion, other substantial quality degradation, land surface subsidence, substantial effects on riparian or other environmentally sensitive habitats, or unreasonable interference with the beneficial use of a basin's resources. The County's fundamental policy shall be to prevent such overdraft conditions. (emphasis added)

ACTION 3.5.2: In seriously overdrafted basins, the County shall not approve discretionary development permits if such development requires new net extractions or increases in net extractions of groundwater, pending development and County acceptance of a basin management plan, consistent with the Groundwater Management Act or other applicable law, which adequately addresses the serious overdraft. (emphasis added.)

The Project is a discretionary development permit that requires increases in net extractions of groundwater in a seriously overdrafted basins in violation of Policies 3.5 and 3.6. Pursuant to Action 3.5.2, the County is prohibited from approving such a discretionary permit.

ACTION 3.10.1: The County shall continue to refine and update its "significance thresholds" as new data becomes available and as overdraft conditions persist, as specified in the County's CEQA Guidelines. The County's acceptance of duly prepared and adopted groundwater management plans also may necessitate the adjustment of appropriate groundwater thresholds.

With respect to Action 3.10.1, the County has failed to update its significance thresholds as new data has become available about the severity of the overdraft conditions in the Cuyama Groundwater Basin. Discussed in the Gibbs' report, the County's 31 AFY threshold was calculated based on a lesser level of overdraft based on 1992 data showing an overdraft of 28,525 AFY, whereas the MND identifies a current overdraft of at least 30,000 AFY. Mr. Gibbs concludes "[t]he 31 AFY Threshold should be recalculated to reflect more current data on the status of the Cuyama Groundwater Basin." (Gibbs Report, p. 3.)

Additionally, comments of Commissioner Brown at the Planning Commission hearing serve to bolster the significance of this policy-based substantial evidence. (*See Pocket Protectors*, 124 Cal.App.4th at 931-932, citing *Stanislaus Audubon v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 155 ("planning commissioner's fact-based opinions, stemming from commission's experience in planning and development, are substantial evidence for a fair argument.")) Specifically, Commissioner Brown expressed concern regarding the Project's noncompliance with these policies, stating:

I was disappointed to s—to s—not see, that there was any consistency analysis with the County’s conservation element, the groundwater resources section. I think there are actions in there, that, apply broadly to this project. Specifically, things that talk about the prudent accounting of the conditions. And I think that...from what I read in the public letters, it’s one thing, and what I see from the applicant it’s—it’s slightly different in terms of all these numbers that we see. And I would like to get some better understanding of those, and to get some third party to look at them. Um, and it’s also about some of the—another policy about providing resources for others. It’s a very broad statement. I don’t get that it’s one—one person who’s put in their straws and take it all out. I f—I feel it’s—it’s somewhat a bigger issue than that. And, um, I do read in this policy, it—one of the policies is that the County would not make land decisions that would lead to the substantial overcommitment of any groundwater basin. Well, the basin has been overcommitted for many years.

(Planning Commission hearing, 9/12/18, Exhibit D, pp. 4-5).

2. The Harvard appeal does not establish that no potentially significant impacts to sensitive plants will result from the Project

Construction of the reservoirs will destroy at least 15.6 acres of habitat suitable for a range of native species including special status plant and animal species. The MND identifies significant but mitigable impacts to wildlife, however concludes that impacts to plant species would be less than significant because no special status plants were observed in the Project area. (MND, p. 14.) However, the MND was fundamentally deficient in its description of the environmental baseline with respect to plant species, and accordingly the MND’s impact analysis is inadequate. (*Cadiz Land Co. v. County of San Bernardino* (2000), 83 Cal.App.4th 74, 87 (If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, an adequate analysis of environmental impacts of a project is not possible.)

While the absence of evidence in the record on a particular issue does not automatically give rise to a fair argument that a project may have a significant effect on the environment, an agency “should not be allowed to hide behind its own failure to gather relevant data” and “[d]eficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 311.) Here, Dr. Gliessman, who is highly experienced and qualified in the area of botany and ecology, prepared a letter dated September 6, 2018 addressing the adequacy of the natural resource surveys provided by Harvard and relied on in the MND. Dr. Gliessman concludes that because the biological surveys carried out by Kevin Merk Associates (KMA) were conducted during a period of extended drought, they are insufficient to identify several endangered and threatened species of plants that may be impacted by the Project. To support his conclusion Dr. Gliessman refers to a paper on the impact of drought in the Carrizo Plan and northern Cuyama Basin, in which a very

dramatic reduction in observed populations of all plant and animal species three years into the drought. (Exhibit C, 9/6/18 Gliessman Letter, p. 1, fn. 1.)

Dr. Gliessman identifies a list of 25 threatened plant species, including four that have been collected in the past in the Project's immediate vicinity and another 13 that have been found in nearby Cuyama Valley areas (*Id.*, p. 2, fn. 2.) Based on the likely presence of these sensitive plants, Dr. Gliessman concludes:

in my opinion, and based on my review of the Project plans and MND, the potential presence of the above plants in and around the Project site creates a reasonable possibility that the Project may result in significant impacts according to the Count's thresholds for impacts to flora through loss or disturbance of unique, rare and threatened plant communities, and a reduction in the numbers of unique, rare or threatened species of plants (MND p. 11.)

Given the deficient biological resource surveys, the expert fact-based opinion of Mr. Gliessman clearly constitutes substantial evidence supporting a fair argument of a potentially significant impact to biological resources. (*See Sundstrom*, 202 Cal. App. 3d at 311; Pub. Res. Code, § 21082.2 (c); Guidelines, § 15384.))

On appeal, Harvard argues that because the surveys were conducted in 2016 and 2016 was a normal rain year, that the surveys were adequate. However, as Dr. Gliessman explains in his most recent letter, the timing of surveys and the rain events in 2016 were such that it would not have affected native plant populations. (*See* Gliessman letter 2/1/19, submitted to the Board separately.) Additionally on appeal Harvard argues the land was previously disturbed with disking and grazing. However, Dr. Gliessman explains that these activities would not have eliminated the potential for substantial plant populations to thrive in the area, and in fact he notes that extensive research by conservation biologists and rangeland managers shows that removal of the non-native grasses by grazing allows the presence of native species. (*Id.*)

Additionally, comments by Commissioner Parke based on his own personal experience add to the substantial evidence supporting a fair argument of potentially significant biological impacts. Specifically, at the Planning Commission hearing Commissioner Parke explained:

I've spent years going over some of that property at about 7 miles per hour, foot by foot, okay, and we'd go across, uh—up Schoolhouse Canyon and down Cottonwood, and—and—and across the properties, behind the foothills, connecting those two, and along the Russel Ranch, and—and—and down under the highway, I spent a lot of time out there. And you know...and that was always usually March, April...the area looks phenomenally different, on the ground, depending on how much rain it got that year. And—and I know, from what I've seen of that uh, habitat, it'll look very differently when we had some rain years, and you'd see fabulous flower displays on that kinda, western edge of Cottonwood Canyon, the

little hilly part, than—than—than maybe it has for the last few years. So I am a little concerned that the, uh, studying of—of—of—of this area in 2016 isn't really, uh, exemplary of—of what it's like over time. ... So um, based on what I know, and you've heard what I don't know, and wish I did know, um, I—I believe an EIR is appropriate. And necessary.

Discussed above, a planning commissioner's fact-based opinions, stemming from their experience in planning and development, are substantial evidence for a fair argument. (*See Pocket Protectors*, 124 Cal.App.4th at 931-932, *Stanislaus Audubon*, 33 Cal.App.4th at 155)

3. Potentially significant flooding impacts

The Planning Commission raised concerns regarding flooding based on a comment letter Caltrans submitted on the MND identifying the following potentially significant impact:

Water Resources/Flooding

The document states that the proposed project would be required to comply with County Grading Ordinance requirements to ensure that the proposed reservoir berms are structurally adequate to contain the water impounded by the reservoirs. The document concludes that the project would have **no impact** related to flood-related hazards. However, Caltrans notes that the potential exists for catastrophic failure of the berms and inundation of SR 166 resulting in potentially significant impacts to state facilities. Caltrans is concerned regarding the adequacy of the County Grading Ordinance requirements, and recommends the incorporation of a mitigation measures to require review and approval of the berms by the California Department of Water Resources in order to ensure structural integrity and adequacy and reduce potential impacts to **less than significant with mitigation**.

(7/7/17 Caltrans letter (Board Letter, Attachment 2, also attached hereto as Exhibit E.) The final MND was not revised to refine this impact analysis or incorporate the mitigation proposed by Caltrans. (8/18 MND, p. 37, (e-f).)

Comment letters from agencies based on their expertise in the relevant area are considered substantial evidence supporting a fair argument of potentially significant impacts. (*See Nelson*, 190 Cal.App.4th at 284-285.) Additionally, in requesting the additional analysis Commissioner Brown stated:

But, there was a letter from Caltrans, that—that's talking about uh, dam failure, I know this isn't a dam, but it's close to being a dam. Darn dam. And, I'm wondering if that could be part of uh, consideration, if there is failure of this em—20 foot embankment, and inundation of 166? Caltrans expressed that concern. And I didn't see anything in it—in the MND on that.

(9/12/18 Planning Commission Hearing, Exhibit D, p.12.) Discussed above, planning commissioner's fact-based opinions, stemming from commission's experience in planning and development, are substantial evidence for a fair argument. (*See Pocket Protectors*, 124 Cal.App.4th at 931-932, *Stanislaus Audubon*, 33 Cal.App.4th at 155.) Discussion in the focused EIR is warranted, including consideration of the mitigation measure proposed by Caltrans.

4. Conclusion

For the foregoing reasons, we respectfully request that the Board deny Harvard's appeal and allow Staff to commence preparation of a focused EIR for the Project.

Sincerely,

LAW OFFICE OF MARC CHYTILO

/s/ Ana Citrin

Ana Citrin
Marc Chytilo
For Appellants Jaffe and Gliessman

Exhibit A: 9/7/18 Letter to Planning Commission
Exhibit B: 9/5/18 Gibbs Report (Yulalona Hydrology)
Exhibit C: 9/6/18 Gliessman Letter
Exhibit D: Planning Commission hearing transcript
Exhibit E: 7/7/17 Caltrans MND Letter

LAW OFFICE OF MARC CHYTILO, APC

ENVIRONMENTAL LAW

September 7, 2018

Santa Barbara County Planning Commission
Santa Barbara County
123 E. Anapamu Street
Santa Barbara, CA 93101

By email to dvillalo@co.santa-barbara.ca.us

RE: North Fork Ranch Frost Ponds Appeal; Legal Question Regarding MND Scope

Dear Chair Blough and Honorable Planning Commissioners,

This office represents Roberta Jaffe and Stephen Gliessman, Appellants in this matter. Ms. Jaffe and Mr. Gliessman are Cuyama Valley residents and farmers of a 5-acre dry-farming operation called Condor's Hope Ranch. Appellants have already submitted several letters into the record including a report from professional hydrologist Dennis Gibbs to support our appeal, and this office will submit an additional letter responding in full to the Staff Report before Monday's noon submittal deadline. This letter addresses one specific legal issue that is central to the adequacy of the Mitigated Negative Declaration (MND) prepared for the North Fork Frost Ponds Project ("Project"), that we want to ensure the Applicant and County Counsel have the opportunity to fully review and respond to.

The Cuyama Valley relies on groundwater as its exclusive source of water. Agriculture and human habitation would not be possible in the Cuyama Valley without adequate groundwater. The Cuyama Groundwater Basin is in a state of Critical Overdraft, with groundwater extraction proceeding at twice the rate of groundwater recharge. The County's Environmental Thresholds, as described in the MND, provide:

A project is determined to have a significant effect on water resources if it would exceed established threshold values which have been set for each overdrafted groundwater basin. These values were determined based on an estimation of a basin's remaining life of available water storage. If the project's net new consumptive water use [total consumptive demand adjusted for recharge less discontinued historic use] exceeds the threshold adopted for the basin, the project's impacts on water resources are considered significant. The water demand threshold for the Cuyama Valley Groundwater Basin is 31 AFY. The adopted threshold applies only to projects subject to discretionary review by the County, and do not apply to uses, such as agricultural operations, that do not require approval of a discretionary permit.

(MND, p. 35.)

LAW OFFICE OF MARC CHYTILO, APC
P.O. Box 92233 • Santa Barbara, California 93190
Phone: (805) 682-0585 • Fax: (805) 682-2379
Email(s): marc@lomcsb.com (Marc); ana@lomcsb.com (Ana)

EXHIBIT A

A key issue in this appeal is whether it was proper for the MND to constrain its analysis of the Project's groundwater impacts to consider only the water lost from the surface of the frost ponds through evaporation, rather than the water used to fill the frost ponds and protect the grapes from frost. This issue is central to the question of whether the Project's impacts to groundwater are significant. When only this surface evaporation is considered, the MND ascertains that the Project will utilize 26.28 AFY, which is less than the 31 AFY of groundwater required to trigger a significant impact pursuant to the County's CEQA thresholds. (MND pp. 38-39.) However, at least 147-AFY, and likely much more than that, will be actually used for operation of the Frost Ponds, which unquestionably exceeds the County's CEQA threshold. A CEQA document must evaluate the *whole of a development proposal* with the potential to impact the environment, not merely the governmental approval. (CEQA Guidelines §§ 15378 (a, c and d).) Discussed below, there is simply no legal basis for excluding the Project's consumptive water use from the environmental analysis simply because the water will be used for agricultural purposes.

The Staff Report states on page 8 (emphasis added):

Since the proposed water storage reservoirs require the approval of a discretionary permit (a Minor Conditional Use Permit), their construction and operation is subject to CEQA review. *However, water that would be stored in the reservoirs and applied directly to the vineyards for frost protection would support an allowed agricultural use, similar to the application of irrigation water, and that water is not a discretionary action that is subject to CEQA review.*

The first sentence above accurately characterizes the construction and operation of the frost ponds as a discretionary project requiring CEQA review. The second sentence essentially provides that where a project like this includes both discretionary and ministerial elements, only the discretionary elements are subject to CEQA review. This proposition is plainly contrary to CEQA.

CEQA identifies a three-step process:

First, the Lead Agency, during its "preliminary review" of a project, determines whether an agency is contemplating "approval" of a "project," and whether the project is subject to CEQA or is exempt.

Second, if the project is not exempt, the Lead Agency prepares an Initial Study to determine whether the project may have a significant effect on the environment, and then prepares a Negative Declaration if there is no substantial evidence of significant effect.

Third, if the Initial Study shows that the project may have a significant effect on the environment, the Lead Agency prepares an Environmental Impact Report (EIR).

(California Environmental Law & Land Use Practice § 21.02 (2018).) Determining whether a project is "discretionary" or "ministerial" involves the first step. **Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the**

project will be deemed to be discretionary and will be subject to the requirements of CEQA.” (CEQA Guidelines § 15268 (d) (emphasis added).)

The “Project” that proceeds to step 2 is “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment” (CEQA Guidelines § 15378 (a)). “Project” refers to the underlying development proposal, not the governmental approval. (Id., subd. (c) and (d “the lead agency shall describe the project as the development proposal for the purpose of environmental analysis”)) (emphasis added.) Accordingly, pursuant to CEQA Guidelines sections 15268 (d) and 15378, the “Project” analyzed in the environmental review document cannot be limited to only the discretionary elements of the proposal. Moreover, whether a particular activity constitutes a CEQA “project” is a question of law; courts do not defer to Lead Agency determinations of whether an activity is a project. (California Environmental Law & Land Use Practice § 21.02 (2018); California Environmental Law & Land Use Practice § 21.05 (2018); *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 795.)

We have found no case upholding a decision to exclude an element of a Project from the environmental analysis of an otherwise discretionary project because that element would not individually require governmental approval. The Applicant has identified several cases, discussed in turn below, that they believe are helpful in supporting their case. However, none of these cases involve projects being approved with discretionary permits, like the Frost Ponds Project.

Friends of Westwood v. City of Los Angeles (1987) 191 Cal.App.3d 259, 266-267, explains why CEQA applies to discretionary projects, but does not in any way support an assertion that the scope of the “Project” considered in the Frost Pond MND can exclude consideration of Project water use:

As applied to private projects, the purpose of CEQA is to minimize the adverse effects of new construction on the environment. To serve this goal the act requires assessment of environmental consequences where government has the power through its regulatory powers to eliminate or mitigate one or more adverse environmental consequences a study could reveal. Thus the touchstone is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report. And when is government foreclosed from influencing the shape of the project? Only when a private party can *legally compel* approval without any changes in the design of its project which might alleviate adverse environmental consequences.

Clearly here, the Applicant cannot legally compel approval of the Frost Ponds Project. The Planning Commission is well within its discretion to apply mitigation measures or alternatives that reduce the water used by the Project, and accordingly reduce the potentially significant impact to groundwater resources. Such measures and alternatives potentially include more efficient

sprinklers, the use of wind machines, and delayed pruning, among other things. (See e.g. <https://www.kj.com/blog/frost-protection-vineyards>.)

Leach v. City of San Diego (1990) 220 Cal.App.3d 389 determined that a decision to draft water from one reservoir to another was ministerial and not subject to CEQA review. Importantly however, the action at issue in *Leach* did not involve the construction or operation of the reservoirs. There was no discretionary action linked to the drafting. Here by contrast, the action proposed for approval is the *construction and operation* of three frost ponds. The approval indisputably requires a discretionary Conditional Use Permit.

San Diego Navy Broadway Complex Coalition v. City of San Diego (2016) 185 Cal.App.4th 924 concerned the question of whether a subsequent action concerning a project, after that project had been approved with an EIR, triggered CEQA's subsequent environmental review requirements. The court determined no subsequent environmental review was required in part because the discretion available to the agency was strictly limited to aesthetics, and the environmental impacts at issue in the petition concerned global climate change only. The court declined to determine whether CEQA could be applied to address aesthetic issues, because the petition did not request subsequent environmental review concerning aesthetics. (*Id.* at 939.) In the Frost Pond context however, the environmental impact at issue concerns groundwater use, and the Project itself over which the Planning Commission has plenary discretion will impound and consume groundwater. Accordingly, *San Diego Navy* is readily distinguishable both in its procedural posture and on its facts, and it fails to lend any support to the proposition that the Frost Ponds MND may exclude consumptive water use from consideration in the impact analysis.

Sierra Club v. Napa County Board of Supervisors (2012) 205 Cal.App.4th 162, 180 again clarifies that the approval process involved must allow the government to shape the project in a way which responds to the concerns that could be identified in an EIR. Again however, because the Frost Ponds Project clearly requires the approval of a discretionary CUP, the Planning Commission has the discretion to condition the Project in a way that would reduce water use, or indeed could deny the Project outright.

The quantity of water the Applicant could theoretically use through alternative means that would not involve a discretionary permit is not relevant to the determination of whether the environmental analysis for *this Project*, approved under a discretionary CUP, may *exclude* the water used during operation of the Project in its environmental analysis. A long line of cases hold that an initial study or negative declaration "must focus on impacts to the existing environment, not hypothetical situations". (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 321, 323.) In *Communities for a Better Environment*, the California Supreme Court reasoned as follows:

the Negative Declaration reasons that the increased steam production the Diesel Project called for was within the boiler permits' maximum operational levels and "could, therefore,

occur even if the proposed project did not commence (exist)." By comparing the proposed project to what *could* happen, rather than to what was actually happening, the District set the baseline not according to "established levels of a particular use," but by "merely hypothetical conditions allowable" under the permits. (*San Joaquin Raptor Rescue Center v. County of Merced, supra*, 149 Cal.App.4th at p. 658.) Like an EIR, an initial study or negative declaration "must focus on impacts to the existing environment, not hypothetical situations." (*County of Amador v. El Dorado County Water Agency, supra*, 76 Cal.App.4th at p. 955.)

An approach using hypothetical allowable conditions as the baseline results in "illusory" comparisons that "can only mislead the public as to the reality of the impacts and subvert full consideration of the actual environmental impacts," a result at direct odds with CEQA's intent. (*Environmental Planning & Information Council v. County of El Dorado, supra*, 131 Cal.App.3d at p. 358.) The District's use of the prior permits' maximum operating levels as a baseline appears to have had that effect here, providing an illusory basis for a finding of no significant adverse effect despite an acknowledged increase in NOx emissions exceeding the District's published significance threshold.

(Id. at 323.) Pursuant to this authority, the impacts of the Frost Ponds Project must be measured against the existing conditions on the ground, not against a hypothetical scenario such as the Applicant increasing water use to the same degree via other non-discretionary means.

To conclude, CEQA plainly requires that once a Project is determined to be subject to CEQA, the CEQA document must evaluate the *whole of the development proposal*. (CEQA Guidelines § 15378 (a).) The Project analyzed is not limited to the specific portion of the Project over which the County has approval jurisdiction. (Id. subd. (c and d).) Here, the development proposal is the construction and operation of three frost ponds that would store water to be used for frost protection. Operation of the frost ponds includes the sustained spray irrigation of approximately 1,000 acres of existing vineyards for frost protection purposes. There is simply no legal basis for excluding this water use from the environmental analysis.

Respectfully submitted,

LAW OFFICE OF MARC CHYTILO, APC



Ana Citrin

Marc Chytilo

For Appellants Jaffe and Gliessman

CC: County Counsel
Steve Rodriguez, Planner

YULALONA HYDROLOGY

PO Box 63

Bonanza, OR 97623

805-451-4179

dennisgibbs@yahoo.com

September 5, 2018

Mr. Daniel Blough

Chair, Santa Barbara County Planning Commission

123 East Anapamu Street

Santa Barbara CA 93101

Dear Mr. Blough and Honorable Santa Barbara County Planning Commission Staff (SBCPC)

I have been retained on behalf of Mr. Steve Gliessman and Ms. Roberta Jaffe of *Condor's Hope Ranch* (CHR), located in the Cottonwood Canyon Subarea of the Cuyama Valley and Cuyama Groundwater Basin (CGB) to provide an unbiased review of the documents and analyses provided as part of the proposed "North Fork Ranch Frost Ponds" Case No. 16CUP-00000-00005, by the Applicant Brodiaea, Inc. My qualifications to comment on this matter and project include 30 years of experience in all aspects of hydrology and hydrogeology, 20 years of experience monitoring and reporting on water conditions in the Cuyama Valley, eight years of experience serving as the "project manager" for the US Geological Survey – Santa Barbara County Water Agency Water Availability Study (2014) and a professional license in the field of Hydrology.

I would like to concisely bring to your attention **five** deficiencies as the above referenced project is evaluated, and which implicate potentially significant impacts under CEQA. This "summary assessment" could be developed further with the investment of additional resources, however that would be the function of a more robust environmental review process.

1. The applicant claims abundant groundwater resources are available in the project area but no peer reviewed published literature exists to support such claims. CHR requested the analysis of "groundwater availability" used by the applicant to support such claim but the request for transparent information was denied.
2. The project area lies within the boundaries of the Cuyama Groundwater Basin (CGB) as defined by the California Department of Water Resources (CDWR) Bulletin 118 which has been defined to be in a critical state of "overdraft" or "usage greater than replenishment". The applicant states that the project area is separated from the Cuyama Groundwater Basin and residential and small scale farmstead water wells but again there is no scientific peer reviewed work to support this claim.
3. The applicant states that "imbalance" of the Basin is not relevant since the *County of Santa Barbara Environmental Thresholds and Guideline Manual* (1992) state a "threshold of significance of 31 acre-feet per year" for a project in the CGB to require further environmental review. These "thresholds" are severely out of date (25 years old).
4. The applicant has grossly underestimated water demand for the project.
5. The applicant has overemphasized needed usage of water for "frost protection".

I will expand on each of the aforementioned points in detail:

1. No proof of long term Water Availability

Previous investigations by Federal, State and Local Agencies indicate the overall Cuyama Groundwater Basin “imbalance” from a low of 14,600 Acre Feet per Year to a high of 38,000 Acre Feet per Year, with a mean or average of 28,100 Acre Feet per Year and a **median value of 30,300 Acre Feet per Year**. According to the US Geological Survey (USGS) the overall Hydrologic Budget of the CGB is in a serious condition of “overdraft” or “imbalance” or “usage greater than replenishment”, and has been for many decades (Hanson, 2014, 2015 and others).

The Cuyama Groundwater Basin has been declared to be in a state of “critical overdraft” by the CDWR. This includes the Cottonwood Canyon Subarea as defined in CDWR Bulletin 118 (2003), where the Project would extract its water. As such, this Basin is one of 21 Basins in California that are designated “High Priority” and must submit a Groundwater Sustainability Plan under the Sustainable Groundwater Management Act (SGMA) to the CDWR by January 2020. Until water augmentation and recharge projects are planned, funded and undertaken to increase percolation to “offset further degradation” and examine “sustainability” as contemplated by SGMA, no projects which increase extraction of groundwater should be approved. Approving a project that will cause a significant increase in groundwater extractions before the SGMA Groundwater Sustainability Plan is adopted and implemented in less than 18 months could substantially prejudice the Groundwater Sustainability Plan and increase the burdens of achieving sustainability of this resource as required by SGMA.

The Project Applicant has made the claim of abundant groundwater resources available in the area but has denied requests to review their analyses to prove such. They claim this Cottonwood subarea is named the *Ruby Star Groundwater Basin* but this “Basin” is not cited in any US Geological Survey (USGS), California Department of Water Resources (CDWR), US Department of Agriculture (USDA), Santa Barbara County (SBC) or any other peer reviewed and published literature. The Applicant has also made the argument that geological fault barriers separate the project water production area from residential wells in Cottonwood Canyon, and has an “available storage” of 54,000 Acre-Feet of groundwater, but there are no published studies which have been adequately peer reviewed to support this claim **and requests by CHR to review the analysis used to make these claims were denied** Without credible, verifiable and peer reviewed evidence supporting the Applicant’s contrary claims that the project will extract groundwater from a separate isolated basin, it must be assumed that the Project proposes to utilize water from the CGB.

2. The Project could adversely affect existing groundwater users in the area

Recent studies (Everett, 2013), have indicated that much of the groundwater extracted in the Cuyama Groundwater Basin is thousands to tens of thousands of years old indicating that simply “the mining of groundwater” is occurring. Given residential wells in the area are shallower than agricultural wells, this mining of groundwater could result in severe implications for residents and small farmers using residential-scale wells like *Condor’s Hope Ranch*.

In addition, based on my review of evidence of increasing climatic uncertainty and by interpolating local dendrochronology records that disclose long-period historical and pre-historical trends, I believe that

higher extremes of dry periods (longer and more severe) can be expected. Tree ring analysis and reconstruction of climate has been done for the Santa Ynez River Watershed (Michaelsen and Haston, 1988) indicates that since 1537 there have been major fluctuations in precipitation variability including changes in the frequency of extremes and rare events that have not occurred during the time of modern written records. The recharge of waters to the Cuyama Groundwater Basin could be substantially diminished in the future based on these trends and related evidence.

3. Applicant Claims the “existing imbalance of the Basin is not relevant”

The applicant states that “imbalance” of the Basin is not relevant since the *County of Santa Barbara Environmental Thresholds and Guideline Manual* (1992) state a “threshold of significance of 31 acre-feet per year” for a project in the Cuyama Groundwater Basin to require further environmental review. These “thresholds” are severely out of date (25 years) and the Final MND more than tripled the amount of annual evaporative loss for the proposed “frost ponds” from 8.14 acre feet per year to 26 acre feet per year, based on the change of keeping water in the “frost ponds” year round to alleviate damage to pump and control systems. This alone equates to an increase of over 300% in loss of valuable water to direct evaporation and thins the margin between the 1992 accepted “thresholds” of 31 acre feet per year. There is no guarantee in place that the “frost ponds” will only hold 3 feet of water in non-frost months and most likely the loss will be significantly greater than 31 acre feet per year for ponds with a cumulative area of 15.6 acres in an arid environment such as the Western Cuyama Valley. Additionally, the 31 AFY Threshold was calculated based on a lesser level of overdraft, as detailed in Table 2 of the County’s 2008 CEQA Thresholds, which is based on 1992 data. The 1992 Cuyama Groundwater Basin overdraft was 28,525 AFY, whereas the Negative Declaration discloses that the 2014 overdraft is at least 30,000 AFY (Page 35 of FMND). The 31 AFY Threshold should be recalculated to reflect more current data on the status of the Cuyama Groundwater Basin.

According to the Santa Barbara County Planning Department’s CEQA Thresholds and Guidelines Manual (2008) “Groundwater supplies are limited in terms of the annual amount of water which can be withdrawn without causing a long term drop in water levels (“Safe Yield”) and in the amount of total storage of a basin which can be removed without significant environmental effects (“Available Storage”). These limits make **conservative use** of water a necessary policy in Santa Barbara County in order to avoid or minimize significant and lasting adverse environmental effects” (Pages 67-68).

Therefore, I disagree with sub sections **a.** and **g. through j.** of section 4.16 Water Resources/Flooding of the Final Mitigated Negative Declaration dated August 11, 2017 for project 16CUP-00000-00005 which state Less than Significant Impacts. Based on the overdrafted condition of the Greater Cuyama Groundwater Basin, which per CDWR Bulletin 118 includes the Cottonwood Sub-basin, I believe that the project could result in Potentially Significant Impacts in these areas of Water Resources.

4. The Applicant has grossly underestimated water usage for the Project

I have carefully reviewed and disagree with the conclusions in the “Analysis of Reservoir Evaporative Losses” provided to the Applicant by *Monsoon Consultants* because it does not accurately account for local climatic conditions. Based on my knowledge of the area, and on available data, I believe that the overall annual evaporative losses would significantly exceed the threshold of 31 acre feet per year, and

further that this threshold should be lowered to avoid significant direct project and cumulative impacts to the Cuyama Groundwater Basin. The analysis understates the amount of evaporation by not taking into account potential “frosts” during the month of May and the minimum storage needed in winter months to alleviate damage to pond-pump infrastructure.

In addition, water duty projections are unrealistic. The Applicant has suggested that the Vineyards will only consume a depth of approximately 0.8 feet of water per year. The UC Cooperative Extension estimates “Irrigation Water Use by Crops in Santa Barbara County” (Included in this correspondence as Appendix A). The chart, which is a part of the County’s CEQA Thresholds, lists a range of 1.0 to 3.0 feet of water usage for Grapes in the Santa Ynez, Los Alamos and Sisquoc Valleys with an average value of 2.0 feet. As of 1981 when this work was accomplished, viticulture in the Greater Cuyama Valley was rare to absent and thus no values were presented for such locale. However, it is well established that the Cuyama Valley provides a much hotter and more arid climate than the Santa Ynez, Los Alamos or Sisquoc areas and does not experience any “sea breeze” which cools and increases humidity in those regions. For all these reasons, I believe that the value of projected water use to raise wine grapes in the Cuyama region must be assumed to be greater than 2.0 feet. Using a value of 2.5 feet which in my opinion more accurately describes likely water usage for the Project in its location, with 850 acres in production, this equates to an extraction of approximately 2130 acre-feet per year in a “critically overdrafted groundwater basin” as defined by CDWR, versus the approximate 680 acre-feet using the value (depth) of 0.8 feet. Thus, the combination of the project’s extraction to maintain and utilize the frost ponds with the more realistic amount of water needed to grow the crops themselves supports the conclusion that the project will have a significant cumulative impact to the Cuyama Groundwater Basin.

5. The applicant has overemphasized needed usage of water for “frost protection”

It is widely known in the viticulture industry that water consumption for “frost protection” can be minimal when utilizing the latest technology in fine spray nozzles compared to the overall consumptive water use for the maturity and viability of such crops (Sisquoc Ranch Staff, 2017). It is also widely known that in many agriculturally developed areas where “instantaneous” water production from groundwater wells cannot meet needed irrigation requirements, “storage” ponds are commonly used. These facts, combined with the size of the proposed ponds at just under the minimum requirement to be defined as a “Dam” by the US Bureau of Reclamation at 49 acre feet, raises a distinct possibility (if not probability) that the applicant will use these structures for routine irrigation since the frost protection goals can be met through different techniques that do not justify such large water storage facilities on these lands.

While the Applicant threatens that without the frost ponds, they could be forced to install larger pumps and/or add additional wells, these alternatives would avoid the evaporative losses from the surface of the frost ponds, and would avoid the other impacts to the environment from constructing the frost ponds.

Summary

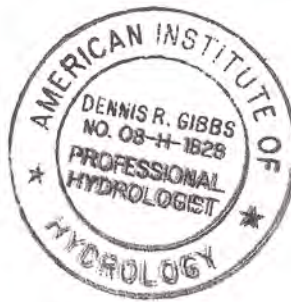
There has been a historical lack of “comprehensive planning” for water supplies and land use in the Cuyama Valley, where all water users must rely exclusively on groundwater or are limited to “dry farming”. In the Cottonwood Subarea where the proposed project would extract groundwater there have been no peer reviewed published technical reports by any public or private agency which would support the conclusion that ample groundwater supplies exist and surface detention of water is a

prudent practice. In addition, the Sustainable Groundwater Management Act (SGMA) dictates conservation requirements must be put in place by 2020.

Based on my knowledge, experience and study of local geohydrology, and review of the proposed project and MND, I believe there is ample evidence that supports the conclusion that the proposed project could result in significant adverse effects to the water resources of the Cottonwood Subarea of the Cuyama Groundwater Basin as designated by the California Department of Water Resources Basin 3-13 (CDWR, 2003). It is my opinion that Santa Barbara County should not approve the referenced project (16CUP-00000-00005) without complete environmental review in regards to utilization of existing Water Resources.



Dennis Gibbs, P.H.
Yulalona Hydrology



References

- Ahthroth et al, Santa Barbara County Water Agency Technical Memorandum, 1992
- California Department of Water Resources, Bulletin 118, 2003
- Crippen, Natural Water Loss and Recoverable Water in the Mountain Basins of Southern California, USGS GSP 417-E, 1965
- Sisquoc Ranch, Personal Communication, 2017
- Everett et al, Geology, Water-Quality, Hydrology, and Geomechanics of the Cuyama Valley Groundwater Basin, California, 2008–12, 2013
- Hanson et al, Hydrologic Models and Analysis of Water Availability in Cuyama Valley, California, 2014
- EKI Consultants, Preliminary Findings from Review of the USGS Study of the Cuyama Valley Groundwater Basin, 2017
- Michaelsen and Haston, Reconstruction of the flows of the Santa Ynez River at Bradbury Dam, Santa Barbara County California 1537-1964, 1998
- Monsoon Consultants, North Fork Vineyards Frost Protection Reservoirs #1, #2 & #3 – Analysis of Reservoir Evaporative Losses, 2017
- NOAA Technical Report NWS 34, Mean Monthly, Seasonal and Annual Pan Evaporation for the United States, 1982
- Pierotti et al, Evaluation of Groundwater Overdraft in the Southern Central Coast Region, Technical Information Record SD-98-1, 1998
- Santa Barbara County Planning Department, CEQA Guidelines and Thresholds Manual, 2008
- Santa Barbara County Water Agency, Adequacy of the Groundwater Basins of Santa Barbara County, 1977
- Santa Barbara County Water Agency, Santa Barbara County 2011 Groundwater Report, 2011
- Santa Barbara County Water Agency, 2014 Groundwater Update, 2014
- Santa Maria Valley Water Conservation District Staff, Twitchell Dam, Personal Communication, 2018
- Singer and Swarzenski, Pumpage and Ground-Water Storage Depletion in Cuyama Valley, California, 1947-66, U.S. Geological Survey Open File Report, 1970.
- Sweetkind et al, Construction of 3-D Geologic Framework and Textural Models for Cuyama Valley Groundwater Basin, California, 2013
- Turner, K.M., Reliability of Storage Schemes, Tree Rings, and Hurst Phenomena, California Department of Water Resources, 1992.

Santa Barbara County Planning Commission
September 5, 2018

UC Santa Barbara Bren School, Conservation Assessment for the Cuyama Valley: Current Conditions and Planning Scenarios, 2009

UC Santa Barbara Cooperative Extension, Irrigation Water Use by Crops in Santa Barbara County, 1991

United States Department of Agriculture, Cuyama Valley Irrigation Water Management and Ground Water Study, 1988

United States Geological Survey Press Release, Cuyama Valley Groundwater Withdrawals Are Double The Long-Term Replenishment, 2014

Upton and Worts, Ground Water in the Cuyama Valley California, USGS WSP 1110-B, 1951

APPENDIX A

IRRIGATION WATER USE BY CROPS IN SANTA BARBARA COUNTY

CROP	South Coast Area		Santa Maria & Lompoc Valleys		Santa Ynes, Los Alamos, & Sisquoc Valleys		Cuyama Valley	
	Range	Ave	Range	Ave	Range	Ave	Range	Ave
<u>Field Crops</u>								
Beans			.5-1.3	1.0	.9-1.5	1.3	1.0-1.7	1.5
Corn, field			1.5-2.2	1.8	2.0-2.8	2.2	2.4-3.2	2.8
Grain, irrigated			.3- .7	0.5	.6-1.0	.8	1.0-1.8	1.5
Sugar Beets			2.6-3.2	3.0	3.0-3.6	3.2	3.6-4.6	4.0
<u>Forages & pastures</u>								
Alfalfa			2.6-3.3	3.0	3.0-4.0	3.5	4.0-4.6	4.3
Pasture/irrigated			2.8-3.3	3.0	3.3-4.0	3.7	4.0-4.6	4.3
Sudangrass			1.0-1.8	1.5	1.3-2.0	1.7	2.0-3.0	2.5
<u>Ornamentals</u>								
Cut Flowers/field	1.5-2.3	1.8	1.5-2.3	1.8				
Flower seeds			1.5-3.0	2.3	2.0-3.5	2.7		
Greenhouse-								
-Carnations	2.0-3.0	2.5						
-Mums, pompom	3.0-4.5	4.0						
-Mums, potted	4.5-5.5	5.5						
Turfgrass	2.5-2.8	2.7	2.5-2.8	2.7	3.0-4.0	3.5	3.5-4.5	4.0
<u>Trees and Vines</u>								
Avocados	1.0-2.0	1.6	1.1-2.1	1.7				
Deciduous Fruits			1.2-2.0	1.7	1.5-3.0	2.5	3.0-4.5	3.8
Grapes			.7-1.8	1.2	1.0-3.0	2.0		
Lemons	.8-1.8	1.5	1.0-2.0	1.6				
Walnuts	1.0-2.0	1.5	1.3-2.5	1.8	2.0-3.5	3.3		
<u>Vegetables</u>								
Broccoli/Cabbage			1.3-1.5	1.4	1.5-2.0	1.7		
Cauliflower			1.5-2.0	1.7	2.0-3.0	2.5		
Carrots			1.5-3.0	2.3	2.0-2.5	2.2	2.5-3.5	3.0
Celery			2.0-2.5	2.2	2.0-2.5	2.2		
Lettuce			1.0-1.3	1.1	1.0-2.0	1.5		
Potatoes			1.5-2.0	1.7	2.0-3.0	2.5		
Strawberries	2.5-3.5	3.0	2.5-3.0	2.7				
Tomatoes	1.0-2.0	1.5	1.5-2.0	1.7				

See back page for assumptions.



ENVIRONMENTAL STUDIES DEPARTMENT

SANTA CRUZ, CALIFORNIA 95064

September 6, 2018

Mr. Daniel Blough
Chair, Santa Barbara County Planning Commission
123 East Anapamu Street
Santa Barbara CA 93101

Dear Mr. Blough and Honorable Santa Barbara County Planning Commissioners (SBCPC):

I respectfully submit this letter in regards to the natural resource surveys provided as part of the proposed “North Fork Ranch Frost Ponds” Case No. 16CUP-00000-00005, by the Applicant Brodiaea, Inc. My qualifications to provide technical, expert opinion on this aspect of the project include almost 50 years of experience in botany and ecology, B.A., M.A, and PhD degrees in Botany and Ecology from the University of California at Santa Barbara, 32 years teaching an annual 10-week spring field course in botany and natural history through my position as a Professor of Natural History and Agroecology at the University of California at Santa Cruz, 25 years as a part-time resident in the Cottonwood Canyon area of the Cuyama Basin, and leader of multiple spring wildflower events in Cottonwood Canyon for Condor’s Hope Ranch.

In my judgement, the biological surveys carried out by Kevin Merk Associates (KMA) are insufficient to ensure that there will be no negative project impacts on plants and animals, especially several endangered or threatened species of plants, since they were conducted in the fourth and fifth years of consecutive drought. Further study is required. KMA completed their first survey in 2015. The Santa Barbara County Planning Department staff asked DUDEK to peer review the survey. DUDEK found the study inadequate and suggested they do a survey comparing it to species in the neighboring Carrizo Plain. This was done in KMA’s 2016 study. The impact on the drought on native plant and animal populations in the Carrizzo Plan and northern Cuyama Basin was recently reported in two separate studies which I describe below.

In a communication just published on 20 August 2018¹, the impact of drought in the Carrizo Plain and northern Cuyama Basin was documented. As part of a long-term biological survey that began in 2007 and continued through 2014, researchers observed a very dramatic reduction in observed populations of all plant and animal species three years into what ended up being a 5-year drought that lasted through 2016. There is a very graphic representation of the drought’s impact in the photo of Attachment #1 that

was taken from this study. I note that the biological surveys carried out by Kevin Merk Associates as part of the North Fork Frost Pond application were done in 2015 and 2016, the 4th and 5th years of the same drought referred to in this publication. This brings into question the validity of the surveys carried out by Kevin Merk Associates, since conditions of extreme drought would have severely reduced the presence of most species, especially annual plants.

In another report from the California Native Plant Society², results of long-term monitoring sites provide important information on the many and diverse plant taxa and vegetation types in the Carrizo National Monument, including multiple sites along the southern border of the monument that extends over the Caliente Mountains down to the Cuyama River. See map of their study sites in Attachment #2. Their surveys encountered 417 taxa of plants, indicating the rich diversity that occurs in the region. The surveys completed by Kevin Merk Associates only found a small percentage of the taxa on this list, due most likely to the fact their observations took place in drought years when populations of native plants were reduced and the physical manifestation of plants was depressed. Hence the surveys by Kevin Merk Associates most likely missed a large number of important plants including unique, rare, and threatened plant species that would probably be present in normal to wet rainfall years, and could be significantly impacted by the Frost Ponds project, both directly and indirectly. In particular, species known to occur in the Project vicinity include the attached list³ of 25 species based on extensive studies of threatened plants in the BLM lands of the Carrizo Monument. Cross checking this list with the Flora of Santa Barbara County published by the Santa Barbara Botanic Garden, at least 4 of these species are highly likely to occur in the project area since they have been collected in the past from the Cottonwood and Schoolhouse Canyon areas. Another 13 have been reported from nearby Cuyama Valley areas. The 8 species not likely to occur in the project area are only those that grow best on alkali soils typical of the dry lake areas of the Carrizo.

Based on my reading of the surveys from Kevin Merk Associates, the two reports described above, and my own experience with native plant species in the Cuyama and Carrizo areas, these surveys are insufficient to support a claim that there will no adverse impacts upon botanical and wildlife populations caused by the Frost Pond Project. Additionally, in my opinion, and based on my review of the Project plans and MND, the potential presence of the above plants in and around the Project site creates a reasonable possibility that the Project may result in significant impacts according to the County's thresholds for impacts to flora through loss or disturbance of unique, rare and threatened plant communities, and a reduction in the numbers of unique, rare or threatened species of plants (MND p. 11.).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Stephen R. Gliessman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dr. Stephen R. Gliessman

Professor Emeritus of Natural History and Agroecology
Department of Environmental Studies
University of California at Santa Cruz
gliess@ucsc.edu

¹ Prugh, L.R., N. Deguines, J.B. Grinath, K.N. Suding, W.T. Bean, R. Stafford, and J. S. Brashares. 2018. Ecological winners and losers of extreme drought in California. *Nature Climate Change*. Volume 8: 819-824.

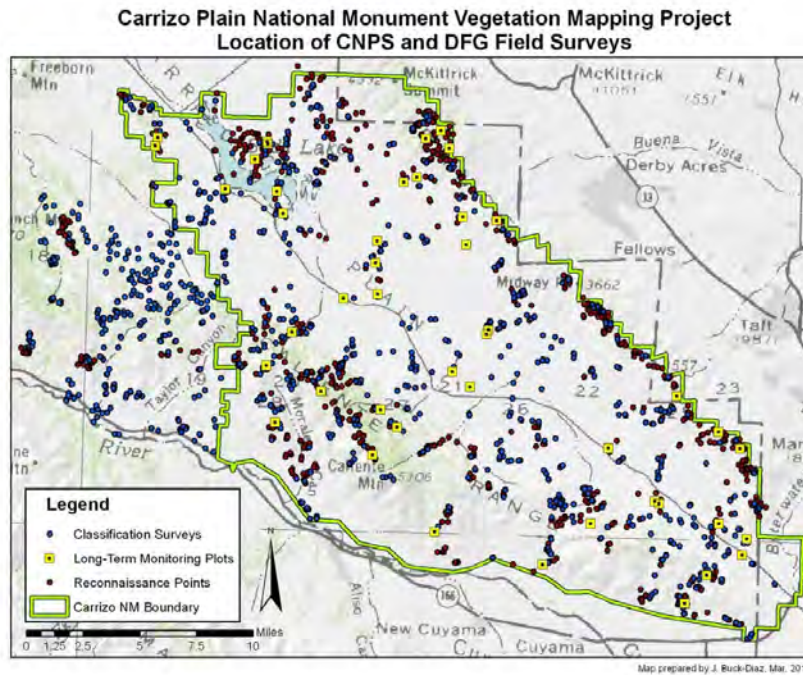


Figure 1. Project study area depicting surveys used for the floristic vegetation classification as well as locations of long-term monitoring plots and reconnaissance points to inform vegetation mapping.

² Buck-Diaz, Jennifer, and Julie Evens. 2011. Carrizo Plain National Monument Vegetation Classification and Mapping Project. California Native Plant Society. Sacramento, CA. 16 pages.



'Center Well 2' site (Mar. 30th, 2011)

'Center Well 2' site (Mar. 27th, 2014)

The same study site in late March 2011, before the drought began, and in late March 2014, three years into the drought. Researchers were able to study the response of this unique ecosystem to an exceptional climate event. *J. Chesnut*

³Potentially threatened plant species in the Project Area (see below):

Source: BLM Carrizo Plant List, accessed at www.inaturalist.org/check_lists/ ***

Hoover's Eriastrum (*Eriastrum hooveri*)*
Tehachapi Woollystar (*Eriastrum pluriflorum*)**
Grass Blazingstar (*Mentzelia gracilenta*)*
Cottony Buckwheat (*Eriogonum gossypinum*)*
Temblor Buckwheat (*Eriogonum temblorense*)
Twisselmann's Buckwheat (*Eriogonum twisselmannii*)
Ferris' Goldfields (*Lasthenia ferrisiae*)*
San Joaquin Woollythreads (*Monolopia congdonii*)
Pale Yellow Layia (*Layia heterotricha*)**
Munz's Tidytip (*Layia munzii*)*
Big Tarplant (*Blepharizonia plumosa*)*
Twisselmann's Nemacladus (*Nemacladus twisselmannii*)
Round-leaved Filaree (*California 'Erodium' macrophylla*)*
Temblor Range Clarkia (*Clarkia tembloriensis*)
Northern California Black Walnut (*Juglans hindsii*)
San Joaquin Bluecurls (*Trichostema ovatum*)*
Oval-leaved Snapdragon (*Antirrhinum ovatum*)**
Byron Larkspur (*Delphinium recurvatum*)
Spiny-sepaled Button-Celery (*Eryngium spinosepalum*)
Alkali Heliotrope (*Heliotropium curassavicum*)*
Douglas Fiddleneck (*Amsinkia douglasiana*)*
California Jewelflower (*Caulanthus californicus*)*
Nodding Needle Grass (*Nassella cernua*)**
Crinkled Onion (*Allium crispum*)*
Stinkbells (*Fritillaria agrestis*)*

*Species that have been found in habitats of Santa Barbara County similar to those where the reservoirs are proposed, according to Smith, Clifton F. 1998. *A Flora of the Santa Barbara Region, California*. Santa Barbara Botanic Garden and Capra Press, Santa Barbara, CA.

**Species that have been found in the Cottonwood Subarea as noted in Smith (1998).

*** From a total of 25 species classified in the BLM list as threatened, only 8 are not listed for the Cuyama Valley in Smith (1998).

**Excerpted Verbatim Transcription of the Santa Barbara North County Planning
Commission Hearing**

**Jaffe/Gliessman Appeal
North Fork Frost Ponds**

**Wednesday, September 12, 2018
Recording Mark 3:54:12.6 to 4:36:04.2
Santa Maria, California**

By: K. Anderson

LEGEND:

Participants:

CDB: Chair Daniel Blough
LF: Commissioner Larry Ferini
CB: Commissioner Cecilia Brown
JP: Commissioner John Parke
CMC: Commissioner C. Michael Cooney
JW: Jeff Wilson, Santa Barbara County Planning
JR: Jenna Richardson, Santa Barbara County Counsel
DV: David Villalobos, Santa Barbara County

Abbreviations:

OV: overlapping voices
PH: phonetic
UF: unknown female
UM: unknown male
UP: unknown person
UNT: unintelligible

Transcription begins at recording mark 3:54:12.6

CDB: Commissioner Cooney, back to you.

CMC: Thank you Mr. Chair. Allow me to share the comments with you, uh, initially as—as, um, I was aware of a part of the Cuyama Valley was in the First District, but, uh, didn't realize there was encroachment from the Fifth District on the western side, so—

UM: (Unt)

(general laughter)

CMC: —it is um,—

(general laughter)

CMC: —it is—

CDB: But it—it—y—

CMC: —instructive.

CDB: —you can thank Salud for that, he's the one that drew the map, so...

(general laughter)

CMC: I—I don't think there's any question that uh, the future of the Cuyama Valley is critical, uh, to all of us who sit on the Planning Commission, uh, not to mention the—the members of the Board of Supervisors. And, uh, we've heard today that uh, the, ability to weigh in on the project before us is uh, fraught with legal peril. Um, if we do too much, uh, to address the concern of—of water o—overdraft, or try to advance the potential policies of, uh, uh, future water extraction at this point, um, we're—we're certainly treading on uh, very thin ice, um,—or frost, if you wanna apply it specifically to this project. I, um, I am—

(video/audio cuts out at 3:55:46.0)

(video/audio resumes at 3:55:51.3)

CMC: —we not accomplish too little, if we're allowed to do more. Uh, with respect to the construction of these ponds, which um—er, reservoirs, which I believe are, uh, without doubt impactful as to, uh, the water basin. And uh, without respect to what crop is benefiting from the water, I think every drop comes out of—of the basin at this point is critical for the future welfare of, uh, the Cuyama Valley, both, uh, western and—and uh, eastern portions. So I—I think, uh, you know, the—I—I should comment that I believe the um...the applicant's entitled to a decision today, not forced to await what might be a regulation in the future. Who knows how things might go, um, our Governor's indicated that uh, I

believe in the relatively near future, 2040, we're not going to have any fossil fuels um, in—in his view, um, operating in California, which is inconsistent with our current use to say the least. So, we need to decide based on what we have in front of us. Um, but I—I do think that the key to our discretionary review is, that—the fact that it's only a minor CUP, is nonetheless, um, important for us to uh, to exercise our discretion in a way that is consistent with the best interests of the valley. We've heard testimony on that, we've heard uh, legal arguments on both sides that are cogent, uh, I think uh, the disagreements are legitimate, this is the kind of case that uh, a Superior Court judge might, uh, some day preside over, and uh, we're—we're sort of at—or near to the beginning of the discretionary review process. Um. However, I—the way I would come down, Mr. Chair, is that I would say we should exercise our discretion in favor of further environmental review of the impact of this project on the water resources, uh, that it—it will inevitably use, and would not confine that to just the water sitting in the reservoir, but uh, would apply it to the entire operation of the frost, uh, control system. So, um, um, you know, either way, uh, I think this going to be looked at and decided by others after us, and, uh, my view, the right way to go, and the right—the right decision will come in the way of further control rather than less.

CDB: Uh—um, well, one thing I will definitely agree upon, that this is not going to be the last hearing for this issue. Um, or this project. There is no doubt in my mind that no matter what we do today, it's going to be appealed to the Board of Supervisors, and, probably it—i—if it were up to me, I'd just send it up there myself right now. I mean, the reality is, that there's some concern that the, the 31 acre-feet is the threshold, that—and—and, we didn't make that policy, they did, I don't think I have the right to, uh—um, to vary from that, I mean, they've given that—us—to us, and I need to apply it. Uh, if they choose to make a change, so be it. I have to disagree that I think this further environmental review. I have to conclude with the applicant's, uh, attorney that, she's right, so what, if they did more environment—what are you gonna do? I mean, there are no other mitigation measures that you can do, to—to stop the, uh, what I would consider a small amount of evaporation. I mean, 23 acre-feet is consi—typically what's consumed by about 30 households. And the average household consumes between a half to one acre-foot per year. That's not a significant amount of water that we are saving. I totally agree that there needs to be something to be done with the Cuyama Valley, I'm more inclined to hope that they would say that, you know, that you can only pump out so much water per acre, and it goes that way for the entire valley. And everybody would be sharing in that equally. And I'd like to think that there's some other—I mean, can't we dig a great big deep hole and fill it full of rocks, so when it rains, it percolates down into the water? I don't know, you know. It's like, what—what can you do. Um—(clears throat)—I—I'm inclined, based on the evidence we heard today, to deny the appeal and allow them to take it upstairs and...uh, do the issues, because the issues that I think are before us, staff has correctly identified as giving us the correct, uh, an—analysis and a correct recommendation. Commissioner Ferini, you wanna go next?

LF: Mark Twain said it....

UP: (in background) (Unt.)

LF: ...that's right. And Commissioner Brown knows that very well. So. You drink the water, I'll drink the whiskey, and we'll all be happy. Okay. So.

(laughter)

LF: (laughs) I—I think both sides made excellent arguments, and—and uh, Ms. Citrin, I appreciate your passion and uh...um, trying to thread this very difficult needle. I—I'm more inclined to agree with staff on this, and I don't think this is the venue for us to get involved in the water fight. I—I think that uh, SGMA is a tool that was developed to—to try to resolve this situation, and uh, controlling your neighbor and tellin' him that what you're doin's better than what they're doin', and they're not good enough to use the water, it—I don't—I don't think that's gonna work, I think that's a falsehood argument. So it's going to be up to SGMA, proper um, review and study of the basin, and then um, where it goes from there, how they limit the uses of water to—to protect that resource, that—that's what SGMA is for. But I—I don't think it's us telling, uh, the newest member of the community that uh, they're—they're not good enough, and we're gonna...put an extra burden on them that has never been applied in this county before. So. I say uh, we deny the appeal and see what happens next.

CDB: Mr. Parke?

JP: Could we hear from Commissioner Brown first?

CDB: Sure...

JP: (Unt)—thoughts?

CDB: Commissioner Brown?

CB: Well, it's—you know, it's interesting reading the last couple of days, and, I've listened carefully today, felt like I was in court and I'm not even a lawyer, but um, I th—I think, primarily for me, it's about the interests of the—of the residents who live in Cuyama Valley. And, if I were one of those, and my well was dropping, 28 acre-feet of water that evaporates would be a lot of water. I think that there is...that there can be a focused EIR, on those—on those issues where experts disagree and where there are opposing views. As we can see, there's—there's quite a few of those. Also, I was disappointed to s—to s—not see, that there was any consistency analysis with the County's um, conservation element, the groundwater resources s—section. I think there are actions in there, that, apply broadly to this project. Specifically, things that talk about the prudent accounting of the conditions. And I think that...from what I read in the public letters, it's one thing, and what I see from the applicant it's—it's slightly different in terms of all these numbers that we see. And I would like to get some better understanding of those, and to get some third party to look at them. Um, and it's also about some of the—another policy about providing resources for others. It's a very broad statement. I don't get that it's one—one person who's put in their straws and take it all out. I f—I feel it's—it's somewhat a bigger issue than that. And,

um, I do read in this policy, it—one of the policies is that the County would not make land decisions that would lead to the substantial overcommitment of any groundwater basin. Well, the basin has been overcommitted for many years. Um, but—and it's going to be uh, as we move forward without SGMA until that all gets worked out, and I feel it's going to be longer than what we think. That, we need to put our one toe into the water, and just looking at some of these issues, regarding these—these uh, frost ponds, which really aren't ponds, but reservoirs, they're almost dams, actually, I think Commissioner Parke indicated that. So I would be in favor of upholding the appeal.

CDB: Commissioner Parke, you're the last one to hear from.

JP: Okay. I think, um, it helps sometimes, I hope it helps. Uh, but that we acknowledge certain things regardless of what our decisions are, uh, here, I'm very impressed that this is a well-run agricultural operation, and I'm also very impressed by the presentation by the representatives, uh, by the applicant, and I'm equally impressed by the r—rep—the presentation by the appellants. Um, . . . y—y—you know I—I've come to know, um, the lay of the land, uh, in that western end of the Cuyama Valley, uh—uh, over the years, I'm—I'm— good friend has a ranch on Schoolhouse Canyon Road, I rode endurance ride out there year after year after year for more than a decade, going over some of your properties, spent a lot of time on the Russell Ranch, this used to be the Russel Ranch, I'm sure all of you know that. Um, and um, y—y—you know, you folks are special folks, you're very careful about access, you're very careful about water, you're very careful about what you build, just very careful people, and—and—and I appreciate that. Um, but, looking at this project itself, um, we have some very clear arguments that, uh, these water issues just aren't for this commission to look at. I get that. And I hear the argument that, well, you gotta look at the whole project, and there are some issues you need to look at that are discretionary, and you get to fold in these water issues. Okay. So, I'm a little unclear on that. Uh, but something that makes me uneasy here, as well, is an argument that was out there in the paperwork didn't get any, really, much attention today, but makes me uneasy, because I've spent years going over some of that property at about 7 miles per hour, foot by foot, okay, and we'd go across, uh—up Schoolhouse Canyon and down Cottonwood, and—and—and across the properties, behind the foothills, connecting those two, and along the Russel Ranch, and—and—and down under the highway, I spent a lot of time out there. And you know . . . and that was always usually March, April . . . the area looks phenomenally different, on the ground, depending on how much rain it got that year. And—and I know, from what I've seen of that uh, habitat, it'll look very differently when we had some rain years, and you'd see fabulous flower displays on that kinda, western edge of Cottonwood Canyon, the little hilly part, than—than—than maybe it has for the last few years. So I am a little concerned that the, uh, studying of—of—of—of this area in 2016 isn't really, uh, exemplary of—of what it's like over time. So I'm just uneasy about that. Um, frankly, if it was only up to me, I'd say, let's continue this, I'd like to figure out these legal arguments a little bit better, and I'd like to hear a little bit more about the biological resources—not just water, I think there's another issue here, the biological resources, but I think that Commissioner uh, Blough is exactly right, this is going to go to the Board regardless, so there's not much point in continuing this and studying it further here, um, and probably—I guess I'm a swing vote, it's not even a matter of how I vote, because it's gonna go up to the Board anyway, and probably go to court. So um, based on

what I know, and you've heard what I don't know, and wish I did know, um, I—I believe an EIR is appropriate. And necessary.

CDB: So, I think we've got uh, three votes in favor of the appeal, and two that are opposed, so, Commissioner Cooney, since it's partly in your district, and you represent the majority, have at it!

(laughter)

CMC: Well that—I think as—as with the prior project, we need to continue this for purposes of, uh, findings, uh, for denial. Um, we don't have them in the Staff report at this time. Um, and, uh, you know, the decision about um, whether uh, an environmental impact report is—is going to be focused, or general, or, what it would cover, uh, should be made by Planning and Development and suggested back to us, so, at this point, all we can do is um, uh, vote to deny the project, and ask Staff to return with findings for denial at a continued date. Am I right, Mr. Wilson?

JW: So, Chair Blough, Commissioner Cooney, if I could just add to that—is the action before you today—or, the option before you today, would be to—(sniffs)—um, uphold the appeal and deny the project, um—(clears throat)—or is staff recommended—i—is to deny the appeal, and, approve the project, or another option, and I think that's where Commissioner C—Cooney is going, is, to not take either of those actions and just return it back to Staff, and direct Staff to come back with a EIR on the project. So, it'd be—basically, that motion would be, to continue the item and direct Staff to complete further environmental review.

CDB; And I would—I would, um, I would c—try and uh, appeal to Commissioner Clark—er, Parke, excuse me—that you—(clears throat)—you join us and we deny the appeal per staff's action. There is no doubt this is going to the Board. No doubt whatsoever. So, why are we causing the applicant, the appellants, any a—additional consternation, having to come back, and do this again when we have a—an environmental review document, an EIR, it's crazy. But I'm—I'm just pleading with you, let's get this to the Board, I—I think it's to the benefit of both parties, to tell you the truth, and maybe the Board will now, do something before the—the state wants to deal with the overdraft situation, uh—um, I—I'm just—I—I'm cautioning you, it—it's just a—I think it's a complete waste of time and money to—to do that. Do it.

JR: (whispering). Uh, no, it—

JR: Uh,—

JP: But—

JR: —Mr. Chair—

JP: —but can't the applicant a—a—

CDB: No, if we—c—

JP: —appeal—

CDB: —continue it, there's no—we haven't made a decision, there's nothing to appeal. If we go back and say, no, we just need a full EIR, then, we—

CMC: That's—

CDB: —we've taken no action.

CMC: —that's an appealable action.

CDB: Is it?

CMC: That—

JR: Mr.—

CMC: —specific action, of, requesting further environmental review, the applicant could take to the Board next week.

JR: Mr. Chair, and Commissioners, just—that's correct, and then, if you directed an EIR and the applicant appealed it to the Board, then the Board would decide essentially what CEQA was appropriate, um, but wouldn't take action on the substance of the project, and it would eventually end up back at your Commission. So if the Board directed an EIR, then staff would prepare an EIR, and it would eventually come back to you Commission for an approval, if—(clears throat)—the Board decided that the Negative Declaration is the appropriate level of environmental review, then it would return to your Commission again, just with an ND, and, you would decide the substance, and then, that ultimately could be appealed to the Board, on the substance again.

CDB: A—a—again, I'm gonna appeal to you, I don't wanna sit through this kind of a hearing again, when our decision's not gonna make any difference to the final outcome. And, again, I'm just telling you, I think it's—it's um...it's delaying a fix—a potential fix for the problem in the Cuyama Valley. Let's get it to the Board, and let them understand that there's a problem, and give us and the Staff directions on how to go forward and try and solve it. I've said my piece, uh, Commissioner...? Oh, I just need to know from Commissioner Parke if he's gonna agree with that, or if he wants to send it back for the environmental review document.

CMC: Well, I—I—before we hear from Commissioner Parke, I would just say that, our other choice today, I—I didn't think it was necessarily the best one, but, we could just, uh, move to grant the appeal. And, that would go to the Board without any indication of—of uh, what the Board might decide....pro, con, or further environmental review.

CDB: As long as we're not continuing and it doesn't come back, I'm in favor of it. I don't want it continued, I just think that's a complete waste of our time and energy to do that. Ms. Richardson.

JR: Mr. Chair, so today, if your Commission wanted to take action, you could follow Staff's recommendation, which is to deny the appeal and approve the project. We have findings prepared for that. Or, you could direct Staff to prepare an EIR. But, if you wanted to approve the appeal and deny the project, that would require a continuance to come back with findings.

CDB: So—so, I'm asking you t—to deny the appeal. And let—just let it—get it to the Board so that it—the issue can get resolved.

(pause)

JP: Um—you know, I th—I think I've stated my reasoning. I think that whatever our vote is, the applicant can appeal it. To the Board.

CDB: Not if we continue it. It—they c—they can't appeal that. Until it comes back to us, or, if it has to come back to us again, if we don't—i—it's what I'm saying. Unless we deny the appeal, it's coming back to us.

(pause)

JP: Y—yes, but the issue of environmental review will go to the Board, and that's the key issue here. I don't think this is a really hard decision to make, once we get past the EIR point, I—I—I must say, and I'd probably vote with you and Commissioner Ferini, Chairman Blough, but, I—I—I'm concerned about the environmental review issue, and I—I—I'd like to go with what I think, Mr. Cooney's motion is gonna be....

JW: So for clarification, Chair Blough, and Commissioner Parke. So the action that...that Staff's presenting today is to deny the appeal and uphold the project, so there's findings today. So, to Chair Blough's point, if that's the motion today, then it can be forwarded on an appeal. If, um, either party wants to do that. However, if we want to deny, um,—er, up—uphold the appeal, deny the project, then I recommend that the motion be to continue it like we did earlier today, to October 31st, with findings for denial on the project and uphold it, and then, they—the Commission would have those findings, and then you take action on that. On the 31st.

(pause)

JP: I—I just think we should pass a motion that—that most accurately reflects our—our—our collective position, and—and I say that not just for expediency's sake, but I think that if that's gonna benefit the parties, should the ever wind up in court, uh—uh—I'm—I'm—I'm not—I could come here every day, that I come here, and vote, let's just do this because it'll be the fastest route to the Board. I think the Board wants us to make some hard decisions and lay the groundwork, and then, they'll modify it as needed. I hope I'm not speaking in riddles, I mean I—I—I wanna hear Mr. Cooney's motion. (laughs)

CMC: Okay, I—lemme just throw this out and see if there are three votes for it. Um,...having taking into account the um, the law and the facts and the Staff report, and, all of the conflicts involved in that, um, but also the comments from our advisors and—and uh, the public speakers. I would move to grant the appeal. And to, uh, submit the matter—the matter back to Staff, for uh, further environmental review. The findings which indicate that the Negative Declaration is sufficient, I—I can't accept today. So that's part of the reason that I vote to grant the appeal. So that—that would be my motion. And I woul—I would be glad to pick a particular date for Staff to return this matter, uh, if Staff came back and said,...these are the areas we feel would profit from further environmental review, that's fine. Certainly doesn't mean that they have to accept—um, an environmental review of every single issue.

JR: Mr. Chair, Commissioner Cooney. So, the pending appeal is what gives your Commission jurisdiction to hear this matter. So, if, you would like to ultimately make a decision on it with the benefit of environmental review, I would recommend continuing it and directing Staff to prepare environmental review but not granting or denying the appeal today? Um, and one other item that would be helpful for Staff, is your earlier comments were specific as to what you hoped would be studied in the EIR, that it would have included all of the frost protection activities, and, if that's part of your motion, I think that would be helpful to Staff.

CMC: Okay. I....

(pause)

CDB: I'm not hearing a second. Is that because we...?

CMC: No, no—no, I'm waiting to hear if there's further input from Staff, um....because I have a comment a—about uh, what was just suggested. (pause). A—anything further before...? (Unt)—?

JW: Ch—Chair Blough, Commissioner Cooney, one—one of the—our recommendation is that for the Commission to remai—maintain jurisdiction over this item, is that you don't take action on the appeal if you want it to come back with further environmental review. So the action—er, the motion would be to remand it backs to Staff and request Staff to have, um, complete further environmental review and then outline what areas that you feel that Staff should look at under that further environmental review, 'cause

then, the Planning Commission will maintain jurisdiction over the project. So it'll go away, Staff will do the environmental review, and then bring it back, um, whenever that's completed, for then, the Commission to—to review the merits of the appeal, and the further environmental document and then the—the actual project. Because the project is before you on—on de novo as well. So—so that's th—the actions before the Commission then is—is CEQA, en—er, environmental review, further environmental review, and then direct Staff to do that, or if the Planning Commission wants to take action on the appeal and the project, then, we recommend that you either follow Staff's direction today, and, deny the appeal and approve it, or, if you don't feel comfortable doing that, continue it to the 31st to deny the appeal and come back with findings. Or, uphold the appeal and come back with findings for denial of the project. So —the—I think those are the three avenues before you. If you don't feel comfortable on the environmental document, send it back, and retain the authority over the project, to do that, or, take action on the appeal and the project.

CDB: So, the findings can't be, inadequate environmental review? Could that be a finding? The reason I say that, because I'm—I'm r—I'm...you wanna come back with findings? I'm gonna give you a findings. The findings that it's inadequate environmental review, we can vote on it, the—the appeal gets uh, approved, and they can now appeal to the Board. Doesn't have to come back to here, waste another month or two months. That is the finding.

(pause)

JR: Mr.—Mr. Chair, Commissioners, the reason I'm pausing is because since we have a Negative Declaration, if you think environmental review is inadequate, the next step would be to prepare an EIR. If we had an EIR, and you didn't think it was appropriate, I think you could make those findings. Um....we could talk about it further, whispering down here for a few minutes.

CDB: Oh—

JR: I mean, perhaps a break? Or if there's any—

CDB: We—

JR: —additional direction—

CDB: —we could use a little—

JR: —and we can—?

CDB: —five minute break, and go—you guys discuss that.

JP: Commissioner Blough, um—?

(audio cuts out at 4:23:26.8)

(audio resumes at 4:28:38.3)

(background noise and voices)

(audio cuts out at 4:29:05.2)

(audio resumes at 4:29:51.0)

CDB: Okay, we can go back on the record? Uh...I—lemme just start out by saying in discussions with the a—applicant, they're—not a problem sending it back to Staff to uh...additional environmental review. So if that's—if we're—and I think the motion needs to be we're not going to continue it to a date certain, but, it'd be a date that when the applicant and the Staff can produce the document. If the applicant wants to appeal that action, I believe they have the right to do that. So I think it's....it will work.

CMC: Well, I'm—I'm presuming that uh, Commissioner Parke would not, um, change his vote, or—or, uh, affect the decision when I say this, but, my motion would be to, uh, not deny or grant the appeal that's been presented to us today, but, to indicate that we're not prepared to deny or grant without further environmental review and to refer that question back to our Staff for their recommendation of additional environmental review. The Negative Declaration is not adequate.

CDB: Do I have a second?

CB: Yes.

CDB: We have a second. Any further discussion? Any concern with uh, Staff or nee—need further direction? Just say—

JW: Mr. Chair—

CDB: —just say no.

(laughter).

JW: Uh—uh—Chair Blough, not—not to, uh, follow your direction there, it would be helpful, um, for the motion, uh, for Commissioner Cooney, if you would provide—indicate some areas for the environmental review—for the Staff to focus on initially. I think that would be beneficial.

CMC: Uh, for me, it—the focus is on the water use. And, um, and the impact of the, um, system as opposed to just evaporation from the pond.

CDB: Okay. I think we're—we're clear?

CB: W—lemme just—can I just add something? Sorry...

CDB: Do we have to? I'm getting hungry.

CB: I'm getting hungry too. But, there was a letter from CalTrans, that—that's talking about uh, dam failure, I know this isn't a dam, but it's close to being a dam. Darn dam. And, I'm wondering if that could be part of uh, consideration, if there is failure of this em—20 foot embankment, and inundation of 166? CalTrans expressed that concern. And I didn't see anything in it—in the MND on that. So.

CDB: Commissioner Parke.

JP: I heard Commissioner Cooney's motion, which I thought was clear. I think things get a little muddy when we're talking about w—what areas to review further? Is—is that part of the motion? Only to review water? I—I—I'm personally interested in the biological as well? But I do support what I thought was the clear and simple motion, and I do appreciate Commissioner Blough for getting this cleared up during the break.

CDB: Um, so I think it's—it's—y—you need to understand that—(clears throat)—I don't know that the earthen dams are a par—any more of the environmental review, if you need additional information on that when this comes back before us, that's a—an appropriate request of the Staff. I—I don't think it has as much to do with the environmental review document. Um—I—I think, th—that's a—that's a safety—health safety issue. So—(clears throat)—C—Commissioner w—wants more information about that, that's great, but, it's probably not part of the motion, I don't think.

CMC: Well. It hasn't been, but uh, I—I think it's appropriate for the other Commissioners who've indicated their concern with the Negative Declaration to um, express their views to Staff as to what other items should be looked at, in terms of further environmental review. C—uh, Commissioner Brown, uh, whether—whether Staff would agree that that needs further environmental review or not, we can—we can let Staff decide, but, in the case of Commissioner Parke, um, there was specific concern expressed regarding the surveys and timing of the year, and so forth, so I'd be happy to include those in the motion as well, if—if you would like.

JP: Yes I would.

CMC: Okay. So—(clears throat)—can we add those to the—so that's the motion, to refer back to Staff for further environmental review on those items.

CDB: Uh, I'll just make a—I'm gon—I'm gonna vote no on that, now that you've added those in there, simply because, —(clears throat)—we heard testimony, and I think it's undisputed that, um, the environmental reviews that you're talking about I'm —I'm assuming that you're talking about the kit fox and other plants, are exempt. I mean, farmers don't need to—to do an environmental review p—to get uh,—to get permission to plow up the fields. So—(clears throat)—if you want them to do that, I think that's another little bit of wasted time and money. Seeing as no further discussions, Mr. Villalobos, will you call the roll? Wait—do we need a second? I—I thought we had a second. I'm sorry. Uh—(clears throat)—I should have asked is the second holder agreeable to—to changes, she says yes. Commissioner Cooney, are you ready to vote?

CMC: I am.

CDB: Plead. Mr. Villalobos.

DV: Commissioner Parke.

JP: Aye.

DV: Commissioner Cooney.

CMC: Aye.

DV: Commissioner Ferini.

LF: No.

DV: Commissioner Brown.

CB: Aye.

DV: Chair Blough.

CDB: No.

DV: Motion passes three to two.

CDB: I think....that concludes for today, thank you very much.

Excerpted Verbatim Transcription of the Santa Barbara North County Planning Commission
Jaffe/Gliessman Appeal of North Fork Frost Ponds
Hearing date: 9/12/18 3:54:12.6 to 4:36:04.2
Santa Maria, California

DEPARTMENT OF TRANSPORTATION

50 HIGUERA STREET
SAN LUIS OBISPO, CA 93401-5415
PHONE (805) 549-3111



*Serious drought.
Help save water!*

July 7, 2017

SB 166 PM 53.72
SCH# 2017061009

Steve Rodriguez
Planning and Development
County of Santa Barbara
123 E. Anapamu Street
Santa Barbara, CA 93101

RE: DRAFT MITIGATED NEGATIVE DECLARATION – NORTH FORK RANCH FROST
PONDS

Dear Mr. Rodriguez:

The California Department of Transportation (Caltrans) District 5, Local Development-Intergovernmental Review (LD-IGR) Branch, appreciates the opportunity to review the draft Mitigated Negative Declaration (MND) for a conditional use permit (16CUP-00000-00005) to construct and operate a 147-acre-foot reservoir for an existing vineyard along State Route (SR) 166. The project site is located approximately nine miles west of the unincorporated community of New Cuyama. Caltrans offers the following comments in response to the project's evaluation of potential impacts to the state highway system as discussed in the draft MND:

Water Resources/Flooding

The document states that the proposed project would be required to comply with County Grading Ordinance requirements to ensure that the proposed reservoir berms are structurally adequate to contain the water impounded by the reservoirs. The document concludes that the project would have **no impact** related to flood-related hazards. However, Caltrans notes that the potential exists for catastrophic failure of the berms and inundation of SR 166 resulting in potentially significant impacts to state facilities. Caltrans is concerned regarding the adequacy of the County Grading Ordinance requirements, and recommends the incorporation of a mitigation measures to require review and approval of the berms by the California Department of Water Resources in order to ensure structural integrity and adequacy and reduce potential impacts to **less than significant with mitigation**.

Encroachment Permits and Irrigation Lines

The project details state that water from wells conveyed to the reservoir will utilize existing vineyard irrigation pipelines extending beneath SR 166. Please provide more information regarding these irrigation lines so they can be positively located. Caltrans notes that there is a record of an encroachment permit (0589 NMC 0256) for a three-inch galvanized steel waterline crossing under SR 166 on the floor of a cattle pass structure located at Post Mile (PM) 53.7 (actual cattle pass is at PM 53.5). However, without positive location Caltrans is not able to verify that these are the same irrigation line being proposed for use by the project. Please be aware that any project-related activities

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

EXHIBIT E

North Fork Ranch Frost Ponds
July 7, 2017
Page 2

(e.g., construction, maintenance, general operations, etc.) that would occur within the Caltrans right-of-way will require an approved encroachment permit.

If you have any questions, or need further clarification on items discussed above, please don't hesitate to contact me directly at Michael.Hollier@dot.ca.gov or (805) 549-3131.

Sincerely,



MICHAEL D. HOLLIER
Transportation Planner
Development Review Coordinator
District 5, LD-IGR South Branch

cc: none