CASE NO. S219783

IN THE SUPREME COURT OF CALIFORNIA

SIERRA CLUB, REVIVE THE SAN JOAQUIN, and LEAGUE OF WOMEN VOTERS OF FRESNO,

Plaintiffs and Appellants

v.

COUNTY OF FRESNO

Defendant and Respondent

FRIANT RANCH, L.P.

Real Party in Interest and Respondent

After a Published Decision by the Court of Appeal, filed May 27, 2014
Fifth Appellate District Case No. F066798

Appeal from the Superior Court of California, County of Fresno
Case No. 11CECG00726
Honorable Rosendo A. Peña

REPLY TO ANSWER TO PETITION FOR REVIEW

---

*James G. Moose, SBN 119374
Tiffany K. Wright, SBN 210060
Laura M. Harris, SBN 246064
REMY MOOSE MANLEY, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814
Telephone: (916) 443-2745
Facsimile: (916) 443-9017
Email: jmoose@rmmenvirolaw.com
twright@rmmenvirolaw.com

Attorneys for Real Party in Interest and Respondent
FRIANT RANCH, L.P.

CASE NO. S219783

IN THE SUPREME COURT OF CALIFORNIA

SIERRA CLUB, REVIVE THE SAN JOAQUIN, and LEAGUE OF WOMEN VOTERS OF FRESNO,

Plaintiffs and Appellants

v.

COUNTY OF FRESNO

Defendant and Respondent

FRIANT RANCH, L.P.

Real Party in Interest and Respondent

After a Published Decision by the Court of Appeal, filed May 27, 2014
Fifth Appellate District Case No. F066798

Appeal from the Superior Court of California, County of Fresno
Case No. 11CECG00726
Honorable Rosendo A. Peña

REPLY TO ANSWER TO PETITION FOR REVIEW

---

*James G. Moose, SBN 119374
Tiffany K. Wright, SBN 210060
Laura M. Harris, SBN 246064
REMY MOOSE MANLEY, LLP
555 Capitol Mall, Suite 800
Sacramento, CA 95814
Telephone: (916) 443-2745
Facsimile: (916) 443-9017
Email: jmoose@rmmenvirolaw.com
twright@rmmenvirolaw.com

Attorneys for Real Party in Interest and Respondent
FRIANT RANCH, L.P.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

California Cases

TABLE OF AUTHORITIES

California Cases (cont.)

TABLE OF AUTHORITIES

California Statutes

California Regulations

Court Rules

I.

INTRODUCTION

In the Answer to Petition for Review ("Answer") filed by Plaintiffs and Appellants Sierra Club, Revive the San Joaquin, and League of Women Voters of Fresno ("Plaintiffs"), Plaintiffs ignore or misconstrue each of the issues presented in the Petition for Review ("Petition"). As demonstrated below and in the Petition, however, if the Court examines the issues that are actually presented in the Petition, it is clear that review of the published opinion in this case (the "Opinion") is warranted to secure uniformity of decision and to settle important questions of law arising under the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.).

II.

ARGUMENTS IN REPLY TO PLAINTIFFS' ANSWER

A. The First Issue Presented Asks What Standard of Review Applies To An EIR That Includes The Information Mandated by CEQA, But Challengers Claim That The Information Is *Insufficient;* The Lower Courts Are Divided On This Important Issue.

Plaintiffs' Answer misconstrues the first issue presented. As background, the Opinion explains that there are two types of claims concerning whether an environmental impact report ("EIR") is inadequate as an informational document. (Opinion ["Opn."] 23.) "The first type involves a situation where the EIR does not discuss a topic" that CEQA

and/or the CEQA Guidelines[1] "says must be discussed."[2] (*Ibid.*) The Opinion explains, and Real Party in Interest and Respondent Friant Ranch, L.P. agrees, that this type of claim is "relatively easy to decide—either the required information was in the EIR or it was omitted." (*Ibid.*) In contrast, "[t]he second type of claim, *which is presented in this case*, is more complex." (*Ibid.*, italics added.) The second type of claim "involves an EIR that has at least addressed the required topic and a claim by the plaintiff that the information provided on that topic is insufficient." (*Ibid.*)

It is this "second type of claim" that is at issue here, and over which the courts are split as to the standard of review. As demonstrated in the Petition, the Fifth District departs from most other districts and applies de novo review to the question of whether an EIR includes sufficient information on a required topic. In contrast, most districts apply the substantial evidence standard to such claims because decisions about the

---

[1] The CEQA Guidelines are codified in California Code of Regulations, title 14, section 15000 et seq.

[2] The Opinion states that the first type of claim "involves a situation where the EIR does not discuss a topic that a statute, regulation or *judicial opinion* says must be discussed." (Opn. 23, italics added.) Public Resources Code section 21083.1, however, prohibits the courts from interpreting CEQA in a manner that imposes new procedural or substantive requirements beyond those explicitly stated in the CEQA statute or CEQA Guidelines. Therefore, to the extent that a judicial opinion conflicts with the statute or Guidelines, the judicial opinion should not be a source for determining the requirements of CEQA.

amount, type, and scope of information to include in an EIR on a required topic are factual decisions best left to the lead agency's discretion.[3]

Rather than admit that there is a split in authority regarding this second type of informational claim (which is at issue here), Plaintiffs' Answer focuses entirely on the first type of informational claim (which is not at issue). In particular, Plaintiffs assert that since this Court decided *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435 ("*Vineyard*"), "[a]ll of the ... cases cited in the petition apply the same standard of review to claims that the EIR failed to provide information *required by CEQA*." (Answer, p. 5, italics added.)[4] As indicated, however, Friant Ranch, L.P. does not disagree with this statement. As should be obvious, the question presented is not what standard of review applies to a claim that an EIR omits information

---

[3] See *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986–987 ("*CNPS*"); *Santa Monica Baykeeper v. City of Malibu* (2011) 193 Cal.App.4th 1538, 1546 ("*Baykeeper*"); see also *North Coast Rivers Alliance v. Municipal Water Dist. Bd. of Directors* (2013) 216 Cal.App.4th 614, 637 ("*North Coast Rivers Alliance*"); *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1045-1046 ("*Treasure Island*").

[4] Presumably the answer focuses on **post**-*Vineyard* cases because the Fifth District acknowledged the split in its **pre**-*Vineyard* decision in *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1392, when it went on record disagreeing with the Fourth District's decisions in *Barthelemy v. Chino Basin Municipal Water District* (1995) 38 Cal.App.4th 1609, 1616–1621 and *National Parks & Conservation Association v. County of Riverside* (1999) 71 Cal.App.4th 1341, 1353–1354.

mandated by CEQA. The law is clear that such claims are reviewed de novo, and, if the omission of information precludes informed public participation and decisionmaking, prejudicial error will be found. (See *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 463.) Rather, the question presented in the Petition is what standard of review applies to a claim that an EIR, while discussing the topics mandated by CEQA, fails to include *sufficient* information on one or more of those topics (i.e., the "second type of claim"). As demonstrated in the Petition, most courts apply the substantial evidence standard to such claims (see Petition, pp. 7–16), while the Fifth District reviews such claims de novo (Opn. 23).

With this clarification in mind, Plaintiffs' attempts to show "uniformity of decision" fail. For example, the Answer asserts that in *CNPS*, the Sixth District explained that "'[t]he omission of *required* information constitutes a failure to proceed in the manner required by law where it precludes informed decision-making by the agency or informed participation by the public. [Citation.] We review such procedural claims de novo.'" (Answer, p. 5, quoting *CNPS*, *supra*, 177 Cal.App.4th at p. 987, italics added.) This is a plain statement of the standard of review for the "first type" of claim and is not at issue. Instead, Friant Ranch, L.P. cited *CNPS* in the Petition because that case involved the "second type" of informational claim.

In particular, plaintiffs in *CNPS* argued that the EIR violated CEQA for failing to include an off-site alternative. (*CNPS*, *supra*, 177 Cal.App.4th at pp. 994–996.) The court concluded, however, that plaintiffs had not "tether[ed]" their claim regarding the off-site alternative to any *requirement* in CEQA. (*Id.* at p. 987; see also *Id.* at p. 993.) Because CEQA did not require the city to include information about an off-site alternative in the EIR, the court applied the substantial evidence standard to plaintiff's claim that the EIR violated CEQA for failing to include that information. (*Id.* at pp. 996-997.) In contrast, under the Opinion, the Fifth District would presumably review the city's failure to include an off-site alternative in the EIR de novo, thereby substituting its judgment for that of the lead agency. (See Opn. 23.)

As the Answer also notes, similar to *CNPS*, in *Baykeeper* "appellants claimed the EIR's discussion of groundwater impacts was inadequate because it failed to analyze potential groundwater quality impacts of discharging effluent for irrigation. [Citation.] The court concluded that the analysis the appellant claimed was missing was not required by CEQA." (Answer, pp. 5–6, citing *Baykeeper*, *supra*, 193 Cal.App.4th at pp. 1555, 1559.) Because the information claimed to be missing from the EIR was not *required* by CEQA, the court reviewed the agency's implicit decision not to include the groundwater information under the substantial evidence standard. (*Baykeeper*, *supra*, 193 Cal.App.4th at p. 1559.) Again,

Baykeeper involved the "second type" of claim, so the court appropriately applied the substantial evidence standard. (See also Answer, p. 6 [summarizing *North Coast Rivers Alliance, supra*, 216 Cal.App.4th at p. 637, in which the court reviewed a claim that an EIR lacked sufficient detail on shock-chlorination treatments for substantial evidence].) In contrast, the Fifth District, reviews all such claims independently. (Opn. 23; see also *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102.) As a result, in the Fifth District, a lead agency's determinations as to the scope and type of analysis contained in an EIR are replaced by the Court of Appeal's determinations, in violation of separation of powers principles.

Save Round Valley Alliance v. County of Inyo (2007) 157 Cal.App.4th 1437 ("*Save Round Valley*"), also cited in the Answer, involved both the "first type" of informational claim (a claim that the EIR lacked information required by CEQA) and the "second type" of claim (a claim that the EIR lacked sufficient information on a topic required by CEQA). Regarding the first type of claim, the court explained that CEQA requires an EIR to explain the reasons an agency rejects a potential alternative as infeasible and also requires an agency to review and participate in the alternative selection process independently and in good faith. (*Id.* at p. 1458, citing CEQA Guidelines, § 15091, subd. (c) [when an agency finds that alternatives are infeasible, it must "describe the specific

reasons for rejecting" the alternatives]; see also, CEQA Guidelines, § 15025, subd. (b) [agency decisionmaking body may not delegate duty to review and consider a final EIR or make findings required by CEQA Guidelines section 15091 and 15093].) The court held that that the county violated these procedural requirements because it blindly relied on the applicants' statements regarding the infeasibility of an environmentally superior alternative analyzed in the EIR, despite the fact that other evidence submitted to the county undermined the veracity of the applicants' statements. (*Id.* at pp. 1458–1465.) Under these circumstances, the court held that the county had failed to proceed in the manner required by law and therefore applied de novo review. (*Id.* at p. 1465.)

Regarding the second type of claim, in *Save Round Valley*, plaintiff claimed that "the EIR must include a 'quantitative analysis'" of the project's impacts on populations of affected species. (157 Cal.App.4th at p. 1468.) The court explained that CEQA does not mandate that an EIR quantify impacts. (*Ibid.*) Therefore, the *Save Round Valley* court appropriately reviewed this claim under the substantial evidence standard and upheld the analysis. (*Ibid.*)

In contrast, under the Opinion, this claim would have been reviewed independently by the court, rather than reviewed for substantial evidence. The Opinion states that it is up to the reviewing court to "draw[] the line that divides *sufficient* discussions from those that are *insufficient*." (Opn.

23, italics original.) "Drawing this line and determining whether the EIR complies with CEQA's informational disclosure requirements presents a question of law subject to independent review by the courts." (*Ibid.*) As indicated, this is contrary to the rule of law followed by the other districts, which apply the substantial evidence standard of review to such claims.

Lastly with respect to the first issue presented in the Petition, Friant Ranch, L.P. alerts this Court to the First District's recent decision in *Treasure Island*, *supra*, 227 Cal.App.4th 1036 which was published after Friant Ranch, L.P. filed its Petition. In that case, the plaintiff claimed that "its 'challenge to the EIR's adequacy as an information disclosure document is a procedural claim reviewed de novo by the courts, and thus the question of whether "substantial evidence" supports the City's determinations is irrelevant."' (*Id.* at pp. 1045-1046.) Despite the plaintiff's "strenuous efforts to reframe the issues to allege procedural violations under CEQA," however, the court observed that "virtually all of the issues it raises on appeal challenge the *sufficiency* of the information provided to the public and the decisionmakers." (*Id.* at p. 1046, italics added.) Therefore, the court applied the substantial evidence standard to these claims. (*Ibid*; see also *id.* at pp. 1056–1060 [substantial evidence supported EIR's discussion about the presence and remediation of hazardous substances].) In marked contrast, the Opinion claims that challenges to the

sufficiency of an EIR's discussion are reviewed independently, not for substantial evidence. (Opn. 23.)

Clearly, a split exists between the Fifth District and the other appellate districts regarding the standard of review that applies to a claim challenging the sufficiency of information contained in an EIR on a required topic. The Answer fails, entirely, to demonstrate uniformity of decision on this specific issue. For the reasons set forth in the Petition and in the amicus curiae letters filed in support of the Petition, the Court should grant review of the Opinion to achieve uniformity of decision on this extremely important and far-reaching issue of law under CEQA.

B. Plaintiffs Are Mistaken; The Opinion Imposes An Obligation To Provide A Health Correlation Analysis; Review Of This Issue Is Warranted Because It Raises An Important Issue Of Law.

Regarding the second issue presented, Plaintiffs claim that "the opinion does not impose an obligation to provide a 'health correlation analysis.'" (Answer, p. 8.) Friant Ranch, L.P. is perplexed by this argument because the Opinion is unambiguous on this point. Although the Opinion acknowledges that the Friant Ranch EIR discussed, generally, the health impacts associated with the types of emissions produced by the Project, the Opinion holds that the Friant Ranch EIR violated CEQA because "[i]t did not correlate the additional tons per year of emissions that would be generated by the project (i.e., the adverse air quality impacts) to adverse

human health impacts that could be expected to result from those emissions." (Opn. 48.)

In case the language quoted above was not clear enough, the Opinion goes on to state that CEQA requires an EIR to contain:

> some analysis of the correlation between the project's emissions and human health impacts. [Citation.] In other words, we agree with plaintiffs that it is not possible to translate the bare numbers provided into adverse health impacts *resulting from this project.*
>
> Therefore, we conclude that the Friant Ranch EIR is inadequate under CEQA because it does not analyze the adverse human health impacts that are likely to result from the air quality impacts identified in the EIR. The simple statement in the EIR that the significant adverse air quality impacts will have an adverse impact on human health fails to comply with CEQA.

(Opn. pp. 49–50, italics original.)

The Opinion also gives examples of the type of analysis that could satisfy its holding, such as: (1) information about how many people with respiratory difficulties would be required to wear filtering devices when they go outside or whether the impact would not be so significant as to cause an increase in respirator use; and/or (2) an estimate of the number of days, if any, that the project's emissions will cause monitoring stations in the Fresno area to exceed state and federal standards. (Opn. pp. 48–49.)

In light of these considerations, it is plain that the Opinion holds that CEQA requires a health correlation analysis and the Friant Ranch EIR

violates CEQA for failing to include one. Plaintiffs are therefore incorrect in characterizing the Opinion as not requiring a health correlation analysis.

Furthermore, to the extent that Plaintiffs are suggesting that the Opinion holds only that the EIR must disclose that "there is a causal connection or correlation between criteria air pollution emissions and adverse health effects" (Answer, p. 8.), they are wrong. As noted, the Opinion specifically acknowledges that the Friant Ranch EIR discloses this causal connection. (Opn. 48.) Rather, the Opinion requires the EIR to do more than acknowledge the causal connection between pollution and health impacts; it requires an analysis *correlating* the project's emissions to the specific health impacts that would result. (Opn. 45–50.)

Finally, in addition to mischaracterizing the holding of the Opinion, Plaintiffs also argue that the Court should not grant review of the second issue presented because "[t]he petition reflects no disagreement among the courts regarding whether CEQA requires an EIR to explain how the level of emissions from a project will affect human health in the area." (Answer, p. 8.) The Petition does not contend that there is a split of authority on this issue, however. (See Petition, pp. 3–4, 19–25.) Rather, the Petition seeks review of this issue so that the Court may settle this important issue of law. (*Ibid.*; Cal. Rules of Court, Rule 8.500, subd. (b)(1).)

As demonstrated in the Petition, this is an important issue of law because the Opinion imposes a new procedural requirement under CEQA in

violation of Public Resources Code section 21083.1. Moreover, it is not clear that it is even possible to perform the health correlation analysis required by the Opinion. In addition, the fact that the Opinion imposes this new highly technical requirement on the County demonstrates the importance of applying the deferential substantial standard of review to the type and scope of an EIR's analysis.

C. Plaintiffs Misconstrue The Third Issue Presented; Review Of That Issue Is Warranted To Secure Uniformity Of Decision And Settle An Important Issue Of Law Regarding The Standard Of Adequacy For Mitigation Under CEQA.

Contrary to the Answer's suggestion (Answer, p. 9), Friant Ranch, L.P., does not dispute that CEQA generally prohibits an agency from deferring formulation of mitigation measures unless the agency commits itself to specific performance standards that must be achieved by the mitigation measures to be formulated in the future. (See Petition, p. 26, citing *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 735.) Instead, the third issue presented asks whether a lead agency defers mitigation when it retains the discretion to substitute adopted measures with equally or more effective measures in the future as better technology becomes available; and, if so, does the Opinion impose heightened standards of precision in conflict with the holdings of other appellate districts. (Petition, pp. 3, 24–32.) Plaintiffs do not dispute that these are important issues of law. (See Answer, pp. 8-12.)

As to the first consideration – whether the County's mitigation measures defer mitigation *at all* – the Answer is completely silent. Presumably this is because Plaintiffs agree with Friant Ranch, L.P. that no other published decision in California holds that an agency defers formulating mitigation simply by retaining the discretion to substitute the measures with equally or more effective measures in the future. (Petition, p. 27.)

As to the second consideration of the third issue presented – whether the Opinion imposes much more stringent requirements for "performance standards" than the other published decisions – Plaintiffs claim that the "only lack of uniformity is the factual scenarios" among the cases cited in the Petition. (Answer, p. 9.) While certainly the adequacy of mitigation will depend on the factual circumstances presented, Plaintiffs are mistaken in asserting that the Fifth District in the Opinion was no more stringent under the facts of this case than any other court of appeal would be given the same set of facts.

Rather, unlike the numerous decisions cited in the Petition that upheld fairly amorphous and *qualitative* standards, the only performance standards that would satisfy the Fifth District in the Opinion are *quantitative*. (See Opn. 61–62.) For instance, the court upheld the County's mitigation measure requiring trees to shade 25 percent of the paved area within 20 years (a quantitative standard), but overturned the mitigation

measure requiring that "all non-residential project shall provide bicycle lockers and/or racks." (Opn. 62.) This was because "there is no basis for evaluating the emissions reductions achieved by this measure." (*Ibid*; see also Petition, pp. 29–31 [detailing the qualitative performance standards upheld by the courts in other published decisions].) Similarly, the Opinion overturned the measure requiring "apartments and condominiums to provide 'at least two Class I bicycle storage spaces per unit'" because the measure "is specific only about the amount of storage required," not the amount of emissions that would be reduced. (Opn. 62.) This is far stricter than the other courts have been, including this Court. (See *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 418 ("*Laurel Heights I*") [upholding mitigation measure for a 29-space parking deficit that required the university "'to promote ongoing campus transportation systems, management programs, including promotion of transit, carpooling, vanpooling, and related activities"']; *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 938 [upholding mitigation measures requiring "(1) provision of storage for bicycle of employees and customers and provision for employee shower and locker facilities and (2) provision for bike access to the project site"].)

The Answer also argues that *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238 ("*Fairview Neighbors*"), cited in the Petition, is distinguishable because in that case, the EIR concluded that the

impacts were unmitigable, whereas here, Plaintiffs assert, the EIR concluded that the mitigation measures would "substantially reduce" air quality impacts. (Answer, p. 11, citing Opn. 53.) Plaintiffs' argument seems disingenuous. While it is true that the EIR's air quality mitigation measures are prefaced with the statement that the measures will "substantially reduce" air quality impacts, the EIR ultimately concluded that the impact will be "***significant and unavoidable***," even with mitigation. (AR 826, emphasis original.) The County's Findings of Fact, which set forth the County's final word on the significance of the Project's impacts after mitigation, likewise conclude that the Project's air quality impact is significant and unavoidable. (AR 24.)

Thus, as in *Fairview Neighbors*, the Friant Ranch EIR and the County's CEQA findings admit that the Project's air quality impacts are unmitigable – it is not feasible to formulate mitigation measures that would reduce the impact to less-than-significant levels. Nevertheless, the County and Friant Ranch, L.P. at least attempted to minimize the impacts through Mitigation Measure #3.3.2. Under these circumstances, the strict prohibitions against deferring the formulation of mitigation measures should not apply. (*Fairview Neighbors*, *supra*, 70 Cal.App.4th at p. 245.) This is because the agency is not relying on the formulation of future mitigation measures to reduce the impact to less-than-significant levels. Rather, the agency is relying on measures to help minimize an impact that

the agency acknowledges is a significant and unavoidable consequence of the project. (*Ibid.*) The Opinion conflicts with the Second District's holding in *Fairview Neighbors* in that the Opinion requires the County to adopt rigid performance standards for the air quality mitigation measures, despite the fact that there are no feasible mitigation measures that could reduce the impact to below the Air District's thresholds. (Opn. 61–63; compare *Fairview Neighbors*, *supra*, 70 Cal.App.4th at p. 245.)

As discussed more fully in the Petition, by holding the County's air quality mitigation measures to unprecedented standards of perfection, the Opinion creates a strong disincentive for agencies and applicants to even attempt to mitigate the significant and unavoidable impacts of their projects. Review is warranted to secure uniformity of decision and to settle these important issues of law.

D. Review Is Warranted To Secure Uniformity Of Decision And Settle The Important Question Of Law Regarding Specificity And Enforcement Of Mitigation Measures.

Plaintiffs claim that that review of the fourth issue is unnecessary because there is uniformity of decision on this issue.[5] (Answer, p. 12.) Plaintiffs are wrong. Although the Opinion states that the court is "not applying the due process vagueness doctrine here," the court used the due

[5] Plaintiffs do not appear to dispute that review of the fourth issue is necessary to settle an important issue of law. (See Answer, p. 12; Cal. Rules of Court, Rule 8.500(b)(1).)

process vagueness doctrine as an analogy to determine whether the County's mitigation measures provided enough specificity. (Opn. p. 55–56.) No other published decision in California holds mitigation measures to this type of "vagueness" standard.

Moreover, as discussed in the Petition, the Opinion holds that the County's mitigation measures violate Public Resources Code section 21081.6, subdivision (b), because, in the court's view, the mitigation measures are not "'fully enforceable through permit conditions, agreements or other measures.'" (Opn. 57; see also Opn. 56, fn. 25.) In contrast to the Opinion, other courts have recognized that the adoption of a mitigation monitoring and reporting program ("MMRP") by a lead agency is a binding obligation on the agency. (See Petition, p. 33, citing *Lincoln Place Tenants v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1509–1510; see also *North Coast Rivers Alliance, supra,* 216 Cal.App.4th at pp. 653–654 [adopted mitigation is binding agency obligation]; *Lincoln Place Tenants v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 449–450 [same].)

Additionally, the Opinion reviews the effectiveness of the County's mitigation measures de novo, which directly conflicts with this Court's decision in *Laurel Heights I.* In that case, this Court made clear that the substantial evidence standard applies to mitigation measures and the courts must uphold an agency's mitigation measures, provided that the evidence, "as a whole" supports the mitigation measures. (*Laurel Heights I, supra,* 47

Cal.3d at p. 408; see Petition p. 35 [explaining the same].) In contrast, the Court of Appeal in this case independently reviewed each of the measures proposed under Mitigation Measure #3.3.2 and determined that many of them were too vague and unenforceable to constitute adequate mitigation under Public Resources Code section 21081.6, subdivision (b).

III.

CONCLUSION

For the reasons stated above and in the Petition, the important questions of law and lack of uniformity of decision presented in this case merit review by this Court.

Respectfully submitted,

REMY MOOSE MANLEY, LLP

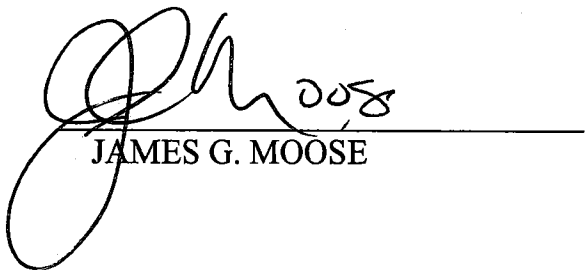
Dated: August 18, 2014

By: _____
JAMES G. MOOSE
Attorneys for
Real Party in Interest and
Respondent FRIANT RANCH, L.P.

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.504(d) of the California Rules of Court, I hereby certify that this REPLY TO ANSWER TO PETITION FOR REVIEW contains 4,195 words, according to the word counting function of the word processing program used to prepare this petition.

Executed on this 18th day of August 2014, at Sacramento, California.



JAMES G. MOOSE

Sierra Club, et al. v. County of Fresno, et al.
Supreme Court of California Case No. S219783
(Fifth District Court of Appeal Case No. F066798;
Fresno County Superior Court Case No. 11CECG00726)

PROOF OF SERVICE

I, Bonnie Thorne, am a citizen of the United States, employed in the City and County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, California 95814 and email address is bthorne@rmmenvirolaw.com. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy Moose Manley, LLP's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each day's business.

On August 18, 2014, I served the following:

REPLY TO ANSWER TO PETITION FOR REVIEW

☒ On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as follows; or

☐ On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below; or

☒ Courtesy copy on the parties in this action by causing a true copy thereof to be electronically delivered via the internet to the following person(s) or representative at the address(es) listed below:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed this 18th day of August 2014, at Sacramento, California.

_____
Bonnie Thorne

Sierra Club, et al. v. County of Fresno, et al.
Supreme Court of California Case No. S219783
(Fifth District Court of Appeal Case No. F066798;
Fresno County Superior Court Case No. 11CECG00726)

SERVICE LIST

Sara Hedgpeth-Harris LAW OFFICE OF SARA HEDGPETH-HARRIS 2125 Kern Street, Suite 301 Fresno, CA 93721 Tel.: (559) 233-0907 Fax: (559) 272-6046 Email: sara.hedgpethharris@shh-law.com	Attorney for Plaintiffs and Appellants *Sierra Club, et al.* **VIA U.S. MAIL** courtesy copy by email
Daniel C. Cederborg Bruce B. Johnson, Jr. OFFICE OF THE FRESNO COUNTY COUNSEL 2220 Tulare Street, Suite 500 Fresno, CA 93721 Tel.: (559) 600-3479 Fax: (559) 600-3480 Email: bjohnson@co.fresno.ca.us kbriggs@co.fresno.ca.us	Attorneys for Respondents *County of Fresno* **VIA U.S. MAIL** courtesy copy by email
Bryan N. Wagner WAGNER & WAGNER 7110 N. Fresno St, Suite 340 Fresno, CA 93720 Tel.: (559) 224-0871 Fax: (559) 224-0885 Email: Bryan@wagnerandwagner.com	Attorney for Real Party in Interest/Respondent *Friant Ranch, L.P.* **VIA U.S. MAIL** courtesy copy by email
R. Tyson Sohagi THE SOHAGI LAW GROUP 11999 San Vicente Blvd., Suite 150 Los Angeles, CA 90049 Tel.: (310) 475-5700 Fax: (310) 475-5707 Email: tsohagi@sohagi.com	Attorney for Amici Curiae *League of California Cities, and the California State Association of Counties* **VIA U.S. MAIL**

Clerk of the Court
Fifth District Court of Appeal
2424 Ventura Street
Fresno, CA 93721
Tel.: (559) 445-5491

Pursuant to California Rule of Court 8.500(f)(1)

VIA U.S. MAIL

Clerk of the Court
Superior Court of California
County of Fresno
1130 O Street
Fresno, CA 93721
Tel.: (559) 457-1900

Pursuant to California Rule of Court 8.500(f)(1)

VIA U.S. MAIL