



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of)
SOUTHERN CALIFORNIA EDISON)
COMPANY (U-338-E) for a Certificate) A.08-05-039
of Public Convenience and Necessity)
for the San Joaquin Cross Valley Loop) (Filed May 30, 2008)
Transmission Project)
_____)

OPENING BRIEF OF PARAMOUNT CITRUS ASSOCIATION

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I. INTRODUCTION

This brief is submitted on behalf of Paramount Citrus Association (“PCA”) in response to the San Joaquin Cross Valley Loop 220kV Transmission Line Project Final Environmental Impact Report (“FEIR”). PCA and its affiliates own and farm significant agricultural acreage within the right of way (“ROW”) for the Proposed Project and the Alternatives 2 and 6 ROW described in the Draft Environmental Impact Report (“DEIR”) and the FEIR. For convenience, this brief will refer to the Proposed Project as Alternative 1.

The FEIR published by the California Public Utilities Commission (“CPUC”) concerns the Southern California Edison (“SCE”) proposal to build a new two circuit 220kV line with associated poles and lattice towers and additional appurtenant equipment connecting the existing Big Creek 4-Springville transmission line to the existing Rector substation near Visalia (the “Project”).

PCA submitted two separate comments to the CPUC in response to the DEIR. The first, submitted by our law firm, Baker Manock & Jensen, PC, is identified in the FEIR as comment letter O-19. That letter (i) compared the agricultural impacts of Alternatives 1, 2, and 6 to the agricultural impacts of Alternative 3, (ii) compared the economic impacts of Alternatives 1, 2, and 6 to the economic impacts of Alternative 3, (iii) addressed the inadequacy of the DEIR’s evaluation of the adverse impacts of Alternatives 1, 2, and 6 on groundwater, and (iv) addressed the inadequacy of the DEIR’s evaluation of the adverse impacts of Alternatives 1, 2, and 6 on recreation, culture, aesthetics and environmental values in the Sentinel Butte Valley.

The second, submitted by David Bean of AMEC, is identified in the FEIR as letter O-18. That letter addressed the adverse impacts of Alternatives 1, 2, and 6 on the underlying aquifer and groundwater supplies.

Although the FEIR did respond to all of PCA’s comments either individually or as part of the Master Comments, those responses failed to sufficiently address the detailed comments and supporting evidence. The FEIR’s responses are cursory expressions of opinion that are not supported by substantial evidence submitted by PCA. The FEIR and the administrative record do not include substantial evidence for the individual conclusions made by the FEIR in a number of subject areas, including (i) Evaluation of Alternative 3A, (ii) Impacts on Agriculture, (iii) Economic Impacts, and (iv) Hydrologic Impacts. Therefore, the FEIR fails to provide substantial

evidence for the ultimate conclusion that Alternative 2 is the Environmentally Superior Alternative.

II. PARAMOUNT CITRUS ASSOCIATION REQUESTS THAT ORAL ARGUMENT BE SET FOR THIS PROCEEDING

In accordance with Rule 13.13 of the Commission’s Rules of Practice and Procedure, oral argument before the Commission is requested in this matter. As no previous directives were issued regarding the time and manner for making the request, this request should be allowed as appropriate for consideration.

III. STANDARD OF REVIEW

Public Resources Code sections 21168 and 21168.5 provide the standard of review applied by courts in “[a]ny action or proceeding” challenging an agency decision under CEQA. Under both sections, a court’s review of that agency decision is focused on two related inquiries: (1) whether there is substantial evidence in light of the whole record to support the decision; and (2) whether the agency abused its discretion by failing to proceed in the manner required by law.¹ The substantial evidence standard applied in CEQA cases was explained by a recent appellate court:

A court’s proper role in reviewing a challenged EIR is not to determine whether the EIR’s ultimate conclusions are correct but only whether they are supported by substantial evidence in the record and whether the EIR is sufficient as an information document. Substantial evidence is defined as ‘enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached’.²

Although a significant amount of discretion is given to agency CEQA decisions, those decisions must be supported by reasonable facts and analysis:

¹ California Public Resources Code §§ 21168 & 21168.5; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395, fn. 5.

² *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1109 (quoting *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390).

When assessing the legal sufficiency of an EIR [as an informational document], the reviewing court focuses on adequacy, completeness and a good faith effort at full disclosure. The EIR must contain facts and analysis, not just the bare conclusions of an agency. An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project. Analysis of environmental effects need not be exhaustive, but will be judged in light of what was reasonably feasible. When experts in a subject area dispute the conclusions reached by other experts whose studies were used in drafting the EIR, the EIR need only summarize the main points of disagreement and explain the agency's reasons for accepting one set of judgments instead of another.³

Under CEQA, a project may not be approved by a public agency if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.⁴ “Feasible” is defined as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”⁵

The FEIR is not supported by substantial evidence in the record. The FEIR does not adequately consider evidence submitted by PCA and generally the FEIR offers no substantial or relevant evidence to refute the evidence submitted in the comments. The FEIR repeatedly adopts conclusions contrary to the uncontradicted evidence submitted in response to the DEIR. As demonstrated below, these conclusions are contrary to law and they must be set aside by the Public Utilities Commission.

IV. DISCUSSION

The substantial evidence in the DEIR and the FEIR indicates that Alternative 2 has significant and unmitigatable adverse impacts on the agriculture and hydrology along the ROW and has significant and unmitigatable adverse impacts on the regional economy. By contrast, Alternative 3A, as proposed by Project Agriculture Communities Environment (“PACE”), a community group that is a party to this case, appears to have substantially less impacts than any of the alternatives studied in the DEIR. Alternative 3A was not adequately addressed in the

³ *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1109 (quoting *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390-1391).

⁴ California Public Resources Code § 21002.

⁵ CEQA Guidelines § 15364.

FEIR, however. The PUC should request that the EIR preparer fully study Alternative 3A as proposed and either recirculate the DEIR or circulate a focused DEIR concerning only Alternative 3A to allow for comments and serious consideration of this well thought out alternative that is strongly supported by the local community.

A. ALTERNATIVE 3A IS ENVIRONMENTALLY SUPERIOR

The DEIR evaluated four alternative routes: the SCE Proposed Project (Alternative 1), Alternative 2, Alternative 3, and Alternative 6. The DEIR concluded that Alternative 3 would cause significant unmitigable impacts on northern claypan vernal pool habitat that is protected in the Stone Corral Ecological Reserve.⁶ Shortly prior to the public comment meeting on the DEIR, PACE identified and released information about a route modification they asserted is both feasible and will avoid the effects on the Stone Corral Ecological Reserve. This route is called “Alternative 3A.” Since this alternative was proposed during public comments, the route was not evaluated in the DEIR. Therefore, the public has not been given the opportunity to meaningfully comment on Alternative 3A.

While we commend the preparers of the FEIR for their inclusion and evaluation of Alternative 3A in the FEIR, the “environmental screening” of this alternative was too superficial to be a meaningful basis for decision-making. The bases for the FEIR’s conclusions regarding Alternative 3A are currently speculative and not fully developed. Therefore, the FEIR’s conclusions regarding Alternative 3A are not supported by substantial evidence.

1. THE FEIR’S REJECTION OF ALTERNATIVE 3A AS THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

- a. **The FEIR’s Conclusion that Use of the Railroad ROW in Alternative 3A is “Legally Infeasible” is Not Supported by Substantial Evidence Because the Only Support for the Conclusion Is Two Telephone Conversations with Buck Workman, Western Region Property Manager for Rail America.**

⁶ DEIR 4.4-53 – 4.4-55.

When considering alternatives to the Proposed Project, the lead agency is only required to consider feasible alternatives.⁷ Among the factors that may be taken into account when addressing the feasibility of alternatives are suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site.⁸

The FEIR improperly concluded that use of 4100 feet of abandoned railroad ROW was legally infeasible. Based on that finding, the location of the Alternative 3A ROW was adjusted so that section of Alternative 3A ROW would run through 410,000 square feet of agricultural land (totaling 9.4 acres⁹) rather than along the railroad ROW.¹⁰

The only basis for the FEIR's conclusion that the use of the railroad ROW is legally infeasible are telephone conversations with Mr. Buck Workman. In those telephone conversations, Mr. Workman stated that Rail America does not want to sell only a portion of the ROW, and, therefore, the price for the ROW would be "exorbitantly high."¹¹ These statements do not rise to the level of substantial evidence. Mr. Workman's statements are nothing more than speculation and unsubstantiated opinion. As stated in CEQA Guidelines Section 15384, speculation and unsubstantiated opinion or narrative does not constitute substantial evidence. The FEIR offers no other evidence to support its conclusion that use of the railroad ROW in Alternative 3A is legally infeasible. We understand that another party will introduce evidence from the Tulare County Official Records that demonstrate that Mr. Workman was mistaken about the extent of Rail America's ownership along this particular ROW. In addition, subsequent conversations with Rail America indicate that the entire railroad ROW through the project area is for sale.

Since the FEIR's conclusion regarding the feasibility of acquiring the railroad ROW is not supported by substantial evidence, accepting the unsubstantiated conclusion of legal infeasibility would be an abuse of discretion by the CPUC. This conclusion must be set aside.¹²

⁷ CEQA Guidelines § 15126.6(a).

⁸ CEQA Guidelines § 15126.6(f).

⁹ Based on the following conversion: 4100 linear feet 100 feet wide is 410,000 square feet that is equivalent to 9.4 acres.

¹⁰ FEIR 4.6-8.

¹¹ FEIR 4.6-8.

¹² California Public Resources Code § 21168.5.

b. The FEIR's Conclusion's Regarding the Environmental Screening of Alternative 3A is not Supported by Substantial Evidence Because the Evidence is "Clearly Erroneous or Inaccurate" in Violation of CEQA Guidelines Section 15384.

i. FEIR's Conclusion that Alternative 3A only Impacts 3.8 Fewer Acres of Farmland than Alternative 2 is Clearly Erroneous and Inaccurate and is not Supported by Substantial Evidence.

The FEIR concludes that Alternative 3A will permanently disturb 21.8 acres of Farmland, only 3.8 acres of Farmland less than Alternative 2.¹³ However, as proposed by PACE, Alternative 3A disturbs significantly fewer acres than stated in the FEIR. As discussed above, the FEIR moved the Alternative 3A ROW off 4,100 linear feet of abandoned railroad ROW¹⁴ and onto 410,000 square feet of agricultural land. This substitution increased the amount of agricultural land affected by the Alternative 3A ROW by 9.4 acres.¹⁵

Once the conclusion that Alternative 3A's use of the railroad ROW is legally infeasible is properly set aside, an accurate evaluation of permanently disturbed farmland will demonstrate that the Alternative 3A ROW will disturb substantially less farmland than Alternative 2.

Alternative 3A as modified by the FEIR already disturbs almost 20% less farmland than Alternative 2. As proposed, Alternative 3A impacts significantly fewer acres of farmland than Alternative 2. Therefore, the FEIR's conclusion that Alternatives 2 and 3A have roughly comparable impacts to agriculture is not supported by substantial evidence and must be set aside.

ii. The FEIR's Conclusion that Alternative 3A is not the Environmentally Superior Alternative Because the ROW Passes Within 50 Feet of Several Residences, a Unique Issue not Associated with Alternative 2, is Clearly Erroneous and Inaccurate and is not Supported by Substantial Evidence.

¹³ FEIR 4.6-11.

¹⁴ FEIR 4.6-8.

¹⁵ Based on the following conversion: 4100 liner feet 100 feet wide is 410,000 square feet that is equivalent to 9.4 acres.

The FEIR concludes that Alternative 3A is not the Environmentally Superior Alternative because the proposed ROW will pass within fifty (50) feet of several residences.¹⁶ Furthermore, the FEIR states that this issue is unique to Alternative 3A and is not associated with Alternative 2.¹⁷ Therefore, the FEIR concludes that Alternative 2 remains the Environmentally Superior Alternative. However, the statement that an aesthetic effect on residences is unique to Alternative 3A is completely inaccurate and contradicts the findings in the DEIR. On page 4.1-13 the DEIR states “between miles 3.0 and 3.6, Alternative 2 would traverse through several backyards of single family homes in the Oak Ranch Development.” (This statement is not altered by the FEIR.) Therefore, the DEIR clearly states that the proposed Alternative 2 ROW will be within close proximity to several residences.¹⁸ Thus, Alternative 3A does not have a unique or even substantially different impact on residences when compared to Alternative 2.

Therefore, the evidence supporting the FEIR’s conclusion that Alternative 3A is not the Environmentally Superior Alternative because it, in contrast to other alternatives, passes within fifty (50) feet of several residences, is clearly erroneous. Because this conclusion is based on erroneous information, it is not supported by substantial evidence and must be set aside.

iii. The FEIR’s Conclusion that Alternative 3A is not the Environmentally Superior Alternative Because the ROW Will Bisect Several Agricultural Parcels Rather than Following Parcel Boundaries, a Unique Issue Not Associated with Alternative 2, is not Supported by Substantial Evidence.

As proposed, Alternative 3A does bisect parcels.¹⁹ However, based on Figure 4.6(RTC)-1 provided in the FEIR, Alternative 3A could easily be altered to follow parcel boundaries. Altering Alternative 3A in this manner would also avoid surrounding the identified turkey farm with transmission lines on three sides because the line immediately adjacent to its eastern boundary would be relocated. Thus an easy modification of Alternative 3A could align it with parcel boundaries if desirable.

¹⁶ FEIR 4.6-12.

¹⁷ FEIR 4.6-12.

¹⁸ The DEIR does not articulate the number of feet from the single family residences to the proposed Alternative 2 ROW. Therefore, a more detailed comparison of the effects of Alternative 2 and Alternative 3A is not possible.

¹⁹ See FEIR Figure 4.6(RTC)-1.

As proposed, Alternative 2 bisects a substantial number of parcels.²⁰ In addition, the FEIR amends Mitigation Measure 4.7-11b regarding groundwater wells to require adjustment of the ROW to avoid potential impacts to wells.²¹ Mitigation Measure 4.7-11b requires SCE to “adjust the proposed ROW such that the centerline of the ROW shall be no closer than 50 linear feet from any existing well.”²² Moving the ROW centerline may solve some of the well impacts but will inevitably cause the ROW to bisect many additional parcels instead of following parcel boundary lines. Because the FEIR’s environmental screening does not analyze whether Alternative 3A actually has an adverse impact on the bisected parcels, and the FEIR makes no attempt to study the parcel impacts from implementation of the proposed well mitigation measure, it is impossible to determine from the FEIR whether Alternative 3A or Alternative 2 has greater impacts due to deviations from parcel lines. Therefore, there is not substantial evidence in the record to support the conclusion that Alternative 3A has greater impacts than Alternative 2 due to the ROW failing to follow parcel lines. Logically, however, since Alternative 2 involves a much greater distance of new ROW crossing private lands, it is likely that Alternative 2 has a greater impact on parcel fragmentation than 3A.

The failure of the FEIR to analyze the potentially adverse impacts of amended Mitigation Measure 4.7-11b on parcel fragmentation fails to comply with the mandate of CEQA to disclose all potential impacts of adopted mitigation measures. It is improper to delay the analysis of the impact of mitigation measures until after project approval.

To the extent that FEIR’s conclusion that Alternative 3A is not the Environmentally Superior Alternative is based on Alternative 3A bisecting some agricultural parcels, it is not supported by substantial evidence and must be set aside.

iv. The FEIR’s Conclusion that Alternative 3A is not the Environmentally Superior Alternative Because the ROW Will Likely Result in the Loss of Use of at Least Eight Parcels Within the Proposed Seville Hamlet Development Boundary is not Supported by Substantial Evidence.

²⁰ See Aerial Photographs in DEIR Appendix C pages 3-31 clearly showing that Alternative 2 ROW bisects many miles of planted fields.

²¹ See FEIR 4.5-2.

²² See FEIR 4.5-2.

According to the FEIR, the community of Seville is identified in the current Tulare County General Plan as a “rural development center” and in the proposed Draft 2008 General Plan as a “hamlet.”²³ Within the Seville Hamlet Development Boundary, several parcels have been subdivided.²⁴ The proposed Alternative 3A ROW will cross along the southern boundary of eight of these parcels.²⁵ According to the FEIR, this will result in the loss of use of those eight parcels.²⁶

Currently, those eight large parcels have not been developed. The FEIR failed to consider the possibility that those parcels could be developed appropriately to accommodate the power lines once the lines have been constructed. Development that takes into account the existence of the power lines would permit the parcels in question to be developed. Therefore, there would not be a loss of use of those eight parcels.

Based on the evidence, the FEIR seems to be basing its conclusion that the power lines will result in the loss of these parcels on nothing more than conjecture. Conclusions based on conjecture are not conclusions supported by substantial evidence.²⁷ The failure to base conclusions on substantial evidence is an abuse of discretion. The conclusion must be set aside.

B. THE FEIR UNDERESTIMATES THE ENVIRONMENTAL IMPACTS OF ALTERNATIVE 2

The FEIR’s conclusion that Alternative 2 is the Environmentally Superior Alternative is not supported by substantial evidence. The FEIR fails to address the evidence introduced by PCA and other parties in written and oral comments that identify a multitude of environmental impacts caused by Alternative 2. The FEIR does not fully disclose or consider those adverse impacts. The uncontroverted evidence demonstrates that the FEIR severely underestimates the adverse impacts on the high value citrus plantings that the proposed Alternative 2 ROW bisects. The FEIR completely ignores the economic impacts of the physical changes to agricultural production. Finally, despite the expert evidence introduced to the contrary, the FEIR persists in its assertion that the groundwater hydrology of the Alternative 2 ROW is the same as the

²³ FEIR 4.6-11.

²⁴ FEIR 4.6-11; FEIR Figure 4.6(RTC)-2.

²⁵ FEIR Figure 4.6(RTC)-2.

²⁶ FEIR 4.6-12.

²⁷ CEQA Guidelines § 15384.

groundwater hydrology along the Alternative 3 ROW. As a result, the FEIR ignores the adverse hydrologic impacts of construction and structures along Alternative 2. The FEIR proposes a significant amendment to well mitigation measure 4.7-11b without any analysis of the local hydrology along Alternative 2. Without undertaking that analysis there is not substantial evidence to support that the mitigation measure is either feasible or effective. The evidence submitted in response to the DEIR strongly indicates that the proposed mitigation will not be effective and that significant hydrologic impacts will persist if Alternative 2 is implemented.

1. PCA OFFERED SUBSTANTIAL EVIDENCE SHOWING ADVERSE AGRICULTURAL IMPACTS OF ALTERNATIVE 2 THAT THE FEIR DISMISSED WITHOUT ANY SUPPORTING EVIDENCE

The Alternative 2 ROW bisects PCA's clementine orchards, a very high value citrus crop. In Comment O-19, PCA explained how the Alternative 2 ROW will adversely impact the feasibility and safety of current and necessary farming practices in the orchards under or near the proposed ROW. PCA comments are substantial evidence of how farming practices will be adversely affected by the Alternative 2 ROW offered directly by the farmers growing crops on affected land. PCA explained that current farming practices on the Alternative 2 ROW would be infeasible and unsafe with the high voltage wires over the orchards and that certain cropland outside the ROW would also be rendered unproductive due to equipment operating requirements. This evidence was apparently not even considered in the FEIR.

The FEIR summarily dismissed PCA's concerns about the infeasibility and danger of operating farming equipment under or near the transmission lines by citing to unrelated farming practices adapted to the Rector-Big Creek 3 transmission lines that have been in place 100 years. The FEIR states: "It is acknowledged that all farming equipment within the ROW would have to adhere to the working clearance heights identified in Cal OSHA Title 8 of the California Code Section 2946. It is possible that some equipment may be too tall to operate under the lines when taking into account the maximum line sag. However, farming practices have been occurring for many years under the existing Rector-Big Creek 3 transmission lines. So it is incorrect to conclude that all farming practices will be incompatible with the proposed new transmission

lines.”²⁸ The FEIR presents no evidence that the practices that salvage some agricultural value from the existing ROW are relevant to the current farming practices in the Alternative 2 ROW.

The FEIR does not acknowledge that farming practices have evolved over the last century and that new orchards currently planted under the Alternative 2 ROW were designed for, and rely upon, equipment that cannot be used in the ROW. The FEIR offers no evidence, much less substantial evidence, to refute the proffered evidence that modern farming practices common along the Alternative 2 ROW will be adversely impacted by the project. The FEIR’s conclusion that the Alternative 2 ROW will have a limited impact on agriculture is not supported by substantial evidence. The evidence shows that the Alternative 2 ROW impacts to agriculture are substantial and unmitigated. This supports the conclusion that Alternative 2 is not the Environmentally Superior Alternative.

a. **The FEIR Failed To Take Into Account the Substantial Evidence of the Infeasibility and Danger of Utilizing Necessary Farming Equipment Under Or Near The High Voltage Transmission Lines.**

The FEIR fails to adequately address PCA’s comments concerning impacts on agriculture. According to the FEIR, construction activities for Alternative 2 will permanently disturb 24.0 acres of farmland.²⁹ The evidence shows that farming crops currently planted on the Alternative 2 ROW requires equipment to efficiently produce a commercial crop. That equipment substantially exceeds the 15 foot height restriction and cannot be operated safely under the transmission lines. The inability to operate this equipment will preclude not only replanting directly under the transmission line after construction, but will prevent commercial farming of clemintine-type citrus on or near the ROW and will have significant impacts on commercial farming of many other crops within the entire width of the new ROW.

As discussed in comment O-19 to the DEIR, the intensive operations required to maintain, irrigate, and harvest the orchards will be impossible under or near the transmission lines. For example, mechanical toppers, used to prune the tops of citrus trees, have a boom arm and whirling saws that swing up to 30 feet or more. It would not be safe to operate this machine under or near the transmission lines due to the potential for contact with the lines. Also, PCA

²⁸ FEIR Response O2-2.

²⁹ Page 4.2-17

and other growers of the seedless clementine-type citrus must drape nets over the trees to prevent bees from pollinating the trees during the bloom. The net machine has a boom that reaches a height of 30 feet. Again, it would not be feasible to operate this machine under or near the transmission lines due to the potential for contact with the lines. Because citrus growers cannot perform most normal tasks used in the rest of their orchards, they will not continue to farm under or near the transmission lines.

The FEIR fails to substantially consider PCA's comments concerning the impact of the Alternative 2 ROW on its farming operation and similar operations along the Alternative 2 ROW. The FEIR summarily dismisses PCA's concerns by citing to unrelated farming practices under the Rector-Big Creek 3 transmission lines.³⁰ There is no evidence, much less substantial evidence, that the cited farming practices are relevant to any farming practices currently used along Alternative 2. Simply showing one area where farming is done with minimal equipment under power transmission lines is not substantial evidence to support the conclusion that farming equipment usage and productivity will not be severely impacted in the Alternative 2 ROW.

The FEIR fails to set forth any substantial evidence to refute the information offered by PCA related to adversely impacted farming practices under the Alternative 2 ROW. The adverse impacts of Alternative 2 were severely underestimated. As such, the FEIR conclusion concerning the agricultural impacts associated with implementation of Alternative 2 is not supported by substantial evidence.

b. The FEIR Fails to Consider that Land Outside the Right Of Way Will Be Converted to Non-Agricultural Land Due to Logistical Considerations of Farming Practices.

The FEIR fails to adequately consider that logistical limitations, as set forth by PCA in its comment letter O-19, will prevent efficient farming of existing orchards and/or other crops if a new ROW is established along Alternative 2. The combination of the ROW restrictions (e.g. how close necessary farming equipment can realistically get to the ROW) and the restrictions of established facilities and infrastructure will render portions of property and infrastructure stranded and unfarmable. For example, land will become inaccessible because the equipment cannot get around both the ROW and already established structures. Although only seven acres

³⁰ See FEIR 5-3 (Response to O2-2).

of PCA is actually within the Alternative 2 ROW, PCA will not be able to farm an additional ten acres due to a combination of safety and logistical considerations. The problem of acreage stranded by the new transmission lines is especially acute in any high value orchards – such as clemintine-type citrus because they are permanent plantings with irrigation systems that are expensive and difficult to modify.

The FEIR fails to address this issue because it incorrectly assumes, as discussed above, that farming operations can and will continue under and near the transmission lines.³¹ The FEIR assumes that land that cannot be used to plant clementine-type citrus can be used to plant another crop.³² However, it is not feasible to farm another type of crop in the middle of any orchard because the farming requirements vary between crops. No farmer will acquire a new set of equipment just to farm 17 acres of a different crop within an orchard and there are very few legal crops that are profitable on only 17 acres. The 17 acres stranded in the middle of the clementine orchard will be rendered virtually unusable as crop land by the Alternative 2 ROW because of operational issues. A clementine-like citrus orchard is commercially productive for a minimum of 25 years. That renders the 17 acres practically unusable for 20 years or more until replanting the orchard might recapture a portion of the fallow acreage. The FEIR’s conclusion that other crops can be planted in or near the Alternative 2 ROW is not based on any evidence. The substantial evidence presented by PCA is that land in proximity to the ROW will be rendered unusable as crop land remains unopposed. Therefore, the conclusion in the FEIR that only 24 acres of agriculture will be permanently impacted by Alternative 2 must be set aside because it is not supported by substantial evidence.

c. **Revised Mitigation Measure for 4.7-11b Necessitates Moving the Centerline of the Selected ROW and Will Further Impact Agriculture.**

The FEIR acknowledges it must mitigate the substantial impacts on agricultural wells caused by the Alternative 2 ROW. The FEIR attempts to address impacts to wells by implementing Mitigation Measure 4.7-11(b), which states in pertinent part: “SCE shall adjust the proposed ROW such that the centerline of the ROW shall be no closer than 50 linear feet from

³¹ See Appendix G-17.

³² See Appendix G-14.

any existing well.”³³ Moving the ROW may reduce impacts on wells, but doing so will increase the impacts on agriculture because the relocated ROW will bisect more parcels and will wind through productive agricultural land. The relocation will increase physical impact on crops and the overall adverse impact on agriculture. Because the FEIR defers an inventory of the wells within the Alternative 2 ROW to a later time, neither the public nor the decision makers have any information about how many wells will require the Alternative 2 ROW to be redirected. Without that inventory, there is no basis for any conclusion in the FEIR about the extent of adverse impacts on agriculture. The remaining portions of Mitigation Measure 4.7-11b also have significant hydrologic problems that are discussed in the hydrologic section below.

d. **Alternative 2 ROW Has Unmitigable Adverse Impacts on the Clementine-Type Citrus Crop Because Land Suitable for Clementines Is Limited.**

In addition, the FEIR does not account for the adverse impact to PCA’s agricultural operations if Alternative 2 is adopted. The Alternative 2 ROW would disrupt 13 acres of clementine-type citrus trees and 4 acres of orange trees. Each acre of clementine-type citrus annually yields \$13,600 on average and each acre of orange orchard annually yields on average \$2,000 per acre. Therefore, if Alternative 2 is adopted, PCA would annually lose a total of \$184,800.

The lost revenue is unmitigable because clementine-like citrus grow in limited environments. Commercial clementine-type citrus can only be grown in subtropical climate with warm summers, cool evenings and low rainfall. Clementine-type citrus require low salt, low to medium pH, moderate organic matter soil, and high quality low tds (total dissolved solids) water. PCA chose its Rayo Ranch location for growing clementine-type citrus due to the western sloping land for cold air drainage, well-drained heavy loam soil, and appropriate soil mineral constitution for late harvest.

The protected climate between two small mountain ranges and the ideal soil that will be lost along the Alternative 2 ROW cannot be replaced. There is only a narrow band of suitable climate and soil in California for the clementine-type citrus crop. No mitigation is available for

³³ See FEIR 4.5.2.

the loss of that limited suitable land with appropriate climate conditions for successfully growing commercial clementine-type citrus.

2. ALTERNATIVE 2 ROW WILL RESULT IN CONDEMNATION OF EXTREMELY HIGH VALUE LAND AND CAUSE RATE PAYERS TO PAY A SIGNIFICANTLY HIGHER PRICE.

The variety of impacts from the Alternative 2 ROW traversing high value agriculture will result in significant battles over condemnation awards and costs that are significantly higher than the minimal impacts projected by the FEIR. In PCA's case, at least 17 acres will be permanently removed from orchard production. Due to the loss of orchard improvements and the significant lost annual revenue from clementines and other citrus, the per acre value of the entire orchard will be substantially depressed. In addition, there will be significant severance damages because the entire operation will be somewhat less efficient and cost effective without that acreage. Therefore, PCA must be compensated for the entire 17 acres of citrus that it cannot commercially farm if the lines are built, for all of the infrastructure connected with those 17 acres and for severance damages. The same thing is true of other existing citrus in the path of Alternatives 1, 2, or 6.

The condemnation of the ROW through PCA's orchards must compensate PCA for the following factors: initial development costs, lost annual production value, and additional costs due to tree removal and relocation of infrastructure. PCA's initial development costs, including orchards, irrigation systems and wind machines, averaged approximately \$13,000/acre. The average net annual income from the affected orchards is about \$11,000/acre, with the acres planted to oranges producing a net return of approximately \$2,000/acre, and the acres planted to clementines averaging approximately \$13,600 net return per acre. The net present value of that income over the 40 year potential commercial life of those orchards is approximately \$165,000 per acre using a 6% discount rate.

The costs due to the removal of the orchards, including tree removal, transfer of wind machines, road replacement, potential irrigation well replacement, irrigation reservoir replacement, and irrigation piping/system replacement will total approximately \$125,800.

The condemnation of the ROW through the PCA's orchards will, therefore, at a minimum be \$125,800 for relocation and removal costs and \$178,000 per acre for the orchard development costs and lost profits. That totals \$3,026,000 for the orchards and \$128,500 for removal and relocation costs—totaling \$3,151,800 for 17 acres without allowing for severance or other damages. Much of the rest of the Alternative 2 ROW would have a similar condemnation value that would be passed on to the rate payers. When the costs for all of the affected farms are compiled, the acquisition costs for the Alternative 2 ROW will greatly exceed that for the Alternative 3A ROW. While there may be more construction costs for Alternative 3A, working within the existing ROW can have significant cost advantages when agricultural impacts are fully considered.

3. THE FEIR FAILED TO ADDRESS THAT ALTERNATIVE 2 WILL CAUSE SIGNIFICANT ECONOMIC IMPACTS THAT WILL PHYSICALLY IMPACT THE LAND.

a. The FEIR Should Have Considered the Economic and Social Impacts of Alternative 2 Because They Will Adversely Affect the Land By Decreasing Agricultural Capability.

Although, generally, an EIR is required only to evaluate the physical environmental impacts of a project³⁴, when physical impacts on the environment cause economic and social effects, the EIR should evaluate and consider those impacts.³⁵ The FEIR is deficient because it fails to address the economic and social effects of the physical changes to the environment that are likely to result if Alternative 2 is implemented. Moreover, the FEIR fails to address how the economic and social effects produced by Alternative 2 will affect the physical land in the Alternative 2 ROW.³⁶

The FEIR specifically states that economic impacts are relevant if they physically change the land by eliminating agricultural productivity.³⁷ PCA presented evidence that fewer resources means less ability to farm and utilize the agricultural land. The economic and social effects

³⁴ California Public Resources Code § 21100.

³⁵ CEQA Guidelines § 15313.

³⁶ See FEIR 4.7.2.

³⁷ *Id.*

adversely caused by the Alternative 2 ROW will directly impact the ability of the land to be used for commercial agricultural.

As discussed above, the FEIR severely underestimates that amount of Prime Farmland, Farmland of Statewide Importance, and Unique Farmland that Alternative 2 will remove from agricultural use due to the inability to use farming machinery and equipment under or near the transmission lines. More farmland will be taken out indirectly because the land will be unusable due to equipment restrictions around the ROW. When farmland is taken out of production, those individuals who were once employed to work the land, to harvest, process and package the crops and to provide specific services to the land will lose their jobs. When jobs are lost due to loss of productive agricultural lands, less money goes into the local community and the State. Furthermore, when jobs are lost, there is a ripple effect felt in the local community as well as the State because “[e]ach dollar earned within agriculture fuels a more vigorous economy by stimulating additional activity in the form of jobs, labor income and value added.”³⁸

Individuals once employed in agricultural jobs will take jobs in other industries. The loss of manpower will physically impact the agricultural land by further decreasing agricultural output. The adverse economic impacts of decreased agricultural output and decreased labor supply will have a dramatic adverse impact on the small communities in the project area.

i. The FEIR Should Have Considered the Economic Effects of Alternative 2 on Farming Operations (Labor, Materials and Supplies) Because the Effects will Adversely Affect the Land.

As discussed in PCA’s letter O-19 to the DEIR, farmers will be forced to cease all farming operations on much of the land within or near and adjacent to the ROW because of specific operations needed to farm certain types of crops (citrus, olives, pomegranates, most nut crops, etc.). If Alternative 2 is built through citrus orchards owned and operated by PCA, it will force PCA to take 17 acres of citrus orchard out of production. From just those 17 acres PCA will spend a total of \$38,808 less in the local community *each year*. The calculation is based upon actual 2009 farming costs after subtracting insurance, water and utilities as those payments do not always go to local employees or vendors. That equates to more than \$2,200 per acre per

³⁸ *The Measure of California Agriculture, 2006: Chapter 5, Agriculture’s Role in the Economy* (Preprint Draft, November 29, 2006) by Agricultural Issues Center, University of California, p. 6.

year in direct farming expenses that is not returned to the community for every acre of PCA's orchard that is lost under any of the Alternatives. Using the value added multiplier of 2.21, that \$38,808.00 currently generates \$85,765 for the local economy every year.

The more than \$85,000/year that would be lost to the economy if Alternative 2 is implemented represents an impact generated by only a single farming operation. Similar economic losses will result from impacts to other farming operations. In PCA's comment letter O-19 we calculated that the new ROW portion of Alternative 2 will include approximately 140 acres of Prime Farmland and Farmland of Statewide Importance. If that is correct and we apply the PCA estimated loss per acre (i.e., \$2,200 per acre per year) then the total lost farming expenses paid locally will be approximately \$300,000/year. With a multiplier of 2.21, that equates to lost local economic activity of \$680,000/year. This money represents a significant adverse impact to the local and state economy that is not adequately addressed in the FEIR. Because land outside the ROW will likely be adversely affected, the impacts may be greater.

ii. The FEIR Should Have Considered the Economic Effects of Alternative 2 on Packing Operations (Labor, Materials and Supplies) Because the Effects will Adversely Affect the Land.

In PCA's experience, harvesting, hauling and packing costs average approximately \$3,300.00 per acre per year. From losing just those 17 acres PCA will spend approximately \$56,100.00/year less in the local community based on this year's packing costs. Using the economic multiplier of 2.21, that \$56,100/year currently generates \$123,981/year for the local economy that will be lost if Alternative 2 is selected.

The more than \$123,000/year described above lost to the economy each year represents an impact generated by only a single farming operation. In PCA's comment letter O-19 we calculated that the new ROW portion of Alternative 2 will adversely affect approximately 140 acres of Prime Farmland and Farmland of Statewide Importance. If we apply the PCA estimated per acre costs then the total lost harvesting and packing expense paid locally is approximately \$462,000/year for harvesting and packing crops grown in the ROW of Alternative 2. With a multiplier of 2.21, that equates to local economic activity of \$1,020,000.00/year for the harvesting and packing activity. When the farming is added, the total local economic activity

that will be lost if Alternative 2 is implemented will be in excess of \$1.7 million *every year* in 2009 dollars. That loss is a significant adverse impact to the local and state economy that the FEIR fails to acknowledge or address.

b. The FEIR Should Have Considered the Economic and Social Impacts of Alternative 2 Because They Will Adversely Affect the Land Due to Job Loss That Will Result in Lower Agriculture Production of the Land.

As discussed in PCA' comment letter O-19, here in the Central Valley the agricultural production and processing industry has an employment multiplier of 1.91. That is, for every job in the agricultural production and processing industry, another 0.91 jobs are created. Again, the FEIR has not accurately calculated the number of acres that will be put out of production by Alternative 2, so it is impossible to describe how many jobs will be lost by those who work the land and provide services to farming operations.

Economic losses borne by agricultural operations result in the inability to pay for labor or services. The resulting job losses result in losses of the jobs supported by those agricultural jobs and ultimately many former workers must leave their local communities to find work. Based on the potential economic losses the job losses will be significant. The FEIR does not address these impacts.

4. THE FEIR FAILS TO PROVIDE SUBSTANTIAL EVIDENCE TO SUPPORT ITS CONCLUSIONS THAT IMPACTS TO LOCAL HYDROLOGY WILL BE LESS THAN SIGNIFICANT

The FEIR's responses to the comments received addressing the hydrologic impacts of Alternative 2 are deficient. The responses ignore the evidence that the local hydrology in the Alternative 2 ROW will experience severe adverse impacts. As such, the FEIR's conclusions are not supported by substantial evidence. The FEIR takes a very general approach in addressing and examining the hydrology that may be adversely impacted by the proposed project. FEIR Sections 4.4 Master Response on Groundwater and 4.5 Master Response on Wells do not cite any hydrologic investigation or study specifically conducted to evaluate the effects of this project. The references that are cited in the DEIR and FEIR are general papers about various

aspects of water conditions in various areas of the San Joaquin Valley written between 1968 and 1991 plus one 2009 survey paper written by the U.S. Geological Survey (“USGS”) that generally describes water conditions in the 20,000 square miles of the California Central Valley in just 225 pages.³⁹ The locations of several of these investigations are too attenuated to be relevant to an analysis of the proposed project. Further, the scale and level of detail of those investigations are too general to be useful in determining either the extent or severity of the impacts of any particular project.

a. **The FEIR Fails to Provide Substantial Evidence that the Characterization of the General San Joaquin Valley Conditions in the Cited Published Papers is Useful or Relevant for Determining the Impacts of The Proposed Project.**

The FEIR misuses information in the reports it cites to make two entirely unsubstantiated and incorrect assumptions. First, the FEIR incorrectly assumes (without substantial evidence) that groundwater conditions throughout the San Joaquin Valley are uniform. Second, the FEIR incorrectly assumes (without substantial evidence) that the entirety of the project area overlies the San Joaquin Valley aquifer. The 2009 USGS study cited by the FEIR (hereinafter, “Faunt”) clearly delineates in numerous maps and cross sections that the eastern boundary of the San Joaquin Valley aquifer (that is the subject of the 20,000 square mile general analysis) runs generally through the proposed project area. Faunt also explains that the aquifer thins dramatically to the east and that bedrock lies to the east of the sedimentary aquifer.⁴⁰ Between the scale of the maps and the large area addressed by the relatively brief text, it is impossible to determine where the exact location of the aquifer boundaries are in comparison to the proposed Alternative 1, 2, and 6 ROW routes. Faunt specifically simplifies local conditions to develop a mathematical model that roughly reflects average conditions over the entire valley.

Comment O-8 submitted by Dr. Kenneth Schmidt and Comment O-18 submitted by AMEC both provide professional opinions of certified hydrologists with extensive experience in the local area. Those comments opine that Alternative 3 is generally within the alluvial area (the same is true of the Alternative 3A ROW) and the portions of the proposed ROWs to the east

³⁹ Faunt, C.C., ed., 2009, Groundwater Availability of the Central Valley Aquifer, California: U.S. Geological Survey Professional Paper 1766, 225 p., at 20-23.

⁴⁰ Faunt, C.C., ed., 2009, Groundwater Availability of the Central Valley Aquifer, California: U.S. Geological Survey Professional Paper 1766, 225 p., at 20-23.

(Alternatives 1, 2, and 6) are in the weathered rock or hard rock areas that were not analyzed in the DEIR. Comment O-18 goes on to describe the hydrology where the necessary structures for the Alternative 1, 2, and 6 ROWs are proposed to be located. This analysis utilizes both field work and well data studied by AMEC in the location of the proposed project rather than generalizations of prevailing conditions that extend from Redding to Bakersfield. The AMEC comments were substantiated with attachments including hydrographs of over 60 local wells, a contour map of groundwater levels and flow direction in the local area and an analysis of the relationship between groundwater levels and streamflow. By any standard, this constitutes substantial evidence in the record that the DEIR characterization of the aquifer is incorrect.

The FEIR responds to these comments merely by referring the commenter back to the deficient discussion in the DEIR that failed to recognize that portions of Alternatives 1, 2, and 6 are east of the San Joaquin Valley alluvial aquifer. FEIR response O-18-1 to the AMEC letter first notes that ESA wanted to obtain further information developed by AMEC; however, PCA and AMEC are unaware that ESA ever made a formal request for information. As counsel of record in this case for PCA we did not receive any request for additional information. In any case, Comment O-18 provides the relevant conclusions and substantial supporting evidence. Based on generalized conclusions about the San Joaquin Valley alluvial aquifer as a whole, the FEIR then incorrectly concludes that the all of the information developed in AMEC's detailed localized study is incorrect because, "the 'aquifer system' is best characterized as a contiguous, though heterogeneous, body of water."⁴¹

Because the FEIR fails to recognize that the location of the eastern boundary of the alluvial zone is even an issue, it fails to provide any substantial evidence to support its conclusion that the general information collected about the San Joaquin Valley as a whole is relevant to the aquifer conditions underlying the Alternative 1, 2, and 6 ROWs. Therefore, the specific and substantial information provided by AMEC and Dr. Schmidt is uncontroverted and the FEIR conclusions must be set aside because they are not supported by substantial evidence.

b. Irrelevant Information Cited in The FEIR Cannot be Utilized to Counter Substantial Evidence Placed in the Record by the Comments.

⁴¹ FEIR 5-20.

Master Response 4.4 on Groundwater responds to 37 comments made on the topic. Many of those comments indicated that groundwater levels are quite shallow in the eastern portions of the proposed ROW for Alternatives 1, 2, and 6. In particular, Comment O-18 presented hydrographs that track the water levels of seven wells along the Alternative 2 ROW from 1980 to 2005. The three wells to the east had maximum depths to groundwater of about 30 feet in the 25 year span, but the general depth of the wells were between 10 and 20 feet. Two wells had a maximum depth of 50 feet and two were in the 70 foot range.

The information provided in the above referenced comment letters contradicts the FEIR's conclusion that the wells that may be impacted by the project range generally between 100 and 500 feet in depth. Master Response 4.4.2 states: "For a study area within the San Joaquin Valley, Bull and Miller (1975) described shallow wells as those between 100 and 250 feet of depth." The Bull and Miller study area is on the west side of the San Joaquin Valley, approximately 70 to 110 miles from Stokes Mountain as the crow flies. There is no evidence at all in the FEIR (or in existence) that the groundwater issues Bull and Miller studied in the extremely deep alluvium formed by erosion of the sedimentary rock of the Coast Ranges along Highway 5 from Los Banos to Kettleman City have any relevance to the conditions in the fractured bedrock aquifers characteristic of the foothills of the granitic Sierra Nevada Range where Alternative routes 1, 2, and 6 are proposed. Yet, the FEIR concludes, based on the irrelevant Bull and Miller study, that the wells in the vicinity of these proposed ROWs are "accessing groundwater that is not influenced by 60 foot deep holes excavated for poles installation."⁴²

The FEIR further states: "Based on published reports and other relevant information, no evidence was found to suggest that one or more shallow aquifer zones exist within the Project area that are less than or equal to 60 feet in depth."⁴³ The evidence of a shallow aquifer was presented in both Dr. Schmidt's and Mr. Bean's comments to the DEIR based on their professional evaluation of local conditions but the FEIR ignored that evidence. The FEIR's conclusion that the pouring of concrete pole foundations and other project construction will have no impacts on groundwater because the aquifer is more than 60 feet in depth (the depth of the

⁴² See Section 4.4.2.

⁴³ FEIR 4.4-2.

necessary project structures) must be set aside as speculative and unsupported by substantial evidence.

c. **The FEIR's Conclusion that Pole Installation will Not Substantially Impact Groundwater Flow Within Bedrock not Supported by Substantial Evidence.**

Despite numerous comment letters, including the AMEC comment O-18, that pole installation will have a significant adverse impact on groundwater level and flow in the hardrock shallow alluvial aquifers in the eastern portion of Alternatives 1, 2 and 6, the FEIR concludes that there will not be a significant adverse impact on groundwater level and flow. Specifically, the FEIR states:

“The regional groundwater gradients and flow patterns in the southern San Joaquin Valley have already been dramatically altered by prolific well installation and pumping over the last half century; the conceptual, incremental impact of pole installation on these same processes would be negligible at most.”⁴⁴

The FEIR offers no analysis or evidence in support of its conclusion that the impacts will be “negligible at most.” Furthermore, the FEIR indicates there was no evaluation of the potential effects of pole installation on groundwater level and flow. Instead, the FEIR makes the assumption that because the flow patterns have already been dramatically altered by well installations, any hydrologic impact of pole installation will be incremental and, therefore, unworthy of analysis. This assumption is contrary to law and not supported by the facts. Even assuming *arguendo* that the effects are merely incremental (which we dispute), the effects must be considered in the cumulative analysis of project impacts.

An EIR must consider the cumulative effects of the project on the environment. “Cumulative impacts” are those which are “individually limited but cumulatively considerable.”⁴⁵ “Cumulatively considerable” is defined as “the incremental effects of an individual project are considerable when viewed in connection with the effects of *past projects*,

⁴⁴ FEIR 4.4-3.

⁴⁵ Public Resources Code § 21083(b).

the effects of other current projects, and the effects of probable future projects.”⁴⁶ Specifically, cumulative impacts can result from “individually minor but collectively significant projects taking place over a period of time.”⁴⁷ Therefore, the relevant issue to be addressed in the EIR is not the relative amount of disruption or effect on the environment resulting from the project when compared to existing environmental effects, but whether any additional amount of the effect would be considered significant in light of the serious nature of the effect already in existence.⁴⁸

Therefore, the FEIR cannot merely **conclude** that because there are already significant effects on groundwater level and flow due to existing wells, the impacts on groundwater level and flow caused by pole installation will be negligible, and therefore there is not significant environmental effect. Instead, the FEIR must analyze whether the impacts on groundwater level and flow caused by the pole installation as a result of the project, in addition to the impacts on groundwater level and flow caused by existing wells, will have a significant effect on the environment. The FEIR does not include this analysis. The FEIR merely concludes that because the regional hydrologic gradient and flow patterns have already been dramatically altered pole installation cannot substantially impact groundwater flow. That conclusion is not supported by substantial evidence and must be set aside.

d. **The FEIR’s Conclusion that Alternative 2 will Not have Greater Adverse Impacts on Groundwater Hydrology than Alternative 3 is Erroneous, Not Supported by Substantial Evidence and Must be Set Aside.**

Contrary to earlier prior statements in Section 4.4, the FEIR does eventually acknowledge that the aquifer in the area is complicated and site-specific information is needed to make specific conclusions:

Within the eastern half of the project area... it is acknowledged that many groundwater wells are directly accessing water within bedrock.... Though... flow within bedrock is more complicated than flow within alluvium, it nonetheless

⁴⁶ Public Resources Code § 21083(b) (emphasis added).

⁴⁷ CEQA Guidelines § 15335(b).

⁴⁸ *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal. App. 4th 1019,1025.

should be conceptualized simply as another flow medium in-lieu of more site specific information.⁴⁹

Without any substantial evidence to support the assertion, the FEIR asks the reader to believe that water flows through solid rock that has occasional fractures (the condition of the aquifer along the Alternative 1, 2, and 6 ROW) the same way it flows through gravel and sand (the condition of the aquifer along the Alternative 3 and 3A ROW). The comments submitted clearly provide site specific information that should be considered in the environmental analysis of the proposed project but this information was apparently not considered as evidenced by the FEIR. Several comment letters state that many of the wells drilled in the eastern area find no water at all because the flow of water through the rock is extremely and unpredictably variable.⁵⁰ The comments clearly establish that the eastern portion of Alternatives 1, 2, and 6 will be constructed in areas where groundwater availability is neither uniform nor plentiful. The statements in the FEIR and the comments also clearly establish that, by contrast, Alternative 3 overlies an alluvial aquifer that **can** be characterized as a contiguous body of water. The FEIR counters this evidence by merely asking the reader to assume that rock is the same as sand and, therefore, the impacts of construction will also be the same. Any and all FEIR conclusions based on ignoring the substantial evidence concerning the groundwater characteristics in the eastern portions of the Project area must be set aside. Therefore, the conclusion that the hydrologic impacts of Alternative 2 are not significant is speculative and not supported by substantial evidence and must be set aside.

e. **The FEIR's Response to Comments Concerning the Impacts of Dewatering for Construction Ignores the Evidence and Relies Upon Mere Speculation and Opinion.**

The FEIR Response to Comment O-18-4 addresses Mr. Bean's expert opinion that necessary dewatering for construction of pole and tower foundations can significantly impact the shallow aquifers under the eastern portions of Alternatives 1, 2, and 6. In contrast to the FEIR's

⁴⁹ FEIR 4.4-3.

⁵⁰ See FEIR Section 4.5 Master Response to Wells. Commenters I4, I6, I9, I13, I14, I16, I25, I27, I30, I34, I37, I39, I40, I43, I46, I47, I51, I54, I60, I75, I79, I83, I88, I93, I95, PM Robert Ward, PM Eric Meling, PM Tom Logan, PM Scott Belknap, PM Tricia Stever, O3, O5, O8, O9, O11, O12, O14, O16, O-18, O-19 and O20 all address the impacts of Alternatives 1, 2, and 6 on wells.

acknowledgement in 4.4.2 that wells in that area draw from the bedrock or shallow alluvium, Response O-18-4 states that dewatering the local area will have negligible effects. That Response presents the opinion that most of “the water would be discharged to the land surface and thus infiltrate back to the aquifer.” This response ignores the fact that the purpose of the dewatering is to keep water away from the foundations until the concrete is properly cured. Thus water will be discharged downhill from the construction zone to prevent water from flowing back into the excavation. If no farmers draw from the aquifer for an extended period and the aquifer is not damaged by dewatering (the Bull and Miller study cited by the FEIR notes that dewatering can permanently damage an aquifer), the shallow aquifer will probably eventually recharge from the mountains. The FEIR merely notes that the volume of water pumped for construction is negligible “compared to the vast size of the regional aquifer....” The FEIR fails to note, however, that the both the land surface and the level of the groundwater surface in the vast regional aquifer are located downhill from the shallow aquifers that will be adversely impacted by construction for Alternatives 1, 2, and 6. Of course, the FEIR does not attempt to present evidence that water flows uphill. Therefore, the FEIR’s conclusion that dewatering the bedrock and shallow alluvial aquifers must be set aside because it is not supported by substantial evidence.

f. The FEIR Fails to Establish by Substantial Evidence that the Proposed Well Mitigation is Both Feasible and Effective.

While the FEIR argues (but fails to establish) that there will be no adverse hydrological impact on wells, in Section 4.5 the FEIR does acknowledge that the power lines will interfere with ordinary and necessary maintenance activities for nearby wells. As a result, Section 4.5.2 proposes a significantly expanded Mitigation Measure 4.7-11b. The first portion of Mitigation Measure 4.7-11b requires relocation of ROW to avoid wells when possible, as discussed above.

The second part of Mitigation Measure 4.7-11b specifies a protocol for drilling and testing replacement wells. The FEIR makes no attempt, however, to provide substantial evidence that the mitigation measure is either feasible or effective in remedying the potential significant problem of a lack of water at a new well site as required by law.⁵¹ The evidence in the FEIR indicates that Mitigation Measure 4.7-11b is actually infeasible and it will not be

⁵¹ *Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1116.

effective at mitigating the adverse impacts on wells associated with implementation of the proposed project. As discussed, numerous comments establish that it is extremely difficult to find well locations in the area that yield adequate water from the bedrock. The mitigation measure requires that replacement wells be tested in February or March and again in October to ensure that they produce the same quantity and quality of water as the well to be replaced. There is no evidence that all of the good well sites have been found, but there is certainly evidence that many more bad well sites have been found than good ones. Some farmers have testified that they have been unsuccessful at locating sufficient water on their property. Should it be impossible to find a replacement well on a farmer's property, it will be necessary to obtain easements to drill and to pipe water from another's property. Because this is an over-drafted basin, as noted in FEIR Section 4.4, exports of groundwater to another property are not legally allowed and can be enjoined by other overlying owners.⁵²

CEQA Guidelines 15126.4(a) requires mitigation measures to be both feasible and effective at minimizing significant adverse impacts. CEQA Guidelines 15364 defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, **legal**, social, and technological factors."⁵³ Since the basin is currently over-drafted, exports of groundwater to another parcel legally must yield to the overlying owners. Therefore, the mitigation measure is legally infeasible in the bedrock area and will not be effective at mitigating the acknowledged significant impacts on wells.

The evidence indicates that the well relocation portion of Mitigation Measure 4.7-11b is both technically and legally infeasible in the bedrock area. As a result, the adverse impacts to wells in the bedrock area have not been mitigated to a less than significant impact. Because there is a significant adverse impact that is not mitigated, none of Alternatives 1, 2, or 6 can be considered the Environmentally Superior Alternative.

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⁵² *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1251-1252 (stating 'Under California law, "[p]roper overlying use ... is paramount, and the right of an appropriator, being limited to the amount of the surplus, must yield to that of the overlying owner in the event of a shortage *unless the appropriator has gained prescriptive rights through the taking of nonsurplus waters.*'").

⁵³ Emphasis added.

V. CONCLUSION

This brief establishes that crucial conclusions in the FEIR concerning the relative level of impacts between the alternatives are not supported by substantial evidence. In particular, the evidence provided in comments based on generations of farming and water supply experience demonstrates that the environmental impacts of Alternatives 1, 2, and 6 have been substantially underestimated in the FEIR. The FEIR consistently minimizes the impacts by relying upon general descriptions and highly averaged data about agriculture and hydrology rather than studying the unique characteristics of the proposed routes. When the local and regional experts attempted to educate the EIR preparers through their thoughtful participation and well researched and documented comments, the FEIR ignored that data in favor of general published information that usually has little or no relevance to the impact of any particular construction proposal.

PCA joins with other parties in confirming that the effort is not to oppose the SCE Cross Valley Loop Project. PCA's concern is only to help SCE and the PUC chose the route that will have the lowest impact on the local environment, economy, and social fabric. Due to the unique nature of the climate, soils, water conditions, and topography, we have established that construction of the project along most of the Alternative 1, 2, and 6 ROWs lying east of the juncture with Alternative 3 will result in significant unmitigated and unmitigatable adverse impacts on agricultural, hydrologic, economic, and social conditions existing today.

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Based on the existing level of study, only Alternative 3A has no unmitigated significant impacts. Therefore, Alternative 3A must be chosen as the Environmentally Superior Alternative. The FEIR has rejected Alternative 3A based on its "Environmental Screening." This brief and others have pointed out the unfortunate errors resulting from this superficial analysis. All evidence indicates that further study will confirm that Alternative 3A is the best alternative. We suggest that the PUC order an in depth study of Alternative 3A, as proposed by PACE, that can promptly be circulated for comment as an addendum to the DEIR. If that process results in the conclusion most commenter expect, the decision for the PUC will be substantially simplified.

Respectfully Submitted,

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Dated: March 11, 2010

CERTIFICATE OF SERVICE

I, Tina L. Webb, hereby certify that I served a copy of the **OPENING BRIEF OF PARAMOUNT CITRUS ASSOCIATION** on April 22, 2010, on all known parties to Service List for A-08-05-039 via electronic mail to those whose addresses are available and via U.S. mail to those who do not have an electronic address.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on this 22nd day of April 2010, at Fresno, California.

/S/ Tina L. Webb

Tina L. Webb

VIA ELECTRONIC MAIL:

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