

Board of Supervisors Hearing
March 22, 2016
Agenda Item 9.B

STOP SYAR EXPANSION APPEAL

COMPLIANCE WITH CEQA

Violations of CEQA occur when there is a prejudicial abuse of discretion. (Pub. Resources Code § 21168.5.)

- + EIR fails to disclose information regarding the project's impacts.
- + EIR fails to support its conclusions regarding the project with substantial evidence.



COMPLIANCE WITH CEQA

Syar EIR fails to disclose information regarding the project's impacts

- + No correlation of fleet mix to emission reductions
- + No analysis of health impacts associated with exceedences of daily emissions standards
- + No disclosure of baseline water supply usage
- + No disclosure of baseline traffic conditions including truck count
- + No noise level data for homes near mine and along haul route
- + No analysis of noise impacts at State Hospital, County Jail and nearby schools
- + No investigation of potential for infiltration
- + Uncertainty of recycled water

COMPLIANCE WITH CEQA

Syar EIR fails to support its conclusions regarding the project impacts and characteristics with substantial evidence:

- * Trip distance
- * Average tons per load
- * # of truck trips
- * Trip distribution
- * No expert noise report
- * Water demand at higher production levels

ALTERNATIVES ANALYSIS

- × Improper Rejection of No Project Alternative
 - + Proposed Project would have significant impacts
 - + No Project Alternative would substantially lessen those impacts
 - + No Project Alternative would meet the majority of the project objectives

ALTERNATIVES ANALYSIS

- × Claims for Rejection of No Project Alternative are Unsupported
 - + Vested right to mine entire site indefinitely
 - × Contrary to claim that reserves are limited
 - × SSE disputes vested right claim to entire site
 - × Vested right can only be claimed after an evidentiary public adjudicatory hearing (*Calvert v. County of Yuba* (2006) 145 Cal.App.4th 613)
 - × No vesting right to pollute the air and water
 - × If vesting right exists, applies equally to the Project

ALTERNATIVES ANALYSIS

- × Claims for Rejection of No Project Alternative are Unsupported
 - + Failure to meet project objectives
 - × EIR relies on overly narrow objectives (*North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647)
 - × Lack of evidence support regarding
 - * Amount of product
 - * Existing ability to provide reliable source
 - * Local demand for aggregate

ALTERNATIVES ANALYSIS

The EIR's alternatives analysis is also inadequate because it failed to analyze a “No Expansion with Recycled Asphalt Plant Alternative”

- × This alternative would reduce the impacts similarly to the No Project alternative, but would have the added benefit of providing a RAP
- × Providing a RAP is one of the project objectives

UNENFORCEABLE MITIGATION

The EIR relies on self reporting and other unenforceable measures

- × MM 4.3-2 and 4.3-3 rely on self reporting of activity levels
- × MM 4.11-1 allows for self monitoring of noise levels at nearby homes
- × MM 4.8-3 relies on self monitoring of pond elevations and groundwater recharge
- × MM 4.8-4 provides for self monitoring of water usage
- × MM 4.4-5 allows for habitat assessment after tree removal has begun
- × MM 4.11-2 self reporting of blasting noise impacts
- × MM 4.15-1 and 4.15-2 self monitoring of truck trips
- × MM 4.17-2 relies on self monitoring of GHG emissions

UNENFORCEABLE MITIGATION

CEQA has strong public participation and disclosure requirements

Any monitoring/self reporting data must be made publically available to allow impacted members of public to evaluate compliance



DEFERRED MITIGATION

The EIR improperly defers formulation and analysis of mitigation measures

- + No quantitative standard for amount of compensatory wetland habitat
- + EIR does not disclose how project would achieve EPA water quality benchmarks
- + Deferred analysis of groundwater depth
- + Deferred analysis of feasibility of additional water reuse
- + Deferred analysis of off-site water sources and their impacts

