

SYAR QUARRY EXPANSION

APPEAL OF THE
SKYLINE PARK CITIZENS ASSOCIATION
AND DOROTHY GLAROS

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A FLAWED EIR

- The surface mining permit (SMP) authorizes Syar to increase production by 60%, which will require more water.
- The SMP and EIR prohibit Syar from pumping more groundwater to support the production increase.
- Yet the EIR does not analyze where Syar will get the additional water, or what the environmental impacts of tapping additional water sources will be.
- The EIR thus fails in its basic mission, which is to inform the Board and the public of the reasonably foreseeable environmental consequences of approving the project.

FOUR KEY QUESTIONS UNANSWERED BY THE EIR

1. How much more water will the expanded quarry use?
2. Where will the additional water come from?
3. Will there be enough additional water to meet the expanded quarry's needs?
4. What are the environmental consequences of tapping into additional water sources?

QUESTION #1
HOW MUCH MORE WATER WILL THE EXPANDED QUARRY USE?

■ ORIGINAL PROPOSAL

- Production increase from 800,000 to 2,000,000 tons per year
- Water use increase from 141 to 191 acre feet per year

■ REVISED PROPOSAL

- Production increase from 800,000 to 1,300,000 tons per year
 - Water use increase from 141 acre feet per year to some unspecified level
- We should not have to guess.

QUESTION #2

WHERE WILL THE ADDITIONAL WATER COME FROM?

❖ No more onsite groundwater.

“No additional groundwater from existing sources is available to accommodate the additional water demand of the proposed Project.”

(Planning Commission Resolution, page 41)

- Offsite wells
- Conservation
- Trucking
- Recycled water

HOW DOES THE EIR ANSWER QUESTIONS #3 AND #4 WITH RESPECT TO THE POTENTIAL ALTERNATIVE WATER SOURCES THAT THE EIR IDENTIFIES?

- **Question #3:** Will there be enough additional water to meet the expanded quarry's needs?

- **Question #4:** What are the environmental consequences of tapping into additional water sources?
 - offsite wells
 - conservation
 - trucking
 - recycled water

OFFSITE WELLS

- Where will the wells be drilled?
- What are the environmental consequences of drilling them?
- How much will the wells produce?
- What infrastructure will be needed to store and transport the water to the quarry?
- What are the environmental consequences of building and operating that infrastructure?

Santiago County Water District v. County of Orange
(1981) 118 Cal.App.3d 818

The Holding

“Nowhere in the EIR is there a description of the facilities that will have to be constructed to deliver water to the mining operation, or facts from which to evaluate the pros and cons of supplying the amount of water that the mine will need. . . . [¶] The construction of additional water delivery facilities is undoubtedly one of the significant environmental effects of the project. As such, a description of the necessary construction had to be included if the EIR was to serve its informational purpose.”

The Rule

An EIR must not only discuss the amount of water a project will require, but also the environmental impacts of constructing and operating the necessary water delivery infrastructure so that decision-makers and the public can make a fully informed decision.

CONSERVATION

❖ What the EIR says:

- Water conservation “could include” (a) reduced watering for dust control by putting gravel on roads and (b) reusing sand wash water instead of allowing it to drain off or evaporate.
- *“Syar estimates that the water demand, due to alternative dust suppression methods on roads, may reduce total water demand by 20%.”*

(Draft EIR, Appendix K (Water Supply Assessment), p. 10).

❖ What the EIR does not say:

- No discussion of whether these conservation measures are feasible
- No independent analysis or projection of how much water they would save
- No discussion of how Syar arrived at its 20% estimate
- No discussion of how accurate or inaccurate Syar’s estimate might be
- No data or evidence concerning water savings through conservation

TRUCKED WATER

❖ The EIR does not:

- Identify potential sellers
- Indicate where the water might come from
- Discuss the likelihood of buying enough water
- Consider the reliability of supply
- Analyze impacts on traffic, dust, noise, GHG emissions

RECYCLED WATER

- No discussion of the feasibility of obtaining a sufficient supply.
 - *EIR says it is a “likely” source of additional water.*
 - *EIR water consultant says that recycled water is a “high demand item,” so “to think you’re going to get recycled water is nice, but probably not.”*
 - *No evidence in the EIR to support either statement.*
- No analysis of the environmental impacts of connecting to NSD’s recycled water pipeline.

ARE TRUCKED AND RECYCLED WATER LIKELY SOURCES OF SUPPLY FOR THE EXPANDED QUARRY?

- Recycled water “may be available in the future” and Napa Sanitation District has “indicated that they will likely be able to satisfy demand.”(Draft EIR, August 2013)
- Increased water demand will be met through the import of additional water, “likely recycled water.” (Final EIR, November 2014)
- The allocation of recycled water to the project “cannot be assured by the Napa Sanitation District.” Access is “highly competitive because it is also used for agricultural purposes and may not be available.” (Final EIR, October 2015)
- Statement of the County Water Consultant at the March 22, 2016 hearing.

Statement of Kent O'Brien
County Water Consultant
March 22, 2016 Syar Appeal Hearing

“So what the County has done is they’ve required that the project be done with no more water than the baseline -- 2009. . . . Now the practical effect of this is it requires more efficient use of the existing water. There were some comments that an analysis of recycled water should be required, an analysis of import water through pipelines, trucking it in. The reality is that recycled water is a high demand item. It’s not easy to get. The agricultural interests like it. **So to think that you’re going to get recycled water is nice, but probably not. Trucked in water isn’t really going to work out and there’s really no place to get water. So the practical effect of this is to limit use to 141 AF of water.”**

THE SYAR EIR ON RECYCLED WATER

1. Recycled water may be available.
2. Recycled water will likely be available.
3. The availability of recycled water cannot be assured.
4. Recycled water will probably not be available.

THE LEGAL SHORTCOMINGS OF THE SYAR EIR WATER ANALYSIS

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova
(2007) 40 Cal.4th 412

- When is an EIR's analysis of a project's water supply legally sufficient under CEQA?
- The *Vineyard Area Citizens* test is based upon the primary purpose of an EIR, which is to inform the public and the decision-makers of the reasonably foreseeable environmental consequences of approving a project.
- Does the Syar EIR pass the test established by *Vineyard Area Citizens* ("VAC")?

VINEYARD AREA CITIZENS RULE #1

An EIR must analyze the environmental impacts of supplying water to a project in the long-term based on the assumption that the project will reach full production.

▪ **Syar EIR fails to do so:**

- SMP authorizes 60% increase in production, which will require more water.
- EIR finds no significant groundwater impact because groundwater use is capped.
- EIR *assumes* Syar can get additional water from various sources to produce 1.3M tons.
- EIR fails to analyze environmental consequences of tapping into those sources.

VINEYARD AREA CITIZENS RULE #2

If future water supplies for a project are uncertain, an EIR must do the following:

- A. Acknowledge* the uncertainty
- B. Analyze* the likelihood that an adequate supply will be available in the future
- C. Discuss* reasonably foreseeable alternatives
- D. Disclose* the environmental impacts of each alternative
- E. Examine* how those impacts might be mitigated

THE SYAR EIR *DOES NOT* ADDRESS MOST OF THE VINEYARD AREA CITIZENS CRITERIA

- No acknowledgement or analysis of uncertainty of future supply.
- No analysis of likelihood that future sources will be available.
- No disclosure of environmental impacts of alternative sources.
- No discussion of mitigating future impacts.

NAPA COUNTY GENERAL PLAN SETS A HIGHER STANDARD

CON-53:

- The County shall ensure that the intensity and timing of new development are consistent with the capacity of water supplies and protect groundwater and other water supplies **by requiring all applicants for discretionary projects to demonstrate the availability of an adequate water supply prior to approval.** Depending on the site location and the specific circumstances, adequate demonstration of availability via an appropriate hydrogeologic analysis or may be satisfied by compliance with County Code “fair-share” provisions or applicable State law. In some areas, **evidence may be provided through coordination with applicable municipalities and public and private water purveyors to verify water supply sufficiency.**

THE COUNTY HAS NOT HELD SYAR TO THE STANDARD OF THE GENERAL PLAN

- EIR finds there is an inadequate supply of groundwater on the Syar property.
- EIR assumes the availability of adequate alternative water, but does not analyze that assumption or require Syar to demonstrate adequacy of supply.
- County has not required verification from NSD that Syar may connect to its recycled water pipe.
- County has not required verification from the City of Napa, or any other municipal supplier, that it will sell Syar water to be trucked to the site.
- What does CON-53 mean?

VINEYARD AREA CITIZENS RULE #3

The closer a project is to approval, the more specific and detailed its analysis of the water supply must be.

- In *Vineyard Area Citizens*, the EIR was examining a conceptual master plan for a subdivision.
- Detailed analysis of water supply could be done as the project moved from a general to more specific phases of approval.

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- Here, the EIR is examining the impact of final approval of a surface mining permit.
- There is no going back.

VINEYARD AREA CITIZENS RULE #4

An EIR must address all reasonably foreseeable consequences of supplying a project with water at full production. It may not defer that analysis on grounds that the development of future water supplies will be subject to future environmental review.

- An EIR must analyze the whole of the action, including reasonably foreseeable activity related to the project.
- To do otherwise is “piecemealing.”
- Is it reasonably foreseeable that Syar will access additional water sources in order to reach full production?

VINEYARD AREA CITIZENS RULE #5

Capping groundwater use at current levels does not eliminate CEQA's requirement that the EIR analyze those supplemental water sources that may be reasonably necessary for the project to reach full production.

San Joaquin Raptor Rescue Center v. County of Merced
(2007) 149 Cal.App.4th 645

"[A]n EIR may not substitute a provision precluding further development for identification and analysis of the project's . . . likely water sources. While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built."

VINEYARD AREA CITIZENS RULE #6

An EIR's discussion of potential future water supplies must be reasonably clear and internally consistent.

- Recycled water may be available, will likely be available, availability cannot be assured, or it probably won't be available.
- Water might come from offsite wells, but we don't know where they will they will be drilled, how much they will produce, or how the water will get to the quarry.
- Syar thinks conservation might save up to 20% of its water, but we don't know why it thinks that or have any data to support that conclusion.
- Trucked water is readily available for purchase (Draft EIR), but "there's really no place to get" it and so it "isn't really going to work" (Kent O'Brien).

CONCLUSION

- ❖ Given the cap on Syar's groundwater use, it is reasonably foreseeable that Syar will need to draw upon additional sources of water in order to reach full production.
- ❖ Under the standards set forth in *Vineyard Area Citizens*, the EIR does not adequately inform the public or the Board of the environmental consequences of Syar doing so.
- ❖ Accordingly, the EIR should not be certified because it does not achieve CEQA's informational objective, and the surface mining permit should be rejected absent a certified EIR.