



July 10, 2016

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Napa County Planning, Building  
& Environmental Services

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Re: Syar Quarry Appeal

Dear Chair Pedroza and Members of the Board:

In a March 21 letter to the Board, Skyline Park Citizens Association asserted that the Syar EIR is flawed because, given the cap on groundwater use, it (1) fails to analyze where Syar will obtain the additional water needed for its proposed production increase, and (2) fails to examine the environmental consequences of mobilizing those additional water sources. The EIR is rife with confusing, contradictory, incorrect and incomplete information on the subject.

That criticism apparently hit home, because Syar is now proposing to increase production within its groundwater limit through water conservation alone, without importing any additional water. It proposes to plug the hole in the EIR's water analysis by revising mitigation measure 4.8-4 to prohibit the use of outside water.

Syar's proposal does not bring this EIR into compliance with CEQA. First, there is no substantial evidence that the revised mitigation measure is feasible. Second, behind the revised mitigation measure is a proposal by Syar to conserve water through the extensive use of surfactants, which may create significant new environmental impacts that must be analyzed in the EIR. Third, Syar's last-minute request deprives the public of a meaningful opportunity to analyze and comment on the revised mitigation measure.

**A. Feasibility of the Revised Mitigation Measure**

Mitigation measures should be feasible and effective in reducing environmental impacts to a less-than-significant level. There must be substantial evidence in the record to support both conclusions. Gray v. County of Madera (2008) 167 Cal.App.4th 1099, 1115-1116. Here, there is none.

Preliminarily, the Board should note the substantial, last-minute change in estimates of the amount of water that will be needed to support quarry production of 1.3 million tons. Analyzing Syar's original request for an increase in production to 2 million tons per year, the EIR concludes that such an increase will require an additional 50 acre-feet of water per year. In its April 25, 2016 letter to the County, requesting that the Board approve a conservation-only strategy, Syar asserts that its revised application for 1.3 million tons of annual production will require no more than 20 additional acre-feet per year. Thus increasing water efficiency by a mere 14% will allow the company to achieve the requested production increase without drawing on outside water.

In its letter dated June 30, 2016, which became available to the public less than two weeks ago, Syar concedes that its water consumption figures were mistaken, and that annual production of 1.3 million tons will require not 20 but 50-more acre feet of water per year, because reduced output levels at the quarry do not translate into reduced water use. The Planning Commission findings in support of the mining permit contain the same order-of-magnitude underestimation of water use (Res. 2015-03 § 8(C)). Thus, the amount of water that Syar must conserve in order to avoid drawing on outside water sources is not 14% but 35%. The corrected figures show that Syar must save an additional 21% of its current water use in order to meet its proposed conservation target.

What is the evidence that such considerable water savings are realistically possible, and that revised measure 4.8-4 is therefore feasible? First, there is Syar's contention that by using surfactants to control dust with less water, the company can achieve up to a 90% reduction in water use. To support that claim, Syar attaches a brochure from a surfactant manufacturer, describing the use of its "practically non-toxic" product DusTreat DC9112 to reduce water use at a Nevada gold mine by 90% over a seven-month period.<sup>1</sup>

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<sup>1</sup> There is no evidence that (1) Syar plans to use DusTreat DC9112 or what products or combination of products Syar plans to use; (2) how, or where, or how often Syar might apply and re-apply them; (3) what year the Nevada goldmine treatments were applied, or whether they were used beyond the seven-month period described in the brochure; (4) whether conditions at the goldmine are comparable to the Napa quarry,

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Second, there is a supplemental memorandum, dated July 1, from the County's EIR consultants. The memorandum asserts, without analysis, that Syar can reduce water use by up to 90% by using surfactants. Incredibly, as authority for this contention, it cites the June 30 letter from Syar's law firm and the attached marketing brochure (Memorandum from GHD to Board of Supervisors, July 1, 2016, page 21).

Third, in its July 11 report to the Board, staff represents that the use of chemical dust suppressants on open areas of the quarry could "potentially" achieve water savings of 52 to 100 acre-feet per year, and that this "conservation measure has been reviewed and verified by the EIR hydrologists and determined to be feasible and capable of being implemented" (Staff Report, page 6).

In other words, staff cites the EIR consultants as authorities, while the EIR consultants cite the manufacturer's brochure. That is the sum total of the "evidence" contained in this vast record to support the conclusion that Syar can increase production by 63% without using additional water.

Even if this material is dignified with the word "evidence," which it should not be, it is not substantial evidence. Substantial evidence does not mean any evidence; it means "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts" (CEQA Guidelines § 15384). The operative word is "facts," which are sorely lacking here. This record offers little but factually unsupported conclusions.

Also lacking is any analysis on the critical question of whether conservation alone will be effective in enabling Syar to significantly increase production while staying within its 140.6 acre-foot groundwater limit. A primary purpose of environmental review "is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action . . ." Save our Peninsula Committee v. Monterey County Board of Supervisors (2001) 87 Cal.App.4th 99, 133. Uncritical acceptance of conservation claims by Syar's law firm, packaged with an advertising brochure from a surfactant manufacturer, and rubber-stamped by the EIR consultants does not provide necessary assurance to the very, very apprehensive citizenry of Napa County.

At the April 26 hearing, attempting to downplay concerns about the quarry's groundwater use, Syar's representative stated forcefully:

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such that comparable results might be achieved; or (5) what unintended environmental consequences these "practically non-toxic" chemical treatments might have.

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We're willing to live with our 140.6 acre-feet, which is our base-line, which is no increase in groundwater use, and we'll achieve that at full production through commitments to conserve water. ***And we're willing to prove that we can do that. . . [W]e'll show that that's possible.***

(Video Record 4:32).

The Board should hold Syar to its word. It should require proof.

## **B. Environmental Effect of the Revised Mitigation Measure**

If a mitigation measure would cause a significant impact on the environment in addition to those caused by the project as proposed, the EIR must discuss the mitigation measure's environmental effects (CEQA Guidelines § 15126.4(a)(1)(D)). Here, Syar proposes to apply surfactants to open areas within the quarry – roads, processing areas and mine pits – to suppress dust and thereby reduce the need for watering. Yet there is no discussion in the EIR or supporting materials of whether Syar's widespread use of surfactants will itself have significant environmental consequences and, if so, how those consequences can be mitigated.

The term "surfactants" refers to a wide range of chemical compounds, not all of which are benign. The scientific literature is replete with discussions of the potentially negative effect of surfactants on the environment, including plants, animals and human beings. These articles, typically authored by chemists, are highly technical. I am not qualified to summarize the literature or draw any firm conclusions from it, nor have appellants had time to consult with experts, because information about the scale of Syar's proposed use of surfactants become publicly available only on July 1.

Even a cursory review of the literature, however, suggests that some kinds of surfactants can be highly toxic. For example, in a 2002 article, scientists from the Hungarian Academy of Sciences concluded:

Both the beneficial and adversary effects of anionic surfactants on the environment are reported and critically discussed. **It was concluded that the role of anionic surfactants in the environment is ambiguous: they can cause serious environmental pollution with toxic effect on living organisms; otherwise, they can promote the decomposition**

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**and/or removal of other inorganic and organic pollutants from the environment.** The relationship between their chemical structure, physicochemical parameters, biological activity and environmental impact is not well understood. A considerable number of data are needed for the development of new anionic surfactants and for the successful application of the existing ones to reduce the [adverse] and to promote beneficial effects.<sup>2</sup>

Examining the interactions of surfactants in soil and water in 2004, Canadian scientists wrote that the widespread use of surfactants means that “their waste and the potential for pollution are high.”

It has been found that although certain surfactants may not be directly toxic, when their concentrations are high in soil, they can act as agents to release toxic pollutants such as polychlorinated biphenyls (PCBs).<sup>3</sup>

And from Brazilian researchers in 2015 comes the following:

Surfactants can change the surface and interfacial properties of liquids, but their presence in the environment can interfere with countless enzymes and can even impair the endocrine system of various organisms and induce the feminization of species.<sup>4</sup>

A Google Scholar search for articles on the environmental risks of surfactants produces over 4,000 listings. Implementation of the revised groundwater mitigation measure through the use of surfactants clearly raises serious questions, none of which is addressed in the EIR. The Board should demand answers, because CEQA requires them, and because protection of the public health and safety is more important than cheap aggregate.

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<sup>2</sup> Biological Activity and Environmental Impact of Anionic Surfactants, 28 Environment International 337-348 (2002).

<sup>3</sup> Health Effects, Environmental Impacts, and Photochemical Degradation of Selected Surfactants in Water, 6 International Journal of Photoenergy 115-125 (2004).

<sup>4</sup> A Perspective on the Potential Risks of Emerging Contaminants to Human and Environmental Health, 22 Environmental Science and Pollution Research 13800-13823 (September 2015).

### **C. Public Review of the Revised Mitigation Measure**

The EIR is an informational document. Its purpose is to fully disclose the environmental consequences of a project before the project is approved. Full disclosure (1) ensures that the decision-makers know in advance what they are being asked to approve, and (2) enables the public to challenge the key assumptions, conclusions and assertions contained in the EIR. "Thus, the EIR protects not only the environment but also informed self-government." Laurel Heights Improvement Assn. v. Regents of the University of California (1993) 6 Cal.4th 1112, 1123.

The County has done a commendable job providing for public participation in the Syar EIR process. Regrettably, the process has broken down with respect to mitigation measure 4.8-4. Groundwater has been a major issue from the inception of this project. Mitigation measure 4.8-4 was first proposed in 2013. Not until April 2016, however, did Syar propose a substantial change in groundwater mitigation, and not until this month did it provide information about how it plans to implement the revised measure.

Whenever significant new information is added to a project before certification of the final EIR, a supplemental EIR should be prepared and recirculated for public comment (Cal. Pub. Res. Code § 21092.1). New information is significant if it changes the EIR in a way that deprives the public of an opportunity to comment (CEQA Guidelines § 15088.5(a)).

Revised mitigation measure 4.8-4 adds significant new information. It reveals for the first time Syar's intent to mitigate groundwater depletion solely through conservation. For the first time it specifies how much groundwater Syar will need to conserve. And for the first time it reveals Syar's intent to make widespread use of surfactants to achieve its conservation target. These matters became known *after* the Planning Commission certified the EIR based on the old groundwater mitigation measure, and *after* the public comment period this appeal had closed.

The public has therefore been deprived of a meaningful opportunity to comment on revised mitigation measure 4.8-4, to challenge the feasibility of Syar's conservation methods and goals, and to identify significant environmental impacts from the company's use of surfactants. The Board will benefit from public scrutiny of these issues; the EIR will fulfill its informational goal; and the public's right to participate in environmental review of this controversial project will be vindicated.

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Respectfully, the Board should either refuse to certify the EIR, or direct the preparation and recirculation of a supplemental EIR to analyze the feasibility and environmental impacts of Syar's water conservation proposal, and to receive public input on the issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin P. Block". The signature is fluid and cursive, with a prominent initial "K" and "P".

Kevin P. Block