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8 **TULARE COUNTY SUPERIOR COURT**  
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10 **STATE OF CALIFORNIA**  
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12 **VALLEY CITIZENS FOR WATER, an** ) **Case No.: 05 – 215123**  
13 **unincorporated association,** )

14 **Petitioner and Plaintiff,** )

15 **v.** )

**RULING ON WRIT**

16 **COUNTY OF TULARE, et. al.,** )

17 **Respondents and Defendants.** )  
18

19 **KAWEAH RIVER ROCK CO., a** )  
20 **California Corporation, HANNAH RANCH** )  
21 **TRUST, a California Trust, and KAWEAH** )  
22 **DELTA WATER CONSERVATION** )  
23 **DISTRICT, a California Public Agency,** )  
24 **et. al.,** )

25 **Real Parties in Interest** )  
26

27 **This matter came on regularly for hearing on January 24, 2006. Caroline Farrell**  
28 **and Brent Newell appeared on behalf of Petitioner and Plaintiff, Valley Citizens for Water.**  
**Whitman Manley and Dan Dooley appeared on behalf of Respondents County of Tulare**  
**and Board of Supervisors for the County of Tulare and Real Parties in Interest Kaweah**

1 River Rock Co., and Hannah Ranch Trust. Zachary Smith appeared on behalf of Real  
2 Party in Interest Kaweah Delta Water Conservation District.

3 Petitioner, Valley Citizens for Water ("Valley Citizens") brings this writ, alleging  
4 the Kaweah South Gravel Mine Project ("Gravel Mine") of the Kaweah River Rock  
5 Company was approved by Tulare County ("County") in violation of the California  
6 Environmental Quality Act ("CEQA"), Public Resources Code §§21000, et. seq. and the  
7 CEQA Guidelines, 14 California Code of Regulations §§ 15000, et. seq. ("Guidelines").  
8 Valley Citizens contend that the County, by approving the Gravel Mine, violated CEQA in  
9 four ways:

10  
11 **1. THE ENVIRONMENTAL IMPACT REPORT (EIR) FAILED TO DESCRIBE  
12 AND ANALYZE DIRECT AIR IMPACTS FROM THE GRAVEL MINE**

13 **A. The County Failed to Adequately Analyze Operation Air Emissions**

14 **B. The County Violated CEQA by Failing to Disclose and Analyze Total Vehicle  
15 Emissions from the Gravel Mine**

16 **2. THE COUNTY FAILED TO ADEQUATELY ANALYZE CUMULATIVE IMPACTS  
17 FROM THE PROPOSED GRAVEL MINE**

18 **A. The County Violated CEQA by Failing to Properly Define the Scope of the  
19 Cumulative Air Impact Analysis**

20 **B. The County Failed to Adequately Analyze Cumulative Air Quality Impacts**

21 **3. THE COUNTY VIOLATED CEQA BY PIECEMEALING THE PROJECT**

22 **A. The Proposed Project Deals With Only a 280-Acre Portion of the Proposed  
23 810-Acre Mining Site.**

24 **B. The County Does Not Analyze Potential Concrete Batch Plants, Asphalt  
25 Mixing Plants or Concrete/Asphalt Recycling Plants at the Mine Site**

26 **4. THE COUNTY FAILED TO ADEQUATELY ANALYZE AND REQUIRE FEASIBLE  
27 MITIGATION MEASURES FOR THE GRAVEL MINE**

- A. The County Failed to Adequately Describe the Mitigation it Selected to Mitigate Traffic Safety Impacts from Fog
- B. The County Failed to Describe the Efficacy of its Mitigation Measure to Reduce Flood Impacts
- C. The County Violated CEQA by Failing to Evaluate the Efficacy of the Proposed Recharge System to Reduce Impacts to Groundwater Levels

The court will first address each procedural issue presented, and then address each alleged CEQA violation in the above presented order.

#### PROCEDURAL MATTERS

At the hearing the court granted Respondent's Request for Judicial Notice and took Judicial Notice of the requested Tulare County Ordinances.

The administrative record had been lodged with the court. No requests were made to augment the record, nor was there any dispute as to the completeness of the record. Thus, the court finds that the administrative record lodged with the court was complete.

#### THE COURT FINDS THAT PETITIONER HAS EXHAUSTED ITS ADMINISTRATIVE REMEDIES

Respondents argue that the court does not have jurisdiction to consider certain of Petitioner's arguments due to its failure to exhaust administrative remedies.

Under the Tulare County Code, a person appealing to the Board a Planning Commission decision on a Surface Mining and Reclamation Plan must file a written notice of appeal and "specifically set forth the grounds for appeal." (Tulare County Code, ch. 25, § 1265, subd. (d).) Petitioner filed a written letter of appeal challenging the Commission's decision on the project. The letter identified 14 grounds for appeal. The appeal letter did not mention "piecemealing," air quality impacts or cumulative air quality impacts. Therefore, Respondents argue Petitioner failed to exhaust its administrative remedies on these issues and are thus barred from raising those issues in this forum. Respondents rely on Tahoe Vista Concerned Citizens v. County of Placer (2000) 81 Cal. App. 4<sup>th</sup> 577.

1 The court disagrees with Respondents and finds Tahoe is distinguishable. Although  
2 Tahoe was based upon a county code that is very similar to County's, no CEQA issue was  
3 raised on appeal to the Board of Supervisors in Tahoe, only an issue as to parking. This  
4 was clearly set forth in the opinion. The court in Tahoe properly found that the court did  
5 not have jurisdiction because Petitioner had not exhausted its administrative remedies by  
6 failing to raise any CEQA issue before the Board. Here, Petitioner's letter requesting an  
7 appeal listed 14 CEQA violations, and County concedes that the two issues it challenges  
8 Petitioner on – piecemealing and air quality issues – were raised before the Board of  
9 Supervisors. That is all that is needed under CEQA to preserve an issue for suit as  
10 provided in Public Resources Code § 21177(a). The doctrine of exhaustion is designed to  
11 bring issues before decision makers in an administrative forum so that the issues may be  
12 resolved without litigation. Here, it is undisputed that all of the issues in this suit were  
13 raised before the ultimate administrative decision maker, the Board.

14 Further, under the most basic of constitutional principles, a County code cannot  
15 extinguish a party's rights under a State law.

16 The court finds Petitioner, Valley Citizens has exhausted its administrative remedies  
17 under CEQA and is entitled to raise all issues presented before the Board of Supervisors.

## 18 19 STANDARD OF REVIEW

20 The parties dispute the standard of review.

21 The court finds Public Resources Code § 21168.5 sets forth the standard of review  
22 in this case. Under section 21168.5, judicial review “extends only to whether there was a  
23 prejudicial abuse of discretion.” An abuse of discretion is established “if the agency has  
24 not proceeded in a manner required by law or if the determination or decision is not  
25 supported by substantial evidence.” (Laurel Heights Improvement Assn. v. Regents of the  
26 University of California (1988) 47 Cal. 3d 376, 392 (Laurel Heights I.) As a result of this  
27 standard, "The court does not pass upon the correctness of the EIR's environmental  
28

1 conclusions, but only upon its sufficiency as an informative document." (County of Inyo v.  
2 City of Los Angeles (1977) 71 Cal.App.3d 185, 189 [139 Cal.Rptr. 396].)

3 "An EIR must include detail sufficient to enable those who did not participate in its  
4 preparation to understand and consider meaningfully the issues raised by the proposed  
5 project." (Laurel Heights Improvement Assn. v. Regents of the University of California  
6 (1988) 47 Cal. 3d 376, 405 (Laurel Heights I.)) "[N]oncompliance with the information  
7 disclosure provisions. . . which precludes relevant information from being presented. . .  
8 may constitute a prejudicial abuse of discretion. . . regardless of whether a different  
9 outcome would have resulted if the public agency had complied with those provisions."  
10 (Public Resources Code § 21005(a).) The trial court may not exercise its independent  
11 judgment on the omitted material by determining whether the ultimate decision of the lead  
12 agency would have been affected had the law been followed. Rural Land Owners  
13 Association v. City Council (1983) 143 Cal. App. 3d 1013, 1023.

14 The Fifth District Court of Appeals has recognized that excluding information from  
15 the EIR has the same prejudicial results when "the failure to include relevant information  
16 precludes informed decision-making and informed public participation, thereby thwarting  
17 the statutory goals of the EIR process." Kings County Farm Bureau v. City of Hanford  
18 (1990) 221 Cal. App. 3d 692, 712; Association of Irrigated Residents v. County of Madera  
19 (2004) 107 Cal. App. 4<sup>th</sup> 1383, 1392. Furthermore, failure to adequately address an issue  
20 constitutes a prejudicial abuse of discretion regardless of whether compliance would have  
21 resulted in a different outcome. Citizens to Preserve the Ojai v. Ventura County (1986) 176  
22 Cal. App. 3d 421, 428.

23 Valley Citizens's arguments that the County violated CEQA by failing to adequately  
24 analyze cumulative and direct air impacts, by piecemealing the project and by failing to  
25 adequately explain the efficacy of selected mitigation measures, are arguments that the  
26 County failed to proceed in the manner required by law. "The substantial evidence  
27 standard of review is not applied to this type of challenge. . . Although the agency's factual  
28 determinations are subject to deferential review, questions of interpretation or application

1 of the requirements of CEQA are matters of law.” Bakersfield Citizens for Local Control  
2 v. City of Bakersfield (2004) 124 Cal. App. 4<sup>th</sup> 1184, 1208.

3 However, “The substantial evidence standard is applied to conclusions, findings and  
4 determinations. It also applies to challenges to the scope of an EIR’s analysis of a topic, the  
5 methodology used for studying an impact; and the reliability or accuracy of the data upon  
6 which the EIR relied because these types of challenges involve factual questions.”

7 Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal. App. 4<sup>th</sup> 1184,  
8 1198.

9 Petitioner’s arguments that the County violated CEQA by failing to adequately  
10 analyze direct and cumulative air impacts, by piecemealing the project and by failing to  
11 adequately explain the efficacy of selected mitigation measures are arguments that the  
12 County failed to proceed in the manner required by law.

13 Therefore, failure to proceed in a manner required by law is the appropriate  
14 standard of review for Valley Citizens’s challenge.

15 The court must presume the agency complied with the law and petitioners bear the  
16 burden of proving otherwise. (Save Our Peninsula Committee v. Monterey County Board  
17 of Supervisors (2001) 87 Cal. App. 4<sup>th</sup> 99, 117.) “CEQA requires an EIR to reflect a good  
18 faith effort at full disclosure; it does not mandate perfection, nor does it require an analysis  
19 to be exhaustive.” (Dry Creek Citizens Coalition v. County of Tulare (1977) 70 Cal. App.  
20 4<sup>th</sup> 20, 26, citing CEQA Guidelines, § 15151.)

21 Thus, the court reviews the administrative record to see if a prejudicial abuse of  
22 discretion is established because the County did not proceed in a manner required by law  
23 by omitting information necessary to understand the project’s impacts and by failing to  
24 adequately discuss mitigation measures proposed to reduce those impacts to less than  
25 significant.

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## DISCUSSION OF ISSUES PRESENTED

### 1. THE ENVIRONMENTAL IMPACT REPORT (EIR) FAILED TO DESCRIBE AND ANALYZE DIRECT AIR IMPACTS FROM THE GRAVEL MINE

#### A. THE COUNTY FAILED TO ADEQUATELY ANALYZE OPERATION AIR EMISSIONS

Petitioner's argument here is mainly that the wrong baseline was used for County's analysis. The court agrees.

The County's air quality analysis does not provide any information on operational emissions from the mine because the County improperly compares the proposed gravel mine with the existing mine to determine that the proposed gravel mine's impacts are less than significant.

The County recognizes that the San Joaquin Valley Air Basin, where the gravel mine sits, does not meet health based air pollution standards. In Kings County Farm Bureau v. City of Hanford (1990) 221 Cal. App. 3d 692, at page 718, the court recognized the importance of analyzing a project's contribution to precursor emissions "in light of the serious nature of the ozone problem within the air basin. Yet the County does not provide any information on operational emissions from the gravel mine. The County identifies three sources of emissions from the project itself: (1) construction; (2) operational emissions; and (3) vehicle emissions. The County did not analyze operational emissions and only looked at half the vehicle emissions. The County overlooked its obligations to analyze all of the direct impacts from the project.

In the EIR, the County recognized that the gravel mine would produce on-site reactive organic gas (ROG) emissions, Nitrogen Oxide emissions (NOx), Particulate Matter with an aerodynamic diameter equal to or less than 10 microns (PM-10) and Hazardous Air Pollutants (HAPs). However, the County did not provide any calculations of impacts nor did it present any modeling of mining-related impacts.

Rather, the County determined air impacts from the gravel mine would be less than significant because (1) the proposed gravel mine would use updated, more productive, onsite off road equipment compared to the existing mine; (2) the proposed mine would

1 have fewer annual operating hours than the existing mine; and (3) KKRC would obtain air  
2 permits from the San Joaquin Valley Air Pollution control District to operate the jaw and  
3 cone crushers, impact crushers and rock washers. None of these justifications excuses the  
4 County's failure to actually analyze impacts from the proposed project as required by  
5 CEQA.

6 The County reasoned that the proposed mine will use more modern equipment than  
7 the existing mine. The County improperly compares this project to the existing gravel  
8 mine rather than what is currently happening at the proposed site. The appropriate  
9 baseline is the physical change from a working ranch to a gravel mine. CEQA requires the  
10 County to evaluate the proposed project against the current "physical environmental  
11 conditions as they exist at the time the notice of preparation is published." CEQA  
12 Guidelines § 15125(a); Save our Peninsula Committee v. Monterey Co. Board of  
13 Supervisors (2001) 87 Cal. App. 4<sup>th</sup> 99, 119-12.

14 In addition, the County does not provide any information on the types of equipment  
15 that will be modernized nor does it provide calculations to support its conclusions that with  
16 the modernized equipment there will be less than significant impact. The only air quality  
17 mitigation measure supported by information was the new mitigation for air quality  
18 requiring the KRRC to decommission one diesel-powered Caterpillar Tractor and replace  
19 it with one electrically powered conveyor belt. The County presented calculations  
20 supporting this requirement illustrating that it is possible to do so. However, no other  
21 information was provided. The County's conclusory statements do not provide the  
22 information and analysis required by CEQA.

23 The County may not rely on the San Joaquin Valley Air Pollution Control Board's  
24 permitting process to excuse its own failure to analyze operational emissions itself. The  
25 County, as lead agency, must independently comply with CEQA. CEQA Guidelines §  
26 15020. The County provides the statement that since project emissions are less than the  
27 Air District's threshold of significance, the gravel mine will have a less than significant  
28 impact. However, there is no way for the County to know if its statement is true since it



1 failed to quantify emissions from the mine's operations, it provides no information on the  
2 types of mitigation that may be required to reduce those emissions, and it does not discuss  
3 the efficacy of those theoretical mitigation measures. The County failed to provide  
4 sufficient information in the EIR to allow the public or decision-makers to confirm whether  
5 or not operational emissions would be less than significant.

6 The County attempted to cure the inadequate air quality analysis by preparing a  
7 supplemental technical report on May 2, 2005. The technical appendix merely reiterates  
8 the analysis from the EIR and references the professional opinion of the consultants that  
9 the impact will be less than significant. The county may only rely on expert opinion  
10 substantiated by facts in the record. (Pub. Res. Code §§ 21080(e)(1)(2), 21082.2(c), CEQA  
11 Guidelines § 15384(b); City of San Jose v. Great Oaks Water Co. (1987) 192 Cal. App. 3d  
12 1005, 1018-1019 (expressing skepticism about professional opinion not supported by  
13 underlying facts.)

14 The supplemental technical appendix also speculates that having a local source of  
15 aggregate will be beneficial to air quality by eliminating trips to Bakersfield, Coalinga, and  
16 Fresno. However, the County does not provide any information documenting the actual air  
17 emission savings garnered from having a local source of aggregate or that having the  
18 proposed mine will significantly reduce longer truck trips to obtain aggregate given the  
19 high demand in the Visalia area.

20 The County has violated CEQA by failing to provide sufficient information to  
21 support its conclusion that the direct air impacts from the gravel mine operations will be  
22 less than significant.

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1                   **B. THE COUNTY VIOLATED CEQA BY FAILING TO DISCLOSE AND**  
2                   **ANALYZE TOTAL VEHICLE EMISSIONS FROM THE GRAVEL**  
3                   **MINE**

4           The County failed to quantify emissions from the total truck and employee trips  
5 because its only analysis used an offset by the reduction, then cessation, of vehicle trips  
6 from the existing KRRC mine. The vehicle emission analysis suffers from the same  
7 baseline flaws as the operational emission analysis discussed above.

8           In addition, the County is overlooking the fact that the existing KRRC mine is not  
9 voluntarily ceasing operations. Rather, this project is nearing the end of its recoverable  
10 reserves. Therefore, the proposed project is actually *extending* mining operations in the  
11 area for an additional thirty years. Thus, it can not claim to be offsetting emissions,  
12 especially since the County fails to analyze direct emissions from the project prior to  
13 claiming any "offset."

14           The County's treatment of its air quality analysis fails to provide adequate  
15 information to the public and decision-makers on the true impacts of the proposed mine in  
16 violation of CEQA.

17  
18                   **2. THE COUNTY FAILED TO ADEQUATELY ANALYZE CUMULATIVE**  
19                   **IMPACTS FROM THE PROPOSED GRAVEL MINE**

20                   **A. THE COUNTY VIOLATED CEQA BY FAILING TO PROPERLY**  
21                   **DEFINE THE SCOPE OF THE CUMULATIVE AIR IMPACT**  
22                   **ANALYSIS**

23           Valley Citizens raised this issue at the March 29, 2005 hearing of the Board of  
24 Supervisors. 18 AR 5078. Raising the issue prior to the Notice of Determination preserves  
25 the issue. (Public Resources § 21177(a).)

26           While knowledge of the regional setting is important, CEQA provides separate  
27 requirements for discussing regional settings and cumulative impacts. (Guidelines §  
28 15125(c).) CEQA requires that an EIR's cumulative impacts analysis to either: (1) list the  
facilities that contribute to a cumulative impact or (2) include a summary of projections of  
the cumulative impacts from an adopted general plan or related planning document.

1 (Guidelines § 15130(b)(1).) The cumulative impact analysis should focus on projects which  
2 combine to cause a related effect. Guidelines §15130(a)(1). This is much more specific  
3 than a general discussion of the regional setting. CEQA also requires a summary of the  
4 expected environmental effects to be produced by these projects and a reasonable analysis  
5 of the cumulative impact. (Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.  
6 App. 3d 692, 729; Guidelines §§ 15130(b)(2), 15130(b)(3).)

7 The County's cumulative air quality discussion merely listed six gravel mine  
8 projects within six miles of the mine and did not analyze the cumulative impacts of those  
9 mines. The regional setting description does not identify related sources of emissions or  
10 reference any emission summary. It consists merely of a general description of each  
11 criteria pollutant and regulatory standards applicable to the pollutant. The only specific  
12 information on local air quality is contained in a monitoring table for Church Street in  
13 Visalia. 3 AR 00432. It does not describe or analyze related sources of pollutants as  
14 required by CEQA.

15  
16 **B. THE COUNTY FAILED TO ADEQUATELY ANALYZE**  
17 **CUMULATIVE AIR QUALITY IMPACTS**

18 The County argues that because project emissions are below the Air District's  
19 thresholds, cumulative emissions will be less than significant. In advancing this argument  
20 the County points to communications with the Air District stating in part "the proposed  
21 project's net increases in emissions, when combined with other emissions sources in the  
22 area is unlikely to cause a detectable increase in cumulative ozone concentrations." Later  
23 in its response, the County states that "the modest increase from the project's net increase  
24 in vehicle trips will be offset by on-site reductions in emissions." The County has focused  
25 on the individual project's relative effects and omitted facts relevant to the analysis of the  
26 collective effect this and other sources will have upon air quality.

27 The County's cumulative impact analysis suffers from the same deficiency as its  
28 direct operational air impact analysis: the County's conflation of the nearby existing mine  
with the new mine at a new site is insufficient for purposes of determining impacts.

1 Because the County has improperly determined that the mine project itself will have no  
2 significant air impact, the County then uses that conclusion to bootstrap its conclusion that  
3 the new mine will have no cumulative impacts. This improper choice of a baseline is a  
4 failure to proceed in the manner required by law.

5  
6 **3. THE COUNTY DID NOT VIOLATE CEQA BY PIECEMEALING THE**  
7 **PROJECT AS TO THE 280 ACRE PROJECT BUT DID VIOLATE CEQA BY**  
8 **PIECEMEALING FOR FAILURE TO ENCLUDE THE BATCH PLANT**

9 **A. THE PROPOSED 280 PROJECT IS NOT PIECEMEALING FOR FAILURE**  
10 **TO DISCUSS UNKNOWN FUTURE EXPANSION**

11 The legal test to determine whether an agency has improperly segmented or  
12 piecemealed environmental review on a project is well established. The basic test is set  
13 forth in the California Supreme Court's decision in Laurel Heights I, in which the court  
14 stated: "an EIR must include an analysis of the environmental effects of future expansion  
15 or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and  
16 (2) the future expansion or action will be significant in that it will likely change the scope or  
17 nature of the initial project or its environmental effects." (Laurel Heights (1988) 47 Cal. 3d  
18 376, at p. 396.) Absent these two circumstances, the EIR for a project need not analyze the  
19 impacts of potential future phases. (Ibid.)

20 Similarly, in Del Mar Terrace Conservancy, Inc. v. City Council of the City of San  
21 Diego (1992) 10 Cal. App. 4<sup>th</sup> 712, the project analyzed in the EIR consisted of one freeway  
22 segment of a regional plan to expand the freeway system throughout San Diego County.  
23 The petitioner argued the EIR "piece-mealed" its review by focusing solely on this one  
24 freeway segment. The court rejected this argument. Because the freeway segment would  
25 serve a viable purpose even if other segments were never built, the Court upheld the  
26 agency's decision to focus on the single segment.

27 An agency need not treat contemplated future action as a component of a project  
28 reviewed in an EIR unless the action is "linked" to the project and is a reasonably  
foreseeable consequence of the project. Berkeley Keep Jets Over the Bay Comm. v. Board

1 of Port Commissioners ( 2001) 91 Cal. App. 4<sup>th</sup> 1344, 1362. The court in Berkeley Jets  
2 upheld an EIR for an airport expansion plan against arguments that it should have  
3 included other anticipated projects at the airport. The court held that the other projects  
4 did not have to be included in the EIR because they were not shown to be a foreseeable  
5 consequence of the project under review.

6 Here, this 280 acre project will serve a viable purpose even if there is no future  
7 development. The record shows no permits to expand the mine are proposed or pending.

8 The court finds the County has not violated CEQA by projecting only a 280 acre  
9 development without requiring discussion of potential future development. Although the  
10 court understands that there is the potential for future development some 30 years hence,  
11 this project is not dependent upon any future development. Any future development is  
12 only speculative at this point, and is not dependent upon this project, nor would it likely  
13 change the scope or nature of the initial project or its environmental effects. Thus, failure  
14 to include this information was not a violation of CEQA.

15  
16 **B. THE COUNTY VIOLATED CEQA BY NOT ANALYZING POTENTIAL**  
17 **CONCRETE BATCH PLANTS, ASPHALT MIXING PLANTS OR**  
18 **CONCRETE/ASPHALT RECYCLING PLANTS AT THE MINE SITE**

19 The County should have analyzed impacts from operation of a concrete batch plant,  
20 asphalt mixing plants or concrete/asphalt recycling plants on site because the project  
21 description stated that such plants may be operated there in the future. The County argues  
22 that no permits are pending to move the existing asphalt batch plant to the mine site and  
23 that if there is such an application, the permit will undergo its own environmental review.  
24 However, whether or not a permit is pending is not the appropriate standard for requiring  
25 inclusion in an EIR. Here, the operation of an asphalt plant is a foreseeable consequence of  
26 permitting the 280-acre gravel mine as was set forth in the description of the project.  
27 Although the moving of the batch plant will undergo its own environmental review, this  
28 does not cure the problem. Each segment will be evaluated based on the baseline existing

1 at the time it is proposed to determine if that increment poses a significant impact without  
2 analyzing the total effect of a 240-acre mine with a batch plant.

3  
4 **4. THE COUNTY FAILED TO ADEQUATELY ANALYZE AND REQUIRE**  
5 **FEASIBLE MITIGATION MEASURES FOR THE GRAVEL MINE AS TO**  
6 **FLOODING AND WATER QUALITY**

7 **A. THE COUNTY FAILED TO DESCRIBE THE EFFICACY OF**  
8 **ITS MITIGATION MEASURE TO REDUCE FLOOD IMPACTS.**

9 The County failed to proceed in a manner required by law because it failed to  
10 adequately analyze and impose mitigation measures for the gravel mine in two main  
11 impact areas: flooding, and water quality. The court finds the County properly analyzed  
12 and imposed mitigation measures in regards to traffic.

13 The County responds that it provided an exhaustive analysis of flooding issues and  
14 reasonably relied on regulatory compliance as mitigation. This mitigation doesn't meet the  
15 requirements of CEQA, however: here, as in Sundstrom v. County of Mendocino (1988)  
16 202 Cal. App. 3d 296, under Condition of Approval 77, the applicants will be getting  
17 administrative confirmation of their flooding analysis *after* the County has already  
18 approved the project, thereby depriving the public of knowing and evaluating FEMA's  
19 response to the County's flooding analysis. Id. at 307-308. This requirement of "public and  
20 agency review" has been called the "strongest assurance of the adequacy of the EIR." Id.  
21 at 308 [citation omitted.] The failure to involve the public and interested agencies, such as  
22 the Federal Emergency Management Agency, in verifying the County's analysis *during the*  
23 *public CEQA process* deprived the public and decisionmakers of important information in  
24 violation of CEQA.

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The County's response contains many citations to the record dealing with water impacts. However, those citations do not contain the necessary information on baseline or historical monitoring trends at the depth most neighboring wells are situated. Instead, the County focuses on monitoring results from a much different and deeper groundwater strata. While the County correctly points out that it need not conduct every conceivable study, it must conduct feasible studies to allow for informed decisionmaking. Citizens to Preserve the Ojai v. County of Ventura (1985) 176 Cal. App. 3d 421, 432. Without the information on the actual aquifer affected by the project, it will be impossible to determine whether or not the gravel mine has substantially depleted groundwater resources. The County has failed to provide sufficient information with which the public and decision-makers can evaluate the sufficiency of mitigation measures proposed by the County to determine whether or not groundwater impacts from the proposed mine are a less than significant impact. This is a failure to proceed in a manner required by law.

**Let the writ issue to the County to vacate and remand the County's approvals of KRRC's gravel mine, including the certification of the EIR, the Statement of Findings and Overriding Considerations, the Notices of Determination and the issuance of Surface Mining Permit and Reclamation Plan for the project for violation of CEQA as stated herein. An EIR adequately addressing all CEQA prerequisites is a condition that must be satisfied prior to any permit approval.**

Date: 3-27-01





**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF TULARE**

Case No. VCU215123

I declare that I am employed in the County of Tulare, California. I am over 18 years of age, and not a party to the within entitled action. I am employed at Superior Court, and my business address is: Room 303, County Civic Center, Visalia, CA 93291. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service; and in the ordinary course of business, mail is deposited in the United States Postal Service on the same day it is picked up from my office. On this date I served the attached **re: Ruling on Writ** on the parties listed below by placing true and correct copies thereof enclosed in a sealed envelope in the receptacle designated for collection in the office and subsequent mailing, following ordinary business practices, at Visalia, California and addressed as shown below:

Executed March 28, 2006 at Visalia, California.

I declare under penalty of perjury that the foregoing is true and correct.

Clerk of the Superior Court

Sharon Lynn

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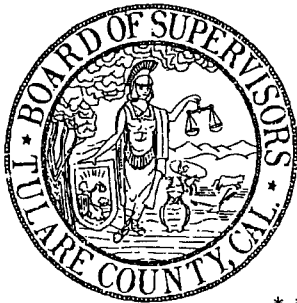
BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA

In the Matter of Rescinding Board Resolution )  
No. 2005-0300 Pertaining to the Approval of the )  
Kaweah South Project Surface Mining Permit and )  
Reclamation Plan, Directing the Tulare County )  
Environmental Assessment Officer to Direct the )  
Preparation of a Revised Environmental Impact )  
Report and Directing the Resource Management )  
Agency to Return the Matter for Consideration to )  
This Board Pursuant to a Noticed Public Hearing )

RESOLUTION  
NO. 2006-0674

The following is hereby adopted as a Resolution on motion of Supervisor Cox,  
seconded by Supervisor Conway, at a regular meeting of this Board of  
Supervisors held on Aug. 29, 2006, by the following vote:

AYES: Supervisors Cox, Conway, Worthley and Maples  
NOES: None  
ABSTAIN: None  
ABSENT: Supervisor Ishida



ATTEST: C. BRIAN HADDIX, COUNTY  
ADMINISTRATIVE OFFICER/CLERK  
BOARD OF SUPERVISORS

By: Wanna K. Bush

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1. That the Board of Supervisors accepts the Order Granting Writ of Mandate dated May 12, 2006, in Valley Citizens for Water v. County of Tulare, et al., Tulare County Superior Court Case No. 05-215123 and pursuant thereto rescind Tulare County Board of Supervisors Resolution No. 2005-0300 in the matter of certifying and approving the Final Environmental Impact Report for the Kaweah South Project (SCH #2002-051039) as being in compliance with the California Environmental Quality Act; adopting project findings, a mitigation monitoring and reporting plan, and a statement of overriding considerations; and approving surface mining permit and reclamation plan (PMR 02-002); and

1 2. That the Board of Supervisors refers the Final Environmental Impact Report prepared in  
2 consideration of the Kaweah South Project to the Tulare County Environmental Assessment Officer  
3 for revision in compliance with the Order Granting Writ of Mandate dated May 12, 2006, in Valley  
4 Citizens for Water v. County of Tulare, et al., Tulare County Superior Court Case No. 05-215123, for  
5 recirculation as deemed appropriate by the Environmental Assessment Officer of all or portions of the  
6 resulting revised Draft Environmental Impact Report and for the preparation of responses to comments  
7 in compliance with the California Environmental Quality Act; and

8 3. That the Board of Supervisors retains jurisdiction for consideration of the application for the  
9 discretionary permit and directs the Tulare County Resource Management Agency to set and notice a  
10 public hearing in front of the Board of Supervisors for consideration of the revised Draft  
11 Environmental Impact Report, proposed revised Final Environmental Impact Report and the  
12 application for a surface mining permit and reclamation plan for the Kaweah South Project by the  
13 Kaweah River Rock Company upon close of the public comment period on the Revised Draft  
14 Environmental Impact Report and preparation of proposed responses to comments.

15 JTR/2002872/8-20-06/158495

16 RMA  
17 Co Counsel  
18 CAO  
19 Auditor

20 8/29/06  
21 WKB  
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