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Use of Project-Specific Significance Thresholds Does Not Violate CEQA

The first published California Environmental Quality Act case of 2013, *Save Cuyama Valley v. County of Santa Barbara*, strongly endorsed a lead agency's authority to use its own, project-specific significance thresholds in an environmental impact report. In addition, the court upheld the county's project approval despite finding that one of the EIR's environmental impact findings was erroneous. The county prepared the EIR for a proposal to mine sand and gravel in the bed of the Cuyama River. It used a significance threshold for river bed and bank impacts, that the county had crafted specifically for the project. In upholding this project-specific significance standard, the court emphasized:

- CEQA gives lead agencies discretion to develop their own thresholds of significance
- Agencies may devise significance thresholds on a project-by-project basis
- CEQA requires that a lead agency formally adopt a threshold of significance only if it is for "general use" in evaluating future projects
- The significance thresholds listed in Appendix G to the CEQA Guidelines are only "suggested" and an EIR need not explain why different thresholds are used

The court also rejected a claim that the project approval was fatally flawed, even though it agreed with the project opponent that the EIR wrongly concluded that the project's impact on groundwater quality would be less than significant. The court found that the premise for the EIR's conclusion – that groundwater would rarely be exposed by mining operations – was not adequately supported by the data. But the court also found no showing that the error hampered informed decision-making about the project. One of the county's conditions of project approval required the mine operator to avoid excavating near the groundwater level and to backfill any pit in which groundwater was exposed. Because the EIR set forth the pertinent data, and the condition of approval would negate any adverse impact on groundwater quality from the project, the court concluded that the EIR's unsupported conclusion about the impact was "of no moment." At a time when the proper role of the environmental impact checklist in Appendix G to the CEQA Guidelines is facing heightened scrutiny (see our prior post on the *Ballona Wetlands Land Trust* decision), *Save Cuyama Valley* is an important reminder that the significance thresholds in Appendix G are only "suggestions" – and that lead agencies have the ultimate responsibility for determining what thresholds to use in the environmental documents they prepare. The court's ruling also is notable for upholding the project approval despite the error in the analysis of groundwater impacts, as it reflects the courts' increasing willingness to consider whether flaws in an EIR should be treated under CEQA as harmless error. *Save Cuyama Valley v. County of Santa Barbara* (2nd Appellate Dist. Div. 6 Case No. B233318, filed Jan. 10, 2013, modified and ordered published Feb. 8, 2013).

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