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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 29 2014

ALAN CARLSON, Clerk of the Court
M. White

See modification

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE - CIVIL COMPLEX CENTER**

DELAWARE TETRA TECHNOLOGIES,
INC.,

Petitioner/Plaintiff,

v.

COUNTY OF SAN BERNARDINO and
SAN BERNARDINO COUNTY BOARD
OF SUPERVISORS,

Respondents/Defendants.

SANTA MARGARITA WATER
DISTRICT; CADIZ, INC.; and FENNER
VALLEY MUTUAL WATER
COMPANY,

Real Parties in Interest.

Case No. 30-2013-00635125 (CEQA)

Assigned for All Purposes to the
Honorable Gail A. Andler - Dept. CX-101

**[PROPOSED] JUDGMENT DENYING
PETITION FOR WRIT OF MANDATE
(TETRA GMMMP)**

Date Originally Filed: October 30, 2012
Date Transferred: February 28, 2013

[PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE

On February 4 and 5, 2014 the matter of *Delaware Tetra Technologies, Inc. v. County of San Bernardino*, Case No. 30-2013-00635125 came on for hearing in Department CX-101 of the above-entitled Court, before the Honorable Gail A. Andler, presiding. Appearances were as noted on the record.

1 The Court, having considered the evidence in the record, and the written and oral
2 arguments of counsel, and receiving additional briefing requested by the Court, the matter was
3 taken under submission.

4 On May 1, 2014, the Court issued its Minute Order in this case, denying the Petition for
5 Writ of Mandate in its entirety and directing Respondents to jointly meet and confer and prepare
6 proposed findings.

7 On May 30, 2014, Respondents filed and served a Proposed Statement of Decision and
8 Judgment.

9 On June 6, 2014, Petitioners filed and served an Objection to the Proposed Judgment for
10 the Court's consideration.

11 On June 16, 2014, Petitioners filed and served an Objection to the Proposed Statement of
12 Decision for the Court's consideration.

13 On August 20, 2014, the Court issued a Minute Order on its Statement of Decision in this
14 case, denying the Petition for Writ of Mandate in its entirety. A true and correct copy of the
15 Court's August 20, 2014 Minute Order and Statement of Decision are attached hereto as Exhibit
16 "A."

17 On August 25, 2014, per the Court clerk's request, Respondents re-filed and re-served the
18 Judgment to conform to the Court's August 20, 2014 Statement of Decision.

19 IT IS ORDERED, ADJUDGED AND DECREED that:

20 (1) Delaware Tetra Technologies, Inc.'s First Amended Petition for Writ of Mandate
21 and Complaint for Injunctive and Declaratory Relief is DENIED, with prejudice.

22 ~~(2) Respondents and Real Parties in Interests' Request for Judicial Notice filed on~~
23 ~~October 25, 2013 for the June 2010 Option Agreement by and between Cadiz, Inc., Fenner Valley~~
24 ~~Mutual Water Company, and Santa Margarita Water District is [GRANTED/DENIED].~~

25 ~~(3) Delaware Tetra Technologies, Inc.'s objections to Respondents' Joint Opposition~~
26 ~~Brief filed on November 15, 2013 are OVERRULED.~~

27 (4) Pursuant to Rule 3.1700 of the California Rules of Court, Respondent County of
28 San Bernardino and Real Parties in Interest Santa Margarita Water District, Cadiz, Inc., and

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Fenner Valley Mutual Water Company shall recover their costs.

Dated: SEP 29 2014

By: *Gail Andler*
GAIL A. ANDLER
JUDGE OF THE SUPERIOR COURT

THE PARTY ELECTRONICALLY FILING THIS DOCUMENT
IS TO SERVE CONFORMED COPIES ON ALL OTHER PARTIES

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 08/20/2014

TIME: 02:53:00 PM

DEPT: CX101

JUDICIAL OFFICER PRESIDING: Gail A. Andler

CLERK: Mary White

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2013-00635125-CU-WM-CXC** CASE INIT. DATE: 02/28/2013
CASE TITLE: **Delaware Tetra Technologies, Inc. vs. County of San Bernardino**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 72011935

EVENT TYPE: Chambers Work

APPEARANCES

Related cases #2013-00635125 Delaware Tetra Technologies Inc vs County of San Bernardino, 2013-00633936 Center for Biological Diversity vs County of San Bernardino, 2012-00594355 Delaware Tetra Technologies Inc vs Santa Margarita Water District, 2012-00612947 Center for Biological Diversity vs County of San Bernardino, 2012-00576715 Delaware Technologies Inc vs Santa Margarita Water District

There are no appearances by any party.

See attached Statement of Decision.

Clerk to give notice to County of San Bernardino and County of San Bernardino to give notice to all other parties.

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 20-AUG- 2014, at Santa Ana, California. ALAN CARLSON /EXECUTIVE OFFICER & CLERK OF THE SUPERIOR COURT, BY: M.WHITE deputy.

DOWNEY BRAND LLP
STEVEN P SAXTON
CHRISTIAN L MARSH
ARIELLO O HARRIS
REBECCA A SMITH
333 BUSH STREET, STE 1400

DATE: 08/20/2014

MINUTE ORDER

Page 1

DEPT: CX101

Calendar No.

CASE TITLE: Delaware Tetra Technologies, Inc. vs.
County of San Bernardino

CASE
30-2013-00635125-CU-WM-CXC

NO:

SAN FRANCISCO, CA 94104-2857

DATE: 08/20/2014

MINUTE ORDER

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DEPT: CX101

Calendar No.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

DELAWARE TETRA
TECHNOLOGIES, INC., a
Delaware Corporation
Petitioner/Plaintiff,
vs.
COUNTY OF SAN
BERNARDINO; COUNTY OF
SAN BERNARDINO BOARD OF
SUPERVISOR,
Respondent/Defendants.

Case No. 30-2013-00635125 (CEQA)

Assigned for all Purposes to the
Honorable Gail A. Andler

STATEMENT OF DECISION (TETRA
GMMMP)

SANTA MARGARITA WATER
DISTRICT; CADIZ, INC; FENNER
VALLEY MUTUAL WATER
COMPANY

Real Parties in Interest

1 **STATEMENT OF DECISION**

2
3 **I. PROCEDURAL HISTORY**

4
5 The instant case is one of six separate cases filed challenging separate administrative decisions of the County
6 and SMWD related to the Cadiz Valley Water Conservation, Recovery and Storage Project (Project).

7 Tetra filed a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive
8 Relief (Petition) on October 30, 2012, challenging the County's October 2012 approvals related to
9 the Cadiz Valley Water Conservation, Recovery and Storage Project (Project), including the
10 County's approvals as a responsible agency under the California Environmental Quality Act (CEQA),
11 and as the entity responsible for implementing its own Desert Groundwater Management Ordinance
12 (Ordinance). Tetra filed an Amended Petition on December 13, 2012.
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16 **II. FINDINGS**

17 Upon due consideration of the Administrative Record, the trial briefs of the parties, and the
18 oral arguments of counsel, the Court finds as follows:

19 **A. Factual Background**

20 The County's Ordinance was designed to "encourage reasonable and beneficial water use,"
21 and allows groundwater extractions with a County-issued permit or "as otherwise excluded from the
22 application of [the Ordinance]." (Ord. §33.06554(a)). The Ordinance "shall not apply" to any well
23 operator where the operator has executed an enforceable Memorandum of Understanding (MOU) with the
24 County and "developed and instituted a County-approved groundwater management, monitoring and
25 mitigation plan [GMMMP] associated with its extraction of water that is consistent with guidelines
26 developed by the County." (Ord. §33.06552(b)). Except for the requirement that the GMMMP be
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1 consistent with County-issued guidelines, the Ordinance does not state what procedures or criteria the
2 County must apply in approving a GMMMP for an exclusion. *Id.*

3 The Project is a public-private partnership designed to manage and use water from the aquifer
4 system underlying Cadiz's property in California's eastern Mojave Desert. Under current natural hydro-
5 geologic conditions, surface and groundwater flow from all four of the watersheds near the proposed Project
6 and drain into the Bristol and Cadiz Dry Lakes, mix with the brine water, and evaporate. The Project
7 proposes using wells to intercept and capture the groundwater before it reaches the highly saline brine.
8 Once captured, the groundwater would then be available to southern California users through water
9 providers like SMWD, among others. SMWD served as the lead agency for CEQA review of the Project,
10 pursuant to a 2011 Memorandum of Understanding (2011 MOU) between the County and SMWD. See
11 Cal. Code Regs., title 14, State CEQA Guidelines (Guidelines) §15051(d). The 2011 MOU also provided
12 that the Project would be subject to the County's discretionary review, under the Ordinance and as a
13 responsible agency, of the Project's groundwater pumping. (2011 MOU §§2, 7).

14 In December 2011, SMWD released a Draft EIR for the Project. The Draft EIR included a
15 draft of the GMMMP and noted that, consistent with CEQA, the GMMMP would ultimately be
16 submitted to the County for its review and approval under the Ordinance. SMWD consulted with the
17 County regarding its duties as a responsible agency regarding the content of the GMMMP.

18 On May 1, 2012, the County Board of Supervisors approved an MOU (2012 MOU) by and among
19 SMWD, Cadiz, and the County. The 2012 MOU contained a framework for development of the GMMMP
20 and for the County's enforcement of the GMMMP if that document were to be adopted. . The 2012 MOU
21 provided that if and when the GMMMP was approved by the County, it would ensure that the measures in
22 the GMMMP were enforced. (2012 MOU Recital F and §§4(a), 7).

1 The SMWD Board of Directors certified a Final EIR for the Project in July 2012, which included an
2 Updated GMMMP. In August 2012, SMWD submitted the GMMMP to the County for its consideration
3 under the Ordinance. On October 1, 2012, the County Board of Supervisors held a special meeting and
4 voted to approve the GMMMP and grant an exclusion from the Ordinance.
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7 **B. Discussion**

8 **1. First Cause of Action: The County Did Not Abdicate its Role as Lead**
9 **Agency; SMWD Properly Acted as Lead Agency**

10 Tetra alleged that CEQA required the County to act as the lead agency in reviewing the
11 Project and approving the EIR. This claim should have been and was raised by Tetra in the earlier
12 related action challenging the EIR, *Delaware Tetra Technologies, Inc. v. Santa Margarita Water*
13 *District*, Orange County Superior Court Case No. 30-2012-00576715. CEQA claims that should
14 have been brought in an earlier action are barred by the statute of limitations in future actions. Pub.
15 Resources Code, §§21167(c), (e); *Committee for Green Foothills v. Santa Clara County Board of*
16 *Supervisors* (2010) 48 Cal.4th 32, 51-52, 54-57; *Citizens for a Megaplex-Free Alameda*, 149
17 Cal.App.4th at 109-110.
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20 Even if the First Cause of Action were properly before the Court, the Court finds that, while it
21 has concerns regarding the lead agency designation, it is not persuaded that those concerns constitute
22 a CEQA violation under existing law. Based on the applicable law, the Court is unable to conclude
23 that the failure to designate the County as Lead Agency, without more, constitutes a CEQA violation
24 where the SMWD may be considered to have a substantial claim to be the lead agency. *PCL*, 83
25 Cal.App.4th at 904-907; Guidelines §15051(a)&(d); Pub. Resources Code, §21067; Gov. Code,
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1 §§53091(d)–(e), 53096; see *Central Delta Water Agency v. State Water Resources Control Bd.*
2 (2004) 124 Cal.App.4th 245.

3 Further, Tetra has not shown that the County’s actions as a responsible agency amounted to
4 prejudicial error under CEQA. *Neighbors for Smart Rail v. Exposition Line Construction Authority*
5 (2013) 57 Cal.4th 439, 463; *Planning and Conservation League v. Department of Water Resources*
6 (2000) 83 Cal.App.4th 892, 907. Accordingly, the Court finds for Respondents and against Tetra on
7 the First Cause of Action.
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10 **2. Second Cause of Action: The County Did Not Fail to Include Feasible Mitigation**

11 Tetra argued that the Project will result in overdraft, and that the County as a responsible
12 agency should have imposed additional mitigation measures in order to prevent impacts related to
13 that overdraft. In particular, Tetra argued that in order to avoid impacts addressed in the EIR certified
14 by SMWD (i.e. particulate emissions, impacts on springs, take of endangered species, saline
15 intrusion and declines in third party wells, the County should have “strictly regulat[ed] Cadiz’s
16 pumping until validating Cadiz’s proof of concept” or, alternately, imposed, as a feasible mitigation
17 measure, that the Project “not defer all of its mitigation responsibilities until someone proves there is
18 a problem attributable” to pumping.
19

20 As a responsible agency, the County was entitled to defer to the environmental conclusions reached
21 by the experts who prepared the EIR, even where other experts disagreed with the underlying data, analysis,
22 or conclusions. *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 408-09
23 (*Laurel Heights I*). This Court finds that the County met its legal obligations under CEQA when it agreed
24 with the expert conclusions and determined that the Project would not result in overdraft and that the
25 potential impacts of the Project could be mitigated to a less than significant impact, and declined to
26 undertake subsequent environmental review or otherwise impose additional mitigation measures.
27 Administrative Record 7:9-14; see also 13:3648-3653 (springs) 15:4868-69; 4884-4890; 4943 (air quality);
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1 15:4869-70; 4890-4903; 4943-4945 (biological resources); 15:4918-33; 4949 (saline intrusion and well
2 drawdowns); 15:4910-4914 (subsidence).

3 Moreover, the County's decision not to challenge SMWD's approval of the Project and certification
4 of the EIR (which Tetra did when it filed *Delaware Tetra Technologies Inc. v. SMWD, et al*, Orange County
5 Superior Court Case No. 30-2012-00594355) confirms that it found the EIR to be adequate. See Pub.
6 Resources Code, §§21166, 21167.1(b), 21167.3(b); Guidelines §15162; *City of Redding v. Shasta County*
7 *Local Agency Formation Com.* (1989) 209 Cal.App.3d 1169, 1178. Accordingly, the only additional
8 environmental review that the County could have conducted prior to approving the GMMMP would have
9 been to prepare a supplemental or subsequent EIR under Public Resources Code, §21166. The Court finds
10 that the circumstances under Section 21166 were not present. See 7:11-12. Tetra did not bring any claim
11 under Section 21166, nor did it present any evidence to support such a claim. The record does not support a
12 claim that future environmental review was required.

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15 For the foregoing reasons, the Court finds for Respondents and against Tetra on the Second Cause
16 of Action. To the extent that this Cause of Action may be read as an argument that the Project was required
17 to comply with the Ordinance's definition of the term "overdraft," the Court incorporates its finding as to
18 the Fourth Cause of Action below.

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21 **3. Third Cause of Action: The County Complied with the County Ordinance**

22 Regarding Tetra's Third Cause of Action, the Court finds that the Ordinance does not require
23 that the County approve the GMMMP and 2012 MOU in any particular order, as the plain language
24 of the Ordinance includes no such requirement. (Ord., §33.06552(b)). The Ordinance requires only
25 that for a well to be excluded from the Ordinance, the well operator must enter into an enforceable
26 MOU "and" develop and institute a County-approved GMMMP. (Ord. §33.06552(b)(2)); *MacIsaac*
27 *v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1083. The plain
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1 language of the Ordinance does not contain a sequencing requirement, and the Court cannot impose
2 this requirement based on policy justifications not appearing in the language itself. *In re Cabrera*
3 (2013) 55 Cal.4th at 692-93; see also *Yamaha Corp. of America v. State Bd. of Equalization* (1998)
4 19 Cal.4th 1, 22.

5 The Court further finds that the timing of the 2012 MOU and GMMMP approvals does not
6 impair the enforceability of those documents, as the County conditioned the 2012 MOU's
7 effectiveness on the possibility that it would later approve a GMMMP, and specifically provided for
8 the enforceability of both documents if approved. (2012 MOU §§3, 4, 7 & 25). The 2012 MOU
9 therefore satisfied the Ordinance's only requirement. (Ord. §33.06552(b) (2)); see Civ. Code §1438;
10 *L.A. Athletic Club v. Bd. of Harbor Comrs. of L.A.* (1933) 130 Cal.App. 376, 387; *Frankel v. Bd. of*
11 *Dental Examiners* (1996) 46 Cal.App.4th 534, 550. For the foregoing reasons, the Court finds for
12 Respondents and against Tetra on the Third Cause of Action.
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16 **4. Fourth Cause of Action: The GMMMP Complied with State
Groundwater Law and the County Ordinance**

17 Tetra alleged that the Project violates the County Ordinance and the common law because it
18 permits overdraft of the Project aquifers by improperly expanding the definitions of "overdraft" and
19 "temporary surplus" under the County Ordinance and common law. The Court finds that the
20 County's approval of the GMMMP under the Ordinance has not unlawfully expanded the concept of
21 temporary surplus, and the record shows the GMMMP's use of the terms "overdraft," "safe yield"
22 and "undesirable result" comport with California water law and the Ordinance.
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25 The County's Ordinance protects "the groundwater resources of San Bernardino County in order to
26 ensure the health of that resource," and is intended to be consistent with the directive in California
27 Constitution Article X, section 2 to maximize the beneficial use of water resources while preventing waste.
28

1 (Ord. §33.06551(c)). The Ordinance allows groundwater extractions to proceed under a County-issued
2 permit or "as otherwise excluded from the application of [the Ordinance]." (Ord. §33.06554(a)). The
3 Ordinance unambiguously states that it "shall not apply" to extractions when the well operator (1) enters
4 into an enforceable MOU with the County; and (2) institute a County-approved GMMMP that is consistent
5 with County Guidelines. (Ord. §33.06552(b)). Because the challenged Project proceeded under an
6 exclusion from the Ordinance, the definitions of the Ordinance are not controlling. *Id.*; see 7:10, 12;
7 15:4633-46; 772:9522-23. The County's authority to grant an exclusion is within its discretion to
8 tailor groundwater regulation to the unique needs of its jurisdiction and to particular aquifers. See
9 *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 182. Further, the Court is not persuaded by
10 Tetra's evidence that the GMMMP was inconsistent with the County's Guidelines, and compliance with
11 those Guidelines was the only requirement necessary for the GMMMP to be approved under the Ordinance.
12 (Ord. §33.06552(b) (1)).

15 The Court finds that Tetra has failed to meet its burden to show either that the County failed to
16 follow the law, or that its decision to approve the GMMMP was entirely lacking in evidentiary support.
17 Tetra's argument is based on the notion that the California Supreme Court's decision in *City of Los Angeles*
18 *v. City of San Fernando* established a rigid template for application of the terms "temporary surplus,"
19 "overdraft" and "safe yield." See *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 280
20 (*San Fernando*). State law mandates that managing groundwater, unlike surface waters, is a matter for local
21 control based on local conditions. *Baldwin v. County of Tehama, supra*, 31 Cal.App.4th at 182. The
22 law does not insist on maintaining a particular groundwater level, nor does it require a specific method of
23 basin management. See, e.g., *City of Lodi v. East Bay Mun. Utility Dist.* (1936) 7 Cal.2d 316, 340-41 (*City*
24 *of Lodi*); *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 288-89. Overdraft and the amount of
25 surplus groundwater available for appropriation in a particular basin are determinations that must be
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1 considered "in light of the facts of [each] case." *San Fernando*, 14 Cal.3d at 280. Case- and fact-specific
2 water management is further evident in the numerous cases acknowledging that a trial court shoulders the
3 equitable obligation to pursue a management plan (or "physical solution") to facilitate the maximum
4 beneficial use and prevention of waste or unreasonable use of the state's water resources as required by
5 Article X, section 2 of the California Constitution. *City of Lodi*, 7 Cal.2d at 341; *Tulare Irr. Dist. v.*
6 *Lindsay-Strathmore Irr. Dist.* (1935) 3 Cal.2d 489, 573-74; *Erickson v. Queen Valley Ranch Co.* (1971) 22
7 Cal.App.3d 578, 584-85; see also *Joslin v. Marin Municipal Water Dist.* (1967) 67 Cal.2d 132, 140-41
8 (reasonable use determined on a case-by-case basis).

9
10 The record demonstrates that the County's use and application of the terms "temporary surplus,"
11 "overdraft," "safe yield" and "undesirable result" are consistent with California groundwater law and the
12 Ordinance and satisfy the constitutional mandate to put the waters of the State to maximum beneficial use to
13 the extent capable. Administrative Record 7:9-14, 8:34-35; 15:4642-45, 4716, 4737-63, 4799-830, 4836-41,
14 4863-4940, 4809-21, 4826-28. The record also supports the County's conclusions regarding the Project,
15 with the protections included in the GMMMP. Specifically, the GMMMP includes terms and conditions
16 that will enable the County to take additional action in the future if necessary to prevent overdraft or other
17 undesirable results. 15:4737-63, 4799-830, 4836-41. Under the terms of the GMMMP, such actions may
18 include reduction or cessation of Project-related groundwater pumping.

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21 For the foregoing reasons, the Court finds for Respondents and against Tetra on the Fourth
22 Cause of Action.

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24 **5. Fifth Cause of Action: The County Complied with State Law and Did Not**
25 **Contract Away its Police Powers**

26 Tetra argued that the County failed in its duty to exercise its police powers to protect the
27 Basin under the Ordinance. Specifically, Tetra claimed that as a result of the County's approvals of
28

1 the 2012 MOU and GMMMP, the County had little continuing authority to exercise oversight over
2 the project, resulting in the impermissible “contracting away” of the County’s police powers. Tetra
3 additionally argued that the County should have imposed as conditions of approvals on the Project the
4 requirement that Cadiz and SMWD obtain permits for well construction and conveyance systems
5 from the County’s Department of Environmental Health.
6

7 This Court finds that the County has not unlawfully delegated its police power. See *County*
8 *Mobilehome Positive Action Com.v. County of San Diego* (1998) 62 Cal.App.4th 727, 738; *108 Holdings,*
9 *Ltd. v. City of Rohnert Park* (2006) 136 Cal.App.4th 186, 196. The record reflects that when it entered into
10 the MOU and GMMMP, the County reserved its discretionary authority to reject the GMMMP, to impose
11 additional corrective measures, or to halt all groundwater pumping if the extractions do not adhere to the
12 terms of the GMMMP, MOU, and conditions of approval. The dispute resolution process in the MOU and
13 GMMMP does not impair this authority, as the County reserved both its ability to go to court in the event of
14 a GMMMP violation and the authority to administratively enforce the MOU, GMMMP, and conditions of
15 approval before ever having to go to court or otherwise invoke the mediation provisions.
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18 This Court further finds that whether the extractions may be subject to further permitting
19 requirements before pumping may begin has no bearing on whether the County’s approval of the
20 GMMMP comported with CEQA or with the Ordinance. The GMMMP provides that “[a]ll new Project
21 production wells shall be designed, installed, and completed in manner consistent with all applicable state
22 and local regulations, and industry standards, and shall be equipped with flow meters.” 15:4801. Even if the
23 Project were required to obtain additional ministerial permits from the County related to well construction,
24 these permits would only be required before drilling a well. San Bernardino County Code, §33.0631 (“No
25 person or entity...shall dig, drill, bore...a well...without first filing a written application...and retaining a
26 valid permit.”). A future requirement to obtain a well permit before “breaking ground” does not in any way
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1 diminish the legality under CEQA of the approvals issued to date. *Health First v. March Joint Powers*
2 *Authority* (2009) 174 Cal.App.4th 1135, 1143-44. For the foregoing reasons, the Court finds for
3 Respondents and against Tetra on the Fifth Cause of Action.

4
5 **6. Sixth Cause of Action: The GMMMP Complies with State Law, CEQA,
and the County Ordinance**

6 Tetra's Sixth Cause of Action alleges that the GMMMP unlawfully authorizes pollution of
7 Project area aquifers and fails to require mitigation of significant effects. Tetra argued that the
8 GMMMP allows the intentional degradation of water quality in the Bristol and Cadiz groundwater
9 basins in violation of the State Water Resources Control Board (SWRCB) Sources of Drinking Water
10 Policy (anti-degradation Policy), and that the groundwater extractions as governed by the GMMMP
11 result in an impermissible discharge of waste under the Porter-Cologne Water Quality Control Act
12 (Porter-Cologne).
13
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15 This Court finds that neither groundwater extraction nor naturally occurring salinity are
16 regulated discharges of waste under Porter-Cologne. See Wat. Code, §§13260 et seq., 13300 et seq.
17 The saline water in the aquifer is naturally occurring and while the pumping will allow some saline
18 migration (spreading) it does not meet the Porter-Cologne definition of "waste" which is defined as
19 substances "associated with human habitation, or of human or animal origin, or from any production,
20 manufacturing, or processing operation," and groundwater, including saline water, as "waters of the
21 state." Wat. Code §13050(d-e). Similarly, the Project pumping as regulated under the GMMMP is
22 also consistent with the SWRCB's anti-degradation Policy which seeks to "achieve the highest water
23 quality consistent with maximum benefit to the people of the State." *Asociacion de Gente Unida por*
24 *el Agua v. Central Valley RWQCB* (2012) 210 Cal.App.4th 1255, 1260. Specifically, the GMMMP
25 monitors and controls the groundwater extractions which are designed to beneficially use this water
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1 without harming existing beneficial uses. See 14:4276, 4299-4301, 4308-18. For the foregoing
2 reasons, the Court finds for Respondents and against Tetra on the Sixth Cause of Action.

3
4 **7. Seventh Cause of Action: The GMMMP Complied with CEQA;
No Additional Mitigation Was Required**

5 Tetra's Seventh Cause of Action alleged that: "the GMMMP ignores unmitigated effects on
6 military lands and aquifers for which feasible mitigation should have been required." Tetra asserted
7 that the groundwater extractions approved by the GMMMP will harm the military operations 40
8 miles west of the Project and will impact aquifers underlying the military operations by Marine Air
9 Ground Task Force Command Center. In support of this claim, Tetra cited a report prepared by
10 outside experts. Tetra further claimed the County was required, as a responsible agency and under
11 its own Ordinance, to impose "feasible mitigation" regarding those aquifers in the GMMMP and as a
12 condition of its approval of the EIR. *Id.* The record reflects that while the Marine Corps commented
13 on the Project, it did not raise this issue.

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16 As discussed above, the Court finds that the County was entitled to defer to the environmental
17 conclusions reached by the experts who prepared the EIR, even where other outside experts disagreed with
18 the underlying data, analysis, or conclusions. *Laurel Heights I*, 47 Cal.3d at 408-09. The record reflects
19 that those experts concluded that the Marine Corps extracts water from an aquifer that is hydrologically
20 separate from the Project aquifer and located in a topographically distinct watershed, thus the Project would
21 not impact the Marine Corps' aquifer. Further, the County was required to presume that the EIR complied
22 with CEQA, or else file suit if it concluded that the EIR did not. See Pub. Resources Code, §§21166,
23 21167.1(b), 21167.3(b); Guidelines §15162; *City of Redding*, 209 Cal.App.3d at 1178. As with the Second
24 Cause of Action, Tetra did not identify any evidence in the record that would support a claim that
25 "substantial changes" in the Project or its circumstances necessitated "major revisions" to the EIR,
26
27
28

1 including the imposition of additional mitigation measures. For the foregoing reasons, the Court finds
2 for Respondents and against Tetra on the Seventh Cause of Action.

3
4 **8. Eighth Cause of Action: No Violation of Tetra's Procedural Due Process Rights**

5 As shown on the record, Tetra confirmed at the February 5, 2014, hearing on this matter that
6 it had abandoned its claims under this cause of action, and therefore the Court finds for Respondents
7 and against Tetra on the Eighth Cause of Action.
8

9
10 **9. Ninth Cause of Action: No Failure to Comply with Public Participation Requirements of the County Groundwater Ordinance, Brown Act, and San Bernardino County Sunshine Ordinance**

11 Tetra did not brief or argue this cause of action. Failure to brief an issue constitutes waiver of
12 those issues. *Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 685; *Tisher v. California*
13 *Horse Racing Bd.* (1991) 231 Cal.App.3d 349, 361. Further, as shown on the record, Tetra confirmed
14 at the February 5, 2014, hearing on this matter that it had abandoned its claims under this cause of
15 action, and therefore the Court finds for Respondents and against Tetra on the Ninth Cause of Action.
16

17 **C. Relief**

18 Having found against Tetra on all of its causes of action, the Court denies the Petition and all
19 forms of Tetra's requested relief.

20 Dated: AUG 20 2014
21

22
23 By: Gail Andler

24 GAIL A. ANDLER

25 JUDGE OF THE SUPERIOR COURT
26
27
28