EDWARD J. CASEY (State Bar No. 119571)
TAMMY L. JONES (State Bar No. 232693)
WESTON, BENSHOOF, ROCHEFORT, RUBALCAVA & MacCUISH LLP
333 South Hope Street
Sixteenth Floor
Los Angeles, California 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100

Attorneys for Petitioners and Plaintiffs, O.W.L. FOUNDATION, a non-profit organization, KATHLEEN HAYNIE, an individual, JOAN McLAIN, an individual, and CRAIG ROTH, an individual

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

O.W.L. FOUNDATION, a non-profit organization, KATHLEEN HAYNIE, an individual, JOAN McLAIN, an individual, and CRAIG ROTH, an individual,

Petitioners and Plaintiffs,

v.

CITY OF ROHNERT PARK, CITY COUNCIL FOR THE CITY OF ROHNERT PARK, and DOES 1 through 25, inclusive,

Respondents and Defendants.

UNIVERSITY DISTRICT LCC and VAST OAK PROPERTIES L.P.,

Intervenors and Real Parties in Interest.

Case No.: SCV 236309

PETITIONERS' OPENING MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Date: April 4, 2006
Time: 8:30 a.m.
Ctrm.: 18 (Honorable Knoel Owen)

Filing Date: February 24, 2005

TABLE OF CONTENTS

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

TABLE OF CONTENTS
(continued)

Page

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

TABLE OF AUTHORITIES

Page

STATE CASES

DOCKETED CASES

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

TABLE OF AUTHORITIES
(Continued)

Page

STATE STATUTES

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

I. SUMMARY OF ARGUMENT

Water is our most precious natural resource. Our ever growing population and the increasing threats to water quality posed by that growth heighten the need to carefully manage our water resources. This management is most effective when done at a local level since the water demands and supplies of each community are so unique. In order to ensure local management of this precious natural resource is properly carried out, the state recently enacted legislation known as Senate Bill 610 ("SB 610").

SB 610 stemmed from a need to improve the link between water supply availability and land use decisions made by cities and counties. Previous legislative mandates addressing insufficient water supply issues were largely ignored. As a result, SB 610 amended Water Code section 10910 et seq. in order to make certain there would be coordination between water suppliers and cities and counties when considering large-scale development projects. Specifically, SB 610 requires a "Water Supply Assessment" ("WSA") be prepared for each large development project in order to determine whether projected water supplies are sufficient to meet the project's anticipated demand. Under SB 610 the WSAs must address water supplies and demands for the next twenty years, during both dry and wet water years, for existing and future development, and cities and counties must consider these assessments before approving development projects. Either a water purveyor will be responsible for preparing the Water Supply Assessment, or if a water supplier is not identified to serve the project, the city or county must prepare the assessment.

This case involves a WSA that was prepared by respondents and defendants City of Rohnert Park ("City") and adopted by its City Council ("Council") on January 25, 2005. That WSA attempts to assess the adequacy of the water supply necessary to support not only the City's existing development, but also the 4,000 new residential units and almost 2 million square feet of new commercial uses that are proposed under the City's General Plan. More immediately, there are five large development projects totaling over 3,000 residential units in areas outside the City boundaries that would be annexed into the City.

Of key concern is the City's analysis of groundwater supplies from the Santa Rosa

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Plain Subbasin ("SRP Subbasin" or "Subbasin"). This is not the first time the Subbasin's water supply has been analyzed. Rather, numerous studies have been conducted over the past 45 years. These studies have been conducted by, among others, the California Department of Water Resources and PES Environmental, a consultant hired by the City to analyze the SRP Subbasin's water supply for the City's 2000 General Plan update. After developing sophisticated computer models based on state and federal standards, these studies reached a similar conclusion: that the water levels in the Subbasin are declining and the southern SRP Subbasin is in overdraft. Absent remedial measures, groundwater from an overdrafted condition is not a reliable and sufficient water supply under SB 610.

These declining water levels and the overdraft situation recently led the Grand Jury for the entire County of Sonoma to recommend the adoption of a groundwater management plan. However, despite this recommendation (rejected by the City), and despite the findings of the over 45 years worth of studies conducted on the SRP Subbasin, the WSA concludes that there is plenty of water in the Subbasin to sustain both existing and future development. The conclusions reached in the WSA were provided by a new consulting firm hired by the City to draft its WSA.

Curiously, the City did not ask PES Environmental to draft its WSA, but rather the City chose to hire an entirely new consultant for the job. In rendering its findings, this new consultant chose not to utilize either the wealth of information and data that has been collected on the Subbasin, or the federally blessed computer model that is often used to assess groundwater supplies. Rather, the consultant used an entirely different methodology, deftly changed the boundaries of the Subbasin and cherry picked data to support its newly found conclusion of groundwater sufficiency. The result is a WSA that is clearly legally insufficient under SB 610.

A water supply assessment is an important document for the long term health of any community. Such a document must be carefully prepared, with attention to prior work performed by other agencies, and not rushed simply because proposed development outside the City is pushing for it. Since none of those guiding principles were followed by the City,

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

the City failed to comply with the mandates of SB 610 and adopted a legally insufficient WSA. Accordingly, Petitioners are forced to bring this lawsuit.

II. THE PARTIES

O.W.L. is a non-profit organization comprised of residents of the City as well as the County of Sonoma ("County") (Cplt., ¶ 4). O.W.L.'s mission is to secure the adoption of a program that ensures sustainable management of the water resources in the County (AR, 2:302).[1] Plaintiffs Haynie, McLain, Roth and O.W.L.'s Board members and donors own land in the County and/or the City, pay water assessments charged by the City or other water purveyors, own and operate groundwater wells, and/or have lost groundwater wells due to declining water levels in the groundwater basin at issue (Cplt., ¶ 4).

The City's role is two-fold. First, the City is the water purveyor for existing Rohnert Park residents and the future purveyor for residents in the vast areas that the City is seeking to annex (infra, § IV (E)). Second, the City acts as the decision-making authority for all land use permits required by developers for their new projects. One of these development projects is for the University District Specific Plan, which consists of 20 parcels on approximately 300 acres (AR, 33:8933). The real parties in interest are the entities processing the University District Specific Plan.

III. BACKGROUND OF SB 610

A. The Events Leading Up To The Adoption Of SB 610

Ensuring sustainable water resources is the driving objective of SB 610. As stated by the Legislature in its enactment of SB 610, "[C]alifornia's overall water delivery system has become less reliable over the last 20 years because demand for water has continued to grow while new supplies have not been developed in amounts sufficient to meet the increased demand." (AR, 2:501). Thus, SB 610 mandates that all land use agencies clearly identify a sufficient and reliable water supply for development projects before approving those projects. Although SB 610 clearly identifies the Legislature's concern over insufficient

---

[1] O.W.L. is an acronym standing for Open Space, Water Resource Protection, and Land Use, in Sonoma County (AR, 2:302).

References to the administrative record ("AR") prepared by the City shall be to volume number and then to page number.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

water supplies and development projects that rely on those supplies, it is instructive to note the bill was not adopted in a vacuum. Even before SB 610 was enacted on January 1, 2002, the California Environmental Quality Act (Cal. Public Resources Code Sections 21000 et. seq.) ("CEQA") required agencies to identify the source of water for proposed development projects at the time environmental impact reports ("EIRs") are certified. See e.g., Stanislaus Natural Heritage Project v. County of Stanislaus, 48 Cal.App.4th 182 (1996) ("Stanislaus") (EIR for resort community found inadequate because of a failure to identify a reliable water source beyond the first five years of development). Setting the stage for SB 610, various appellate courts then built on that CEQA principle by scrutinizing the reliability of the agency's selection of the source of water for development. Those court decisions stemmed from a common concern that cities, counties and other land use agencies were relying on "paper water" rather than a realistic and reliable supply of water to sustain future development projects. The term "paper water" was coined and explained by the Court in the landmark case of Planning and Conservation League v. Department of Water Resources, 83 Cal.App.4th 892 (2000) ("PCL").

In PCL, the plaintiffs challenged the sufficiency of an EIR prepared in connection with amendments to a series of contracts entered into by the Department of Water Resources ("DWR") and various water agencies. Those contracts (originally executed in the 1960's) provided that DWR would build and operate the "State Water Project" (which includes the California Aqueduct) in order to supply water to 29 agricultural and urban water suppliers throughout the State (83 Cal.App.4th at 899). As originally envisioned, DWR would provide 4.23 million "acre-feet"("AF")[2] of water to those agencies once the State Water Project was fully built (Id. at 908). Each supplier contracting with DWR was allocated a maximum "entitlement" of water in its individual contract, which entitlement assumed full build out of the State Water Project (Id.). The amended agreement at issue (the "Monterey Agreement") included modifications to that entitlement scheme, and the EIR sought to evaluate the

[2] An acre-foot of water is the volume of water equal to 325,851 gallons (AR, 6:1590) and can serve two single-family households of four persons per year (AR, 6:1624-1632).

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

environmental impacts of those contract modifications.

However, as of the date of the Monterey Agreement, the State Water Project had not been fully built out. As a result, the Court noted that the actual, reliable water supply from the Project was in the vicinity of 2.5 million AF rather than the 4.3 million AF of water on which the Monterey Agreement was relying (Id.). Thus, "there is a huge gap between what is promised and what can be delivered." (Id.) Because of this large discrepancy, the Court noted that any "entitlement" water the parties were relying on represented nothing more than "hopes, expectations, water futures, or, as the parties refer to them, 'paper water'." (Id.) The Court further elaborated that many land use decisions are predicated on available water supply. As a result, "there is certainly the possibility that local decision makers are seduced by contractual entitlements and approve projects dependent on water worth little more than a wish and a prayer." (Id. at 915.) Accordingly, the Court invalidated the EIR.

In addition to the PCL case, other CEQA cases contained similar holdings regarding insufficient water supply. See e.g., Santa Clarita Organization For Planning The Environment v. County of Los Angeles, 106 Cal. App. 4th 715 (2003) (EIR invalidated for failure to analyze dry year supply from State Water Project); Napa Citizens for Honest Government v. Napa County Board of Supervisors, 91 Cal.App.4th 342 (2001) (EIR found inadequate due to a failure to provide sufficient information about an industrial development project's effect on regional water supply).

These cases exemplify the reasons why SB 610 is so important. As the PCL Court noted, land use decisions are often predicated on the assumption that water supply is readily available. As evidenced by these prior court decisions, a fatal flaw in this assumption will occur if the agency relies on "paper water," rather than a firm water supply that is backed by substantial evidence. Avoiding the paper water trap lies at the heart of the mandatory provisions of SB 610. Each of these provisions contains language requiring evidence of a reliable water supply before development projects can be approved.

B. Requirements Of SB 610

SB 610 requires a city or county, at the time it determines that an EIR or other related

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

CEQA document must be prepared, to secure a WSA from the operator of the public water system that would supply water to the proposed development project (Cal. Water Code § 10910 (b)). If a city or county operates the public water system, the city or county must prepare the WSA. (Id.)

That WSA must determine whether the total project water supplies, for normal, single dry, and multiple dry water years over a 20-year period, will meet the project's demands (Cal. Water Code § 10910 (c)(3)). The emphasis on "total" is important as it applies to water supply for both existing and future demand. The logic behind this requirement may be gleaned by the Stanislaus decision, supra, in which the Court invalidated the EIR on the basis that the agency was unable to identify a reliable water supply for its resort development beyond the first 5 years of the project (Stanislaus, 48 Cal.App.4th at 205). Thus, it is insufficient for an agency to simply make a 20-year projection for existing uses and the particular development project at issue. Rather, the agency is statutorily mandated to provide a reliable water supply to meet the demands of *all* projects, both existing and anticipated, over a 20-year period.

In addition, the WSA must include evidence confirming the adequacy of the water supply, such as evidence of water rights, water supply contracts, capital improvement plans and budgets and all necessary regulatory approvals (Cal. Water Code § 10910(d)(2)). This evidentiary requirement relates to the paper water supply issues addressed in the PCL case. Specifically, where land use planning determinations are made on the basis of entitlement or paper water, rather than reliable water, development can outpace the availability of water, leading to detrimental environmental and social consequences. (PCL, 83 Cal.App.4th at 914.) By requiring evidentiary support of water rights and water supply contracts, as well as other factors relevant to reliable water supplies, SB 610 ensures that agencies will not rely on paper water to support current and future development projects.

These concerns are heightened when the agency is relying on groundwater to supply development projects. California is one of the few states that does not impose a state-wide

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

regulatory or permitting system on the production of groundwater.[3] Because there is no state-wide system governing groundwater production, persons may acquire a water right to produce groundwater based on common law. Under that body of common law, that person's water right may be reduced by a court if the groundwater basin being utilized is in an "overdraft" condition. (See generally City of Pasadena v. City of Alhambra, 33 Cal.2d 908, 924 (1949) ("Pasadena"); Cal. Const., Art. X, § 2.). Generally speaking, overdraft occurs when the amount of water that is withdrawn by pumping is greater than the amount of groundwater that recharges the groundwater basin over a period of years (AR, 79:25525). If an overdraft condition continues for a number of years, significant adverse impacts may occur, including increased extraction costs, costs of well deepening or replacement, land subsidence, water quality degradation and other environmental impacts. (AR, 79:25525).

Because an overdrafted groundwater basin can have such deleterious effects, SB 610 imposes additional requirements if groundwater is a planned source of water. Specifically, the WSA must include a description of the groundwater basin from which the proposed project will be supplied and, if that basin has not been judicially adjudicated, information must be supplied as to whether (i) the basin is overdrafted or is projected to be overdrafted, and (ii) any management efforts being taken to eliminate the long-term overdraft condition. (Cal. Water Code § 10910(f)(2).)

This statutory emphasis on overdrafted basins stems from the paper water concern discussed previously. If a groundwater basin is in overdraft, any person's groundwater production may be lost or reduced either by court order or sheer loss of groundwater supply (see Pasadena, supra,). Consequently, an agency may not rely on an overdrafted basin's groundwater supply to support future development projects -- absent judicial or agency management measures aimed at curing the overdraft. To ensure that an agency is not relying on an overdrafted supply of groundwater, SB 610 further requires the WSA to include a detailed description and analysis of (i) the amount and location of groundwater pumped by

[3] An informative overview of California groundwater law is provided in DWR's Bulletin 118 update (2003) (AR, 78:25412-25676), and the law review article attached as Exhibit A to Petitioners' Additional Legal Authorities filed concurrently herewith.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

the public water system for the past five years from the groundwater basin at issue, (ii) the groundwater that is projected to be pumped, and (iii) the sufficiency of the groundwater to meet the project's demand (Cal. Water Code § 10910(f)(3)(4)-(5)).

C. The Department Of Water Resources' Role

The California Department of Water Resources ("DWR") provides assistance to water agencies in preparation of WSAs under SB 610. DWR is a governmental agency whose mission is to assist local agencies statewide in developing and implementing effective groundwater management programs (AR, 78:25416). In connection with this mission, DWR has published a guidebook to assist water suppliers, cities and counties in their implementation of SB 610 ("DWR Guidelines"). The DWR Guidelines are designed to provide step-by-step suggestions for completing a WSA and include commonly accepted definitions and examples of various supply and demand scenarios. (A copy of the DWR Guidelines can be found at AR, 2:405-528).

In addition to providing SB 610 guidance, DWR has conducted numerous technical studies of groundwater basins throughout the State. As stated by DWR, basic information for many groundwater basins is lacking and the essential data that is necessary to provide for both the protection and optimal use of groundwater is often not available (AR, 78:25445). Therefore, in order to provide guidance in the largely unregulated area of groundwater supply and availability, DWR has become an authority on the subject by conducting various groundwater studies. Among the most prominent of these studies is DWR's Bulletin 118. Bulletin 118 presents the results of groundwater basin evaluations in California (A copy of DWR's update of Bulletin 118 can be found at AR, 78-79:25412-25676). These comprehensive groundwater basin evaluations are based on information provided by DWR, the U.S. Geological Survey, and other agencies to "help those who must make decisions affecting the protection, additional use, and management of the State's ground water resources." (AR, 78:25444).

In addition to its statewide Bulletin 118 series, DWR has released several other publications that evaluate specific groundwater basins. Of importance to the instant

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

litigation, Bulletin 118-4 provides highly relevant information on the geology and hydrology of the groundwater systems underlying Sonoma County, including the major groundwater basins underlying the Santa Rosa Plain and the Petaluma and Sonoma Valleys. (A copy of DWR Bulletin 118-4 can be found at AR, 70:22829-23012).

IV. FACTUAL BACKGROUND

A. The South Santa Rosa Plain Groundwater Subbasin

"A groundwater basin can serve the same function as a surface reservoir; it can act as a natural receptacle for storing water subsequent extraction. . . ." (Pet. Add. Authorities, Exh. A, p. 5.) "Groundwater is the water occurring beneath the earth's surface that completely fills (saturates) the void space of rocks or sediment." (Refer to DWR's "Basic Groundwater Concepts," AR, 78: 25509.) "A groundwater basin is defined as an alluvial aquifer or a stacked series of alluvial aquifers with reasonably well-defined boundaries in a lateral direction and a definable bottom. Lateral boundaries are features that significantly impede groundwater flow such as rock or sediments with very low permeability or a geologic structure such as a fault. Bottom boundaries would include rock or sediments of very low permeability if no aquifers occur below those sediments within the basin." (AR, 79: 25517.) "An aquifer is a body of rock or sediment that yields significant amounts of groundwater to wells or springs." (AR, 78:25514.) "[C]oarse materials such as sand and gravel deposits usually provide the best source of water and are termed aquifers; whereas, the finer-grained clay and silt deposits are relatively poor sources of water and are referred to as aquitards." (AR, 78: 25509.)

The County of Sonoma includes seven major groundwater basins (AR, 70:22907). The City pumps groundwater from the Santa Rosa Valley Groundwater Basin. (AR, 33:8951). Three "subbasins" occur within this basin, including the SRP Subbasin, the Healdsburg Subbasin and Rincon Valley Subbasin (AR, 33:8951). The City of Rohnert Park is located within the SRP Subbasin, which is the groundwater basin at dispute in this case. The Subbasin is bounded on the east by the Sonoma Mountains and the Wilson Grove Formation Highlands Basin, and on the west by the hills of the Mendocino Range. (AR, 3:725). The Sonoma Mountains are principally composed of the Sonoma Volcanics, which

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

have been uplifted along the Healdsburg-Rogers Creek Fault Zone. (Id.) Surface water enters the Subbasin through streams originating in the highlands east and west of the Subbasin, with all major streams being discharged into the Laguna de Santa Rosa located on the southern boundary of the Subbasin (Id.).

B. Studies Conducted On The Santa Rosa Plain Groundwater Subbasin

As discussed previously, DWR has conducted a series of Bulletin 118-4 studies that have evaluated the SRP Subbasin. In addition, numerous other studies have been undertaken over the last 45 years concerning the SRP Subbasin. See e.g. (Geology and Groundwater in the Santa Rosa and Petaluma Valley Areas Sonoma County California, G.T. Cardwell, 1958 (AR, 23:6180-84); Meeting Water Demands in the City of Rohnert Park, Department of Water Resources, 1979 (AR, 9-10:2458-581); Evaluation of Groundwater Resources Sonoma County, Department of Water Resources Bulletin 118-4, September 1982 (AR, 10:2582-721); Santa Rosa Plain Groundwater Model, Department of Water Resources, September 1987 (AR, 32:8696-735); California's Groundwater, Department of Water Resources Bulletin 118, 2004 (AR, 2:400-04); and Evaluation of Groundwater Supply Alternatives, Water Supply and Transmission System Project, Parsons Engineering Science, Inc., 1995 (AR, 17:4696-98).

Due to the large span of time covering these studies, the studies differ in detail and scope. However, similar themes run throughout each of them. Each study warns of the declining water levels in the SRP Subbasin. By way of example, the 1979 DWR study indicates that "presently available water level data indicate a gradual lowering of water levels beneath the City of Rohnert Park over time." (AR, 9:2473). In addition, the study acknowledges that "[G]reatly increasing the number of pumping wells may cause an overdraft situation." (AR, 9:2484). Critically, the 1982 DWR study states that the SRP is "about in balance" with increased groundwater levels in the northeast and decreased water levels in the south (AR, 10:2596) (emphasis added). Thus, these two DWR studies confirm that as of 1982, the amount of water recharging the SRP Subbasin by rainfall and other means was precisely the same amount as the water being pumped out of the SRP Subbasin.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Thus, over time, the SRP Subbasin was bound to fall out of balance since less water will be recharged into the Subbasin due to urbanization of open space and natural recharge areas, while the amount of groundwater pumped out will increase due to growing population demand.

More recent studies draw similar conclusions. For instance, the 1987 DWR study discusses the rapidly increasing demand for water in the Santa Rosa Plain, both from the SRP Subbasin and imported surface water. (AR, 32:8701). The 1995 Parsons Engineering Science study further emphasizes the increasing reliance on groundwater in the southern portion of the SRP Subbasin groundwater by noting "[G]roundwater pumping has lowered the water table on the order of 100 feet in this area." (AR, 17:4697).

C. The City's Evaluation Of The SRP Subbasin

In October 1999, the City prepared and released a Draft EIR in connection with amendments to its General Plan. The Draft EIR evaluated the sufficiency of the City's water supply and came to many of the same conclusions concerning the SRP Subbasin's groundwater supply made in earlier studies. Presumably due to the insufficiencies related to the SRP Subbasin's groundwater supply and in response to the numerous comments received, the City prepared a Revised Draft EIR in 2000. (The Revised Draft EIR can be found at AR 2-3:529; and the General Plan can be found at AR, 75:24477). The Revised Draft EIR similarly concluded that a "significant impact would occur with full implementation of the Rohnert Park General Plan in the event operation of the municipal wellfield [at the rates projected in the Revised Draft EIR] results in substantial lowering of groundwater levels" (AR, 3:735). Such adverse impacts loomed since the Revised Draft EIR concluded that "production of groundwater resources may result in the lowering of groundwater levels" (AR, 3:753). Indeed, the City itself, in its response to comments on the Draft EIR, conceded that "[I]t is possible that the demand on the groundwater supply may exceed the recharge rate" and that "in the short term, more water may be extracted from the groundwater basin than will be replenished." (AR, 74:24305).

The objective of the Revised Draft EIR was to provide an "expanded discussion of

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

water supply resources...and an in-depth analysis of potential impacts on groundwater resources." (AR, 3:563). In order to adequately provide this expanded analysis, the City hired a consulting company called PES Environmental ("PES"). PES performed its analysis of the SRP Subbasin using a sophisticated computed model (called MODFLOW) developed by the U.S. Geological Survey ("USGS") (AR 3:735). MODFLOW is a model that is run on data and assumptions used as inputs into the model (Id. at 754). PES inputted a host of data into the model and drew upon many of the earlier studies, included those conducted by both DWR and Cardwell (Id.).

Using this computer model, PES examined the recharge rate for an even larger portion of the southern SRP Subbasin than analyzed in the City's WSA (AR, 3:736). PES concluded that the natural recharge rate averages 1.60 million gallons per day ("mgd") or 1,792 AF per year ("afy"). (AR, 3:753). Yet, between 1984-1999 the total amount of groundwater pumping by the City alone was 2.5 times greater than that recharge rate. (AR, 3:734). Given this significant imbalance between the water going into the southern SRP Subbasin and the amount being pumped out, PES concluded that the SRP Subbasin was in overdraft. (AR, 3:753). The EIR containing the PES Study was certified as complete and accurate by the City in July, 2000 (AR, 73:24181).

Recognizing the insufficiency of its groundwater supply, the City's General Plan EIR calls for the virtual elimination of groundwater pumping by 2010 (AR, 75:24670). The City's proposed solution for accommodating future growth was to rely more heavily on imported surface water to sustain the water demand associated with future growth (Id.). In fact, the 2000 EIR assumed that the City would receive 16,800 afy (or 15.0 mgd) of such additional imported water by the year 2010 more than double the City's existing allotment of imported surface water (Id.). The source of this surface water is the Sonoma County Water Agency.

D. The Sonoma County Water Agency And Its Surface Water Supply

Water supply can come from two sources, either from a groundwater basin, or from surface water that is imported from a water supplier. The provider of surface water to the

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

City is the Sonoma County Water Agency ("SCWA"). SCWA diverts water from the Russian River and delivers that water to the City and seven other entities (known as "Contractors") and a number of other entities located outside Sonoma County. (AR, 6:1553-57). SCWA supplies this water pursuant to written supply contracts, which set forth the "entitlement" or maximum amount of water each Contractor can receive. (AR, 6:1560).

The governing contract that binds all these entities is the Eleventh Amended Agreement for Water Supply dated January 26, 2001 (AR, 6:1503-51). Under the Eleventh Amended Agreement, the City's maximum annual entitlement to SCWA water is 7,500 afy (AR, 6:1520). However, as SCWA stated in its 2000 Urban Water Management Plan, "deliveries by the Agency to its water contractors will be limited to the capacity of the transmission system." (AR, 6:1586). In an effort to resolve that limited capacity, SCWA proposed a project to increase the amount of water that could be diverted from the Russian River and thereby increase the amount of water that could be provided to SCWA's Contractors. (Id.). In the meantime, SCWA and its Contractors entered into a Memorandum of Understanding Regarding Water Transmission System Capacity Allocation During Temporary Impairment (the "Impairment MOU") dated March 1, 2001 (AR, 8:2054-68). That Impairment MOU curtailed the City's entitlement of SCWA water during times of peak usage to 5,936 afy (AR, 8:2059)[4].

Not long after the City's surface water supply was reduced due to the Impairment MOU, the City faced a legal challenge to its groundwater supply. In 2002, a lawsuit entitled South County Resource Preservation Committee, et al. v. City of Rohnert Park, et al., Case No. 224976, resulted in a Stipulated Judgment that prohibited the City from approving any development project outside its existing boundaries that would result in the City exceeding an average annual groundwater pumping rate of 2.3 million gallons per day ("mgd") or 2,577 afy (AR, 6:1465-66).

Further complicating the City's increasing water supply issues, an appellate court invalidated the EIR prepared by SCWA for the Russian River project (Friends of the Eel

[4] The Impairment MOU states water supply in terms of "mgd". One mgd equals 1120 AFY.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

River v. Sonoma County Water Agency et al., Case No. 220847) ("Eel River") in May 2003 (AR, 8:2072). The Eel River decision led SCWA's General Manager to send a letter to all Contractors stating that SCWA cannot implement the proposed project. (AR, 19:5192-94). Thus, as of the summer of 2003, the City's overall water supply was limited to the surface water allotment per the Impairment MOU and the groundwater restrictions set forth under the Stipulated Judgment.

E. The City's Plan For Future Development

As confirmed in its current General Plan, the City seeks to approve annexation of five massive new development projects into the City's boundaries. Those projects are:

(a) University District SPA – The University District project consists of 20 parcels on approximately 300 acres. The application for the project requests 1,610 residential units and approximately 250,000 square feet of commercial land uses. The entire plan area has the potential for 1,610 units and 350,000 square feet of commercial space. (AR, 33:8933).

(b) Northeast SPA – The Northeast project consists of 36 parcels on approximately 264 acres. The application for the project requests 559 residential units. The entire plan area has the potential for 1085 units. Id.

(c) Southeast SPA – The Southeast project consists of two parcels on approximately 80 acres. The application for the project requests 499 residential units and 20,000 square feet of commercial use. (AR, 33:8933-34).

(d) Northwest SPA – The Northwest project consists of 170 acres. The application for the project requests 495 residential units and 495,000 square feet of commercial/industrial use. The entire plan area has the potential for 900 units, 480,000 square feet of commercial space, 260,000 square feet of office space and 560,000 square feet of industrial space. (AR, 33:8934).

(e) Wilfred Dowdell SPA – The Wilfred Dowdell project consists of approximately 25 acres, located between the existing City limits and the Northwest SPA. The future land uses include approximately 300,000 square feet of commercial space. (Id).

In addition to these specific projects, the City's General Plan anticipates the approval

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

of almost 4,500 new residential units, 5 million square feet of new commercial uses, and the annexation of over 1,000 acres of land into City territory. (AR, 75:24531-24534). Further development just outside the City's limits will also affect the City's water supply shared with others. For instance, the Graton Rancheria Indian tribe seeks to develop a casino complex and plans to use groundwater to serve the casino's demand. (AR, 6:1484). There will also be additional stress on the SRP Subbasin caused by the County's recently approved Canon Manor West project, which lies within the City's sphere of influence. (AR, 5:1307). Hundreds of new homes are planned for under this project, all of which will rely on the SRP Subbasin's groundwater as its primary supply.

F. The Adoption Of The City's Water Supply Assessment

Against the backdrop of PES' conclusion that the SRP Subbasin is in overdraft, the reduction of available SCWA water, the groundwater restrictions in the Stipulated Judgment, and the five massive development projects waiting to be annexed, the City retained a consultant to prepare its first ever WSA under SB 610 in 2004. However, rather than retaining PES to conduct its groundwater analysis, the City hired a brand new consultant – Luhdorff & Scalmanini. And, instead of updating the computer models of the SRP Subbasin developed by PES and DWR, the City's new consultant used an entirely different methodology to analyze the SRP Subbasin.

In late October 2004, the City released its draft of the WSA for public review. Somehow, the City's new consultant, using its new methodology, reached the conclusion that the SRP Subbasin is not, and will not be, in overdraft, and there will be sufficient water to meet all future demands. During that public review process, numerous comments by O.W.L and others were made concerning the legal insufficiency of the Draft WSA. Further, owners of private groundwater wells in the SRP Subbasin testified to their wells going dry in recent years due to dropping water levels. (AR, 34:9267, 9273, 9282, 9290). The City scheduled a public hearing on the draft WSA for November 23, 2004.

At the November 23, 2004 hearing, the City and its new consultant submitted a new document entitled "Technical Memorandum." (AR, 2:285-301). This Technical

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Memorandum was not released to the public for review prior to the evening of the hearing. The Technical Memorandum provided new information and analyses related to both water supply and demand assessments. Despite all that new information, the City Council, on express instruction by the City Attorney, closed the public hearing on November 23, 2004 (AR, 32:8890-91). The City then issued its Final WSA in January 2005 (AR, 33:8908-9124). The Final WSA doubled the length of the Draft WSA and added a substantial amount of new information. The City Council adopted the Final WSA on January 25, 2005 per Resolution No. 2005-24 (AR, 34:9235-36).

V. STANDARD OF REVIEW

The City held a public hearing on the WSA and accepted evidence and testimony at that hearing. Accordingly, this petition for writ of mandate is governed by C.C.P. § 1094.5. (See C.C.P. § 1094.5(a); see also, Stipulation Re Resolution Of Plaintiff's Motion To Augment And Respondents' Demurrer To The Third Cause Of Action filed on October 27, 2005 and City's Case Management Statement paragraph 17(c) filed on August 5, 2005) Thus, the standard of review is whether substantial evidence supports the agency's decision in light of the whole record (C.C.P. § 1094.5(b), (c)). In determining whether there is substantial evidence to support an agency's decision, the court examines all relevant evidence in the entire record, both evidence that supports the agency's decision and evidence against it. Intercommunity Med. Center v. Belshe, 32 Cal.App.4th 1708, 1711 (1995).

Two important aspects of case law illustrate when an agency's decision is not supported by the evidence. First, courts have held that augment, speculation, unsubstantiated opinion or narrative, [and] evidence which is clearly erroneous or inaccurate do not constitute substantive evidence. See e.g., Santa Monica Chamber of Commerce v. City of Santa Monica, 101 Cal.App.4th 786, 797 (2002) (decision under CEQA).

The second category of relevant cases concerns those agencies' decisions that were contrary to the recommendation of an expert agency or advisory body. In those cases, a number of the courts have held that the agency's decision is not supported by substantial evidence. For instance, in Mountain Lion Foundation v. Fish and Game Comm'n, 16 Cal.4th

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

105 (1997), the Department of Fish and Game ("Department") prepared a report to the Fish and Game Commission ("Commission") reviewing the status of the "threatened" Mojave Ground Squirrel under the California Endangered Species Act (Id. at 136). The Department, an expert in the field, recommended that the Commission keep the squirrel on the threatened species list. However, ignoring that recommendation, the Commission voted to delist the squirrel (Id.). The Court found that the Commission's decision to remove the ground squirrel from the threatened species list was not supported by substantial evidence because the Commission did not give "due consideration" to the Department's recommendation and failed to offer sufficient evidence to support the Commission's rejection of the Department's recommendation (Id. at 136-37).

Other cases confirm the heightened level of evidence needed to rebut findings or recommendations made by expert agencies or advisory bodies. For example, in Berkeley Keeps Jets Over the Bay Comm. v. Bd. of Port Comm'rs of the City of Oakland, 91 Cal.App.4th 1344 (2001), the California Air Resources Board ("CARB") submitted an analysis to the lead agency, the Port of Oakland ("Port"), criticizing the accuracy of the air quality data utilized in an EIR for a proposed airport expansion (Id. at 1366). The Court invalidated the EIR since the Port "mischaracterized the view of CARB, the agency having the pertinent expertise", "failed to acknowledge the opinions of responsible agencies and experts who cast substantial doubt on the adequacy of the EIR's analysis," and "fail[ed] to support its many conclusory statements by scientific or objective data." (Id. at 1367 n. 13, 1371.)

Similarly, in League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland, 52 Cal.App.4th 896 (1997), the court found that the city's determination that a building was not eligible for classification as a historical building was not supported by substantial evidence (Id. at 899). In that case, the city disregarded advice from the City Landmarks Preservation Advisory Board as well as the city's own internal documents. Both of these sources recognized the historical significance of the building. (Id.) Based on that evidence, the Court invalidated the City's approval of a mitigated negative declaration.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

As demonstrated below, the City relied on conclusions reached by its new consultant in the WSA that run directly contrary to analyses previously prepared by DWR and the City's former consultant, PES, and there is no substantial evidence to support such a contradictory position.

VI. THE WSA SHOULD BE INVALIDATED BECAUSE ITS ANALYSIS OF THE ADEQUACY OF GROUNDWATER SUPPLIES (1) VIOLATES THE MANDATORY PROVISIONS OF SB 610 AND (2) IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

For groundwater basins that have not been judicially adjudicated, SB 610 requires an analysis as to whether the basin is overdrafted or is projected to be overdrafted, and any management efforts being taken to eliminate the long-term overdraft condition must be identified (AR, 2:502). As stated above, the rationale for this requirement is critically straightforward. Absent any judicial or agency management of the basin, prolonged overdrafting of a groundwater basin will lead to a reduced (if not non-existent) supply due to worsening water quality, dropping water levels, or a court order in an adjudication lawsuit (supra, p. 7). Because of these serious adverse impacts, various legal mechanisms have been put into place to safeguard against such damage to a basin's groundwater supply. For instance, a person possessing groundwater rights can file a complaint for a judicial adjudication of water rights for future use, which action authorizes courts to impose a "physical solution" for the basin (see Pasadena, supra, 33 Cal.2d at 924). Also available to local water agencies is the adoption of a groundwater management plan pursuant to a State statute commonly known as "AB 3030." (Cal. Water Code Sections 10750-10755) (infra, p. 34).

There is no dispute that the City failed to include any groundwater management measures in its WSA needed to eliminate the overdraft condition. Rather, the City concluded that the SRP Subbasin is not in overdraft.

A. The Legal Definition Of Overdraft

According to DWR, overdraft is defined as "the condition of a groundwater basin or subbasin in which the amount of water withdrawn by pumping exceeds the amount of water that recharges the basin over a period of years." (AR, 79:25525). Thus, overdraft can be

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

characterized by groundwater levels that decline over a period of years and never fully recover, even in wet years. (Id.)

Despite the use of the term "overdraft" in SB 610 and the straightforward definition of that term provided by the State agency with the relevant expertise (DWR), the WSA focuses on a different concept in groundwater law -- "safe yield." The WSA points to the State Water Rights Board's definition of "safe yield," which is "the maximum average annual pumping draft which can be continually withdrawn for useful purposes under a given set of conditions without causing an undesired result." (AR, 33:8950). While this definition of safe yield may be accurate, the City's reliance on it in the WSA is misplaced for at least two reasons. First, the WSA utterly fails to provide an actual quantification of the safe yield for the SRP Subbasin, let alone any analysis supporting such a quantification. (See generally the discussion of quantification of "safe yield" in adjudication actions. City of Pasadena v. City of Alhambra, 33 Cal.2d 908, 922 (1949); Martha H. Wright v. Goleta Water District, 174 Cal.App.3d 74, 81 (1985).) Consequently, the City cannot prove that the SRP Subbasin is not in overdraft or exceeded the safe yield since it provides no quantification of the safe yield.

The second error in the City's position is rooted in the rationale behind separating the concept of "safe yield" from the concept of "overdraft" for purposes of compliance with SB 610. The essence of SB 610 is the assured supply of water for existing and future development. SB 610 contemplates that groundwater from a basin that is in "overdraft," as defined by DWR, can still serve as an adequate supply if the overdrafting or overproduction of the groundwater has not reached the level of "undesired results" (i.e., the level of safe yield) and there are management measures in place aimed at alleviating such overdraft and avoiding undesired results (Cal. Water Code § 10910(f)). In contrast, overdraft, as defined by the City, would not occur until the groundwater has already been pumped to the point where an "undesired result" has occurred, which, in turn, would have already impaired the adequacy of the supply. Thus, the City's logic runs contrary to the statute, as well as an admonishment from the California Supreme Court:

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

> "The proper time to act in preserving the supply is when overdraft commences, and the aid of the courts would come too late and be entirely inadequate if, as appellant seems to suggest, those who possess water rights could not commence legal proceedings until the supply was so greatly depleted that it actually became difficult or impossible to obtain water. Where the quantity withdrawn exceeds the average annual amount contributed by rainfall, it is manifest that underground store will be gradually depleted and eventually exhausted, and, accordingly, in order to prevent such a catastrophe, it has been held proper to limit the total use by all consumers to an amount equal, as near as may be, to the average supply and to enjoin takings in such quantities or in such a manner as would destroy or endanger the underground source of water. (City of Pasadena v. City of Alhambra," 33 Cal.2d 908, 929 (1949) (emphasis added).)

B. The WSA's Groundwater Analysis Is Legally Inadequate Because It Analyzed An Area Smaller Than The Basin Or Subbasin

SB 610 and DWR's 610 Guidelines clearly require water supply assessments that rely on groundwater to analyze the groundwater "basin." (AR, 2:502). While Petitioners acknowledge that the SRP Basin is large, the "study area" analyzed in the WSA is substantially smaller than even the SRP Subbasin already mapped by DWR. (AR, 33:8994). There is simply no reason for the WSA to not have analyzed the SRP Subbasin since it had been studied by many others in the past, including DWR and its computer model of that Subbasin (supra, pp. 10-11). Absent an analysis at a Subbasin level, the adequacy of groundwater from the SRP Subbasin cannot be determined as a matter of law under SB 610. For this reason alone, the WSA must be invalidated.

C. The City's Conclusion Of An Adequate Water Supply Cannot Be Supported By Substantial Evidence Since The WSA Consultant Never Examined the PES Groundwater Model Or the Backup Data Used In that Model

As discussed above, DWR developed a computer model of the SRP Subbasin in the late 1970s-early 1980s, and concluded that the Subbasin was "in balance" with respect to the levels of recharge and production. Since that time, the levels of recharge must have decreased due to urbanization of open space, and the level of groundwater production must have increased given the water needs of a larger population. That resulting imbalance -- overdraft -- was confirmed in 2000 by the City's own consultant, PES. PES reached that conclusion by also developing a sophisticated groundwater model using a host of information (AR, 3:753-54).

Those conclusions drawn by two different experts based on state and federally-approved computer models and the teachings of Mountain Lion, Berkeley, and Oakland,

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

supra, mandate that a significant amount of evidence be proffered by the City in order to refute these findings of an overdraft condition in the SRP Subbasin. Accordingly, one would expect the City's WSA consultant to have run his own computer model. That was not done. Or, one would expect the City's WSA consultant to begin with the prior modeling work and update the input data. That was not done. Indeed, one would expect the City's WSA consultant, at the very least, to obtain the backup data (commonly known as the "input and output" files) used by the City's prior consultant who analyzed the same issue presented to the WSA consultant. Incredibly, as conceded by the City in a Stipulation filed with the Court on October 20, 2005, that did not happen:

> "Respondents stipulate that the PES Work Documents[5] have never been reviewed by the Respondents, any employee of the Respondents, or the outside consulting company that prepared the WSA." (Emphasis added.)[6]

Without examining the documentation substantiating the City's prior conclusion of overdraft, the City's new Consultant could not, as a matter of law, have provided substantial evidence to rebut that prior conclusion of overdraft. Accordingly, the WSA should be invalidated.

D. The WSA's Conclusion That The SRP Subbasin Is Not In Overdraft Is Contrary To A Wealth Of Substantial Evidence To The Contrary

As far back as 1982, the SRP Subbasin was determined to be "about in balance" by DWR. (AR, 10:2596). A basin "in balance" indicates that the amount of water recharging the SRP Subbasin in 1982 was essentially the same as the amount of water that was being pumped out. This detail is significant because that same 1982 study also noted that the City of Rohnert Park was the third largest city in Sonoma County and was among the three fastest growing cities in the County with a population increase of 267% from 1970 (AR, 10:2591). Given the massive developments projects proposed in the City's General Plan, there are certainly no plans to slow down that trend of rapid growth.

---

[5] The Stipulation defines PES Work Documents as "documents generated by PES Environmental ("PES") relating to a groundwater model study that PES performed for an Environmental Impact Report prepared for the City's General Plan Update of 2000."

[6] As discussed in the next subsection, the WSA consultant distinguished the entire PES computer model based on one isolated phone call!

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

What is difficult to discern, then, is how the SRP Subbasin could be "in balance" in 1982, yet now have sufficient water to support the development that has occurred since 1982 and the future development projects totaling over 3,000 residential units. In boldly asserting that the SRP Subbasin remains in balance and will remain in balance for years to come, the City's WSA Consultant deftly changed the boundaries of the SRP Subbasin and cherry picked data to support its newly found conclusion of groundwater sufficiency. Essentially, the WSA Consultant tried to rewrite hydrological history. Thus, the issue before the Court is whether the City should have based its WSA on the substantial evidence from prior studies indicating the SRP Subbasin is in overdraft, or whether the City and its WSA Consultant should be allowed to fashion a fictional solution in an attempt to resolve the ever-diminishing water supply problems plaguing the City and surrounding areas.

1. The WSA Improperly Defines the Boundaries Of The SRP Subbasin

Groundwater basins are typically recharged by spring runoff in streams and percolation from rainfall (AR, 78:25449). Thus, essential in any groundwater analysis is determining how much of the water pumped out of the groundwater basin may be recharged from these sources. To make this determination, one must first determine the actual boundaries of the basin that is being recharged. Hence, the requirement in both SB 610 and DWR's 610 Guidelines that WSAs must include a description of the "groundwater basin or basins from which the proposed project will be supplied." (AR, 2:502).

Providing details of the boundaries of the SRP Subbasin should have posed little problem for the City as these boundaries had been clearly delineated by prior studies. For example, in DWR's 1979 study entitled "Meeting Water Demands in the City of Rohnert Park" (AR, 9:2458-2581), DWR defined the SRP Subbasin consistent with its State-wide guidance on the issue. DWR characterizes a groundwater basin as bounded by one or more of the following: rocks or sediment of low permeability, a geologic structure, such as a fault, and a hydrologic feature, such as a stream, lake or groundwater divide (AR 79:25517). This groundwater boundary definition coincides perfectly with DWR's 1979 study for the City. Specifically, the Petaluma Formation and Sonoma Volcanics comprise the rocks and

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

sediment, the Sebastopol fault and Rogers Creek comprise the geologic structure and the Russian River and groundwater divide with Petaluma Valley make up the hydrologic boundary. Similar boundaries were determined by PES in its 2000 study. (The maps depicting those basin boundaries determined by DWR and PES are found at AR, 9:2467 and AR, 3:736).

Numerous problems exist, however, when comparing the WSA's study boundary with the definition of a groundwater boundary clearly articulated by DWR. First, rather than use that well accepted definition of a "groundwater basin," the WSA arbitrarily defines the study area in terms of a "surface watershed." (AR, 33:8951.) However, this "surface watershed" that comprises the WSA study area is substantially smaller, and different, than the boundaries of the SRP Subbasin. For example, the WSA study area does not extend north into the Laguna de Santa Rosa near Sebastopol, an area in the SRP Subbasin (AR, 33:8994). Thus, the WSA is able to ignore the substantial amount of groundwater production that occurs in that area, such as SCWA's production (ranging up to 4,087 afy) from its three wells located in the Laguna de Santa Rosa (AR, 2:310).

Second, the WSA's study area extends southwest into the Wilson Grove Formation area and east into the Petaluma and Sonoma Volcanics Formation areas (AR, 33:8997). However, the Wilson Grove area is not part of the SRP Subbasin, but rather, is part of an entirely separate and distinct groundwater basin -- the Wilson Grove Formation Highlands Basin (AR, 79:25550). Additionally, the eastern portion of the WSA study area is not only outside the boundary of the Subbasin but is not part of a groundwater basin at all (see infra, pp. 25-26).

Although this technical information may sound tedious, the City's strategy in redrawing the boundaries of the SRP Subbasin is perfectly clear. More recharge and less production equals a basin that is not in overdraft. The City is able to meet this formula by eliminating the substantial amount of groundwater produced by SCWA from its three wells in Sebastopol, and simultaneously extending the southwestern and eastern boundaries of the SRP Subbasin to seemingly include more recharge.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Although the City heavily relies on the increased "recharge" in these extended areas to the east and southwest, the City appears to be the only authority that has concluded that these areas are capable of even sustaining recharge to the SRP Subbasin. In one breath, the City concedes in the WSA that "based on DWR's definitions and mapping, less than five percent of the [DWR] study area would be classified as a "recharge area" (AR, 33:8969), but then claims that the U.S. Geological Survey mapping software (used by PES) and the DWR recharge classifications "oversimplify recharge conditions by ignoring much of the variability in soil permeability and slope within the study area." (AR, 33:8970). The City rejects the methodology employed by those federal and state entities by simply noting that "geology does not appear to be a limiting factor in the study area." (Id.) Yet, it is virtually impossible to determine how the City came to this conclusion, particularly as to the additional area in the eastern portion of the WSA study area. For that area, the study area maps contained in the WSA clearly indicate that there is a "double barrier" to recharge in these areas. This "double barrier" consists of numerous fault zones that cut off groundwater flow (the Rogers Creek Fault Zone) and a substantial amount of unfavorable geology that exists below the permeable soil of much of the study area. (AR, 33:8997).

Both faults and unfavorable geology can significantly impact a groundwater basin's ability to absorb recharge. A fault acts as a groundwater barrier that restricts recharge and creates a "zone of confinement" against which groundwater recharge is restricted (AR, 9:2473). In addition, DWR has determined that the Petaluma Formation, which is located along the eastern boundary of the WSA's extended study area, contains large amounts of clay and "is generally not considered to be a water producing formation." (AR, 9:2487). That conclusion by DWR was confirmed in its Bulletin 118-4 update for the SRP Subbasin when it stated "the groundwater reservoir is extensively compartmentalized due to the discontinuous nature of most of the water-yielding units and to faulting, which thins water-yielding materials and may impede groundwater flow." (AR, 10:2596).

The fact that there is little recharge in these extended boundaries is also reflected in the WSA itself. Although the WSA contains a large amount of water level data for the

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

numerous wells located throughout the study area, there is not a single groundwater well depicted in the eastern portion of the study area. (AR, 33:8996). One would assume that if there truly is four times more recharge in this study area than determined by PES, as the City claims,[7] then production wells would have been sited in this water rich area to the east. However, there is not a single production well in that area.

2. The WSA Contains Several Criticisms Of The PES Computer Model, Each Of Which Is Fundamentally Flawed

In drafting the WSA, the City's newly hired Consultant was faced with an enormous hurdle. That Consultant was tasked with finding an explanation for how the SRP Subbasin could consistently experience declining water levels for 30 years, yet now have sufficient water to sustain the massive amount of development contemplated in the City's General Plan. To accomplish that task, the WSA Consultant was also forced to somehow reconcile its new findings with those made by PES. The WSA Consultant's theory concerning the PES model is comprised of several conclusory statements in a total of two pages, this out of the 217 pages that make up the WSA. Yet, each of those statements is fundamentally flawed.

Before reviewing those flawed statements, it is important to recognize that other experts and agencies have embraced the PES conclusions. For example, an expert retained by the County recognized the accuracy of PES' recharge rate of 1,900 afy for the southern half of the SRP Subbasin (AR, 77:25175). In fact, that expert also recognized that "the total amount of natural recharge in the southern portion of the basin is significantly less than one third of the Santa Rosa basin total because much of the basin recharge occurs due to percolation from the Russian River and other larger streams north of Rohnert Park." (Id.) (emphasis added). All of these technical studies led the County itself to conclude that the southern "portion of the Santa Rosa Basin is in an overdraft situation." (AR, 77:25181) (emphasis added).

As to the WSA's attempts to criticize the PES study, the WSA claims that PES

[7] The WSA concludes that there is 8,400 AFY of recharge as compared to the 1,900 AFY of recharge estimated by the PES study (AR, 33:8975).

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

omitted vast amounts of recharge from its model (AR 33:8973). For example, the WSA contends that PES improperly excluded the extended boundaries of the study area to the southwest and the east (discussed above) because they contain some of the "most permeable soils and the highest recharge potential." (AR, 33:8973). As discussed above, there is substantial evidence from both DWR and PES that these areas, particularly to the east, are not within the SRP Subbasin, geologically unfavorable to recharge, and bounded by fault zones and, therefore, cannot provide substantial recharge to the SRP Subbasin. Then the City attempts to argue that additional recharge from streams was not accounted for in the PES computer model (AR, 33:8972-73). Yet, this argument is refuted by the City's 2000 EIR, which states that the PES model specifically included "stream channel(s)" and "stream terrace deposits" as "principal water-bearing deposits that comprise the basin within the vicinity of Rohnert Park." (AR, 3:726.) Finally, the City states that the PES findings did not take into account recharge from "return flow" to the Subbasin from irrigation and septic tanks (AR, 33:8972). Yet, even if true, such recharge is minimal based on the source document relied on in the WSA (AR, 5:1342 and 5:1369). Thus, all of the WSA's claimed errors in the PES model concerning recharge are themselves erroneous.

Second, the WSA states that PES ignored "semi-confined zones" in the SRP Subbasin and instead ran its model as a "single unconfined" basin (AR, 33:8972). A confined basin contains a layer on top (called an "aquitard") that prevents groundwater from returning to the surface until the layer is penetrated by a well (AR, 79:25516). The City argues that running a computer model as a single unconfined basin does not distinguish between different zones of the basin and how these zones respond to differing pumping stresses (AR, 33:8973). However, the City's argument is simply a red herring since the 2000 EIR states specifically that PES recognized both unconfined and semi-confined zones (AR, 3:726), and PES ran its computer model in exactly the manner as DWR ran its primarily unconfined model of the SRP Subbasin in 1982 (AR, 17:4697).

The City's last attack on the PES findings concerns the methodology used by PES in calibrating its computer model. Calibration of a groundwater computer model provides an

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

important "reality check" that verifies the consistency between the recharge estimate produced by the model and historic groundwater elevations. The PES computer model evaluated and calibrated historical responses of groundwater to both steady-state and transient (i.e., changing) conditions (AR, 3:754). The steady-state simulations were performed and calibrated for the years between 1952 and 1970 (AR, 3:754). The transient simulations were performed and calibrated for fluctuations in groundwater pumping between the years of 1970 and 1989 (AR, 3:754). Once these simulations were calibrated, the model was then used to simulate, and accurately predict, recharge rates for the years 1970 through 1999 (AR, 3:754).

Despite this careful methodology, the WSA criticizes PES' methodology by claiming that groundwater levels were stable to slightly increasing during the 1990s and the PES model could not reproduce the outcome (AR, 33:8974). This criticism is flawed, however, as the PES model specifically accounted for actual water level data from the 1990s in its model, and then looked at the trend in water levels over a thirty-year period (1970-1999), *double* the period examined in the WSA (1986-2001) (AR, 33:8974). Thus, the PES model not only considered "stabilized water levels" but was also able to make future predictions for the years 2000 through 2010 (AR, 3:753).

In contrast, the methodology employed by the WSA cannot account for past fluctuations in water levels or make any prediction as to future levels. For instance, the WSA notes that water levels were declining during the 1980's and then "stabilized" in the 1990's (AR, 33:8974). However, the City provides no explanation as to how water levels could drop in the 1980's and then stabilize over the next decade while production of groundwater still remained constant. (Refer to AR, 33:9026 for production levels during that time period). Nor does the WSA provide any explanation for how these "stabilized" water levels in the 1990's can be reconciled with the increase in rainfall that occurred in that same period. (AR, 79:25748). A logical assumption is that an *increase* in rainfall would lead to a corresponding increase in, rather than a stabilization of, water levels. Thus, water levels should have risen to the same degree that rainfall levels rose in the 1990's (as depicted by the

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

graph in the Slade report depicting "accumulated" departures in rainfall (AR 79:25748)).[8] However, this was not the case, and this discrepancy is not explained in the WSA.

It is difficult to ascertain how the SRP Subbasin's water levels would not increase during a period of consistently elevated rainfall unless the SRP Subbasin was in overdraft. Perhaps even more telling, is the possible explanation as to why the Subbasin's water levels were "stabilizing" over this time period. Between 1985 and 1999, the City sited a number of new production wells in the northeast and southeast fringes of the City (AR, 33:8996). Thus, the City was able to flatten out the "cone of depression" in the groundwater table directly below the City boundaries by simply decreasing its production from older production wells in the center of this zone. Corroborating evidence of that phenomenon is provided by the landowners in the Canon Manor area, who testified that their groundwater wells had gone dry (AR, 34:9267, 9273, 9282, 9290), as well as the dropping water level in the Penngrove Water Company well analyzed in the Canon Manor EIR. Thus, the water level in the SRP Subbasin was not actually "stabilizing" but rather was simply shifting.

Thus, what the SRP Subbasin is experiencing is called the "step down" effect of a basin in overdraft. In such a basin, the water levels drop in dry years, and then level off in wet years. Repeat cycles of dry and wet years produces a basin that is "stepping down" over time. DWR has created an exemplar hydrograph to illustrate such "historic overdraft." (AR, 79:25526). The startling feature of this hydrograph is that it is nearly the mirror image of an actual hydrograph produced from a DWR monitoring well that exists less than a mile northeast of the City (AR, 33:9154).

SB 610 contains a clear mandate that WSAs that rely on groundwater supplies must determine the present conditions in the basin and assess future water supplies for a 20-year period. (Cal. Water Code § 10910 (c)(3).) The WSA fails to comply with this mandate as the City's methodology is unable to account for past trends in the SRP Subbasin or make predictions for groundwater levels in the future. Accordingly, the WSA should be

[8] An analysis depicting accumulated rainfall departures shows average rainfall at the zero level, then plots the annual and accumulated departures (plus or minus) from that benchmark level.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

invalidated.

E. The WSA Never Provides A Quantification Of The Recharge That Will Be Lost Due To Future Development

According to DWR's 1982 study, a substantial amount (up to 50%) of recharge to the SRP Subbasin comes from the rainfall percolation through soils overlying the Subbasin (AR 10:2647). A critical area of recharge previously identified by DWR is located in the exact area that is slated for development in the Specific Plan areas (compare maps at AR, 32:8684).

The WSA tries to brush aside that future loss of recharge from development. Instead of modeling such a loss of recharge and reaching a quantification figure, the WSA cavalierly states that the "affect of development in the SPAs [Specific Plan Areas] on recharge in the study area is anticipated to be small." (AR, 33:8972). Yet, the WSA concedes that development in those areas will eliminate 41 acres of moderate to high recharge potential. (Id.) Absent a quantification of the loss of that recharge, no estimate of future recharge of the SRP Subbasin can be reached, and no conclusion that the Subbasin is not in overdraft (as the WSA tries to do) can be supported.

F. The Subbasin's Shifting Groundwater Divide Is An Indication Of Overdraft That Is Ignored By The City

The WSA clearly indicates a boundary between the SRP Subbasin and the Petaluma Valley Groundwater Basin (AR, 33:8994). This boundary, or "divide" is significant in defining the direction and destination of groundwater flows (AR, 5:1308). According to the Canon Manor West EIR, groundwater to the northwest of this divide flows toward the city of Cotati and groundwater to the southeast of this divide flows toward the community of Penngrove (AR, 5:1321).

Recent evidence confirms that groundwater pumping from the City has affected the water levels in the Petaluma Valley Groundwater Basin. For example, the Canon Manor West EIR concluded that groundwater levels have declined over a significant portion of the Petaluma Valley Groundwater Basin due to the large amount of pumping from the SRP Subbasin (AR, 5:1321). Indeed, the California Regional Water Quality Control Board submitted a letter expressing concern over the "magnitude and significance of decline in the

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

groundwater table" of the Petaluma Valley Groundwater Basin. (AR, 34:9215.) Such drafting of water from a neighboring groundwater basin is a telltale sign of an overdrafted groundwater basin.

VII. THE WATER DEMAND ANALYSIS IN THE WSA IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

A. The Absence Of Support For The WSA's Baseline Water Demand

SB 610 requires that water supply assessments determine "whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses." (Cal. Water Code § 10910(c)(3); emphasis added.) Accordingly, DWR's 610 Guidelines recommend that the determination of existing water demand take into account "historic use" years when establishing the baseline water demand (AR, 2:442).

In the City's WSA, a glaring and unanswered question arises from its scant discussion of the baseline water demand figure. The WSA lists "the City's historic demands at 7,045 AFY in 1993, 7,695 AFY in 1999 and 7,778 AFY in 2000." (AR, 33:8982). Then, with absolutely no substantiation, the WSA states that the City's 2003 water demand has increased only 11 AFY to 7,789 AFY (Id.), which figure serves as the baseline water demand for the entire WSA. Yet, just the number of residential units alone has grown by 1,026 units, from 15,540 units in 1999 (refer to p.3-25 of the City's 2000 General Plan, AR, 75:24534) to 16,566 units in 2003 (refer to p.4-2 of WSA Table 4-2 sum of first three lines in column entitled "Current", AR, 33:8982). Yet, an acre foot of water is generally considered adequate to serve two families of four for one year (AR, 6:1624-1632). Thus, 11 AFY can serve 88 people, and surely more than 88 people reside in these 1,026 additional units.

The WSA's use of this unsupported baseline demand figure has two significant ramifications. First, the difference between the City's projected water supply and demand is extraordinarily thin (see WSA Table 5-2, AR, 33:8986), so any necessary correction to an understatement in demand will cause that margin to evaporate. Second, the City calculates

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

future water demand by starting with the baseline demand figure and then assumes a 10% reduction in demand over time. Thus, akin to calculating compound interest on an incorrect principle balance, the size of the error in the City's calculation of future demand is also compounded.

B. The Calculation Of Future Water Demands In The WSA Is Equally Unsupported By Substantial Evidence

In addition to the error arising from using an overly low baseline demand figure, three additional deficiencies exist in the WSA's calculation of *future* water demands. First, the WSA relies on a voluntary reduction in water demand by all existing and future uses that equals 10% (AR, 33:8983). Without such a reduction, future water demands would outstrip future water supply. Table 5-2 of the WSA posits that supply will exceed demand in year 2025 by 856 AFY. However, if the water demand figures from the City's 2000 EIR are used (which assume no 10% reduction), then total demand would equal 10,486 AFY and exceed total supply by 133 AFY.[9]

Yet, other than citing to a City ordinance (not found in the WSA) that calls for this voluntary 10% reduction in water usage, the WSA provides no evidence to support this assumption. That approach runs contrary to the City's own 2004 "Water Policy Resolution."[10] Per that resolution, all water conservation practices that are to be relied on by any development project in the Specific Plan areas must first receive "concurrence from the City Engineer that the practices are acceptable and consistent with the City's Water Conservation Program," (RJN, Exh. A, p. 2, para. (b)(2).) In a similar vein, the WSA must provide the public with a more detailed description of the conservation practices that will enable the City to achieve this 10% reduction so a fair assessment can be made as to the likelihood of success of those measures.

The second deficiency concerning the WSA's future water demand analysis arises

---

[9] Table 4.10-3 of the 2000 EIR projects a demand in 2025 of 8.47 mgd, which equals 9,486 AFY (AR, 3:735) (one mgd equals 1,120 AFY). That demand of 9,486 AFY plus the assumed need for 1,000 AFY of recycled water equals 10,486 AFY.

[10] This resolution is referred to throughout the WSA and a copy is attached as Exhibit "A" to the Petitioner's Request for Judicial Notice filed concurrently herewith.

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

from the City's assumption that a 20% and 30% reduction in water demand will be achieved during times of drought (AR, 33:8983, 8987). Yet, the WSA fails to provide the analysis required by DWR's 610 Guidelines for dry year demand – "Water use patterns change during dry years. Document expected changes to water demand by sector." (AR, 2:449). (For example, people tend to use more water for irrigation during periods of low rainfall.) Yet, the WSA inexplicably assumes a constant demand even in times of drought. Then, as with the voluntary 10% demand reduction, the WSA provides no description of the demand management measures that will cause a 20% and 30% reduction in water usage, nor provides any analysis of the likelihood of success of such measures.

The final deficiency in the WSA's future demand analysis arises from its residential unit count at full buildout. The WSA projects a total of 19,704 dwelling units as of 2015, an increase of 3,138 units from existing conditions (AR, 33:8982). The WSA further states that all the proposed development projects identified in the WSA will be completed by the year 2015 (AR, 33:8981). Yet, when one adds the total number of units described in the Notices of Preparation for just four of the Specific Plan projects, the total number of new dwelling units will be 3,667 (AR, 9:2245-80). The WSA provides no explanation for that discrepancy.

These post hoc rationalizations used in the WSA's water demand calculations are readily manifest when one listens to the City's own words spoken to SCWA in early 2004 *before* the release of the WSA. The WSA states that the City's overall supplies are adequate with a maximum amount of 6,476 afy of SCWA water (AR, 33:8926). Yet, only nine months prior, the City told SCWA that it will need 6,926 afy of SCWA, 450 afy more SCWA water than reported in the WSA (AR, 9:2243-44). Indeed, the City further states in that earlier letter to SCWA that:

> "It is important to note that, per your request, the water use identified in this letter does not include full build-out of the Rohnert Park General Plan. At general plan build-out, Rohnert Park anticipates using at least the 7,500 acre-feet it is currently entitled to under the 11th Amended Agreement for Water Supply." (Id., emphasis added.)

///

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

VIII. THE CITY FAILED TO CONDUCT THE PUBLIC HEARING ON THE WSA IN A FAIR MANNER

In October 2004, the City Council adopted a resolution setting a public hearing on the Draft WSA in order to receive "public input and comments." (AR, 1:259). Once the City decided to proceed with a public hearing, it was obligated to conduct the hearing in a fair manner affording all concerned with due process. Cohan v. City of Thousand Oaks, 30 Cal.App.4th 547, 559-61 (1994) (cumulative errors in hearing procedures resulted in denial of fair hearing and due process, thereby mandating invalidation of agency decisions).

Yet, when faced with Petitioner's comment letter dated November 19, 2004 detailing the numerous deficiencies in the Draft WSA, the City embarked on a course that can only be characterized as arbitrary and capricious. Most notably, the City Council closed the public hearing on November 23, 2004 (AR, 32:8890-91). Yet, after that date, the City's consultant produced a "Technical Memorandum" that provided entirely new information (AR, 2:285-301). That new information, in turn, led to a "Final" WSA that was vastly different from the Draft WSA that was the subject of the public hearing. For example:

--The Final WSA added 30 pages of text to the Draft WSA, almost doubling its length.

--The Final WSA added new information concerning SCWA's water supply in new Sections 2.3.1 to 2.3.3., new information regarding additional recycled water in Sections 2.4.1 to 2.4.3, and vast new information concerning groundwater supplies (compare the 34-page discussion of groundwater in Section 3 versus the 14-page discussion in Section 2.4 of the Draft WSA).

--The Final WSA added 14 new "report figures" in Appendix A, as well as the entirely new Appendices D and E.

In short, the City released a patently deficient WSA for comment at the public hearing, and then closed the hearing before releasing the vast amount of new information contained in the Final WSA. That tactic breaks the bond of trust between the City and the public and made the principle of a fair hearing and due process a sham.[11]

[11] While Petitioners were allowed to comment on the Final WSA at the City Council's January 25, 2005

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

IX. THE CITY'S REFUSAL TO ADOPT SPECIFIC AND ENFORCEABLE GROUNDWATER MANAGEMENT MEASURES, SUCH AS A MANAGEMENT PLAN, RENDERS THE WSA LEGALLY INADEQUATE

As stated above, DWR's 610 Guidelines require agencies relying on groundwater from an overdrafted basin to identify and implement groundwater management measures (supra, p. 7). The City has steadfastedly refused to adopt or even consider any such management measures. Yet, the County Grand Jury, after a lengthy investigation into the issue of water supply, unequivocally recommended in July 2004 that "the county and each of its cities should adopt and develop a comprehensive groundwater management plan such as that set forth in AB 3030." (AR, 2:322-33). Without such a comprehensive management plan, the Grand Jury found that "increased, population, agricultural expansion and new construction, without implementation of a groundwater management plan, will put the future economic and personal well being of all Sonoma County residents at risk." (Id.) These recommendations have gone unheeded by the City.

Since the adoption of AB 3030 in the early 1990s (Cal. Water Code Section 10750 et. seq.) over 160 jurisdictions have adopted groundwater management plans. (Petitioners provided exemplar plans to the City during the administrative proceedings; AR, 9:2284-451). The premise underlying this State statute is clear -- "groundwater is a valuable natural resource in California, and should be managed to ensure both its safe production and its quality." (Cal. Water Code § 10750). The components of these State-authorized management plans all further that objective and are directly applicable to the SRP Subbasin, include the plan component for "mitigation of conditions of overdraft." (Id., § 10753.8(e).) The need for such groundwater management plans is well documented in the literature. (Refer to Petitioners' Additional Authorities, Exhs. A and B.)

Despite the availability of this legal mechanism aimed at managing local groundwater in a sustainable fashion, the City's sole response has been to point to its 2004 Water Policy

---

meeting, the Council's prior action of closing the public hearing and providing no notice of a continuation of that hearing surely caused other members of the public to refrain from commenting on the Final WSA. That action deprived the public of due process concerning the hearing process for the WSA and constitutes prejudicial error invalidating the City's approval of the Final WSA. Horn v. County of Ventura, 24 Cal. 3d 605, (1979) (land use decision invalidated based on agency's failure to provide adequate notice).

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

Resolution. Yet, that resolution provides for no management measures other than the City's intention to not approve any development project in the Specific Plan area whose "Net Consumptive Water Use Impact is determined to contribute to the City exceeding an Average Groundwater Pumping Rate of 2.3 mgd." (RJN, Exh. A, p. 3, para. (d).) Yet, a close examination of the definitions used in this resolution reveals the fallacy in the City's position. The definition of the term "Average Groundwater Pumping Rate of 2.3 mgd" is "the projected pumping rate from the City's municipal wells for the year estimated to be the Project's buildout year." (RJN, p. 2, para. 4(a).) The resolution defines "buildout year" as the "year when 80 percent of the commercial and residential development have been constructed and occupied." (Id.; p. 3, para. 6.) Since those development projects will not achieve that buildout year for over a decade (AR, 33:8933-34), the cap of 2.3 mgd will not apply for years to come. In fact, while the WSA assumes that the City's groundwater pumping will not exceed 2.3 mgd (or 2,577 afy) beginning in year 2005, there is no such limitation anywhere in any City resolution or ordinance that would achieve that limit beginning now. Indeed, looking at the WSA's baseline year of 2003 and the years preceding, the City has not limited its groundwater pumping to 2.3 mgd since the 1970s! (AR, 33:9026). The need for a groundwater management plan cries out in this case.

X. CONCLUSION

Based on the foregoing, Petitioners respectfully request the Court to grant its Petition and issue a writ of mandate directing the City to vacate its approval of the WSA.

DATED: January 4, 2006

Respectfully submitted.
WESTON, BENSHOOF, ROCHEFORT, RUBALCAVA & MacCUISH LLP

Tammy L. Jones
Attorneys for Petitioners and Plaintiffs

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

PROOF OF SERVICE

I, Yolanda S. Ramos, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On January 5, 2006, I served the document(s) described as PETITIONERS' OPENING MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

***SEE ATTACHED SERVICE LIST**

☒ **BY EMAIL: I emailed in pdf format a copy of said document to the following addressees at the following email addresses in accordance with the Stipulation and Order Re Hearing and Briefing Schedule previously filed and entered by the Court.**

☐ BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, California 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071.

☐ BY FEDERAL EXPRESS ☐ UPS NEXT DAY AIR ☐ OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by ☐ FEDERAL EXPRESS ☐ UPS ☐ Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of ☐ FEDERAL EXPRESS ☐ UPS ☐ OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Los Angeles, California 90071 with delivery fees fully provided for.

☐ BY FACSIMILE: I telecopied a copy of said document(s) to the following addressee(s) at the following number(s) in accordance with the written confirmation of counsel in this action.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 5, 2006, at Los Angeles, California.

YOLANDA S. RAMOS

WESTON BENSHOOF ROCHEFORT RUBALCAVA MACCUISH LLP
333 South Hope Street, Sixteenth Floor
Los Angeles, California 90071

O.W.L. Foundation v. City of Rohnert Park, et al.
Case No. CIV 236309

SERVICE LIST

Michelle Marchetta Kenyon, Esq.
McDONOUGH HOLLAND & ALLEN PC
1901 Harrison Street, 9th Floor
Oakland, CA 94612

Attorneys for Respondents CITY OF ROHNERT PARK, CITY COUNCIL FOR THE CITY OF ROHNERT PARK

Email: mkenyon@mhalaw.com
Telephone: (510) 273-8780
Facsimile: (510) 893-9104

Marie A. Cooper, Esq.
BINGHAM McCUTCHEN LLP
1333 North California Boulevard
Suite 210
Walnut Creek, CA 94596-1270

Attorneys for Intervenors and Real Parties in Interest UNIVERSITY DISTRICT LLC and VAST OAK PROPERITES L.P.

Email: marie.cooper@bingham.com
Telephone: (925) 937-8000
Facsimile: (925) 975-5390