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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA
THE HONORABLE RONNI MacLAREN, JUDGE

--oOo--

STEIN, ANTOINETTE W., et al.,)
)
Petitioner,)
)
vs.) No. RG17858423
)
ALAMEDA COUNTY WASTE MGMT AUTHORITY,)
)
Respondent.)
_____)

REPORTER'S TRANSCRIPT OF TESTIMONY AND PROCEEDINGS
AT TIME OF PETITION FOR WRIT OF MANDATE

Oakland, California
Friday, March 9, 2018
9:52 a.m.

Reported by:
LINDA SHRYACK
CSR NO. 12104
JOB NO. 2814568

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For Dr. Antoinette M. HANSON BRIDGETT, LLP
Stein: 425 Market Street, 26th Floor
 San Francisco, California
 94105
 By: SAMIR ABDELNOUR
 By: SEAN G. HERMAN
 Attorneys at Law

For Arthur R. Boone, III: Appeared In Propria Persona

For the Waste Management REMY MOOSE MANLEY, LLP
of Alameda County: 555 Capitol Mall, Suite 800
 Sacramento, California
 95814
 By: ANDREA K. LEISY
 Attorney at Law

For the Alameda Waste SHUTE, MIHALY & WEINBERGER,
Management: LLP
 396 Hayes Street
 San Francisco, California
 94102
 By: EDWARD T. SCHEXNAYDER
 By: TAMARA S. GALANTER
 Attorneys at Law

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1 MARCH 9, 2018

9:52 a.m.

2 --oOo--

3 The above-entitled matter came on regularly
4 this day for hearing before the Honorable RONNI MacLAREN,
5 Judge.

6 HANSON BRIDGETT, LLP, 425 Market Street,
7 26th Floor, San Francisco, California 94105, represented
8 by SAMIR ABDELNOUR and SEAN G. HERMAN, Attorneys at Law,
9 appeared as counsel on behalf of Dr. Antoinette W. Stein.

10 ARTHUR R. BOONE, III, appeared In Propria
11 Persona.

12 REMY MOOSE MANLEY, LLP, 555 Capitol Mall,
13 Suite 800, Sacramento, California 95814, represented by
14 ANDREA K. LEISY, Attorney at Law, appeared as counsel for
15 Waste Management of Alameda County.

16 SHUTE, MIHALY & WEINBERGER, LLP, 396 Hayes
17 Street, San Francisco, California 94102, represented by
18 EDWARD T. SCHEXNAYDER and TAMARA S. GALANTER, Attorneys
19 at Law, appeared as counsel for Alameda Waste Management.

20 The Honorable RONNI MacLAREN, Judge
21 presiding.

22 LINDA SHRYACK, CSR NO. 12104 Official Pro
23 Tem Shorthand Reporter for the County of Alameda, was
24 duly present and acting.

25 The following proceedings were then and

1 there taken, to wit:

2 P R O C E E D I N G S

3 THE COURT: Would you please call the case.

4 THE JUDICIAL ASSISTANT: Calling the matter of
5 Stein versus Waste Management of Alameda County on
6 calendar for Case Management Conference and Petition for
7 Writ of Mandate.

8 Counsel and parties, may we have your
9 appearances, please.

10 MR. ABDELNOUR: Good morning, your Honor.
11 Samir Abdelnour, representing Petitioner Dr. Antoinette,
12 Toni Stein.

13 MR. HERMAN: And Shawn Herman on behalf of
14 Petitioner.

15 MR. BOONE: Arthur Boone, in pro per.

16 THE COURT: Thank you. Good morning.

17 MS. GALANTER: Good morning, your Honor.
18 Tamera Galanter on behalf of the Alameda Waste Management
19 Authority.

20 MR. SCHEXNAYDER: Good morning, your Honor.
21 Edward Schexnayder, also on behalf of the Waste
22 Management Authority.

23 MS. LEISY: Good morning, your Honor.
24 Andrea Leisy on behalf of Waste Management of Alameda
25 County.

1 THE COURT: All right. Good morning, everyone.
2 All right. Let me just start out by saying, in
3 looking over my tentative order again last night, I saw
4 not only a number of typos but a inconsistency of -- a
5 rather big inconsistency in what the total, what the
6 final -- no, what the tentative order concludes in terms
7 of whether the petition should be granted or not. And a
8 sentence that appears on page 10 is inconsistent, so the
9 Court is going to fix any inconsistencies and
10 typographical errors when I issue my final order.

11 All right. But in terms of whether the
12 tentative order was to grant or deny, to clear up any
13 confusion, the tentative is to grant. Okay.

14 So, and let me also say as a preliminary remark
15 that I thought the briefing was outstanding. This is a
16 very interesting case. It's also my first CEQA case
17 because the judges on our court who normally handle these
18 cases were challenged, and I was the lucky winner.

19 And, so in your argument, don't make assumptions
20 about my background, because it's minimal, and, okay.
21 But I have spent a lot of time on this case, and so, all
22 right. I will then hear, first, from the Respondents.

23 MS. LEISY: Your Honor, Andrea Leisy, again, for
24 Waste Management. I'm here, primarily, I guess, to
25 elaborate on why there's been no substantial change to

1 the project as approved by the Alameda County Waste
2 Management Authority as part of its CIWMP, or the
3 Integrated Waste Management Plan amendment process. So
4 you'll hear us referring to CIWMP and the Waste
5 Management plan, and specifically, to including the
6 amounts of material able to be processed and composted
7 through the OMCF, the Organic Material Composting
8 Facility.

9 As a preliminary issue, I just wanted to touch
10 on the fact that the role of the Authority under the
11 California Waste Control Law and under CEQA was really
12 limited to being a responsible agency. There's no
13 substantial evidence requiring the Authority to step into
14 the shoes of the lead agency and assume that there was
15 substantial changes to the project. So even if Waste
16 Management had proposed this thousand tons of composting
17 that petitioner's claim, the Authority would have been
18 under no jurisdiction to be able to approve that because
19 that was within the purview of the City of San_Leandro as
20 the lead agency issuing the CUP, the Conditional Use
21 Permit, and the LEA, which is the Department of
22 Environmental Health for the County, in issuing the
23 revised Solid Waste Facility Permit of which we sought
24 judicial notice, as Exhibit B.

25 So I don't want to steal my co counsel's

1 thunder. I know he represents the Authority. He will be
2 speaking after me, but I think that your tentative is
3 correct. Could this have been explained more clearly,
4 certainly, it could have. That's absolutely right.
5 Unfortunately, I think it's a by-product of California
6 and the multilayer of agency approval and processes that
7 clients, such as mine, need to go through to permit a
8 facility such as this.

9 So unfortunately, it's not uncommon for agencies
10 to describe things a little differently, or not describe
11 things at all, like the Authority not specifically
12 calling out the 250 to 350 tons per day of composting.

13 But that omission in the Authority's approval
14 does not necessarily equate to substantial evidence which
15 is defined as facts, reasonable assumptions predicated on
16 facts under CEQA that there will be a new significant
17 impact under CEQA Guidelines 15162 requiring the
18 Authority to do additional environmental review.

19 So I think it's important to understand that the
20 OMCF will not compost up to 1000 tons per day. We took
21 the liberty of blowing up this exhibit. It's from
22 AR0372, so it's already in the record, just to try and
23 better explain the process so the Court can understand
24 better, the amount of tons per day of material that goes
25 into these processes, and then what ultimately can come

1 out at the end. It's not the most up-to-date, current.
2 This was, you know, in the power-point presentation that
3 our client gave, but nevertheless, it's the best site
4 plan we have on record, so we decided to use it here.

5 So the 1000 tons per day is the total combined
6 process tonnage for the OMCF, and that's at AR9, which
7 the Authority, you know, stated in its amendment, and
8 AR21 in the Neg. Dec. 250 to 350 tons per day of compost
9 is the ultimate product of multiple different processes
10 that can occur within the OMCF building. So I think it's
11 important to step back just a little bit, if you'll
12 indulge me in explaining that.

13 First, the waste comes in off of Davis Street,
14 goes to the transfer station, a lot of mixed solid waste,
15 different variety of materials, and it's then going to
16 take approximately 1000 to 1,300 tons per day. And this
17 is in the initial study, Neg. Dec. at AR2021 of municipal
18 solid waste to be processed. It will be extracted
19 like -- recyclables will be extracted from the OMRF, or
20 the recycling facility is this building here, which is
21 almost built out.

22 THE COURT: Which is what?

23 MS. LEISY: Which is almost completely built
24 out.

25 THE COURT: Okay.

1 MS. LEISY: So extracting recyclables and other
2 materials for diversion, like CMD construction and
3 debris, it will also pull out organic and food waste from
4 the municipal solid waste stream, which is estimated to
5 be about 600 tons per day to be recovered for composting.
6 That's AR20. Then there will be a mixture of, with green
7 waste, which comes into this area, and wood waste.
8 Depending on the material that's received, it's this
9 recipe. It really depends on, you know, who the
10 customers are, how well their source separating organics,
11 what another materials are mixed in, but this is
12 generally what's happening at the OMRF.

13 And then there's an estimate of 400 tons per day
14 of green waste, which will be mixed in, which is what is
15 derived of the 1000 tons per day. If there's material in
16 excess of that amount, then it can be literally trucked
17 offsite for further processing or disposal, you know, or
18 recycling. But approximately 1000 tons per day will then
19 be generated in these facilities and then transferred
20 over, once the OMCF is constructed. It has not yet been
21 constructed. Our clients are in the building permit, or
22 almost building permit stage, but the intent is that it
23 be transferred over to the green waste compost facility.

24 THE COURT: And how much?

25 MS. LEISY: Approximately, 1000 tons per day.

1 That's what is referenced to in the initial study
2 Negative Declaration and in the Authority amendment. So
3 that's a AR2021, mainly in the Neg. Dec. discussion, and
4 AR9.

5 So once it gets to this composting facility, and
6 this will eventually be one big building.

7 THE COURT: I'm sorry. But explain one thing to
8 me. So you're moving your hand up and down, and I'm not
9 sure what you're referring. So that you've separated
10 them by food waste, organic, recycling facility, and the
11 green waste, right? You've separated them there, yes?

12 MS. LEISY: Right. The green waste will come
13 into the green waste enclosure.

14 THE COURT: You're saying that's a maximum of
15 400?

16 MS. LEISY: Approximate amount of 400 tons per
17 day of green waste.

18 THE COURT: Okay.

19 MS. LEISY: Could be mixed with the 600 tons per
20 day from the extraction process that comes from the
21 transfer station, the material from the transfer station
22 to the recycling facility, the 1000 to 1300 total tons
23 per day.

24 THE COURT: Yeah.

25 MS. LEISY: Once that is processed, and the

1 organics are separated out, any recyclables are separated
2 out, metals are separated out.

3 THE COURT: Okay.

4 MS. LEISY: So the estimate is it will be about
5 600 tons per day.

6 THE COURT: Now you're pointing where?

7 MS. LEISY: To the recycling facility.

8 THE COURT: Okay. 600. So you separated 600
9 and 400 approximately.

10 MS. LEISY: Right.

11 THE COURT: Okay. Okay.

12 MS. LEISY: So that's important because it's
13 roughly 600 of food waste, you know, other organics that
14 will then be transferred over into the compost facility.
15 So that's --

16 THE COURT: Just the 600.

17 MS. LEISY: Well, it could be mixed with up to
18 400 of green waste.

19 THE COURT: Could be mixed.

20 MS. LEISY: Yes.

21 THE COURT: Okay.

22 MS. LEISY: Depending on the material that's,
23 you know, provided by the client base, because there's no
24 guarantee what, you know, the source always is.

25 But this is what was analyzed in the Neg. Dec.,

1 the premise in the project, and, you know, explaining how
2 the 1000 tons per day for processing gets to this compost
3 facility, its derivatives of the processes that already
4 happened in the recycling facility. Does that make
5 sense?

6 THE COURT: Kind of. So you've done this
7 separation between the food waste and the green waste,
8 but what happens to that separation when it then goes
9 into the --

10 MS. LEISY: Compost facility.

11 THE COURT: -- compost facility?

12 MS. LEISY: Yes, so I was gonna get to that. I
13 was trying to build a foundation.

14 THE COURT: But it stays separated.

15 MS. LEISY: Well, it can be co-mingled and
16 combined, the 1000 tons to the compost facility.

17 THE COURT: Okay.

18 MS. LEISY: So this is what the initial study,
19 Neg. Dec., although not necessarily artfully, was
20 explaining when it says 1000 tons per day can be
21 processed by the compost facility.

22 So once it gets to the compost facility, there's
23 multiple different processes that can happen in here as
24 well. So the compost is roughly 135,000 square feet, and
25 this is all intended to be under one building, fully

1 enclosed, bio filters, as opposed to most green waste
2 composting facilities which tend to be outdoors, very
3 large, odors, whatnot. So our client, in proposing these
4 improvements, was really trying to improve the site and
5 the facility and is unique in that process.

6 So once the 1000 tons per day come over to the
7 composting facility, there's a pre-processing process
8 that starts which is like sorting, mixing. It can then
9 go into the anaerobic process which is also described as
10 Stage One in the Neg. Dec., which is the additional
11 40,000 tons per year into the anaerobic digestion
12 process. It can also go into composting lanes.

13 So the composting lanes are where there's a
14 churning with oxygen mixed into the materials, and
15 composting occurs in a different fashion, and that's
16 where the Authority talks about the annual average
17 capacity being 165 tons per year. And then there's
18 another Stage Three process. It's like a post
19 processing, the screening of the waste. Solid and
20 recycling waste can be transferred or recycled further,
21 and some solid waste can be on site.

22 So there's a combined peak daily capacity, which
23 is the main point. The combined peak daily capacity is
24 1000 tons per day for this facility. The maximum, and I
25 understand there's confusion, you know, in the record

1 that the Authority also references in it's amendment, is
2 205 tons per year, which, if we do the math -- and no one
3 seems to dispute the 205,000 tons per year number. If
4 you do the math, based on the operating days, that comes
5 out to less than 1000 tons per day. The Authority just
6 explained things differently than what the City had
7 approved.

8 So there's three primary processes, and just to
9 break it down a little more simply, we have anaerobic
10 composting, aerobic composting, this post-processing
11 screening, and the CIWMP amendment. It's the Countywide
12 Integrated Waste Management Plan. I also tend to refer
13 to it as the Waste Management Plan, but I know the
14 Authority says CIWMP.

15 MS. GALANTER: Referred to as a Countywide Plan.

16 MS. LEISY: Right. Right. So, essentially, if
17 petitioners were correct that the OMCF could compost up
18 to 1000 tons per day, this facility would need to be like
19 roughly three times bigger than it actually is. And
20 there's no dispute that the actual total square foot of
21 this building, the 262,000 square feet, has not changed.
22 The Court even found that in its tentative.

23 So if you follow petitioner's logic, you know,
24 the design capacity of the site would need to be expanded
25 as well. That has not happened. The design capacity is

1 limited just by nature of the size of the building, how
2 many vessels are proposed.

3 MS. STEIN: I'm sorry.

4 MS. LEISY: Are you okay? Do you need water?

5 So the footprint would really have to be like
6 600,000 or 700,000 square feet, which there is no
7 evidence of that occurring.

8 THE COURT: So you're saying that it, it was
9 built to only accommodate a certain amount.

10 MS. LEISY: Correct. And this is also described
11 in --

12 THE COURT: And where is that stated, that it
13 was at full capacity?

14 MS. LEISY: So the CIWMP amendment talks about
15 the total processing -- whoops, let me get my AR excerpts
16 and not our briefs -- of 205,000 tons per year, and
17 that's at AR9. And it also talks about the square
18 footage of the composting facility --

19 THE COURT: M-hm.

20 MS. LEISY: -- being 135,000 square feet, and
21 that that will also be combined one day with the digester
22 facility building, which is 65,000 square feet. So the
23 total --

24 THE COURT: But where is it that says, as built,
25 that it could not handle a capacity greater than 1000?

1 MS. LEISY: Well, so the total CIWMP amendment
2 talks about on AR9 that the combined daily peak capacity
3 will be 1000 tons per day, and an estimated maximum
4 annual of 205,000 tons per year. The initial study, Neg.
5 Dec., which is a condition of approval of the Authority,
6 also states that it will be 1000 tons for processing.

7 THE COURT: No. No, maybe my question is just
8 unartful. But I understand that that's what they're
9 saying is, is what is the volume, but where is it that it
10 states that, because you're relying on this square
11 footage, that it says that at that square footage it
12 couldn't handle anymore than that?

13 MS. LEISY: I think the best place that that's
14 also described is in the Solid Waste Facility Permit, the
15 LEA, and Cal recycle discussion.

16 THE COURT: Okay.

17 MS. LEISY: Which we requested judicial notice
18 of.

19 THE COURT: M-hm.

20 MS. LEISY: Which is at page 20, I think, up
21 there.

22 MR. SCHEXNAYDER: And, your Honor, if I may, on
23 pages, roughly 140 through 143 of the record, there's a
24 diagram that shows all of the composting facilities that
25 are within the building, and you can see that the

1 building dimensions haven't changed at all. And you can
2 see within that diagram that there's, there's no extra
3 space in the building to add more composting lanes in the
4 building.

5 THE COURT: Okay.

6 MR. SCHEXNAYDER: So if the square footage of
7 the building hasn't changed, you'd have to put new
8 composting lanes somewhere else in order to accommodate
9 the increased capacity.

10 THE COURT: Okay. Thank you.

11 MS. LEISY: And then what I was referring to is
12 at page 20 of the Request for Judicial Notice where
13 there's a discussion of the OMCF by the LEA, and where
14 they were approving the revised Solid Waste Facility
15 Permit. And this talks about the annual maximum design
16 for the in-vessel composting being approximately 215 tons
17 per day of material.

18 THE COURT: M-hm.

19 MS. LEISY: On average, and that for the compost
20 refining process, there's a design capacity maximum of
21 250 tons per day.

22 THE COURT: Okay.

23 MS. LEISY: So essentially, there's no
24 substantial evidence supporting this new significant
25 impact argument that the petitioners are alleging. And

1 the Authority reasonably concludes that it was still a
2 responsible agency, but there wasn't this unidentified
3 change or request to change the project with respect to
4 this issue.

5 With respect to percolate, which I understand
6 your Honor's tentative found a potentially significant
7 impact, assuming that there would be this additional
8 tonnage, that that's really coming from the anaerobic
9 digestion or the -- digestion process, and this is
10 recycled or reused. The percolate is reused, stored in
11 tanks, reused again as part of the processes. So it's a
12 mostly a closed-loop system, and it's not necessarily a
13 significant impact on the environment because it gets
14 reused. Anything that is discharged to the sewer --

15 (Interruption by the court reporter.)

16 MS. LEISY: Anything that would be discharged to
17 the sewer has to meet the Title 23 of the Regs., which
18 protects water quality. It has to meet the Wastewater
19 Plant Treatment Standard, WDRs, Waste Discharge
20 Requirements. So there's no evidence of potentially
21 significant impact. There's no expert comments that
22 prove that there would be a significant impact, so, but
23 you even have to get past the 1000 tons per day
24 assumption to even get to that point. So with that, I'll
25 turn it over to my co-counsel.

1 MR. SCHEXNAYDER: Thank you, your Honor.
2 Edward Schexnayder for the Waste Management Authority.
3 And I think I'd like to start by just coming back to the
4 legal standards a little bit and explaining how there is
5 essentially two different elements that petitioners have
6 to prevail on in order to have a writ issued here.

7 And we've taken the liberty of blowing up a
8 section of the CEQA back lines, which are the layout of
9 the legal standard. And the Court's tentative includes
10 this as well. But the most relevant portion is this very
11 first one, which is that after a lead agency prepares and
12 adopts an initial study, that two things have to occur,
13 first, a substantial change to the project that was
14 analyzed by the lead agency. And in addition to that,
15 there has to be evidence of a fair argument and that that
16 substantial change will cause a significant environmental
17 impact.

18 And Ms. Leisy was describing primarily that the
19 first piece of that, which is that there is not
20 substantial evidence of a substantial change to the
21 project for all the reasons she mentioned. And so I want
22 to briefly touch on, elaborate on one additional point
23 and the way that we know that, and then move on to
24 discuss further why there's also a lack of substantial
25 evidence of a fair argument of a new impact.

1 And turning first to -- back to the substantial
2 change issue, I think it's important for the Court to
3 understand the planning process the Authority is going
4 through here when it issued an amended countywide plan to
5 include this facility. The, the Authority acts in a very
6 different way than all of the other permitting agencies
7 that look at this project because it's a countywide
8 planning agency. What it's doing is it's basically
9 looking at how waste moves throughout Alameda County, and
10 adopting goals to reduce the disposal of waste in
11 landfill, through either more composting like we see at
12 this facility, or reducing waste at the source. That's
13 the fundamental purpose of the Authority, and that's what
14 the plan exists to do.

15 And so when the Authority looks at facilities
16 like Davis Street and determines whether they can conform
17 with the plan. It's looking at those facilities in a
18 much broader perspective than, say, the lead agency like
19 San Leandro would, or the air district would, when it's
20 issuing an air quality permit, or the Cal Recycle, and
21 the local enforcement agency would when they're issuing a
22 Solid Waste Facility Permit. Those agencies look at
23 those projects with a much finer tooth comb than the
24 Authority does.

25 And you see that in the countywide plan itself,

1 not just with the description of the Davis Street
2 project, but also the description of all of the other
3 transfer stations and facilities in Alameda County are
4 described in much broader terms. Not every single detail
5 of those projects is in the plan because it's a planned
6 document.

7 And that's important here because as Ms. Leisy
8 was saying, the Authority didn't describe in its, in its
9 approval, every detail of this project. It didn't
10 describe the composting output. But what it did describe
11 was the maximum capacity of the facility, the general
12 components of the facility, being the sorting process,
13 the anaerobic digestion process, and the composting
14 process.

15 It described those components and the square
16 footage of the building, so it's described it in a
17 general way. And because the Authority looks at these
18 projects in a different, through a different lens than
19 the other agencies, it has two very important conditions
20 of approval that are standard on every single time it
21 makes a conformance finding, like it did here for a new
22 facility. And those conditions are Conditions Five and
23 Eight on the record. They're on pages 13 and 14. And
24 Condition Five, which the Court discusses somewhat in its
25 tentative, basically says that the project before us

1 cannot differ from the project that was analyzed in the
2 initial study. And Condition Eight goes on to say, not
3 only that, but to the extent that permitting agencies
4 have adopted conditions of approval that apply to this
5 project, you must comply with those.

6 So it's relevant here because, as we know, the
7 local enforcement agency adopted a condition of approval
8 limiting the composting output to 350 tons per day. And
9 so that's what gives the Authority assurance that the
10 project it's reviewing is not substantially different
11 from the project that other agencies have looked at. And
12 I understand that the tentative ruling, there's some
13 concern expressed that these conditions maybe weren't
14 discussed during the public process or weren't
15 considered. And actually, if you look at the record
16 that's not the case. These conditions were attached to,
17 to the draft ordinance amending countywide plan and that
18 ordinance was presented at three different public
19 meetings in front of the local, the recycling board, in
20 front of the Authority board twice. Those materials not
21 only are available to decision makers, they're available
22 to the public on the Brown Act.

23 THE COURT: Do you have citations to the records
24 to support the attachment?

25 MR. SCHEXNAYDER: Yes, your Honor. So for

1 redundancy purposes, we didn't reproduce it every single
2 time. But if you look at our record site, page 84, and
3 then also 112, you'll see references to the draft
4 ordinance, and one of those drafts includes the
5 conditions of the approval in it.

6 In addition to that, on page six the Authority
7 made express findings that it had reviewed all of the
8 materials presented and prepared by staff. The decision
9 makers had looked at it, in addition to the fact that
10 they made on record, page five, there's an express
11 finding authority, actually considered San Leandro's
12 Negative Declaration. And so I understand that there's
13 concern that maybe there wasn't robust discussion of
14 these, but that's very typical in approval processes
15 where you have a lot of information. Not everybody is
16 focused on every single detail, and not everything was
17 voiced in a hearing, but that doesn't mean it wasn't
18 there, and it wasn't considered.

19 Just to reiterate one more time, this is a
20 really critical -- especially Condition Five, it's a
21 critical condition for the Authority's process. So that
22 condition, we, we would argue, and we believe provides us
23 the substantial evidence that we need, if there isn't a
24 change to this project, in addition to all of the points
25 that Ms. Leisy was stating before.

1 And if I could move on from there, I would like
2 to discuss now how there's also a lack of substantial
3 evidence of fair argument for new impact.

4 THE COURT: Okay.

5 MR. SCHEXNAYDER: So we think -- and looking at
6 the tentative ruling, it's right on 90 percent of these
7 issues, because they're -- it's important to realize that
8 speculation and unsupported opinion is not substantial
9 evidence. And that's, you know, in our, in our view what
10 all the petitioners have offered. And the Court agrees
11 with that point on most of the alleged impact. And the
12 only one we're in disagreement is on this issue of --

13 (Interruption by the court reporter.)

14 MR. SCHEXNAYDER: Excess percolate and whether
15 that enters the sanitary sewer system. And that's -- so
16 there are a couple points I want to make about that.
17 First, this argument was never raised until the
18 supplemental brief, and so we haven't had a chance to
19 respond to it, but petitioners actually never exhausted
20 on this issue --

21 THE COURT: I'm sorry?

22 MR. SCHEXNAYDER: They never exhausted. CEQA
23 requires that before you can pursue an issue in court,
24 you have to exhaust that issue before --

25 (Interruption by the court reporter.)

1 MR. SCHEXNAYDER: -- the administrative agency.
2 And Public Resources Code section 21177(a) specifically
3 says that the legal issue or the legal defect that you're
4 going to pursue, you need to flag that for the agency,
5 and that never happened here. And I can't cite to an
6 omission. It's just not in the record. For that reason
7 alone, they should fail on this argument.

8 In addition to that, when you look at the
9 record, you see that the assertion that an increase in
10 percolate can cause some water quality impact is purely
11 speculative. And I want to, I want to walk through this
12 because I haven't had a chance to respond to this issue.

13 You know, first, you -- there are multiple,
14 well, I guess multiple logical leaps you have to take to
15 assume that an increase in percolate is going to somehow
16 get into the water and cause a significant impact. The
17 first leap you have to make is you have to assume that
18 increasing the capacity of the facility is going to
19 correspondingly increase the amount of percolate. And as
20 Ms. Leisy stated, percolate actually isn't a product of
21 the composting process. It's a product of the digesting
22 process. In the, the Negative Declaration and initial
23 study describes how it's used and says that the percolate
24 is actually used in composting in a closed-loop system to
25 feed the composting because it's basically liquid that

1 has organic material that jump starts or aids composting.

2 So if you are, logically, if you accept
3 petitioner's assertion that there is a massive increase
4 in composting, then that's going to require -- to the
5 extent there is more percolate, it's going to use more
6 percolate in that process. So that's the first
7 assumption you need to make, is that somehow there's
8 going to be an increase in the percolate, and it's going
9 to be more than the closed-loop system could actually
10 use.

11 In addition to that, you have to assume that if
12 there is an excess, that that excess is going to be
13 discharged into the sewer system, and there's no evidence
14 that that's the case. The Court notes that the Negative
15 Declaration says, excess water will be discharged into
16 the sanitary sewer system, but water and percolate are
17 not the same thing, and there's no evidence in the record
18 that they are.

19 And even going from there, you have to assume
20 that once it's in the sewer system that it's going to
21 somehow impact water quality. And what we know is that
22 the wastewater treatment facility that accepts sewer
23 water is right next door. It's literally directly to the
24 north of the project. That's in the record. I can
25 provide the cites if you would like, your Honor.

1 And the entire purpose of having a wastewater
2 treatment facility is to treat affluent to ensure that
3 there's no water quality impact. So even if somehow this
4 excess made it there, we don't know what the volume of
5 that excess is. We then have to assume that the excess
6 percolate is so great, that it is going to overwhelm the
7 capacity of the wastewater treatment facility, and in a
8 way that would secrete some unknown water impact.

9 We don't even know what that impact is because
10 there's no exhaustion on this issue. There's no evidence
11 in the record on this issue. These are -- at each stage
12 where we have a lack of evidence, this is speculation,
13 and this is exactly what CEQA says you cannot have for a
14 fair argument.

15 And I'd like to finally just focus briefly on
16 the section of the Negative Declaration that's talking
17 about the percolate because I think it really describes
18 what's going on here. And this is on pages 44 and 45 of
19 the record. And if you look on 44, it's talking about
20 Issue B. This section of the Negative Declaration is
21 talking about potential groundwater impact. So that's
22 different from -- you know, groundwater is what's going
23 into the ground, not what's going into the sewer. And
24 then if you look at the analysis, it's basically saying
25 that the design of the facility is meant to reduce

1 runoff. That's the purpose.

2 Additionally, restoring percolate it takes to a
3 closed-looped system, but that percolate is not going to
4 go into the ground. And then it says, additionally,
5 excess water will be conveyed into --

6 (Interruption by the court reporter.)

7 MR. SCHEXNAYDER: -- the sanitary sewer system.
8 And we read that, and the only way to, I think you can
9 read that, because this paragraph is talking about the
10 project, is thinking about all of the water that's excess
11 water from the entire project. And we know that the
12 project has an option for, for misters to control odors
13 and dust. It also, there are substantial wastewater
14 changes, control changes at the project site. It was
15 part of the change in the initial setting here. So
16 they're basically moving -- changing how they move
17 wastewater and storm water -- not wastewater, storm
18 water, at the site. So we think it's excess water to
19 that capacity that would be conveyed to the sanitary
20 sewer system.

21 Also, it's really important to note that on page
22 44, the initial study says there is no impact, not even
23 that there's a potential for an impact. There's just no
24 impact, is the analysis there. And if you look at the
25 initial study, there are different levels of potential

1 impact, and no impact is the lowest.

2 And with respect to water quality on pages 44
3 and 45, and also 54 and 55 of the record, the initial
4 study notes that this project has -- there's no impact to
5 water quality or the sanitary sewer system or any of
6 these things. So what the record is telling us is
7 there's no impact. What speculation is telling us is
8 there is, there's some sort of impact. We don't know
9 what that impact could be, because there's no evidence of
10 it in the record.

11 And that's, as the Court notes in many other
12 places in its tentative, that's exactly the type of
13 speculation that cannot support a fair argument of a
14 substantial impact and leads to the issuance of a writ.
15 And for those reasons, we request that the Court reverse
16 its tentative on this issue and uphold it in other
17 respects. And we'd also like to reserve any type of
18 rebuttal the Court may offer in response to petitioner's
19 remarks.

20 THE COURT: All right. Thank you. Who would
21 like to speak first on behalf of the petitioners?

22 MR. ABDELNOUR: Thank you, your Honor,
23 Samir Abdelnour on behalf of Dr. Stein. Before I respond
24 to comments of Mr. Leisy and Mr. Schexnayder, I would
25 like to clarify, at the top of the hearing, your Honor

1 noted or cited to page 10 of the tentative ruling in a
2 typographical error of some significance. Am I correct
3 that that was the sentence that begins on line 19, page
4 10?

5 THE COURT: You are correct.

6 MR. ABDELNOUR: All right. Thank you, your
7 Honor.

8 So I'll keep my comments brief, your Honor. But
9 what I've heard for the last 45 minutes from Ms. Leisy
10 and Mr. Schexnayder, while maybe adding to their mind
11 some clarity about some of the processes that go on, or
12 that are contemplated to occur at the transfer station,
13 they're counsel by argument -- I'm sorry, they're
14 argument by counsel, and they are not a part of the
15 administrative record.

16 As the Court's tentative ruling clearly lays
17 out, the Court spent a substantial amount of time going
18 through the administrative record understanding the
19 facts. The record, I think, does speak for itself, also
20 applying those facts to the CEQA standards, and, and I
21 think even more striking is that counsel's argument
22 really cuts to the heart of the issue here, which is that
23 there is significant confusion.

24 Ms. Leisy acknowledged that the project
25 description, the administrative record is not clear. It

1 could have been clearer. And that's exactly the point
2 that Dr. Stein was trying to get to the bottom of during
3 the public comment process, and she asked questions
4 repeatedly, and both at oral hearing and through written
5 comments. As the record makes clear, those comments were
6 largely swept under the rug, or given short shrift,
7 certainly not provided the level of detailed explanation
8 that Ms. Leisy and Mr. Schexnayder just went through now.
9 And I think as your Honor observed in the tentative
10 ruling and got to the point, got to the heart of the
11 issue to which Ms. Leisy, nor Mr. Schexnayder responded,
12 there is, there is a difference that, that respondents
13 here are just failing to acknowledge between the input
14 and the output of the compost facility. And as you noted
15 in the tentative ruling, the 2010, 2011 review strongly
16 suggests that of the 1000 tons per day that gets
17 processed on the facility, 250 to 350 tons per day will
18 be kept on site for the composting process, and the
19 remainder goes off-site. That's not what Ms. Leisy
20 explained in her presentation.

21 Another thing that, that struck me from
22 Ms. Leisy's presentation was she noted that there's,
23 there's a recipe question. There's a potential mixture
24 of 400 tons and 600 tons, and depending on the recipe and
25 how well the customers separate, that, leading to the

1 recipe, that is nowhere in the record. The discussion of
2 that is nowhere in the record. The public has no way of
3 knowing how that determination will be made, what
4 potential impacts may arise from that determination or
5 from that recipe mixture. And again, it just, it
6 underscores the inadequacy of the record and the review
7 process.

8 Another point that I think underscores that,
9 your Honor asked the question about the, the capacity of
10 the facility. On the one hand, the record states that
11 the facility has the capacity for 1000 tons per day. On
12 the other hand, counsel has represented that in order to
13 take 1000 tons per day, the building footprint would need
14 to be tripled -- no discussion of that on the record.

15 On the question of the percolate, it's not true
16 that Petitioner Stein failed to exhaust administrative
17 remedies on that point. Dr. Stein's letter through her
18 then-attorney Rachael Doughty, and this is on page --
19 well, it begins on page 439 of the record, and continues
20 through 446, raises concerns regarding the digestate, and
21 as Mr. Schexnayder explained, while Dr. Stein may not
22 have used the word "percolate," in distinguishing
23 percolate from water, she referred to it as the product
24 that comes out of the digestion process. So she did
25 raise that issue. She may not have used the word

1 "percolate" in that letter, but we're talking about the
2 same material.

3 And another point on that, that kind of goes
4 back to what I was saying before, Mr. Schexnayder, in
5 trying to distinguish between what's percolate and what's
6 water, says, well, we think what's excess is water.
7 Well, that's great if that's what he thinks, but that's
8 not in the records, and that's not what the public knows.
9 And that's what CEQA is intended to do, is intended to
10 inform the public and be transparent about the process.

11 And as I think, you know, your Honor identified
12 in the tentative ruling, and, and, you know, certainly we
13 don't agree with all of the analysis in the tentative
14 ruling about the changes, but your Honor did the
15 analysis. And that's the analysis that all along
16 Dr. Stein had been requesting respondent and real party
17 to do, which really respondent is the agency, and that
18 they failed to do.

19 And so with that, your Honor, I'll close my
20 comments, and I will submit on the tentative ruling.
21 Thank you.

22 THE COURT: Does Mr. Boone want to be heard?

23 MR. BOONE: Yes, thank you. I'd like to use the
24 drawing again.

25 My name is Arthur Boone, and I worked in the

1 recycling business for 35 years, and I used to be a
2 member of the recycling board, part of the A --

3 (Interruption by the court reporter.)

4 THE COURT: A-C-W-M-A.

5 MR. BOONE: ACWMA, the subordinate of that is
6 the Alameda County Recycling Board, which is a separate
7 organization within the larger organization. I was a
8 member of that for two years, and so I knew something
9 about the agency, how it worked and all that kind of
10 stuff. I've been working in and around garbage for 30
11 years. I spent two months in the transfer station in
12 1989, looking at loads coming in from commercial sorts.
13 We had a guy who had another plant somewhere else, hired
14 me to -- pick out which of the 900 boxes would be useful.
15 For a number of years now I've been picking up compost
16 over here at this site, so I kind of know the property
17 pretty well, and some parts better than others.

18 I'm definitely committed to the idea that
19 composting should happen locally. The company relies on
20 the fact that it takes two loads of uncooked materials to
21 make one load of compost, and so if you can compost it
22 here where it comes in from the public, you save yourself
23 all those outbound trips. It's a good idea. Plus,
24 there's no reason they shouldn't make more money here.

25 They lose about \$80 a ton from this facility and

1 its income, because once the stuff comes in, they have to
2 take it to somebody else who will then turn it into
3 compost and who's going to make the money selling the
4 materials. So it's very much to the company's advantage
5 to have this kind of a process. And they have the space,
6 so why not do it. I've never had any problem with the
7 facility.

8 The original 2011 plan, which was somewhat
9 different, more from the inside than from what they're
10 doing, rather than from the design of this. This is
11 actually the 2011 plan. This is not the current plan.
12 The current plan is slightly different, but this
13 basically gives you the idea. Green waste comes in here.
14 They sort it over here. They mix it with the food
15 materials over here, and they compost it here. They
16 clean it up over here, and they take it out. It goes out
17 through this root -- very simple process, and not a bad
18 one.

19 The problem is that this is a relatively new
20 technology of separating wastes, of separating organics
21 from wastes is a relatively new technology.
22 Historically, the way you get these to market, we all, we
23 all get rid of stuff, right, cans, bottles, newspapers,
24 all that kind of stuff. But the way the people who are
25 buying that stuff or who want that, they don't want all

1 these things mixed together. They want them separately.
2 The question is who's going to do that, and how is that
3 going to happen.

4 Our group, which is the old-fashioned recyclers
5 from the '70s and '80s, we want people to do that.
6 Garbage company in Oakland and Alameda County, we have
7 half as much garbage as we had 20 years ago, okay. So
8 the garbage company is looking for work. And what they
9 want to do is they want to build factories like this one.
10 This is the new plan, the 2017 plan. They want the
11 factories to take anything that people throw away and
12 separate out the organics to make composting, and get the
13 cans and bottles. We don't know whether that's going to
14 work. We have not been convinced by anything they've
15 said in detail yet, that this is going to work. This is
16 a picture of what it looked like in 2010, which is
17 essentially is a pretty simple -- this is a northeast
18 part of the building. They changed the name a bunch of
19 times.

20 But basically, the old idea was this is green
21 stuff, clean green, what you put in your compost bin.
22 You have a green cart at home, this is what you put in
23 your green cart. Not the can and bottles, you put in
24 yard waste, food waste, soiled paper, that kind of stuff.
25 That goes through here. They have hand sorters who are

1 looking through things. People are always putting dumb
2 stuff in the thing. You have to pick that out, maybe one
3 or two percent. But this stuff is all gonna get ground
4 up eventually, and if you put an alternator or something
5 that doesn't -- a wheel, or something like that, it's
6 going to make a problem for the machine.

7 The first thing you do is you look and pull out
8 the bad stuff, then it goes to the screen. This is a
9 2011 plan. Then it goes to the screen to basically take
10 out the grass. When you try to chop stuff up, grass --

11 (Interruption by the court reporter.)

12 MR. BOONE: Grass is already chopped up into
13 smaller pieces, but if you try to put it through, you put
14 it through the grinder, you're going to wear the grinder
15 out. Then you have to resurface the cutting blades.
16 That's time and money. So you have a screen here, and
17 the grass comes out. That gets rejoined to this other
18 material when you make the compost.

19 In the 2011 plan, the idea is sort, separating
20 the clean organics. We have simple hand-picking screen,
21 and we make a high-grade compost for any use,
22 agricultural and all that stuff.

23 The current plan which relies on this kind of
24 machinery to separate organics, usable organics from
25 garbage, is a much more complicated thing. The input is

1 garbage, including organics and recyclables. This is not
2 done by hand. This is done by complex machines, and you
3 end up with a low-grade compost which has no agricultural
4 use. There's too much crap in our garbage that gets
5 mixed with the organics. When you come out of that,
6 what -- the end stuff that's going to be compost is going
7 to have all kinds of contaminants in it. We are more and
8 more recognizing that. I've learned a lot from a guy in
9 Italy who's been working on this for years. It's all
10 fairly recent stuff. We're just getting started on this
11 in this Country, so it's kind of new.

12 THE COURT: So your argument is that the
13 machines can't do what the humans can do when sorting.
14 Is that what you're --

15 MR. BOONE: Well, all the humans are doing here
16 is sort of picking, like people -- if you've ever worked
17 at a fruit packing shed where people pull out the fruits.

18 THE COURT: So why is it a lower grade?

19 MR. BOONE: Why is this a lower grade, because
20 it's too much heavy metals, various chemicals. Actually,
21 Enzo is gonna be in San Diego next week. I'm going down
22 to talk to him. He has a report he came out with --
23 shows all the things they've learned in Europe about this
24 mixed-waste processing. I won't say it's dangerous, but
25 it's just an unnecessary complication.

1 The real question is can we get the public to do
2 the right thing, to use the green cart the way you and I
3 do. In Palo Alto they did a study, single-family homes
4 in Palo Alto. 95 percent of the households are compliant
5 with these three-cart rules, but when you come to the
6 multi units, when it comes to rentals --

7 (Interruption by the court reporter.)

8 MR. BOONE: 25 percent of the County population,
9 that's 60 percent are poor people, they move around.
10 They don't have a lot of stake in the neighborhood, in
11 the community, so they tend to be slow to get on board.
12 There's a lot of language problems. I used to go through
13 the trash a lot. I found trash looks like what I used to
14 see in Hong Kong. People come from Hong Kong here, they
15 deal with the trash the same way they used to. You have
16 to get to those people. Okay. I think I've said enough
17 on that. Okay. I've said enough.

18 THE COURT: Okay. Thank you.

19 MR. BOONE: But I think this project -- I don't
20 think this project is a bad project. I think the part
21 that I liked was -- I like the 2011 project a lot. I did
22 not like the 2017 project. Then I had to find a hook to
23 hang it on in the CEQA, because what I think is not what
24 CEQA worries about. What I look at was two things: One
25 was project alternative, neither the Authority nor the

1 City of San Leandro ever said if we ever build this
2 what's going to happen. All this stuff is currently
3 being turned into compost, not the stuff in the garbage.
4 That's the stuff that's loose out there.

5 And the second question is: Is this project the
6 same as that project. What CEQA says, or the sheet says
7 is a significant difference. Everybody, for some
8 reason -- I don't understand how you can look at this and
9 this and say they're the same.

10 And I have an expert here in the room who could
11 talk about this if you want to listen to him a few
12 minutes. But basically, these are -- this is a
13 significant change. In my opinion, this should have
14 gone back to the City of San_Leandro when they got this
15 far, and said, hey, we don't want to do this. We want to
16 do this. Is that okay with you.

17 If you read the 2011 stuff, they never discussed
18 anything about the methane, how much methane it would be.
19 Methane is what caused the pipelines to blow up in
20 San Bruno. Methane is what poisoned all those people in
21 Aliso Canyon. This is the largest single driver -- the
22 largest single driver in the Country, in the State, and
23 it has to be watched. That's all. We have to make sure
24 that all the proper controls are in there to make sure
25 that nobody is going to get hurt. And I don't want an

1 explosion on Davis Street. Thank you.

2 THE COURT: Thank you.

3 MR. SCHEXNAYDER: Edward Schexnayder for the
4 Management Authority. Your Honor, first I'd like to
5 briefly reply to some of the points that Mr. Boone just
6 made. First, this diagram and the discussion -- between
7 2010 and 2017, and the discussion about how waste
8 disposal occurs in the City of Oakland, and etcetera,
9 none of this is in the record anywhere. None of that was
10 before the Authority. All of his arguments are basically
11 policy arguments that don't go to the CEQA cause of
12 action here. So we'd ask the Court to disregard that.

13 Additionally, there were a couple of CEQA points
14 that Mr. Boone raised briefly. He raised the concept of
15 product alternative. I would encourage the Court to look
16 back at our opposition brief where we point out the
17 question of whether there is an alternative to the
18 project, only comes up when an agency is preparing an
19 environmental impact report, which is a fundamentally
20 different process than what was going on for this
21 approval. So it's a separate question for a separate
22 part of CEQA.

23 Additionally, he's asserted that the 2011
24 process didn't talk about methane or consider its
25 potential impact. That's actually not true. Throughout

1 the Negative Declaration, the City of San Leandro
2 discussed the methane byproduct from composting, and how
3 that was when we captured and reused in renewable energy
4 waste. So it was fully considered then, as it is now.

5 And I'd also like to briefly turn to a couple of
6 the points that Petitioner Stein's counsel made. First
7 on the exhaustion issue, Petitioner Stein had mentioned
8 the word "digestate" and said that she has raised
9 concerns about digestate. Two points there, percolate
10 and digestate actually are different. Percolate is a
11 liquid product in the composting and digestion process.
12 Digestive is the solid product that comes out of that, so
13 our reference to digestate does not equate to a reference
14 to percolate.

15 Second, just saying the words digestate or
16 percolate, or nasty stuff, or whatever you want to call
17 it, is not enough to --

18 (Interruption by the court reporter.)

19 MR. SCHEXNAYDER: -- exhaust your administrative
20 remedy. What you need to do is say that we have a
21 concern that there is excess percolate that will somehow
22 enter ground water, and in a way that will contaminate
23 water quality in this way, in a specific way, not just
24 generally. And that is nowhere in the administrative
25 record, and that is why --

1 THE COURT: Well, I mean, he cited to a specific
2 page.

3 (Interruption by the court reporter.)

4 MR. SCHEXNAYDER: I apologize.

5 THE COURT: He cited to a specific page in the
6 record, 439.

7 MR. SCHEXNAYDER: Yes, your Honor. And if you
8 will look at Petitioner Stein's counsel's letter on, I
9 believe it starts on 439, and it's a seven-page letter,
10 and if you like, we can read through it all right now.
11 But if you'd look through it, there is no mention of
12 cites of percolate impacting water quality.

13 THE COURT: Then let me ask petitioner's counsel
14 to be more specific when you mentioned that as the cite.

15 MR. ABDELNOUR: Yes, your Honor. I was
16 referring to 444. And I, you know, as, as not an expert
17 on the technicals, I may have, I may have
18 mischaracterized the equivalence of digestate and
19 percolate. But, but if those are different materials,
20 then I understand Mr. Schexnayder's point. There is a
21 discussion at the top of 444 --

22 (Interruption by the court reporter.)

23 MR. ABDELNOUR: There's a table on that page,
24 and in the right-hand column, it states, "The slurry will
25 be dewatered to create a solid feedstock for digesters

1 and a liquid feedstock for high rate up-flow digestion.
2 Digestate produced from digesters will be dewatered to
3 generate approximately 25 percent solid material," and it
4 goes on. And that's from the 2017, that's from the 2017
5 project.

6 The 2011 Negative Declaration doesn't mention
7 the word "digestate." So to the extent that counsel is
8 arguing, as he did earlier, that that was previously
9 analyzed, it wasn't. And, you know, again, this is --
10 and I don't want to get too far afield from your Honor's
11 question, but what we're talking about here is post hoc
12 explanations of what the record says, your Honor.

13 MR. SCHEXNAYDER: And to respond, your Honor,
14 what we're talking about specifically here is an
15 exhaustion issue, and whether this has raised -- when you
16 look at this column, you don't see water quality impact
17 anywhere. You don't see any type of water quality
18 impact. You don't see percolate. And that's the issue
19 that is in the tentative ruling. That's the issue that
20 petitioners raised for the first time in their
21 supplemental brief, and we just truly encourage the Court
22 to look closely at that.

23 Additionally, just to petitioner counsel's
24 assertion about post hoc explanations, when I spoke
25 before about the difference between, there being a

1 difference between percolate and water, that difference
2 is seen in the Negative Declaration on page 45. The
3 tentative ruling says, "Assuming percolate is water,
4 there could be an impact." There is no basis in the
5 record to make that assumption. And on page 45, there's
6 no description that those two things are the same.

7 And I just wanted to read briefly what the, the
8 initial study says about percolate. On 45, it says that
9 "It's handled in a closed-loop system," suggesting that
10 it doesn't go anywhere else. It doesn't go into
11 wastewater.

12 On, on page 22, it says, "Percolate is collected
13 and stored in tanks. The percolate is then recycled as
14 part of the compost process." So if it's being used and
15 recycled in the compost process, and petitioners are
16 alleging that the compost process is increasing, then
17 necessarily that is going to consume more percolate.

18 So there's, again, nowhere in here is there
19 evidence that there's going to be some sort of discharge
20 into the wastewater system that will cause a significant
21 environmental impact. Thank you.

22 THE COURT: Is there anything else?

23 MS. LEISY: Your Honor, just briefly.

24 THE COURT: Yeah.

25 MS. LEISY: I appreciate Mr. Boone's comment

1 that this is not a bad project. And just wanted to
2 direct the Court to the opposition brief where we cited
3 the California Code of Regulations, Title 14, which
4 includes very detailed requirements for compost quality,
5 that's both for composting operations and handling, and
6 also, for in-vessel digestion operations. And those
7 regulations were recently updated to be much more
8 stringent than they were in the past. They have metal
9 limits, they have pathogen limits. So the claim that
10 this material, because it involves municipal solid waste,
11 and extracting organics out of that process will result
12 in dangerous or health and safety concerns, compost at
13 the output is regulated already by State law. And there
14 is also requirements for sampling, and before that
15 compost is sold, for use like in people's gardens and
16 things like that. So there's already a very elaborate
17 regulatory scheme that the Authority reasonably did not
18 venture into to ensure health and safety.

19 And again, just recounting on Mr. Abdelnour's
20 comments -- and Mr. Schexnayder is correct that the
21 Authority do not need to include a very, as detailed, you
22 know, description of the project as the City lead agency
23 did in terms of, you know, quantifying input and output.
24 The recipe, maybe I didn't explain, you know, clearly
25 enough, because I'm a horrible cook. But what I meant by

1 that was the amount of each material as it goes into the
2 process can't always be known, because it depends on the
3 amount of material received at the site. So it's not
4 that, you know, the project description was ambiguous or
5 wishy-washy. There were certain assumptions made, based
6 on what's known in the existing waste stream, but not
7 necessarily to the degree where you can say, well, we're
8 going to need, you know, X amount of green waste all the
9 time, to go into the mixed materials and organics into
10 the composting facility. So that's what I meant, you
11 know, by "The recipe."

12 With respect to the argument that the Authority
13 and Waste Management did not explain that there would
14 need to be a nearly three-fold increase in the square
15 footage size of the building, there's no duty to exhaust,
16 you know, arguments or logic at the administrative level
17 for an administrative agency as there is the duty to
18 exhaust at the administrative level by an opponent of a
19 project, so there's no authority for that.

20 And I just want to also direct the Court to the
21 Abatti versus Imperial Irrigation District. This was
22 cited in our opposition brief. The facts are
23 distinguishable, but I think it's worthy of review
24 because it involved an agency that found an approval of a
25 resolution a couple years after the fact for water to be

1 distributed during times of drought, to be within the
2 scope of a previously adopted initial study, Neg. Dec.
3 And that's what the Authority did here.

4 It's very different from the Sundstrom versus
5 County of Mendocino case that petitioner's rely heavily
6 on, which involved an agency in the initial instance, you
7 know, approving a private sewer system plant on a
8 barebones Neg. Dec., and deferring the mitigation and
9 analysis to a future study that had not yet been
10 prepared. So there's, you know, a vast difference in the
11 authorities.

12 Then, just lastly, if we haven't been, you know,
13 persuasive enough for the Court to reverse its tentative
14 on this one issue, I wanted to direct the Court's
15 attention to Public Resource Code section 21168.9. And
16 while we urge the Court to consider and reverse its
17 tentative, there is this ability of a Court, if you find
18 as a result of a trial, hearing, or remand, any
19 determination or finding of a public agency has been made
20 without compliance with CEQA, that you can issue a
21 mandate for that agency to take a specific action as may
22 be necessary to bring the determination, and finding, or
23 decision, into compliance.

24 So the Court has discretion to require the
25 Authority, maybe to include a condition as part of its

1 amendment to the CIWMP, similar to what the LEA required
2 in the Solid Waste Facility Permit, which the Court
3 recognizes in its tentative is more explicit, limiting
4 the onsite composting to 350 tons per day. We don't urge
5 the Court to do that, but if you should so desire, that
6 is within the discretion. Thank you.

7 THE COURT: That was 21168.9?

8 MS. LEISY: Correct. And it's subdivision -- I
9 just had it, subdivision (a)(3). Thank you, your Honor.

10 THE COURT: Okay. Did you have anything else?

11 MR. ABDELNOUR: Yes, your Honor. I'd just like
12 to very quickly and briefly respond to the latest point
13 by Ms. Leisy regarding that section 21168.9.

14 THE COURT: Yeah.

15 MR. ABDELNOUR: If the Court is inclined to, to
16 follow that route and send it back to the agency for a
17 specific task --

18 THE COURT: M-hm.

19 MR. ABDELNOUR: -- that the Court allow
20 petitioners to be heard on that as well, whether it's
21 through additional briefing or some other manner with
22 respect to what would satisfy that requirement.

23 THE COURT: Okay. I'm -- yes, Mr. Boone.

24 MR. BOONE: During the first hearing, I did, I
25 did object to the fact that there was no third-party

1 alternative consideration of the project, which is
2 similar to the no-project alternative. It wasn't
3 expressed in exactly the CEQA language, but I think in
4 terms of, if you go back and look at the transcript of
5 the first hearing, I can get you the AR number if you'd
6 like, but I did object to that at that time.

7 THE COURT: Okay. Thank you.

8 I'm going to propose we take five, ten minutes.
9 I want to review my notes and see if I have any questions
10 before we conclude the hearing. Okay. Thank you.

11 (Recess taken.)

12 THE COURT: All right. I will go back on the
13 record. A few final questions from the Court. I'm going
14 to begin with Ms. Leisy. I'd like you to repeat for me
15 something that you said with regard to, this has to do
16 with the excess water and being put into the sewer
17 system, and you said that it had to comply -- I think you
18 said there were three requirements. Could you repeat
19 what you said there. You mentioned Title 23.

20 MS. LEISY: Okay. Yes, Title 23 of the
21 California Code of Regulations is what typically
22 regulates water quality.

23 THE COURT: What in particular would be required
24 here?

25 MS. LEISY: Discharge requirements to the sewer

1 system. Unfortunately, we don't have any of that in the
2 record because it wasn't --

3 THE COURT: Okay.

4 MS. LEISY: -- raised.

5 THE COURT: Okay.

6 MS. LEISY: But generally speaking, it is Title
7 23 of the Regs that apply, and then I don't recall saying
8 any other point.

9 THE COURT: All right. And then if you'd also
10 clarify, I'm still having trouble understanding the
11 argument that if you're increasing the -- assume you're
12 increasing the volume, which would -- why wouldn't it
13 generate more excess water? You seem to just say that
14 that was an illogical conclusion, that the difference in
15 amount of material being composted would not necessarily
16 have any effect on the amount of excess water. Why
17 wouldn't there be a correlation?

18 MS. LEISY: Well, because most of the water that
19 is generated, or the percolate that's generated is
20 reused.

21 THE COURT: Yes, but a certain amount of it
22 you're conceding is not, which is why it's going into the
23 sewer.

24 MS. LEISY: So if you have water, other water
25 from the site washing down pads, like concrete pads --

1 THE COURT: Okay.

2 MS. LEISY: -- flushing that water into the
3 drainage system, there's other sources of water on the
4 site rather than just the 8D process or the composting
5 processes.

6 THE COURT: So are you telling the Court that
7 all of the water through the composting process is in
8 this closed-loop system, and none of the excess water is
9 coming from that?

10 MR. SCHEXNAYDER: Your Honor, if I may.

11 THE COURT: Yeah.

12 MR. SCHEXNAYDER: So there are two different
13 pieces of the process. So there's the anaerobic
14 digestion process, and that's where the percolate is in
15 the closed-loop systems.

16 THE COURT: Okay. And none of that leaves.

17 MR. SCHEXNAYDER: Right. And the closed loop,
18 but there's also the composting process. And percolate
19 can be used. In the initial study that describes, it can
20 be used to feed the composting. So composting, actually,
21 because of the breakdown, organic breakdown of material,
22 it takes in water. It's not really a water producer. It
23 needs water, so it's fed into that process.

24 THE COURT: Okay.

25 MR. SCHEXNAYDER: But as Ms. Leisy was saying,

1 there's, there's other sources of water, and storm water,
2 you know, from rainfall on the site that occurs, and so
3 there's a storm water management plan, and then excess
4 water goes into the sanitary sewer system. But
5 there's -- the only description of a percolate in the
6 record is a -- which is on pages 22 and 45 of the record,
7 talks about recycling it for the composting process. It
8 talks about it being in a closed-loop system. There's no
9 statement that there's an excess that is being
10 discharged.

11 THE COURT: Okay. Thank you.

12 And I want both sides to respond to this next
13 question. If the Court were to find that there was no
14 significant environmental impact, regardless of whether
15 there was a substantial change, the substantial change
16 argument is no longer critical, right?

17 MS. LEISY: Right.

18 THE COURT: Agreed?

19 MR. ABDELNOUR: Agreed, your Honor, to the
20 extent that there is -- that the potential for
21 environmental impact has been analyzed and that
22 determination has been made.

23 THE COURT: But you only have to do that if
24 there's a substantial change.

25 MR. ABDELNOUR: Correct.

1 THE COURT: Okay. So, but if the Court were to
2 find there was a substantial change, but there was no
3 significant environmental impact, then, I mean, the whole
4 finding on the substantial change is almost irrelevant,
5 right? I mean, that's -- it's just the, it's just the
6 first step of the --

7 MR. ABDELNOUR: Right. And the second step, the
8 finding no environmental impact, based on the evidence in
9 the record, correct.

10 THE COURT: And if the Court were to find that
11 it's unclear whether there was a substantial change, if I
12 end up, that being my finding, that it is unclear,
13 however, there's no significant environmental impact,
14 same result?

15 MR. ABDELNOUR: Think of how that squares with
16 the fair argument standard that the Court analyzed in the
17 ruling. You know, we're talking about a Negative
18 Declaration as the initial review document, as opposed to
19 an EIR, so the standard is whether the evidence supports
20 a fair argument, and that's what's before the Court. And
21 if the Court doesn't think there's a fair argument, then
22 certainly, you know, that would, that would be one path.
23 And if the Court, you know, has not changed its mind on
24 that point from the tentative, then it takes you down
25 another path.

1 THE COURT: Changes its minds on what point?

2 MR. ABDELNOUR: On the fair argument point from
3 the tentative.

4 THE COURT: Okay. Mr. Boone.

5 MR. BOONE: There's two ways organics gets to
6 Davis Street. One is by -- well, three ways. One is by
7 company trucks. That's all green waste from people's
8 houses and businesses. The second way is people, people
9 who work in maintenance and landscaping and stuff, bring
10 stuff in their own trucks, and dump it out there, and
11 that's -- the third way is stuff mixed in with garbage.
12 What nobody knows is how effective these machines are at
13 separating the organics materials from the garbage
14 materials.

15 THE COURT: Okay.

16 MR. BOONE: What they don't know is when you put
17 that stuff in the tank, and you leave it there for three
18 weeks, there's all kinds of microbes crawling, turning
19 the organic materials into compost. What happens to the
20 plastic materials that are in there? And what Toni
21 worries about a lot is the fact that these plastics have
22 all kinds of additives in themselves and stuff like that
23 and will migrate out of the plastics into the compost,
24 and that's what we hear is happening in Europe. People
25 don't want to deal with the stuff. Farmers don't want

1 it. If you want to put it on the roadside, that's okay.
2 If you want to put it in a sanitary landfill that's
3 covered for that, that's okay. But you don't want to put
4 it in food crops soil. There's more and more consensus.
5 I wouldn't want you to be embarrassed five years from
6 now, you say it's okay, when we all recognize it's not
7 okay. But I can tell you that the scientists so far in
8 this Country, that everybody in the scientific community
9 would say, who is this lady, what is she doing. That's
10 all. Sorry.

11 THE COURT: Thank you.

12 MR. SCHEXNAYDER: Your Honor, may I respond
13 briefly on the fair argument issue?

14 THE COURT: Yes.

15 MR. SCHEXNAYDER: And I wanted to clarify this
16 because this has actually been an evolving area of the
17 law very recently. The standard isn't unfortunately
18 super clear in the caselaw, but we actually differ from
19 the petitioner's assertion of how the argument standard
20 plays into this question. And I want to use this to
21 illustrate, as the Court notes, it's a two-step question.
22 Is there a substantial change, and the second point, a
23 new significant environmental effect.

24 And we agree with the petitioners on the second
25 question, which is the fair argument standard, and argue

1 that there's no substantial evidence to support a fair
2 argument of that impact.

3 But on this first question, we disagree with
4 petitioners if that's the fair argument standard. We
5 believe that if you look closely at the supreme court
6 San Mateo Gardens case, and the Abatti decision that
7 Ms. Leisy referenced earlier today, both of those cases
8 say the question of whether there is a change to the
9 project is still subject to the agencies reviewing the
10 first instance, and the Court reviews the agency's
11 determination for substantial evidence. So even if
12 petitioners have their own contradicting evidence of a
13 change, that's not enough. All there has to be is
14 substantial evidence to support the agency's
15 determination on that first step.

16 And we understand that the law is not clear
17 there because the recent caselaw somewhat blurs the
18 standards of review, but the Abatti decision was not
19 overturned by the supreme court in the San Mateo Gardens
20 decision, and remains good law, and is very clear on that
21 issue, with that first step is a different standard of
22 review than the fair argument standard.

23 THE COURT: Okay. Thank you.

24 MR. BOONE: Rebuttal, please.

25 THE COURT: Yes.

1 MR. BOONE: 30 seconds. If you look at the
2 administrative record, you will see a series of questions
3 from Teresa Eade, E-A-D-E, who is an employee of the
4 Authority. She is their composting expert, and she asked
5 Mr. Tacket (phonetic) a bunch of questions about what,
6 what do we know technically about this compost that's
7 gonna come out of this mixed waste processing. There is,
8 to my knowledge, there is no expansive or clarifying or
9 technical answer from him in the administrative record.
10 Follow that?

11 THE COURT: M-hm.

12 MR. BOONE: So if there's somebody who really
13 understands a little bit about that stuff, was to ask
14 that question, they would say that Mr. Tacket's response
15 was nonresponsive. That's what I would characterize it,
16 but you can read it yourself. And I can get you the page
17 number if you need it. But I have it. She's in the AR.
18 Her questions were in the AR. There are no answers in
19 the AR, except in very broad and general statements.

20 THE COURT: Okay.

21 MR. ABDELNOUR: Your Honor, can I very briefly
22 respond on the import, the case cited by Mr. Schexnayder,
23 the Friends of the College of San Mateo.

24 THE COURT: Yes.

25 MR. ABDELNOUR: So what that case says, and it's

1 cited in both parties' briefs.

2 THE COURT: Talking about one or two?

3 MR. ABDELNOUR: That's two, 2017 I believe.
4 That the, the substantial evidence standard she's
5 referring to in reviewing the question about substantial
6 changes, the judicial review of that question must
7 reflect the exacting standards that an agency must apply
8 when changes are made to a project that has been approved
9 via a Negative Declaration, which is what we have here,
10 as opposed to through an EIR. In the Sundstrom case,
11 which has also been cited, and which is cited in the
12 tentative ruling, states that deficiencies in the record
13 can enlarge the scope. And the second question, which is
14 the fair argument question that we previously talked
15 about.

16 THE COURT: Right.

17 MR. ABDELNOUR: So if the Court doesn't find
18 that the agency applied an exacting review, then that,
19 that decreases the judicial deference given to the
20 agency's finding on that first question.

21 THE COURT: I see. Okay.

22 MS. LEISY: Your Honor, just briefly. I think
23 just to close the loop on that, I'd like to read a
24 passage from the Friends of College of San Mateo Gardens.
25 This is at 11 Cal.App.5th 596, page 607, and it says, and

1 it's going through the two-prong test, "When we apply the
2 first standard, we ask whether substantial evidence
3 supports an agency's decision to proceed under CEQA's
4 subsequent review provisions. The standard requires us
5 to approve the agency's determination when it is
6 supported by substantial evidence, even if other evidence
7 undermines the determination. Similarly, if a project
8 was originally approved by EIR, we affirm the agency's
9 determination whether subsequent or supplemental EIR is
10 required, when the determination is supported by
11 substantial evidence, even if there's --" you know,
12 "evidence to the contrary."

13 So in the beginning it's talking about there's a
14 two-prong test that's still there is deference as to
15 whether or not there's a substantial change. And then
16 you apply the fair argument, you know, if you think there
17 has been. So I think that's what Mr. Schexnayder was
18 referring to.

19 MR. SCHEXNAYDER: Right. And it's important to
20 understand that in San Mateo Gardens, it was essentially
21 conceded by all the parties that there had been a
22 substantial change. The question in this case is whether
23 there was a fair argument of a significant impact. So
24 that's why I think the Abatti decision which predates
25 that case was not overturned. And I think the supreme

1 court case, the decision, or the court of appeal is --
2 remand. But I think the supreme court case is more
3 important because it's doesn't overrule Abatti. It
4 actually cites Abatti in a footnote. And Abatti is very
5 clear that the question of whether there's a substantial
6 change is the standard substantial evidence supporting
7 the agency's determination. It's not the fair argument
8 standard.

9 THE COURT: Okay. All right. Then somewhat
10 related to that question by the Court, I wanted to talk
11 about this Public Resources Code section 21168.9(a)(3).
12 And so if the Court were to find that it's, that it's
13 unclear whether there is a substantial change, but if
14 the -- could the Court then order the Authority to bring
15 it's, to bring its finding into compliance by
16 identifying, as did the LEA permit, including a condition
17 that the OMCF is limited to producing 350 tons of compost
18 per day, but making explicit, what you're saying is
19 implicit, why shouldn't the Court do that if it, if there
20 is this confusion?

21 MS. LEISY: Well, I think the Court would first
22 have to find substantial evidence of a new significant
23 impact, which if the Court is uncertain --

24 THE COURT: I would? Why would I have to find
25 that? Where does the section require that?

1 MS. LEISY: No, this section is a remedy
2 provision under CEQA.

3 THE COURT: Okay.

4 MS. LEISY: So if the Court finds that an agency
5 abused its discretion --

6 THE COURT: Okay.

7 MS. LEISY: And in this instance, if the Court
8 were to find that there is substantial evidence of a new
9 significant impact because of the ambiguity in the
10 project description --

11 THE COURT: But that would be a basis to find a
12 significant environmental impact.

13 MS. LEISY: Right. I would assert that the
14 Court does not even get to 21168.9(a)(3) as a remedy
15 provision, because if you don't find substantial evidence
16 in support of a new significant impact, then this section
17 becomes irrelevant, and you should deny the petition.

18 MR. ABDELNOUR: And, your Honor --

19 THE COURT: I know you said you wanted
20 additional briefing on it, but what is your thought?

21 MR. ABDELNOUR: Well, my thought, initially, is
22 that on the environmental impact prong, the standard is a
23 fair argument, not, not the fully deferential to EIR
24 substantial evidence. And as far as the interplay
25 between 21168.9(a)(3) that you cited and how that, how

1 that impacts this analysis, I would request the
2 opportunity to brief that. I apologize. I wasn't -- I'm
3 having trouble finding that section in front of me to
4 look at the verbiage. Thank you.

5 THE COURT: But wait, maybe before you go on I
6 should have Ms. Leisy expand.

7 And on what would be the point? You're saying
8 that you don't want -- this is obviously not
9 affirmatively seeking this, but that if the Court were
10 inclined to grant the petition, then you'd ask for this.
11 What would you be asking the Court to do then?

12 MS. LEISY: To issue a limited writ, a very
13 surgical limited writ to the agency saying, because, you
14 know, this description is not clear, that it adopts a
15 condition similar to what the LEA adopted as part of the
16 Solid Waste Facility Permit, that the 350 tons per day of
17 compost on site is the maximum.

18 THE COURT: Okay.

19 MS. LEISY: But I think, again, the Court will
20 only get to this remedy provision if it finds that either
21 there was a substantial change, or --

22 THE COURT: But how could I -- that seems
23 contradictory. If I were to find that there was a
24 substantial change, so you're saying I would be finding
25 it based on the records that I have, but I --

1 MS. GALANTER: Your Honor, maybe I can clarify,
2 Tamera Galanter. So this is a remedy section. In
3 order -- I think what Ms. Leisy is saying is that the
4 Court never gets to 21168.9, unless it first finds,
5 number one, that there isn't substantial evidence
6 supporting the Authority's determination that the project
7 had not significantly changed. So that's prong one.

8 And secondly, the Court finds that as a result
9 of that change, there's substantial evidence of a fair
10 argument, that that change would result in significant
11 environmental impacts.

12 THE COURT: Okay.

13 MS. GALANTER: So once it gets to that, then the
14 next step -- and this is often done, you know, and argued
15 over after the fact. Often the Court comes out with its
16 judgment and its order, and then the parties are
17 disagreeing about what the remedy should be in the event
18 of a violation. But if it gets to that point, in a
19 typical CEQA case, what typically happens is the Court
20 just sets aside the approval and finds that the
21 environmental document didn't comply with CEQA, and
22 that's the end of it, and leaves it to the agency to
23 determine what to do as a result of that ruling.

24 What 61168.9 does is it provides this
25 alternative remedy where the Court can carve out and

1 provide the least amount of disruption to the agency that
2 would allow it to fix the problem that was identified by
3 the Court.

4 THE COURT: So you're saying, are you saying it
5 would deny the petition but require this to happen? No.

6 MS. GALANTER: No. In order to even get to
7 21168.9, the Court -- and realistically, the Court
8 shouldn't even think about 21168.9 until it goes through
9 the step process and determines whether or not there was
10 a violation of CEQA, and whether or not a new
11 environmental review should have been done because of a
12 substantial change in the project that resulted in new
13 substantial, significant impacts.

14 THE COURT: Okay.

15 MS. GALANTER: Okay. So once it gets to that
16 point, and only when it gets to that point, if it
17 answers, yes, to each and every one of those questions,
18 then it is faced, the Court is faced with a question of
19 what should I do now, what remedy should I order. And
20 that's when we look.

21 THE COURT: Tell me what, if any, harm the Court
22 would do if it still finds confusing whether there's been
23 a change in the volume on the record?

24 MS. GALANTER: Right.

25 THE COURT: But also finds that even if there

1 were, there's been -- that there, there's no fair
2 argument that there would be a significant environmental
3 effect?

4 MS. GALANTER: Then, your Honor --

5 THE COURT: What harm, if any, would the Court
6 be doing to the litigants in this case if that were the
7 final outcome?

8 MS. GALANTER: Well --

9 THE COURT: I would be denying the petition on
10 those grounds.

11 MS. GALANTER: Exactly. And the Court obviously
12 has to follow the law, and the law, you know, to the
13 extent it made both of those findings, then the only
14 result that would be appropriate in the circumstance by
15 the Court is to deny the petition.

16 THE COURT: Is there anything in that order that
17 would do harm later to this project?

18 MS. LEISY: I mean, I think in reality the
19 project cannot be stopped, because the Authority's CIWMP
20 amendment was really only necessary in order for our
21 client to get the Solid Waste Facility Permit, and that
22 solid waste permit has been issued. Really, if you were
23 to issue a writ, and, you know, depending on the scope,
24 I'm sure petitioners will file a 1021.5 motion for
25 attorney's fees, and, you know, either if that writ gets

1 appealed or other, you know, remedies are found. But the
2 harm to our client is really, and to the Authority, is
3 having to go back to the Authority and in whatever
4 fashion the Court orders, for them to revisit that
5 decision -- potential for attorney's fees. But it's not
6 going to stop the project in and of itself. Petitioners
7 would have to get an injunction or a stay. They have not
8 filed one of those. You would have to show a likelihood
9 of success on the merits, and whatnot, and typically,
10 that would have happened before this point.

11 THE COURT: Okay.

12 MR. SCHEXNAYDER: And from the Authority's
13 perspective, your Honor, the -- two thoughts, first, the
14 Authority can't in the writ, it can't stop the project
15 because it's not a permit agency. It doesn't issue a
16 permit to allow it to move forward, but also, the idea of
17 sending it back, but I mean, that's a new public process
18 that, that takes public resources. And it takes time for
19 Authority's staff and the board. So I'm not saying
20 that --

21 THE COURT: I'm not talking about the effect of
22 granting the petition. I'm talking --

23 MR. SCHEXNAYDER: The effect of denying the
24 petition --

25 THE COURT: -- denying it, but not making it a

1 finding other than lack of clarity on that. It's the
2 1021 issue, period.

3 MR. SCHEXNAYDER: That doesn't even arise if
4 there's no, there's no basis for -- petitioners haven't
5 prevailed if you've denied the writ.

6 MR. ABDELNOUR: Your Honor, may I respond.

7 THE COURT: Sure.

8 MR. ABDELNOUR: I would characterize the harm
9 very differently in that situation. I think what, the
10 harm that flows from that decision, such a decision,
11 would be a signal that when the record is unclear as to
12 changes in a project, an agency in coordination with the
13 proponent of the project can simply disregard that and
14 shift the burden back on the public to do the review for
15 it, that it's his burden to do. And, you know, as I
16 heard Ms. Leisy, you can't stop the project, you know,
17 trust us, we know what we're doing. And that completely
18 thwarts the purpose of CEQA.

19 MS. LEISY: Your Honor, I would respectfully
20 submit that had petitioners wanted to stop the project,
21 they would have challenged the Solid Waste Facility
22 Permit, or the CUP, which they did not do.

23 THE COURT: Mr. Boone, you wanted to say
24 something.

25 MR. BOONE: One more time. Nobody in the City

1 of San Leandro has ever seen this plan, officially. If
2 the City of San_Leandro saw this plan, there's no
3 discussion in the, in that whole document that appeared
4 before them on January 4th, 2011, that this is anything
5 but clean material, okay. So this is a whole new plan.
6 It's a significant, substantial change, and there is not
7 any good evidence anywhere in this Country about what
8 that material is like. But in Europe, people are getting
9 away from this in a big way. That's all.

10 THE COURT: Thank you. The Court's going to
11 take the matter under submission. Thank you, everybody.

12 MS. LEISY: Thank you, your Honor.

13 MR. ABDELNOUR: Thank you, your Honor.

14 //

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16 (Whereupon the proceedings were concluded.)

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1 STATE OF CALIFORNIA)
)ss.
2 COUNTY OF ALAMEDA)
3

4 CERTIFICATE OF OFFICIAL REPORTER

5 I, LINDA SHRYACK, CSR No. 12104 a duly qualified
6 and acting Official Pro Tem Shorthand Reporter of the
7 Superior Court of the State of California, in and for the
8 County of Alameda, do hereby certify:

9 That I acted as the Certified Shorthand Reporter
10 in the case of STEIN, ANTOINETTE W., et al. versus
11 ALAMEDA COUNTY WASTE MGMT AUTHORITY, No. RG17858423.

12 That I took down in shorthand writing the
13 testimony and proceedings had therein.

14 That thereafter I transcribed the same into
15 typewriting.

16 That the foregoing pages 1 through 70,
17 inclusive, comprise a full, true and correct transcript
18 of proceedings had.

19 Dated this 22nd day of March, 2018.
20
21
22

23 _____
LINDA E. SHRYACK, CSR No. 12104
24 Official Pro Tem Shorthand Reporter
County of Alameda
25 State of California

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