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12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

13 COUNTY OF VENTURA

14 SIMI VALLEY LANDFILL EXPANSION)
15 TASK FORCE, an unincorporated)
16 association,)

17 Petitioner and Plaintiff,)

18 v.)

19 COUNTY OF VENTURA,)

20 Respondent and Defendant.)

21 WASTE MANAGEMENT OF)
22 CALIFORNIA, INC.,)

23 Real Party in Interest.)
24)
25)
26)
27)
28)

CASE NO. 56-2010-00383360-CU-
WM-VTA

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF DEMURRER OF
REAL PARTY IN INTEREST TO
PETITION FOR WRIT OF
MANDATE**

ASSIGNED FOR ALL PURPOSES:
Hon. Kent M. Kellegrew
Department: 40

Hearing Date: December 13, 2010
Time: 8:30 a.m.

Filing Date of Action:
October 13, 2010

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INTRODUCTION

Real Party in Interest WASTE MANAGEMENT OF CALIFORNIA, INC. (Real Party or WM) demurs to the Petition for Writ of Mandate Under C.C.P. §1085 and Complaint for Violation of C.C.P. §526a (Petition) filed in this action by Petitioner SIMI VALLEY LANDFILL EXPANSION TASK FORCE (Petitioner).¹ Petitioner has failed to allege, and is unable to allege, specific facts showing that the Respondent COUNTY OF VENTURA (the County) acted improperly in its continuing review of the Simi Valley Landfill and Recycling Center expansion project (the Project) such that Petitioner is entitled to relief under California Code of Civil Procedure sections 526a or 1085. Petitioner's cause of action under California Code of Civil Procedure section 526a fails as a matter of law because the County has entered into a reimbursement agreement with WM whereby no tax dollars are expended for the Project. Petitioner's second cause of action fails as a matter of law as the California Department of Resources Recycling and Recovery (CalRecycle) has already determined the proposed Project consistent with the County's Countywide Siting Element (CSE) pursuant to Public Resources Code section 50001.

If sustained, the effect of Real Party's demurrer, filed pursuant to Code of Civil Procedure section 430.10, is to dismiss Petitioner's Petition, without leave to amend, for failure to state facts sufficient to constitute a cause of action and for being ambiguous and therefore uncertain. (Code Civ. Proc., § 430.10, subds. (e), (f).) Real Party joins in, and adopts as its own, the Demurrer to Petition for Writ of Mandate and the Memorandum of Points and Authorities in Support Thereof filed by Defendant/Respondent County of Ventura.

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STATEMENT OF FACTS

A. THE COUNTY'S PROCESSING OF THE SIMI VALLEY LANDFILL AND RECYCLING CENTER EXPANSION PROJECT (SVLRC) AND RELATED EIR DOES NOT INVOLVE AN IMPERMISSIBLE EXPENDITURE OF TAXPAYER DOLLARS AS EVIDENCED BY THE REIMBURSEMENT AGREEMENT BETWEEN THE COUNTY AND WM.

The Simi Valley Landfill and Recycling Center (SVLRC) is located in an unincorporated area of

¹ / The Simi Valley Landfill Task Force is not associated with, or acting on behalf of, the City of Simi Valley. The Landfill Task Force is an unincorporated community group. Although Barbara Williamson is both an officer of the Task Force and a sitting Simi Valley City Council member, she is not acting in her official capacity as a councilmember by pursuing this lawsuit.

1 southeast Ventura County, north of State Route (SR)-118 and west of the Madera 30 Road overcrossing.
2 (See excerpts from the SVLRC Recirculated Draft EIR, Executive Summary, p. ES-3, attached as
3 Exhibit J to the Declaration of Andrea K. Leisy in Support of Request for Judicial Notice (Leisy
4 Declaration).) The SVLRC is an existing Class II and III (non-hazardous) municipal solid waste (MSW)
5 landfill owned and operated by WM under Conditional Use Permit (CUP)-3142-7. (See excerpts from
6 the SVLRC Recirculated Draft EIR, Executive Summary, p. ES-3, attached as Exhibit J to the Leisy
7 Declaration.)

8 On April 13, 2007, WM submitted an application to the County proposing to expand the existing
9 SVLRC facility and construct a landfill gas to energy plant. The Project requires a revision to its existing
10 conditional use permit (CUP) and a revised Solid Waste Facilities Permit (SWFP) from the Ventura
11 County Resource Management Agency Environmental Health Division (EHD). (Permit Case No. LU07-
12 0048; Major Modification No. 8 to CUP-3142; See SVLRC Draft EIR and Recirculated Draft EIR
13 excerpts attached as Exhibit J to the Leisy Declaration; see also Solid Waste Facilities Permit 56-AA-
14 0007, attached as Exhibit M to the Leisy Declaration.)

15 The proposed Project requires a number of discretionary approvals. As such, the County, as lead
16 agency, must first complete an environmental impact report (EIR) for the Project pursuant to the
17 California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000, et seq.). (See excerpts
18 from the SVLRC Project Recirculated Draft EIR Executive Summary, p. ES-3, attached as Exhibit J to
19 the Leisy Declaration.) The County released a Notice of Preparation commencing the environmental
20 review process in 2007, over three years ago. The County released the Draft EIR for public review and
21 comment on September 28, 2009. (See Notice of Availability for the Simi Valley Landfill and Recycling
22 Expansion Project Draft EIR, attached as Exhibit K to the Leisy Declaration.) A Recirculated Draft EIR
23 for the Project was prepared and released for public review and comment on July 27, 2010. (See Notice
24 of Availability for the Simi Valley Landfill and Recycling Expansion Project Draft EIR, attached as
25 Exhibit L to the Leisy Declaration.) The County has not yet completed the Final EIR or considered the
26 merits of the Project for approval.

27 Prior to undertaking the environmental review process for the Project, the County and WM
28

1 entered into a reimbursement agreement for the consultant and staff time involved in processing the
2 application and environmental review necessary for the revised permits and EIR. The County is not
3 publically financing the costs associated with the environmental review process for the Project. (See
4 reimbursement agreement between County of Ventura Resource Management Agency and Waste
5 Management, Inc. for processing Permit Case No. LU07-0048 for the SVLRC Project, attached as
6 Exhibit A to the Leisy Declaration.)

7 **B. AS PART OF THE REVIEW PROCESS, THE COUNTY MUST FIND THE PROJECT IN CONFORMANCE**
8 **WITH THE COUNTYWIDE SITING ELEMENT AND CALRECYCLE MUST CONCUR WITH THE FINDING.**

9 As part of the review process for siting a new landfill or expanding an existing landfill, the
10 County must make a finding that a project is in conformance with the County's Countywide Siting
11 Element (CSE). (See Pub. Resources Code, § 50001, Cal. Code Regs., tit. 27, § 21570, subd. (f)(5).) A
12 CSE is one element of a Countywide Integrated Waste Management Plan (CIWMP), which is required
13 pursuant to the California Integrated Waste Management Act (AB 939). (See Pub. Resources Code, §
14 41750-41770.)² As part of the CIWMP, the CSE is used for developing new disposal facilities or
15 capacity and contains a description and identification of areas, numbers, and types of new or expanded
16 solid waste disposal and transformation facilities to meet a minimum of 15 years of combined permitted
17 disposal capacity. (See Pub. Resources Code, §§ 41700-41721.5.) The CSE also includes a discussion
18 and description of the siting criteria used in the County's siting process for new or expanded solid waste
19 disposal or transformation facilities. (See Cal. Code Regs., tit. 14, § 18756, subd. (a)(1-5).) Where an
20 applicant seeks a new or revised SWFP for a new or expanding solid waste facility, the Local
21 Enforcement Agency (LEA) (in this case the County's EHD) on behalf CalRecycle is required to

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23 ² / In Ventura County, the Ventura County Council of Governments (VCOG), a 15-member body of city
24 and county elected officials, has assumed the State mandated role of the AB 939 Task Force to maintain
25 and update the CIWMP, including the CSE. In November 2000, the VCOG prepared the current CSE
26 and, along with a majority of the incorporated cities containing a majority of the incorporated population
27 of the County, adopted by resolution the CSE and a Negative Declaration. (See California Integrated
28 Waste Management Board (CIWMB), June 19-20, 2001 Board Meeting Agenda Item 35, attached as
Exhibit B to the Leisy Declaration.) The City of Simi Valley took no action, thereby approving the
documents by default. (See *id.*) The VCOG received final state approval of the current CSE from the
CIWMB (now CalRecycle)) in June 2001. (*Id.*)

1 prepare a statement to CalRecycle that the facility under review is either in the countywide siting
2 element for the jurisdiction in which it is located, or that the facility is not required to be identified in
3 any of these elements pursuant to Public Resources Code Section 50001. Public Resources Code Section
4 50001 states that "...no person shall establish or expand a solid waste facility,...unless the solid waste
5 facility meets one of the following criteria: (1) The solid waste facility is a disposal facility or a
6 transformation facility, *the location of which is identified in the countywide siting element or amendment*
7 *thereto*, which has been approved pursuant to Section 41721." (Emphasis added.)

8 CalRecycle, as the statewide agency charged with ensuring conformance with CSEs, must
9 concur in the LEA's finding of conformance and make a finding (when the SWFP is presented for
10 concurrence), pursuant to Public Resources Code Section 50001 that the new or expanding solid waste
11 facility is in conformance with the CSE. (See Pub. Resources Code, § 44009 ("the Department (formerly
12 the CIWMB) cannot concur in a proposed permit that does not comply with PRC 50001").) The
13 CIWMB memorialized its policy interpreting Public Resources Code Section 50001 in a September 19-
14 20, 2000 Board Resolution No. 2000-330, which states:

15 "...in considering proposed Solid Waste Facility Permits, the Board shall interpret PRC
16 50001 to only require a finding that the facility's location be identified in the SE or
17 NDFE, either by the facility address or general location on a map, and shall not review
18 the facility's conformance to the description set forth in those documents for the purposes
of this finding." (See CIWMB Resolution No. 2000-330, attached as Exhibit C to the
Leisy Declaration (emphasis added).)

19 This interpretation, dubbed the "dot on the map" method, was adopted after the then CIWMB
20 (now CalRecycle), encountered opponents of various projects arguing that the description of a proposed
21 facility in a Siting Element had to be identical to the description in a proposed permit (e.g., regarding
22 permitted tonnage, capacity, etc.). The CIWMB, and now CalRecycle, interprets Public Resources Code
23 Section 50001 as explicitly written, and only requires the location of a facility to be identified in the
24 Siting Element. Other aspects of a facility description are not required to match. (See May 4, 2010 letter
25 from CalRecycle to Ventura Integrated Waste Management Division, attached as Exhibit E to the Leisy
26 Declaration.)

1 The VCOG has expressly adopted CalRecycle's interpretation of Public Resources Code Section
2 50001 in the CSE. (See November 2000 Ventura County Integrated Waste Management Plan,
3 Countywide Siting Element (CSE), attached as Exhibit D to the Leisy Declaration, p. 4-3 ("CSE
4 consistency findings will take place pursuant to the decisions reached by the California Integrated Waste
5 Management Board in this matter during their September 19-20, 2000 meeting.")) Thus, although the
6 CSE identifies solid waste disposal facility siting criteria (mapping of 13 pass/fail criteria, demonstration
7 that the proposed site meets second-phase criteria, and assessment of issues addressed by the evaluation
8 criteria), the CSE indicates that application of the siting criteria is not required for the expansion of an
9 existing permitted facility, such as the SVLRC, which is already identified in the CSE:

10 "[o]nce the site has been issued for the landfill, the landfill will be deemed an existing
11 solid waste disposal facility. Countywide Siting Element consistency findings *shall not*
12 *be required for subsequent permit modifications.*" (See Exhibit D to the Leisy
Declaration, p. 4-3 (emphasis added).)

13 **C. THE COUNTY AND CALRECYCLE RECENTLY CONCLUDED THAT NO AMENDMENT TO THE CSE IS**
14 **NECESSARY TO FIND THE SVLRC PROJECT CONSISTENT.**

15 Counties are responsible for maintaining and updating their CSEs pursuant to AB 939. (Pub.
16 Resources Code, §§ 41770, 41822 and Cal. Code of Regs., tit. 14, §18788.) Every five years after the
17 then CIWMB's initial approval of a CIWMP, each County is required to complete a review of its
18 CIWMP to ensure that its practices remain consistent with the hierarchy of waste management practices
19 defined in Public Resources Code section 40051. (Cal. Code Regs., tit. 14, § 18788.) The purpose of
20 this five year review is to determine whether the CIWMP is still adequate as a planning document for
21 the waste management conditions, or if revisions are required. Changes in, among other things: the
22 amount of waste generated within a county, county demographics, and permitted disposal capacity could
23 trigger the need for revisions to a CIWMP to ensure 15-years of disposal capacity. (See Cal.Code Regs.,
24 tit. 14, § 18788, subd. (a)(3).)

25 The most recent five-year review for the CIWMP and CSE at issue was initiated in January
26 2010. (See May 13, 2010 County Integrated Waste Management Division staff report to the VCOG,
27 attached as Exhibit F to the Leisy Declaration.) The County prepared a Ventura County CIWMP Five-
28 Year Review Report which was circulated among the cities in the County, including the City of Simi

1 Valley. A draft report with the cities' input was submitted to the VCOG to allow for regional comments
2 on the adequacy of the report. (*Id.*) The County determined that an updated (rather than amended)
3 CIWMP report was necessary for the 2010 CIWMP review. (*Id.*) CalRecycle concurred with the
4 County. (See May 4, 2010 letter from CalRecycle to Ventura Integrated Waste Management Division,
5 attached as Exhibit E to the Leisy Declaration.)

6 Because the Five-Year Review coincided with the County's ongoing environmental review of
7 the SVLRC Project, the County received comments during the Five-Year Review process suggesting
8 that the CIWMP should be revised to address the proposed expansion of the SVLRC. Some comments
9 claimed, notwithstanding any revision to the CIWMP, the SVLRC Project is inconsistent with the CSE's
10 siting criteria. In light of these comments, although not required at the time, the County sought the
11 determination of CalRecycle regarding whether any revision to the CSE was necessary to address the
12 SVLRC expansion. (See May 4, 2010 letter from CalRecycle to Ventura Integrated Waste Management
13 Division, attached as Exhibit E to the Leisy Declaration.)

14 CalRecycle found no revision to the CSE necessary as part of the Five-Year Review for the
15 proposed Project, or otherwise. As stated in its May 4, 2010 letter to the County Integrated Waste
16 Management Division, the SVLRC facility is already identified in the CSE, consistent with Section
17 50001. (See May 4, 2010 letter from CalRecycle to Ventura Integrated Waste Management Division,
18 attached as Exhibit E to the Leisy Declaration.) CalRecycle found it persuasive that the CSE also
19 identifies the possibility of future expansion of the SVLRC, and expressly states that if expansion of the
20 existing facilities is needed, the CSE itself would not need to be amended. (See *id.*) Applying its adopted
21 interpretation of the requirements of Public Resources Code Section 50001, set forth in Resolution No.
22 2000-330, CalRecycle determined that the SVLRC expansion is consistent with the CSE, and that any
23 revision to the CSE on that basis would be costly and unnecessary. Specifically, Mark Leary, Deputy
24 Director of Waste Management Programs at CalRecycle declared that:

25 "interpreting PRC 50001 differently than it has been interpreted in the past to require a
26 Siting Element revision would be inconsistent with the statute and require an unnecessary
27 expenditure of resources for no value added. Thus, I can say on behalf of the Department,
28 that when the proposed expansion comes before the Department for concurrence, that the
requirement for compliance with PRC 50001 has been met." (See *id.*)

1 In June 2010, based on its review of a staff report from the County of Ventura Integrated Waste
2 Management Division (see Exhibit F to the Leisy Declaration), the VCOG Board of Directors
3 determined that none of the Countywide or jurisdiction-specific documents of the CIWMP required
4 revision, and took action to submit the Ventura County CIWMP Five-Year Review Report to
5 CalRecycle. (See June 4, 2010 letter from VCOG Board of Directors submitting the Ventura County
6 CIWMP Five-Year Review Report to CalRecycle, attached as Exhibit G to the Leisy Declaration.) In
7 August 2010, CalRecycle, based on staff review of the Ventura County CIWMP Five-Year Review
8 Report concluded that the requirements had been satisfied, and agreed with the findings of the VCOG
9 that revision to the CIWMP was not necessary. (See August 17, 2010 CalRecycle approval of the
10 Ventura County CIWMP Five-Year Review Report, attached as Exhibit H to the Leisy Declaration.)

11 On October 13, 2010, nearly three years after issuance of the NOP for the Project, Petitioners
12 filed a Petition for Writ of Mandate and Complaint alleging the County is misusing public funds to
13 process the application for the SVLRC expansion, which Petitioner alleges cannot be found to be
14 consistent with the CSE. (Petition, pp. 3-7.)

15 ARGUMENT

16 **I. STANDARD OF REVIEW**

17 Code of Civil Procedure section 430.30, subdivision (a), authorizes respondents and real parties
18 to file demurrers as a means of objecting to the contents of a complaint (or a petition for writ of
19 mandate). Section 430.10 describes the following grounds, among others, on which demurrers can be
20 based: “[t]he pleading does not state facts sufficient to constitute a cause of action” (subd. (e)).

21 In determining the sufficiency of a petition or complaint against a demurrer, a court must treat a
22 demurrer as “admitting all material and issuable facts properly pleaded.” (*Scott v. Indian Wells* (1972) 6
23 Cal.3d 541, 549; *Wilson v. Transit Authority of Sacramento* (1962) 199 Cal.App.2d 716, 720-721.)
24 While a petition need not be precise, it must aver the ultimate facts sufficient to constitute a cause of
25 action. (*Scott, supra*, 6 Cal.3d at p. 550.) A petition fails to state a cause of action if it omits an essential
26 element of the cause of action by, for example, failing to allege facts showing the existence of a legal
27 duty. (See, e.g., *Adams Point Preservation Society v. City of Oakland* (1987) 192 Cal.App.3d 203, 205,
28 208 (sustaining city’s demurrer to CEQA causes of action because CEQA does not apply to ministerial

1 acts.) Furthermore, the allegations of the complaint are not accepted as true if they contradict or are
2 inconsistent with facts judicially noticed by the court. (Code Civ. Proc., § 430.30(a) [authorizing the
3 court to consider, as grounds for demurrer, any matter which the court must or may judicially notice
4 under Evidence Code §§ 451 or 452].)

5 Where it is clear from the face of the pleadings that a petitioner cannot cure a pleading defect
6 through amendment, a court may sustain the demurrer without leave to amend. (*Goodman v. Kennedy*
7 (1976) 18 Cal.3d 335, 349; *Johnson v. County of Los Angeles* (1983) 143 Cal.App.3d 298, 306; *City of*
8 *Santee v. County of San Diego* (2010) 186 Cal.App.4th 55 (upholding decision of trial court which
9 affirmed San Diego County and the California Department of Corrections and Rehabilitation's approval
10 of a siting agreement for a reentry project, reasoning the approval was not a "project" under CEQA and
11 granting demurrer without leave to amend).)

12 **II. THE COURT SHOULD SUSTAIN THE DEMURRER WITHOUT LEAVE TO AMEND BECAUSE**
13 **PETITIONER HAS NOT STATED, AND CANNOT STATE, FACTS SUFFICIENT TO SUPPORT ITS**
14 **CAUSES OF ACTION.**

15 Under the first cause of action, Petitioner requests injunctive relief pursuant to Code of Civil
16 Procedure, Section 526a claiming the County has, and will continue to, improperly expended tax dollars
17 to review and process the SVLRC expansion project. Petitioner claims the expansion is an illegal project
18 under the Ventura County CSE and, therefore, the County's expenditures in processing the proposed
19 project are a waste of public funds. Petitioner's second cause of action reiterates the facts stated in the
20 first cause of action and claims that a writ of mandate should issue to require the County to stop
21 processing the application for the project on the basis that the project is in direct conflict with the CSE
22 and violates the Integrated Waste Management Act (Pub. Resources Code, § 41700, et seq.).

23 Petitioner's claims fail on two grounds, both of which are supported by judicially noticeable
24 documents: (1) the County is not expending taxpayer monies to further the expansion of the SVLRC, as
25 the County and WM have entered into a reimbursement agreement to fund the County's environmental
26 review and processing of the SVLRC expansion project; and (2) the County's continuing review of the
27 SVLRC Project is not illegal because the Project has been deemed consistent with the CSE by the
28 County and CalRecycle. The County is not required to apply the "pass/fail criteria" set forth in the CSE

1 to the SVLRC expansion in order to determine consistency with the CSE, as advocated by Petitioner.
2 (Petition, ¶ 14.)

3 **A. Code of Civil Procedure Section 526a does not apply because the County has not expended**
4 **public funds while processing the application for the SVLRC expansion.**

5 Code of Civil Procedure Section 526a states, in pertinent part:

6 An action to obtain a judgment, restraining and preventing any illegal expenditure of,
7 waste of, or injury to, the estate, funds, or other property of a county, town, city or city
8 and county of the state, may be maintained against any officer thereof, or any agent, or
9 other person, acting in its behalf, either by a citizen resident therein, or by a corporation,
10 who is assessed for and is liable to pay, or, within one year before the commencement of
11 the action, has paid, a tax therein. This section does not affect any right of action in favor
12 of a county, city, town, or city and county, or any public officer; provided, that no
13 injunction shall be granted restraining the offering for sale, sale, or issuance of any
14 municipal bonds for public improvements or public utilities.

15 In order to maintain a cause of action under this provision, there must be an expenditure of
16 County funds and the expenditure must be wasteful. (See *County of Ventura v. State Bar* (1995) 35
17 Cal.App.4th 1055, 1059 (a public expenditure is a waste of public funds, and thus subject to a
18 taxpayer's suit under Code of Civil Procedure section 526a, if it is "totally unnecessary" or "useless" or
19 "provides no public benefit").)

20 In this case, the County and WM have executed a reimbursement agreement by which WM pays
21 for the costs associated with the application process and environmental review for the Project. (See
22 Exhibit A attached to the Leisy Declaration [agent for WM agrees to cover costs of the County in
23 processing Permit Case No. LU07-0048, including staff time, coordination and processing, where staff
24 time includes, but is not limited to, time spent reviewing application materials; responding by phone or
25 correspondence to inquiries from the applicant, the applicant's representatives, neighbors, interested
26 parties; attendance and participation at meetings and public hearings; preparation of staff reports and
27 other correspondence; and, if necessary, separate review of application by biological consultant and/or
28 cultural resources consultant].) Such a reimbursement agreement is authorized pursuant to the fee
provisions in the County's Non-Coastal Zoning Ordinance, which require an applicant for a CUP to
fund the cost of processing the application. (See Exhibit I to the Leisy Declaration, Sections 8111-
1.2.1.1 ("...Conditional Use Permits may only be granted if all billed fees and charges for processing

1 the application request that are due for payment have been paid ...”), 8111-2.9 (“Each application
2 request for any purpose...shall be accompanied by payment of all required processing fees and all
3 outstanding fees, charges, and penalties billed by and owed to the County...”), 8111-2.9.3 (“Once a
4 project has been acted upon and inaugurated ..., the applicant shall be billed for the balance of fees and
5 charges up to the ceiling amount as specified by the adopted schedule of fees and charges”).) Because
6 WM is required to cover the costs of processing the application for the Project, the County is not
7 “expending” County funds.

8 Petitioner may claim that certain expenditures by the County are not covered by the
9 reimbursement agreement, such as time spent by County Supervisors both within and outside of any
10 hearings held on the Project. As the Supervisors have discretion over the ultimate approvals for the
11 Project, any agreement for WM to reimburse the Supervisors for time spent on the review of the Project
12 would be inappropriate and unethical. Furthermore, even if a reimbursement agreement did not exist or
13 if the County was expending some County funds to process the SVLRC expansion application that
14 might not be reimbursed, Petitioner must show that the expenditures are wasteful and would have no
15 benefit to the County. For instance, in reviewing a judgment sustaining a demurrer without leave to
16 amend to a taxpayer’s complaint challenging the City of Modesto’s plans to construct sewer lines in an
17 unincorporated area, the court in *Ceres v. Modesto* (1969) 274 Cal.App.2d 545, 555 found that alleging
18 evidence of “waste,” sufficient to constitute an illegal expenditure under Code of Civil Procedure
19 section 526a required the taxpayer to show that the city would derive *no benefit of any kind* from the
20 installation of sewer lines in the unincorporated territory unless it was ultimately annexed.

21 On this basis, Petitioner does not and cannot plead specific facts to support their cause of action.
22 Expenditures in furtherance of the SVLRC Project do not fall within the confines of Code of Civil
23 Procedure section 526a. Rather, such expenditures are made to ensure compliance with CEQA and the
24 County’s land use process, thereby furthering the public interest. (See, e.g., *Berman v. Parker* (1954)
25 348 U.S. 26, 32-33 (the legal basis for all land use regulation is the police power to protect public
26 health, safety and welfare); Pub. Resources Code, § 21001 (noting public interest policies of CEQA).)
27 Moreover, because the applicant is requesting a revised CUP, which is a quasi-adjudicatory
28

1 administrative approval, the constitutional principles of due process also apply. (See *Horn v. County of*
2 *Ventura* (1979) 24 Cal.3d 605, 613-614 (noting granting of conditional use permits is adjudicatory in
3 nature).) As such, the County has an obligation to continue to process the application for the Project
4 and the County Supervisors have a duty to review it for approval, notwithstanding the cost to do so.
5 (See *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 223-224 (applicant may file
6 petition for writ of mandate against lead agency that fails to complete CEQA process).) Because the
7 County has been, and will continue to be, made whole for the costs associated with processing the
8 proposed Project, and because there is a public benefit for all public expenditures associated with
9 processing the Project, Petitioner's claims are not actionable under Code of Civil Procedure section
10 526a. (*County of Ventura v. State Bar, supra*, 35 Cal.App.4th at p. 1059.) While Petitioner disagrees
11 with the expenditure, "the courts should not take judicial cognizance of disputes which are primarily
12 political in nature, nor should they attempt to enjoin every expenditure which does not meet with a
13 taxpayer's approval." (*Ceres, supra*, 274 Cal.App.2d at p. 555.)

14 The County has been, and will continue to be, reimbursed for the cost of the application process
15 for the SVLRC expansion project. Petitioner is unable to plead facts or otherwise sufficiently allege
16 that the County is engaging in a wasteful expenditure of public funds. This evidence is fatal to
17 Petitioner's claim under Code of Civil Procedure section 526a. Petitioner's First Cause of Action fails
18 as a matter of law.

19 **B. Because the SVLRC Facility is already identified in the CSE, no amendment to the CSE is**
20 **required for the Project.**

21 Petitioner fails to plead specific facts which support its allegations regarding the alleged
22 statutory violation committed by the County in continuing to process the Project. Rather, Petitioner
23 cites generally to Public Resources Code Section 40050, et seq (the California Integrated Waste
24 Management Act of 1989), without further reference to specific statutory requirements alleged to be
25 violated. (Petition, ¶ 9.) As the Petition lacks a sufficient basis to entitle the Petitioner to relief, this
26 demurrer must be sustained. (*Chazen v. Centennial Bank* (1988) 61 Cal.App.4th 532, 542.)

27 Furthermore, the Petition includes numerous and verbose allegations, but fails to assert anything
28 more than conclusory opinion and allegations, rather than specific facts supported by legal authority.

1 For instance, Petitioner claims any expenditure by the County in association with the application for the
2 SVLRC expansion is *per se* wasteful because the proposed landfill expansion is illegal. (See Petition, ¶
3 16.) According to Petitioner, because the siting of the expansion of the SVLRC currently under review
4 by the County is not specifically identified in the CSE, the Project is inconsistent with the CSE and
5 “cannot possibly be legal under any theory.” (See Petition, ¶¶ 13, 14.) Therefore, according to
6 Petitioner’s logic, the County is unable to lawfully proceed with the application process for the
7 expansion. (See Petition, ¶¶ 13, 14.) Petitioner even goes so far as to claim, without citing any legal
8 authority, that the County may not conduct environmental review of the Project until it is determined to
9 satisfy the pass/fail criteria and second phase criteria set forth in the CSE. (See Petition, ¶ 15.) These
10 allegations realleged and incorporated under the second cause of action amount to nothing more than
11 legal conclusions and opinion which are inadequate to maintain the cause of action. (See *Penrose v.*
12 *Winter* (1901) 135 Cal. 289, 290-291.) Regardless, as explained below, Petitioner’s allegations are
13 incorrect as a matter of law and the demurrer must be granted without leave to amend.

14 **1. Express language in the CSE supports a finding that the Project is in conformance**
15 **with the CSE.**

16 As part of the review process for the SVLRC Project, the County is required to verify that the
17 new or expanding solid waste facility is in conformance with the CSE pursuant to Public Resources
18 Code Section 50001 (requiring the site to be identified and described in the Siting Element of the
19 County Integrated Waste Management Plan (CIWMP)). (Cal. Code Regs., tit. 27, § 21570, subd.
20 (f)(5).) According to the CSE, however, in making CSE consistency findings the County employs the
21 CIWMB’s September 19-20, 2000 adopted method (pursuant to Board Resolution 2000-330) which
22 only requires that the location of the facility to be expanded is identified in the Siting Element, either by
23 the facility address or general location on a map, and notes that “the facility’s conformance to the
24 description set forth in those documents” is not be reviewed for the purposes of this finding. (See, p. 4-
25 3 of Exhibit D to the Leisy Declaration.) Furthermore, the CSE declares that no findings of consistency
26 with the CSE are required for a permit modification for an existing, permitted facility that is already
27 identified in the CSE. (See, p. 4-3 of Exhibit D to the Leisy Declaration (“[o]nce the site has been
28 issued for the landfill, the landfill will be deemed an existing solid waste disposal facility. Countywide

1 Siting Element *consistency findings shall not be required for subsequent permit modifications.*"
2 (emphasis added)).)

3 As acknowledged by Petitioner, the SVLRC and a proposed 2002 expansion of the SVLRC are
4 already identified in the CSE. (See Petition, ¶ 13; see Chapters 3 and 5 of Exhibit D to the Leisy
5 Declaration.) Chapter 5.3 of the CSE, for example, indicates that a prior expansion effort for the
6 SVLRC was consistent with the CSE and the County's General Plan. (See, pp. 5-3 through 5-5 of
7 Exhibit D to the Leisy Declaration.) The approval sought by the applicant, moreover, is not the siting of
8 a new facility, but a *modification to the existing CUP* and a *revision to the existing SWFP* for the
9 existing SVLRC site. (See application for a Major Modification to a Conditional Use Permit, attached
10 to Exhibit A Leisy Declaration; see also excerpts from the SVLRC Project Draft EIR and Recirculated
11 Draft EIR, Executive Summary, pp. ES-3, attached as Exhibit J to the Leisy Declaration.) Applying the
12 express language of the CSE with its interpretation of the requirements of Public Resources Code
13 Section 50001 to the SVLRC Project, supports the decisions of the County and CalRecycle staff that
14 the Project is in conformance with the CSE, and an amendment would not be require prior to
15 concurrence in the issuance of a revised SWFP. (See, e.g., Solid Waste Facility Permit 56-AA-0007,
16 attached as Exhibit M to the Leisy Declaration (noting 2003 amendment to permit is consistent with
17 CIWMP as the "location of the facility is identified in the Countywide Siting Element, pursuant to
18 Public Resources Code (PRC), Section 50001(a)").) Notably, the CIWMB agenda item summary in
19 support of Resolution No. 2000-330 explains that because the majority of permits which come before
20 the Board for consideration deal with permit revisions, as opposed to new facility permits, basing
21 conformance exclusively on finding that the location of a new or expanding facility is identified in the
22 applicable CSE, most permits would be found to be "in conformance" with the CSEs. Thus, the
23 CWIMB noted "*only new solid waste facilities* not 'identified' in a CSE...would require an amendment
24 to the respective planning document before the permit could be found to be in conformance." (See
25 CIWMB Agenda Item 20, attached as Exhibit C to the Leisy Declaration (emphasis added).)³

26 _____
27 ³ / Moreover, to the extent Petitioner claims that the disposal footprint of the expansion must match that
28 of the existing facility identified in the CSE, Petitioner is mistaken. The CIWMB agenda item summary

1 When reviewing whether revision to the CSE was necessary in light of the SVLRC Project,
2 CalRecycle specifically determined that, because SVLRC was already identified in the CSE, no
3 revision to the CSE was necessary to specifically describe the expansion area. (See Exhibit E to the
4 Leisy Declaration.) More importantly, CalRecycle declared, based on its review and its interpretation of
5 the requirements of Public Resources Code Section 50001 (pursuant to Board Resolution 2000-330),
6 the SLVRC expansion project is in conformance the CSE. (See Exhibit E to the Leisy Declaration.) As
7 the agency charged with administering and interpreting the CIWMA, CalRecycle's interpretation of the
8 requirements of Public Resources Code Section 50001 and its application of this interpretation is
9 entitled to deference. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 8 (the
10 standard for judicial review of agency interpretation of law is the independent judgment of the court,
11 giving deference to the determination of the agency appropriate to the circumstances of the agency
12 action).)

13 Because the SVLRC expansion project's compliance with Public Resources Code Section
14 50001 can be met, the County is not required to apply the "pass/fail" siting criteria set forth in CSE
15 Section 4.3 to the site, as claimed by Petitioner. (See Petition, ¶ 14.) In fact, the CSE notes the
16 "pass/fail" criteria were already applied to Ventura County in order to identify general areas that may
17 be considered for landfill development. (See, p. 5-1 of Exhibit D to the Leisy Declaration.) The CSE
18 identifies those areas that remain (referred to as the "remaining areas") after the pass/fail criteria were
19 applied and which may be considered as sites for new or expanded disposal facilities. (*Id.*) The CSE
20 specifically identifies the SVLRC site as being within one of the "remaining areas" suitable for landfill
21 siting. (See, p. 5-2 of Exhibit D to the Leisy Declaration (discussing remaining areas following pass/fail

22
23 for Resolution No. 2000-330 specifically notes that the CIWMB had considered basing its "location
24 identification" conformance with a CSE where "location" was defined as the disposal footprint rather
25 than the "dot on a map," but the CIWMB noted that new regulations would have needed to be written
26 and all CSEs would need to be revised, because the regulations did not require disposal footprint
27 information to be included in a CSE. Because no new regulations have been written nor have CSEs
28 been required to be revised to include the disposal footprint information, there is no basis for a claim
that the footprint of the expansion project must match the footprint of the facility identified in the CSE.
(See CIWMB Agenda Item 20, attached as Exhibit C to the Leisy Declaration; see also Section 3.1.1 of
Exhibit D to the Leisy Declaration (no disposal footprint information identified for SLVRC).)

1 siting criteria and noting that “[t]he map of the remaining areas contains two existing landfill facilities:
2 Toland Road Landfill, and the Simi Valley Landfill”).) The siting criteria set forth in the CSE,
3 including the pass/fail siting criteria, are not applicable to the SVLRC Project.

4 The SVLRC expansion is not in conflict with the CSE. Petitioner is unable to plead facts or
5 otherwise sufficiently allege the County is processing the application for the SVLRC expansion in
6 violation of the California Integrated Waste Management Act (Public Resources Code section 41700, et
7 seq.), which is fatal to Petitioner’s claim under Code of Civil Procedure section 1085. Petitioner’s
8 Second Cause of Action, therefore, fails as a matter of law.

9 **CONCLUSION**

10 Petitioner’s First and Second Causes of Action fail as a matter of law and invite this court to
11 myopically focus on the pass/fail criteria of the CSE. Such an unsupported approach is contrary to the
12 text of the CSE, the plain language of the statute, the policy decisions of the CIWMB and CalRecycle,
13 and the substantive decision of CalRecycle that an amendment to the CSE is not required for the
14 Project. Judicially noticeable evidence shows the County is not expending public funds to process the
15 application for the SVLRC expansion project, and the County is able to find the expansion project in
16 conformance with the CSE. Accordingly, the defects in the Petition cannot be cured by amendment and
17 the demurrer should be sustained without leave to amend. (See *Citizens to Enforce CEQA v. City of*
18 *Rohnert Park* (2005) 131 Cal.App.4th 1594, 1602-1603 (affirming trial court decision sustaining
19 demurrer to petition without leave to amend because no additional pleading of conclusions of law or
20 fact would have changed the decision).)

21 Respectfully Submitted,

22
23 Dated: November 15, 2010

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24
25 By: 

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27 WASTE MANAGEMENT OF CALIFORNIA, INC.
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