SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

BUILDING INDUSTRY ASSOCIATION OF FRESNO/MADERA COUNTIES, INC., GRANVILLE HOMES, INC., WATHEN CASTANOS PETERSON HOMES, INC. and LENNAR HOMES OF CALIFORNIA, INC. Petitioners and Plaintiffs, vs. THE CITY OF FRESNO, CITY COUNCIL OF THE CITY OF FRESNO, ALL PERSONS INTERESTED IN THE VALIDITY OF (1) CITY OF FRESNO BILL B-17, AMENDING ARTICLE 5 OF CHAPTER 6 OF THE FRESNO MUNICIPAL CODE AND ARTICLE 4.5 OF CHAPTER 12 AND (2) THE CITY OF FRESNO'S APPROVAL OF A RESOLUTION, ON OR ABOUT APRIL 6, 2017, ENCOMPASSING THE 530TH AMENDMENT TO THE MASTER FEE RESOLUTION NO. 80-420 ADOPTING WATER CAPACITY FEES UNDER PUBLIC UTILITIES SECTION, AND (3) ALL ACTS RELATED TO THE ENVIRONMENTAL REVIEW OF SUCH ACTIONS, and DOES 1 through 100, inclusive. Respondents and Defendants.	No. 17 CE CG 01699 ORDER AFTER HEARING

I.

INTRODUCTION

In this action for writ of mandate, petitioners/plaintiffs Granville Homes, Wathen Castanos Peterson Homes, and Lennar Homes[1] seek a writ to set aside the City of Fresno's approval of water capacity fees (the "capacity fees") that will be imposed on future developments in the City for the purpose of paying for improvements to the water infrastructure and treatment facilities in the City. Petitioners contend that the capacity fees were approved in violation of the Mitigation Fee Act (Gov. Code § 66000, *et seq.*) because the City failed to present any evidence that the fees would be of proportional benefit to new development, and without performing environment review of the project under the California Environmental Quality Act (CEQA).

The matter came on for hearing on the merits of the writ petition on May 18, 2018 in Department 61 of the Fresno Superior Court, the Honorable James M. Petrucelli presiding. Attorney Timothy Jones appeared for and argued on behalf of petitioners Granville Homes and Wathen Castanos Peterson Homes. Attorney Michael Slater appeared on behalf of petitioner Lennar Homes. Attorney Anthony Taylor appeared for and argued on behalf of respondent City of Fresno. After hearing oral argument from the parties on the merits of the petition for writ of mandate, the court took the matter under submission.

Having considered the moving and opposing briefs filed by the parties and the arguments raised at the hearing, the court now

---

[1] Building Industry Association of Fresno/Madera Counties, Inc., was also originally named as a petitioner and plaintiff in the action, but it has since been voluntarily dismissed from the case.

removes the case from submission and issues its order denying the petition for writ of mandate.

II.

FACTUAL AND PROCEDURAL BACKGROUND

The City of Fresno has historically relied on groundwater to meet its water demands. However, this has resulted in an overdraft of groundwater, failure of wells, contamination of groundwater, and subsidence of land. The situation has become so dire that the State Department of Water Resources has threatened to intervene and force the City to reduce its reliance on groundwater, which is inconsistent with the recently enacted Sustainable Groundwater Management Act (SGMA) of 2014.

The State required the City to develop and implement a Groundwater Sustainability Plain (GSP) to address the overdraft problem in the City. In response to the State's demand, the City developed a $429 million capital investment plan to implement corrective action to address the declining groundwater levels, groundwater contamination, and the requirements of the SGMA. The GSP will use surface water to replenish the groundwater levels and provide surface water in lieu of groundwater to citizens of the City. The City currently has rights to 180,000 acre-feet of surface water from Pine Flat Reservoir and Millerton Lake during a normal precipitation year. The City plans to construct new pipelines, infrastructure and water treatment facilities to treat and distribute surface water to the City's inhabitants in lieu of using groundwater. The State will provide 100% financing of the GSP.

As part of the GSP, the City has constructed two new surface water treatment facilities, one in Southwest Fresno and one in

Northeast Fresno. The Southeast treatment facility will begin operating in mid-2018, and will have a capacity of up to 80 million gallons per day (mgd). The Northeast treatment facility will have a capacity of 30 mgd. Altogether, the City expects to increase surface water production to 110,000 acre-feet per year, reduce groundwater extractions to 18,000 acre-feet per year, and allow the City to recharge the groundwater aquifer by approximately 32,000 per year. Thus, there will be a net positive contribution to the aquifer of 14,000 per year.

In late 2016, the City determined that it would need more money to pay for future improvements to the water treatment and supply system that it claims will be necessary to accommodate the increased water demands from new development. The City hired a consulting firm, Bartle Wells Associates (BWA), to study and prepare a report regarding the need for possible fees to pay for improvements. BWA prepared a nexus study for the proposed capacity fees. Under the study, the capacity fees have two components. The first is designed to recover costs for new and future groundwater and distribution system assets that benefit both existing ratepayers and future growth projected through 2035. The second component seeks to recover costs for surface water infrastructure improvements that will be needed to meet an anticipated 30 mgd of water demand for future growth. The study recommended that the entire cost of the second fee component be allocated to new development growth.

On March 9, 2017, the City introduced the proposed bill and ordinance seeking to modify the Fresno Municipal Code and Master Fee Resolution to add the new water capacity fees calculated based

on the BWA study. Petitioners and others made written and oral objections to the new capacity fees.

On April 13, 2017, The City Council adopted the bill amending the Municipal Code and adding new water capacity fees according to the BWA study. The City found that the second category of the fees was necessary to recover costs for the future expansion of the Northeast Surface Water Treatment Plant (NESWTF). Specifically, the City plans to use the new capacity fees to expand the capacity of the NESWTF from 30 mgd to 60 mgd by 2035 to accommodate the needs of future development. The City also found that, by adopting the water capacity fees, it was not committing to any specific new project or construction, and thus the approval of fees was not a "project" under CEQA and did not require an environmental impact study.

Petitioners filed their petition for writ of mandate under the Mitigation Fee Act and CEQA on May 11, 2017, challenging the City's decision to approve the imposition of the water capacity fees on new development. The parties have filed moving and opposing briefs, as well as a reply and supplemental opposition.[2]

III.

DISCUSSION

A. Petitioners' Opening Brief

Petitioners contend that the water capacity fees adopted by the City violate the Mitigation Fee Act because the City has not

[2] Respondents' "supplemental opposition brief" actually appears to be an improper sur-reply brief in violation of the CEQA briefing rules. (Fresno Superior Court Local Rule 2-11.5.) As there is no provision for a supplemental opposition brief or sur-reply in the Local Rule, the court hereby strikes the supplemental opposition, as well as the requests for judicial notice submitted with it.

shown that the fees are of proportional benefit to the new development. (Gov. Code § 66013, subd. (b).) They also contend that the fees violate CEQA because the City failed to perform any environmental review of the impacts that may be caused by the project that the fees will be used to fund. Therefore, the court should grant the writ of mandate and order the City to rescind its approval of the capacity fees.

B. Respondents' Opposition Brief

The City claims that the petition must be denied in its entirety because petitioners have completely ignored the applicable standard of review. A review of a water capacity fee under the Mitigation Fee Act is limited to an examination of the proceedings before the agency to determine whether its action has been arbitrary or capricious, or entirely lacking in evidentiary support, or whether it has failed to follow the procedure required by law. (*NT. Hill, Inc. v. City of Fresno* (1999) 72 Cal.App.4th 977 [applying traditional mandamus under CCP § 1085 see *Shapell Industries v. Governing Board* (1991) 1 Cal.App.4th 218.) Here, the Administrative Record contains abundant evidence the fee study methodology relied upon and the ordinance enacting the fees conformed to all applicable legal authorities, including but not limited to the Mitigation Fee Act. (Government Code Section §§66013.) The Fee Study used capital improvement plans to develop a reasonable estimate of the City's costs of providing water capacity service to new developments.

Petitioners have also failed to identify any evidence of a single potential adverse environmental impact from the water capacity fees. Moreover, CEQA Regulations expressly state a funding mechanism is not a commitment or a "project" under CEQA. (14 CCR

§ 15378(b)(4).) The City found the water capacity fees are intended to fund future infrastructure, but the fees do not commit the City to approve a particular project. Courts have squarely held these types of funding mechanisms are not "projects" under CEQA. (*Sustainable Transport. Advocates v. Santa Barbara County Ass 'n of Govts.* (2009) 221 Cal.App.4th 846.) The City's Fee Study permissibly used specific examples of facilities that the City is contemplating constructing solely in order to make the fee more accurate and avoid overcharging. Therefore, petitioners' claims under the Mitigation Fee Act and CEQA fail as a matter of law.

C. Petition for Writ of Mandate Under the Mitigation Fee Act

1. Standard of Review

"In general if an agency acts pursuant to legislative authority, review of the action is by ordinary mandamus. (Code Civ. Proc., § 1085.) In ordinary mandamus proceedings courts exercise very limited review 'out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority.' The court may not weigh the evidence adduced before the administrative agency or substitute its judgment for that of the agency, for to do so would frustrate legislative mandate. An agency acting in a quasi-legislative capacity is not required by law to make findings indicating the reasons for its action, and the court does not concern itself with the wisdom underlying the agency's action any more than it would were the challenge to a state or federal legislative enactment. In sum, the court confines itself to a determination whether the agency's action has been 'arbitrary,

capricious, or entirely lacking in evidentiary support...'" (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 230-231, internal citations omitted.)

"However, the agency must act within the scope of its delegated authority, employ fair procedures, and be reasonable. 'A court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.' Nevertheless, in technical matters requiring the assistance of experts and the study of scientific data, courts will permit agencies to work out their problems with as little judicial interference as possible." (*California Bldg. Industry Ass'n v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 129, internal citations omitted.)

On the other hand, "If the administrative proceedings are quasi-judicial in character, judicial review will be stricter. Whereas quasi-legislative acts involve the formulation of rules of wide application, quasi-judicial action involves 'the actual application of such a rule to a specific set of existing facts.' Since such a proceeding adjudicates individual rights and interests, findings are required and the reviewing court looks to see whether the findings are supported by the evidence. If fundamental rights are implicated the court may be authorized to exercise its independent judgment to determine whether the findings are supported by the weight of the evidence. In all other cases the court examines the record for substantial evidence in support of the findings." (*Id.* at p. 231, internal citations omitted.)

Here, the City Council was acting in a quasi-legislative rather than an adjudicatory manner when it adopted the amended ordinance with the water fees. The ordinance was intended to apply to all new future developments, not one specific development, and thus the decision to adopt the ordinance was a quasi-legislative act. As a result, the court will apply the ordinary mandamus standard of review, which is deferential to the entity's decisions, and looks only to whether there the agency's decision is "'arbitrary, capricious, or entirely lacking in evidentiary support...'" (*Shapell*, *supra*, at pp. 230-231.)

2. Substantive Requirements of the Mitigation Fee Act

"The [Mitigation Fee] Act, codified as sections 66000-66003 of the Government Code, sets forth procedures for protesting the imposition of fees and other monetary exactions imposed on a development by a local agency. As its legislative history evinces, the Act was passed by the Legislature 'in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects.'" (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 864, internal citations omitted.)

"Although for the most part procedural in nature, the Act also embodies a statutory standard against which monetary exactions by local governments subject to its provisions are measured. Government Code section 66001 requires the local agency to determine 'how there is a reasonable relationship' between the proposed use of a given exaction and both 'the type of development project' and 'the need for the public facility and the type of development project on which the fee is imposed.' (Gov. Code, § 66001, subd. (a)(3), (4), italics added.) In addition, the local agency must

determine how there is a 'reasonable relationship' between 'the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.' (*Id.*, § 66001, subd. (b), italics added.)" (*Id.* at p. 865.)

"The Act thus codifies, as the statutory standard applicable by definition to nonpossessory monetary exactions, the 'reasonable relationship' standard employed in California and elsewhere to measure the validity of required dedications of land (or fees imposed in lieu of such dedications) that are challenged under the Fifth and Fourteenth Amendments." (*Ibid*, internal citations omitted.)

"As a matter of both statutory and constitutional law, such fees must bear a reasonable relationship, in both intended use and amount, to the deleterious public impact of the development." (*San Remo Hotel L.P. v. City And County of San Francisco* (2002) 27 Cal.4th 643, 671, internal citations omitted.) "While the relationship between means and ends need not be so close or so thoroughly established for legislatively imposed fees as for ad hoc fees subject to *Ehrlich*, the arbitrary and extortionate use of purported mitigation fees, even where legislatively mandated, will not pass constitutional muster." (*Ibid.*)

"[T]o the extent charges exceed the rationale underlying the charges, they are taxes." (*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 261.)

However, "we should not lose sight of the constitutional background. 'To put the matter simply, the taking of money is different, under the Fifth Amendment, from the taking of real or

personal property. The imposition of various monetary exactions - taxes, special assessments, and user fees - has been accorded substantial judicial deference.' 'There is no question that the takings clause is specially protective of property against physical occupation or invasion .... It is also true ... that government generally has greater leeway with respect to noninvasive forms of land-use regulation, where the courts have for the most part given greater deference to its power to impose broadly applicable fees, whether in the form of taxes, assessments, user or development fees.'" (*San Remo, supra*, 27 Cal.4th at p. 671, internal citations omitted.)

3. Burdens of Production and Proof under Section 66013

The initial burden of production is on the agency or public entity to show that the proposed fees bear a reasonable relationship to the estimated cost of the improvement for which the fees are imposed. (*County of Orange v. Barratt American, Inc.* (2007) 150 Cal.App.4th 420, 438.)

"[B]efore imposing a fee under the Mitigation Fee Act, the local agency is charged with determining that the amount of the fee and the need for the public facility are reasonably related to the burden created by the development project. If such a fee is challenged, the local agency has the burden of producing evidence in support of its determination. The local agency must show that a valid method was used for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development." (*Homebuilders Ass'n of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 561, internal citations omitted.)

"However, this burden of producing evidence is not equivalent to the burden of proof... Thus, the local agency has the obligation to produce evidence sufficient to avoid a ruling against it on the issue. However, this burden of producing evidence does not operate to shift the burden of proof. The plaintiff has the burden of proof with respect to all facts essential to its claim for relief and that burden remains. Therefore, the plaintiff must present evidence sufficient to establish in the mind of the trier of fact or the court a requisite degree of belief." (*Id.* at p. 562, internal citations omitted.)

"In general, the imposition of various monetary exactions, such as special assessments, user fees, and impact fees, is accorded substantial judicial deference. In the absence of a legislative shifting of the burden of proof, a plaintiff challenging an impact fee has to show that the record before the local agency clearly did not support the underlying determinations regarding the reasonableness of the relationship between the fee and the development." (*Ibid*, internal citations omitted.)

"Accordingly, the local agency has the initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development. If the local agency does not produce evidence sufficient to avoid a ruling against it on the validity of the fee, the plaintiff challenging the fee will prevail. However, if the local agency's evidence is sufficient, the plaintiff must establish a requisite degree of belief in the mind of the trier of fact or the court that the fee is invalid, e.g., that the fee's use and the

need for the public facility are not reasonably related to the development project on which the fee is imposed or the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the development." (*Id.* at pp. 562-563, internal citation omitted.)

3. Requirements of Section 66013, subdivisions (b) and (c)

Petitioners contend that the capacity fee violates Government Code section 66013, subdivisions (b) and (c). Under section 66013, subdivision (a), "Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, *those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed,* unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue." (Emphasis added.)

Also, under section 66013, subdivision (b), "As used in this section: ... (3) 'Capacity charge' means a charge for public facilities in existence at the time a charge is imposed or charges for new public facilities to be acquired or constructed in the future *that are of proportional benefit to the person or property being charged,* including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the local agency involving capital expense relating to its use of existing or new public facilities." (Emphasis added.)

Furthermore, under section 66013, subdivision (b)(5), "'Fee' means a fee for the physical facilities necessary to make a water

connection or sewer connection, including, but not limited to, meters, meter boxes, and pipelines from the structure or project to a water distribution line or sewer main, and *that does not exceed the estimated reasonable cost of labor and materials for installation of those facilities.*" (Emphasis added.)

In addition, under section 66013, subdivision (c), "A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected."

5. The City Sufficiently Identified the Public Facilities for Which the Fees Will be Used

Petitioners contend that the capacity fees adopted by the City violate section 66013, subdivisions (b) and (c), because the City failed to show that the fees will be used to fund any specific existing or future public facilities for which the City has performed a proportional benefit analysis. They point out that the bill that the City adopted does not identify any particular new or existing facility that will be paid for by the capacity fees, and only vaguely refers to the "purpose" of financing "installation of new water infrastructure, assets and facilities to be acquired or constructed in the future", as well as to provide "reimbursement" to third parties for construction of unidentified facilities. Petitioners contend that this means that the City may use the fees to fund virtually any infrastructure, assets and facilities that

relate to water in any way, whether or not they are proportionally beneficial to new development.

However, a public entity is not required to identify the specific project or public improvement that will be funded by the fees charged to the developer at the time the fee is adopted. Simply making a reference to future facilities without any actual plan or commitment is sufficient to satisfy the Mitigation Fee Act. "[I]t is acceptable for the local agency to identify the facilities via general plan requirements. In fact, a 'fee' may be 'established for a broad class of projects by legislation of general applicability.' (§ 66000, subd. (b).) It would be unreasonable to demand the specificity urged by HBA and require local agencies to make a concrete showing of all projected construction when initially adopting a resolution. Such a resolution might be in effect for decades." (*Homebuilders Ass'n of Tulare/Kings Counties, Inc. v. City of Lemoore*, *supra*, 185 Cal.App.4th at pp. 564-565, internal citations omitted.)

Petitioners contend that *Homebuilders* was decided under section 66001, not section 66013, which is the section relied upon by petitioners here, and that section 66013 requires that the existing or future facilities be specifically identified by the public entity when it adopts the capacity fee. However, there is nothing in the language of section 66013 that requires that the new or existing public facilities which will be paid for with the fees must be specifically identified at the time the fees are adopted. It merely defines a "capacity charge" as "a charge for public facilities in existence at the time a charge is imposed or charges for new public facilities to be acquired or constructed in the

future that are of proportional benefit to the person or property being charged..." (Gov. Code, § 66013, subd. (b)(3).)

Petitioners point to no other authorities that would require the City to specifically identify the new or existing public facility when it adopts the capacity charge, and it does not appear that such specific information is required by section 66013. In fact, the logic of *Homebuilders* applies equally to capacity charges under section 66013, since it would be unreasonable to require the City to identify the exact facilities or projects that the fee will pay for when such facilities might not be constructed for years after the capacity charge is adopted. (*Homebuilders*, *supra*, at pp. 564-565.)

Here, the City stated that "The Water Capacity Fees are to be used to finance installation of new water related infrastructure, assets, and water supply to serve new development. The fees will also be used to reimburse individuals who construct capital facilities above their conditions of approval and Water Capacity Fee obligation." (AR 560.) The resolution adopting the ordinance also stated that "the Water Capacity Fees are designed to recover costs for facilities needed to address water supply and reliability needs for serving new development, and a share of costs for existing assets benefitting new development through buildout..." (AR 559.)

Also, according to the Bartle Wells Water Capacity Fee Study ("BWA Fee Study"), "The fees are designed to recover an equitable and proportional share of costs for both a) groundwater and distribution system facilities and assets benefitting projected growth through 2035, and b) future surface water improvements

required to support a sustainable and reliable water supply to meet the next 30 mgd of water demand for growth." (AR 1724.)

"This fee component recovers the cost of existing and future surface water supply projects needed to meet the next 30 mgd capacity needs of growth. This fee component is based on the costs of expanding the Northeast Surface Water Treatment Plant from 30 to 60 mgd, as well as related costs of regional transmission main improvements. These costs are divided by the expansion capacity these facilities provide of 30 mgd, equal to about 33,600 AF. Costs for surface water improvements benefiting existing customers are excluded from fee recovery. This approach is appropriate because it excludes cost recovery for the first phase of surface water improvements, which benefit existing ratepayers, but requires new development to fund the next phase of surface water system improvements needed to meet the capacity needs for serving the next phase of growth." (AR 1725.)

Therefore, the City has adequately identified the purpose of the capacity charge, even though the ordinance does not specify the precise type of public facility that will be built using the fees.

6. The Capacity Charges Are Proportionally Beneficial to the Persons Being Charged

Petitioners next contend that the City has not shown that the additional 30 mgd of surface water treatment capacity that the capacity fee is intended to pay for is actually necessary to meet the needs of new growth, because there is no evidence cited in the BWA Study or the staff report to support the conclusion that an additional 30 mgd capacity will be needed in the future due to the demands of new development.

However, the City found when it adopted the ordinance approving the capacity fees that the Kings Sub-basin is critically overdrafted and that the State has threatened to intervene if the City did not take measures to adopt a sustainable groundwater management program. (AR 553-556.) In response, the City has developed a capital investment plan to address the current groundwater overdraft problem. (*Ibid.*) The draft EIR for February of 2014 states that an additional 30 mgd from the Northeast Treatment Plant and an additional 80 mgd from the Southeast Treatment Plant is needed to meet the needs of new development. (AR 1317, fn b, 1322, 1326, 1771.) The City hired a consulting firm, Bartle Wells Associates (BWA), to study the issue of capacity fees and how they should be allocated. BWA's study concluded that, while the cost of the Southeast Water Treatment Facility should be shared by all of the City's water customers, the cost of expanding the capacity of the Northeast Water Treatment Facility should be paid entirely by new development because the expanded capacity was needed to cover the needs of new housing. (AR 1724-1725.)

Thus, the City has pointed to adequate evidence in the record to support its conclusion that an expansion of the Northeast Treatment Facility of 30 mgd is needed to meet the needs of new development, and therefore the cost of the expansion should be borne entirely by new development. The City's findings are entitled to deference, and petitioners have not pointed to any evidence in the record that contradicts the City's findings. (*Calif Building Industry Ass 'n v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 129-30.) Therefore, the petitioners have failed to meet their burden of proof to show that the City's

capacity fees are not proportionally beneficial to the persons or entities on which they are being imposed. (*Homebuilders Ass'n of Tulare/Kings Counties, Inc. v. City of Lemoore, supra,* 185 Cal.App.4th at p. 561.)

7. Petitioners Have Failed to Show that an Additional 30 mg of Surface Water Treatment Capacity is Not Required to Meet Future Demand

Petitioners also argue that there is no evidence in the record to show that there will be a need for 30 mgd of new water treatment capacity to meet the City's future water demand. In fact, petitioners contend that the evidence in the record demonstrates that the City already has more than enough water treatment capacity to meet water demand until at least 2035. They point out that, according to the City's own records, the average safe groundwater yield is projected to be 144,300 acre feet (af) in 2035. (AR 2472.) Therefore, the City only needs another 46,200 af of surface water treatment to avoid overdraft. However, the City already has 110,000 mgd of surface water treatment, or 148,074 af of water, so it does not need an additional 30 mgd of surface water treatment. Therefore, petitioners conclude that the City cannot show that the capacity charges for the additional 30 mgd of surface water treatment are necessary to meet the needs of new development. (*Shapell, supra,* 1 Cal.App.4th at p. 235.)

However, while the "reasonably available volume" for 2035 is projected to be 144,300 af (see AR 2472, Table 6-14), the "safe yield" for 2035 is only projected to be 80,200 af. (AR 2449, Table 6-3.) In other words, in order to avoid overdraft of the groundwater supply, the City will only be able to pump 80,500 af to meet demand,

not 144,300 af. Thus, petitioners have greatly overstated the amount of water projected to be available to the City. If we use the actual estimated amount of water that can be safely pumped, it reduces the total water available to meet demand by about 63,800 af.

Petitioners also assume that both of the new surface water treatment facilities will be able to run at full capacity every day. The City contends that the facilities will be running at lower capacity during the November to March period, and thus the total production of surface water will not be as high as the maximum numbers suggest. Moreover, the City states that it needs to recharge 19,050 af into the aquifer for drought resiliency purposes under new statutes and regulations, which further reduces the amount of water that will be available. (AR 1769-1770.) The BWA study also indicates that actual water demand in 2035 is projected to be 91,200 af for single family residential users alone, which is based on an estimated 43.3% increase in population. (AR 1737.) Therefore, the record does not support petitioners' contention that the expansion of the Northeast Treatment Facility is unnecessary, and in fact it appears to be justified by the anticipated increase in demand as the City grows.

8. Petitioners Have Not Shown That Capacity Fees Will be Used to Benefit Existing Customers and Recharge Groundwater Rather Than to Benefit New Development

Petitioners next argue that at least some the capacity fees will be used to address the City's historic overreliance on groundwater pumping rather than to benefit new development, and therefore the City has violated the Mitigation Fee Act by imposing

100% of the cost of the Northeast Water Treatment Facility expansion on new development rather than apportioning it between new and existing users. They point out that the City's corrective action plan specifically provides for recharging and restoring the City's aquifer on an annual basis, so that, when drought conditions exist, the City's existing ratepayers can rely on banked groundwater. (AR 1805.)

However, the capacity fees include two separate components, one of which would pay for infrastructure improvements to benefit existing customers, including groundwater recharging, and the other to pay for the cost of new surface water system improvements to benefit new development. (AR 1724-1725.) "This approach ensures new development does not pay for facilities required to serve existing ratepayers. Costs for rehabilitation and replacement of existing assets are also excluded from fee recovery to ensure no double-counting of existing assets plus replacement of those same assets." (AR 1725.)

Also, with regard to the second category of capacity fees, "Costs for surface water improvements benefiting existing customers are excluded from fee recovery. This approach is appropriate because it excludes cost recovery for the first phase of surface water improvements, which benefit existing ratepayers, but requires new development to fund the next phase of surface water system improvements needed to meet the capacity needs for serving the next phase of growth." (*Ibid.*)

Thus, the evidence in the record shows that the City has segregated the portion of the capacity fees that will benefit existing ratepayers, including groundwater recharging costs, from

the fees to will benefit new development, such as the expansion of the Northeast Surface Water Treatment Facility. Petitioners have not pointed to any evidence in the record that shows that the water from the improvements paid for by the portion of the capacity fees apportioned to new development will go to benefit existing users. As a result, petitioners have not met their burden of showing that the capacity fees are not fairly apportioned to new development.

9. Petitioners Have Failed to Show that the Capacity Fees Exceed the Reasonable Cost of the Service for Which They Were Imposed

Petitioners also argue that, since the City has failed to show that the additional 30 mgd of surface water capacity is necessary to meet the needs of future development, therefore the City cannot show that the cost of the capacity fees does not exceed the reasonable cost of providing the service for which the fees are being imposed. (Gov. Code § 66013, subd. (a).) However, as discussed above, the City has met its initial burden of production by pointing to evidence in the record that the additional 30 mgd of water capacity is necessary to meet the needs of future growth. Petitioners point to no evidence in the record that specifically relates to the cost of the expansion of surface water treatment facilities or attempts to show that the amount of the capacity fees is greater than the anticipated cost of the infrastructure needed to increase water production. Consequently, the petitioners have failed to meet their burden of showing that the capacity fees exceed the reasonable cost of the service for which they were imposed.

///

///

10. Petitioners Have Not Shown That the Capacity Fees Will Be Used for Any Purpose Other Than That for Which They Are Collected

Petitioners next contend that the City failed to comply with the requirements of Government Code section 66013, subdivision (c), which requires that any capacity fees that are collected must be deposited into a separate fund to avoid comingling with other moneys of the local agency, and must be expended solely for the purposes for which the charges are collected. Petitioners point out that the ordinance adopted by the City requires the City to use money from the water capacity fee fund to pay for reimbursements to the Urban Groundwater Management ("UGM") accounts that were previously set up under the City's old groundwater management plan. (AR 614.) However, they contend that there is no guarantee that the money from the capacity fee accounts will go to the same purpose for which the capacity fees are being charged, since there is nothing requiring that the facilities constructed under the UGM regulations would be the same as those required under the capacity fee ordinance.

According to the City's ordinance adopting the capacity fees, the UGM fee system will be repealed when the capacity fees are adopted. (AR 559.) However, the funds in the UGM accounts will remain in place and will continue to reimburse developers that were required to construct water supply facilities as a condition precedent to approval of their development projects under the old UGM system. (AR 613.) If the funds are no longer needed for reimbursements, any funds remaining in the UGM accounts shall be deposited into the Water Capacity Fund, and that City may use those funds for the same purpose as the water capacity fees. (AR 613-

614.) Thus, the funds remaining in the UGM account will offset the capacity fees that the developers will have to pay into the new Water Capacity Fund, and as a result may actually benefit the developers by reducing the total amount of capacity fees they have to pay.

The more controversial provision states that, "Notwithstanding any other provision of this section, in order to honor valid reimbursement agreements issued under the UGM Regulations, the City shall make available revenue from the Water Capacity Fee Fund to the UGM water-related fee accounts for reimbursements pursuant to the UGM Regulations. Funds made available to each UGM water-related fee account for reimbursements pursuant to the UGM Regulations shall be limited to the amount of revenue that would have been collected for each UGM water-related account, from persons within the corresponding water-related UGM area, under the UGM Regulations. In no event will any person with a reimbursement agreement issued under the UGM Regulations receive a greater right to reimbursement than he or she would have had under the UGM Regulations." (AR 614.)

In other words, the water capacity fee funds may be used to reimburse money owed to developers for costs that they incurred under the old UGM system. Thus, it appears that the City will use the water capacity fees to some extent to transition from the old UGM system to the new Water Capacity Fund system. However, it is worth noting that the UGM system and the new Water Capacity Fund serve very similar purposes, as they are both intended to pay for water system improvements to meet the needs of new development. (AR 596-599, 1724-1725, 1727.) Both fees are paid by developers to cover the costs of the water system improvements necessitated by

the construction of new development. (*Ibid.*) As a result, there appears to be some overlap between purpose of the UGM fees and the new water capacity fees. Indeed, it appears that the reason that the UGM fee system has been repealed is due to the fact that the new water capacity fees will take the place of the UGM fees and make them unnecessary, other than to the extent that UGM funds may be needed to reimburse developers for improvements that still need to be completed under the old system.

In addition, while the ordinance does require that money be taken out of the Water Capacity Fund for reimbursement of expenses incurred by developers under the old UGM system, this does not necessarily mean that the water capacity fees charged to new development will be used for some other purpose. The City's Water Capacity Fund will be set up to collect capacity fees to both benefit existing users by paying for improvements to the City's water system, and also to benefit new development in the form of new water treatment facilities and other infrastructure. (AR 607.) While the fees will all be placed in the same Water Capacity Fund, they will be treated as separate, and the fees for the new development will not be comingled with other funds or used for other projects. (AR 563, 3516.) Thus, although other funds from the Water Capacity Fund may be used to reimburse developers or others who were part of the old UGM system, there is no evidence that any of the water capacity fees paid for the purpose of developing new water capacity for new development will be used to reimburse for UGM costs.

Also, to the extent that the petitioners argue that the capacity fees do not comply with section 66013, subdivision (c)

because there is no need for new water capacity, this contention fails for the same reasons discussed above.

Petitioners also argue that the City has violated section 66013, subdivision (c) because all of the capacity fees will be deposited into a single account, rather than being deposited into separate accounts for the fees that will be charged to new development and the fees that will be charged to existing customers. Petitioners point out that the City's ordinance only sets up a single account for the entire Water Capacity Fund, without segregating the fees designated for the expansion related to new development from the fees for existing customers. "All Water Capacity Fees collected by the city shall be deposited in a Water Capacity Fund for the purpose of funding public facilities reasonably necessary to provide water capacity service to new or expanded connections to the city water system." (AR 607.)

Under section 66013, subdivision (c), "A local agency receiving payment of a charge as specified in paragraph (3) of subdivision (b) shall deposit it in a separate capital facilities fund with other charges received, and account for the charges in a manner to avoid any commingling with other moneys of the local agency, except for investments, and shall expend those charges solely for the purposes for which the charges were collected." (Gov. Code, § 66013, subd. (c), emphasis added.)

Thus, the language of section 66013, subdivision (c) does not require that a separate account be set up for different types of capacity charges. It only requires that the funds be deposited "in a separate capital facilities fund with other charges received" and that the funds not be comingled with other monies or spent for

purposes other than those for which the charges were collected. (See *Homebuilders Ass'n of Tulare/Kings Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 574m interpreting similar language in section 66006, subd. (a) to mean that "all that is required is that the fees be deposited into 'a separate capital facilities account' to avoid commingling with the local agency's other revenues and funds.") Consequently, the mere fact that the City has set up a single account into which all capacity funds will be deposited does not necessarily violate section 66013, subdivision (c), as long as the funds are not comingled or spent for purposes other than those for which they were collected.

Here, petitioners point to no evidence that the capacity charges will be comingled. In fact, the City has stated that the water capacity fees for expansion of the water system for new development will be treated as separate from the other fees. Also, the petitioners have not pointed to any evidence in the record showing that the capacity funds charged for the water system expansion to accommodate new development will be used for any other purpose. Therefore, the petitioners have failed to meet their burden of showing that the City violated section 66013, subdivision (c) by placing all of the water capacity fees into a single Water Capacity Fund.

11. The City's Use of 2014 as the "Baseline" Year for Calculating Existing Water Demand Was Not an Invalid Method for Calculating Capacity Fees

Petitioners also contend that the City improperly used 2014 as the "baseline" year for calculating the existing water demand, which they contend resulted in an artificially low number for existing

demand, which in turn resulted in an inaccurate projected estimate of the amount of demand attributable to new growth in 2035. Petitioners claim that there is no justification for choosing 2014 as the baseline year for calculating existing demand, and that 2014 was an exceptionally low demand year due to the drought and recession, as well as the implementation of state-mandated conservation requirements. They argue that the City has thus failed to meet its burden of producing evidence showing that it used a valid method for imposing the fees. (*Home Builders, supra,* 185 Cal.App.4th at p. 562.)

However, the City alleges that it used 2014 as the baseline year for calculating existing demand because it was the last year before the 28% mandatory reduction in water use went into effect. (AR 2417, 2500.) Thus, 2014 was the last "normal" year for water use before the reduction in water use. In fact, the table cited by petitioners in their opening brief shows that 2015 was an even lower year for water use than 2014, since total production was only about 111,000 af as opposed to 130,000 in 2014. (AR 2418, Table 4-1.) Also, the same table shows that water use had been generally declining since the start of the recession in 2008. (*Ibid.*) Therefore, the choice of 2014 as a baseline year for calculating existing water demand does not appear to be arbitrary or capricious, nor does it establish that the City failed to use a valid means for calculating the amount of the capacity fees.

12. Petitioners Have Not Shown that the Capacity Fees Are Unlawful Under Government Code Section 66001

Petitioners also argue that the City cannot rely on Government Code section 66001 to justify the capacity fees. However, as

petitioners admit, the City did not rely on section 66001 to justify the fees, as it clearly relied on section 66013. The City stated in the ordinance adopting the capacity fee that, "WHEREAS, the City's authority to impose capacity charges for the privilege of connecting property to the City's water systems is governed in part by the Mitigation Fee Act (Gov. Code§ 66000 et seq.), particularly *Government Code 66013* and 66016. The Mitigation Fee Act requires that when a local agency, such as a City, imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges must not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed. (*Gov. Code § 66013.*)" (AR 558, emphasis added.) Therefore, petitioners' arguments with regard to section 66001 are moot, as the City never relied on that section to justify the capacity fees.

In any event, most of petitioners' arguments regarding the City's alleged failure to comply with section 66001 merely duplicate their arguments with regard to section 66013, and fail to show any actual failure to comply with the Mitigation Fee Act, as discussed in detail above.

The only new argument that petitioners have raised to show that the City has not complied with section 66001 is that the capacity fees are improper under section 66001, subdivision (g), because they are being imposed to pay for "costs attributable to existing deficiencies in public facilities", namely the cost of rectifying the existing groundwater overdraft conditions that are not attributable to new development. They contend that the overdraft of the Kings River Basin is an "existing deficiency in a

public facility" and therefore they cannot be forced to pay for it with a capacity fee.

Under section 66001, subdivision (g), "A fee shall not include the costs attributable to existing deficiencies in public facilities, but may include the costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the general plan."

Here, petitioners cite to no authorities holding that a water aquifer is a "public facility" as defined under section 66001, subdivision (g). They merely cite to section 66000, subdivision (d), which defines "public facilities" to include "public improvements, public services, and community amenities." (Gov. Code, § 66000, subd. (d).) However, a naturally existing groundwater basin or aquifer is not a public improvement, public service, or community amenity. Rather, it is an existing natural feature of the environment. Thus, the overdraft of the Kings Subbasin does not qualify as a "deficient public facility" for the purposes of section 66001, subdivision (g).

Petitioners' interpretation would also be contrary to the purpose of the Sustainable Groundwater Management Act (SGMA), which expressly requires reduction of groundwater pumping and restoration of groundwater. (Water Code §§ 113; 10727, *et seq.*) Under petitioners' theory, local agencies would not be allowed to impose capacity fees on new development to reduce or mitigate groundwater pumping because such fees would be imposed to mitigate an existing deficiency in public facilities, even though the State clearly

encourages and requires such measures to reduce reliance on groundwater. Therefore, the petitioners have failed to show that the City violated section 66001 when it imposed the capacity fees.

D. Petition for Writ of Mandate Under CEQA

1. Standard of Review

"Review of decisions made pursuant to CEQA or its administrative guidelines is governed by [Public Resources Code] sections 21168 and 21168.5, the provisions of which focus review on '(1) whether there is any substantial evidence in light of the whole record to support the decision; and (2) whether the agency making the decision abused its discretion by failing to proceed in the manner required by law.' (1) The reviewing court may not substitute its judgment for that of the local agency as to what constitutes wise public policy." (*Stone v. Board of Supervisors* (1988) 205 Cal.App.3d 927, 932, internal citations omitted.)

Generally speaking, where an agency makes a negative declaration stating that there will be no significant environmental impact from a project, it is the petitioner's burden to point to substantial evidence in the record showing that there is a fair argument that there may be a significant environmental impact from the project. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1379.) However, "It is well-established that '[w]hether an activity is a project is an issue of law that can be decided on undisputed data in the record on appeal.'" (*Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223, internal citations omitted.)

2. Petitioners Have Failed to Show that the City Has Committed to a "Project" Within the Meaning of CEQA and Thus Violated CEQA by Failing to Study the Environmental Impacts of the Capacity Fees

Petitioners contend that the City violated CEQA when it found that the capacity fees were not a "project" within the meaning of CEQA, and therefore there was no need for environmental review of the possible impacts of such fees. (AR 1786.) Petitioners argue that the capacity fees were part of a larger project that could result in a significant change to the environment for purposes of CEQA, as the fees will be used to fund various infrastructure projects, including the Northeast Surface Water Treatment Plant expansion, and that the City committed to the project when it adopted the capacity fees.

In opposition, the City has taken the position that the capacity fees are not, in themselves, a "project" that could cause an environmental impact, and therefore no study of the potential impact is necessary. The City also claims that it has not committed to any project that will be funded by the fees, so CEQA is not implicated by the adoption of the fees.

Under the CEQA Guidelines, "'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvements to existing public structures..." (Cal. Code Regs., tit. 14, § 15378, subd. (a)(1).)

On the other hand, a "Project" does not include: "The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment." (Cal. Code Regs., tit. 14, § 15378, subd. (b)(4).)

Also, "CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of: ... Obtaining funds for capital projects, necessary to maintain service within existing service areas..." (14 Cal. Code Regs., § 15273, subd. (a)(4).) However, "Rate increases to fund capital projects for the expansion of a system remain subject to CEQA." (14 Cal. Code Regs., § 15273, subd. (b).)

There is no bright-line rule defining when an agency has given its approval to a project for purposes of CEQA review. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 138.) "Instead, we apply the general principle that before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.'" (*Id.* at p. 138, internal citations omitted.)

"In applying this principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that

CEQA would otherwise require to be considered, including the alternative of not going forward with the project. In this analysis, the contract's conditioning of final approval on CEQA compliance is relevant but not determinative." (*Id.* at p. 139, internal citation omitted.)

"A frequently cited treatise on CEQA summarizes this approach in a useful manner. 'First, the analysis should consider whether, in taking the challenged action, the agency indicated that it would perform environmental review before it makes any further commitment to the project, and if so, whether the agency has nevertheless effectively circumscribed or limited its discretion with respect to that environmental review. Second, the analysis should consider the extent to which the record shows that the agency or its staff have committed significant resources to shaping the project. If, as a practical matter, the agency has foreclosed any meaningful options to going forward with the project, then for purposes of CEQA the agency has 'approved' the project.' As this passage suggests, we look both to the agreement itself and to the surrounding circumstances, as shown in the record of the decision, to determine whether an agency's authorization or execution of an agreement for development constitutes a 'decision ... which commits the agency to a definite course of action in regard to a project.'" (*Id.* at p. 139, internal citations omitted.)

Here, the City stated in its ordinance adopting the capacity fees that it was not committing to any specific project. "The Council finds the Water Capacity Fee program is intended to fund as-yet unknown, future projects and programs, which may include potential infrastructure related to growth. These fees do not

commit the City to approve any particular project, program, or capital improvement, but will be placed in a separate fund for potential unidentified future projects. Any activities, including infrastructure improvements, which may be funded by these Water Capacity Fees will be subject to future environmental review under CEQA, as applicable, prior to Council approval." (AR 564.)

"The Council therefore finds the Water Capacity Fees are not subject to environmental review under CEQA. First, the Water Capacity Fees, in and of themselves, do not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment and therefore are not considered a 'project' under CEQA. (Pub. Resources Code, § 21065, 14 Cal. Code Regs., § 15378, subd. (a).) Further, the Water Capacity Fees are considered a government funding mechanism that do not involve any commitment on behalf of the City to any specific project which may result in a potentially significant physical impact on the environment. (14 Cal. Code Regs.,§ 15378, subd. (b)(4).) Even with adoption of the fee structure, projects that may be funded by the Water Capacity Fees may never be built and in this way, remain speculative. As such, adoption of the Water Capacity Fee involves no commitment whatsoever to any project which may result in a significant physical impact on the environment." (AR 565.) The City also specifically noted that any projects or improvements funded by the capacity fees would be subject to a future environmental review under CEQA. (AR 564, 1799, 1811.)

Thus, there is nothing in the ordinance adopting the capacity fees that specifically commits the City to any particular project,

and in fact the City states that it may not build any project at all. Also, the City has stated that any project that may be proposed will be subject to future review for environmental impacts under CEQA.

Nevertheless, petitioners point out that the BWA study that supported the City's decision to adopt the capacity fees assumes that the City will construct specific water infrastructure projects, including the Northeast Surface Water Treatment Facility and the transmission mains associated with the facility. For example, the BWA study discusses the need for a separate component of the capacity fees for the specific purpose of funding expansion of the water system to support the needs of new development, and in particular the need to expand the Northeast Facility from 30 mgd to 60 mgd, as well as the need to make improvements to transmission mains. (AR 1725.) The study also states that these costs will be imposed entirely on new development, as the expansion will be needed to meet the needs of new growth. (*Ibid.*) In addition, the study provides estimates for the cost of expanding water treatment facilities and infrastructure to meet the needs of new growth, and specifically identifies the two main costs as the expansion of the Northeast Treatment Facility ($82,419,000) and regional transmission mains ($76,600,000). (AR 1730, Table 6.) Thus, petitioners contend that the City's own study indicates that it has committed to a specific project, namely the expansion of the Northeast Surface Water Treatment Facility and the related water transmission infrastructure.

However, while it does appear that the City intends to use the capacity fees for expansion of the Northeast Treatment Facility and

associated water transmission lines, the City has not taken any action to commit itself to the expansion of the facility, and in fact it has expressly stated that it did not intend to commit to any particular project when it adopted the fees. The City also noted that any future projects would be subject to review under CEQA before they would be approved. Therefore, it does not appear that the City's adoption of the capacity fees was a commitment to build a "project" under CEQA that required environmental review.

The situation here is similar to the circumstances in *Sustainable Transportation Advocates of Santa Barbara v. Santa Barbara County Ass'n of Governments* (2009) 179 Cal.App.4th 113, where the Court of Appeal found that the City had not committed itself to implementation of transportation projects when it adopted a measure to pay for the projects, even though the City had advocated for the projects and provided detailed information about them before adopting the measure. (*Id.* at pp. 122-124.)

"Unlike City's actions in *Save Tara*, respondent's actions did not demonstrate that, as a practical matter, it had committed itself to the implementation of the transportation projects in the Investment Plan. Measure A does not qualify as a project within the meaning of CEQA because it is a mechanism for funding proposed projects that may be modified or not implemented depending upon a number of factors, including CEQA environmental review. (CEQA Guidelines § 15378, subd. (b)(4).)" (*Id.* at p. 123.)

Likewise, here the City did not indicate that it had committed itself to any project that would require environmental study, but rather merely adopted a funding mechanism that could be used to fund potential future projects which might or might not be

constructed depending on a number of factors, including CEQA environmental review. While the City clearly has advocated for certain potential projects, such as the Northeast Treatment Facility expansion, and has even based the amount of capacity fees on the anticipated future expense of such projects, there is nothing in the record to show that it has taken any concrete steps toward committing to a specific project. There is nothing to indicate that the City has signed any contracts, paid any money, issued any bonds, or made any other binding promises to begin the process of expanding the treatment facility or the transmission lines. There is also nothing in the record showing that the City has done anything to foreclose alternative or mitigation measures that would ordinarily be part of CEQA review of the anticipated Northeast Treatment Facility expansion project. (*Save Tara, supra*, 45 Cal.4th at p. 138.) In fact, the City has expressly left open the possibility that the facility might never be expanded, and that if an expansion is to go forward, it will be subject to environmental review before the project can be approved.

Thus, the court finds that petitioners have failed to meet their burden of showing that the City failed to comply with CEQA when it adopted the capacity fees.

///

///

///

///

///

///

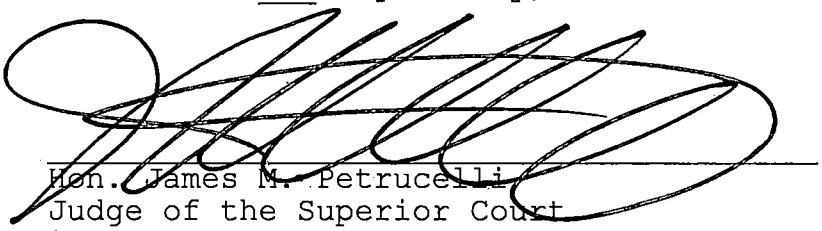
///

IV.

CONCLUSION

The petition for writ of mandate is hereby denied. It is so ordered.

DATED this 30 day of May, 2018.



Hon. James M. Petrucelli
Judge of the Superior Court