



## *Ione Valley Land, Air, & Water Defense Alliance, LLC v. County of Amador*

Court of Appeal of California, Third Appellate District

February 26, 2019, Opinion Filed

C081893

**Reporter**

33 Cal. App. 5th 165 \*; 2019 Cal. App. LEXIS 230 \*\*; 2019 WL 1275354

IONE VALLEY LAND, AIR, AND WATER DEFENSE ALLIANCE, LLC, Plaintiff and Appellant, v. COUNTY OF AMADOR, Defendant and Respondent; NEWMAN MINERALS, LLC, et al., Real Parties in Interest and Respondents.

**Notice:** As modified Mar. 20, 2019.**CERTIFIED FOR PARTIAL PUBLICATION\*****Subsequent History:** [\*\*1] The Publication Status of this Document has been Changed by the Court from Unpublished to Published March 20, 2019.**Prior History:** Superior Court of Amador County, No. 15CVC09240, Leslie C. Nichols, Judge.

[Ione Valley Land v. County of Amador, 2019 Cal. App. Unpub. LEXIS 1326 \(Cal. App. 3d Dist., Feb. 26, 2019\)](#)

### Core Terms

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trial court, issues, traffic impact, recirculated, impacts, res judicata, partially, writ of mandate, certification, litigated, parties, traffic, air, approval of the project, writ petition, conditions, Resources, complied, Quarry, water supply, mitigated, vacate, deficiencies, circulation, revised, revisit, argues, merits, challenging, biological

### Case Summary

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**Overview**

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\* Pursuant to [California Rules of Court, rules 8.1105](#) and [8.1110](#), this opinion is certified for publication with the exception of part II.

**HOLDINGS:** [1]-Except for issues relating to traffic impacts, res judicata barred objections to a county's partially recirculated environmental impact report (EIR) certification and project approval for a quarry because other issues were, or could have been, litigated and resolved in connection with a prior writ petition that was granted only as to traffic impacts; [2]-The decertification of the original EIR as a result of the grant of writ relief regarding traffic impacts did not alter the fact that the sufficiency of other EIR components had been litigated and resolved; [3]-The objector could have appealed the prior ruling as an aggrieved party under [Code Civ. Proc., § 902](#), because its petition was denied in part; [4]-The trial court's limited writ of mandate under [Pub. Resources Code, § 21168.9, subd. \(a\)\(3\)](#), did not require the county to revisit issues other than traffic impacts.

**Outcome**

Judgment affirmed.

### LexisNexis® Headnotes

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Civil Procedure > ... > Defenses, Demurrers & Objections > Affirmative Defenses > Res Judicata

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

**[HNI](#) [📄] Res Judicata**

Res judicata or claim preclusion bars relitigation of a cause of action that previously was adjudicated in another proceeding between the same parties or parties in privity with them. Res judicata applies if the decision in the prior proceeding is final

and on the merits and the present proceeding is on the same cause of action as the prior proceeding. Res judicata bars the litigation not only of issues that were actually litigated but also issues that could have been litigated. Causes of action are considered the same if based on the same primary right. A claim in the present proceeding is based on the same primary right if based on the same conditions and facts in existence when the original action was filed. Even if the petitioner's challenge is not based on the same conditions and facts, those different conditions and facts must be material.

Business & Corporate Compliance > ... > Environmental Law > Assessment & Information  
Access > Environmental Impact Statements

Civil Procedure > Judgments > Preclusion of Judgments > Res Judicata

Civil Procedure > ... > Defenses, Demurrers & Objections > Affirmative Defenses > Res Judicata

## [HN2](#) Environmental Impact Statements

Whether an environmental impact report (EIR) has been decertified does not alter the fact that the sufficiency of a component of the EIR has been litigated and resolved. Res judicata has been applied even when the city rescinded approval of the project and decertified the prior EIR.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Adverse Determinations

## [HN3](#) Adverse Determinations

Only aggrieved parties may appeal. [Code Civ. Proc., § 902](#).

Civil Procedure > Appeals > Appellate Briefs

## [HN4](#) Appellate Briefs

Obvious considerations of fairness in argument demand that an appellant present all of his points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission. Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.

## Headnotes/Summary

### Summary

[\*165] CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court denied a petition for writ of mandate challenging a county's partially recirculated environmental impact report (EIR) certification and project approval for a quarry. (Superior Court of Amador County, No. 15CV09240, Leslie C. Nichols, Judge.†)

The Court of Appeal affirmed, holding that except for issues relating to traffic impacts, res judicata barred objections because other issues were, or could have been, litigated and resolved in connection with a prior writ petition that was granted only as to traffic impacts. The decertification of the original EIR as a result of the grant of writ relief regarding traffic impacts did not alter the fact that the sufficiency of other EIR components had been litigated and resolved. The objector could have appealed the prior ruling as an aggrieved party ([Code Civ. Proc., § 902](#)) because its petition was denied in part. The trial court's limited writ of mandate ([Pub. Resources Code, § 21168.9, subd. \(a\)\(3\)](#)) did not require the county to revisit issues other than traffic impacts. (Opinion by Mauro, J., with Butz, Acting P. J., and Hoch, J., concurring.)

### Headnotes

CALIFORNIA OFFICIAL REPORTS HEADNOTES

[CA\(1\)](#)  (1)

**Judgments § 69—Res Judicata—Identity of Issues—Same Primary Right.**

Res judicata or claim preclusion bars relitigation of a cause of action that previously was adjudicated in another proceeding between the same parties or parties in privity with them. Res judicata applies if the decision in the prior proceeding is final and on the merits and the present proceeding is on the same cause of action as the prior proceeding. Res judicata bars the litigation not only of issues that were actually litigated but also issues that could have been litigated. Causes of action are considered the same if based on the same primary right. A claim in the present proceeding is based on the same primary right if based on the same conditions and facts in existence when the original action was filed. Even if the petitioner's

† Retired judge of the Santa Clara Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

challenge is not based on the same conditions and facts, those different conditions and facts must be material.

[CA\(2\)](#) [↓] (2)

**Pollution and Conservation Laws § 2.9—California  
Environmental Quality Act—Proceedings—Judicial Review—  
Res Judicata.**

Whether an environmental impact report (EIR) has been decertified does not alter the fact that the sufficiency of a component of the EIR has been litigated and resolved. Res judicata has been applied even when the city rescinded approval of the project and decertified the prior EIR.

[CA\(3\)](#) [↓] (3)

**Appellate Review § 7—Parties—Aggrieved.**

Only aggrieved parties may appeal ([Code Civ. Proc., § 902](#)).

[CA\(4\)](#) [↓] (4)

**Appellate Review § 111—Briefs—Form and Requisites—  
Reply Brief—Points First Raised.**

Obvious considerations of fairness in argument demand that an appellant present all of its points in the opening brief. To withhold a point until the closing brief would deprive the respondent of the opportunity to answer it or require the effort and delay of an additional brief by permission. Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.

[CA\(5\)](#) [↓] (5)

**Pollution and Conservation Laws § 2.9—California  
Environmental Quality Act—Proceedings—Judicial Review—  
Res Judicata and Limited Mandate.**

A county was not required to revisit impacts or issues other than traffic impacts because the trial court's writ of mandate only required recirculation of an environmental impact report as to traffic impacts. Consistent with the [California Environmental Quality Act \(Pub. Resources Code, § 21000 et seq.; CEQA\)](#), the trial court issued a mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with [CEQA \[\\*167\]](#) ([Pub. Resources Code, § 21168.9, subd.](#)

[\(a\)\(3\)](#)). The trial court's limited writ of mandate did not require the county to revisit issues other than traffic impacts. All issues that an objector sought to raise on appeal were precluded except those having to do with traffic impacts because the remaining issues were litigated, or could have been litigated, in the prior proceeding and because the writ of mandate only required further action as to traffic impacts.

[Manaster & Selmi, Cal. Environmental Law & Land Use Practice (2019) ch. 23, § 23.02; Cal. Forms of Pleading and Practice (2019) ch. 491, Res Judicata, § 491.14.]

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Gregory Gillott for Defendant and Respondent.

Cox, Castle & Nicholson, Michael H. Zischke, James M. Purvis; Harrison Temblador Hungerford & Johnson, Mark D. Harrison and Bradley B. Johnson for Real Parties in Interest and Respondents.

**Judges:** Opinion by Mauro, J., with Butz, Acting P. J., and Hoch, J., concurring.

**Opinion by:** Mauro, J.

## Opinion

**MAURO, J.**—In 2012, the County of Amador (County) certified a final environmental impact report (EIR) and approved the Newman Ridge Project (Project), an aggregate quarry and related facilities near Ione owned by real parties in interest Newman Minerals, LLC, and others (Applicants). Ione Valley Land, Air, and Water Defense Alliance, LLC (LAWDA), filed a petition for writ of mandate under the [California Environmental Quality Act \(Pub. Resources Code, § 21000 et seq.; CEQA\)](#) challenging the certification and approval. The trial court granted the petition as to traffic impacts because the 2012 draft EIR did not accurately portray the data from the traffic impact study and did not disclose traffic information in a manner reasonably calculated to inform the public and decision makers. The errors required correction and recirculation of the EIR as to traffic issues only. As to all other issues, the petition was denied.

After the County issued a partially recirculated draft EIR in 2014, certified the partially recirculated **[\*\*2]** EIR, and again approved the Project, LAWDA again filed a petition for writ of mandate. The trial court denied the petition, and LAWDA appeals.

**[\*168]**

LAWDA now contends the trial court erred by denying the petition (1) as to impacts other than traffic impacts, and (2) as to traffic impacts. In the published portion of this opinion, we conclude the arguments relating to impacts other than traffic impacts are precluded by res judicata. And in the unpublished portion of this opinion, we conclude LAWDA fails to establish that [CEQA](#) statutes and guidelines require reversal as to traffic impacts. We will affirm the judgment.

## BACKGROUND

LAWDA elected not to include a reporter's transcript in the record on appeal. Consequently, it is difficult to piece together what arguments were made in the trial court and when they were made. For example, the trial court heard arguments on this case on several occasions having to do with a demurrer and on the merits, yet we do not have the benefit of the arguments made. Also, LAWDA did not request a statement of decision, so we also do not have the benefit of the trial court's reasoning in denying the petition for writ of mandate. We glean the following from the clerk's transcript and, to a lesser extent, the administrative record.

Applicants proposed the **[\*\*3]** Project to consist of two parts: the Newman Ridge Quarry and the Edwin Center. The Newman Ridge Quarry is a 278-acre quarry from which it is anticipated five million tons of rock will be extracted per year for 50 years. The adjacent Edwin Center is a 113-acre area to host processing and transportation facilities. The County certified an EIR and approved the Project in 2012.

In November 2012, LAWDA filed a petition for writ of mandate (*Ione Valley Land, Air & Water Defense Alliance, LLC v. County of Amador* (Super. Ct. Amador County, 2015, No. 12-CVC-08091)), which we will refer to as the “first petition,” claiming that the County's approval of the Project violated [CEQA](#), as well as the Surface Mining and Reclamation Act of 1975 (Pub. Resources Code, § 2710 et seq.) and the Planning and Zoning Law (Gov. Code, § 65000 et seq.). The trial court summarized the [CEQA](#) issues raised by LAWDA in the first petition: “(1) the air pollution impacts were understated and insufficiently mitigated[;] (2) the water supply and water quality issues were inadequately analyzed or mitigated[;] (3) the traffic and circulation impacts were inadequately analyzed and mitigated[;] (4) the revised [draft] EIR should have been recirculated[;] (5) the County failed to adequately consult with the California Department of Corrections and Rehabilitation [CDCR] as **[\*\*4]** a trustee agency, and with Caltrans as a responsible agency; (6) the substantial evidence does not support the Statement of Overriding Considerations; (7) the County failed to provide a reasoned analysis in **[\*169]** response to Caltrans claims that the [final] EIR failed to adequately identify, disclose and mitigate for potentially significant impacts to the State

Highway system.”

In February 2014, the trial court entered its order granting the first petition in part and denying it in part. The trial court found two traffic-related deficiencies in the EIR, one having to do with surface street traffic impacts and the other with rail traffic impacts. The trial court issued a written ruling along with its order, requiring the County to (1) vacate certification of the EIR, (2) vacate approval of the Project, (3) “recirculate for public comment the revised [draft EIR] pertaining to traffic issues,” (4) decide anew whether to certify the EIR, (5) decide anew whether to approve the Project, and (6) notify the trial court that it had complied with the peremptory writ. In all other respects, the trial court denied the petition.

The County filed an initial return certifying that it had complied with the **[\*\*5]** requirements of the peremptory writ to vacate the EIR certification and the Project approval. It further complied with the writ by circulating for public comment a partially recirculated EIR pertaining only to traffic issues. After responding to comments, the County certified the partially recirculated EIR and approved the Project. In June 2015, the County and the Applicants filed an additional return certifying that they had complied with the entirety of the writ. Based on the compliance, the County asked the trial court to “uphold the County's certification of the EIR and approval of the Project, grant the motion to discharge the Writ, and relinquish jurisdiction over this matter ... .” The trial court granted the motion to discharge the writ in August 2015.

Meanwhile, in April 2015, LAWDA filed a new petition for writ of mandate (*Ione Valley Land, Air, & Water Defense Alliance, LLC, v. County of Amador* (Super. Ct. Amador County, 2016, No. 15-CVC-09240)), which we will refer to as the “second petition,” challenging the certification of the partially recirculated EIR and approval of the Project. The second petition acknowledged that the trial court had granted in part and denied in part the first petition, “ruling that the EIR had failed to apprise the public **[\*\*6]** of the transportation impacts of the proposed project,” but “den[ying] the other claims in the writ petition.” The second petition continued: “Subsequently, the County released a Recirculated EIR, which included a revision of the one section of the EIR dealing with circulation. However, the County did not change any other portion of the EIR despite the fact the entire EIR would be affected by changes in the circumstances in which the Project was being approved; the official state of drought in California, the County's approval of the expansion of the existing Jackson Valley Quarry, and the approval of the Mule Creek State Prison expansion.”

**[\*170]**

The second petition alleged the EIR was deficient in the following respects: (1) water supply and quality, (2) traffic and circulation, (3) biological resources, (4) air pollution, (5) mitigation measures, (6) recirculation of the entire EIR, (7) evidence supporting overriding considerations, and (8) response to public comments. The second petition also alleged violation of the Planning and Zoning Law.

The County and Applicants demurred to the second petition, claiming that many of the contentions relating to the EIR were litigated and resolved in [\*\*7] connection with the first petition. The trial court sustained the demurrer with leave to amend. The record does not reflect the trial court's reasons for sustaining of the demurrer.

LAWDA filed an amended petition, the parties filed briefs on the merits, and the trial court held a hearing. Since there is no reporter's transcript, we do not have a record of the hearing, other than that it occurred. The trial court subsequently issued an order denying LAWDA's second petition for writ of mandate. The order provided no reasoning, and LAWDA did not request a statement of decision.

Additional background is set forth in the discussion.

## DISCUSSION

I

The County and Applicants, which we will refer to collectively as the County, contend that LAWDA is barred from raising most of the issues in the second petition for writ of mandate. We agree. Res judicata bars all of LAWDA's objections to the partially recirculated EIR certification and project approval, except for those issues arising from the partially recirculated EIR concerning traffic impacts, because the remaining issues were litigated and resolved, or could have been litigated and resolved, in connection with the first petition, and the writ [\*\*8] of mandate did not require the County to revisit issues other than traffic impacts.

In a similar *CEQA* case, this court held the parties could not raise issues the parties either raised or could have raised in prior litigation. (*Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 324–327 [140 Cal. Rptr. 3d 459] (*Citizens for Open Government*)). In that case, the trial court granted a petition for writ of mandate, finding that the EIR was inadequate as to cumulative urban decay analysis and potential energy impacts analysis. The writ issued on the merits and became final even though the trial court retained jurisdiction over the matter until the city complied with the writ. (*Id.* [\*\*171] at pp. 302, 324–325; see *Pub. Resources Code, § 21168.9, subd. (b)* [requiring the trial court to “retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined

that the public agency has complied with this division”].) Later, after the city had revised the EIR and reapproved the project, the petitioners filed a new petition for writ of mandate. One of the issues raised in the new petition was that there were significant water supply impacts that were not disclosed in the EIR. The trial court concluded res judicata barred the claim that could have been made in the first petition. This court [\*\*9] affirmed (*Citizens for Open Government, supra, at pp. 324–327*), concluding: “[The petitioner's] water supply claims in this proceeding were based on the same conditions and facts in existence when the original action was filed. As such, res judicata bars us from considering them here” (*id. at p. 327*).

*CA(1)*[↑] (1) In *Citizens for Open Government*, this court summarized the doctrine of res judicata: *HNI*[↑] “Res judicata or claim preclusion bars relitigation of a cause of action that previously was adjudicated in another proceeding between the same parties or parties in privity with them. [Citation.] Res judicata applies if the decision in the prior proceeding is final and on the merits and the present proceeding is on the same cause of action as the prior proceeding. [Citation.] Res judicata bars the litigation not only of issues that were actually litigated but also issues that could have been litigated. [Citation.]” (*Citizens for Open Government, supra, 205 Cal.App.4th at p. 324.*)

This court continued: “Causes of action are considered the same if based on the same primary right. [Citation.] A claim in the present proceeding is based on the same primary right if based on the same conditions and facts in existence when the original action was filed. [Citation.] Even if petitioner's challenge is not based on the same conditions [\*\*10] and facts, those different conditions and facts must be ‘material.’ [Citation.]” (*Citizens for Open Government, supra, 205 Cal.App.4th at p. 325.*)

Here, the trial court's writ of mandate directed the County to revisit only the 2012 EIR's traffic impacts analysis. The trial court denied the first petition for writ of mandate with respect to other parts of the 2012 EIR. Yet LAWDA raises several additional alleged deficiencies other than traffic impacts in its second petition. On appeal, LAWDA raises again some of the issues listed in the second petition, including contentions that the partially recirculated EIR was deficient in its analysis of water supply and quality impacts, biological resource impacts, and air quality impacts. LAWDA also contends the partially recirculated EIR unreasonably failed to consider the approval of another quarry, which undermined the partially recirculated EIR's statement of overriding considerations. We conclude these contentions are barred by res judicata because they were, or could have been, raised in LAWDA's first petition. (*Citizens for Open Government, supra, 205 Cal.App.4th at p.*

324.)

[\*172]

[CA\(2\)](#)<sup>[↑]</sup> (2) LAWDA's opening brief on appeal fails to discuss res judicata, collateral estoppel, or failure to exhaust administrative remedies, even though those theories were raised by the County in the [\*11] trial court and may have been the basis for much of the trial court's order. Only after the County again raised those preclusion issues in its respondent's brief did LAWDA engage them on appeal. It replies that res judicata does not apply because the trial court ordered the County to vacate its certification of the 2012 EIR and approval of the Project, which the County did. Thus, LAWDA argues, the County's later action was a new certification, allowing LAWDA to challenge all of its elements. LAWDA claims that [Public Resources Code section 21168.9](#) allows for partial decertification of an EIR, and, therefore, the trial court's order directing full decertification of the EIR allowed new challenges to parts of the EIR that had already been upheld by the trial court. This argument fails because [HN2](#)<sup>[↑]</sup> whether the EIR has been decertified does not alter the fact that the sufficiency of a component of the EIR has been litigated and resolved. (See [Citizens for Open Government, supra, 205 Cal.App.4th at p. 302](#) [this court applied res judicata even though the city rescinded approval of the project and decertified the prior EIR].)

[CA\(3\)](#)<sup>[↑]</sup> (3) In addition, LAWDA claims res judicata does not apply because it could not appeal the prior order granting in part and denying in part the petition for writ of mandate. [\*12] Noting that [HN3](#)<sup>[↑]</sup> only aggrieved parties may appeal ([Code Civ. Proc., § 902](#); [In re Pacific Std. Life Ins. Co. \(1992\) 9 Cal.App.4th 1197, 1200 \[12 Cal. Rptr. 2d 50\]](#)), LAWDA argues it was not an aggrieved party because the trial court vacated the EIR certification and Project approval. This contention, however, does not account for the trial court's partial denial of the petition for writ of mandate. Because the trial court rejected LAWDA's arguments regarding aspects of the EIR other than traffic impacts and denied the petition as to those aspects of the EIR, thus rejecting the attempt to have the County reconsider those other impacts, LAWDA was aggrieved and could have appealed.

[CA\(4\)](#)<sup>[↑]</sup> (4) LAWDA also asserts for the first time in its reply brief that new and different circumstances render the newly certified EIR factually different from the prior EIR and, therefore, res judicata does not apply. It argues, for example, that new legislation, the Sustainable Groundwater Management Act ([Wat. Code, § 10720 et seq.](#)), has been enacted since the first EIR was certified. It asserts that conditions have changed, including drought conditions and

drying of wells, and other projects in the area have been approved. LAWDA also argues that “misleading information” in the 2012 EIR regarding traffic impacts prevented informed public comment on air quality [\*13] and biological resource impacts. However, because LAWDA failed to include this counterargument to the application of res judicata in its opening brief, LAWDA forfeited the argument. [HN4](#)<sup>[↑]</sup> ““Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening [\*173] brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission. Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.”” ([Neighbours v. Buzz Oates Enterprises \(1990\) 217 Cal.App.3d 325, 335, fn. 8 \[265 Cal. Rptr. 788\]](#).)

[CA\(5\)](#)<sup>[↑]</sup> (5) We conclude the County was not required to revisit impacts or issues other than traffic impacts because the trial court's writ of mandate only required recirculation of the EIR as to traffic impacts. Consistent with [CEQA](#), the trial court issued “[a] mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with [[CEQA](#)].” ([Pub. Resources Code, § 21168.9, subd. \(a\)\(3\)](#).) The trial court's limited writ of mandate in this case did not require the County to revisit issues other than traffic impacts.

We further conclude [\*14] that all issues LAWDA seeks to raise on appeal are precluded except those having to do with traffic impacts because the remaining issues were litigated, or could have been litigated, in the prior proceeding and because the writ of mandate only required further action as to traffic impacts.

II\* [NOT CERTIFIED FOR PUBLICATION]

#### DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal. ([Cal. Rules of Court, rule 8.278\(a\)](#).)

Butz, Acting P. J., and Hoch, J., concurred.

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\* See footnote, *ante*, page 165.