

1 California Environmental Quality Act ("CEQA"), the court took the
2 matter under submission.¹

3 The court now takes the matter out from under submission and
4 issues the following ruling:

5 The petition for writ of mandate with respect to the first
6 cause of action for violation of CEQA is denied.

7 I.

8 **INTRODUCTION**

9 The statute of limitations for claims under CEQA are some of
10 the shortest. The last day to file a cause of action for
11 violation of CEQA in this matter was March 8, 2023. However, on
12 that date, petitioners filed their CEQA cause of action only in a
13 federal suit. Caltrans is immune from such claims under the
14 Eleventh Amendment. The parties were unable to come to any
15 agreement to toll the statute of limitations, or for Caltrans to
16 waive its immunity, and petitioners finally filed this action on
17 October 2, 2023, nearly seven months after the expiration of the
18 statute of limitations.

19 Respondents have long alleged that petitioners' CEQA claims
20 are untimely. Petitioners assert that the issue of the timeliness
21 of their CEQA claims has either been resolved by the appellate
22 court or waived by respondents' procedural error. The court
23 disagrees. The statute of limitations is ripe for decision.
24 Moreover, the evidence demonstrates that petitioners' decision to
25 file suit only in federal court on the last possible day was
26 objectively unreasonable.

27 _____
28 ¹ In accordance with the court's January 28, 2024 Order severing the CEQA cause
of action from the non-CEQA causes of action, the parties did not present
briefing or orally comment on the merits of petitioners' non-CEQA claims.
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1 II.

2 DISCUSSION

3 A. This Court is Free to Revisit the Reasonableness of
4 Petitioners' Litigation Strategy

5 Petitioners urge the court to disregard respondents' claim
6 that the CEQA cause of action is untimely and move directly to
7 considering the merits of that claim. Petitioners argue variously
8 that respondents have waived or forfeited the statute of
9 limitations defense, that it is precluded by the doctrine of law
10 of the case, and/or that it is not supported by any evidence
11 validly before the court. The Court finds petitioners' procedural
12 objections without merit and will evaluate the reasonableness of
13 petitioner's litigation choices.

14 1. *Respondents Have Neither Waived Nor Forfeited Their*
15 *Statute of Limitations Defense*

16 "[T]he terms 'waiver' and 'forfeiture' long have been used
17 interchangeably. ... [H]owever, '[w]aiver is different from
18 forfeiture. Whereas forfeiture is the failure to make the timely
19 assertion of a right, waiver is the "intentional relinquishment or
20 abandonment of a known right." ' " (*People v. Simon* (2001) 25
21 Cal.4th 1082, 1097, fn. 9, citing *United States v. Olano* (1993)
22 507 U.S. 725, 733 [Internal citations omitted].)

23 Respondents' verified answer, filed February 20, 2024,
24 asserts that the CEQA claims are time barred in its first
25 affirmative defense. (See Answer, 27:19-20.) Respondents have
26 not forfeit the use of the doctrine. Nor have they waived it.
27 The withdrawal of a motion seeking resolution of a defense is
28 procedurally quite different than dismissing or waiving that

1 defense. Merely withdrawing a motion for summary adjudication
2 does not waive any defense, issue or argument raised therein and
3 petitioners have no authority to the contrary. *Color-Vue, Inc. v.*
4 *Abrams* (1996) 44 Cal.App.4th 1599, cited by petitioners, is
5 inapposite. In *Color-Vue*, by the time of trial, the plaintiff
6 lacked capacity to sue as the Secretary of State had suspended its
7 corporate status for failure to pay its franchise taxes.
8 Defendant knew this, but failed to disclose it, when required to
9 do so for the pretrial conference. The plaintiff thus had no
10 warning of defendant's motion to dismiss which was brought on the
11 first day of trial. The trial court denied plaintiff a
12 continuance to correct the issue and the appellate court reversed.
13 Here, respondents have properly pled and repeatedly asserted their
14 statute of limitations defense. It has not been waived, forfeit
15 or otherwise abandoned.

16 *2. The Doctrine of Law of The Case is Inapplicable*

17 "The law of the case doctrine states that when, in deciding
18 an appeal, an appellate court 'states in its opinion a principle
19 or rule of law necessary to the decision, that principle or rule
20 becomes the law of the case and must be adhered to throughout its
21 subsequent progress, both in the lower court and upon subsequent
22 appeal.' " (*Kowis v. Howard* (1992) 3 Cal.4th 888, 892-893.) The
23 doctrine has limited application to pretrial writ proceedings (*id.*
24 at pp. 893-895), and has no application here.

25 On March 12, 2025, the Fifth District Court of Appeal issued
26 an alternative writ directing this court to either vacate our
27 October 17, 2023 order granting summary adjudication on the first
28 cause of action, and conduct further proceedings to consider

1 whether there are undisputed facts supporting the conclusion
2 petitioners' CEQA claims should be barred by the statute of
3 limitations, due to their unreasonable delay in filing the state
4 action; or to show cause why we should not be compelled to do so.

5 As is usual, the alternative writ and accompanying order
6 provided a summary of the appellate court's thoughts. For example,
7 the Court of Appeal concluded that certain "undisputed" material
8 facts contradicted other "undisputed" material facts in the
9 parties' separate statements of material fact. The appellate
10 court specifically noted that it could not be true that Caltrans
11 had no intent to waive the affirmative defense of sovereign
12 immunity after filing its motion to dismiss on August 21, 2023, if
13 it was also true that the parties were still talking about waiving
14 immunity and entering into a tolling agreement into September of
15 2023. (See *Friends of Calwa, Inc. v. Superior Court of Fresno*
16 *County* (March 12, 2025, F088939).)

17 However, the Fifth District's abbreviated statement of law
18 and fact made in conjunction with issuing the alternative writ is
19 not law of the case. "[A]bsent a written opinion *following*
20 issuance of the alternative writ, this court's reasoning in
21 issuing the alternative writ is not the law of the case" binding
22 on appeal. (*Cerna v. City of Oakland* (2008) 161 Cal.App.4th 1340,
23 1354-1355 (emphasis added).) Law of the case generally requires
24 both opportunity for oral argument and a written opinion. (*Kowis*
25 *v. Howard, supra*, 3 Cal.4th 894, 899.) The Fifth District never
26 heard oral argument or issued a written opinion on the alternative
27 writ. Thus, the doctrine of law of the case does not apply here.

28

1 Accordingly, nothing in the procedural history of
2 respondents' motion for summary adjudication precludes this court
3 from deciding the merits of their statute of limitations challenge
4 now, at the "trial" of the CEQA cause of action.

5 3. Respondents' Statute of Limitations Argument is Properly
6 Supported by Evidence

7 Finally, petitioners assert that there is "no evidence" to
8 support respondents' statute of limitations defense, because
9 everything respondents cite is outside the Administrative Record.
10 Respondents have requested judicial notice of documents which were
11 all previously submitted in connection with respondents' motion
12 for summary adjudication, in connection with their opposing brief.
13 Petitioners object to these requests, claiming that this court may
14 only judicially notice the existence of those documents, and
15 cannot consider the truth of the facts contained within them.
16 Thus, with no vehicle to consider the truth of the materials,
17 respondents have failed to present any evidence to support their
18 assertion that this action is time barred or that their behavior
19 was unreasonable.

20 Although respondents have resubmitted their summary
21 adjudication papers as part of a document entitled a "request for
22 judicial notice," it is well settled that a trial court may
23 consider evidence already on file in the same action. The
24 evidence need only be incorporated by reference. (See Cal. Rules
25 of Court, rule 3.1110(d) ["[a]ny paper previously filed must be
26 referred to by date of execution and title."]; *Roth v. Plikaytis*
27 (2017) 15 Cal.App.5th 283, 292 ["... the prior motion had been
28 denied, and the record was large. These reasons do not justify the

1 court's refusal to consider the previously filed materials."].)
2 Respondents' "request for judicial notice," meets the essential
3 requirements of incorporation by reference, as it identifies the
4 documents by date and title. Accordingly, the court has reviewed
5 and considered the materials that comprise Exhibit D to the
6 Vaghini Declaration in making this ruling.

7 B. The Trial of Petition for Writ of Mandate

8 A "trial" of the merits of a writ petition is in the nature
9 of a law and motion hearing with no special requirements. (See
10 Cal. Rules of Court, rules 3.1103(a)(2) ["law and motion" includes
11 "writs of review, mandate and prohibition"], 3.1110, 3.1112,
12 3.1113; see also Asimow, *California Practice Guide: Administrative*
13 *Law* (The Rutter Group 2025) §§ 20:225, 20:240-255, 20:270-271.)
14 Even when a petition for writ of mandate raises questions of fact,
15 the matter is generally resolved by reference to documents,
16 declarations and other record. Oral testimony is very rarely
17 permitted. (*American Federation of State, County & Municipal*
18 *Employees v. Metropolitan Water Dist.* (2005) 126 Cal.App.4th 247,
19 263.)

20 Respondents were free to revisit the timeliness of the CEQA
21 cause of action and the reasonableness of petitioners' actions
22 through their merits briefing.

23 C. Petitioners' Cause of Action for Violation of CEQA is
24 untimely

25 "CEQA provides unusually short statutes of limitations on
26 filing court challenges to the approval of projects." (Cal. Code
27 Regs., Tit. 14, § 15112, subd. (a).) "CEQA's purpose to ensure
28 extremely prompt resolution of lawsuits claiming noncompliance

1 with the Act is evidenced throughout the statute's procedural
2 scheme. Such suits have calendar preference; more populous
3 counties must designate one or more judges to develop CEQA
4 expertise so as to permit prompt disposition of CEQA claims; and
5 expedited briefing and hearing schedules are required. (Pub. Res.
6 Code², §§ 21167.1, 21167.4.) [¶] Courts have often noted the
7 Legislature's clear determination that "the public interest is
8 not served unless CEQA challenges are promptly filed and
9 diligently prosecuted." [Citations.] ... "The Legislature has
10 obviously structured the legal process for a CEQA challenge to be
11 speedy...." [Citation.]" (*Stockton Citizens for Sensible Planning*
12 *v. City of Stockton* (2010) 48 Cal.4th 481, 500.)

13 "CEQA specifically requires that any lawsuit alleging CEQA
14 noncompliance must be filed within 30 days after a facially valid
15 NOD [notice of determination] is filed." (*Coalition for an*
16 *Equitable Westlake/Macarthur Park v. City of Los Angeles* (2020) 47
17 Cal.App.5th 368, 378, citing § 21167, subds. (b), (c) & (e).) "If
18 an agency files a notice of exemption (NOE), then a 35-day statute
19 of limitations applies." (*Ibid.*, citations omitted.) "If a public
20 agency does not file either an NOD or an NOE, a 180-day statute of
21 limitations begins to run on 'the date of the public agency's
22 decision to carry out or approve the project.'" (*Ibid.*, citations
23 omitted.) "The California Supreme Court has made clear that the
24 filing of a facially valid notice starts the running of the
25 statute of limitations, even where the underlying CEQA
26 determinations may be flawed." (*Ibid.*)

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28

² All further statutory citations are to the Public Resources Code, unless otherwise noted.
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1 Here, it is undisputed that Caltrans filed the notice of
2 determination ("NOD") on February 6, 2023, that Petitioners filed
3 an action in federal court challenging Caltrans' approval of the
4 Project under CEQA and the National Environmental Policy Act
5 ("NEPA") on March 8, 2023, and that Petitioner did not file suit
6 in state court on these claims until October 2, 2023, nearly seven
7 months after the 30 day time limit expired. (See AR 1; Vaghini
8 Decl., Ex. D at CT001013.)

9 Accordingly, the CEQA cause of action is untimely unless the
10 statute of limitations is tolled or otherwise suspended.

11 *1. Equitable Tolling Doctrine*

12 "Equitable tolling is a 'judicially created, nonstatutory
13 doctrine' that 'suspend[s] or extend[s] a statute of limitations
14 as necessary to ensure fundamental practicality and fairness.'" '
15 [Citation.] The doctrine applies 'occasionally and in special
16 situations' to 'soften the harsh impact of technical rules which
17 might otherwise prevent a good faith litigant from having a day in
18 court.' [Citation.] Courts draw authority to toll a filing
19 deadline from their inherent equitable powers—not from what the
20 Legislature has declared in any particular statute. [Citation.]
21 For that reason, we presume that statutory deadlines are subject
22 to equitable tolling." (*Saint Francis Memorial Hospital v. State*
23 *Dept. of Public Health* (2020) 9 Cal.5th 710, 719-720 (*Saint*
24 *Francis I*)). The doctrine of equitable tolling applies to CEQA
25 statutes of limitation, including Public Resources Code section
26 21167. (See *Friends of Mammoth v. Board of Supervisors* (1972) 8
27 Cal.3d 247, 269, disapproved on other grounds in *Kowis v. Howard*,
28 *supra*, 3 Cal.4th 888.)

1 "To determine whether equitable tolling may extend a statute
2 of limitations, courts must analyze whether a plaintiff has
3 established the doctrine's three elements: timely notice to the
4 defendant, lack of prejudice to the defendant, and reasonable and
5 good faith conduct by the plaintiff." (*Saint Francis I, supra*, 9
6 Cal.5th at pp. 725-726.) Courts should also carefully consider
7 each case to apply the doctrine only " 'occasionally and in
8 special situations.' " (*Id.* at p. 719, quoting *Addison v. State*
9 (1978) 21 Cal.3d 313, 316.) It should not be applied to " 'garden
10 variety claim[s] of excusable neglect.' " (*Id.* at p. 730, quoting
11 *Irwin v. Department of Veterans Affairs* (1990) 498 U.S. 89, 96.)

12 Caltrans does not claim that it lacked sufficient notice of
13 petitioners' state claims or that it suffered any particular
14 prejudice from petitioners' choice to file in federal court.
15 Therefore, the only issue remaining is whether petitioners'
16 actions were reasonable.

17 The reasonableness element encompasses "two distinct
18 requirements: [a] plaintiff's conduct must be objectively
19 reasonable and subjectively in good faith." (*Saint Francis I,*
20 *supra*, 9 Cal.5th at p. 729.) "An analysis of reasonableness
21 focuses not on a party's intentions or the motives behind a
22 party's actions, but instead on whether that party's actions were
23 fair, proper, and sensible in light of the circumstances." (*Ibid.*)
24 Again, petitioners' (and their counsels') good faith is not in
25 question. The question before the court is solely whether
26 petitioners' course of action in filing the instant lawsuit was
27 objectively reasonable.

28

1 The First District examined the reasonableness element in
2 detail after the California Supreme Court remanded *Saint Francis I*
3 with instructions to "address equitable tolling's third element."
4 (*Saint Francis I, supra*, 9 Cal.5th at p. 731.) This court finds
5 *Saint Francis Memorial Hospital v. State Dept. of Public Health*
6 (2021) 59 Cal.App.5th 965 (*Saint Francis II*) directly on point and
7 highly persuasive.

8 In the *Saint Francis* cases, the titular hospital challenged a
9 fine issued by Department of Public Health. The Department's
10 decision upholding the fine was issued on December 15, 2015 and
11 served on *Saint Francis* the following day. (*Saint Francis II,*
12 *supra*, 59 Cal.App.5th at p. 970.) On December 30, 2015, *Saint*
13 *Francis* sought to challenge the fine by making a written request
14 for reconsideration to the Department. (*Ibid.*) This was
15 improper. The applicable statute required *Saint Francis* to file a
16 petition for judicial review within 30 days of service of the
17 decision, i.e., by January 15, 2016. (*Ibid.*) Despite this, the
18 Department's staff counsel litigating the case answered *Saint*
19 *Francis's* request for reconsideration on the merits on January 8,
20 2016 and the Department did not raise any question as to whether
21 the request for reconsideration was void or otherwise invalid,
22 prior to January 14, 2016, the day on which the Department denied
23 the request. (*Ibid.*) *Saint Francis* eventually filed its original
24 petition in the superior court on January 26, 2016, 12 days after
25 the denial of the request for reconsideration and 41 days after
26 service of the Department's final decision. (*Id.*, at p. 971.)

27 In deciding whether *Saint Francis's* actions were objectively
28 reasonable, the appellate court recognized that *Saint Francis* was

1 represented by legal counsel at all relevant times. (*Saint*
2 *Francis II, supra*, 59 Cal.App.5th at p. 977.) The appellate court
3 concluded that the requirement that plaintiff act reasonably and
4 in good faith applied equally to plaintiff's lawyers, because "
5 'they made most of the decisions about whether and what to file.'
6 " (*Ibid.*, citing *Collier v. City of Pasadena* (1983) 142 Cal.App.3d
7 917, 931.)

8 The *Saint Francis II* court determined that a party's mistaken
9 choice of first remedy had to be itself objectively reasonable.
10 (*Saint Francis II, supra*, 59 Cal.App.5th at p. 981.) *Saint*
11 *Francis'* decision to file a request for reconsideration was not
12 objectively reasonable because "figuring out the correct deadline
13 was a relatively simple matter of reading the decision and the
14 applicable statutes." (*Ibid.*) Furthermore, even if the
15 Department's own staff counsel also mistakenly believed that
16 reconsideration was an available remedy, that belief arose, and
17 was expressed, only "after the deadline for filing the petition
18 had passed," and therefore "did not cause *Saint Francis* to miss
19 that deadline." (*Id.*, at p. 982. (emphasis in original).)

20 Mindful of the Supreme Court's admonishment to ensure
21 equitable tolling provide only a narrow form of relief in "unusual
22 circumstances," and did not become "a cure-all for entirely
23 common" affairs, the Court of Appeal held that fact that *Saint*
24 *Francis* could have easily determined the applicable deadline,
25 meant its decision to pursue reconsideration was objectively
26 unreasonable. (*Saint Francis II, supra*, 59 Cal.App.5th at p.
27 982.) The appellate court concluded "[i]f these circumstances do
28

1 not present a " 'garden variety claim[] of excusable neglect' "
2 [citations omitted], we do not know what would." (*Ibid.*)

3 Petitioners', like Saint Francis Hospital's, choice of first
4 remedy was not objectively reasonable. There is no evidence that
5 the petitioners were unaware of the Eleventh Amendment immunity
6 issues with their CEQA claims prior to filing their federal case,
7 or that they were unaware of the extremely brief statute of
8 limitations for their CEQA claims. There is likewise no evidence
9 that respondents made any representations to induce petitioners to
10 file suit solely in federal court.

11 Only the filing of the appropriate pleading in court "stops
12 the running of the statute" of limitations against a party.

13 (*Pimental v. City of San Francisco* (1863) 21 Cal. 351, 367; see
14 *Garcia v. Lacey* (2014) 231 Cal.App.4th 402, 411 ["civil actions
15 (such as lawsuits for damages or equitable relief) and special
16 proceedings (such as writ petitions) are commenced when the
17 plaintiff's complaint or petition is filed with the court".])

18 Petitioners' choice to file their CEQA claims exclusively in
19 federal court, where Caltrans possessed complete immunity to those
20 claims, on the last possible day prior to the expiration of the
21 statute of limitations, seriously prejudiced petitioners' case.
22 While it is reasonable for a party to desire efficient and cost
23 effective litigation, it is not objectively reasonable for a party
24 to exchange an absolute right to litigate their state law claims
25 in state court for the mere possibility of raising such claims in
26 federal court only with their opponent's cooperation and consent.

27 Petitioners' prolonged failure to refile the CEQA cause of
28 action promptly in state court, while itself unreasonable, is

1 ultimately immaterial, because nothing the parties did, or did not
2 do, "after the deadline for filing the petition had passed," could
3 have caused petitioners to have missed the filing deadline. (*Saint*
4 *Francis II, supra*, 59 Cal.App.5th at p. at p. 982. (emphasis in
5 original).)

6 Ultimately, petitioners are the architects of their own
7 misfortune. The decision to file suit on the last possible day
8 left petitioners with no time to act even if the statute of
9 limitations were to be tolled. Equitable tolling cannot revive a
10 claim that is already time-barred. Indeed, "the effect of
11 equitable tolling is that the limitations period *stops running*
12 *during the tolling event, and begins to run again only when the*
13 *tolling event has concluded.*" (*Lantzy v. Centex Homes* (2003) 31
14 Cal.4th 363, 370 [emphasis in original]; see also *Committee for*
15 *Sound Water & Land Development v. City of Seaside* (2022) 79
16 Cal.App.5th 389, 403.) Thus, " '[t]olling can only suspend the
17 running of a statute that still has time to run; it cannot revive
18 a statute which has already run out.' " (*Mills v. Forestex Co.*
19 (2003) 108 Cal.App.4th 625, 651-652.)

20 As the California Supreme Court made clear in *Saint Francis*
21 *I*, a plaintiff must have acted reasonably before equitable tolling
22 can apply. "Reasonableness" means that not only must the
23 plaintiff act in subjectively good faith, but the choice of remedy
24 must also be objectively reasonable. (*Saint Francis I, supra*, 9
25 Cal.5th at p. 729.) The court must ask whether "that party's
26 actions were fair, proper, and sensible in light of the
27 circumstances?" (*Ibid.*) The court cannot describe petitioners'
28 decision to bring its CEQA claims in only in a federal lawsuit

1 filed on the last possible day as reasonable. Petitioners had
2 multiple options for preserving their ability to fully litigate
3 their CEQA allegations. They could have requested a tolling
4 agreement or an immunity waiver from Caltrans before the
5 expiration of the statute of limitations, but they didn't. If
6 Caltrans cooperated, filing suit only in federal court would be
7 appropriate. If Caltrans refused to cooperate, or failed to
8 respond, petitioners could have filed their CEQA claims in state
9 court before the state of limitations expired. They also could
10 have simply simultaneously filed in state court, and dismissed or
11 stayed one of the cases. Instead, petitioners' chose to raise
12 their CEQA claims solely in a forum where Caltrans was immune,
13 thus subordinating their right to litigate their allegations of
14 CEQA violations to Caltrans' good will. Under such circumstances,
15 Petitioners' pursuit of their claims exclusively in a federal
16 forum was not fair, proper or sensible.

17 D. Requests for Judicial Notice

18 Both petitioners and respondent request the court take
19 judicial notice of various documents. Plaintiffs seek judicial
20 notice of 11 Exhibits in support of their opening brief and four
21 in support of their reply. Respondents request judicial notice of
22 six additional documents (or sets of documents) in connection with
23 their opposition. Respondents oppose 9 of petitioners' requests
24 for judicial notice accompanying the opening brief.
25 Because the majority of the requests for judicial notice do not
26 bear on the question of whether equitable tolling extends the
27 statute of limitations on petitioners' CEQA claim, they are
28 irrelevant to the court's resolution of this matter. As such, the

1 court finds petitioners' initial and reply requests for judicial
2 notice, as well as respondents' requests A-C and E-F to be moot.

3 The court denies respondents' request to take judicial notice
4 of the documents in Exhibit D to Robert Vaghini's Declaration -
5 the sole request that relates to the statute of limitations issue.
6 Exhibit D is comprised of documents previously filed in connection
7 with respondents' motion for summary adjudication. Petitioners
8 assert that this court cannot take judicial notice of the truth of
9 the matters asserted in the evidence submitted with respect to the
10 motion for summary adjudication. This is correct. We may take
11 judicial notice that court filings exist, but may not assume the
12 truth of their contents. (*Arce v. Kaiser Found. Health Plan, Inc.*
13 (2010) 181 Cal.App.4th 471, 483-484.) Nevertheless, as these
14 records are in the court's own file in this case, the court
15 considers them incorporated by reference. (Cal. Rules of Court,
16 rule 3.1110(d); *Roth v. Plikaytis, supra*, 15 Cal.App.5th at p.
17 292.) Accordingly, the court will not also take judicial notice
18 of the evidence in Exhibit D.

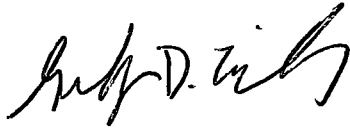
19 **III.**

20 **DISPOSITION**

21 The petition for writ of mandate is denied with respect to
22 the first cause of action. The clerk of the court is directed to
23 reclassify the case as a non-CEQA case, and reassign it
24 accordingly.

25 IT IS SO ORDERED:

26 DATED: April 6, 2026

27 
28 _____
HON. GEOFFREY D. WILSON
Judge of the Superior Court