COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT, DIVISION THREE

DELAWARE TETRA TECHNOLOGIES, INC., Case No. G050869

Plaintiff and Appellant,

v.

SANTA MARGARITA WATER DISTRICT, et al.,

Defendants and Respondents;

COUNTY OF SAN BERNARDINO, et al.,

Real Parties in Interest.

Appeal From the Superior Court of Orange County, California
Superior Court Case No. 30-2012-00594355
Judge: Honorable Gail A. Andler, Judge

AMICUS BRIEF OF CBIA, BILD, CBPA, BIA-BAY AREA, CALCHAMBER AND LABOR COUNCIL IN SUPPORT OF RESPONDENT'S BRIEF

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Pursuant to California Rules of Court 8.520, subdivision (f)(1), proposed amici curiae California Building Industry Association, California Business Properties Association, Building Industry Legal Defense Foundation, Building Industry Association of the Bay Area, California Chamber of Commerce and Southern California District Council of Laborers (collectively, "Amici") wish to address two California Environmental Quality Act (CEQA) issues raised in this case.

I. INTRODUCTION

Amici recognize that the instant case arises out of a major water supply project and involves unique facts, but believe that the rules Appellant has urged this Court to adopt would have adverse implications across all projects throughout the state. In particular, Amici note that in the context of a public-private partnership, there is no precedent for asserting that the public agency member of that "partnership" is not the lead agency for purposes of conducting CEQA review. Builders and developers are increasingly encouraged to explore variations on public-private partnerships with public agencies, which often lack sufficient funding to undertake projects on their own. The notion that the public agency partner can be disqualified as the lead agency for the very project it has undertaken with a private applicant is jarring. It also appears at odds with the plain text of CEQA, and in particular, the CEQA Guidelines, which set out a clear means to identify the lead agency and to resolve any controversy when

more than one agency can rightfully claim that role. Years into an intensive project development process, applicants should not be subject to utter disruption simply because a project opponent disagrees with the two public agencies' joint exercise of discretion to resolve a potential dispute about the proper lead agency.

Development projects that require an environmental impact report (EIR) or even a mitigated negative declaration will have a mitigation monitoring and reporting program (MMRP) adopted as part of the overall project approval. The notion that a project opponent can skip over the MMRP and instead focus on design elements of the project as inadequate or "deferred" mitigation is troubling. Amici believe CEQA and the case law on this issue have clearly established the rules for how to judge whether an EIR invalidly defers mitigation. CEQA does not permit the opponent to convert project design elements into CEQA mitigation measures and then discount them as inadequate mitigation. This sort of approach could present a new obstacle to any development project and it is unfair to builders, developers and anyone depending on economic development in general to change the rules regarding CEQA compliance.

II. THE LEAD AGENCY IN A PUBLIC-PRIVATE PARTNERSHIP SHOULD BE THE PUBLIC AGENCY JOINING WITH PRIVATE APPLICANTS TO DELIVER THE PROJECT

Amici, as private applicants who must go before public agencies to seek project approvals and workers who build them, have little say over

who the most appropriate "lead agency" will be under CEQA. Amici must rely on state, regional and local governments to make those arrangements and resolve any disputes that may arise. When two local agencies with a substantial claim to be the lead agency are able to resolve their potential disputes pursuant to the CEQA Guidelines designed to facilitate that resolution, courts should not lightly revisit that resolution. This is especially true when the challenge is asserted by a private, third party opponent who is clearly motivated by a sense of competition for use of the same natural resource. This is not a situation where two competing potential lead agencies have been unable to resolve their disputes despite the Guidelines and despite the Office of Planning and Research (OPR) acting as a mediator. Here, the local agencies reached a mutual resolution precisely as envisioned by the Guidelines § 15051(d) ["...the public agencies may by agreement designate an agency as the lead agency."]

Again, this project arises in a sparsely populated desert environment involving a major water supply project to support Southern California's growing population, but Amici can envision similar fact patterns in any number of more traditional development projects. For example, if an applicant proposes a new commercial development on the edge of a city, which promises financial rewards to the approving city, but the only real environmental impacts are to traffic congestion in the neighboring city or a state highway, such that the mitigation will be of greatest interest to the

neighboring jurisdiction as opposed to the approving city, that should not call into question the approving city's capacity to act as lead agency. It might be a new development to accommodate automobile dealerships that generate substantial tax revenue for the host city. It might be a new residential development in a suburban community to serve a job center in a surrounding community and the traffic impacts will be felt most heavily by a jurisdiction in between. In any of those circumstances, the lead agency may not be at the center of the environmental impacts, but that has never been held to call into question the status of the approving agency as the lead agency.[1]

Moreover, if there were any dispute about the lead agency role, and the approving city and neighboring city reached an accord pursuant to section 15051(d), the courts should be wary of second-guessing that exercise of two agencies' discretion. Otherwise, challenging the designation of lead agency will become a new play in project opponents' playbooks and will create still more uncertainty for project applicants throughout the state.

The case Appellants have relied on, *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892

[1] As the California Supreme Court just reaffirmed, CEQA addresses this issue by mandating that lead agencies consider and adopt all feasible mitigation for off-site impacts, just as they must for on-site impacts. See, *City of San Diego v. Board of Trustees of the California State University*, Case No. S199557 (August 3, 2015) at slip opinion pages 18-19.

("*PCL*"), is patently distinguishable. In that case the water district that ended up as the lead agency had no basis to claim lead agency status, there had not been any sort of good faith dispute where competing public agencies negotiated a resolution, but rather, it appears to have been a selection by convenience. The *PCL* court was clear in explaining that negotiations of contracts for State Water Project water was the sole responsibility of the Department of Water Resources and it was not delegable to a local water agency: "It is DWR that 'manage[s]' the SWP, 'the largest state-built, multipurpose water project in the country'... It is incongruous to assert that any of the regional contractors simply by virtue of a private settlement agreement can assume DWR's principal responsibility for managing the SWP." *PCL* at 906. The court went on to note that "under these circumstances" the parties were "not at liberty to anoint a local agency to act in place of DWR." *Id.*

Those extreme facts are not at issue in the case before this Court. Rather, two agencies who each had a substantial claim to lead agency status resolved a good faith dispute through the appropriate process set out in the CEQA Guidelines.

If this Court finds that SMWD cannot act as a lead agency when it is the public agency in a public-private partnership, that would throw into doubt any private party's ability to rely on its public agency partner to act in that role whenever project opponents can muster the charge that another

public agency would have been more appropriate. Nor should it matter if the lead agency may ultimately manage the project through another agency created for the project. This is all the more true when considering the subtext of Appellant's argument, that a lead agency's self-interest in a project is a red flag suggesting that public agency cannot be trusted to conduct environmental review.

Most development projects proposed in California today have benefits for the local community or agency. Indeed, that is increasingly an exaction public agencies seek.[2] If the very fact that a project will benefit a public agency, or its constituents, calls into question that agency's ability to discharge its legal duties under CEQA, that will throw the entire CEQA process into chaos. (See e.g., *Save Tara v. City of West Hollywood,* (2008) 45 Cal. 4th 116, 136 (*Save Tara*) ["If having high esteem for a project before preparing an environmental impact report (EIR) nullifies the process, few public projects would withstand judicial scrutiny, since it is inevitable that the agency proposing a project will be favorably disposed toward it."]

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[2] Public agencies statewide are experimenting with demands for 'community benefits' in exchange for granting development approvals. Even where the project itself will generate great public benefit through job creation, tax base, and overall economic vitality, local agencies have been exploring means to exact direct financial contributions to communities, divorced from any nexus to the project's impacts, for art, schools, street repairs, housing subsidies for lower-income residents, etc.

Appellants claim that having SMWD certify the EIR, as opposed to the County, was on its face prejudicial. But even if there were some error here, prejudice is not presumed, it must be shown. Pub. Res. Code § 21005(b) ("there is no presumption that error is prejudicial.") Appellants again discuss how SMWD is too far away to care, its self-interest in the project rendered it unable to be "neutral and objective," and therefore it could exercise its discretion without due care for the impacts. (Appellants' Reply at 39).

But apart from impugning the integrity of SMWD, Appellant has failed to show what information was excluded from this extensive, open, public process. As noted above, a lead agency's favorable disposition toward a project is not a disqualifying prejudice. Nor does Appellant explain that the County, as a responsible agency, had a duty to challenge the Project EIR if it did not concur with it. CEQA Guidelines § 15096(e) [responsible agency must challenge lead agency's EIR if it concludes EIR not adequate for responsible agency's use]. As Respondents noted in their Joint Respondents Brief (footnote 4 at page 33-34), Appellant challenged the County's failure to sue the EIR, Appellants lost that issue below and did not appeal, so the County's reliance on the EIR as a responsible agency is final.

Appellants essentially ask this Court to assume there has been prejudice without making an actual showing. As the California Supreme

Court recently stated, however, courts do not presume any violation of CEQA was prejudicial. *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463 [courts "must look at the nature of ... noncompliance to determine if it was of the sort that 'preclude[d] informed decision making and informed public participation'."] See also, *Rominger v. County of Colusa,* (2014) 229 Cal.App.4th 690, 709 [applying *Smart Rail* to reject contention that "[f]ailure to comply with the CEQA procedures is necessarily prejudicial."]

Notably absent from Appellant's challenge is an assertion that SMWD's analysis or process violated informed decision-making or thwarted public participation. Simply reiterating that Appellant mistrusts SMWD's motives because SMWD stands to benefit from the Project does not establish a prejudicial abuse of discretion. Accordingly, the lack of prejudice is an independent reason to uphold the trial court judgment.

Appellant also suggests that SMWD jumped the gun by preparing an EIR before all agreements between the private applicant and the public agency partner (and among public agencies by way of the JPA) were prepared. But that construct runs afoul of fundamental CEQA requirements that the EIR be prepared as early as possible and before the public agency has entered into binding agreements. *Save Tara* at 136 ("postponing EIR preparation until after a binding agreement for development has been

reached would tend to undermine CEQA's goal of transparency in environmental decisionmaking.")

Thus, Amici urge this Court to summarily reject the challenge to SMWD's lead agency status. The private participant in a public-private partnership should be able to rely on its partner to act as the public agency on these projects, which are often large, complicated undertakings that will touch many jurisdictions and interest groups. Indeed, the larger and more complex the project, the more likely it will have substantial benefits to the community, but also the more likely it will cause impacts outside the jurisdiction of the approving agency. That should not be used as a device to stymie approval.

III. SMWD DID NOT DEFER MITIGATION MEASURES - ITS MMRP IS MORE THAN ADEQUATE TO COMPLY WITH CEQA.

Appellant charges SMWD with deferred mitigation because the Groundwater Monitoring Management and Mitigation Plan (GMMMP) was not final when SMWD certified the EIR and approved the Project. This is an apples and oranges argument with implications across the spectrum of CEQA challenges. It is critical that courts not conflate project design features and CEQA-imposed mitigation measures. The GMMMP is not a CEQA-imposed mitigation measure; it is a design feature of the Project. By contrast, the duly adopted CEQA Mitigation Monitoring and Reporting Program (MMRP) – as it name suggests – is the compilation of CEQA

mitigation measures imposed on the Project. Appellants cannot fairly assert "deferred mitigation" and then avoid discussing the actual mitigation measures adopted for the Project.

Again, the facts of the instant case are not commonly repeated for typical development projects like new housing or a new commercial center. But the legal principle arises with some frequency and it does so in the context of CEQA compliance from categorical exemptions, to negative declarations, to EIRs. The importance of separating mitigation measures from design features transcends the facts of this case.

For example, in the context of a project qualifying for a categorical exemption, it has been held that an applicant cannot "mitigate their way into an exemption." (See *e.g.*, *Salmon Protection and Watershed Network v. County of Marin* (2004) 23 Cal.Rptr.3d 321 [county erred by relying on mitigation measures to rely on categorical exemption for development project]). In other words, a project that may cause an adverse environmental impact cannot have CEQA mitigation measures imposed on it and then rely on a categorical exemption from CEQA. Either the project is exempt, or if it requires CEQA mitigation to be approved, then it is subject to a mitigated negative declaration or EIR. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199-1200 [mitigation measures may support a negative declaration but not a categorical exemption.]

Applicants who understand how to design a project in the first instance to avoid causing impacts are not "mitigating into an exemption," they are simply engaged in good design and may benefit from that careful effort by qualifying for a categorical exemption from CEQA. See, e.g., *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1353, holding that applicant who offered to dedicate land to solve a pre-existing traffic condition was not offering CEQA mitigation and could still qualify for categorical exemption. "The dedication became part of the project design – it was never a proposed mitigation measure." *Id.*

The same principle applies when testing the legal efficacy of mitigation measures that have been imposed on a project. Opponents cannot point to elements of the project that are not CEQA-imposed mitigation and then demand that they be tested against the legal standards for CEQA mitigation measures. That is what Appellant has done here. Focusing on the GMMMP, and claiming it fails as CEQA mitigation is simply a misdirected argument. To challenge whether the Project approvals include invalidly deferred mitigation, an opponent must start with the adopted CEQA mitigation measures – the MMRP. In this case, Appellant's opening brief avoided any challenge to the MMRP, so its contention that SMWD illegally deferred CEQA mitigation should be disregarded on that basis alone.

On reply, Appellant cites *Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645 for the proposition that SMWD "compressed" its project with mitigation measures. (Appellant Reply at 56-59). *Lotus* does not support Appellant. In fact, it supports SMWD. The court explains that an EIR cannot rely on mitigation disguised as a design feature to avoid the duty to impose feasible mitigation. In *Lotus*, Caltrans erred by "incorporating the proposed mitigation measures into its description of the project and then concluding that any potential impacts from the project will be less than significant." *Id.* at 655-656. This is the same error Appellant makes here – attempting to convert the GMMMP to mitigation and then attacking it as inadequate or deferred mitigation. SMWD has avoided the error that Caltrans made in *Lotus*. SMWD has not used design features to conclude that a project's impacts are less than significant when those features are "plainly mitigation measures and not part of the project itself." *Lotus* at 656, fn. 8. Quite the contrary, SMWD has been clear that the GMMMP is not being relied on as CEQA mitigation and instead the Court should look to the actual mitigation measures adopted. It is Appellant, not SMWD that repeats the mistake identified in *Lotus*. This Court should reject Appellant's attempt to challenge the GMMMP as mitigation instead of focusing on the actual mitigation measures.

Moreover, an examination of the MMRP demonstrates that each of the adopted mitigation measures complies with the standards for CEQA mitigation. Had Appellant sought to challenge the MMRP as reflecting invalidly deferred mitigation, its challenge would have been properly rejected.

According to the Guidelines, mitigation measures "may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." (Guidelines § 15126.4(a)(1)(B).) While the entire "formulation of mitigation measures should not be deferred until some future time," "[c]ourts have approved deferring the formulation of the details of a mitigation measure" in certain circumstances (*Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.App.4th 200, 237). The lead agency's conclusion regarding the effectiveness of mitigation is evaluated under the substantial evidence standard. *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.*, (1988) 47 Cal.3d 376, 407; *Environmental Council of Sacramento v. City of Sacramento*, (2006) 142 Cal.App.4th 1018, 1041.

Appellant relies on *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70 ("*CBE*") to support its deferred mitigation arguments, but that case is easily distinguishable. (See Appellants' Open. Brief at 61.) The mitigation measure at issue there

called for the developer to submit "a plan for achieving complete reduction of GHG emissions up to . . . 898,000 metric tons per year" no later than one year after approval of the conditional use permit. (*CBE, supra*, at 91.) *CBE* held that this measure improperly deferred mitigation until after project approval because the "EIR merely proposes a generalized goal of no net increase in greenhouse gas emissions" rather than defining performance criteria. (*Id.* at 93.) There, "[t]he only criteria for 'success' of the ultimate mitigation plan adopted is the subjective judgment of the City Council." (*Id.*)

Unlike the measure challenged in *CBE*, the MMRP at issue here is replete with enforceable standards and performance criteria. Its measures include monitoring coupled with specific performance standards in compliance with CEQA. The suite of performance based standards and measures were designed to correct any potential significant impacts identified in the EIR. *Sac. Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1029-30 (*Sac. Old City Assn.*) (Providing a menu of options for mitigating parking problem to be determined based on further study constituted sufficient mitigation standard under CEQA); *Laurel Heights* at 407 (evaluation of a list of noise control techniques and implementing those that would meet the specific noise performance standard constitutes adequate mitigation). For example, there are measures which include performance standards such as comprehensive "early

warning" monitoring features (signal wells, air monitoring and land subsidence equipment, soil testing, and periodic visual observation) to identify potential effects before they reach a level of significance. (Respondents' Joint Br. at 46). Provisions require verification of the accuracy of the modeling results and annual reporting. The adaptive management strategy for mitigation is constantly evaluating what is happening in the area and imposing mitigation as it is needed; CEQA requires no more.

The evaluation will be conducted by an additional monitoring committee, the TRP, which will use performance-based criteria to evaluate whether the triggering event is caused by the project. (Resp. Joint Br. at 46). Monitoring can also be used as a check on an EIR's determination that an impact will be less than significant. In *Laurel Heights,* the Supreme Court upheld air quality monitoring plan as part of mitigation because it would be "unreasonable to demand a commitment to take specific action based on unknown and as yet unknowable test results." *Id.* at 412). When it is uncertain whether a particular impact will occur, an agency may adopt a contingent mitigation measure that will be triggered by specified conditions. See *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1070. See also *Mount Shasta Bioregional Ecology Ctr. v County of Siskiyou* (2012) 210 Cal.App.4th 184, 208; *Rialto Citizens for Responsible Growth v City of Rialto* (2012) 208 Cal.App.4th 899.

Under well-established legal standards, the MMRP at issue in this case is more than legally adequate. Moreover, Appellant did not challenge the MMRP, but rather, attempted to challenge a design element of the Project as insufficient mitigation. Amici urge this Court to reject Appellant's tactics and to reaffirm the important distinction between the project and the mitigation imposed on the project pursuant to CEQA.

IV. CONCLUSION

Amici respectfully request that this Court affirm that the public agency approving a private applicant's project proposal, whether or not it is formally a public-private partnership, is a proper lead agency for CEQA purposes. Moreover, Amici ask the Court to preserve the standards for judging the legal efficacy of CEQA-imposed mitigation measures and

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Amici respectfully request that this Court affirm that the public agency approving a private applicant's project proposal, whether or not it is formally a public-private partnership, is a proper lead agency for CEQA purposes. Moreover, Amici ask the Court to preserve the standards for judging the legal efficacy of CEQA-imposed mitigation measures and

rejecting Appellant's attempt to conflate the project and the mitigation measures. Accordingly, Amici urge this Court to affirm the trial court judgment.

Dated: August 12, 2015

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APPLICATION FOR LEAVE TO FILE AMICUS BRIEF AND PROPOSED BRIEF IN SUPPORT OF RESPONDENTS' BRIEF

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APPLICATION

Pursuant to California Rules of Court 8.520, subdivision (f)(1), proposed amici curiae California Building Industry Association ("CBIA"), Building Industry Legal Defense Foundation ("BILD"), Building Industry Association of the Bay Area ("BIA Bay Area"), California Business Properties Association ("CBPA"), California Chamber of Commerce ("CalChamber"), Southern California District Council of Laborers ("Labor Council") (collectively, "Amici") respectfully request permission to file an amici curiae brief in this matter, in support of Respondents Santa Margarita Water District, County of San Bernardino, Cadiz, Inc., et al. Pursuant to Rule 8.520, subdivision (f)(5), the proposed amici curiae brief is combined with this Application.

I. BACKGROUND OF PROPOSED AMICI

California Building Industry Association

The California Building Industry Association ("CBIA") is a statewide non-profit trade association comprising approximately 3,000 members involved in the residential development industry. CBIA and member companies directly employ over one hundred thousand people. CBIA is a recognized voice of all aspects of the residential real estate industry in California. CBIA acts to improve the conditions for this state's residential development community and frequently advocates before the

courts in amicus curiae briefs in cases involving issues of concern to its members.

Building Industry Legal Defense Foundation

The Building Industry Legal Defense Foundation ("BILD") is the premier legal advocate for the building and construction industry in California. BILD is a non-profit mutual benefit corporation and wholly-controlled affiliate of the Building Industry Association of Southern California, Inc., which has approximately 1,200 member companies. BILD's purposes are to initiate or support litigation or agency action designed to improve the business climate for the building industry; to monitor legal developments and legislation critical to the building industry; and to educate the industry, public officials, and the public of legal and policy issues critical to sustaining the building industry.

Building Industry Association of the Bay Area

The Building Industry Association of the Bay Area ("BIA/BA") is a non-profit association representing building, developers, and others involved in the residential construction industry in the San Francisco Bay Area. BIA/BA advocates for its members' interests, including before the courts in amicus curiae briefs in cases involving issues important to the residential construction industry.

California Business Properties Association

The California Business Properties Association ("CBPA") serves as the California legislative and regulatory advocate for individual companies, as well as the International Council of Shopping Centers, the California Chapters of the Commercial Real Estate Development Association, the Building Owners and Managers Association California, the Institute of Real Estate Management chapters of California, the Retail Industry Leaders Association and the Association of Commercial Real Estate–Southern California, making CBPA the recognized voice of the commercial, industrial, and retail real estate industries in California representing over 10,000 companies.

California Chamber of Commerce

The California Chamber of Commerce ("CalChamber") is a non-profit business association with over 13,000 members, both individual and corporate, representing virtually every economic interest in the state of California. For over 100 years, CalChamber has been the voice of California business. While CalChamber represents several of the largest corporations in California, seventy-five percent of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues. CalChamber often advocates before federal and state courts by filing amicus curiae briefs and

letters in cases, like this one, involving issues of paramount concern to the business community.

Southern California District Council of Laborers

The Southern California District Council of Laborers ("Labor Council") is a labor union representing over 20,000 skilled construction workers in Southern California. The Labor Council is party to collective bargaining agreements establishing fair wages and safe working conditions for its members with over 1,200 construction companies. These companies employ the Labor Council's members on construction projects of all types and sizes, including almost every major infrastructure project built in the last 60 years in Southern California. To ensure that there are sufficient skilled workers for the future of the construction industry in California, the Labor Council and its signatory employers maintain a State approved apprenticeship program that currently trains over 1,200 apprentices. The mission of the Labor Council is to increase work opportunities for its signatory contractors and members, provide good paying jobs that contribute to the economy in the area, and ensure the continued rebuilding of California's infrastructure.

II. INTEREST OF PROPOSED AMICI

Amici's members are all in building-related industries regulated or affected by CEQA. Amici bring to the Court their perspective on the broader importance of two CEQA issues raised in the case: designation of

the lead agency on projects involving public-private partnerships, and the allegation that the lead agency has deferred mitigation measures when the challengers ignore the mitigation measures actually adopted as part of the project approvals. Amici's members are dependent on local and regional agencies to conduct CEQA review for projects that Amici's members have proposed, sometimes in "partnership" with local or regional government entities. In many (perhaps most) instances, the lead agency considering Amici's projects also stand to gain directly or indirectly from the benefits of the project. Amici are particularly concerned that Appellants urge an interpretation of CEQA that would unfairly disqualify lead agencies when the agency's constituency stands to gain from project approval. While the case at issue involves a water project, the holding could reverberate across the spectrum of projects and open up a whole new line of attack on traditional development. After all, development that gets approved usually involves benefits to the community, including jobs.

Moreover, Amici have abundant experience with the obligation to adopt mitigation measures under CEQA and are concerned that Appellants seek a ruling that would unfairly increase the burden and litigation risk for Amici's members by blurring the distinction between the project and mitigation measures adopted pursuant to CEQA. Again, these facts arise in the context of a water supply proposal and a groundwater monitoring and management plan, but Amici's members routinely face analogous

circumstances in traditional development where design elements of a project must be viewed separately from adopted mitigation measures. Appellants' attempt to blur those lines would adversely impact Amici's ability to rely on what they believe are settled issues of law.

CEQA litigation has been described as a "guerrilla war of attrition" where project opponents try to wear down project applicants. *County of Orange v. Superior Court* (2003) 113 Cal.App.4th 1, 12. The Legislature has sought to prevent that by ensuring that CEQA approval process, as well as litigation, proceed quickly. *Id.* Otherwise, delay becomes an end in itself for opponents especially where, as here, they insist that the entire EIR process be redone from scratch. Major water supply projects are critical to the ability of California to meet the demands of a growing population and a vibrant economy.

III. HOW THE PROPOSED AMICI CURIAE BRIEF WILL ASSIST THE COURT

After reviewing the briefs filed in this action, Amici believe this Court would benefit from additional briefing on the two key issues and policy concerns regarding the role of lead agencies from the applicant's perspective and the risk of making new housing available by changing the standard for judging the efficacy of mitigation measures imposed through CEQA.

By focusing on these issues, Amici's brief will complement the Respondents and Real Party in Interests' briefs.

IV. RULE 8.520 DISCLOSURE

Pursuant to Rule 8.520, subdivision (f)(4), neither the Appellants nor the Defendants/Respondents or Real Parties in Interest or their respective counsel authored this brief in whole or in part. Neither the Appellants nor the Defendants/Respondents or Real Parties in Interest or their respective counsel made any monetary contribution towards or in support of the preparation of this brief. Proposed Amici's counsel did contribute time to prepare this brief.

V. CONCLUSION

Amici respectfully request that this Court accept the filing of the attached brief.

Dated: August 12, 2015

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