CASE NO. G051058

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE

NATIONAL PARKS CONSERVATION ASSOCIATION; CENTER FOR BIOLOGICAL DIVERSITY, et al.,
Petitioners and AppellantS
v.

SANTA MARGARITA WATER DISTRICT, et al.,
Defendants and Respondents.

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND PROPOSED BRIEF OF CALIFORNIA STATE ASSOCIATION OF COUNTIES AND CALIFORNIA ASSOCIATION OF SANITATION AGENCIES

Appeal from the Judgment of the Superior Court
State of California, County of Orange on September 29, 2014
The Honorable Gail A. Andler, Judge Presiding

Orange County Superior Court Case No. 30-2012-00612947-CU-TT-CXC

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE	Court of Appeal Case Number: G051058
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APPELLANT/PETITIONER: NATIONAL PARKS CONSERVATION ASSOC. RESPONDENT/REAL PARTY IN INTEREST: SANTA MARGARITA WATER DIST	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

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1. This form is being submitted on behalf of the following party (*name*): CA STATE ASSOC. OF COUNTIES & CA ASSO

2. a. ☑ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

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Full name of interested entity or person	Nature of interest (*Explain*):
(1)	
(2)	
(3)	
(4)	
(5)	

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 24, 2015

Sabrina V. Teller
(TYPE OR PRINT NAME)

▶ Sabrina Teller
(SIGNATURE OF PARTY OR ATTORNEY)

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APPLICATION TO FILE AND STATEMENT OF INTEREST OF AMICI CURIAE

Pursuant to Rule 8.200, subdivision (c), of the California Rules of Court, the California State Association of Counties (CSAC) and the California Association of Sanitation Agencies (CASA) jointly submit this application to file an *Amici Curiae* brief in support of the position of Respondents County of San Bernardino and Santa Margarita Water District in this matter.

CSAC is a non-profit corporation. Its membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide. The Committee has determined that this case raises important issues that affect all counties.

CASA is a nonprofit mutual benefit corporation organized and existing under the laws of the State of California. CASA is comprised of 115 local public agencies throughout the state, including cities, sanitation districts, sanitary districts, community services districts, sewer districts, county water districts, California water districts, and municipal utility districts. CASA's member agencies provide wastewater collection, treatment, water recycling, renewable energy, and biosolids management services to millions of California residents, businesses, industries and institutions. CASA is advised by its Attorneys Committee, and engages in litigation of statewide significance that has the potential to yield significant benefits to, or to avoid burdens upon, a large number of CASA member agencies.

The purpose of CSAC and CASA in filing this brief is to provide the Court with these entities' perspective regarding the importance of agreements entered to resolve disputes under CEQA Guidelines section 15051(d) and the circumstances under which agencies can

appropriately serve as "lead agency" under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). This brief will also explore the issue and policy implications of Appellants' claim that an error in designating a lead agency, in the absence of any substantive defects in an EIR, is inherently prejudicial.

The answers to these questions involve considerations that Appellants ignore in their briefs. The issues of which agency should act as lead agency, and whether designation of the incorrect lead agency is inherently prejudicial, have broad implications for Amici that transcend the facts of this case. The issues apply to any public/private project or project undertaken by a lead agency outside its jurisdiction. That said, the facts herein provide an excellent platform on which to consider the above-referenced issues. Amici hope that their perspective will persuade the court that the environmental impact report (EIR) at issue here, and any future EIR challenged on these grounds, should not be overturned based solely on Appellants' contention that the wrong agency prepared the EIR. Public agencies such as CSAC and CASA's members need the security of knowing that, when they thoughtfully coordinate lead agency status with other local agencies pursuant to CEQA, those designations will be afforded proper deference by the courts. Clear legal guidance is critical to ensuring future California water management and other complex projects proceed properly and efficiently.

No party or counsel for a party in this case authored any part of the accompanying Amicus Curiae brief. No party or party's counsel made any monetary contribution to fund the preparation of the brief. This brief has been prepared pro bono solely on behalf of Amici Curiae.

Amici Curiae respectfully request that this court accept the accompanying brief for filing in this case.

DATED: August 24, 2015

REMY MOOSE MANLEY, LLP

By: Sabrina Teller
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Attorneys for Amici Curiae
CALIFORNIA STATE ASSOCIATION
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CALIFORNIA ASSOCIATION OF
SANITATION AGENCIES

AMICI CURIAE BRIEF

INTRODUCTION

This brief[1] will explore the following questions: What qualifies an agency to be a proper "lead agency" under the California Environmental Quality Act? And does the selection or designation of the "wrong" lead agency create inherent prejudice sufficient to set aside an EIR even in the absence of any violation of any specific provision of CEQA or its associated regulations or case law? Plaintiffs/Appellants Center for Biological Diversity (CBD) and National Parks Conservation Association (NPCA) (together, Appellants) argue that the County of San Bernardino (County), rather than Santa Margarita Water District (SMWD or District), was the proper lead agency for the groundwater extraction and conservation project ultimately at issue in this litigation. In making this argument, Appellants primarily rely on a case with facts that are highly distinguishable from the facts of this case, *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892.

Appellants' position causes Amici significant concern because, if adopted by this court, it would undermine agencies' decision-making authority. The question of which agency should assume the role of lead agency is not always clear, particularly in a context such as this one, in which there is a public-private partnership and multiple public agencies with substantial claims to lead agency status. The existence of such competing claims, which is a common occurrence, is why CEQA gives potentially competing agencies in such scenarios substantial discretion to sort out and come to agreement amongst themselves. Here, two agencies with substantial claims to lead agency status abided by CEQA's provisions allowing them to decide this matter between

[1] Because Center for Biological Diversity and National Parks Conservation Association both submitted briefs under the same case number (G051058) on identical issues, Amici have prepared and submitted a single brief for the Court's consideration on these issues.

themselves. Thus, the deliberated decision to confer lead agency status upon one of those agencies was proper under CEQA.

Appellants also argue that improper lead agency designation is inherently prejudicial and the court should therefore invalidate any environmental review completed by that agency. Amici disagree. Even if this court were to find that the lead agency designation was improper, the mere designation of the incorrect lead agency, by itself, was not prejudicial error. The court below correctly held that designation of the wrong lead agency is not, in itself, an error that invalidates prior environmental review.

ARGUMENT

1. An agency with a substantial claim to lead agency status may be considered a proper "lead agency" under CEQA.

"Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment. (§ 21067.) "The lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole." (Cal. Code Regs., tit. 14, div. 6, ch. E ["CEQA Guidelines"], § 15051, subd. (b); see also *Eller Media Co. v. Community Redevelopment Agency* (2003) 108 Cal.App.4th 25, 45-46.)

Appellants essentially argue that only the agency that is most disinterested in or has the least to benefit from a Project may serve as lead agency for that Project. From that illogical and unsupported premise, Appellants then conclude that because SMWD will receive water from the Project, it cannot be disinterested, and therefore cannot serve as lead agency. This unsupported interpretation of CEQA would prohibit any agency from taking the lead in analyzing a project in which it had a vested interest, and further presumes that analysis of any project that benefits the lead agency in some way must necessarily be undertaken in bad faith. This is a breathtakingly

cynical view of the ethics and conduct of public agencies, and one the law explicitly forbids. Courts must "presume[] that [an agency's] official duty has been regularly performed." (Evid. Code, § 664.) Furthermore, this negative assumption about the motives of public agencies under CEQA is contradicted by other provisions expressly allowing agencies to consider and adopt as their own analysis that, by Appellants' perspective, is inherently untrustworthy. (See CEQA Guidelines, § 15084, subd. (d)(3) and (e) [allowing a lead agency to accept a draft EIR prepared by a project applicant, its consultant, or *any other person*, as long the agency subjects the draft to its own independent review and analysis]; see also *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1452 ["an agency may comply with CEQA by adopting EIR materials drafted by the applicant's consultant, so long as the agency independently reviews, evaluates, and exercises judgment over that documentation and the issues it raises and addresses"].)

Extending Appellants' argument to its logical conclusion would invalidate the environmental review documents for most projects for which counties or special districts serve as lead agency, as these agencies almost always have some interest in the outcome. For example, a county would not be able to serve as lead agency on a project which would increase its tax revenue, improve its infrastructure, or help to fulfill the goals and policies of its General Plan. Clearly, this is not how government operates. The Legislature did not create a scheme in which a single neutral state agency prepares all the EIRs in the state; it instead vested this duty in agencies that, almost by definition, will have substantial interests in projects they consider, but that are nevertheless presumed, absent substantial evidence to the contrary, to carry out their official duties under CEQA in good faith and in compliance with the law.

a. Where two agencies have a substantial claim to lead agency status, either may act as lead agency.

In the context of public projects, two public agencies, each with a substantial claim to be lead agency, may designate the lead agency by agreement. (CEQA Guidelines, § 15051, subd. (d) ["Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices."].) An interpretation of CEQA that second-guesses these agreements without deference would create substantial uncertainty among agencies, and would have a chilling effect on entering into these agreements. Appellants' interpretation of CEQA would also put a substantial burden on counties to always act as lead agency, a burden that is neither warranted nor appropriate.

Appellants mistakenly frame the issue before the court as being which agency has the *greater* claim to be lead agency. But CEQA only asks whether an agency has *a* substantial claim. There is no weighing of the substantiality of one claim against another. Indeed, such weighing by a reviewing court would defeat the Natural Resources Agency's purpose in changing the standard that once read "equal" claims to be "substantial" claims in Guidelines section 15051, subdivision (d). (See Cal. Admin. Register 76, No. 41-C (Oct. 9, 1976)[2] for changed language.) "Equal" connotes that the claims can be quantified, whereas "substantial" indicates that they cannot necessarily be quantified. Thus, the agencies' claims to lead agency status must viewed individually, not in the context of each other. Appellants claim that subdivision (d) may only be invoked if subdivisions (a), (b), and (c) do not apply. But subdivision (d) states that "[w]here the

[2] This document and other Legislative history can be found in Respondents' Motion for Judicial Notice in Support of Joint Response Briefs.

provisions of subdivisions (a), (b), and (c) *leave two or more public agencies with a substantial claim to be the lead agency*, the public agencies may by agreement designate an agency as the lead agency." (Guidelines, § 15051, subd. (d), emphasis added.) That is the case here.

Appellants argue that because the standard of review for lead agency designations is a question of law, the complexities of any particular fact pattern play no part in determining which agency should have been lead agency. But that is not how the "question of law" standard of review operates. Whether an agency has a substantial claim to lead agency status—the legal standard for determining whether its designation was proper—necessarily depends on the surrounding facts and circumstances of each case.

b. The *PCL* decision held that the agency charged with managing the project is best suited to be lead agency.

There is a dearth of case law on the issue of which agency amongst one or more contenders should be properly designated as a lead agency. That is why Appellants focus their discussion on what appears to be one of the few cases to examine the issue at significant length, *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892 ("*PCL*"). Appellants' attempt to analogize the circumstances in *PCL* to those in this case, however, glosses over critical factual differences. Appellants' overbroad interpretation of *PCL*—that an entity implementing or negotiating part of a project will be the one "carrying out" the project, and designation of another entity as lead agency is therefore always wrong and prejudicial—would hinder CEQA's goals in any case where this interpretation is applied..

PCL involved a dispute regarding whether, for a large water project requiring an EIR, a water district was the proper choice for lead agency instead of a state agency. There, the Central Coast Water Agency (CCWA) served as lead agency with respect to revision of long-term contracts associated with the State Water Project (SWP). The petitioners sought to compel the

Department of Water Resources (DWR) to serve as lead agency and to prepare a new EIR. The court held that DWR, and not CCWA, was required to serve as lead agency for those activities, and directed DWR to prepare a new EIR.

The history of the dispute was important to the court's holding. In the 1950s, the California Legislature authorized construction of the SWP, the largest state-built, multipurpose water project in the country. DWR was tasked with managing the SWP. At the time *PCL* was decided, nearly two thirds of the state's residents received at least part of their water from SWP, and SWP water was used to irrigate approximately 600,000 acres of farmland. (*Id.* at p. 906.)

At the inception of the SWP, DWR entered into individual contracts with agricultural and urban water suppliers that received entitlements to project water in return for which they would repay a proportionate share for maintenance of the SWP facilities. By the early 1990s, water supplies were severely diminished as a result of a multi-year drought. Disputes arose over allocation of the limited supply. The agricultural contractors contended the shortages were not due to the drought, but rather to DWR's failure to complete originally planned SWP facilities that would have yielded more water for contractors to use. The parties agreed to negotiate to try to resolve their differences. The outcome was an omnibus revision of the SWP long-term contracts and their administration culminating in a statement of 14 principles known as the Monterey Agreement. (*Id.* at p. 901.) Those contractors who participated in the Monterey negotiations, together with DWR, determined that implementation of the agreement would potentially have adverse environmental impacts. These entities agreed that CCWA should act as lead agency for purposes of preparing the required EIR.

Petitioners challenged this collective decision. In response, Respondents argued that because the project could not be carried out without the joint action of DWR and the contractors,

both DWR and the contractors, as a group, constituted public agencies with shared principal responsibility for carrying out or approving the project. CCWA, they urged, thus legitimately acted as lead agency.

The court disagreed, holding that "DWR, the state agency charged with the statutory responsibility to build, manage, and operate the SWP, clearly retains the principal responsibility to execute amended long-term contracts and to facilitate the water transfers allowed under the Monterey Agreement." (*Id.* at p. 906.) The court found it "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. *Under these circumstances*, those at the negotiating table were not at liberty to anoint a local agency to act in place of DWR." (*Ibid.*, emphasis added.)

Importantly, those "circumstances" were the statewide nature of the project, and DWR's history with the project and its impacts. "The allocation of water to one part of the state ha[d] potential implications for distribution throughout the system. DWR [was] painfully familiar with the problems plaguing the Delta and the possible impacts," and DWR was the agency with "statewide perspective and expertise." (*Id.* at p. 907.) Thus, DWR was "the 'logical choice for lead agency' because it has principal responsibility for implementation of an agreement that substantially restructures distribution of water throughout the state." (*Ibid.*)

Such facts do not exist here. In *PCL*, a state agency had already been in control of operations for the SWP, which would be directly affected by the proposed project (the Monterey Agreement); and it made most sense for the state agency with complete oversight to act as lead agency for the state-wide project. Here, in contrast, the scope of the Project is limited to the geographic area stretching from where the water originates in the Fenner Basin of the Mojave

Desert to Southern California. Neither SMWD nor the County of San Bernardino covers this entire swath of land. In *PCL*, it was clear that DWR was the agency with the requisite institutional expertise to carry out the Monterey Agreement. The same is not true for the County. To hold that only the County should have been lead agency would not only disregard CEQA's process for agencies with substantial claims to work out lead agency status on their own, it would also require an agency potentially *less qualified* to fulfill the lead agency role in that position. Unlike DWR, the County will oversee less of the groundwater project and its geographic extent than will SMWD. Thus, to hold that the County should have been lead agency would contradict *PCL*'s holding that such status be conferred upon the agency with the principal responsibility for implementation of an agreement.

Amici are concerned that such an interpretation and application of *PCL* would be problematic far beyond the facts of this case. It would in fact obfuscate the CEQA process anywhere development straddles a jurisdictional boundary. The bulk of a project's impacts may occur outside the project city's jurisdiction, instead occurring in the adjacent city or county. For example, a number of cities have proposed reuse plans for decommissioned military bases. Where the outskirts of the base, or the nearest housing developments, are within another city's boundaries, both agencies may have permitting requirements that apply to the reuse. The cities should have the flexibility and discretion, under CEQA, to negotiate who will be lead agency for the project. Similarly, a mixed-use housing and commercial development may be located in a city on the border of unincorporated county land. The city may receive the tax benefits of the project, while the county faces more of the traffic and air quality impacts. The two localities can utilize the negotiation mechanism provided by section 15051 (d) to reach an agreement as to who should act as lead agency. Appellants' interpretation of CEQA ignores the nuances and

complexities present in both common and uncommon development scenarios and implies that it will always be clear who should act as lead agency based on who permits portions of the project or acts with certain authority. The fact that subdivision (d) exists at all belies this assumption.

c. Case law supports upholding a lead agency designation where that agency is qualified and will carry out the project.

Courts have upheld designation of a special district as lead agency over the local county where both were qualified to fill that role. *Sierra Club v. West Side Irrigation District* (2005) 128 Cal.App.4th 690 involved an irrigation district that was located adjacent to, and at places overlapped, the City of Tracy. The district had a contract with the Bureau of Reclamation to receive Central Valley Project water for agricultural and municipal and industrial uses, which the district obtained through turnouts on a canal approximately two miles north of the city's own turnout. Due to reduced demand for its water supply, the district and city negotiated an agreement under which the district would assign to the city its right to collect some of its water, which it would access through its own turnout on the canal. The agreement was contingent in part upon the parties' compliance with CEQA. The parties agreed the irrigation district would serve as lead agency, and the City would act as a responsible agency. The court upheld this division of labor, stating that both agencies were qualified to serve as lead agency, and that in such situations, CEQA permits either to assume that role. (*Id.* at p. 700.)

Lead agencies can also be those agencies that "carry out" a project, meaning they propose the project and provide services if it is approved, or even have an ownership interest in the project. (Pub. Resources Code, § 21067; see *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1298 [designation of city as the lead agency was proper where city would be the entity proposing the land use amendment and providing the services if approved]; *Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation & Park Dist.* (1994) 28

Cal.App.4th 419, 428 [state's ownership interest in Lake Cuyamaca mandated its status as lead agency; contractual delegation of administrative oversight did not alter outcome].)

Counties and special districts regularly institute projects as lead agency to obtain water for their jurisdictions. Public agencies such as the members of CSAC and CASA need the latitude to engage in deliberations permitted by CEQA regarding lead agency status without either second-guessing themselves, foregoing the deliberations altogether in an effort to avoid controversy, or risking the expenditure of substantial sums to prepare an EIR, only to be told at the very end of a long and expensive process that they had no business acting as lead agencies in the first place. Amici fear that, if the court adopts Appellants' view of lead agency designation, their member agencies will become enmeshed in expensive, time-consuming, and project-delaying challenges to those decisions. The Natural Resources Agency, in promulgating the CEQA Guidelines, amended those Guidelines specifically to allow inter-agency deliberation and agreement as to the choice of the lead agency. Adopting Appellants' view would undermine the Natural Resources Agency's objectives in making these revisions.

d. Even if the wrong agency is designated lead agency, such a mistake is not inherently prejudicial.

Though the trial court held the County, rather than SMWD, should have been lead agency, it also found that this error was not prejudicial. The court was "unable to conclude that the failure to designate the County as Lead Agency, without more, constitute[d] a CEQA violation where the SMWD may be considered to have a substantial claim to be the lead agency." (Statement of Decision, Case No. G050864, citing Pub. Resources Code, § 21067; CEQA Guidelines, § 15051, subd. (d).)

Under CEQA, there is no presumption that error is prejudicial. (Pub. Resources Code, § 21005, subd. (b); *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 709.) Courts look

to the nature of the noncompliance to determine if it is of the sort that "preclude[d] informed decisionmaking and informed public participation." (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 463; *Rominger, supra,* 229 Cal.App.4th at p. 696; *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 534; *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* (2012) 210 Cal.App.4th 184, 203.)

Reviewing courts must defer to agencies' decisions, so long as the agency followed proper procedures and its decision is backed by evidentiary support. "In any action or proceeding…to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with [CEQA], the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Pub. Resources Code, § 21168.5.)

Appellants' argument that an EIR must be dismissed solely because it was prepared by the incorrect agency expressly and wrongly values form over substance. The only reason the CEQA Guidelines offers guidance as to which agency amongst more than one contender should serve as lead agency is to ensure that environmental documents serve the informational purposes of CEQA. To invalidate an EIR solely because it was prepared by the incorrect agency would entirely disregard the question of whether, from an *informational* standpoint, the document is legally adequate. An error of incorrect lead agency designation should not be deemed prejudicial unless that error also demonstrably resulted in the EIR itself being legally inadequate. But Appellants do not substantively challenge the EIR's contents; they essentially challenge its title page.

Where an agency serves as a responsible agency and is intensely involved during the entire project process, yet never challenges or criticizes the sufficiency of the EIR upon which it had notice that it must rely, a court must presume that the responsible agency carried out its official duties. (Evid. Code, § 664; CEQA Guidelines, §15096, subd. (e) [process for responsible agency's decision on adequacy of an EIR or negative declaration].) It follows, in such a scenario, that if that responsible agency had acted as lead agency on the EIR, the evidence of its lack of disagreement with the lead agency's conclusions in the EIR indicate it would have performed essentially the same analyses and reached the same conclusions had it acted as lead agency instead. Thus, any failure to serve in that capacity in the first instance could not be found to be prejudicial.

In *PCL, supra*, 83 Cal.App.4th 892, petitioners argued "that appointment of the wrong lead agency taints the entire EIR process, is inherently prejudicial, and compels a fresh start with an appropriate lead agency." (*Id.* at pp. 907-908.) But, while the court agreed that the wrong entity had served as lead agency (*id.* at p. 906), it did not presume prejudice: "the failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decisionmaking and informed public participation." (*Id.* at p. 912.) Then, having found a legal inadequacy in the manner in which CCWA's EIR addressed the "No Project Alternative" (see 83 Cal.App.4th at pp. 910-920), the court ordered DWR to prepare a whole new EIR. In doing so, the court reasoned that "DWR, with its expertise on the statewide impacts of water transfers, may choose to address those issues in a completely different and more comprehensive manner." (*Id.* at p. p. 920.)Here, Appellants would have this court wipe away half a decade's worth of agency work for no reason other than that they believe the incorrect agency ultimately assumed the role of lead agency, even though this decision was the product of deliberation, was made in

good faith, and resulted in no prejudice. Such an outcome would not only be unjust to the County and District in this case, but would set a precedent that would create substantial uncertainty for the members of CASA and CSAC and other public agencies.

CONCLUSION

The plain reading of the applicable statute (Pub. Resources Code, § 21067) and implementing Guideline (section 15150), as well as interpreting case law, supports the designation of an agency with a substantial claim to be lead agency. Even if a designation is determined to be incorrect, courts should not automatically find such errors prejudicial where they have not been shown by petitioners to cause omission of vital information or preclude informed decision-making or public participation.

DATED: August 24, 2015

REMY MOOSE MANLEY, LLP

By: Sabrina Teller
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WORD COUNT CERTIFICATION [CRC 8.204(c)]

Counsel for the CALIFORNIA STATE ASSOCIATION OF COUNTIES and CALIFORNIA ASSOCIATION OF SANITATION AGENCIES certify that the Application for Leave to File Amicus Curiae Brief contains 608 words and the Amicus Curiae Brief contains 3994, for a total of 4602 words as measured by the Microsoft Word 2013 word processing software used in the preparation of the application and the brief.

Dated: August 24, 2015

REMY MOOSE MANLEY, LLP

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Center for Biological Diversity, et al. and National Parks Conservation Association v. County of San Bernardino, Santa Margarita Water District, et al.

Court of Appeal No. G051058

PROOF OF SERVICE

I, Rachel N. Jackson, am a citizen of the United States, employed in the City and County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, California. My email address is rjackson@rmmenvirolaw.com. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy Moose Manley, LLP's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a U.S. mailbox after the close of each day's business.

On August 24, 2015, I served the following:

APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND PROPOSED BRIEF OF CALIFORNIA STATE ASSOCIATION OF COUNTIES AND CALIFORNIA ASSOCIATION OF SANITATION AGENCIES

☒ On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as listed below

☐ On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below

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SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct and that this Proof of Service was executed this 24th day of August, 2015, at Sacramento, California.

_____

Rachel N. Jackson

Center for Biological Diversity, et al. and National Parks Conservation Association v. County of San Bernardino, Santa Margarita Water District, et al.

Court of Appeal No. G051058

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