Case No. H042623

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

MONTEREY COASTKEEPER,

Respondent and Cross-Appellant

v.

MONTEREY COUNTY WATER RESOURCES AGENCY,

Appellant and Cross-Respondent

Appeal from the Superior Court of California, County of Monterey
Case No. M108858
Honorable Thomas W. Wills, Judge Presiding

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND [PROPOSED] BRIEF OF *AMICI CURIAE* ASSOCIATION OF CALIFORNIA WATER AGENCIES, LEAGUE OF CALIFORNIA CITIES, AND CALIFORNIA STATE ASSOCIATION OF COUNTIES

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

To the Honorable Presiding Justice of this Court:

The Association of California Water Agencies (ACWA), the League of California Cities (League), and the California State Association of Counties (CSAC) (collectively, "*Amici Curiae*") request leave to file an *amicus curiae* brief in this case in support of Appellants in this action.

INTEREST OF APPLICANTS

ACWA is a coalition of 430 public water agencies throughout the State of California. ACWA and its members are dedicated to promoting the development, management, and reasonable beneficial use of good quality water in an environmentally balanced and cost-effective manner. ACWA is advised by its Legal Affairs Committee, which monitors and identifies litigation that may affect public water agencies. The Committee has identified this case as being significant to water agencies statewide.

The League is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys throughout California. The Committee monitors litigation of concern to municipalities and identifies cases that have statewide or nationwide significance. The Committee has determined that this case has such significance.

CSAC is a non-profit corporation with 58 California county members. CSAC sponsors a Litigation Coordination Program, administered by the County Counsels' Association of California and overseen by the Association's Litigation Overview Committee, which is comprised of county counsels statewide. The Litigation Overview Committee monitors litigation of concern to counties statewide and has identified this case as a matter affecting all counties.

The *Amici Curiae* have a vital interest in ensuring that public water agencies, cities, and counties managing waterways have clear guidance on their obligations under the Porter-Cologne Water Quality Control Act (Porter-Cologne), Water Code section 13000 et seq., and that the Regional Water Quality Control Boards (Regional Boards) retain their role in determining whether reporting or permitting is necessary for a particular agency through uniform application of the doctrine of exhaustion of administrative remedies.

The Monterey County Superior Court's recent decision in *Monterey Coastkeeper v. Monterey County Water Resources Agency* exposes water agencies, cities, and counties to civil liability through citizen lawsuits brought under Porter-Cologne, when there has historically been no mechanism by which a private entity could sue a district directly for an alleged violation. The superior court's decision further improperly and

without legal precedent imposes a costly burden on water agencies, cities, and counties to mitigate pollution that they did not generate or discharge.

NEED FOR FURTHER BRIEFING

Counsel for the *Amici Curiae* are familiar with the issues in this case and the scope of their presentation, and believe that further argument is needed on the following points:

1. The trial court erred in determining that Monterey Coastkeeper was not required to exhaust administrative remedies pursuant to Porter-Cologne before the Central Coast Regional Water Quality Control Board (Central Coast Regional Board) prior to pursuing its claims against Monterey County Water Resources Agency (MCWRA) in a court of law.

2. The trial court erred in finding that MCWRA was required to file a report of waste discharge related to its flood control and water management practices in Blanco Drain and Reclamation Canal.

Respectfully submitted,

SOMACH SIMMONS & DUNN
A Professional Corporation

Dated: 6/27/16

By: _____
Theresa A. Dunham, Esq.
Theresa C. Barfield, Esq

ASSOCIATION OF CALIFORNIA WATER AGENCIES, ET AL.'s *AMICUS CURIAE* BRIEF

I. INTRODUCTION

This *amicus curiae* brief is filed by the Association of California Water Agencies (ACWA), League of California Cities (League), and California State Association of Counties (CSAC) in support of Appellants in this matter. These amicus parties support Appellants because the Monterey County Superior Court's ruling misapplies the Porter-Cologne Water Quality Control Act (Porter-Cologne), Water Code section 13000 et seq., and the doctrine of administrative remedies in a manner that will improperly expose local, regional and state agencies to civil liability by creating a citizen suit provision in Porter-Cologne where one was neither created nor intended.

Further, the superior court improperly concluded that Monterey County Water Resources Agency's (MCWRA) activities in and around the Reclamation Ditch and Blanco Drain watersheds render it a waste discharger under Porter-Cologne that must file a report of waste discharge or otherwise obtain waste discharge requirements. To the contrary, MCWRA and various other state water management agencies, cities and counties only perform flood control maintenance and water management tasks and clearly do not discharge waste into the waters of the state.

Shoehorning the roles of MCWRA and other state water management agencies into roles of active participation in the creation and discharge of pollutants with corresponding regulatory burdens and costs is an egregious distortion of the mandates and protections of Porter-Cologne. MCWRA, and other similarly situated agencies, cities, and counties are not the source of and do not contribute to pollution in the waters of the state and should not be burdened with mitigating pollution arising from other sources over which they have no control. Such efforts are properly left to actual dischargers, already regulated pursuant to Porter-Cologne.

II. ABOUT ACWA, ET AL., AND THEIR INTERESTS IN THIS CASE

As set forth above, ACWA is a coalition of public water agencies throughout California. ACWA members provide a variety of water services, including flood control and water management services. The League is an organization representing cities throughout California and CSAC is a non-profit representing California counties. Members of both the League and CSAC provide flood control and water management services, like those provided by Appellant MCWRA. The amicus parties, as well as MCWRA, face potential liability from citizen lawsuits under Porter-Cologne if the superior court decision is allowed to stand. Additionally, the superior court decision would reduce the amount of regulatory control and standardization that the Regional Water Quality Control Boards (Regional

Boards) have had over administering Porter-Cologne. The outcome of the superior court case violates the intent of Porter-Cologne in this regard.

Additionally, the amicus parties are concerned about the overbroad interpretation of "discharge" in Water Code section 13260. The superior court's interpretation of "discharge" in such a way that it includes maintenance activities on waterways that passively channel water from one place to another would put a burden on the amicus parties' members who perform those activities to protect water quality when they do not contribute to or produce the water quality issue. Such an interpretation exposes agencies to a high regulatory burden and cost of compliance, without any corresponding benefit, as these agencies are not in a position to control discharges.

III. ARGUMENT

A. The Superior Court Erred in Exercising Jurisdiction on Coastkeeper's Petition for Writ of Mandate Because Adequate Administrative Remedies Were Available, Mandatory and Not Pursued

1. Porter-Cologne Mandates Exhaustion of Administrative Remedies Before Seeking Judicial Review

The doctrine of administrative remedies requires that, when the statute provides relief through an administrative body, that remedy must be exhausted before the judiciary will act. (*Abelleira v. Dist. Court of Appeal* (1941) 17 Cal.2d 280, 291–292.) Porter-Cologne provides a clearly defined

machinery for the administrative resolution of claims regarding a Regional Board's actions and/or alleged failure to act. (*Id.* at p. 292.) The claims made by Monterey Coastkeeper (Coastkeeper) fall within the jurisdiction of the Regional Board.

Specifically, Regional Boards have the authority to require dischargers to file reports of waste discharges. (Wat. Code, §§ 13260, 13264, 13265.) If a discharger does not file such a report after being notified by the Regional Board of their obligation to do so, then the Regional Board may hold the discharger to be civilly liable. (Wat. Code, § 13265.) To the extent that a Regional Board fails to take action in requiring submittal of a report of waste discharge, Porter-Cologne provides a means for parties concerned to challenge a Regional Board's decision. (Wat. Code, § 13320(a).)

When Regional Boards take, or fail to take, administrative actions, including matters involving the filing of reports of waste discharge, aggrieved parties may appeal a Regional Board's action or inaction to the State Water Resources Control Board (State Board) within 30 days. Water Code section 13320(a) states in relevant part: "Within 30 days of any action or failure to act by a regional board . . . an aggrieved person may petition the state board to review that action or failure to act." A party may seek judicial review only after the administrative petition process is concluded.

In the case of a failure to act, the 30-day period shall commence 60 days after a request for action is conveyed to a Regional Board.

If the State Board denies review of the petition, explicitly or by operation of law, the aggrieved party may seek judicial review of the Regional Board's decision (including their failure to act) within 30 days of the denial. (Wat. Code, § 13330(b); Cal. Code Regs., tit. 23, § 2050.5(e) [deeming review denied if the State Board fails to act within 90 days of receipt of a petition].) An aggrieved party waives its right to seek judicial review if it fails to exhaust its administrative remedies by seeking State Board review within 30 days of the Regional Board's action.

Thus, before filing the Petition for Writ of Mandate, Coastkeeper was required to first request action by the Regional Board. In this case, Coastkeeper needed to ask the Central Coast Regional Water Quality Control Board (Central Coast Regional Board) to require a submittal of a report of waste discharge from MCWRA. Then, if the Central Coast Regional Board failed to do so, Coastkeeper could file a petition with the State Board after 60 days from their request expired. Water Code section 13320(a) specifically provides for administrative review of the Regional Board's specific actions and/or failures to act that form the basis of the action in superior court. (See, *California Ass'n of Sanitation Agencies v. State Water Resources Control Bd.* (2012) 208 Cal.App.4th 1438, 1463, fn.

22, as modified on reh'g den., Sept. 27, 2012 [mandatory nature of exhaustion of requirements of sections 13320 and 13330].) Only after the State Board denies such a petition for administrative review has an aggrieved party exhausted its administrative remedies. (Wat. Code, § 13330(b); Cal. Code Regs., tit. 23, § 2050.5(e).)

Despite Coastkeeper's admission that it never requested the Central Coast Regional Board to pursue a claim against MCWRA and then use the administrative process to challenge the Central Coast Regional Board's action or failure to act, the superior court nonetheless considered the case and ultimately issued a writ of mandamus. The law is clear that where adequate remedies are available, as they clearly are here, the superior court had an affirmative obligation to order Coastkeeper to exhaust its administrative remedies before seeking judicial review. (*Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 620.)

Indeed, a court does not have jurisdiction over a state agency when the aggrieved parties had administrative remedies available to them that they did not exhaust prior to seeking judicial involvement. (*Abelleira v. District Court of Appeal, Third District* (1941) 17. Cal.2d 280, 292-292 (*Abelleira*) ["In brief, the rule is that where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act."]; *Miller v. City of Los*

Angeles (2008) 169 Cal.App.4th 1373, 1379 (*Miller*) ["Exhaustion of administrative remedies is 'a jurisdictional prerequisite to resort to the courts' [citation]."]; *Morton v. Superior Court (Lindsey)* (1970) 9 Cal.App.3d 977, 982.) This allows the Regional Boards and State Board to, in turn, exercise their unique expertise in regulating water quality matters in California, without their authority being usurped by the judiciary too early in the process. (See *Abelleira, supra,* 17 Cal.2d at pp. 280, 293; see also *McKee v. Bell-Carter Olive Co.* (1986) 186 Cal.App.3d 1230, 1235.) Only after an aggrieved party has requested Regional Board action, and then exhausted any concerns related to the Regional Board's action (or failure to act) with the State Board, can that party bring its claims in court.

Notwithstanding the foregoing clearly defined administrative remedies created in Porter-Cologne and the policy goal to bestow primary regulatory authority over water quality upon Regional Boards and the State Board, the Superior Court erroneously concluded that no administrative remedies were available to Coastkeeper under Porter-Cologne. However, this conclusion misconstrues Porter-Cologne, the purposes behind it, and case law on administrative remedies within Porter-Cologne, which clearly show that there is an administrative process available to parties such as Coastkeeper. The main purpose of Porter-Cologne is to empower the State Board and Regional Boards to regulate activities which may affect the quality of the waters of the state. (Wat. Code, §§ 13000, 13001.) The

Legislature also established a process through which parties can raise concerns about possible violation of Porter-Cologne with these regulatory bodies. (Wat. Code, §§ 13320(a), 13330; Cal. Code Regs., tit. 23, § 2050.)

The superior court's judicial intervention in issuing a writ of mandate herein blatantly ignores the fact that Porter-Cologne provides a more than adequate administrative process through which Coastkeeper could have, and should have, raised its concerns about potential violations of Porter-Cologne. In so finding, the superior court improperly acted in a legislative fashion, by essentially creating a citizen suit provision in Porter-Cologne without rational justification or legal authority. It is inconsistent with the express goals of Porter-Cologne to effectively create a citizen lawsuit provision because this would remove regulation of entities whose activities may have effects on water quality from the Regional Boards and State Board and place that regulatory power in the judiciary. (See Wat. Code, § 13001.) As such, the inevitable result is that the superior court has now established a precedent for individuals and entities to circumvent the administrative remedies process provided by the state Legislature in Porter-Cologne and ask the state's judiciary system to render decisions regarding water quality protection in the first instance and without the structure and benefits of technical expertise provided by utilizing the comprehensive statewide system memorialized in Porter-Cologne. This action is unprecedented and cannot be sustained.

2. The Administrative Remedies in Porter-Cologne Are Adequate

In order for the doctrine of exhaustion of administrative remedies to apply, the available remedies must also be adequate. It is the petitioner's burden to show that administrative remedies are inadequate. (*Lohr v. Superior Court of Los Angeles County* (1952) 111 Cal.App.2d 231, 235.) Remedies will not be considered inadequate merely because going through the administrative process would "take time and cost money." (*Ibid.*)

Remedies before Regional Boards and the State Board are adequate. As previously stated, they provide aggrieved parties a mechanism by which they can bring potential violations of Porter-Cologne to the attention of the regulatory bodies charged with administering that act. (Wat. Code, §§ 13320(a), 13330; see also *id.*, § 13001.) The fact that parties alleging a violation would have to spend additional time and money first pursuing remedies before a Regional Board and then the State Board does not mean that the remedies are inadequate. (*Eight Unnamed Physicians v. Medical Executive Com.* (2007) 150 Cal.App.4th 503, 515.)

In fact, contrary to the superior court's determination otherwise, Porter-Cologne accounts for situations wherein the Regional Board or State Board have failed to take action or have declined to act altogether. If the Regional Board and/or State Board have unnecessarily delayed taking action upon an aggrieved party's complaint, the complainant has measures

to take to compel such action. (Wat. Code, § 13320(a) [failure to act by Regional Board is appealable to the State Board]; Code Civ. Proc., §1094.5; see also *Johnson v. State Water Resources Control Bd.* (2004) 123 Cal.App.4th 1107, 1114 [holding that although the State Board's decision not to review a Regional Board's decision is not appealable to the courts, the courts can review the actions of a Regional Board].) (*Johnson.*)

Furthermore, although it is true the State Board has discretion to decline review of a Regional Board action, a court may still review the Regional Board's action de novo. (*Johnson, supra,* 123 Cal.App.4th at pg. 1114.) Thus, there is no situation where a decision to act—or not to act—by a Regional Board is unreviewable by a court of law.[1] For this reason, the superior court's determination that the administrative process before Regional Boards and the State Board prevent any judicial review was unfounded and must be reversed and/or otherwise vacated.

B. The Superior Court Erred in Concluding That MCWRA Is a Waste Discharger and the Writ Issued Mandating Filing of a Waste Discharge Report Should Be Reversed and Vacated

MCWRA, along with many other water agencies, cities and counties statewide, engage in water management and flood control activities relative to water that flows through various channels and tributaries throughout the

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[1] It is still required that an aggrieved party proceed through all administrative remedies available before seeking this judicial review. (*Abelleira, supra,* 17 Cal.2d 280 at pp. 291–292.)

state. Despite the fact that MCWRA does not generate, discharge or otherwise cause any of the pollution present in the waters of the state, the superior court nonetheless deems MCWRA a "waste discharger" and issued a writ of mandate to force MCWRA to file a waste discharge report pursuant to Water Code section 13260. Filing a waste discharge report not only mandates payment of required fees, it affirmatively requires MCWRA to obtain waste discharge requirements which result in the application of various actions to control pollution. Essentially, waste discharge requirements equate to pollution source control.

The superior court's determination that MCWRA is a "waste discharger" is erroneous, without applicable legal support and must be reversed. Further, the precedent set by the superior court in deeming MCWRA a "waste discharger" has widespread and overreaching consequences. Indeed, the superior court misinterpreted the meaning of discharge in such a way that would bring nearly any activity relating to water management or flood control under its definition, and necessarily impose a costly burden on other water agencies, cities and counties statewide to control discharges of waste that they did not generate or discharge. Control of waste is properly left to the actual dischargers, all of which are already regulated under Porter-Cologne.

1. Water Management and Flood Control Activities Do Not Constitute "Discharges" of Waste as Defined in Case Law

Water Code section 13260, subdivision (a)(1) requires that "[a] person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state" file a report of waste discharge with the applicable Regional Water Board. Water Code section 13260, subdivision (a)(1) includes four elements to trigger this requirement: (1) the entity at issue is a "person"; (2) discharging; (3) waste; (4) that may affect water quality in waters of the state. The superior court erroneously found that MCWRA's activities related to managing the Blanco Drain and Reclamation Canals constitute "discharging waste."

The Superior Court arrived at its erroneous conclusion by misapplying the analysis set forth in *Lake Madrone Water Dist. v. State Water Resources Control Bd.* (1989) 209 Cal.App.3d 163 (*Lake Madrone*.) There, the Lake Madrone Water District operated a dam that impounded waters flowing in Berry Creek. (*Id.* at p. 166.) Sediment, which naturally flows downstream toward the dam from myriad upstream sources, began accumulating behind the dam. (*Ibid.*) Opening a gate valve at the base of the dam allowed water—and accumulated sediment—to flow out of the dam and into Berry Creek. (*Ibid.*) The *Lake Madrone* court held that the release of concentrated sediment through the opening of the dam gate valve was a discharge because the dam "[was] not a mere conduit" for the

sediment. (*Id.* at p. 169.) Rather, the dam's presence allowed sediment, which is natural and harmless in small amounts, to accumulate to a degree that it became "deadly to aquatic life." (*Id.* at p. 170.) In that sense, the dam itself caused the harmful concentration of sediment and opening the valve constituted a "discharge" of that sediment. (*Id.* at pp. 170–171.)

Here, the superior court held that MCWRA's flood control and water management activities were substantially similar to the facts in *Lake Madrone*, such that MCWRA's activities were "discharges" of waste. In fact, the circumstances in *Lake Madrone* are clearly distinguishable from those in the Blanco Drain and Reclamation Ditch. MCWRA's management activities did not *cause* the water quality issues complained of by Coastkeeper. Contrary to the superior court's holding, nothing in *Lake Madrone* remotely stands for the proposition that the passive movement of water from one point to another is a "discharge." Unlike the dam at issue in *Lake Madrone,* MCWRA is a conduit of water. The Blanco Drain and Reclamation Ditch managed by MCWRA do not concentrate or otherwise change the character of the waters that flow within them. They are mere channels that transport water and reduce flooding of the surrounding land. Whether or not the water that happens to flow through the channels is polluted is irrelevant to the purpose of the channels themselves, or to the flood control and management tasks overseen by MCWRA relative to the existence of the channels. In fact, the court in *Lake Madrone* drew a bright

line between a "conduit through which a substance dangerous to aquatic life (e.g., a chemical) passes" and a structure that concentrates or otherwise exacerbates a water quality problem. (*Lake Madrone, supra,* 209 Cal.App.3d at pp. 169–170.)

Significantly, the superior court failed to acknowledge that, unlike the facts at issue in *Lake Madrone*, the pollutant discharges and existing waste in the water flowing through the channels managed by MCWRA are already reported to the Central Coast Regional Board by the actual source of the waste. As such, and in accordance with Porter-Cologne, the entities who introduce wastes into the waters in Blanco Drain and Reclamation Ditch are regulated by the Central Coast Regional Board through already adopted waste discharge requirements, or conditional waivers that are akin to waste discharge requirements. This includes discharges from irrigated agriculture and municipal stormwater. MCWRA, and other similar water management agencies, cannot control the nature of the water it receives and ultimately transports, nor is it in a position to improve its quality. Conversely, in *Lake Madrone*, the water district could have, and ultimately was required to, create management practices that reduced the amount of sediment that flushed downstream when they opened the dam gate. (*Lake Madrone, supra,* 209 Cal.App.3d at pp. 166–167.)

MCWRA, and other similarly situated agencies, cities and counties are not in a position to control pollutants entering their facilities, and nor

should they be, given their limited role involving flood control maintenance and water management tasks. It is improper and unprecedented to place the burden of pollutant control onto water agencies, cities or counties that have absolutely no role in contaminating the water flowing within the channels.

2. The Superior Court's Interpretation of "Discharge" as Used in Porter-Cologne Erroneously Conflates the Meaning of "Discharge" E=With "Activities"

In addition to the superior court's misinterpretation of *Lake Madrone* as it relates to the meaning of "discharge" in Porter-Cologne, the Superior Court also erroneously used words from other sections of Porter-Cologne interchangeably with "discharge." Specifically, the superior court improperly imported the discussion of regulating "activities . . . which may affect the quality of the waters of the state" from Water Code sections 13000 and 13050 to Water Code section 13260's requirement for *dischargers* of waste to file a report of waste discharge. The superior court first acknowledged that Water Code section 13260, subdivision (a)(1), requires that an entity be deemed a "discharger" before a report of waste discharge is necessary. However, it then held that the provisions in Water Code sections 13000 and 13050, empowering the regulation of "activities" that could affect water quality, indicate that any such "activity" is equivalent to a "discharge." This is improper and without legal precedent. Indeed, the Legislature acts deliberately when it uses certain language, and the express use of different words in the same enactment strongly indicates

that the Legislature intended a different meaning for each. (*In re C.H.* (2011) 53 Cal.4th 94, 107.) The superior court's interpretation that "discharge" is coterminous with "activities" is grossly overbroad and is against the intent behind Porter-Cologne.

Even using the Webster's Dictionary definition of "discharge," as the superior court does, there is no definition of "discharge" that makes it equivalent to "activity." Rather, "discharge" can only be interpreted as a subset of "activities" relating to the pouring forth or emission of substances, namely waste. (See Webster's 3d New Internat. Dict. (1961) at p. 644.) Porter-Cologne allows Regional Boards to regulate *activities* affecting water quality, but only compels water agencies to submit reports of waste discharge when that agency (or other entity) is engaged in the activity of *discharging* waste. (Compare Wat. Code, §§ 13001, 13050 *with* Wat. Code, § 13260(a).) To hold that the two words are interchangeable would impose a heavy regulatory burden on water agencies, cities and counties throughout the state that do not introduce pollutants into water, but merely ensure that water containing pollutants introduced by other sources moves through waterways without flooding. As stated previously, these agencies cannot control the quality of the water introduced to their waterways, nor are these agencies equipped to clean up the waters they transport.[2] They

[2] Water Code section 13260 has multiple elements that must be met before an entity is required to submit a report of waste discharge. The elements of

merely ensure that water flows from one point to another in the same form it was received, an activity that is not a discharge.

Based on the foregoing, the superior court erred when it determined that MCWRA was a "discharger" of waste and required under Water Code section 13260(a) to submit a report of waste discharge to the Regional Board and the decision should be vacated.

IV. CONCLUSION

For the foregoing reasons, the *Amici Curiae* respectfully request that this Court reverse the superior court decision and enter judgment denying Coastkeeper's petition for writ of mandate in its entirety.

Respectfully submitted,

SOMACH SIMMONS & DUNN
A Professional Corporation

Dated: 6/27/16

By: _____
Theresa A. Dunham, Esq.
Theresa C. Barfield, Esq.

"discharging" and "waste" are separate and distinct, and should not be conflated. Thus, it is of no consequence whether the water flowing through the channels managed by a particular agency like MCRWA is polluted to the point of becoming a "waste" if MCWRA is not actually the discharger.

CERTIFICATION OF WORD COUNT

The text of this application and brief consists of 3815 words as counted by the Microsoft Word program used to generate this application and brief. (Cal Rules of Court, rule 8,.204(c)(1).)

SOMACH SIMMONS & DUNN
A Professional Corporation

Dated: 6/27/16

By: _____
Theresa A. Dunham, Esq.
Theresa C. Barfield, Esq.

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 500 Capitol Mall, Suite 1000, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

On June 27, 2016, I served the following document(s):

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND [PROPOSED] BRIEF OF *AMICI CURIAE* ASSOCIATION OF CALIFORNIA WATER AGENCIES, LEAGUE OF CALIFORNIA CITIES, AND CALIFORNIA STATE ASSOCIATION OF COUNTIES

X (**by mail**) on the parties designated below in accordance with Code of Civil Procedure section 1013a(3), by placing a true copy thereof enclosed in a sealed envelope, with postage fully paid thereon, in the designated area for outgoing mail, addressed as set forth below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on June 27, 2016 at Sacramento, California.

Jennifer Estabrook

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