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CITY ATTORNEY

August 10, 2017

VIA FEDERAL EXPRESS

Honorable Tani Gorre Cantil-Sakauye, Chief
Justice and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-7303

Re: Amicus Letter in Support of Defendant's Petition for Review
City of Oroville v. Superior Court of Butte County,
CA Supreme Court Case No. S243247.
Petition for Review filed July 19, 2017.

To the Chief Justice and Associate Justices of the California Supreme Court:

Pursuant to Rule 8.500, subdivision (g) of the California Rules of Court, the League of California Cities (League) and the California Association of Sanitation Agencies (CASA) by and through the Los Angeles City Attorneys' office (the City of Los Angeles is a member City of the League), respectfully writes this letter in support of Petitioner City of Oroville.

INTEREST OF *AMICI*

A. The Amici Curiae.

The League is an association of 475 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 from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case and the Petition filed by City of Oroville as having such significance.

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.

B. Why Review Should be Granted.

The issues in this case present common and relevant issues that all California cities and sanitation agencies face on an ongoing basis.

Although the Court of Appeal phrased its decision as if it simply found a triable issue of fact regarding the City's liability for inverse condemnation, this decision is premised upon an error

of law. All California cities and sanitation agencies would benefit from a published decision by this Court correcting this error and clarifying this issue.

As the trial court in this case recognized, the City of Oroville's sewer system, like virtually all public sewer systems, relies upon the private homeowner's compliance with local building and plumbing laws requiring installation of a backwater valve ("BWV") in the homeowner's system, when necessary. Accordingly, where the homeowner's system lacks a required BWV, the city's sewer system, by definition, cannot operate as it was "deliberately conceived, altered or maintained" and thus no inverse condemnation liability should pertain. (*Barham v. So. Cal. Edison Co.* (1999) 74 Cal.App.4th 744, 754.)

Here, the trial court below recognized that the lack of a BWV was a "significant secondary cause of the damage" and that the BWV was a "*necessary* part of the sewer design and plan." (Petition, page 25.) In effect, then, by allowing this inverse condemnation case to proceed, the Third District Court of Appeal has allowed a private homeowner who ignored the crucial BWV requirement to nonetheless recover from the public entity -- under an inverse condemnation theory -- for the damage caused by the homeowner's lack of a BWV. Notably, *only* a homeowner can install a BWV, as the public entity could not do so without intruding upon the private property.

Under these circumstances, there is no valid public policy or constitutional mandate that requires that cities be legally liable for lapses in legal compliance created by property owners and their licensed contractors. Such a decision and the conflicting approaches to resolving these issues

apparent in the unpublished decisions below raise several legal issues rendering the Petition ripe for this Court's review.

1. **Statewide importance.** This case raises key issues of statewide importance. First, all cities and sanitation agencies in California need contractors and owners to follow state building and plumbing codes as they pertain to sewer systems. Indeed, the BWV is integral to the design and operation of public sewer systems and its absence when required can sabotage and defeat the design and planned operation of the public system. Cities and sanitation agencies throughout California require a decision by this Court assessing the viability of a claim for inverse condemnation liability in instances where the complaining property owner has failed in its legal obligation to install a BWV. Indeed, in the City of Los Angeles, approximately 658,737 properties are connected to the City's public sewer system. Roughly twenty percent of these properties are legally required to have BWV's installed and maintained at all times. The impact of this decision on Los Angeles alone – putting aside the hundreds of other California cities and sanitation agencies facing these issues – is tremendous. Since 2011, the City of Los Angeles has paid out just over \$10 million in damage claims relating to sewer backups. Without question, a significant portion of these payouts were for property damage that could have been avoided had the legally required BWV been installed and maintained.
2. **Uniformity of decision.** There is no published case involving a missing but legally required BWV. However, in an unpublished case involving Los Angeles (*Starks v. City of Los Angeles* (2008) 2008 WL 570775), the Second District Court of Appeal affirmed

judgment for the City on this very issue, finding that the homeowner's failure to install a backwater valve was the cause of their own harm and thus they could not recover under inverse condemnation. (*Id.* at *1 ("Had the Starks installed the valve as required, they would not have been harmed.")) This decision stands in direct opposition to the decision issued by the Third District Court of Appeal in the case at bar.

In reaching its conclusion, the Third District Court of Appeal relied on *California State Auto Ass'n Inter-Insurance Bureau v. City of Palo Alto* (2006) 138 Cal.App.4th 474 (*CSAA*), which held that, regardless of whether an independent force contributed to an alleged injury, "the element of proximate causation for inverse condemnation is established if the injury occurred in substantial part because the improvement failed to function as it was intended." As did the Third District Court of Appeal, trial and appellate courts throughout the State are using vague and conflicting standards articulated in *CSAA* to find liability against municipalities in sewer intrusion cases where property owners themselves have not complied with basic legal requirements for protecting their property and helping ensure that sewer systems operate as designed and constructed. However, *CSAA* did not involve a legally required but missing BWV. The League and CASA therefore seek clarity and guidance from this Court regarding cases involving this issue of a missing but legally required BWV.

Honorable Tani Gorre Cantil-Sakauye, Chief Justice and the Associate Justices
California Supreme Court
August 10, 2017
Page 6

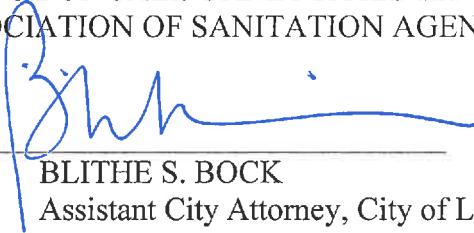
C. Conclusion

The League and CASA urge this Court to grant review to the City of Oroville. If such review is granted, the League and CASA intend to thoroughly and completely brief the issues as they impact the Cities and Sanitation Agencies throughout California.

Very truly yours,

LEAGUE OF CALIFORNIA CITIES and CALIFORNIA
ASSOCIATION OF SANITATION AGENCIES

By: _____


BLITHE S. BOCK
Assistant City Attorney, City of Los Angeles

BSB/mc

PROOF OF SERVICE

City of Oroville v. Superior Court of Butte County,
CA Supreme Court Case No. S243247.
Amicus Letter in Support of Defendant's Petition for Review

I, MARIA CRUZ, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 No. Main Street, 7th Floor, Los Angeles, CA 90012.

On August 10, 2017, I served the document(s) described as

AMICUS LETTER IN SUPPORT OF DEFENDANT'S PETITION FOR REVIEW

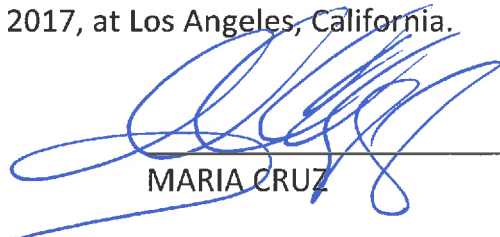
on the interested parties in this action as by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST

(X) BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 10, 2017, at Los Angeles, California.



MARIA CRUZ

MAILING LIST

City of Oroville v. Superior Court of Butte County,
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Amicus Letter in Support of Defendant's Petition for Review

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