Case No. S287414

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

SUNFLOWER ALLIANCE,
Plaintiff and Respondent,

v.

CALIFORNIA DEPARTMENT OF CONSERVATION et al.,
Defendants;

REABOLD CALIFORNIA, LLC,
Real Party in Interest and Appellant.

After a Decision by the Court of Appeal
First Appellate District, Division Five
(Case No. A167698)

Appeal from Judgment of the Superior Court of California
for the County of Contra Costa,
Honorable Edward G. Weil
(Case No. N22-1503)

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE DIABLO WATER DISTRICT IN SUPPORT OF RESPONDENT SUNFLOWER ALLIANCE

Wesley A. Miliband, State Bar No. 241283
Miliband Water Law
3626 Fair Oaks Boulevard, Suite 100
Sacramento, CA 95864
Telephone: (916) 245-2889
Facsimile: (916) 269-3001
Attorney for Amicus Curiae

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE:

Pursuant to Rule 8.520 (f) of the California Rules of Court, Diablo Water District respectfully requests permission to file the amicus curiae brief combined with this application.

The applicant is a local public water agency that has a substantial interest in this case because it is bound by requirements imposed under the California Environmental Quality Act ("CEQA"), including provisions at issue in this case. These requirements apply not only to the specific categorical exemption presented in this case, but potentially to other categorical exemptions under CEQA. The Court's opinion in this case has the potential to modify existing procedural processes and substantive applications of exemptions under CEQA, which in turn, impacts local public agencies such as Diablo Water District that serve as the lead agency for water infrastructure projects. Having as much reasonable certainty regarding legal parameters for utilizing exemptions is important for mitigating litigation risks and causing delay to projects that often are necessary to ensure continued delivery of reliable and safe water supplies.

The applicant's attorney has examined the briefs on file in this case

and is familiar with the issues involved and the scope of the presentations. No party or its counsel has authored, in whole or in part, or made monetary contribution for preparation and submission of this accompanying brief.

Applicant respectfully submits that the perspective of applicant, as addressed in the brief combined with this application, will assist the Court's determination of this matter on the question of:

> Whether the Class 1 categorical exemption under CEQA Guideline Section 15301 was properly applied, specifically as to whether the proposed use at the abandoned well properly falls within the scope of the Class 1 exemption of "involving negligible or no expansion of existing or former use"?

Therefore, and as further amplified in the Introduction and Interest of Amicus portion of the attached brief, the applicant respectfully requests leave to file the amicus curiae brief combined with this application.

Date: September 10, 2025

Respectfully submitted,

/s/ *Wesley A. Miliband*

_____

Wesley A. Miliband
Miliband Water Law
Attorney on behalf of Applicant
Diablo Water District

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I. INTRODUCTION AND INTEREST OF AMICUS.

This case affects every government agency in the state empowered to impose CEQA categorical exemptions, particularly as to Class 1 exemptions because hundreds of agencies seek to comply with CEQA, and in doing so, to enhance certainty as to the process for public vetting *and* to the substance of the environmental subject to be evaluated, while also preserving reasonable certainty to mitigate litigation risks by not creating more uncertainty as to the legal standards and related criteria.

Class 1 exemptions apply to existing or former uses. The fact that injection of oil wastewater is not an existing or former use is one valid, and perhaps dispositive, point in this case. In addition, and as Sunflower Alliance contends, the CEQA process was violated by allowing mitigation measures to be imposed as part of justifying use of the Class 1 exemption without utilizing the customary CEQA process (*e.g.,* an Initial Study) when a greater-than negligible expansion occurs.

This case is relevant to Diablo Water District ("DWD") because DWD sometimes acts as the lead agency for CEQA, including considering exemptions like Class 1 for existing facilities. Therefore, it is essential for DWD staff and consultants to clearly understand the proper scope and application of this Class 1 exemption as it pertains to DWD projects. This

understanding ensures that the public has an opportunity to participate in the process and fosters trust and confidence in the decisions made on their behalf. Moreover, DWD is an established steward of the environment, seeking to help ensure long-term sustainability of limited natural resources.

DWD is a public water agency founded in 1953 that provides water to about 45,000 people and the parks, schools, and businesses throughout a 21-mile square area with service in Oakley, Cypress Corridor, Hotchkiss Tract, Summer Lakes, and portions of Bethel Island and Knightsen in the northeastern corner of Contra Costa County.

DWD may serve a population of approximately 64,000 people at ultimate buildout. DWD has a low-income program available to customers, with approximately 144 single-family customers and nine multi-family properties part of this program. DWD is bounded by the San Joaquin River to the north, the City of Antioch to the west, the City of Brentwood to the south, and unincorporated area to the east.

DWD is governed by an elected five-member board of directors and emphasizes high-quality service, water conservation, and the long-term sustainability of its water resources.

DWD primarily supplies treated water for domestic use and some

non-potable water for park and landscape irrigation. DWD's sources of water supply are untreated water from the Central Valley Project purchased from the Contra Costa Water District and groundwater extracted from the East Contra Costa Subbasin of the San Joaquin Valley Basin. The surface water is conveyed through the Contra Costa Canal and treated at the Randall-Bold Water Treatment Plant ("RBWTP") in Oakley. The RBWTP is jointly owned by DWD and Contra Costa Water District. DWD purchases surface water from the Contra Costa Water District and supplements it with local groundwater, which it treats at its RBWTP before distributing it to customers.

As of 2017, DWD also serves as the Groundwater Sustainability Agency ("GSA") to manage and protect the local groundwater basin. Landmark legislation was passed during 2014 taking effect January 1, 2015 commonly known as the Sustainable Groundwater Management Act ("SGMA") codified at California Water Code sections 10720 through 10737. SGMA is a foundational state law that establishes a framework for managing groundwater sustainably at the local level, requiring the formation of Groundwater Sustainability Agencies to develop and implement Groundwater Sustainability Plans ("GSPs") to prevent undesirable results including significant depletion of supply, degradation of water quality, and

seawater intrusion. The law empowers local agencies to form GSAs to manage their groundwater basins.

The Water Code specifies six undesirable results that GSPs must prevent, including chronic lowering of groundwater levels, significant reduction of groundwater storage, seawater intrusion, degraded water quality, land subsidence, and adverse impacts on interconnected surface waters. (California Water Code section 10721, subsection (x).)

In essence, the California Water Code provides the legal basis for SGMA, setting the standards and requirements for local entities to manage groundwater for long-term reliability and multiple benefits.

DWD's purpose for submitting this *amicus* application and brief is for two reasons:

(1) From a process perspective, DWD seeks to ensure continuity with existing CEQA processes and related practices to better ensure defensible decision making by lead agencies, which DWD serves as a lead agency for its projects from time-to-time; and

(2) From a substantive perspective, DWD seeks adherence to existing applications of categorical exemptions for projects that properly qualify on the front end of analyzing whether a project falls within an

exemption, rather than backing the analysis into an exemption by concluding anticipated environmental risks are adequately mitigated by specific measures.

With evolving factual uncertainties triggered by climatological cycles (*e.g.,* drought and flood cycles), coupled with sea level rise, imposing new or expanded use of categorical exemptions furthers uncertainty for all involved.

Here, providing Sunflower Alliance's requested relief to reverse the Court of Appeal decision and reinstate the trial court's judgment and writ of mandate could enable CalGEM to undertake an initial study to evaluate, for example, the extent to which the proposed injection activity could contaminate local drinking water supplies by migrating through existing faults, nearby abandoned wells, or other such potential threats to drinking water supplies.

II. FACTS AND PROCEDURAL HISTORY.

In the interest of economy, Amicus adopt the Statement of the Case set forth by Sunflower Alliance in its Opening Brief on the Merits.

III. ARGUMENT.

This literally is a case where oil and water do not mix.

CEQA's Class 1 exemption is for minor alterations to existing facilities with no expansion, while Class 3 and Class 4 exemptions

involve new, small-scale construction or conversions and minor land and landscaping alterations, respectively. Class 1 projects are about fixing or modifying existing structures, whereas Class 3 and 4 are about new, small projects or environmental improvements. The overarching requirement is that the project cannot involve more than a "negligible" expansion of the former or existing use.

A. The Proposed Use is a New Use.

The CEQA Class 1 categorical exemption pursuant to Title 14 California Code of Regulations ("CCR") Section 15301 does not allow an abandoned oil production well to be used for injecting oil wastewater if the change in use constitutes more than a negligible or no expansion of the well's former use. The exemption applies to the operation, repair, maintenance, permitting, or minor alteration of existing facilities involving negligible or no expansion of use. (CCR Section 15301.)

Converting an abandoned oil production well into an injection well for oil wastewater does not appear to have factual precedent to justify departure from the customary application of the Class 1, as this particular proposed use involves a significant change in use, and thus, this Court is asked to give effect to all part of the CEQA statutory and regulatory framework. (*See, e.g.,*

Berkeley Hillside Preservation v. City of Berkeley (2015) 60 Cal.4th 1086, 1102, wherein giving effect to the whole is in the context of the "unusual circumstances" exception yet still equally applicable for purposes of evaluating the proposed use at issue in this case.)

B. The Proposed Use is Not a Negligible Use.

The scope of "negligible or no expansion of existing or former use" under Section 15301 is focused on whether a project involves only minor alterations to existing structures, facilities, or equipment without significantly increasing their use. The key consideration is whether the project results in a negligible or no expansion of the use.

The term "negligible" is interpreted to mean small, unimportant, or inconsequential. This does not preclude all new uses or changes in use, as long as the expansion remains negligible. For example, interior or exterior alterations, minor additions to structures (*e.g.,* up to fifty percent of the floor area or 2,500 square feet, whichever is less), and restoration of damaged structures are typically considered within the scope of this exemption, provided they do not significantly alter the use or capacity of the facility. (CCR Section 15301; *see also,* 25 CCR Section 6962.)

Courts have emphasized that the determination of whether a project

qualifies for this exemption depends on the specific facts and context of the project. For instance, in *North Coast Rivers Alliance v. Westlands Water District* (2014) 227 Cal.App.4th832, the court upheld the application of the exemption for a project that continued the operation of existing water facilities without any changes in use or capacity.

However, and emphasizing all the more for careful application of an exemption, the exemption is subject to exceptions under CEQA Guidelines Section 15300.2, such as when there is a reasonable possibility of significant environmental effects due to unusual circumstances, cumulative impacts, or impacts on scenic or historical resources. (14 CCR Section 15300.2; *see also, CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488 ("CREED").) Contrary to Appellant's contentions that CREED supports Appellant's proposed use,[1] the "common sense" from CREED demonstrates here that the revegetation of plants at issue in CREED fundamentally differs from the wastewater injection at issue in this case. Ultimately, agencies must carefully evaluate the facts and elements before applying an exemption.

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[1] Appellant's Answering Brief on the Merits, at pp. 54-55.

C. The Proposed Use Does Not Align with Illustrative Examples.

Under Section 15301, the determination of whether changes are "negligible" often hinges on the degree of environmental impact and the scope of the expansion of use.

Examples of changes considered "negligible" under this exemption include:

- Interior or exterior alterations such as interior partitions, plumbing, and electrical conveyances (14 CCR Section 15301.).

- Additions to existing structures, provided the addition does not exceed 50% of the floor area of the structure or 2,500 square feet, whichever is less, or up to 10,000 square feet in areas with adequate public services and facilities and not environmentally sensitive (*Id.*).

- Restoration or rehabilitation of deteriorated or damaged structures to meet current public health and safety standards, unless the damage was substantial and caused by environmental hazards (*Id.*).

- Modification of existing streets by adding bicycle or transit lanes, but not automobile lanes, as this does not significantly increase environmental risks (*Sunflower Alliance v. Department of Conservation*

(2024) 105 Cal.App.5th 771 [subject to the appeal in this matter and offered for persuasive value to this enumerated point.]).

- Conversion of a single-family residence into office use or the installation of a steam sterilization unit in an existing medical waste generation facility, as these changes are deemed to have negligible environmental impact (*Id.*).

The key consideration is whether the project results in a significant environmental impact or constitutes a substantial expansion of use. For instance, the addition of bicycle lanes to existing streets is permissible under this exemption because it does not harm air quality, whereas adding automobile lanes would not qualify due to the associated environmental risks.

The underlying facts of this case do not fit the illustrative sample of examples provided above that have been established over time and based on a plain reading of Section 15301. Here, Appellant's project seeks to: (i) inject a substance below the land surface, whereas before a substance was extracted from below the land surface; (ii) the substance sought to be injected (*e.g.,* wastewater) is significantly different than the substance previously extracted (*e.g.,* oil); and (iii) the proposed injection use is an

expansion of the former use because the former use (given no use of the well currently exists) did not involve the proposed use, thus leaving the critical question of whether the propose use is a "negligible" expansion of the former use.

The proposed use is not "negligible". In its simplest form, "negligible" is defined by Merriam-Webster as "so small or unimportant as to be not worth considering; insignificant."[2] Synonymous to "negligible" is *de minimis*, which Black's Law Dictionary (7th Edition) defines as: "1. Trifling; minimal. 2. (Of a fact or thing) so insignificant that a court may overlook it in deciding an issue or case." (*Id.* at 443.)

By way of analogy regarding Section 15301's essential elements of (i) involving a "negligible or no expansion" of "(ii) an "existing or former use," the underlying proposed use to convert oil extraction to wastewater injection bears similarity to a hypothetical water service provider seeking to convert a portion of its aged water conveyance pipeline that runs subsurface through an aquifer with a different utility use to deliver natural gas instead. While commonly known in the public domain that water and natural gas lines run through public areas such as streets and sidewalks in California, rigorous

[2] NEGLIGIBLE Definition & Meaning - Merriam-Webster as of September 10, 2025.

review is required for construction and operations as well as maintenance and repairs, for obvious reasons of public safety and environmental protection, amongst other reasons. Such a conversion from water to natural gas would not be "negligible".

In summary, changes are considered "negligible" when they do not significantly expand the use of the facility or demonstrably with reasonable certainty will not cause environmental harm. This project at issue in the underlying case does not align with the intent of CEQA and well-established applications of the categorical exemptions.

Even if this Court were inclined to find the proposed expansion is "negligible" based on the former use of the well, the process utilized by CalGEM and/or the lower court is an end run around the established CEQA process wherein the end result of risk to the environment, and related mitigation measures, was the focal point rather than proper application on its face of the project to the exemption. This modified process to make the exemption seemingly work is in a way a workaround of finding the exemption does not apply and then moving on to do an Initial Study to evaluate and determine what type or level of environmental documentation and process is necessary to comply with CEQA. Such an approach runs

afoul of CEQA's intent to have a set menu of options for the process depending on a particular project and the judgment exercised by the lead agency. CEQA is designed to ensure a specific, established process is used to justify the outcome, rather than seeking to have an anticipated outcome (*e.g.,* perceived insignificant risk of environmental harm) justify the actual outcome.

IV. CONCLUSION.

This literally is a case where oil and water do not mix. For all these reasons, amicus respectfully submit that CEQA Guideline Section 15301 should be adhered to for its process and substance, rather than expanded or otherwise altered from existing practices. Applying Section 15301 as sought here by Appellant would not fulfill CEQA's dual purpose to streamline minor projects while safeguarding environmental integrity.

Date: September 10, 2025

Respectfully submitted,
MILIBAND WATER LAW

/s/ *Wesley A. Miliband*

Wesley A. Miliband
Attorney on behalf of Amicus
Diablo Water District

CERTIFICATION OF COMPLIANCE WITH CAL. R. CT. 8.204(c)(1)

Pursuant to California Rules of Court 8.204(c)(1), the foregoing *Amicus Curiae* Brief of Diablo Water District contains 2,820 words (including footnotes, but excluding the tables and this Certificate). In preparing this certificate, I relied on the word count generated by Microsoft 365 Office Word 2021.

Executed on September 10, 2025, at Sacramento, California.

MILIBAND WATER LAW

/s/ *Wesley A. Miliband*

Wesley A. Miliband
Attorney on behalf of Amicus
Diablo Water District

PROOF OF SERVICE

I, Wesley A. Miliband, hereby certify that at the time of service, I was at least 18 years of age and not a party to this action. My business address is 3626 Fair Oaks Boulevard, Suite 100, Sacramento, California 95864.

I certify that on September 10, 2025, I served the following document:

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Martinez, CA 94553

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

Executed on September 10, 2025, at Sacramento, California.

/s/ *Wesley A. Miliband*

_____

Wesley A. Miliband

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Leena Mary Sheet Dept. of Justice 300 S. Spring Street, Suite 1702 Los Angeles, CA 90013 Leena.sheet@doj.ca.gov *Attorneys for Defendant and Respondent California Department of Conservation, Geologic Energy Management Division*	Navi Singh Dhillon Christopher J. Carr Dylan J. Crosby Grayson A. Peters Paul Hastings LLP 101 California Street, 48th Floor San Francisco, CA 94111 navidhillon@paulhastings.com chriscarr@paulhastings.com dylancrosby@paulhastings.com graysonpeters@paulhastings.com *Attorneys for Real Party in Interest and Appellant Reabold California, LLC*
Talia Nimmer Center for Biological Diversity 2100 Franklin Street, Suite 375 Oakland, CA 94612 *Attorneys for Center for Biological Diversity : Pub/Depublication Requestor*	Jason R. Flanders Theresa M. Trillo Aqua Terra Aeris Law Group 8 Rio Vista Avenue Oakland, California 94611 jrf@atalawgroup.com tt@atalawgroup.com Susan Brandt-Hawley Brandt-Hawley Law Group Post Office Box 1659 Glen Ellen, California 95442 susanbh@preservationlawyers.com Deborah A. Sivas Environmental Law Clinic, Mills Legal Clinic at Stanford Law School 559 Nathan Abbott Way Stanford, California 94305-8610 dsivas@stanford.edu *Counsel for Respondent, Sunflower Alliance*

CALIFORNIA COURT OF APPEAL First Appellate District, Division Five 350 McAllister Street San Francisco, California 94102	SUPREME COURT OF CALIFORNIA 350 McAllister Street Room 1295 San Franciso, CA 94102

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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Case Number: **S287414**
Lower Court Case Number: **A167698**

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Talia Nimmer Center for Biological Diversity 331002	tnimmer@biologicaldiversity.org	e-Serve	9/10/2025 9:44:50 PM
Aaron Pennekamp California Department of Justice 290550	Aaron.Pennekamp@doj.ca.gov	e-Serve	9/10/2025 9:44:50 PM
Susan Hawley Brandt-Hawley Law Group 75907	susanbh@me.com	e-Serve	9/10/2025 9:44:50 PM
Wesley Miliband Miliband Water Law 241283	wes.miliband@mwaterlaw.com	e-Serve	9/10/2025 9:44:50 PM
Deborah A. Sivas	dsivas@stanford.edu	e-	9/10/2025

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9/10/2025

Date

/s/Wesley Miliband

Signature

Miliband, Wesley (241283)

Last Name, First Name (PNum)

Miliband Water Law

Law Firm