S258574

IN THE SUPREME COURT OF CALIFORNIA

COUNTY OF BUTTE, COUNTY OF PLUMAS et al.,
Petitioners and Appellants,
v.
DEPARTMENT OF WATER RESOURCES
Respondent.

STATE WATER CONTRACTORS, INC. et al.
Real Parties in Interest and Respondents.

After a Decision by the Court of Appeal
Third Appellate District
Case No. C071785

Appeal from the Yolo County Superior Court, Case No. CVCV091258
The Honorable Daniel P. Maguire, Judge Presiding

REPLY TO ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

California Cases

Federal Cases

California Statutes

California Regulations

Federal Statutes

Other Authorities

INTRODUCTION

This Court's holding in *Friends of the Eel River v. North Coast Railroad Authority* could not be clearer. The requirement that state agencies comply with the California Environmental Quality Act when assessing environmental impacts of state projects is not regulatory action. It is an essential expression of state sovereignty. Despite this Court's instruction, the Court of Appeal, supported only by Real Party State Water Contractors (SWC), insists that the Federal Power Act preempts California's control over its subdivisions. Respondent and project-sponsor Department of Water Resources (DWR), disavows preemption and has agreed with Butte and Plumas Counties (Counties) that the challenge to DWR's Oroville Facilities EIR, brought over eleven years ago, should be resolved on the merits.

The Court of Appeal's Opinion places the Federal Power Act on a collision course with the Tenth Amendment. Once California enters the Federal Energy Regulatory Commission's process, the Opinion would cede the state's authority to determine whether its own project's environmental impacts have been adequately addressed. Even where a dam serves multiple state goals, as here, the state would lose the power to decide the terms under which it commits resources to that project. Although the Opinion recognizes a narrow slice of state jurisdiction delegated by the Clean Water Act, the Opinion misinterprets that jurisdiction, stripping away the public engagement and accountability that CEQA otherwise provides. Without

any indication that Congress intended such a result, the Opinion reads the Federal Power Act to eliminate a core element of California's internal decision-making process.

Recognizing the depth of the Opinion's impingement of state sovereignty, and the disarray it would bring to established regulatory proceedings, DWR and the State Water Resources Control Board seek depublication. Both agencies recognize that DWR's Oroville Facilities are a keystone of the State Water Project, providing not just electricity but water for consumption statewide. They also acknowledge CEQA's role to inform decisions about how and whether to proceed with the project. However, the grounds for the state agencies' requests—conflict with existing caselaw and confusion over important legal issues—demonstrate the necessity of review, not depublication. Clear direction is needed to prevent the Court of Appeal's error from ending judicial accountability over an EIR of immense public importance, and from disrupting dam relicensing, water-quality certification, and CEQA proceedings throughout the state.

The Court should grant this petition.

ARGUMENT

I. The Opinion Conflicts with *Friends of the Eel River* and Related Federal Precedent.

No section of the Federal Power Act touches on a state's authority to control its subdivision, much less preempts that authority in unmistakably

clear terms. Although both DWR and the State Board recognize that federal law cannot preempt CEQA here, SWC, like the Opinion, endeavors to craft a new rule for the Federal Power Act that would subordinate California's sovereignty.

There is no reasoned basis for distinguishing the Federal Power Act from the Interstate Commerce Commission Termination Act (ICCTA) when determining whether California agencies that pursue relicensing must comply with CEQA. By establishing a separate preemption rule that jettisons DWR's state-law obligations, the Opinion unsettles existing law.

A. Like the Opinion, SWC Fails to Identify Any Clear Congressional Statement Preempting DWR's Obligation to Comply with CEQA.

Both the State Board and DWR, two agencies with robust experience in FERC relicensing, agree that the Federal Power Act manifests no "unmistakably clear" Congressional intent to preempt CEQA. (DWR Request for Depublication ("DWR Letter") at 4; State Board Request for Depublication ("State Board Letter") at 5.)

SWC's effort to locate such intent identifies three statutory provisions that require FERC to consider the environmental impacts of a hydroelectric license and set the license's terms and conditions accordingly. (Answer at 20-22 [citing Federal Power Act sections 4(e), 10(a), and 10(j)].) Yet none of these statutory sections even mentions state authority over subdivisions, nor contains any suggestion of Congressional intent to

preempt California's governance of DWR's decision-making processes, including CEQA compliance for relicensing. These citations cannot overcome the required presumption that Congress *did not* intend to alter the normal federal-state balance by interfering with state self-governance. (*Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 690 ["we must consider a presumption that, in the absence of unmistakably clear language, Congress does not intend to deprive the state of sovereignty over its own subdivisions"].)

Unable to locate unmistakably clear language in the Federal Power Act that preempts DWR's CEQA obligations, SWC attempts to change the inquiry, arguing that Congress preempted the hydroelectric field and vested FERC with exclusive jurisdiction over environmental issues regarding DWR's project. (Answer at 11, 19-20.) But field preemption does not manifest clear Congressional intent to interfere with California's sovereignty. Longstanding federal authority holds that the ICCTA and Federal Power Act have "similarly broad preemptive scope." (*City of Auburn v. United States* (9th Cir. 1998) 154 F.3d 1025, 1031 [citing *California v. FERC* (1990) 495 U.S. 490, 506-07 and *Sayles Hydro Associates v. Maughan* (9th Cir. 1993) 985 F.2d 451, 456].) In enacting the ICCTA, Congress also "intended to occupy completely the field of state economic regulation of railroads" (*Cedarapids, Inc. v. Chicago, Central & Pacific Railroad Co.* (N.D. Iowa 2003) 265 F.Supp.2d 1005, 1013), which

courts have construed to preclude state environmental regulations. (*City of Auburn*, 154 F.3d at 1030; see also *Friends of the Eel River*, 3 Cal.5th 677, 714–15 [the ICCTA prevents states from "invad[ing] the regulatory field of the [federal] STB"].) The ICCTA assigns wide (and exclusive) regulatory powers to the STB, which mirror FERC's authority here. (See *Friends of the Eel River*, 3 Cal.5th at 707 ["A number of [rail] transactions require approval from the STB," including "licensing of railroad construction and operations" and "authorization to abandon a rail line or discontinue service."], 731, fn.7 [acknowledging STB authority to "implement[] NEPA" for a "railroad owned by the state"].)[1]

Notwithstanding its broad preemptive reach and the exclusive jurisdiction it grants the STB, the ICCTA does not displace state self-governance. (See *Friends of the Eel River*, 3 Cal.5th at 710, 718-19, 725-26 [preserving state rail agency's CEQA obligations despite the STB's "exclusive" jurisdiction over rail transportation].) Accordingly, FERC's jurisdiction over environmental issues during relicensing cannot preempt the State's control of its subdivisions' discretionary decisions.

Because the origins of the clear statement rule are constitutional, it applies to all Congressional enactments, not just the ICCTA. (*See Sheriff v.*

[1] Critically, FERC has never argued that its relicensing process, which included joint NEPA/CEQA scoping, preempted DWR's CEQA obligations. (Administrative Record ("AR") C000027, C001740.)

Gillie (2016) 136 S.Ct. 1594 [Fair Debt Collection Practices Act]; *Nixon v. Missouri Municipal League* (2004) 541 U.S. 125 [Telecommunications Act]; *Gregory v. Ashcroft* (1991) 501 U.S. 452 [Age Discrimination in Employment Act]; *Dellmuth v. Muth* (1989) 491 U.S. 223 [Education of the Handicapped Act]; *Atascadero State Hosp. v. Scanlon* (1985) 473 U.S. 234 [Rehabilitation Act].) In each case, courts avoid upsetting the normal constitutional balance between the federal and state governments by reading federal statutes to preserve states' authority to structure their governments. (*Gregory*, 501 U.S. at 460-61; see also *Friends of the Eel River*, 3 Cal.5th at 725-27.) The Federal Power Act is no different. It must be read to preserve California's sovereign authority and not preempt CEQA.

B. Applying CEQA to State Projects Is Not Regulatory Activity.

The ICCTA's deregulatory purpose does not meaningfully distinguish *Friends of the Eel River* from this case. (Answer at 24-25.) This Court's core holding—that application of CEQA to public projects, like the Oroville Facilities, constitutes state self-governance—remains regardless of whether a federal statute is labeled regulatory or deregulatory. (See *Friends of the Eel River*, 3 Cal.5th at 740 (Kruger, J., concurring) ["CEQA represents . . . a rule of internal state governance that the North Coast

Railroad Authority—much *as every other California public agency*—must follow with respect to *all projects* it undertakes"] (italics added).)

Contrary to SWC's claim (Answer at 18), the "zone of authority" the ICCTA left California to control its rail subdivisions was not central to the clear statement analysis in *Friends of the Eel River*. Rather, it provided an alternative ground for this Court's holding. *(Id.* at 740 [CEQA is not preempted "*both because* we presume Congress does not intend to disrupt state self-governance without clear language to that effect, *and because* the ICCTA leaves a relevant zone of freedom of action for owners that the state, as owner, can elect to act in through CEQA"] (italics added).)

The cases SWC cites to bolster the Opinion are also unavailing. (Answer at 22-23, 25-26.) SWC relies on caselaw upholding FERC's "final authority to establish license conditions [even when] inconsistent with the States' recommendations," and contends that "California's regulatory laws do not apply to hydropower projects." (Answer at 22 [quoting *California v. FERC*, 495 U.S. at 499 and *Karuk Tribe of Northern California v. California Regional Water Quality Control Bd.* (2010) 183 Cal.App.4th 330, 355].) But the Counties are not challenging FERC's relicensing authority, and, as DWR acknowledges, the state is not regulating a third party. (See DWR Letter at 4.) California is exercising its own sovereign power by governing DWR's decision-making. As this Court explained:

> Application of CEQA to the public entity charged with developing state property is not classic *regulatory* behavior . . . . Rather, application of CEQA in this context constitutes self-governance on the part of a sovereign state and at the same time on the part of an owner.

(*Friends of the Eel River*, 3 Cal.5th at 723.) Here as well, CEQA is a fundamental component of California's authority to govern DWR's decisions about relicensing the Oroville Facilities.

SWC repeatedly attempts to confuse the issue by conflating preemption of this CEQA action, an issue of subject matter jurisdiction, with the remedies available if the Counties later prevail on the merits. (Answer at 8-9, 22, 28-29.) But as *Friends of the Eel River* recognized, these distinct inquiries should not be conflated. (See 3 Cal.5th at 738-40; see also *id.* at 740-41 (Kruger, J., concurring) [distinguishing between categorical preemption of CEQA actions and as-applied preemption of particular CEQA remedies].)[2] The possibility that federal law might foreclose certain remedies otherwise available in CEQA actions does not

[2] The Counties' pleadings followed the standard practice of requesting the full suite of remedies typically available in CEQA actions, not just injunctive relief as SWC implies. (See, e.g., Appellants' Appendix 25, 41; see *Friends of the Eel River*, 3 Cal.5th at 699.) FERC still has not acted on DWR's license application, but that is not because of any injunctive motion here, which was never brought. The Counties seek no relief in the FERC proceedings, and have proposed conventional CEQA remedies directed at DWR's exercise of discretion as a lead agency. (See, e.g., Appellants' Supplemental Reply Brief (June 7, 2019) at 39.)

deprive California courts of subject matter jurisdiction to enforce CEQA compliance for public hydroelectric projects.

Federal Power Act preemption fails in this case precisely because it would interfere with California's authority over DWR. The Opinion confuses the clear-statement rule at issue in *Friends of the Eel River*, and unsettles existing caselaw.

C. Adequate Environmental Review Remains Critical to DWR's Decision-making Regarding the Oroville Facilities.

Distracting from the Opinion's clear conflict with existing law, SWC argues that DWR already chose to seek, and accept, a new license long before certifying its EIR and approving the project. (Answer at 16-18.) In essence, after years of *defending* the EIR, SWC now contends that DWR lacks meaningful discretion because it pre-committed to relicensing before concluding the CEQA process, an action CEQA prohibits. (See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134 [CEQA review must occur at the "earliest commitment" to a project].)

SWC's contention is simply not true. The documents listed in SWC's "timeline" (Answer at 17) remained contingent on environmental review and DWR's final decision.[3] DWR's EIR stated that DWR would still need to make discretionary decisions after completing environmental

[3] See, e.g., AR B068710 (Notice of Intent), G000168 (initial application), G000198 (Settlement Agreement).

review. (AR G000134.) DWR identified a discretionary choice among "three alternatives": the No-Project Alternative, the Proposed Project, and the FERC Staff Alternative. (AR G000129.) The Counties, and others, proposed a climate change and water-resilient project alternative that DWR declined to analyze. No federal mandate foreclosed a choice among these options. As DWR's Decision Document concluded, it would "determine whether to approve the proposed project" only after completing environmental review; following certification, it "may" approve the project. (AR A000007-8.) DWR also structured its Decision Document to avoid potential conflict with the forthcoming FERC licensing decision. (*Id*.)

Even with its relicensing application now pending before FERC, DWR retains ample discretion to remedy flaws in its EIR—including its failure to analyze project operations under twenty-first century hydrologic conditions—and to incorporate new information in its final decision-making. FERC procedures, while not ripe or at issue here, offer more flexibility than the extremes of freezing terms and forcing sale posited by SWC. (Answer at 18, 39.) Applicants may materially amend applications after filing (18 C.F.R. § 4.35(b)), or pursue a different licensing procedure (18 C.F.R. § 4.34(i)(7)). As SWC concedes, if DWR does not agree with the terms of a final license, it may contest those terms. (Answer at 18.) In short, DWR has multiple avenues through which it may exercise discretion

under CEQA without relinquishing title in the Oroville Facilities, a remedy the Counties never sought.[4]

Finally, SWC's assertion that the Counties "could have" challenged FERC's EIS or invoked ALP dispute resolution procedures is both wrong and irrelevant. (Answer at 26-27.) The EIS cannot be challenged until FERC makes a final decision, and the ALP procedures were unavailable to address errors in a CEQA document that had not been completed. (See, e.g., AR F002494 [ALP procedure did "not apply" because "the license application has already been filed."].) In any event, these federal remedies cannot supplant the remedies available under CEQA because California's sovereign power includes the "availability of citizen enforcement mechanisms." (*Friends of the Eel River*, 3 Cal. 5th at 730.)

Proper CEQA review provides critical information to DWR at every step. It guides the agency's decisions about whether and how to seek relicensing, and allows the public to participate in that decision-making. Under *Friends of the Eel River*, federal law should not preempt these internal state matters.

II. The Opinion Conflicts with *County of Amador*.

County of Amador v. El Dorado County Water Agency holds that the Federal Power Act does not preempt CEQA review for dam projects that

[4] California's "nonalienation" statute, Water Code section 11464, is therefore inapposite. (*See* Answer at 18, 39).

involve multiple purposes, including "proprietary rights to water." ((1999) 76 Cal.App.4th 931, 958-60.) Although it did not consider the clear-statement rule at issue in *Friends of the Eel River*, *County of Amador* holds that such multipurpose projects fall squarely within the Federal Power Act's savings clause, which preserves the states' regulatory purview. (*Id*.)

SWC attempts to disguise the Opinion's conflict with *County of Amador* by mischaracterizing the scope of the EIR and DWR's project. This state court CEQA action is not "a FERC relicensing dispute" (Answer at 30), nor was FERC relicensing the sole purpose of DWR's environmental review. DWR's project objectives include satisfying non-FERC obligations affecting water supply and other uses (AR G000128, G000190-91), in addition to providing environmental review for water quality certification (AR G000134; see also AR G000110). Project conditions must meet multiple water rights and beneficial uses that are sensitive to changes in hydrologic conditions. (AR G000161-163.) The State Board also recognizes that the Oroville Facilities are a key component of State Water Project, which "serves multiple purposes, including irrigation and municipal use, not just hydropower," and is subject to "state law regarding water rights and quality." (State Board Letter at 4-5.)

SWC's contention that the Opinion made "findings" that DWR's actual project was narrower misses the mark. (Answer at 14.) The scope of a CEQA project is a question of law, not fact (*Tuolumne County Citizens*

for Responsible Growth, Inc. v. City of Sonora (2007) 155 Cal.App.4th 1214, 1223-24.) Moreover, although its discussion of the project is inconsistent, the Opinion acknowledges that DWR's "Project is the continued operation of the Oroville Facilities for water and power generation." (Opinion at 3.)

Nor does DWR's pursuit of relicensing meaningfully distinguish *County of Amador*, which rejected the argument that the Federal Power Act preempted "CEQA challenges to the operation" of a public hydroelectric project. (76 Cal.App.4th at 956.) Federal Power Act preemption extends broadly to state laws regulating private dam operations, even when a dam operator is not actively pursuing relicensing. (See, e.g., *California v. FERC*, 495 U.S. at 494-96; *Sayles*, 985 F.2d at 453, 456.) Under the Federal Power Act, the determinative factor is not whether a dam operator has applied for a new license, as SWC contends, but whether the project implicates proprietary water uses. (*County of Amador*, 76 Cal.App.4th at 959-60; *Sayles*, 985 F.2d at 454-55.) DWR's project does.

III. The Opinion Disrupts Well-Established Law Requiring CEQA Compliance Before Water Quality Certification.

Abrogating well-established law, the Opinion would further disable CEQA enforcement in its critical role supporting state water quality certification under the Clean Water Act. Although the Opinion provides no reason to question CEQA's role as an "appropriate requirement" of state

law supporting water quality certification (33 U.S.C. § 1341(d)), it misleadingly asserts "the plaintiffs cannot challenge . . . the CEQA document because *that is subject to review by FERC*" (Opinion at 32 (italics added)). SWC likewise conflates the "relicensing process" with certification procedures. In SWC's faulty description of water certification procedure, which would substantially hamstring state certification agencies, most water quality review would be reserved only for FERC, except for any later, "more stringent" state conditions. (Answer at 34-36.)

These arguments conflict with well-established law. The Clean Water Act and Federal Power Act serve different purposes, and their environmental reviews are not interchangeable, even when both consider water quality. The Federal Power Act provides no authority to displace state law supporting certification. (See, e.g., *PUD No. 1 of Jefferson County v. Washington Department of Ecology* (1994) 511 U.S. 700, 712-22 ("*Jefferson County*"); *American Rivers, Inc. v. FERC* (2d Cir. 1997) 129 F.3d 99, 107-11) (FERC lacks authority); State Board Letter at 3.)[5]

SWC incorrectly invokes the D.C. Circuit's unsettled ruling in *Hoopa Valley* to question the Board's future authority over water quality. (Answer at 33, 38 (citing *Hoopa Valley Tribe v. FERC* (D.C. Cir. 2019)

[5] SWC's weak attempt to distinguish *Jefferson County* (Answer at 33) ignores that flow requirements in that case arose from state environmental study, and that, like here, FERC had "not yet acted on petitioners' license application." (Petition for Review at 32, fn. 7, 34.)

913 F.3d 1099, *cert. petition pending*).) However, that case did not, as SWC asserts, uphold the finality of certification, but addressed whether certification had been waived because it was not issued within the mandatory one-year period. (*Hoopa Valley Tribe,* 913 F.3d at 1105).[6] SWC makes no claim that the State Board's certification authority was waived.

Here, water quality issues are central to the Counties' EIR challenges, including DWR's refusal to study twenty-first century drought, flood, and precipitation conditions. (See, e.g., AR H000133, H000235.) Significantly, DWR's EIR served as the only analysis supporting state water quality certification. (AR G000134, G000110; Opinion at 16.)

Nonetheless, SWC denies this case even "involve[s]" the state's essential function of analyzing water quality (Answer at 33, 38), and instead advances inconsistent timing arguments. SWC argues it is too late for CEQA, because certification "became final 30 days after its issuance" and cannot be changed. (*Id*. at 32-33.) Simultaneously, SWC contends it is too early for CEQA because certification conditions would not commence "until the license is issued," and "may be subject to future CEQA review when implemented," if at all. (*Id*. at 35-36.)

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[6] SWC fails to note the split of circuit authority on this issue. (See, e.g., *AES Sparrows Point LNG v. Wilson* (4th Cir. 2009) 589 F.3d 721; *N.Y. Dept. of Environmental Conservation v. FERC* (2d. Cir. 2018) 884 F.3d 450.)

Both arguments are untenable. The Counties properly brought their CEQA challenge against DWR, the lead agency. (See *Citizens Task Force on SOHIO v. Bd. of Harbor Comrs.* (1979) 23 Cal.3d 812, 814.) They could not have challenged the EIR through the certificate, which "*did not exist*" within the statute of limitations. (Opinion at 6, 7, fn. 9 (italics added); Pub. Resources Code § 21167).)

Requiring a *second* CEQA challenge against the State Board would also undermine the statute's preference for "one forum" for judicial resolution of CEQA deficiencies and would "cause confusion and provoke additional time-consuming litigation." (*City of Redding v. Shasta County LAFCO* (1989) 209 Cal.App.3d 1169, 1181; see also Pub. Resources Code § 21167.3(b) [responsible agency permitting decisions remain at applicant's risk "pending final determination" of challenge against the lead agency].) The State Board was one of four responsible and trustee agencies relying on DWR's EIR for later decisions; there are often many more. The Opinions' failure to clearly address this issue will elicit multiple, inconsistent challenges against lead and responsible agencies addressing the same CEQA errors.

Finally, deferring CEQA accountability until implementation of State Board conditions conflicts with existing law. It is contrary to the unambiguous requirement that challenges to a 401 certification be brought within 30 days after the State Board's decision. (Wat. Code § 13330.) The

Opinion's misstatement of the law encourages untimely certification challenges, "resulting in increased litigation and uncertainty." (State Board Letter at 3.) It also undermines agency accountability served by CEQA's requirement that environmental review *precede* agency decisions. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395.) A decision in the normal course of judicial review enables a state agency to adjust its project if necessary to comply with CEQA's requirements. Avoiding accountability for CEQA compliance based on mistaken assumptions about additional review following "implementation" would dangerously reverse this process.[7]

IV. Without Review, Unsettled Issues Regarding Dam Relicensing, Water Quality Certification, and CEQA Proceedings Will Persist.

Both the State Board and DWR correctly recognize the Opinion's broad impact. It unsettles existing law by "threaten[ing] to undercut the reasoning of *Friends of Eel River*" and it will "create uncertainty and confusion about the Water Board's certification process," leading to "wasteful and unwarranted litigation challenging water quality certification decisions." (DWR Letter at 1; State Board Letter at 1, 3.)

[7] For example, the Opinion concedes that "[i]t is true that changes in the earth's climate could affect the temperature or flow of water to the new environmental project." (Opinion at 30, fn. 22.) But, its erroneous conclusion that "*any such argument must be made when the project in the Certificate is implemented*" (*id.* (italics added)) precludes the ability to change the project before irreversible commitments are made.

The agencies are correct. The Opinion's unwarranted conflict with existing law will cast a shadow over multiple relicensing proceedings pending in California. It affects not just projects that require a 401 certification from the State Board, but any project where a public agency operates a hydroelectric facility, including other components of the State Water Project. (See Petition for Review at 39-40.)

DWR and the State Board recognize that the Opinion "directly conflicts" with *Friends of the Eel River* and "mistakenly fails to recognize the differences between the State Water Project and . . . privately-owned, single purpose hydroelectric projects." (DWR Letter at 3; State Board Letter at 5.) Neither agency opposes review, but they seek only depublication.

Only this Court's review can adequately resolve the legal conflicts and other important legal issues raised by the Opinion. (Rule of Court 8.500(b)(1); cf Rule of Court 8.1105(c)(3), (5), (6).) And without review, the Opinion's practical effects cannot be undone. The EIR will become unreviewable, even though the document purports to conclusively resolve matters of fundamental importance to counties and communities near the Oroville Facilities, and statewide.

And even if unpublished, the Opinion will spread uncertainty regarding CEQA's proper role. (See *State Farm Mutual Automobile Ins. Co. v. Davis* (9th Cir. 1991) 937 F.2d 1415, 1420, fn. 4 ["California's

depublication procedure does not send clear signals."].) Project proponents will revive the Opinion's reasoning to claim that CEQA review—once uniformly understood to be an essential step in the relicensing process—is preempted. The Answer's assertion, on behalf of numerous water suppliers including the country's largest, Metropolitan Water District, that "[t]he application of CEQA" constitutes "state encroachment on the clear regulatory province of FERC" (Answer at 29) underscores the near certainty that these arguments will reappear in proceedings throughout the state.

If it is required at all, CEQA will become an afterthought immune from effective judicial review or enforcement. Such a result cannot be squared with *Friends of the Eel River*, which recognized the critical role that CEQA plays in California's internal governance even in the face of a federal program designed to avoid conflicting state requirements. That result also cannot be squared with *Jefferson County*'s recognition that appropriate requirements of state law cannot be preempted, and remain vital to inform and fulfill the water quality responsibilities that Congress expressly assigned to the states.

CONCLUSION

For the foregoing reasons, Court should grant the petition.

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CERTIFICATE OF WORD COUNT

In accordance with California Rules of Court Rule 8.504(d)(1), I certify that, exclusive of this certification and the other exclusions referenced in Rule of Court 8.204(c)(3), this **REPLY TO ANSWER TO PETITION FOR REVIEW** contains 4,196 words, including footnotes, as determined by the word count of the computer used to prepare this brief.

DATED: November 14, 2019 SHUTE, MIHALY & WEINBERGER LLP

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PROOF OF SERVICE

County of Butte et al. v. Department of Water Resources et al.
Supreme Court of the State of California
Case No. S258574

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, California 94102.

On November 14, 2019, I served true copies of the following document(s) described as:

REPLY TO ANSWER TO PETITION FOR REVIEW

on the parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I served the document(s) on the person(s) listed in the Service List by submitting an electronic version of the document(s) to TrueFiling, through the user interface at www.truefiling.com.

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on November 14, 2019, at San Francisco, California.

/s/ Patricia Larkin
Patricia Larkin

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Case Name: **COUNTY OF BUTTE v. DEPARTMENT OF WATER RESOURCES (STATE WATER CONTRACTORS)**
Case Number: **S258574**
Lower Court Case Number: **C071785**

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

11/14/2019

Date

/s/Edward Schexnayder

Signature

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