S258574

IN THE SUPREME COURT OF CALIFORNIA

COUNTY OF BUTTE, COUNTY OF PLUMAS et al.,
Plaintiffs and Appellants,
v.
DEPARTMENT OF WATER RESOURCES
Defendant and 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

PLAINTIFFS' REPLY BRIEF ON THE MERITS

*Roger B. Moore (SBN 159992)
Law Office of Roger B. Moore
337 17th Street, Suite 211
Oakland, California 94612
Telephone: (510) 548-1401
rbm@landwater.com
Attorney for Plaintiffs and Appellants COUNTY OF BUTTE and COUNTY OF PLUMAS et al.

Ellison Folk (SBN 149232)
Edward T. Schexnayder (SBN 284494)
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816
Folk@smwlaw.com
Schexnayder@smwlaw.com
Attorneys for Plaintiff and Appellant COUNTY OF BUTTE

R. Craig Settlemire (SBN 96173)
County of Plumas, County Counsel
520 Main Street, Room 302
Quincy, California 95971
Telephone: (530) 283-6240
Facsimile: (530) 283-6116
CSettlemire@countyofplumas.com
Attorney for Plaintiff and Appellant COUNTY OF PLUMAS et al.

Bruce Alpert (SBN 75684)
County of Butte, Office of County Counsel
25 County Center Drive
Oroville, California 95965
Telephone: (530) 538-7621
Facsimile: (530) 538-6891
balpert@buttecounty.net
Attorney for Plaintiff and Appellant COUNTY OF BUTTE

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

California Cases

Other State Cases

Federal Statutes

California Statutes

Federal Regulations

California Regulations

Other Authorities

PRELIMINARY STATEMENT

When Congress enacted the Federal Power Act, it was silent on the States' ability to control subdivisions that operated hydroelectric facilities. Amid this silence, only Real Parties in Interest State Water Contractors, Inc., et al. ("SWC") contend that this Court should infer Congress's unmistakably clear intent to preempt California's self-governance, which requires compliance with the California Environmental Quality Act ("CEQA"). Significantly, the agency that operates the Oroville Facilities project and prepared the Environmental Impact Report challenged here, Respondent California Department of Water Resources ("DWR"), disagrees. Like the Plaintiffs Butte County, Plumas County, and Plumas County Flood Control and Water Conservation District ("the Counties"), DWR acknowledges that under this Court's decision in *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677 ("*Eel River*"), and related U.S. Supreme Court precedent, congressional silence cannot preempt California's sovereign governance of DWR.

SWC does not dispute that requiring DWR to comply with CEQA is an act of self-governance, but instead argues that field preemption under the Federal Power Act is enough to displace state control. But the implied displacement of state power conferred by field preemption has no place in the clear statement analysis applicable to sovereign state governance. For

this reason, the preemption caselaw SWC relies on involves state regulation of private entities, not self-governance of public entities.

Tellingly, the Federal Power Act sections SWC cites do not address the state-subdivision relationship at all, much less preempt it in unmistakably clear terms. Nor can SWC show that CEQA review for public projects conflicts with federal authority over hydroelectric licensing, especially since CEQA review has coexisted with Federal Energy Regulatory Commission ("FERC") permitting for decades. Indeed, FERC did not dispute but expected DWR's CEQA review here.

Even if the Federal Power Act reflected congressional intent to preempt California's governance of DWR, it still would not preempt state environmental review of the Oroville Facilities project. First, like the project in *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, operation of DWR's project is essential to agricultural and municipal water supply. Federal Power Act section 27, which preserves state laws related to such uses, also saves this challenge to DWR's CEQA review.

And finally, it is *undisputed* that CEQA applies to the State Water Resources Control Board's certification under Clean Water Act section 401 that DWR's project must comply with appropriate requirements of state law. It is also undisputed that DWR prepared and certified its EIR, in part, to support the State Board's certification decision. Despite conceding these

points, SWC contends that the Counties were required to wait for *more than two years* after the EIR's certification to challenge the State Board's action, not DWR's decision. Nothing in CEQA supports SWC's novel position, which conflicts with long-established caselaw defining the relationship between lead and responsible agencies.

Restoring California's sovereign prerogative to hold its agencies accountable under CEQA could hardly be of greater importance to the Counties and to California's people and natural resources. All of the parties recognize that DWR's Oroville Facilities serve vital water-dependent purposes in the State. Twelve years, including prolonged droughts and severe floods, have passed since the Counties initiated their actions challenging DWR's exclusive reliance on the past century's hydrologic conditions to assess a dam project that will operate for the next fifty years. The EIR's failure to address calls from DWR's own scientists to consider the wider climate extremes expected in the coming decades, among other errors, is shortsighted and contravenes CEQA. It is past time to resolve these issues on the merits.

For the foregoing reasons, the Counties respectfully request that this Court reverse the Court of Appeal's decision and remand this case with directions to rule on the merits of the Counties' CEQA claims.

ARGUMENT

I. The Federal Power Act Does Not Preempt DWR's CEQA Review for Its Own Project.

A. Under the clear statement rule applied in *Eel River*, DWR's obligation to comply with CEQA is not preempted.

Under the U.S. Constitution's federalist system, the "States possess sovereignty concurrent with that of the Federal Government." (*Gregory v. Ashcroft* (1991) 501 U.S. 452, 457.) Central to the States' sovereignty is their authority to structure their governments. (*Eel River*, *supra*, 3 Cal.5th at p. 725 [citation omitted].) Thus, federal legislation "threatening to trench on the States' arrangements for conducting their own governments should be . . . read in a way that preserves a State's chosen disposition of its own power." (*Nixon v. Missouri Municipal League* (2004) 541 U.S. 125, 140-41 [citing *Gregory*, *supra*, 501 U.S. at p. 460].)

Courts presume that "Congress does not intend to deprive the state of sovereignty over its own subdivisions." (*Eel River*, *supra*, 3 Cal.5th at p. 690.) If Congress intends to encroach on the States' self-governance, "it must make its intention to do so '*unmistakably clear in the language of the statute*.'" (*Id*. at p. 726 [quoting *Gregory*, 501 U.S. at pp. 460-61].)

It is undisputed that CEQA "operates as a form of self-government when the state or a subdivision of the state is itself the owner of . . . property." (*Eel River*, *supra*, 3 Cal.5th at p. 723; see Answer Brief on the

Merits of the Department of Water Resources ("DWR Br.") at 39-46; Answering Brief on the Merits of State Water Contractors, Inc., et al. ("SWC Br.") at 33, 39; see also *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 [an EIR is a "document of accountability" protecting "informed self-government" in California] [citation omitted].) Thus, absent "unmistakably clear" congressional intent, the Federal Power Act should not be read to preclude DWR's compliance with CEQA. (*Eel River*, *supra*, 3 Cal.5th at p. 730.)

Nowhere does the Federal Power Act contain unmistakably clear intent to preempt how the states govern the decisions of public hydroelectric operators. For this reason, SWC attempts to limit *Eel River*, and the unmistakably clear statement rule it applies, to the "deregulated sphere" found within the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101 et seq. (SWC Br. at 31, 41-42.)

SWC's approach is untenable for multiple reasons. First, SWC's reading of *Eel River* does not match this Court's analysis. *Eel River*'s outcome was not predicated on the ICCTA's deregulatory "zone of . . . freedom" as SWC contends. (SWC Br. at 31, 41-42.) Rather, this Court held CEQA was 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.

(*Eel River*, *supra*, 3 Cal.5th at p. 740 [emphasis added].) Thus, the ICCTA's "zone of freedom" confirmed this Court's independent conclusion that, under the clear statement rule, Congress did not intend to exempt public rail agencies from complying with state law.

Second, SWC ignores the "similarly broad preemptive scope" of the Federal Power Act and the ICCTA. (*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 ("*Sayles Hydro*")].) Within that preemptive scope, both the Federal Power Act and the ICCTA confer broad federal regulatory authority over the hydroelectric and rail industries. (Counties' Opening Brief on the Merits ("Open. Br.") at 32.) Similar to FERC's authority, the federal Surface Transportation Board issues licenses to private and public operators to construct, operate, and abandon rail facilities. (49 U.S.C. §§ 10901, 10903.) Rail operators are hardly "free from federal regulation." (SWC Br. at 10.)

However, within that regulatory authority, the Federal Power Act, like the ICCTA, allows applicants to shape their project proposals and ultimately decide whether to accept a FERC license. (Open. Br. at 34-35; Section I.C, *infra*.) State laws governing public applicants' pursuit of a

FERC license operate in the same zone of freedom that the Federal Power Act affords private market participants. Thus, DWR is correct that *Eel River*'s interrelated zone of freedom and market participant discussions also confirm that the Federal Power Act does not displace public *or* private applicants' discretionary decisions about whether and how to pursue hydroelectric projects. (DWR Br. at 41-42.)

Third, SWC's attempt to distinguish *Eel River* overlooks the U.S. Supreme Court decisions on which *Eel River* rests—*Nixon* and *Gregory*. These cases applied the unmistakably clear statement rule to preserve the "*constitutional* balance of federal and state powers." (*Gregory*, *supra*, 501 U.S. at p. 460 [emphasis added].) Because *Eel River*'s heightened clear statement rule is grounded in federalism, the U.S. Supreme Court has applied it to numerous statutes beyond the ICCTA. (See, e.g., *Sheriff v. Gillie* (2016) 136 S.Ct. 1594 [Fair Debt Collection Practices Act]; *Dellmuth v. Muth* (1989) 491 U.S. 223 [Education of the Handicapped Act]; *Atascadero State Hospital v. Scanlon* (1985) 473 U.S. 234 [Rehabilitation Act].) SWC's suggestion that the clear statement rule should not apply to the Federal Power Act fails to grapple with the doctrine's constitutional underpinnings.

Rather than dispute this authority, SWC relies on cases holding that the Federal Power Act preempts state *regulation* of private hydroelectric projects. (See SWC Br. at 34-35 [citing *California v. FERC*, *supra*, 495

U.S. 490; *First Iowa Hydro-Electric Cooperative v. Federal Power Com.* (1946) 328 U.S. 152 ("*First Iowa*"); *Karuk Tribe of Northern California v. California Regional Water Quality Control Bd., North Coast Region* (2010) 183 Cal.App.4th 330 ("*Karuk Tribe*"); *Sayles Hydro*, *supra*, 985 F.2d 451].) As discussed by the Counties (Open. Br. at 12-13, 31, 33-34) and DWR (DWR Br. at 47-48), these cases are not controlling here because they do not consider States' sovereign authority over their subdivisions, much less hold that the Federal Power Act preempts that authority.

Because preempting state self-governance "would work so differently than preempting regulation of private players," the U.S. Supreme Court has found "it highly unlikely that Congress intended to set off on such uncertain adventures." (*Nixon*, *supra*, 541 U.S. at p. 134; see also *Murphy v. Nat. Collegiate Athletic Assn.* (2018) 138 S.Ct. 1461, 1481 ["[E]very form of preemption is based on a federal law that *regulates the conduct of private actors, not the States*."] [emphasis added].) Under *Eel River*, *Nixon*, and *Gregory*, this case is not preempted.

B. SWC fails to show that Congress intended the Federal Power Act to preempt CEQA here.

The heightened clear statement rule applied in *Eel River* unquestionably insulates this case from preemption as well. But even without that rule, the Federal Power Act would not preempt DWR's environmental review for its own project. Because federal preemption is

disfavored, courts "are reluctant to infer preemption, and it is the burden of the party claiming that Congress intended to preempt state law to prove it." (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 936 [quotation omitted]; see also *Brown v. Mortensen* (2011) 51 Cal.4th 1052, 1065 [burden requires "demonstrating a clear and manifest congressional intent to preempt" state law] [quotation omitted].)

SWC, the only party asserting preemption, argues that the Federal Power Act "occupies the field of hydroelectric relicensing," and therefore precludes CEQA. (SWC Br. at 34-40.) But field preemption is not so simplistic. A court must locate both congressional intent to preempt state law *and* the "boundaries of the pre-empted field." (*English v. Gen. Electric Co.* (1990) 496 U.S. 72, 82.) Federalism instructs that those boundaries be drawn as narrowly as possible. (*In re Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1088.)

As this Court has held, the law governing hydroelectric projects "is not exclusively occupied for all purposes by the Federal Power Act or [FERC]." (*California Oregon Power Co. v. Superior Court* (1955) 45 Cal.2d 858, 868.) The Federal Power Act's "system of dual control" described in *First Iowa* provides that, in addition to water rights, applicants must comply with other areas of state law that do not intrude on FERC's regulations. (*First Iowa*, *supra*, 328 U.S. at p. 178; see also *Niagara*

Mohawk Power Corporation v. Hudson River-Black River Regulating Dist. (2d Cir. 2012) 673 F.3d 84, 99 [the Federal Power Act "leaves intact countless state powers, not just the hydropower-related ones specifically 'saved' by section 27"].) Relying on *First Iowa*, subsequent courts have upheld the application of state law to hydroelectric operators even where that law falls outside of section 27's savings clause.[1] (See *California Oregon Power Co.*, *supra*, 45 Cal.2d at pp. 868-69 [state law nuisance claims against hydroelectric operator not preempted]; *Niagara Mohawk Power Corporation*, *supra*, 673 F.3d 84 [state property assessment not preempted]; *South Carolina Public Service Authority v. FERC* (D.C. Cir. 1988) 850 F.2d 788 [state tort liability for federal licensees not preempted]; *Ruspi v. Glatz* (Pa.Super.Ct. 2013) 69 A.3d 680, 686 [same].) Similarly, here, applying CEQA to DWR's decision to renew its 50-year license does not fall within the Federal Power Act's preemptive sphere.

SWC contends that three sections of the Federal Power Act, 4(e), 10(a), and 10(j), along with the National Environmental Policy Act ("NEPA"), effectively displace DWR's CEQA obligation. (SWC Br. at 36.)

---

[1] For this reason, the conclusion that state authority saved by section 27 is "all the states get" is overbroad and inconsistent with *First Iowa* and later cases. (See *Sayles Hydro*, *supra*, 985 F.2d at p. 454; see also *Karuk Tribe*, *supra*, 183 Cal.App.4th at p. 348.) This Court need not resolve that inconsistency, however, because the scope of the State's regulatory authority over private parties is not at issue here. (Cf. *Sayles Hydro*, *supra*, 985 F.2d at p. 454; *Karuk Tribe*, *supra*, 183 Cal.App.4th at p. 348.)

But none of these statutes preclude *any* state environmental review, much less an applicant's ability to consider environmental factors for its own hydroelectric project. Section 4(e) requires FERC, in issuing a license, to:

> give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

(16 U.S.C. § 797(e).) Section 10(a) requires that any "project adopted" by FERC be "in the judgment of the Commission . . . best adapted to" achieve "water-power development" and the environmental and recreational purposes established in Section 4(e). (16 U.S.C. § 803(a).) Neither of these sections addresses much less governs the factors an applicant may consider in shaping its project plan for a hydroelectric license, or determining whether to amend that plan.

Federal Power Act section 10(j) is even narrower. It requires that a final license include conditions to "equitably protect, mitigate damages to, and enhance, fish and wildlife," and requires FERC to consult with "State fish and wildlife agencies." (16 U.S.C. § 803(j).) Section 10(j) *does not* establish FERC's conclusive "control over the environmental aspects of the hydropower licensing process" (SWC Br. at 37) in a manner that would preclude DWR's ability to conduct its own environmental review. Indeed, the entire thrust of SWC's argument—that Congress granted FERC "the

paramount regulatory role" over "environmental considerations" for hydroelectric projects (SWC Br. at 38)—has been rejected by the U.S. Supreme Court. (See *PUD No. 1 of Jefferson County v. Washington Dept. of Ecology* (1994) 511 U.S. 700, 712-22 ("*Jefferson County*"); Section III, *infra*.)

SWC also suggests that FERC's environmental review under NEPA, which only applies to federal agencies, effectively renders DWR's EIR unnecessary. (SWC Br. at 23-24, 36.) This position is irreconcilable with *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252. *Nelson* held that a NEPA analysis for a surface mining project on federal land did not satisfy Kern County's independent obligation to comply with CEQA. (*Id*. at pp. 278-81.) The court observed that CEQA and NEPA's requirements are not identical. For instance, as SWC concedes (SWC Br. at 24, fn. 10), NEPA lacks CEQA's requirement to adopt and implement all feasible mitigation measures (Pub. Resources Code §§ 21002, 21002.1). Ultimately, "there is nothing necessarily problematic (from a preemption standpoint)" with federal and state agencies conducting separate environmental review for the same project. (*Nelson*, *supra*, 190 Cal.App.4th at p. 281; see also *Eel River*, 3 Cal.5th at p. 740 [CEQA compliance required despite federal agency's NEPA obligation].)

In short, nothing in the Federal Power Act (or NEPA) suggests that Congress intended to reach beyond state *regulation* to also preempt state

consideration of environmental issues associated with state hydroelectric projects. (See *California v. FERC*, *supra*, 495 U.S. at pp. 496-98.) SWC has failed to meet its burden to prove that CEQA is preempted here.

C. Neither DWR's CEQA obligations nor this suit interfere with FERC's jurisdiction.

FERC's decisions implementing the Federal Power Act also confirm that CEQA is not preempted. FERC has followed the courts' conclusion that the Federal Power Act's "dual system" of authority leaves certain issues of state law beyond FERC's jurisdiction, including "whether a licensee has legal authority . . . to construct, operate, and maintain a hydroelectric project." (*North Hartland, LLC* (2002) 101 FERC ¶ 61157, 61644 [citing *First Iowa*, *supra*, 328 U.S. at p. 179].) FERC has therefore recognized that it cannot authorize a municipal applicant to operate a hydroelectric facility if the applicant lacks state authority to do so. (*Allegheny Electric Cooperative, et al.* (1990) 51 FERC ¶ 61268, 61854-55; *Appomattox River Water Authority* (1989) 49 FERC ¶ 61313, 62174-75.) SWC fails to address the Counties' reliance on these decisions (Open. Br. at 34, fn. 4, 36), which reflect FERC's unwillingness to interpose "[its] authority between a State and its . . . subdivisions." (*Nixon*, *supra*, 541 U.S. at pp. 140-41.)

FERC has taken a similar approach when California agencies apply CEQA to public hydroelectric projects. For decades, CEQA review for such

projects has coexisted with federal regulation without FERC ever suggesting that CEQA is preempted. (See *California Dept. of Water Resources & City of Los Angeles* (2009) 129 FERC ¶ 62073, 64201; *Sacramento Mun. Util. Dist*. (1999) 88 FERC ¶ 62159, 64319; *California Dept. of Water Resources* (1997) 81 FERC ¶ 62247, 64588; *California Dept. of Water Resources* (1980) 12 FERC ¶ 62270, 63490.) FERC has also observed that DWR, as a CEQA lead agency, must "abide by any state or local laws that are relevant to" its projects. (*California Dept. of Water Resources* (1997) 81 FERC ¶ 62247, 64588.) Likewise, here, throughout the administrative process, FERC coordinated its environmental review with DWR's CEQA review without ever suggesting that CEQA was preempted. (Administrative Record ("AR") C000027, C001740.)

Rather than confront CEQA's long-standing coexistence with FERC's regulation of hydroelectric projects, SWC repeatedly alleges that the Counties' motivation for bringing their suits is to "halt" or "collaterally attack" the FERC relicensing proceeding. (SWC Br. at 11, 28, 40, 44, 49-50, 54, 59.) SWC's repetition does not transform this claim into truth. On their face, the Counties' writ petitions do not name, much less seek any relief against FERC (AA 1:1:24[2]; 1:3:41), which federal sovereign

[2] Citations to the Appellants' Appendix ("AA") appear herein as "AA [volume]:[tab]:[page number]."

immunity bars. (*Aminoil U.S.A., Inc. v. California State Water Resources Control Bd.* (9th Cir. 1982) 674 F.2d 1227, 1231, 1233.) The writ petitions seek an order requiring DWR to comply with CEQA (AA 1:1:24; 1:3:41), not to prevent FERC from complying with its duties. And in this Court and the Court of Appeal, the Counties have confirmed that they are not seeking to "collaterally attack" the FERC proceeding, or even DWR's temporary withdrawal of its application.[3] (Open. Br. at 36, fn. 5; Appellants' Supplemental Reply Brief at 38-41.)

In reality, throughout this case, the Counties have documented the EIR's serious deficiencies, most egregiously, its refusal to evaluate the project's impacts against the wider range of drought, flood, and precipitation conditions that will exist over DWR's 50-year license term. (See, e.g., AR H000131-33, H000216-33, H000367-68, H000491-94, L001040-44; Appellants' Opening Brief at 14-52; Appellants' Reply Brief

[3] SWC sows further confusion by conflating the Settlement Agreement, i.e. "the project," with DWR's environmental review of that project. (See SWC Br. at 12, 33, 43, 57.) This case does not contest the "environmental sufficiency of the Settlement Agreement" (SWC Br. at 57); it contests the legal adequacy of DWR's *EIR*. Contrary to SWC's assertion that the Counties must seek relief before FERC (SWC Br. at 54), the EIR's legality is a question of state law that FERC cannot resolve. (*North Hartland, LLC* (2002) 101 FERC ¶ 61157, 61645.) Additionally, the Alternative Licensing Procedure's dispute resolution process, 18 C.F.R. § 4.34(i)(6)(vii), provided no opportunity to address the EIR's errors. (Cf. SWC Br. at 18-19, fn. 5.) DWR completed the EIR long after that process had concluded. (See AR F002494 [DWR stating that the Alternative Licensing Procedure did not apply once "the licensee's application has . . . been filed"].)

at 19-56; Appellants' Supplemental Reply Brief at 28-35.) Consequently, SWC's obsessive focus on the Counties' research quantifying the local environmental and socioeconomic impacts of the Oroville Facilities (see, e.g., SWC Br. at 22) is both irrelevant and misleading. The Counties' legitimate concerns about the project's impact on public services—such as the understated risks from "catastrophic flooding" or an "uncontrolled spill," which Butte County raised in *2007*, long before the Oroville spillway crisis occurred 2017 (AR H000235; cf. SWC Br. at 19, fn. 6)—hardly undermines the seriousness of either the Oroville Facilities' environmental impacts or the Counties' interest in quantifying and mitigating these impacts. (See *City of Marina v. Bd. of Trustees of the California State Univ.* (2006) 39 Cal.4th 341 [addressing CEQA's requirement to mitigate impacts on public services].)

In any event, SWC's entire premise—that the Counties' intentions are relevant to determining Federal Power Act preemption—is baseless. (See *American Trucking Assns. v. City of Los Angeles* (2013) 569 U.S. 641, 651 [local authority's "intentions are not what matters" in a preemption analysis].) Requiring DWR to fully analyze the environmental impacts of its project "does not interfere in any way with FERC licensing procedures." (*County of Amador*, *supra*, 76 Cal.App.4th at p. 961.) There is no conflict between FERC's jurisdiction and enforcing DWR's CEQA compliance.

D. DWR retained discretion over its project after applying for a federal license.

Unable to demonstrate a genuine conflict with FERC's licensing jurisdiction, SWC contends that requiring CEQA compliance is fruitless because once DWR submitted the Settlement Agreement to FERC in 2006, DWR lost discretion over its project. (SWC Br. at 46-48.) This argument is irreconcilable with SWC's actions during the CEQA process. SWC and its member agencies *never* objected to DWR's preparation of the EIR, and, in fact, SWC encouraged DWR to comply with CEQA. (See AR C0000323, C0000331, H000425-47.) After the Counties filed their suits, SWC defended the EIR for years without ever suggesting it was meaningless. (See, e.g., AA 1:23:0195-221; 1:98:2444-506.) Even now, SWC concedes that DWR's EIR was necessary for the project's water quality certification. (SWC Br. at 56; see Section III, *infra*.) In any event, SWC's new claim that DWR lacks meaningful discretion over its project does not fit the record before the Court, or the law governing relicensing applications.

First, the record shows that DWR did not abandon its discretion over the project in 2006. Indeed, the 2006 the Settlement Agreement expressly retained DWR's discretion pending compliance with CEQA: "Nothing in this Settlement Agreement is intended or shall be construed to be an irrevocable commitment of resources or a pre-decisional determination by a Public Agency" signatory. (AR G001111 [Settlement Agreement § 3.1.1].)

This retained discretion is consistent with how DWR described its legal obligations at the beginning and end of the CEQA process. (See AR C000038 [Notice of Preparation: DWR "must satisfy the requirements of the FPA and the FERC regulations, [NEPA] and the CEQA"]; A000007 [DWR Decision Document: "Director will determine whether to approve the Proposed Project" after considering the EIR].) After DWR approved its project, it acknowledged that it still must "decide whether to accept the [proposed] license and license conditions" at the end of FERC's proceeding, and that the EIR would inform that choice. (AR A000008.)

Ignoring DWR's retained discretion, SWC makes much of the fact that DWR signed the Settlement Agreement in 2006 but finalized the EIR in 2008. (SWC Br. at 46.) This is hardly a showstopper. DWR could not have concluded its environmental review without a final Settlement Agreement because the Settlement Agreement *defined* the "project" for the EIR's analysis. (See AR G000210 ["The Proposed Project is the [Settlement Agreement] signed March 21, 2006, and submitted to FERC."].) Thus, the Settlement Agreement necessarily preceded the EIR, which required an "accurate, stable and finite project description" for an informative and legally adequate environmental analysis. (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 938 [quotation omitted].)

Second, FERC's regulations allow DWR ample freedom to exercise its retained discretion over its project. As explained in the Counties' Opening Brief (Open. Br. at 35), FERC's regulations allow DWR to amend its license application while FERC's review is pending. (18 C.F.R. § 4.35(b).) If DWR disagrees with the terms FERC places on a final license, DWR may contest those terms or reject the license entirely. (16 U.S.C. § 825l; 18 C.F.R. § 385.713.) Even after DWR accepts a FERC license, it may apply to amend the license terms.[4] (18 C.F.R. § 4.200(b).) Thus, like any other applicant, DWR retains ample discretion to modify its project after filing its relicensing application.

SWC's only response is to argue that California's nonalienation statute, Water Code section 11464,[5] somehow shackles DWR. On its face, section 11464 does not. DWR has no plan to sell, grant, or convey the Oroville Facilities, nor do the Counties' lawsuits seek that result. Nowhere does section 11464 prohibit DWR from modifying its license application, or applying to amend an issued license. Nor does section 11464 mandate

---

[4] Licensees may also abandon or transfer licenses. (16 U.S.C. § 799; 18 C.F.R. §§ 6.1-6.4.)

[5] "No water right, reservoir, conduit, or facility for the generation, production, transmission, or distribution of electric power, acquired by the department shall ever be sold, granted, or conveyed by the department so that the department thereby is divested of the title to and ownership of it." (Wat. Code § 11464.)

that DWR acquire a new 50-year license under any terms that FERC dictates, no matter how unreasonable or contrary to the State's interests.

For its part, DWR agrees that Water Code section 11464 is irrelevant to these proceedings. (DWR Br. at 45, fn. 8.) As the agency governed by section 11464, DWR's interpretation of the statute is entitled "great weight and respect." (*American Coatings Assn. v. South Coast Air Quality Management Dist*. (2012) 54 Cal.4th 446, 461 [quotation omitted].)

Third, the EIR analyzes discretionary DWR actions that fall outside of FERC's jurisdiction. Both the Settlement Agreement and the EIR show that DWR's project is broader than simply obtaining a new FERC license. (See AR G000210-11 [Settlement Agreement, Appendix B contains items not considered by FERC]; G001191-208 [Settlement Agreement, Appendix B].) These additional project components also required environmental analysis. (AR G000233, G000922, G000930-31.) Although these project components are appended to the Settlement Agreement, FERC's relicensing decision does not affect DWR's discretion to implement them.

In sum, to this day, DWR retains ample discretion over its entire project, including the portion of the project within FERC's licensing jurisdiction.

E. CEQA provides remedies that the Federal Power Act does not preempt.

If the Counties prevail on the merits, Public Resources Code section 21168.9 gives the trial court flexibility to craft a remedy that does not interfere with FERC's jurisdiction. For example, "an order simply requiring [DWR] to cure any inadequacy in its final EIR would not interfere with FERC's licensing proceeding." (DWR Br. at 53; see Open. Br. at 36, fn.5.)

It is possible that if DWR conducts additional environmental and hydrologic analysis, that analysis might lead DWR to adopt a different project alternative (such as the climate-resilient alternative the Counties recommended (see AR H000221, H000223, H000367-69, H001099)) or additional mitigation. As set forth above, both FERC's procedures and State law allow DWR to adapt its project as needed to minimize its significant environmental effects.[6]

[6] Two FERC decisions involving South SWP Hydroelectric Project No. 2426 illustrate FERC's ability to accommodate changes to a project. There, a successful CEQA suit against the California Department of Fish and Game enjoined a trout stocking program that DWR had relied on to mitigate impacts to trout habitat. (*California Dept. of Water Resources & City of Los Angeles* (2012) 138 FERC ¶ 62105, 64413-14; *California Dept. of Water Resources & City of Los Angeles* (2009) 129 FERC ¶ 62073, 64210.) Following that decision, DWR applied to FERC to modify its mitigation obligation so that it could develop a new plan in consultation with state and federal wildlife agencies. (*California Dept. of Water Resources & City of Los Angeles* (2012) 138 FERC ¶ 62105, 64414.) While "reserv[ing] the right to make changes to the plan," FERC concluded DWR's request was "reasonable." (*Ibid*.)

At this stage, however, it is premature and unnecessary to determine the effect (if any) a writ of mandate would have on DWR's requested license. The possibility that FERC *might* not fully embrace any project modifications that DWR *might* propose does not relieve DWR of the obligation to prepare adequate environmental review in the first place. (See *Assn. of Irritated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708, 752-53 [possibility that federal preemption might render some mitigation legally infeasible does not eliminate requirement to analyze environmental impacts].) Indeed, the EIR's value as an informational document is itself sufficient to require legally adequate environmental review. (*Id.* at pp. 752-53; *County of Amador*, *supra*, 76 Cal.App.4th at p. 961.)

To be clear, the Counties are not seeking a remedy requiring DWR to amend its relicensing application. DWR ultimately must decide how to exercise its discretion to comply with CEQA, including whether to modify its project. (*John R. Lawson Rock & Oil, Inc. v. State Air Resources Bd.* (2018) 20 Cal.App.5th 77, 102-03 [discussing Pub. Resources Code § 21168.9].) But legally adequate environmental review is a necessary prerequisite to that decision.

II. Federal Power Act Section 27 Confirms that CEQA Is Not Preempted Here.

As explained in the Counties' Opening Brief, the savings clause in Federal Power Act section 27 reinforces the conclusion that the Act does not preempt CEQA: Section 27 indicates Congress's intent to *preserve* traditional areas of State control (Open. Br. at 29), and DWR's project falls within the terms of the savings clause because it involves consumptive water use (Open. Br. at 37-39 [discussing *County of Amador*, *supra*, 76 Cal.App.4th 931]). SWC does not disagree with *County of Amador*'s holding, but claims that holding is inapplicable here. Without addressing any facts in the record, SWC contends the Counties' reliance on section 27 "[m]istat[es] both the applicable facts and law," and "is utterly without support." (SWC Br. at 50.) SWC is utterly wrong.[7]

The undisputed record evidence shows that water consumption is the primary purpose of the Oroville Facilities. (See Open. Br. at 37-39; DWR Br. at 24.) "The Oroville Facilities are an essential water storage and delivery component of the State Water Project," which provides water for

[7] Although SWC never raised federal preemption during the administrative process or in the trial court, SWC argues that "Section 27 was never raised by the Counties below." (SWC Br. at 52.) In fact, the Counties addressed section 27 and *County of Amador* in the Court of Appeal and in their Petition for Review. (See Appellants' Supplemental Opening Brief on Remand at 23; Petition for Review at 29-31.) In any event, because preemption involves subject matter jurisdiction (*Boisclair v. Superior Court* (1990) 51 Cal.3d 1140, 1156), the scope of section 27's savings clause is properly before this Court (*People v. Chavez* (2018) 4 Cal.5th 771).

roughly "two-thirds of Californians" and irrigation for over 750,000 acres of California farmland." (DWR Br. at 24 [citations omitted]; see also AR C000051 [the Oroville Facilities store water for consumptive uses throughout the State Water Project service area].) For example, water flows that operate DWR powerplants are diverted to the Thermalito Afterbay, which serves as a "warming basin for agricultural water," before being sent to local irrigation districts or the Feather River. (AR C000045.)

Thus, FERC recognized that DWR's project will "protect and *enhance* existing water use" served by the Oroville Facilities. (AR E000054 [emphasis added].) SWC's member agencies likewise recognized DWR's project necessarily implicates water supply. (See AR C000286 [Kern County Water Agency: "the FERC relicensing process involves the balancing of power and water supply benefits"]; C000289 [Castaic Lake Water Agency: "Retaining or enhancing the current water supply and power generation from the Oroville Facilities is essential" to meet California's water needs].)

These facts parallel *County of Amador*, *supra*, 76 Cal.App.4th 931, which held that section 27 preserved CEQA where consumptive water use was at issue. Like here, *County of Amador* involved a hydroelectric dam, Project 184, which was operated primarily for consumptive uses. (*Id*. at pp. 940-42, 960-61.) And like here, the plaintiffs challenged the sufficiency of

CEQA review for environmental impacts related to the dam's operation. (*Id*. at pp. 941-42.)

Contrary to SWC's claim (SWC Br. at 52), DWR's pending relicensing application does not meaningfully distinguish this case from *County of Amador*. The hydroelectric facilities in both cases required FERC licenses. (See *County of Amador*, *supra*, 76 Cal.App.4th at p. 955.) Additionally, a pending FERC proceeding does not determine the scope of Federal Power Act preemption. (See *id*. at p. 961 [FERC jurisdiction, alone, "does not resolve the question of preemption" under the Federal Power Act]; *California v. FERC*, *supra*, 495 U.S. at p. 496 [FERC's delegated authority "hardly determines the extent to which Congress intended to have the Federal Government exercise exclusive powers"].)

Here, as in *County of Amador*, a public agency is proposing future operations of hydroelectric facilities that serve consumptive uses. In such circumstances, section 27 saves CEQA review.

III. Clean Water Act Section 401 Also Preserves the Counties' CEQA Challenge.

All parties agree that federal law does not preempt the State Board's obligation to comply with CEQA when it adopts a water quality certification under Clean Water Act section 401. (See SWC Br. at 56 ["It is undisputed that issuance of the Water Board's 401 certification required compliance with CEQA."]; DWR Br. at 63 ["[T]he Federal Power Act does

not preempt . . . state court review of CEQA claims arising in [the 401 certification] context."].) Nor can it be disputed that DWR prepared its EIR, in part, to satisfy the State Board's CEQA obligation for DWR's project.[8] (See AR G000110 [EIR stating CEQA review "is required before the Water Board can take action. This DEIR is intended to fulfill that purpose."].) Therefore, this Court should answer the second issue presented by holding that the Federal Power Act *does not* preempt a state court challenge to an environmental impact report prepared to comply with a federal water quality certification under section 401 of the Clean Water Act. (See *Jefferson County*, *supra*, 511 U.S. at p. 714 [broadly interpreting States' authority under section 401(d) to require compliance with state water quality objectives and "any other appropriate requirement of State law set forth in such certification"].)

SWC does not argue that the Federal Power Act preempts the Counties' CEQA challenge. Instead it suggests that CEQA required the Counties to file a separate challenge to the State Board's 401 certification,

---

[8] Although both DWR and SWC discuss the timing for completion of the State Board's review, including the one-year limit for acting on a certification request, that issue is not presented here. (See 33 U.S.C. § 1341(a)(1); DWR Br. at 67; SWC Br. at 55.) No party claims that the State Board waived its certification authority when it issued its 2010 certification. Additionally, the one-year requirement relates to issuing a certification, not the time for appeal or judicial review. (See *FPL Energy Maine Hydro LLC v. Dept. of Environmental Protection* (Me. 2007) 926 A.2d 1197, 1201-03.)

which was adopted in 2010, two years *after* DWR certified the EIR and approved its project. (SWC Br. at 58; AA 11:95:2369-421.) SWC is wrong.

This case involves two agencies occupying different roles: DWR acting as the lead agency proposing the relicensing project and the State Board acting as a responsible agency approving the 401 certification. Under CEQA, the lead agency has primary responsibility for a project and its environmental review. (Pub. Resources Code § 21080.1.) A responsible agency only issues subsequent approvals within its jurisdiction. (Pub. Resources Code § 21069.) Because the lead agency must analyze all of a project's impacts, it may not omit analysis of a required CEQA subject, such as water quality, or defer its assessment to a responsible agency's later permitting decision. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 941.)

A party seeking to challenge an environmental document must challenge the lead agency's decision. (Pub. Resources Code §§ 21080.1, 21167.3; see *Citizens Task Force on Sohio v. Bd. of Harbor Comrs.* (1979) 23 Cal.3d 812, 814.) Absent such a challenge, an EIR is presumed valid and a responsible agency must rely on it. (Pub. Resources Code § 21080.1.)[9] Where a party challenges the lead agency's environmental

[9] The only exception to this rule is where new information or changes to a project or its circumstances arise between the lead agency and responsible agency decisions. If those changes result in new significant impacts not (footnote continued on next page)

review, the responsible agency must presume that review was adequate, but its approval is contingent on the outcome of that litigation. (Pub. Resources Code § 21167.3.)

By challenging DWR's EIR within CEQA's 30-day statute of limitations, the Counties followed the procedure CEQA prescribes. Once that lawsuit was filed, any otherwise final State Board approval would depend in part on the outcome of the litigation challenging the EIR. (Pub. Resources Code § 21167.3.) Thus, as DWR acknowledges, the 401 certification granted it "'permission to proceed with the project at [DWR's] risk pending final determination of' this lawsuit." (DWR Br. at 31 [quoting Pub. Resources Code § 21167.3].)

Notwithstanding that the 401 certification was contingent on the outcome of the Counties' challenge to the EIR, DWR implies that the Counties were required to bring a second action directly challenging the State Board's action. (See DWR Br. at 55-56, fn. 11, 64, fn. 15 [asserting

---

previously addressed, the responsible agency must conduct subsequent environmental review. (CEQA Guidelines § 15052; *City of Redding v. Shasta County Local Agency Formation Com.* (1989) 209 Cal.App.3d 1169, 1181, fn. 13.) But that subsequent review considers only impacts related to the new information or changed circumstances (Pub. Resources Code § 21080.1), not the project's impacts as a whole.

that any challenge to the environmental review for the 401 certification now would be barred].)[10] SWC makes this claim outright. (SWC Br. at 58-59.)

City of Redding v. Shasta County Local Agency Formation Commission, *supra*, 209 Cal.App.3d 1169 directly refutes this argument. There, the City of Anderson acted as a lead agency for the approval of a land annexation project that the City of Redding challenged after Anderson adopted a negative declaration. Subsequently, the Shasta County Local Agency Formation Commission ("LAFCO"), acting as a responsible agency, relied on Anderson's negative declaration and approved the annexation application. Redding then challenged LAFCO's action on the grounds that adequate environmental review had not been prepared. (*Id*. at p. 1173.) Reasoning that LAFCO was required to assume Anderson's negative declaration was adequate, the court held that Redding's *sole* remedy was to challenge Anderson's approval. (*Id.* at p. 1181.) To hold otherwise would have caused "confusion" and risked inconsistent litigation outcomes. (*Ibid*.)

[10] DWR incorrectly assumes that the Counties' CEQA challenge did not address "those parts of the . . . EIR that informed the Water Board's 401 certification." (DWR Br. at 55, fn. 11.) In fact, the Counties' challenge, while addressing other issues, also covers parts of the EIR that the State Board relied on, such as the assessment of water quality and beneficial uses. (See, e.g., Appellants' Opening Brief at 61-74; Appellants' Reply Brief at 56-66.)

City of Redding presents the same procedural issues as this case. The Counties timely challenged the environmental review prepared by DWR as lead agency, including the EIR's water quality analysis. Because the State Board was required to presume that environmental review was adequate, the 401 certification provided the Counties no opportunity to challenge DWR's EIR. Instead, the Counties' sole remedy was against DWR. (*City of Redding*, *supra*, 209 Cal.App.3d at p. 1181; see also *Friends of Outlet Creek v. Mendocino County Air Quality Management Dist.* (2017) 11 Cal.App.5th 1235, 1243 [challenge to a responsible agency's approval cannot invalidate a lead agency's approval]; *Bakman v. Dept. of Transportation* (1979) 99 Cal.App.3d 665, 679 ["Only one EIR need be prepared, and it must be prepared by the lead agency."].)

Contrary to SWC's implication (SWC Br. at 59), the Counties are not claiming the State Board was required to prepare a new or revised EIR. Nor do the Counties assert additional claims against the State Board's certificate. Rather, as a legal matter, if the Counties prevail in this case, DWR must correct the deficiencies in the EIR and, potentially, modify its approved project. (See Section I.E, *supra*.) If DWR prepares new environmental review, modifies its project, or both, the State Board would then review the new CEQA documentation as it relates to matters within its jurisdiction. (CEQA Guidelines § 15096.) The State Board could reassess the 401 certification in view of the revised EIR and any other relevant

changes. (See 33 U.S.C. § 1341(a)(3); AA 11:95:2416-17 [conditions allowing modification of 2010 water quality certificate, including if DWR proposes certain "change[s] to the Oroville Facilities" project].)

Because all parties agree that CEQA applies to the State Board's 401 certification, the Federal Power Act does not preempt the Counties' challenge to the EIR supporting the State Board's action.

CONCLUSION

For the foregoing reasons, the Counties respectfully request that this Court reverse the Court of Appeal's decision and remand this case with directions to rule on the merits of the Counties' CEQA claims.

DATED: July 29, 2020 LAW OFFICE OF ROGER B. MOORE

By: /s/ Roger B. Moore
Attorney for Plaintiffs and Appellants COUNTY OF BUTTE, and COUNTY OF PLUMAS et al.

DATED: July 29, 2020 SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Edward T. Schexnayder
Attorneys for Plaintiff and Appellant COUNTY OF BUTTE

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 **PLAINTIFFS' REPLY BRIEF ON THE MERITS** contains 7,022 words, including footnotes, as determined by the word count of the computer used to prepare this brief.

DATED: July 29, 2020 SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Edward T. Schexnayder
EDWARD T. SCHEXNAYDER

Attorneys for Plaintiff and Appellant
COUNTY OF BUTTE

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 July 29, 2020, I served true copies of the following document(s) described as:

PLAINTIFFS' REPLY BRIEF ON THE MERITS

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 July 29, 2020, at San Francisco, California.

/s/ Patricia Larkin
Patricia Larkin

SERVICE LIST

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

VIA TRUEFILING
Carolyn Nelson Rowan
Office of the Attorney General
1300 I Street, Suite 125
Sacramento, CA 95814
Telephone: (916) 210-7841
Facsimile: (916) 327-2319
carolyn.rowan@doj.ca.gov

Joshua Patashnik
Aimee Feinberg
Deputy Solicitors General
Linda L. Gandara
Deputy Attorneys General
455 Golden Gate Avenue
Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 510-3896
Josh.Patashnik@doj.ca.gov

Attorneys for Defendant and Respondent DEPARTMENT OF WATER RESOURCES

VIA TRUEFILING
Thomas M. Berliner
Jolie-Anne Shappell Ansley
Paul J. Killion
Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1104
Telephone: (415) 957-3333
Facsimile: (415) 520-5835
tmberliner@duanemorris.com
jsaAnsley@duanemorris.com
pjkillion@duanemorris.com

Attorneys for Real Parties in Interest and Respondents STATE WATER CONTRACTORS INC.; ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT, ZONE 7; KERN COUNTY WATER AGENCY; SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT; SANTA CLARA VALLEY WATER DISTRICT; and METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

VIA TRUEFILING
David R. E. Aladjem
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
Telephone: (916) 444-1000
Facsimile: (916) 444-2100
daladjem@downeybrand.com

Attorneys for Real Parties in Interest and Respondents SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT; and ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT, ZONE 7

VIA MAIL
Honorable Daniel P. Maguire
Yolo County Superior Court
1000 Main Street
Woodland, CA 95695

VIA TRUEFILING
California Court of Appeal
Third Appellate District
914 Capitol Mall
Sacramento, CA 95814

1270856.4

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **schexnayder@smwlaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Plaintiffs Reply Brief on the Merits

Service Recipients:

Person Served	Email Address	Type	Date / Time
David Aladjem Downey Brand LLP 152203	daladjem@downeybrand.com	e-Serve	7/29/2020 3:42:23 PM
Roger Moore Law Office of Roger B. Moore 159992	rbm@landwater.com	e-Serve	7/29/2020 3:42:23 PM
Thomas Berliner Duane Morris LLP 83256	tmberliner@duanemorris.com	e-Serve	7/29/2020 3:42:23 PM
Edward Schexnayder Shute Mihaly & Weinberger LLP 284494	schexnayder@smwlaw.com	e-Serve	7/29/2020 3:42:23 PM
Bruce Alpert Office of County Counsel 075684	balpert@buttecounty.net	e-Serve	7/29/2020 3:42:23 PM
Joshua Patashnik Office of the Attorney General 295120	josh.patashnik@doj.ca.gov	e-Serve	7/29/2020 3:42:23 PM
Russell Hildreth Office of the Attorney General 166167	russell.hildreth@doj.ca.gov	e-Serve	7/29/2020 3:42:23 PM
Carolyn Rowan Office of the Attorney General 238526	Carolyn.Rowan@doj.ca.gov	e-Serve	7/29/2020 3:42:23 PM
Jolie-Anne Ansley Duane Morris LLP 221526	JSAnsley@duanemorris.com	e-Serve	7/29/2020 3:42:23 PM

Aimee Feinberg California Dept of Justice, Office of the Attorney General 223309	Aimee.Feinberg@doj.ca.gov	e-Serve	7/29/2020 3:42:23 PM
Ellison Folk Shute, Mihaly & Weinberger 149232	folk@smwlaw.com	e-Serve	7/29/2020 3:42:23 PM
Paul Killion Duane Morris LLP 124550	PJKillion@duanemorris.com	e-Serve	7/29/2020 3:42:23 PM
R. Settlemire Office of the County Counsel 96173	csettlemire@countyofplumas.com	e-Serve	7/29/2020 3:42:23 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

7/29/2020

Date

/s/Edward Schexnayder

Signature

Schexnayder, Edward (284494)

Last Name, First Name (PNum)

Shute, Mihaly & Weinberger LLP

Law Firm