Case No. S287414

IN THE SUPREME COURT 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

REPLY BRIEF ON THE MERITS

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*Deborah A. Sivas (SBN 135446)
Matthew J. Sanders (SBN No. 222757)
Amanda D. Zerbe (SBN No. 352565)
Environmental Law Clinic
Mills Legal Clinic at Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426
dsivas@stanford.edu

(Additional Counsel Listed on Next Page)

*Jason R. Flanders (SBN 238007)
Theresa M. Trillo (SBN 349989)
Aqua Terra Aeris Law Group
8 Rio Vista Ave.
Oakland, CA 94611
Telephone: (916) 202-3018
Facsimile: (510) 398-0091
jrf@atalawgroup.com
tt@atalawgroup.com

*Susan Brandt-Hawley (SBN 75907)
Brandt-Hawley Law Group
P.O. Box 1659
Glen Ellen, CA 95442
Telephone: 707.938.3900
susanbh@me.com

Attorneys for Plaintiff and Respondent

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INTRODUCTION

This case is not about "weaponizing" the California Environmental Quality Act ("CEQA"). It is not about blocking affordable housing or "other essential infrastructure." And it has nothing to do with the so-called "Abundance" agenda. Sunflower Alliance (Sunflower) has a more modest goal here: It seeks to ensure that a new wastewater injection and disposal project with the potential to contaminate local water supplies receives the required environmental review. Nothing in CEQA, its implementing regulations, or the interpretative case law suggests that such activity is – or should be – exempt from the law's basic review and public disclosure requirements.

In arguing otherwise, project proponent Reabold California LLC (Reabold) relies on the Class 1 "categorical exemption" in section 15301 of the CEQA Guidelines.[1] That narrow exemption is unambiguous: It applies to the "operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical

[1] The CEQA Guidelines are codified at California Code of Regulations, title 14, sections 15000-15387, and are cited hereafter as "Guidelines."

equipment, or topographical features, involving negligible or no expansion of *existing or former use*." (Guidelines § 15301, italics added.) The Court of Appeal correctly recognized that Reabold's proposed repurposing of the long-shuttered Ginochio oil and gas production well to allow disposal of injected wastewater "is a new use of the well" – not an existing or former use. (*Sunflower Alliance v. Department of Conservation* (2024) 105 Cal.App.5th 771, 783.) That undisputed fact should have been dispositive because section 15301, by its express terms, applies *only* to an "existing or former use."

Tellingly, Reabold does not directly engage section 15301's unambiguous language. Instead, the Answering Brief fixates on the single word "conversion" in CalGEM's well permitting regulations and goes on at length about bicycle lanes, single-family residences, and the purported "environmental benefits" of its waste injection project – none of which overrides the plain text and intended purpose of section 15301. In the end, all Reabold can muster is a policy argument: "Focusing the inquiry on the subjective question of whether certain uses are the 'same' is . . . unworkable." (Answering Br. at 45.)

But it is not the job of courts to set policy. That role belongs to the legislative branch. And in exercising its authority, the California Legislature carefully cabined CEQA's limited exemptions. It directed the Resources Secretary to develop and adopt "a list of classes of projects" that he or she finds, categorically, "*do not have* a significant effect on the environment." (Pub. Resources Code § 21084(a), italics added.) Faithful to that directive, the Secretary narrowly sculpted section 15301 to exempt only "minor" alterations of "existing" structures involving no more than "negligible" expansion of the structure's "existing or former use." (Guidelines § 15301.)

Redrilling, reactivation and repurposing of the closed Ginochio *oil and gas extraction* well to permit its use, for the first time, as an *injection and disposal* well for nearly half a billion gallons of contaminated wastewater does not qualify for section 15301's limited carve-out: The proposal is not a minor alteration of an existing use. Nor does it align with section 15301's overarching rationale, because no agency has previously evaluated the proposed wastewater injection activity. (See *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1195 (*Azusa*) ["The apparent

rationale for the existing facilities exemption is that the environmental effects of the operation of such facilities must already have been considered."].)

If the California Legislature believes that section 15301 is "unworkable" – or that there is, in the Court of Appeal's words, a "better approach" – it can certainly take appropriate legislative action. This Court has recognized that the Legislature reserved its ability to *statutorily* exempt classes of projects, notwithstanding their environmental effects, based on its determination that doing so "promote[s] an interest important enough to justify forgoing the benefits of environmental review." (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1124 (*Berkeley Hillside*), citation omitted.) Indeed, the Legislature has exercised that option on numerous occasions. (*Ibid.* [noting certain kinds of affordable housing (§ 21159.23), certain high priority transit projects (§ 21155.1), and the construction of certain prisons (§§ 21080.01, 21080.02)].) But it has done precisely the *opposite* for fossil fuel projects. On June 30, 2025, when California enacted the most recent CEQA statutory exemptions for certain housing and other projects – the state's response to the "Abundance" theme that Reabold advances

– the Legislature *expressly excluded* "oil and gas infrastructure" from any reform or streamlining. (See Sen. Bill No. 131 (2025-26 Reg. Sess.).)[2]

In short, it is not for the courts – and certainly not for Reabold or CalGEM – to expand the reach of CEQA's categorical exemptions beyond their plain, unambiguous, carefully considered, and duly adopted language. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 125.) Doing so in this case removed the affected local community from the decision process for a new, potentially harmful activity that has *never* been evaluated under CEQA. More generally, the appellate court's expansive reading of section 15301 opens the door for agencies to liberally exempt all manner of new projects, activities, and uses from CEQA, effectively returning us to the days when government officials routinely approved harmful projects without any public disclosure or environmental review.

Despite Reabold's hyperbolic introduction, there is no need for courts to intervene and expand the Class 1 categorical exemption. CEQA already provides a path for expedited review

[2] (<https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB131>.)

of new activities at existing structures. A permitting agency may use the routine initial study checklist and negative declaration process if the evidence shows that the project does not pose significant impacts. The law, however, does not allow agencies to simply skip this vital initial step by invoking an inapplicable categorical exemption. CalGEM's action here is especially concerning because the record reveals serious unresolved questions about potential effects on local residents and water supplies.

If the Court agrees that Reabold's new wastewater injection and disposal project does not qualify for a categorical exemption under section 15301, it should reverse the Court of Appeal decision and order the trial court writ of mandate and judgment reinstated. On remand, CalGEM may undertake an initial study and determine whether, based on the evidence, it is proper to proceed by way of a mitigated negative declaration. Under no circumstances, however, may CalGEM circumvent environmental review and public process through what is effectively a "mitigated" categorical exemption.

ARGUMENT

I. Reabold's Contaminated Wastewater Injection and Disposal Project Does Not Fall Within the Scope of the Class 1 Categorical Exemption from CEQA.

The threshold question in this case is whether Reabold's proposed new waste injection and disposal project falls within CEQA's Class 1 categorical exemption. That narrow exemption applies only to minor activities "involving negligible or no expansion of existing or former use." (Guidelines § 15301.) Reabold does not seriously attempt to show that its project involves an "existing or former use," and with good reason: There is no dispute that the Ginochio well has *never* been used for injection activity of any kind. It was constructed before CEQA was enacted, used for two decades exclusively for oil or gas extraction, and plugged with cement more than 40 years ago. (See Opening Br. at 21.)

These facts are of no moment, Reabold suggests, because the new waste injection activity "will not significantly impact the environment and *thus* does not require environmental review." (Answering Br. at 14-15, italics added.) But as this Court has recognized time and again, that is not how CEQA works. The law provides a systematic three-step decision process, designed to

facilitate transparency, accountability, and public participation. (*Protecting Our Water & Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th 479, 488-89 (*Protecting Our Water*); *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1185 (*Medical Marijuana*); *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 286; *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 379-81.) The first step is to determine whether one of CEQA's narrow exemptions applies. (*Ibid.*) If not, the lead agency must proceed to an "initial study"; it may not bypass this step by simply declaring at the outset that a proposed activity will not have significant environmental impacts.

Reabold asks the Court to ignore this basic statutory framework and jettison decades of judicial precedent by reading section 15301 not as it is written, but "with an eye to 'the philosophy and policies underlying' the exemption." (Answering Br. at 37.) Reabold's proffered rewrite of section 15301 would dramatically expand Class 1 to exempt new and never-before-evaluated uses of an existing structure whenever the proponent claims that the project poses "negligible environmental risk." But environmental risk is precisely what the lead agency must

evaluate in a public review process, not something it can assume away *before* CEQA review occurs.

The Court should reject Reabold's attempt to upend the statute's core goals and procedures, especially for projects, like this one, that pose undetermined environmental risks to communities and resources.

A. The plain text of section 15301 is unambiguous and inapplicable to Reabold's proposed project.

The plain language of section 15301 governs the outcome of this case. That language unequivocally limits the exemption to "minor" alterations of an existing structure "involving negligible or no expansion of existing or former use." (Guidelines § 15301.) Reabold invites the Court to radically rewrite this plain text. In place of the critical phrase "involving negligible or no expansion of existing or former use," Reabold proposes to substitute "would involve a 'negligible or no expansion' of a certain use, *i.e.*, whether it would negligibly or not increase environmental risks." (Answering Br. at 37.)

Defining "existing or former use" to mean "environmental risks" defies plain English and is untethered to anything in the statute, the regulations, the case law, or the Secretary's intent in

adopting the Class 1 exemption. (See Opening Br. at 30-46.) More than that, such a definition would exempt a wide range of projects from initial environmental review and public disclosure whenever the project applicant pronounces project risks to be "negligible" – or, as here, "beneficial."

Unable to identify anything in section 15301 that supports its position, Reabold pivots abruptly from the Guidelines to CalGEM's regulations. Those regulations must "be used in conjunction with" the state Guidelines. (Cal. Code Regs., tit. 14, § 1681.) The Guidelines direct each public agency to develop a list of specific activities that fall within exempt classes. (Guidelines § 15300.4.) That directive, however, is "subject to the qualification that these lists must be consistent with both the letter and the intent expressed in the classes." (*Ibid*.)

CalGEM's regulatory definition for Class 1 exemptions adheres closely to section 15301: "Class 1 consists of the operation, repair, maintenance, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features *involving negligible or no expansion of use beyond that existing previously*." (Cal. Code Regs., tit. 14, § 1684.1, italics added.) Reabold ignores the "existing previously"

restriction and anchors on the regulation's second sentence, which describes the class as including "remedial, maintenance, conversion, or abandonment work" on wells. Citing dictionary definitions for the word "conversion," Reabold claims that its project definitionally falls within Class 1. (Answering Br. at 40-41.) This argument misses the mark, for two reasons.

First, CEQA directs *the Secretary* to develop limited categorical exemptions for use by individual public agencies, and any implementing regulations by those agencies "must be consistent with both the letter and the intent expressed in the classes." (Guidelines § 15300.4.) CalGEM's implementation of the Class 1 exemption cannot override the express limitations imposed by section 15301 and should not be interpreted to do so. (See *Protecting Our Water*, 10 Cal.5th at 497-99 [holding, as a matter of law, that categorical exemption under local well permit ordinance was inconsistent with CEQA Guidelines and interpretive case law].)

Second and equally important, CalGEM's own regulations align with section 15301 by limiting Class 1 exemptions to projects "involving negligible or no expansion of use beyond that existing previously." (Cal. Code Regs., tit. 14, § 1684.1.) If a well

"conversion" involves a previously existing use, there *may* be grounds for a Class 1 exemption, but a change in use to an activity that was not "existing previously" falls outside the scope of CalGEM's regulation. For example, the conversion of an agricultural water supply well to a community water supply well might qualify for a Class 1 exemption if the structural alterations are "minor" and there is only "negligible or no expansion" in water extraction. But the conversion of an oil and gas extraction/production well to a wastewater injection/disposal well – activities that involve quite different potential environmental impacts – is plainly "beyond" any previously existing use.

CalGEM's own interpretive guidance for these regulations underscores this conclusion. That guidance explains CalGEM's preliminary CEQA review for proposed existing oil and gas well "rework," defined as "any operation subsequent to drilling that involves deepening, redrilling, plugging, or permanently altering in any manner the casing of a well or its function." (Cal. Code Regs., tit. 14, § 1720(b).) One of the "key questions" that CalGEM considers in this preliminary review is: "Will the rework result in a change in purpose or capacity of the well?" (Sunflower RJN at H-3.) The answer:

> A rework that *changes the purpose* or capacity of a well is less likely to be categorically exempt than one that does not as some exemptions may not apply when the proposed work expands the capacities of the well or field *beyond those previously approved* or constitutes a change in existing facilities."

(*Ibid.*, italics added.)

CalGEM's guidance provides examples to illustrate this principle as applied to "typical" projects, grouped into four categories. (*Ibid.*) "Group A" and "Group B" projects "are not expected to change or expand the existing use of a well." (*Id.* at H-3 to H-5.) "Group C" projects are generally those that fall within Guidelines section 15330 for "Minor Actions to Prevent, Minimize, Stabilize, Mitigate, or Eliminate a Release of Hazardous Substances." (*Id.* at H-5.) Here too, CalGEM is clear that a simple wellhead repair without a drill rig may be exempt, but the "conversion of an observation well to [a] production well" likely will not. (*Ibid.*)

Finally, "Group D" addresses miscellaneous other projects, including Reabold's proposal: "Conversion of a producer well to an injection well: *Unlikely to be exempt* as a standalone project *due to change in existing use*." (*Id.* at H-6, italics added.) Contrary to Reabold's claim, this interpretative guidance

faithfully implements the "existing use" limitation in Guidelines section 15301 and the "existing previously" restriction in section 1684.1. (See Answering Br. at 42 [claiming erroneously that guidance conflicts with section 1684.1].) And it undercuts Reabold's suggestion that *any* well "conversion" is automatically exempt from CEQA.[3]

B. Reabold's "conversion" theory is unsupported by statute, regulation, or case law.

Having failed to show that its project fits within the plain language, regulatory history, or intended purpose of section

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[3] Reabold's related arguments are equally specious. CalGEM's interpretative guidance is not a "retroactive" application of a statutory amendment. (See Answering Br. at 42, citing *People v. Lynch* (2024) 16 Cal.5th 730, 748.) Rather, it is a reinforcing agency interpretation of long-existing regulations entitled to the Court's consideration and respect. (*Prang v. Los Angeles County Assessment Appeals Bd.* (2024) 15 Cal.5th 1152, 1187.) Even more odd is Reabold's attempt to distance its project from CalGEM's guidance on the ground that "the Ginochio Well is not a 'producing well'; it has been sealed and abandoned for years." (Answering Br. at 42-43.) Reworking an old, long-ago plugged and abandoned well raises serious well integrity issues that make it riskier, not less risky, than converting a modern, functional oil and gas production well. (See, e.g., Semwogerere, et al., *Well integrity and late life extension – A current industry state of practice and literature review* (Jan. 2025) 244 Geoenergy Science and Engineering 213419 at 4 ["There is a growing concern amongst operators on how to safely keep these old wells in production. In these legacy wells, the failure risk is high due to aging of the well integrity barriers."].)

15301 (or section 1684.1),[4] Reabold turns next to the illustrative examples listed in the CEQA Guidelines. Sunflower briefly addressed those examples mentioned in the decision below in its Opening Brief. (Opening Br. at 36-39.) Here, we respond more fully to Reabold's spinning of those one-sentence examples into a sweeping re-interpretation of section 15301.

Reabold's argument draws primarily from two examples in section 15301: (1) "Conversion of a single family residence to office use" under subsection (n); and (2) "Use of a single-family residence as a small family day care home" under subsection (p). From these, Reabold weaves a broadly expansive theory of Class 1: "The regulations are crystal-clear: 'conversions' are included.'" (Answering Br. at 43-44.) That is, Reabold claims that all "conversion" projects – which it defines as projects involving a "change in use" – fall within the Class 1 exemption. Under this theory, *any* project that repurposes existing infrastructure

[4] Reabold offers no intelligible response to Sunflower's detailed discussion of section 15301's regulatory history. That history confirms that the Secretary's office has always limited section 15301 to previous uses. (Opening Br. at 32-36.) Reabold's only reply is that slight regulatory language revision over the years "makes no difference in practice." (Answering Br. at 53.) That is precisely Sunflower's point: The Secretary has never wavered in limiting the exemption to *existing or prior uses*.

qualifies for exemption, effectively nullifying section 15301's carefully crafted restrictions.

But the interpretative question before the Court is not whether the project involves a "conversion" – a word that appears nowhere in the text of section 15301. The operative regulation turns on whether the project involves a "minor" alteration involving "negligible or no expansion of existing or former use." Of course, some types of well "conversions" may fall within Class 1. For instance, the conversion of an agricultural water supply well to a community supply well or the conversion of an oil production well to a natural gas production well might come within Class 1 because the underlying activity or "use" remains the same – the withdrawal of groundwater or the extraction of petroleum resources – if there is no more than a "negligible" expansion of this underlying activity.

The same is true of single-family residential "conversions" in subsections 15301(n) and (p). The Secretary reasonably concluded that internal use of a single-family residence for "office work"[5] or "family day care" has similar environmental effects (or

[5] Reabold plays fast and loose with the regulatory language, claiming that "a residential use versus a commercial use could

really, non-effects) as typical residential use. Each involves routine indoor activities – working at a computer, playing games, watching television, eating meals, etc. – within a residential structure. The human use of the structure is essentially the same, with negligible expansion.

But the Secretary did not, and presumably could not, make the same determination for "conversion" of a single-family residence to other, dissimilar uses – for instance, to a retail business or a manufacturing operation.[6] Likewise here, neither section 15301 nor CalGEM's regulations contains any language to suggest that "conversion" of a dormant petroleum production well to a waste disposal well is a minor alteration exempt from CEQA.

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certainly differ." (Answering Br. at 47.) The example in section 15301(n) is not general "commercial use," but specifically "office use."

[6] Reabold also briefly mentions subsection 15301(c), analogizing its proposed injection and disposal of nearly 11,000,000 barrels – or more than 495,000,000 gallons – of contaminated wastewater to the addition of bicycle lanes, pedestrian crossings, street trees, and bus lane improvements on an existing roadway. (Answering Br. at 62.) But adding bike or bus lanes, planting street trees, or improving pedestrian safety crossings does not "convert" a road to a different use, alter its fundamental purpose, or pose environment risks of any kind; repurposing an old oil extraction well for underground waste injection unquestionably does all three.

Creating a generic exemption for any "conversion" of an existing structure to a different use, as Reabold urges, would eviscerate CEQA's multistep decision framework. The Court should decline to do so.

C. Repurposing the Ginochio well for a new use poses very different environmental threats.

Reabold's final argument fares no better. Reabold contends that even if section 15301 is limited, as written, to "existing or former use," the proposal to redrill and repurpose the Ginochio well "fits squarely" within Class 1 because the shift from petroleum extraction to waste injection "is a distinction without a difference." (Answering Br. at 63.) There is no support for this assertion in the record or Reabold's brief.

And California plainly disagrees. The state has concluded that waste injection wells pose unique fluid pressure, migration, and contamination threats to water supply sources. (See Health & Saf. Code § 25159.10(e) [finding that deep well injection can serve as a conduit for wastes to migrate to drinking water supplies].) In contrast, oil and gas extraction wells pose equally concerning but distinct environmental risks, including local toxic air pollution, greenhouse gas emissions, and contamination from

petroleum spills. (See Sen. Bill 1137 (2021-22 Reg. Sess.) [legislative findings for Public Resources Code sections 3280 et seq., creating health protective buffer zones within 3,200 feet of oil and gas wells].)[7] In short, petroleum extraction and wastewater disposal activities pose significant but different environmental threats. This lawsuit merely seeks to have CalGEM evaluate risks from new injection activity, as CEQA requires.

Reabold counters that a "newness of use" analysis is "unworkable," relying on *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937 (*San Mateo Gardens*). (Answering Br. at 45, 48.) That case, however, did not involve a CEQA exemption and is inapposite. In *San Mateo Gardens*, the Court addressed what standard of review applies where a lead agency makes changes to a proposed project that has already undergone CEQA review. It held that "when there is a change in plans, circumstances, or available information *after a project has received initial approval*, the agency's environmental review obligations 'turn[ ] on the

[7] (<https://legiscan.com/CA/text/SB1137/id/2606996>.)

value of the new information to the still pending decisionmaking process,'" not on the label attached to the modified project. (*Id*. at 951-52, italics added.) That holding is not germane to the Ginochio well, which has never received any CEQA review for petroleum production or waste injection. In the exemption context, unlike the "subsequent EIR" context at issue in *San Mateo Gardens*, section 15301 draws a clear line – only minor activities involving negligible or no expansion of existing or former uses qualify.

Nor is Reabold saved by its belated attempt[8] to reorient the analysis to the broader Brentwood oil field. The Answering Brief suggests that the Ginochio well project is simply a continuation of oil and gas production in the "existing facility" of the Brentwood field. (Answering Br. at 47, 62.) But an oil field in which various companies conduct different oil and gas activities is neither a "structure" nor a "facility" under section 15301. (See *Azusa*, 52 Cal.App.4th at 1192-93 [holding that "facility" does not include a "class of businesses" on a single premise and that a landfill is not a section 15301 "existing facility"].) Here, CalGEM considered

[8] Reabold did not make this argument below, and the Court of Appeal did not address it.

the CEQA "project" to be Reabold's proposal to redrill and repurpose the single Ginochio well. (AR 401, 775-76, 785.) The larger Brentwood oil field is not at issue.

D. Replacing "existing or former use" with "environmental risks" is inconsistent with CEQA's decision framework.

Attempting to "find" a "better approach" for implementing the Class 1 exemption, the Court of Appeal effectively transformed section 15301's "negligible or no expansion of existing or former use" language into a new test – whether "the risk of the environmental harm from the new use is negligible." (*Sunflower Alliance*, 105 Cal.App.5th at 784 [holding that "the change in use is unimportant, as far as CEQA goes"].) Reabold argues that this judicially-crafted test provides a "simpler, and better way to frame the analysis" under section 15301. (Answering Br. at 48.) But it is *not* the way the Secretary framed section 15301. Courts must apply the regulation as drafted, not rewrite it. (*Berkeley Hillside*, 60 Cal.4th at 1097 ["the rules that govern interpretation of statutes also govern interpretation of

administrative regulations" and courts begin with the language of the regulation, "giving effect to its usual meaning"].)[9]

Not only is the "negligible environmental risks" test unmoored from section 15301's text, intent, and history, it also upends CEQA's core three-step decision process. As the Court has repeatedly recognized in *Protecting Our Water*, *Medical Marijuana*, *Tomlinson*, and *Muzzy Ranch*, the first step is limited to ascertaining whether the project qualifies for one of CEQA's narrowly-crafted and narrowly-construed exemptions. The Class 1 exemption applies *only* to minor projects that affect an existing or former use. By substituting the words "environmental risks" for the phrase "existing or former use," the lower court effectively expanded this first step into a substantive risk assessment, but without the transparency, accountability, and public input that CEQA requires at the next two steps.

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[9] Reabold is correct that an agency may not blindly apply a categorical exemption without considering evidence in its files of potentially significant effects (Answering Br. at 28, citing *Berkeley Hillside*), but doing that investigation does not create license for the agency to *expand* section 15301 beyond its text and intent.

Moreover, without the benefit of a developed agency record, centering the judicial analysis on "environmental risks" requires courts to conduct their own risk assessments, as happened here. Reabold repeatedly insists, despite the absence of supporting record evidence, that its injection project poses "no risk of significant environmental impacts." (Answering Br. at 14-15, 47-48, 50.) In fact, expert water agencies raised serious concerns about the potential for contaminated injectate to migrate into local water supplies – concerns that remain unresolved. (See Opening Br. at 24-27; Argument II.B.1, *infra*.) CalGEM proceeded anyway, conditioned on Reabold conducting *post-approval* testing and evaluation of potential migration risks.

The lower court, therefore, had no evidentiary basis on which to reach any conclusion about project impacts. Instead, it engaged in an independent assessment of project impacts, concluding that the project poses only "negligible" environmental risks and thus is eligible for exemption based solely on the court's reading of CalGEM's well regulations, not on a factual record. Citing to those regulations, the court stated that "injected water cannot escape the aquifer and harm people, property, or the environment because the injected water will be geologically

confined within the aquifer." (*Sunflower Alliance*, 105 Cal.App.5th at 786-87.) Such reliance on regulatory requirements, however, does not adequately address environmental concerns under CEQA – that is, requirements are not analysis. (*Ebbetts Pass Forest Watch v. California Department of Forestry & Fire Protection* (2008) 43 Cal. 4th 936, 956.) And here, the court's conclusion contravened the record, which makes clear that expert water agencies could not – and did not – conclude that injected waste will remain geographically confined. Indeed, CalGEM's permit conditions are directed at procuring data necessary to complete the requisite evaluation and reach a conclusion.

In sum, it is Reabold's – not Sunflower's – dramatic expansion of section 15301 that is "unworkable." It would allow agencies to approve all manner of new, untested activities without public disclosure or input and would require courts to make "environmental risk" determinations without a developed factual record. There is no call for courts to rewrite section 15301, which has served the public well for half a century.

II. CalGEM Unlawfully Based Its Class 1 Categorical Exemption Decision on Mitigation Conditions.

The Court can resolve this case by concluding that CalGEM improperly invoked the Class 1 categorical exemption to approve a new wastewater injection and disposal use for the Ginochio well. If the Court reaches the second issue on mitigating conditions, it should reject Reabold's arguments, which mischaracterize what occurred in *this* case, misapply the relevant legal authority, and misconstrue CEQA. Even under Reabold's "negligible environmental risks" reading of section 15301, an agency cannot invoke a Class 1 exemption when, as here, the project poses potentially significant but undetermined environmental risks.

A. Conditions of approval that attempt to mitigate a project's potential environmental effects cannot be the basis for a categorical exemption.

Sunflower's position is simple: Based on the record before it, CalGEM could not determine that the proposed injection activity does not pose significant environmental effects. To mitigate that uncertainty and proceed with a Class 1 exemption, CalGEM imposed permit conditions that require future testing

and evaluation. In effect, CalGEM mitigated its way into a categorical exemption.

Lower courts have been clear that such conduct is improper:

> Only those projects having no significant effect on the environment are categorically exempt from CEQA review. If a project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant. Mitigation measures may support a negative declaration but not a categorical exemption.

(*Salmon Prot. & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102 (*SPAWN*), citations omitted); see also *Azusa*, 52 Cal.App.4th at 1199-1200; *Lewis v. Seventeenth District Agricultural Association* (1985) 165 Cal.App.3d 823, 830.)

The principle articulated in these cases follows directly from CEQA's "multistep decision tree" structure. (*Medical Marijuana*, 7 Cal.5th at 1185.) The first step requires a "preliminary review" to determine whether project approval triggers CEQA and, if so, whether the project falls within an exemption. (Guidelines §§ 15060, 15061.) As *Azusa* explained, "[a]n agency should decide whether a project is eligible for a categorical exemption as part of its preliminary review of the

project, not in the second phase when mitigation measures are evaluated." (52 Cal.App.4th at 1199-1200, citations omitted.)

The reason is foundational and substantive:

> The Guidelines dealing with the second phase of the environmental review process contain elaborate standards – as well as significant procedural requirements – for determining whether proposed mitigation will adequately protect the environment and hence make an EIR unnecessary; in sharp contrast, the Guidelines governing preliminary review do not contain any requirements that expressly deal with the evaluation of mitigation measures.

(*Id.* at 1200.) Simply put, because categorical exemptions bypass CEQA's requirement to evaluate mitigation and alternatives that may reduce a project's adverse impacts, they provide no opportunity to assess the feasibility and efficacy of mitigation options.

As *Azusa* explained, section 15301's restrictive terms must be strictly construed consistent with its narrow purpose, and a Class 1 exemption is not applicable if the proposed project "creates a reasonable possibility of a significant environmental effect." (*Id.* at 1194 [narrowly construing "minor alteration" and "facility"].) Instead, the agency's proper course is to prepare an

initial study and solicit public and expert comment before proceeding. That process may reveal feasible mitigation measures that resolve uncertainty or reduce potential effects to insignificance. Only at *that* point – and only when supported by sufficient record evidence – may an agency rely on conditions of approval to avoid or reduce a project's effects as part of a mitigated negative declaration. Or, if there remains a fair argument that the project may cause significant effects, the agency must prepare an EIR, evaluating mitigation measures to lessen or avoid those effects. (See *County of Butte v. Department of Water Resources* (2022) 13 Cal.5th 612, 627.)

In either case, the agency "shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects." (Guidelines § 15074(d); see also § 15097.) Such a "mitigation monitoring or reporting program" ("MMRP") must include either regular reporting on implementation and completion of mitigation measures by the project proponent or ongoing project oversight by the agency to monitor mitigation measures. (*Id.* § 15097(c).) The Guidelines thus ensure agency transparency and developer

accountability for implementing a project's adopted mitigation conditions. No similar requirement applies to a project deemed to be categorically exempt because it is, "by definition, a project belonging to a class of projects that does not have significant environmental effects" and therefore does not require mitigation. (*Berkeley Hillside*, 60 Cal.4th at 1123 (Liu, J., concurring).)

In sum, the timing of mitigation measures is critical to the integrity of CEQA's three-step evaluation process. A project deemed categorically exempt at the first step proceeds without public disclosure or environmental review. An exemption determination thus provides no opportunity for the affected public to review or comment on measures that may reduce a project's adverse effects. Equally important, allowing what is effectively a "mitigated" categorical exemption circumvents CEQA's key MMRP requirement, which holds agencies accountable for implementing adopted conditions of approval. To preserve CEQA's fundamental integrity, the Court should affirm the holdings in *SPAWN*, *Azusa*, and *Lewis* and find that they are dispositive of this case.[10]

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[10] Because the Court did not reach this issue in *Berkeley Hillside* (60 Cal.4th at 1118, fn.7), clarification here could be helpful.

B. Reabold's "independent authority" theory is misaligned with the factual record, the case law, and CEQA's overarching purpose.

"Sunflower's argument fails," Reabold claims, "[b]ecause CalGEM acted pursuant to its statutory and regulatory mandates." (Answering Br. at 64.) In Reabold's telling, the permit requirements for pressure/permeability testing and conduit assessment are "standard" evaluations "grounded in CalGEM's independent authority" under the oil and gas statutes and, *therefore*, should not be considered CEQA mitigation measures. (*Id*. at 67, 70.)[11] In other words, Reabold asks the Court to endorse the principle that permit conditions imposed to address a project's potential environmental effects and uncertainties do not constitute CEQA mitigation as long as they are drawn from the agency's "independent authority."

[11] Reabold cites California Public Resources Code section 3106(a), which generally charges CalGEM with supervision of oil and gas well drilling, operation, maintenance and removal to prevent damage to life, health, property, and natural resources, and California Code of Regulations, title 14, section 1724.7(a), which requires pre-approval studies demonstrating that underground injection projects will not cause damage to life, health, property, or natural resources. Neither regulation speaks to permit conditions requiring post-approval evaluation of potential risks.

Nothing in CEQA supports this alarming theory. In fact, the statute provides that agencies, in crafting CEQA mitigation measures, may rely *only* on discretionary powers *under other laws*. (Pub. Resources Code § 21004; *County of San Diego v. Grossmont-Cuyamaca Community College District* (2006) 141 Cal.App.4th 86, 102 ["an agency's authority to impose mitigation measures must be based on legal authority other than CEQA"].). Reabold's position thus contravenes CEQA; it is also unsupported by the cases Reabold cites.

1. The undisputed facts show that CalGEM's permit conditions were intended to address unresolved concerns about environmental impacts.

To understand the fundamental flaw in Reabold's position, a brief review of the undisputed record facts is helpful:

(1) The Ginochio well was drilled without CEQA review in 1963, used exclusively to extract oil or gas, and plugged with cement in 1984 (AR 1-40);

(2) The Ginochio well, which has been sealed and idle since 1984, has never been used for wastewater injection or disposal and thus the effects of such activity have never been subject to CEQA review (AR 439, 790, 796);

(3) Today, the Ginochio well is located within 900 feet of residential homes and sits within the vicinity of 22 water wells, including 19 that are used for domestic,

irrigation, and public drinking water supplies (AR 47-49, 53, 108-30, 417, 437, 446, 769);

(4) Reabold's proposed reactivation and repurposing of the Ginochio well will allow, for the first time, the injection and disposal of up to 1,500 barrels per day – or more than 10 million barrels over the next 20 years – of contaminated wastewater from oil and gas operations (AR 439, 796);

(5) Staff at both CalGEM and the State and Regional Water Boards expressed concern that the proposed new injection activity, which will increase pressure in the underlying reservoir (AR 431), could contaminate drinking water supplies by migrating upwards through an existing fault or nearby abandoned wells (Opening Br. at 24-25 and citations therein);

(6) Because the aquifer pressure, status of the nearby abandoned wells, and potential for reactivation of the underlying oil field fault remain unknown, the Regional Water Board requested, and CalGEM imposed, permit conditions designed to evaluate these risks, including a "pressure fall-off test," a cement evaluation to assess bond of the 60-year-old well casing, fluid sampling and liquid analysis of the injection zone, and a "step-rate" test to determine facture gradient and maximum allowable injection pressure (AR 26-27 and citations therein).

The Regional Water Board's staff communications with CalGEM summarize what occurred here:

> On 10 March 2021, Staff submitted its initial review to CalGEM identifying missing items, concerns, and questions related to the Project's potential to adversely impact water

> quality (Initial Review). On 26 May 2021, CalGEM provided Staff with the Operator's and CalGEM's responses to the Initial Review (26 May 2021 Operator Response and 26 May 2021 CalGEM Response, respectively), as well as the Operator's revised application (Revised Application). On 30 June 2021, Staff submitted additional concerns to CalGEM and requested a meeting to discuss the outstanding concerns, and the Operator provided a reply on 13 July 2021. On 14 July 2021, Staff had a telephone discussion with CalGEM and the Operator to discuss its concerns, and the Operator subsequently provided Staff with additional information on 21 July 2021. CalGEM provided a revised draft [Project Approval Letter] on 10 August 2021 that *included a condition requested to be added by Staff in the meeting*.

(AR 781, italics added).) Thereafter, Water Board staff notified CalGEM that the permit condition requiring more data and analysis resolved its concerns. (AR 783.)

That key permit condition sought by the Water Board and imposed by CalGEM requires a "pressure fall-off test":

> Prior to injection a Pressure Fall Off Test shall be conducted to determine 1) Current reservoir pressure of the Third Massive; 2) Permeability; 3) The evaluation of a potential conduit. A report shall be submitted with the data and an evaluation of test results, for both CalGEM and the Central Valley Regional Water Quality Control Board to review.

(AR 787.) This post-approval, project-specific permit requirement was intended to produce data that can address unresolved

questions about potential contamination conduits to local water supplies. Once data are collected and the evaluation completed, the permit requires recalculation of the project's impacts on the "zone of endangering influence." (*Ibid.*)

The record is clear: Because CalGEM could not make an informed "no significant environmental effects" finding, it required Reabold to collect and evaluate data *after* project approval and construction. This chronology upends CEQA's step-by-step decision process and undermines its core objective to evaluate project impacts, alternatives, and mitigation *before* project approval. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 130 [CEQA compliance "must be performed before a project is approved"]; *Laurel Heights Improvement Association. v. Regents of University of California* (1988) 47 Cal.3d 376, 394 ["If post-approval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support action already taken."]; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79 ["CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, before it approves that project."].)

But even assuming that CalGEM could properly approve the project based on such deferred evaluation,[12] permit conditions requiring future assessment of potential water supply impacts are precisely the kind of CEQA mitigation measure that must be included in an MMRP. Had CalGEM prepared a mitigated negative declaration or an EIR, the required MMRP necessarily would have included implementation requirements for the pressure fall-off test and evaluation, facilitating CEQA's transparency and accountability objectives. But as it stands now, there is no way for affected communities or local water purveyors to participate in future discussions over enduring wastewater migration concerns.

[12] Agencies may not defer environmental review to a future post-approval date by directing the project applicant to conduct necessary hydrological studies for later administrative approval by agency staff and incorporation of needed mitigation measures into the permit. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; see also *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 856 [illegal deferral where agency "simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report"]; Guidelines § 15126.4(a)(1)(B).) Yet that is precisely what CalGEM did here.

2. Reabold's legal theory contravenes CEQA and misconstrues case law.

To sidestep these inconvenient facts, Reabold advances a truly novel theory: Because CalGEM's regulations require engineering studies to demonstrate that injected fluid will be confined to the approved injection zone and will not cause damage to life, health, property, or natural resources, Reabold's completion of those studies is "separate from mitigation under CEQA" and thus "provides no basis to set aside" the exemption decision. (Answering Br. at 65, 67, quoting Cal. Code Regs., tit. 14, § 1724.7(a).) This argument fails on multiple fronts.

First, Reabold's expansive theory is nonsensical in the face of section 21004's legislative directive. All CEQA mitigation measures *must* be drawn from an agency's authority under *laws other than CEQA*. (*Sierra Club v. California Coastal Commission* (2005) 35 Cal. 4th 839, 859) [quoting section 21004's legislative history, which clarifies that CEQA confers no "independent authority" for mitigation measures and that, in imposing such measures, "a public agency is required to select from various powers which have been conferred upon it by other laws"]; see also Guidelines § 15126.4(a)(1)(B) ["Compliance with a regulatory

permit or other similar process may be identified as mitigation."].) If Reabold were correct that any mitigation measure drawn from its independent authority does not count as "mitigation under CEQA," then the whole concept of CEQA mitigation becomes a null set.

Second, Reabold misconstrues Sunflower's arguments. Sunflower does not claim that Reabold's Technical Report was a CEQA mitigation measure. That report was duly submitted to comply with CalGEM's regulatory requirements. (Opening Br. at 23-25, citing AR 65-398, 427-774).) But the problem here is that the report *failed* to resolve interagency concerns about the potential migration of contaminated wastewater to local water supplies and *failed* to demonstrate that injected waste will stay confined to the injection zone. (See AR 378-80, 505-13, 758-60, 762-67, 768-71, 780-83.) This uncertainty compelled CalGEM to impose additional data collection and evaluation requirements as conditions of approval. It is those conditions, not Reabold's indeterminate Technical Report, that constitute CEQA mitigation because CalGEM imposed them *for the purpose of completing the necessary environmental effects evaluation*. The fact that CalGEM was "well within its authority to impose those permit

requirements" is simply not germane to the CEQA inquiry. (Answering Br. at 70.)

Third, the judicial authority on which Reabold relies does not support its capacious "independent authority" theory.[13] Most prominently, Reabold offers *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, for the proposition that "[a]n agency may rely on generally applicable regulations to conclude an environmental impact will not be significant and therefore does not require mitigation." (Answering Br. at 65.) In that case, the lead agency invoked a Class 3 categorical exemption to approve the installation of metal utility boxes on San Francisco sidewalks. A number of residents and members of the Board of Supervisors offered statements to the effect that the utility boxes would become unsightly "graffiti magnets" with significant aesthetic and public safety impacts. (*Id*. at 1025-26.) The court affirmed the planning department's conclusion that, in the context of the crowded existing urban

[13] Reabold's cited cases stand for the uncontroversial proposition that *generally applicable* regulatory requirements that *prevent* significant environmental effects are permissible. But the pressure fall-off test and evaluation is neither: Rather, it is a project-specific requirement intended to address agency-identified environmental concerns *after* project approval.

streetscape, such incremental impacts would be minimal. (*Id.* at 1027-28.)

The court separately addressed whether the city improperly relied on mitigation measures to categorically exempt the project from CEQA. For each utility box, the city required routine pre-installation review, as it did for all city excavation permits, to protect the public right-of-way. (*Id.* at 1032.) Distinguishing *SPAWN*, the court held that such review did not constitute a "mitigation measure" because there was no record evidence of a significant environmental impact to mitigate. (*Id.* at 1033.)

This case is very different. CalGEM relied on its generally applicable authority to impose conditions intended to evaluate *whether* the project will have an environmental impact after project approval, not to conclude that the project *will not* have an impact. The expert water agencies expressed substantial, detailed concerns that injecting wastewater through the Ginochio well could cause contamination of local water supplies. CalGEM attempted to address those concerns by requiring bespoke conditions of approval, all designed to inform a future fluid conduit evaluation and to remedy significant effects if they

emerged. Without this information, CalGEM simply could not conclude that the project will have no significant environmental effect, as required to construe and apply section 15301. (*Azusa*, 52 Cal.App.4th at 1194.)

Similarly, in *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, the city invoked a Class 3 categorical exemption to approve a single-family residence and associated site development plan. There, "no evidence whatsoever was introduced" to support an exception to the categorical exemption or challengers' claim that the project may have a significant environmental effect. (*Id*. at 733, 736.) The city's authority under the Uniform Building Code to require detailed soils and geotechnical engineering reports for the project – a police power the city apparently had not exercised – was not "evidence" of a potentially significant impact. (*Id*. at 736.) The opinion does *not* discuss mitigation measures.

Reabold's final case, *Protect Telegraph Hill v. City & County of San Francisco* (2017) 16 Cal.App.5th 261, is also far afield. There, the city approved restoration of a small cottage pursuant to a Class 1 categorical exemption and construction of a new three-unit residential structure pursuant to a Class 3

exemption. (*Id*. at 264.) As part of the conditional use permit for the project, the city imposed several *construction management conditions*. The court found no evidence that the city had imposed these conditions to mitigate significant environmental effects, "as opposed to taking precautions to address the ordinarily anticipated inconvenience and danger that arises [with] significant construction activity." (*Id.* at 268 [noting also that "the record is devoid of evidence of a significant environmental effect" from the project].) Here, CalGEM's permit conditions were intended to evaluate the project's potentially significant effects on water supplies, not to address "ordinarily anticipated" temporary construction impacts. Context is critical.

In short, no legal authority or logic supports Reabold's startling argument that when a lead agency's mitigating conditions are within its "independent authority," the agency should be allowed to rely on those conditions to justify a categorical exemption. Indeed, local agencies routinely exercise their broad independent land use and police powers to impose project mitigation to avoid or reduce potentially significant impacts as part of the CEQA process. Under Reabold's theory, those conditions would no longer be considered "CEQA

mitigation" and, therefore, could be used as the basis for expansive exemptions. Such a result would radically transform CEQA and undermine its fundamental goals.

C. The Court should reverse and remand this case for reinstatement of the trial court's correct judgment.

On the facts in the record, this case is an easy one. Reabold's project does not "fit" into Class 1. Given the existence of potential fluid migration conduits in the Brentwood oil field, expert water agencies raised legitimate concerns about potential cross-aquifer contamination of local water supplies from Reabold's proposed activities. Because CalGEM could not resolve those concerns, it conditioned the well permit on requirements for additional testing, evaluation, and potential project or permit revision. Those conditions of approval are quintessential CEQA mitigation (see Guidelines § 15370 [defining "mitigation" to include avoiding, minimizing, reducing, or eliminating potential impacts]), disallowed for categorical exemption under the *SPAWN-Azusa-Lewis* line of case.

Faced with these unassailable facts, Reabold offers one last-ditch argument: "Even if CalGEM did adopt additional conditions of approval at the Water Boards' recommendation,

that is of no consequence" *because* CalGEM's consultation with those agencies reflects routine practice and "CalGEM should not be penalized for its regulatory practice of soliciting, and following, the advice of the state's water quality experts." (Answering Br. at 72-73.)[14] Reabold's argument is curious – and dead wrong. This case is not about "penalizing" anyone. It is about ensuring that agencies properly analyze project impacts and facilitate public participation where a new activity poses potential risks to the community.

Based on the record, the Court should hold that Reabold's new wastewater injection well project does not qualify for a categorical exemption. On remand, CalGEM may evaluate whether the project can properly proceed by way of a mitigated negative declaration. (See Guidelines §§ 15070 and 15369.) But as *SPAWN*, *Azusa*, and *Lewis* make clear, CEQA's structure, text,

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[14] Reabold's lengthy discussion of the Memorandum of Agreement between CalGEM and the Water Boards is irrelevant. (Answering Br. at 69-70.) An agreement to consult other expert agencies is consistent with CEQA. (See Guidelines §§ 15060.5, 15063, 15083.) Moreover, the Memorandum's acknowledgement that CalGEM "may include" conditions like groundwater monitoring, hydraulic controls, and injection zone buffers to protect against fluid migration is consistent with CEQA, which contemplates that agencies may impose mitigation to reduce or minimize potential impacts. (See Guidelines § 15370.)

and purpose do not allow "mitigated" categorical exemptions.[15]

CONCLUSION

CalGEM unlawfully relied on a categorical exemption to approve Reabold's new injection well project and applied mitigation measures without mandated environmental review. Sunflower respectfully requests that the Court reverse the appellate court decision and remand the case with directions to reinstate the trial court's judgment and writ of mandate.

Dated: Aug 11, 2025 Respectfully submitted,

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School

By: */s/ Deborah A. Sivas*
Deborah A. Sivas

Attorneys for SUNFLOWER ALLIANCE

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[15] Several cases cited in the parties' briefs address the "unusual circumstances" exception *in addition to and separate from* claims about improper agency reliance on mitigation measures to qualify for a categorical exemption. (See, e.g., *San Francisco Beautiful*, 226 Cal.App.4th at 1020-25 [unusual circumstances] and 1032-33 [improper mitigation measures]; *Protect Telegraph Hill*, 16 Cal.App.5th at 267-68 [improper mitigation measures] and 270-73 [unusual circumstances].) These distinct legal claims are factually intertwined because both rely on the record to determine how the agency justified its exemption decision. There is no question that Sunflower briefed, and the Court of Appeal decided, Sunflower's mitigation-measures claim. (*Sunflower Alliance*, 105 Cal.App.5th at 788-90.) Reabold's waiver argument is unavailing.

CERTIFICATE OF WORD COUNT

This brief complies with the type-volume limitation of California Rules of Court Rule 8.520(c)(1) because this reply contains 8,393 words as counted by Microsoft Word, excluding the parts of the brief exempted by Rule 8.520(c)(3). The brief complies with the typeface, type-style, page alignment, spacing, and margin requirements of Rule 8.74(b) because it has been prepared in proportionally left-aligned 2.0 spaced typeface using Microsoft Word in 13-point Century Schoolbook font.

/s/ *Deborah A. Sivas*

Deborah A. Sivas

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I, Ana Villanueva, 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 559 Nathan Abbott Way, Stanford, California 94305.

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Executed on August 11, 2025, at Stanford, California.

/s/ *Ana Villanueva*

Ana Villanueva

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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*	
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