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

RESPONSE OF SUNFLOWER ALLIANCE TO AMICUS BRIEFS

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INTRODUCTION

The core legal question before this Court is whether section 15301 of the CEQA Guidelines ("Guidelines") means what it says. Throughout this litigation, Sunflower Alliance ("Sunflower") has advanced a simple, coherent legal position: Section 15301 applies by its own terms *only* to the "minor alteration of existing . . . structures . . . involving negligible or no expansion of existing or former use." Because the proposed redrilling of a permanently closed oil and gas extraction well and its repurposing as a high-volume wastewater injection and disposal well is not a minor alteration of an existing or former use, the project does not qualify for a section 15301 categorical exemption. End of story.

In an effort to evade this straightforward result, responding parties and their supporting amici curiae have proffered a plethora of tortured arguments to justify alternative interpretations of section 15301's plain text. Real Party and project proponent Reabold Corporation LLC ("Reabold") argues first and primarily that the test for a Class 1 categorical exemption *should be* whether the proposed activity poses negligible "environmental risks" – words that appear nowhere in section 15301 itself. Original Respondent California Geologic

Energy Management Division ("CalGEM") – now standing on the sidelines as an "amicus" party[1] – correctly rejects this argument as inconsistent with the plain text and clear intent of section 15301. (CalGEM Amicus Br. at 34-39.) This Court should do the same.

Yet CalGEM then offers a different defense of its decision to invoke a Class 1 categorical exemption in this case. As a threshold matter, this defense hinges on a significant mischaracterization of the proposed project and its environmental implications. CalGEM suggests that Reabold's proposal to redrill, retool, and repurpose the long-sealed Ginochio oil and gas production well involves nothing more than reversing the direction of fluid flowing in the well. (CalGEM Amicus Br. at 41.) That premise is flatly erroneous – and belied by the detailed amicus filings of experienced oil and gas geologist Douglas

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[1] After the trial court ruled in Sunflower's favor, CalGEM chose not to appeal that decision, but nevertheless filed an answering brief in the Court of Appeal. The court agreed that CalGEM was not a proper respondent, but accepted CalGEM's filing as an amicus curiae brief. (*Sunflower Alliance v. Dep't of Conservation* (2024) 105 Cal.App.5th 771, 780, n.2.) For the first time, the California Natural Resource Agency now joins CalGEM's amicus brief (hereinafter "CalGEM Amicus Br."), which puts forth new legal arguments.

Bleakly and the Center for Biological Diversity et al. ("CBD"). Drawing from the available details in the administrative record, these briefs show that the proposal to rework the Ginochio well and reactivate it as a waste injection and disposal well requires non-trivial physical alterations and poses significant new (unevaluated) environmental risks.

On the law, responding parties and their supporting amici have advanced one interpretative theory after another throughout this case, as they try to justify a vast expansion of section 15301 beyond its plain text. Here, CalGEM abandons its earlier effort to portray waste injection as an "existing or former use" of the Ginochio production well, landing instead on another specious proposition – that section 15301's express language limiting the exemption to "existing or former" uses "may sometimes" be "reasonably" interpreted to encompass wholly "new" and different uses. (CalGEM Amicus Br. at 32.) Perhaps this latest position is intended to align with the Court of Appeal's decision, which necessarily concluded that wastewater injection and disposal would be a "new use" of the Ginochio well. (*Sunflower Alliance*, 105 Cal.App.5th at 783.) But CalGEM's counterintuitive reading of section 15301 – that an admittedly

new use should also be considered an existing use – effectively turns the Class 1 exemption into a free pass from the California Environmental Quality Act ("CEQA") for virtually any new use of an existing structure.

Amicus Western States Petroleum Association ("WSPA") tries a different tack, but to the same effect. Its amicus brief focuses on Reabold's secondary argument that inclusion of the word "conversion" in section 1684.1 of CalGEM's implementing regulations means that any project involving a "change" from one use to another is eligible for a Class 1 categorical exemption. As discussed in Sunflower's Reply Brief and below, this argument lacks merit as a matter of statutory construction and, if adopted, would carve a gaping hole through section 15301's carefully-tailored and intentionally-narrow exemption for minor alterations of existing structures.

Amici's evolving legal arguments have one thing in common: Each requires the Court to engage in a kind of mental gymnastics to find a coherent limiting principle for application of section 15301. That exercise is unnecessary, however, because section 15301 contains its own limiting principle. The retooling of a plugged extraction well for a new activity with different and

potentially significant environmental effects is not a "minor alteration" or "negligible expansion" of an "existing or former use." Adding conditions of approval that require future testing and evaluation of potential project impacts, as happened here, cannot change that legal conclusion.

In contrast, a plain text reading of section 15301 adheres to the Court's admonition that CEQA categorical exemptions should be strictly construed and are not available where the proposed activity may have a significant environmental effect. (See *Mountain Lion Foundation v. Fish & Game Comm.* (1997) 16 Cal.4th 105, 124-25.)

ARGUMENT

I. Amici Offer No Credible Legal Basis for Rewriting the Plain Language of Section 15301.

Respondent CalGEM elected not to appeal the trial court's ruling that Reabold's proposal to redrill and repurpose the Ginochio well does not qualify for a categorical exemption under section 15301. Yet the agency now comes before this Court in an "amicus" capacity seeking judicial deference for its project approval decision. CalGEM's newest legal argument differs from the ones it offered below – and from the arguments offered by

Reabold and industry trade association WSPA – but it makes no more sense as a matter of statutory construction. The Court should reject the evolving legal justifications advanced by responding parties over the course of this litigation in favor of a simple, plain-text reading of section 15301. Such a commonsense construction aligns with legislative intent, comports with this Court's CEQA jurisprudence, and warrants reinstatement of the trial court's decision in this case.

A. CalGEM and WSPA mischaracterize Reabold's proposed project.

Before addressing Amici's various interpretative arguments, we turn first to one foundational point: Both CalGEM and WSPA build their elaborate legal arguments on the flawed premise that Reabold's project will involve only trivial physical alterations and environmental threats. That characterization of the project is fundamentally misleading, as the administrative record and other amici demonstrate.

For one thing, the necessary alterations to the existing Ginochio well are not insubstantial. As Sunflower explained in its Opening Brief, the proposed project will "require construction and conversion of structures, including tanks, pumps, and piping,

to inject wastewater into the aquifer." (Sunflower Opening Br. at 22 [citing AR 376, 439].) Amicus Douglas Bleakly, a licensed professional geologist who spent 25 years involved in oil and gas drilling, production, and injection operations, elaborates: To facilitate new injection activities, Reabold must "install new and different equipment" built to "different specifications," including "one or more pumping units, new downhole equipment, pipelines and piping to deliver the wastewater to the site, a storage tank, and several pieces of ancillary equipment." (Bleakly Amicus Br. at 22-23.)

By approving the project through a categorical exemption, CalGEM sidestepped any evaluation or public disclosure concerning this required new equipment. For instance, Reabold will need to build or extend a pipeline to transport wastewater to the injection wellpad; even if an older natural gas pipeline existed near the project site, that equipment would likely be unsuitable for wastewater transport.[2] (*Id.* at 23-24.) The scant administrative record does not address this issue, provide any

[2] There should in fact be no such pipeline, since all surface facilities were required to be removed from the site at the time that the well was plugged and abandoned. (Bleakly Amicus Br. at 22 [citing AR 2, 5].)

schematics showing a pipeline, or include the requisite CalGEM-approved pipeline management plan necessitated by the agency's own regulations. (*Id*. at 24 [citing Cal. Code Regs., tit. 14, § 1774.2].) Likewise, the record does not address outstanding questions about the status and permitting of the necessary wastewater storage tank(s) or in any way discuss other essential new equipment, such as the requisite pumping unit. (*Id*. at 24-25.)

Equally concerning, CalGEM and WSPA both downplay the dramatic change in proposed use when they repeatedly suggest that Reabold will merely restart a currently "inactive" production well. (See CalGEM Amicus Br. at 12, 20, 22, 43, 51; WSPA Amicus Br. at 8, 11). Nothing could be further from the truth. The decommissioned Ginochio production well is not just "inactive" or "idled"; it was permanently "plugged and abandoned" in 1984, a process that entails removal of production tubing and other downhole equipment; injection of cement "plugs" inside the casing to prevent fluid migration and possible contamination of geologic strata or groundwater; removal of all surface equipment; and welding of a plate to seal the well. (Bleakly Amicus Br. at 13.) Over the last 40 years, both the

cement plug and the original annular cement between the well casing and the geologic formation have been vulnerable to deterioration and degradation, increasing the probability of leaks, fluid migration, and contamination of protected aquifers. (*Ibid.*) Yet CalGEM approved the new wastewater injection activity without testing the integrity of the well casing or the cement plug. (*Id.* at 14.)

Even more problematic, wastewater injection is a distinctly different activity than oil and gas extraction, posing distinctly different environmental threats. CalGEM argues that the project is only a "negligible expansion" of the prior production well because it will merely "transport the same fluid—just in a different direction." (CalGEM Amicus Br. at 41.) Not so. The notion that waste injection activity poses the same risks as oil extraction activity is manifestly false. Wastewater injection wells, which typically contain a long list of harmful pollutants, generally require higher pressure than production wells, increasing the risk of damage to well casings and the likelihood of leaks and fluid migration, especially as a well ages. (Bleakly Amicus Br. at 15-19; see also CBD Amicus Br. at 17-21.) As Mr. Bleakly explains, "[t]hese two environmental risk factors—

injection pressure and well degradation—converge to make Reabold's proposed injection project of particular concern and wholly distinct from the prior use of the Ginochio well." (Bleakly Amicus Br. at 19.)

Amici also mislead when they suggest that new injection activity would "return cleaner water to the aquifer." (WSPA Amicus Br. at 11; see also CalGEM Amicus Br. at 22.) As the record makes clear, the project will take wastewater produced as a result of extracting oil and gas from the "Second Massive Sand" aquifer, treat it with chemicals, and inject it into the different "Third Massive Sand" aquifer. (AR at 402, 440.) Repressurizing that lower aquifer with nearly 11 million barrels of wastewater could contaminate nearby water supply wells – a potentially significant environmental risk that should be evaluated and mitigated before approval of the project. (Bleakly Amicus Br. at 19-20 [citing AR 77, 108-30, 437, 439, 769, 767, 782, 786, 796]; see also CBD Amicus Br. 18, 20.)

For these reasons, Mr. Bleakly concludes:

> Re-entering and recompleting the well as an injector represents a fundamental and significant change from [the] original use, with attendant changes in wellhead equipment and facilities, the characteristics of fluids involved, and markedly different operating conditions

> downhole. . . To inject fluid into a reservoir several thousand feet underground, pumps at the wellhead must *push* the wastewater down the wellbore and *into* the formation by pressurizing the fluid above the pressure of the reservoir . . . [T]his intensive process, especially applied to an old well, can lead to cracks in casing and cement, leaks, and groundwater contamination.

(Bleakly Amicus at 21, italics in original.)

In short, Amici's foundational assumption that reworking the plugged and abandoned Ginochio production well and repurposing it for wastewater injection into a different aquifer involves only a "minor alteration" or "negligible expansion" of an existing or former use is simply wrong as a factual matter and fundamentally undermines all of Amici's legal arguments.

B. CalGEM's shifting legal justification for its decision is not entitled to judicial deference.

Throughout the administrative and judicial process, CalGEM has continued to evolve its legal justification for invoking a Class 1 categorical exemption to approve Reabold's proposed reworking and reactivation of the plugged and abandoned Ginochio well. During the permitting process, CalGEM provided no analysis to explain why a Class 1 categorical exemption was proper; it merely recited the text of section 15301. Under "Reasons Why Project Is Exempt," the

Notice of Exemption stated only that the project is exempt as an existing facility "because the project proposes minor alteration of an existing previously permitted well involving a negligible expansion of former use." (AR 791.)

Following the filing of this lawsuit – where Sunflower has consistently argued that redrilling of a plugged oil and gas extraction well *and* its repurposing as a waste injection and disposal well does not qualify as a minor alteration of an existing or former use[3] – CalGEM has offered several different legal

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[3] CalGEM suggests that Sunflower did not argue below that the proposed repurposing is not a minor alteration of an existing use. Not true. Sunflower's Verified Petition for Writ of Mandate alleges that "alteration of the Well from one that has been plugged, abandoned, and nonoperational . . . to one into which approximately 300 barrels of oil production wastewater per day will be disposed does not constitute a 'minor alteration.' (*See* 14 Cal. Code Regs. § 15301 (The alteration of an existing facility must be minor)." (AA107.) The short trial court brief (i) describes the project's physical changes and potential impacts from new injection activity and (ii) begins the section 15301 argument with the following summary: "The Class 1 Categorical Exemption does not apply in this case, because conversion of an abandoned oil and gas production well, into a wastewater injection disposal well, is not a minor modification to an existing use." (AA075-76, 081.) In responding to Reabold's many legal arguments on appeal (which did not focus on the "minor alteration" aspect of section 15301), Sunflower framed the issue presented as: "Whether the Project fits within the definition and scope of CEQA's Class 1 categorical exemption for 'Existing Facilities,' where the Administrative Record fails to support CalGEM's decision that the Project qualifies as a minor

arguments to bolster the empty permit record. At the trial court, CalGEM tested the argument that Reabold's proposal "is no more than a minor alteration of the existing facility, *which is the large Brentwood Oil Field*." (AA097, italics added.) As Sunflower's Reply Brief explains, the sprawling multi-operator Brentwood Oil Field is definitively *not* the existing "structure" or "facility" at issue here – the Ginochio well is. (Sunflower Reply Br. at 28-29 [citing AR 401, 775-76, 785]; see also WSPA RJN, Attach. B, Exh. A, at 4 [noting that CalGEM considers individual wells to be the relevant "facility" for purposes of Class 1 exemption].) In any event, courts have concluded that such widespread land operations, even when conducted as a single business, do not qualify as an "existing facility" for Class 1 exemption purposes. (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997), 52 Cal.App.4th 1165, 1192-94; *Los Angeles Dep't of Water & Power v. County of Inyo* (2021) 67 Cal.App.5th 1018, 1041.) Perhaps for that reason, CalGEM appears to have abandoned this unavailing argument.

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alteration of an existing facility or a negligible expansion of an existing or former use." (Sunflower Appellate Br. at 13.)

With respect to the Ginochio well itself, CalGEM argued at trial that the "previously permitted"[4] Ginochio well borehole, not Reabold's proposal to redrill and repurpose it for another use, constitutes the "project" for CEQA purposes and that merely "changing the direction of the fluid flow in the well is a minor alteration" of the existing facility, not a new use of the well. (AA097.) As discussed above, that simplistic position is not supported by the record or reality. (Argument I.A, *supra*.)

CalGEM elected not to appeal the trial court's decision, but then submitted an "answering brief" that introduced a new justification for its permit decision; it argued that the word "conversion" in section 1684.1 of its CEQA implementing regulations authorized use of a Class 1 exemption in this case – an argument that CalGEM did not develop during the trial court proceedings. (Compare CalGEM Appellate Br. at 16-17 and 21-27 with AA096-97.)[5] As Sunflower explained in its Reply Brief,

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[4] The production well was drilled in 1963 (AR 29), before many modern safety standards. (Bleaky Amicus Br. at 11-12.)

[5] In the trial brief's one-paragraph discussion of section 1684.1, CalGEM argued only that the regulation "expressly includes the operation of existing structures, *including conversion of oil injection wells*, and it recognizes that the scope of a 'minor alteration' or 'negligible expansion' of a facility depends on the

CalGEM's inclusion of the word "conversion" in section 1684.1 cannot override the express "existing or former use" limitation in section 15301; indeed, section 1684.1 contains virtually the same limitation, restricting the CalGEM exemption to projects involving "negligible or no expansion of *use beyond that existing previously*." (See Sunflower Reply Br. at 22-26.) Nor does inclusion of the word "conversion" mean that every type of well conversion qualifies for a Class 1 exemption. In fact, CalGEM's own interpretive guidance for section 1684.1 explains which "conversions" generally qualify for an exemption and which do not, noting that conversion of a production well to an injection well is "[u]nlikely to be exempt as a standalone project due to change in existing use." (*Id.* at 19-22 [citing "CalGEM CEQA Rework Exemptions Process Guidance to Operators" (Dec. 2023), at Sunflower RJN, Exh. H].)

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size and scope of the underlying facility." (AA097, italics added.) Notably, CalGEM's trial court brief did not argue that section 1684.1 is intended to exempt the permanent conversion from an oil production well to a waste injection well, perhaps because the agency's interpretative guidance says otherwise, as discussed below.

In this Court, CalGEM does not seriously press its prior section 1684.1 "conversion" argument,[6] but WSPA leans into it – to no greater effect. In fact, the section 1684.1 regulatory history submitted by WSPA only underscores Sunflower's point. When CalGEM amended section 1684.1 in 1995, it expressly contemplated the temporary use of oil extraction wells for cyclic steam injection, a widespread practice in California's geologically depleted oil fields used to decrease viscosity and increase oil production:

> As an example [of a conversion covered by the amended regulation], in California, many wells are stimulated by a cycle steam process. Cyclic stimulation is carried out by injecting a predetermined amount of steam into a producing well for a short time. After injection, the well is shut-in for a brief period to allow the steam to condense and the heat to transfer to the oil in the producing formation, thereby lowering the oil's viscosity and enhancing its flow. When the steam-soak period is completed, the well is returned to production.

[6] For instance, CalGEM does not attempt anywhere in its amicus brief to explain how section 1684.1's phrase "use beyond that previously existing" can possibly be reconciled with the agency's admission now that injection is a new use of the Ginochio well. And in response to its own 2023 guidance interpreting section 1684.1 to mean that production-to-injection conversions generally do not qualify for Class 1 exemption, CalGEM offers only the tepid response that the guidance does not "purport to adopt a blanket rule." (CalGEM Amicus Br. at 43.)

(WSPA RJN, Attach. B, Exh. A at 5.) Consistent with section 15301, CalGEM explained that the amendment covered "the conversion of wells from one use to another that *does not result in permanent changes to the mechanical condition* of the wells." (*Ibid.*, italics added.) The proposed conversion of the plugged and abandoned Ginochio extraction well to a waste injection well indisputably involves permanent changes to the well's mechanical condition and operation, as the Bleakly Amicus explains.[7]

Exempting temporary "steam-soak" or similar oil recovery enhancing techniques from CEQA review poses a different issue (not at issue here) because such routine practices can be part and parcel of the oil extraction process in many California oil fields, do not permanently alter a

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[7] CalGEM's own regulations make clear that there are many different types of injection wells, including those for "waterflood injection, steamflood injection, cyclic steam injection, carbon dioxide enhanced oil recovery, and disposal injection." (Cal. Code Regs. tit. 14, § 1720.1(p).) In CalGEM's typology, injection wells for "enhanced oil recovery," "storage of liquid hydrocarbons," "pressure maintenance," and "subsidence mitigation" are all distinct from waste "disposal" wells. (*Ibid.*) The "conversion" contemplated by section 1684.1 may apply to some of these examples, but not others.

well's purpose, mechanics, or operation, and thus may not present significantly new or different impacts. In contrast, permanent transformation of a former production well into a high-pressure waste disposal well is not essential to a functional oil extraction process – as demonstrated by Reabold's current practice of transporting its wastewater elsewhere for disposal – and poses different, potentially significant environmental risks.

California's Underground Injection Control ("UIC") program highlights the critical difference between risks posed by oil extraction and those posed by waste injection/ disposal wells. As the Center for Biological Diversity explains, California updated its UIC regulations in 2019 pursuant to federal delegation under the Safe Drinking Water Act. (CBD Amicus Br. at 22.) In doing so, the state recognized that injection wells have the potential to act as vertical conduits for fluid migration into water supply wells. (*Id*. at 23.) Both CalGEM and WSPA suggest that these separate UIC regulations, which impose distinct requirements to address pressurized fluid migration, support their position. But the opposite is true: The UIC

regulations demonstrate that the potential risks associated with wastewater injection are different than the risks associated with oil extraction, necessitating different regulatory protections. In other words, California recognizes that permanently repurposing a production well for injection and disposal is neither a minor alteration nor a negligible change.

Stepping back from these earlier arguments, CalGEM now takes a third bite at the apple, advancing yet a different interpretive theory in this Court. CalGEM pivots back to section 15301 and hangs its hat, this time, on the word "expansion," which it claims "can plainly encompass a change in use—and may sometimes result in a use that can reasonably be characterized as 'new.'" (CalGEM Amicus Br. at 32.) This tortured logic – that expansion of an existing use can sometimes include an entirely new use – hinges on the word "scope" in the Merriam-Webster Dictionary definition of "expanding." (*Ibid.*) As Sunflower explained in its Opening Brief, "expanding" means "to increase the extent, number, volume, or scope of: enlarge." (Sunflower Opening Br. at 32 [citing https://www.merriam-webster.com/ dictionary/expand].) Highlighting the word "scope"

in this definition does not help CalGEM. The same Merriam-Webster Dictionary defines "scope" to mean "extent of treatment, activity, or influence." (Merriam-Webster Dict. Online (2025) < https:// www.merriam-webster.com/ dictionary/scope> [as of Nov. 1, 2025].) Thus, as used in the definition of "expanding," the word "scope" addresses the extent to which an activity is increased, not a shift from one activity or use to another. In short, CalGEM's most recent legal theory makes no more sense than the different theories it offered in the lower courts.

CalGEM's shifting legal arguments throughout this case, as it struggles to find a justification for its administrative decision, do not deserve judicial deference. This Court has recognized that the degree of judicial deference to an agency's statutory or regulatory interpretation is "fundamentally *situational*." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12, italics in original.) Here, where the interpretative issue is purely a question of law, an agency's comparative technical advantage vis-a-vis the courts is not at play. (See *Kaanaana v. Barrett Bus. Servs., Inc*, (2021) 11 Cal.5th 158, 179; *Center for Biological Diversity v. Dep't of Fish & Wildlife* (2015)

62 Cal.4th 204, 236 ["determining statutes' meaning and effect is a matter 'lying within the constitutional domain of the courts.'"].)

Moreover, an agency's interpretation is entitled to deference *only* "if it is long standing, consistent, and contemporaneous. A vacillating position warrants no deference." (*Kaanaana*, 11 Cal.5th at 178 [declining to defer to agency amicus].) Over the last four years, CalGEM has offered several different legal justifications for its application of CEQA's "existing facility" exemption to the Reabold project. Each of those explanations, moreover, is at odds with CalGEM's own adopted regulations, which limit Class 1 exemptions to projects involving only "negligible or no expansion of use beyond that existing previously," and with its interpretative guidance, which notes that permanent conversion of a well from production to injection is "unlikely" to qualify for the exemption *because* it involves "a change in the existing use." (Cal. Code Regs., tit. 14, § 1684.1; Sunflower RJN at H-6.) The agency's ad hoc interpretation over the course of this litigation – particularly one that has changed with time – is simply not entitled to deference. (*Farmers Ins. Exch. v. Superior Ct.* (2006) 137 Cal.App.4th 842, 859 [citing

Culligan Water Conditioning v. State Bd. of Equalization (1976) 17 Cal.3d 86, 93].)

In sum, notwithstanding the clear language of sections 15301 and 1684.1 and despite CalGEM's prior interpretation of that language to normally *exclude* the conversion of production wells to wastewater injection and disposal wells, the agency now urges the Court to adopt an expansive new rule – one that permits a "change" to a new and different use of an existing structure to "sometimes" qualify as an "existing or former use." When, precisely, would such a new rule apply? And what principles would guide an agency's decision whether to construe a new use as an existing or former use – or a court's review of that agency decision? CalGEM's approach only invites regulatory chaos and more litigation. There is no reason to expand section 15301's reach and every reason not to do so.

C. WSPA's purported concerns are not well-founded.

WSPA argues that failure to embrace the Court of Appeal's novel reading of section 15301 to cover inconsequential "changes in use" would unsettle its members' long-standing reliance on the Class 1 exemption over the last three decades. (WSPA Amicus

Br. at 20.) That argument might be persuasive if this case involved the kind of temporary cyclic steam injection practices that motivated CalGEM's 1995 revision of section 1684.1. But neither WSPA nor Reabold cite a *single* example where the Class 1 exemption has been applied to the redrilling of a permanently closed production well and its repurposing as a wastewater injection and disposal well. And none likely exists. Indeed, the extensive reworking necessary to reactivate a permanently closed well – as compared to drilling a new injection well meeting contemporary safety standards – suggests that the main reason for Reabold's proposal here was to avoid public notification and scrutiny under CEQA. (See Bleakly Amicus Br. at 20.)

As the Center for Biological Diversity notes, there are over 143,000 plugged and abandoned wells in California. (CBD Amicus Br. at 34.) Expanding the reach of section 15301 (and section 1684.1) to exempt the reworking of such wells and their conversion to injection and disposal wells from environmental review and public disclosure creates an enormous legal loophole, exponentially increasing the risk to community water supplies and disenfranchising local voices. Because California's UIC program does not provide for any public notice or pre-approval

public disclosure of potential impacts, the CEQA process is typically the only mechanism available to alert the affected public of new activities that may adversely impact community water supplies. (CBD Amicus Br. at 29-30.) Rewriting the Class 1 categorical exemption to immunize such activities from public disclosure, preliminary environmental review, and consideration of potential mitigation measures undermines the core purpose of CEQA and its long-established three-step decision framework. The Court should decline to do so.

II. Amici's Arguments Defending CalGEM's Reliance on Mitigating Conditions Also Fail.

If the Court concludes that Reabold's project does not qualify for a Class 1 exemption, it may elect not to engage the factual disagreement at the heart of the second question presented. But as amici Planning and Conservation League et al. ("PCL") suggest, the CEQA case law could benefit from this Court's clarification of an issue left open in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1118, fn.7 – namely, that a permit condition imposed to address or mitigate a project's potential environmental effects precludes use of a categorical exemption.

If the Court reaches this second issue, it should affirm the basic test that appellate courts have repeatedly applied: Agencies may not base a categorical exemption determination on approval conditions that are imposed to ameliorate or avoid potentially significant environmental effects. (*Azusa*, 52 Cal.App.4th at 1200; *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1107 (*SPAWN*) ["[O]nly those projects having no significant effect on the environment are categorically exempt from CEQA review . . . [i]f a project may have a significant effect on the environment, CEQA review must occur, and only then are mitigation measures relevant."].)

A. The administrative record reflects that CalGEM imposed pressure testing and evaluation conditions to address unresolved concerns about potential environmental effects.

Like its first argument, Sunflower's second argument is simple. When Reabold initially submitted its permit application to reactivate the Ginochio well, the company relied on approximations of geological metrics – including permeability and reservoir pressure – to calculate the "zone of endangering influence" for Reabold's proposed injection. (AR 783.) In turn,

the "zone of endangering influence" informed estimates of the area that could be vulnerable to contamination by injected wastewater, particularly where vertical faults in the area might serve as conduits to overlying drinking water sources. (Cal. Code Regs., tit. 14, § 1720.1(a) ["'Area of review' means an area around each injection well" and must be "at least as broad as the area of influence]; 40 Code Fed. Regs. § 146.6 [defining the "area of review for each injection well . . . of the State" according to either a fixed radius or the "[z]one of endangering influence."].) But as the Regional Water Board pointed out, Reabold's initial calculations were based on values and assumptions that were not necessarily representative of the injection zone. (AR 782.) Particularly because there is a geologic fault with the potential to conduct wastewater into drinking water supplies, Reabold's proffered information was insufficient to ensure that injected wastewater would *not* migrate upward to the overlying aquifer. Real-world data and confirmation were, therefore, necessary to address this uncertainty. (AR 782-83.)

CalGEM responded to this substantive concern by approving Reabold's proposal to reactivate the well *contingent* on conducting and evaluating a "pressure fall-off test." This

deferred contingency would address uncertainty about the project's impacts and confirm whether the nearby geologic fault might become a conduit for introducing injectate into the overlying drinking water source. (AR 782 [noting that pressure fall-off test "will help demonstrate" the presence of fluid conduits and whether the well could reactivate the fault].) Should the test reveal Reabold's calculated permeability and reservoir pressure to be in error, the condition of approval then required recalculation of the potentially affected underground area. (AR 783, 787.)

CalGEM claims that this permit requirement was not a mitigation measure because "[i]t would have made no material difference if the pressure fall-off tests described in CalGEM's project approval letter had resulted in pressure or permeability values that were 'greater than the estimated values' used in Reabold's earlier calculations." (CalGEM Amicus Br. at 49.) Instead, CalGEM contends, "testing results showing larger-than-estimated pressure or permeability values would merely require Reabold to re-run some of its calculations." (*Id.* at 50.) This argument ignores the fact that such recalculation could, in turn, trigger additional regulatory safeguards.

Under the UIC regulations, an underground injection project "shall not cause or contribute to the migration of fluid outside the approved injection zone, or otherwise . . . cause damage to life, health, property, or natural resources." (Cal. Code Regs., tit. 14, § 1724.8(a); see also *id.* § 1724.6(b) ["The Project Approval Letter shall include identification of the approved injection zone for the underground injection project, and the approved injection zone shall not include an [underground source of drinking water]."] Where underground injection threatens such harm, the UIC regulations direct CalGEM to order cessation of the harmful activity and compliance with remedial directives. (*Id.* §§ 1724.6(e), 1724.13(b).). Any such suspended project may not resume without subsequent CalGEM approval. (*Ibid.*)

Thus, if the pressure and permeability testing required by Reabold's permit condition reveals a risk that fluid may migrate to overlying water supplies, CalGEM will be required to do more than "merely . . . re-run some of its calculations." It will need to suspend, modify, or rescind the permit and impose safeguards to "ensure that they are effectively preventing damage to life, health, property, and natural resources." (*Id.* § 1724.6(d).)

Indeed, the whole purpose of further testing and subsequent submission of a report evaluating those test results (AR 787) is to ensure that the "no harm" requirements of the UIC program are satisfied. Presumably, CalGEM would adjust well operations as necessary to comply with this strict legal requirement. (See AR 785 ["The conditions of approval specified in this Project Approval Letter are in addition to all other applicable requirements in statute or regulation."]). The fact that the permit itself did not specify what additional restrictions might be necessary does not mean that the testing and evaluation conditions were meaningless paperwork requirements; they were necessary to address specific unstudied environmental concerns raised by expert staff.

In short, the Regional Water Board and CalGEM designed and imposed the condition for this specific project, due to the real possibility – reflected by evidence, even in the sparse record underlying CalGEM's exemption determination – that wastewater could potentially migrate upward and contaminate drinking water, a potential significant environmental effect. (AR 782-83.) This condition is crafted to "avoi[d] the [environmental] impact" of such contamination by preventing the agency from

"taking a certain action or parts of an action" – here, injecting additional wastewater after evidence suggests that doing so could put overlying drinking water at risk. (Guidelines § 15370 [defining "mitigation"].) As such, it constitutes "mitigation" for purposes of CEQA. (*Ibid.*)

B. The permit condition requiring Reabold to test and evaluate reservoir pressure was neither routine nor pointless, as Amici suggest.

CalGEM and WSPA offer an array of unavailing legal arguments to muddy the simple story revealed by the administrative record. First and foremost, CalGEM asserts that the pressure-fall off test condition "had nothing to do with" its determination to apply a Class 1 exemption. (CalGEM Amicus Br. 45.) But, as discussed above, the record makes clear that the pressure fall-off test is what ultimately resolved the agencies' concerns about drinking water contamination, a potentially significant environmental impact. (AR 783 [indicating that Regional Water Board staff no longer objected to the project following the adoption of the pressure fall-off test]; AR 786-88.)

The resolution of those concerns, in turn, cleared the way for CalGEM to conclude that the proposed project was exempt because it "would not result in a significant adverse impact to the

environment" or fall within "any of the exceptions to the exemptions." (AR 790-91.) In short, CalGEM's conclusion that the project met the Class 1 exemption criteria – and did not pose a reasonable possibility of significant environmental effects – turned on the imposition of future pressure and permeability testing requirements and the subsequent "evaluation of a potential conduit" in the Letter of Approval. (AR 787.) If this record is not sufficient to show that an agency relied on mitigating conditions to approve a project, it is unclear what would be.[8]

CalGEM is misguided when it suggests that *Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261 is "instructive" for this case. (CalGEM Amicus Br. at 47.) The key question before that court was whether permit conditions formed the basis for the agency's conclusion that a categorical exemption applied. (*Id*. at 268.) Based on the record, the appellate court found that the exemption

[8] Agencies attempting to mitigate project impacts in order to qualify a project for a categorical exemption are unlikely to expressly articulate that intent in the record, given the prohibition on doing so in cases like *Azusa* and *SPAWN*.

determination and the imposition of project conditions were separate processes and that "the conditions were not adopted out of concern that the project would have a significant environmental effect." (*Id.* at 267.) The court concluded that there was "simply nothing" in the record to show that the conditions in question were imposed to mitigate an environmental effect. (*Ibid.*) In contrast here, CalGEM imposed the pressure testing and evaluation conditions explicitly to address technical uncertainties and allay expert concerns about potential environmental effects on drinking water.

The crucial difference between the facts of this case and those in other decisions cited by Amici[9] is that the pressure fall-off test was not a "routine" or "generally applicable" standard

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[9] See CalGEM Amicus Br. at 48, fn.9; WSPA Amicus Br. at 35. To clarify Sunflower's position regarding these cases, Sunflower agrees with overruling precedent *to the extent the Court finds a conflict*. As Planning and Conservation League et al. explain, those cases are problematic to the extent that they "fail to offer any clear principles rooted in the statute or regulatory scheme" for distinguishing "generally applicable" standards from CEQA mitigation measures. (PCL Amicus Br. at 10.) Here, however, any reasonable reading of the factual record demonstrates that CalGEM used conditions of approval as mitigation to qualify the project for categorical exemption – facts that distinguish the record before this Court from the facts described in the decisions cited by Amici. (See Sunflower Reply Br. at 46-49.)

required of all permittees, as even WSPA concedes. (WSPA Amicus Br. at 33-34 ["this test is not expressly required by the UIC regulations"].)[10] Rather, the pressure testing, evaluation, and follow-on report were necessary specifically *because* the available information and project proponent's calculations were *insufficient* for CalGEM to conclude that nearby local water supplies will be protected, as the law requires. The situation in this case is not analogous to cases like *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, where the lead agency accepted the conclusion of the noise study prepared by the proponent's consultant and then imposed permit monitoring conditions to verify that conclusion. Here, agency experts could not and did not conclude that Reabold's technical calculations adequately demonstrated the absence of any adverse impact on community water resources; actual testing and further evaluation are necessary to reach that conclusion.

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[10] Moreover, the fact that CalGEM has authority under the UIC regulations to impose this condition is simply not relevant to the issue presented here. Under CEQA, any permit conditions intended to mitigate a potential environmental impact must be derived from the agency's underlying statutory authority. (See Sunflower Reply Br. at 44-45 [discussing Public Resources Code section 21004 and relevant case law].)

Amici try to sow confusion by neglecting first principles. As a threshold matter, an agency may properly invoke a categorical exemption only when the project will not have a significant effect on the environment. "It follows that where there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper." (*Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 206; see also *Mountain Lion Foundation*, 16 Cal.4th at 124-25 [where delisting proposal created "at least the potential" for reduced species protection, lead agency was obligated to find that project may have a significant effect and thus precluded from invocating a categorical exemption].) From the start, Sunflower's simple argument in this case has been that Reabold's proposed new use of the Ginochio wells for waste injection and disposal poses a reasonable possibility of significant environmental impacts, thereby precluding use of a categorical exemption.[11]

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[11] Guidelines section 15300.2(c), the so-called "unusual circumstances" exception to categorical exemptions, was subsequently adopted to implement the rule laid out in *Chickering*. (See *Azusa*, 52 Cal.App.4th at 1191.) Like Reabold, Amici argue that Sunflower "waived" any claim of "unusual circumstances" in this case. But the more specific "unusual circumstances" argument under section 15300.2(c) is a lesser included argument, subsumed by the larger rule articulated in

Specifically, a Class 1 exemption is available only for a "minor alteration" involving no more than the "negligible expansion" of existing activity. Sunflower has argued since the inception of this case that Reabold's proposal to repurpose the Ginochio well for waste injection and disposal is neither a "minor alteration" nor a "negligible expansion" of the permanently closed and sealed oil extraction structure – and thus does not qualify for a Class 1 exemption – *because* waste injection poses new, different, and potentially significant environmental risks, risks that were not considered when the well was approved in 1963. CalGEM improperly attempted to sidestep this uncontestable fact by imposing a permit condition intended to ensure that the new injection activity would pose no more than "negligible" environmental risks, an approach that the Court of Appeal adopted.

But that approach runs afoul of CEQA's basic decision framework and relevant judicial precedent. The most

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Chickering, and Sunflower has not waived that threshold argument. (See Sunflower Reply Br. at 56, n.11.) CalGEM seems to concede this point when it argues, later in its brief, that Sunflower is not without options because it "can object to the scope of a categorical exemption." (CalGEM Amicus Br. at 55-56 [citing *Chickering*].) That is precisely what Sunflower did here.

"instructive" case here is not *Protect Telegraph Hill*, but *Azusa*. In *Azusa*, the court found that the proposed project modifications could not be considered minor alterations of an existing facility and thus did not qualify for a Class 1 exemption because the project posed a reasonable possibility of significant environmental effects. (52 Cal. App. 4th at 1192-94 [noting that words in section 15301 "should not be so broadly interpreted so to include a class of businesses that will not normally satisfy the statutory requirements for a categorical exemption"].) In particular, the court held that:

> Although the Guidelines do not define a minor alteration, it has to be one that is so small that it does not cross the threshold level set by the Guidelines for an exception to the categorical exemptions. Thus, a "minor" alteration cannot be an activity that creates a reasonable possibility of a significant environmental effect.

(*Azusa*, 52 Cal.App.4th at 1194 [citing *Chickering*].) Given that threshold conclusion, the agency could not circumvent CEQA's procedural and substantive process by imposing project conditions to mitigate those possible environmental effects; instead, it had to follow CEQA's normal decision framework. (*Id.* at 1199-1200 [explaining that proper next step was for the agency to determine the propriety of a mitigated negative declaration].)

Other courts have adopted the same logic. (See, e.g., *SPAWN,* 125 Cal.App.4th at 1107; *Lewis v. Seventeenth Dist. Agric. Assn.* (1985) 165 Cal.App.3d 823, 830.)[12]

Neither CalGEM nor WSPA respond directly to this core claim or even attempt to address the reasoning in *Azusa*, *SPAWN*, and *Lewis*. Instead, CalGEM offers incoherent circular logic. It posits that "where, as here, a project falls within a categorical exemption, . . . consideration of 'mitigation measures' is unnecessary" because such measures "become 'relevant' only if an agency concludes that a project is *not* exempt." (CalGEM Amicus Br. at 52.) This tautological argument begs the requisite threshold question of whether a project's potential environmental

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[12] The Lewis court explained: "It is the *possibility* of a significant effect on the environment which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR. Appellants cannot escape the law by taking a minor step in mitigation and then find themselves exempt from the exception to the exemption. The very fact the district association took steps in mitigation makes it manifest there was a possibility of a significant effect. If steps in mitigation lessen the "adverse change," such steps may qualify the district association to file a negative declaration, but not to find itself outside the law itself. . . . [T]he district board would need to have found there was no reasonable possibility the noise would represent a potentially substantial adverse change in the environment." (165 Cal.App.3d at 830 [noting that record showed possible environmental effects that could not be determined until the project commenced].)

effects preclude use of a categorical exemption in the first place. *That* threshold question is at issue in this case.

In a tepid nod to the facts, CalGEM oddly claims that "the record 'amply supports' CalGEM's determination that the project would have no such effects." (CalGEM Amicus Br. at 49.) To support this claim, CalGEM points only to the Notice of Exemption, which the agency says "establishes" that the project "met the requirements for a Class 1 Exemption 'without qualification.'" (*Ibid.*) But the Notice of Exemption does *not* provide any analysis or cite any evidentiary support; it simply mimics the language of section 15301. As to the rest of the record, CalGEM concedes that it "reflects some generalized discussion" about fluid migration risks associated with the proposed injection project, but claims that it "is 'devoid' of any evidence that the well-conversion project threatened the kind of 'significant environmental effects'" which might preclude the use of a categorical exemption. (*Ibid.*)

As Sunflower discussed at length in its merits briefs, this (mis)characterization of the record is factually inaccurate, as there is clear evidence in the record of meaningful concerns over water supply contamination. Equally important, it illustrates

why use of a categorical exemption under these circumstances undermines core CEQA principles. Because CalGEM invoked a categorical exemption, there was no opportunity for the public or any outside expert to raise the kind of substantial environmental issues and concerns articulated in amicus briefs filed by Douglas Bleakly, the Diablo Water District, and the Center for Biological Diversity. Had CalGEM utilized the normal CEQA process, such concerns and related information would have become part of the administrative record subject to judicial review. As it presently stands, the record includes only unresolved scientific questions and unfounded legal conclusions. It does not support, let alone "amply support," CalGEM's determination that the injection and permanent disposal of nearly 11 million barrels of contaminated wastewater into a 60-year-old extraction well poses no significant risk to the overlying drinking water supplies.

No problem, CalGEM assures the Court, because "CEQA provides meaningful checks" on "agency misbehavior" by allowing parties to challenge exemption decisions. (CalGEM Amicus Br. at 51.) But as CalGEM itself concedes, exemption challenges are limited to the administrative record created solely by the lead agency. (*Ibid.*) Where the agency invokes an exemption, there is

no forum in which affected communities can raise comments or present relevant information prior to the decision and thus no opportunity to submit the kind of "substantial evidence" necessary to demonstrate an exception to the categorical exemption. That is the situation in which Sunflower found itself here.[13]

Indeed, this case exemplifies the problems with Amici's positions. Out of the public eye, CalGEM approved Reabold's project with a "severely underdeveloped" mitigation measure in place. (Bleakly Amicus Br. at 29.) Had CalGEM followed the

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[13] CalGEM urges the Court to reject Sunflower's arguments on the basis of *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105, which held that where "projects meet the requirements of a categorical exemption, a party challenging the exemption has the burden of producing evidence supporting an [unusual circumstances] exception" – the Guidelines' escape-hatch adopted after *Chickering*. That task is daunting, if not impossible, where (as here) the agency makes an exemption determination *sub silentio* and the affected community is not informed of the project's existence until after the decision is final and the record set. As Planning and Conservation League et al. highlight, the Court could use this case, if it chooses, to revisit or refine its holding in *Berkeley Hillside*. (PCL Amicus Br. at 8-9.) But as discussed above, Sunflower's legal argument here is not tethered to the "unusual circumstances" exception, as it challenges CalGEM's threshold determination, à la *Chickering*, that a Class 1 exemption applies to the Reabold project, which cannot reasonably be characterized as a minor alteration or negligible expansion of an existing or former use.

proper CEQA mitigated negative declaration process, it would have instead created a mitigation, monitoring, and reporting program for the pressure fall-off test. (Sunflower Reply Br. at 36.) Moreover, that process would have prompted CalGEM to consider additional mitigation measures to better protect against the risk of groundwater contamination. (Bleakly Amicus Br. at 29-30.) And it would have maintained CEQA's crucial role in disclosing potential impacts to the public and soliciting public input. (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) Instead, on review, the Court of Appeal was left to speculate, without supporting evidence, that the risks of the project are negligible. (*Sunflower Alliance*, 105 Cal.App.5th at 786 [opining, inaccurately, that "the injected water cannot escape the aquifer and harm people, property, or the environment because the injected water will be geologically confined within the aquifer"].)

At the end of the day, Amici must fall back on weak policy arguments, much like Reabold did. WSPA professes concern that Sunflower's interpretation will disincentivize agencies from adopting environmentally protective measures. But Sunflower merely contends that bespoke measures intended to limit a

potential significant environmental effect – and to fast-track a project – should be adopted in public view, via a mitigated negative declaration, rather than in the shadows of the exemption process. (Sunflower Reply Br. 43, 51.) The mitigated negative declaration framework, itself an expedited process, ensures that measures to mitigate potential environmental impacts to a less-than-significant level are tested in the crucible of public scrutiny before they are adopted. (Guidelines §§ 15070, 15073, 15369.5.)

For its part, CalGEM suggests that Sunflower's legal claim would render categorical exemptions "largely useless" because public agencies frequently impose some type of "environment-related condition" for projects subject to categorical exemptions. (CalGEM Amicus at 54.) Here again, CalGEM misconstrues Sunflower's arguments. The imposition of "environment-related" conditions is not the problem; it is the use of those conditions in the categorical exemption determination to address scientific uncertainties or potentially significant environmental effects that turns them into improper mitigation measures.

CONCLUSION

The arguments advanced by CalGEM and WSPA were evaluated and properly rejected by the trial court. (AA138-41.) The operative sentence in section 15301 provides that Class 1 exemptions are limited to "the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." (Cal. Code Regs., tit. 14, § 15301.) Based on the indisputable facts, the trial court correctly concluded that "turning a well that pumps out oil and gas . . . into a well that injects treated water is a significantly different use." (AA141.) The Court of Appeal agreed that the project involves a new use of the well. (*Sunflower Alliance,* 105 Cal.App.5th at 783.) As to whether a CEQA categorical exemption may include mitigating conditions to address significant environmental impacts, the answer is surely "no."

For the foregoing reasons and those set forth in the Opening and Reply Briefs, Sunflower respectfully requests that the Court reverse the appellate decision and direct reinstatement of the trial court judgment. Any other outcome would

dramatically undermine the three-part CEQA decision framework the Court has long embraced – to the detriment of communities that rely on CEQA for agency transparency and accountability.

Date: Nov. 17, 2025 Respectfully submitted,

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CERTIFICATE OF WORD COUNT

This brief complies with the type-volume limitation of California Rules of Court Rule 8.204(c)(1) because this reply contains 8,607 words as counted by Microsoft Word, excluding the parts of the brief exempted by Rule 8.204(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.

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

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