CASE NO. A172760

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT**

COUNTY OF SONOMA,

Defendant and Appellant,

v.

RUSSIAN RIVERKEEPER and CALIFORNIA COASTKEEPER ALLIANCE,

Petitioners and Respondents.

Application to File *Amici Curiae* Brief and Brief of *Amici Curiae* California Law Professors in Support of Petitioners and Respondents

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On Appeal From the Superior Court for the State of California, County of Sonoma, Case No. SCV-273415, Hon. Bradford DeMeo (Ret.)

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no entities or persons that must be listed in this certificate under Rule 8.208 of the California Rules of Court.

DATED: Jan. 2, 2026 */s/ Matthew J. Sanders*
Matthew J. Sanders

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APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF

TO THE HONORABLE JUSTICES OF THE FIRST DISTRICT COURT OF APPEAL:

Pursuant to California Rule of Court 8.200(c), applicants California Law Professors[1] ("*Amici*") respectfully request leave to file the attached *amici curiae* brief in support of Respondents Russian Riverkeeper and California Coastkeeper Alliance.[2]

STATEMENT OF INTEREST OF PROPOSED *AMICI CURIAE*

Amici are eleven California law professors who study and teach California environmental law, including California's public trust doctrine and California water-resource laws.

Amici have an interest in providing the Court with additional citations and explanation bearing on California's public trust doctrine and situating this case within California's public trust jurisprudence. In addition, *Amici's* understanding of the County's public trust duty, as derived from the common law and expanded upon in modern California judicial precedent, differs from Appellant County of Sonoma's ("County") explanation of the public trust doctrine. *Amici* seek to share

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[1] *See* Addendum for the names and positions of *Amici*.

[2] *Amici* certify that no party or its counsel authored this brief in whole or in part and no party, counsel, or other person made a monetary contribution intended to fund its preparation or submission.

their perspective through this brief because this Court's response to the County's arguments has the potential to impact the scope of resource protection currently afforded by the trust under California law.

Finally, *Amici* are interested in being heard regarding their understanding of the development, scope, and application of the public trust doctrine in the context of water-resource laws to ensure continued public access to, and sustainable use and protection of, California's public-trust-protected resources, including reductions of flows in the creeks and rivers of Sonoma County that may affect public-trust-protected resources and uses.

HOW THIS BRIEF WILL ASSIST THE COURT

The proposed *amici curiae* brief will assist the Court by (1) describing the public trust duty of Appellant Sonoma County; (2) contextualizing that duty within California's public trust doctrine; and (3) explaining the contours of that duty. The party briefs do not fully address these issues. Accordingly, *Amici* offer the proposed brief to provide expertise and information that may be helpful to this Court's resolution of this case.

REQUEST FOR LEAVE TO FILE

Because the proposed *amici* brief offers additional insight that is important to the issues presented and outcome of this case and not fully developed in the parties' briefing, and because the Court's decision may further develop California's public trust

doctrine, *Amici* respectfully request that the Court grant the filing of this *amici curiae* brief.

DATED: Jan. 2, 2026

Respectfully submitted,

ENVIRONMENTAL LAW CLINIC
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BRIEF OF *AMICI CURIAE*

INTRODUCTION

The public trust doctrine is a foundational component of California's resource-protection laws. The doctrine is set forth in an extensive body of case law, including from this Court.

California's public trust doctrine ensures that the State considers and, where appropriate, protects natural resources for the People, who are the beneficiaries of the trust. The obligations of the doctrine are clear and straightforward: The State (and its political subdivisions) have a duty to identify and consider the potential impacts of their actions on public-trust-protected resources and avoid or mitigate those impacts to the extent feasible.

In this case, Appellant County of Sonoma ("County") argues that counties do not share in the State's public trust obligations, at least absent an express delegation of that duty from the Legislature. *See* County Opening Brief at 33-43; County Reply Brief at 13-27.

The County is mistaken. The California courts, including the First Appellate District, have consistently held that counties, as political subdivisions of the State, share the State's duty to protect public trust resources. This Court reached that conclusion in *Center for Biological Diversity, Inc. v. FPL Group, Inc.* (2008) 166 Cal. App. 4th 1349 ("*CBD*"), holding that counties are appropriate defendants when injuries to public trust resources stem from a failure to fulfill trust obligations.

CBD's holding—that political subdivisions share the State's public trust duties—has since been cited, and it finds extensive support in a long history of public trust jurisprudence rooted in fundamental state governmental principles and obligations. It would make no sense for the State to be able to circumvent its public-trust obligations by delegating tasks to a subordinate body.

The County also argues that, even if it has a duty to protect public trust resources, it has done so in this case. *See* County Opening Brief at 47-59. The County's position raises the question of what constitutes "full consideration" of public trust resources under California precedent. "Full consideration" requires gathering and analyzing information, balancing public trust uses, and adopting mitigation measures to protect those uses "whenever feasible." *CBD*, 166 Cal. App. 4th at 1366 (quoting *Nat'l Audubon Soc'y v. Sup. Ct.* (1983) 33 Cal. 3d 419, 446).

Here, the County exercised its police power to pass an ordinance regulating water extractions that may affect public-trust-protected resources. This action triggered a corresponding duty to consider and mitigate impacts to public-trust-protected resources. *See, e.g.*, *Light v. State Water Res. Control Bd.* (2014) 226 Cal. App. 4th 1463, 1480-81, 1489 (citing *CBD*, 166 Cal. App. 4th at 1361.) This brief does not answer whether the County satisfied this duty; it simply explains the relevant legal standards.

ARGUMENT

I. It is settled law that counties share in the State's public trust obligations.

A. This Court's precedent holds that counties, as political subdivisions of the State, share the State's duty to protect public trust resources.

The County contends that counties do not share in the State's duty to protect public trust resources absent an express delegation of that duty from the Legislature. *See* County Opening Brief at 33-43. In making this argument, the County criticizes the reasoning of *Environmental Law Foundation v. State Water Resources Control Board* (2018) 26 Cal. App. 5th 844 ("*ELF*"), a decision of the Third Appellate District, which holds that counties, as political subdivisions of the state, must satisfy public trust obligations in exercising their police powers. *ELF*, the County insists, is an "anomaly." County Opening Brief at 43.

The County is mistaken. A long line of cases—including several within this District, as well as several leading up to the *ELF* decision—have concluded that political subdivisions of the state, including counties, are subject to public trust duties. Far from being an "anomaly," *ELF* reflects fundamental local-government principles and long-settled California public trust law.

Per California's Constitution, counties are "legal subdivisions of the State." Cal. Const. art. XI, § 1; *see also Baldwin v. Cnty. of Tehama* (1994) 31 Cal. App. 4th 166, 175-176. California counties have authority, derived from the

Constitution, to make and enforce "all local police, sanitary, and other ordinances and regulations that do not conflict with general laws." Cal. Const., art XI, § 7. This authority includes police power to regulate, including regulating groundwater extractions to prevent unreasonable use and waste, where such regulation does not conflict with any general law of the State. *See, e.g.*, *In re Application of Maas* (1933) 219 Cal. 422, 424-26 (affirming local ordinance restraining waste of groundwater as proper use of general police powers not in conflict with any general law of the State); *accord Baldwin*, 31 Cal. App. 4th at 175-76 (reviewing multiple state statutes and finding that none strip counties of their constitutional police power to regulate groundwater to prevent harm caused by overdraft); *see also Allegretti & Co. v. Cnty. of Imperial* (2006) 138 Cal. App. 4th 1261, 1275 (describing a County's act in conditioning a well permit on certain water use limitations as an act taken under the authority of the County's police powers).

Logically, if counties' constitutional police power extends to preventing unreasonable use and waste, it includes examining and preventing or mitigating uses that would otherwise harm public-trust-protected resources. *See Light*, 226 Cal. App. 4th at 1488-89 (explaining that no one can acquire a vested right to use water unreasonably or in a manner that harms public trust resources; the State has an "affirmative duty" to consider trust impacts when regulating water use and protect trust uses

whenever feasible); Wat. Code § 102 ("All water within the State is the property of the people of the State . . . .").

Thus, just as counties, cities, and other political subdivisions inherently share the State's police powers, they also share the State's duties in exercising those powers—without an express delegation of those duties.[3] *See, e.g.*, *Hitchings v. Del Rio Woods Recreation & Park Dist.* (1976) 55 Cal. App. 3d 560, 572 (finding a park district to be a trustee of the Russian River without express delegation because of its regulatory power); *cf. City of Long Beach v. Lisenby* (1917) 175 Cal. 575, 580 (finding that, where the Legislature had granted by statute broad powers to a city to own and manage its public harbor, the city possessed public trust duties associated with the harbor due to powers necessary to the complete and efficient management and control of that municipal property);

In 2008, this Court affirmed, in *CBD*, that counties share the State's public trust duties. Specifically, the Court held that "a challenge to the permissibility of" conduct affecting public trust resources "must be directed to the agencies that have authorized the conduct." *CBD*, 166 Cal. App 4th at 1367. In that case, the Court explained, the relevant agency was Alameda

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[3] The State Water Resources Control Board has enforcement discretion and can independently take action to protect the public trust with respect to waters covered by the trust. But of course the Board's permissive authority does not obviate a county's duty to consider and mitigate public trust impacts in the first instance.

County, the governmental entity responsible for issuing permits for the use of the wind turbine generators, allegedly without regard for their lethal consequences to wildlife. *Id.*

CBD, which is precedent in this District, forecloses the County's argument that counties do not share in the State's public trust obligations. Yet the County does not cite CBD in its opening brief and barely engages with it in its reply brief.[4] *See generally* County Opening Brief at 33-43; County Reply Brief at 22-23. This passing treatment is particularly puzzling given that *CBD* squarely considers and rejects the argument that the Legislature must specifically delegate the State's public trust obligations to a county for a county to share in them:

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[4] The County's primary legal authorities mostly concern the application of the public trust doctrine to tidelands, to which California received title as trustee when it joined the Union. *See, e.g.*, County Opening Brief at 38 (citing *City of Berkeley v. Sup. Ct.* (1980) 26 Cal. 3d 515, 526-28); *see also* Pub. Res. Code § 6009. The State necessarily has a special relationship with, and special responsibility for, resources to which it holds title. But such cases necessarily occur in a different context than cases concerning usufructuary rights, like this one. Unlike submerged lands, the State does not hold title to water. *See* Cal. Water Code § 102 ("All water within the State is the property of the people of the State, but the right to the use of water may be acquired by appropriation in the manner provided by law."); *id.* § 1001 ("Nothing in this division shall be construed as giving or confirming any right, title, or interest to or in the corpus of any water."); *State of California v. Sup. Ct. (Underwriters at Lloyd's of London)* (2000) 78 Cal. App. 4th 1019, 1025 ("[T]he current state of the law is that . . . an established appropriator[ ] has the right to take and use water from, e.g., a flowing stream, but the flowing stream is not owned.").

> At oral argument plaintiffs' counsel seemed to suggest that the absence of legislation explicitly delegating to the counties the responsibility for enforcing the public trust over birdlife means that the Alameda County Board of Supervisors cannot be held accountable for authorizing conduct unjustifiably detrimental to these natural resources. However, the county, as a subdivision of the state, shares responsibility for protecting our natural resources and may not approve of destructive activities without giving due regard to the preservation of those resources.

Id. at 1370 n.19.[5] Since its publication in 2018, *CBD* has been cited for the proposition the counties must protect public trust resources when exercising their police powers. *See, e.g.*, *ELF*, 26 Cal. App. 5th at 868 (citing *CBD*, 166 Cal. App. 4th n. 19) ("Although the state as sovereign is primarily responsible for the administration of the trust,

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[5] In its reply brief, the County dismisses the relevant portions of *CBD* as dicta because, the County argues, the Court in *CBD* also stated that "[w]e have no occasion here to address the responsibilities that sundry agencies bear in this regard, whether such obligations be imposed by statute or by common law." County Reply Brief at 22 (quoting *CBD*, 166 Cal. App. 4th at 1369.). But read in context, "in this regard" plainly refers to the contours of the "responsibilities" of the State, "through its appropriate subdivisions and agencies, [to] protect and preserve public trust property, including raptors and other wildlife." *CBD*, 166 Cal. App. 4th at 1369. That statement does not undermine the Court's explicit affirmation that Alameda County, "as a subdivision of the state, shares responsibility for protecting our natural resources and may not approve of destructive activities without giving due regard to the preservation of those resources" under the public trust doctrine, even in "the absence of legislation explicitly delegating" that duty. *Id.* at 1370 n.19.

the county, as a subdivision of the state, shares responsibility for administering the trust . . . .").

CBD is dispositive of the County's argument that it has no duty to protect public trust resources. Notably, the County does not indicate who the proper legal defendant for future plaintiffs enforcing public trust duties in Sonoma County (or any other county) would be, if it is not the County. A contrary ruling would create a previously unrecognized and counterintuitive release of the sovereign from its public trust duties to the People simply because the decision or action regarding water diversions or extractions affecting public-trust-protected resources is made by a political subdivision rather than a state agency. Given the intense and direct political pressure that local governments often face to favor development over resource protection, such an outcome has the potential to be as harmful to trust resources as it is unprecedented. By affirming the County's public trust duties in this case, this Court can avoid such a result.

B. Other states with developed public trust doctrines imbue counties with public trust duties.

California's courts are in good company in concluding that counties share in their states' public trust duties.

Consider Hawai'i. In *Kelly v. 1250 Oceanside Partners*, Hawai'i's Supreme Court squarely held that counties share the state's public trust obligations:

> [T]he County's argument that it has 'no attendant obligations' under the public trust doctrine and that the public trust responsibilities arise out of state ownership only is not correct . . . the County has a duty, as a political subdivision of the State, to protect the waters located adjacent to the Property.

(Haw. 2006) 111 Hawai'i 205, 140 P.3d 985, 1004; *see also Mauna Kea Anaina Hou v. Bd. of Land & Natural Res.* (Haw. 2015) 136 Hawai'i 376, 363 P.3d 224, 253 (Pollack, J., concurring) ("[T]he duties under the public trust doctrine bind not only the State and its agencies but also the several counties of this State.").

It is true that Hawai'i's public trust doctrine is enshrined in that state's constitution. Haw. Const. art. XI, § 7. But in other states the public trust doctrine is, as in California, primarily a creature of common law. Like California courts, Oregon courts have concluded that local governments share the state's public trust duties. In *Kramer v. City of Lake Oswego*, the Oregon Supreme Court recognized that a city is a co-trustee of the public trust and therefore shares the state government's duty to protect it. (Or. 2019) 365 Or. 422, 446 P.3d 1, 19 ("Because the state's authority to enact restrictions on the public's access to publicly-owned waters is limited [by the public trust doctrine], the same limitations apply to the authority of a city, to which the constitution has assigned a portion of the authority of the state."). The Court affirmed this holding in *Chernaik v. Brown* (Or. 2020) 367 Or. 143, 475 P.3d 68, 79 ("This court has also expanded the levels of governmental bodies to which the public trust doctrine applies.").

Courts across the country concur that local governments, including counties, bear obligations to protect the public trust. *See, e.g.*, *Robinson Twp. v. Commonwealth of Pennsylvania* (Pa. 2013) 83 A.3d 901, 977 ("With respect to the public trust, Article I, Section 27 of the Pennsylvania Constitution names not the General Assembly but 'the Commonwealth' as trustee . . . . [A]s a result, all existing branches and levels of government derive constitutional duties and obligations with respect to the people."); *Van Ness v. Borough of Deal* (N.J. 1978) 393 A.2d 571, 574 (applying the public trust doctrine to all municipally owned beaches); *Borough of Neptune City v. Borough of Avon-By-The-Sea* (N.J. 1972) 294 A.2d 47, 54 (holding, under New Jersey's common-law public-trust doctrine, that because local governments are creatures of the State, they must abide by the public trust doctrine and grant public access to their beaches); *Grayson v. Town of Huntington* (N.Y. App. Div. 1990) 160 A.D. 2d 835, 836 (holding under New York's common-law public-trust doctrine that local governments cannot convert park uses to non-park uses without legislative approval because local governments hold parks in trust for the public).

All these states, including those with common-law public-trust doctrines like California's, have independently reached the same conclusion as California courts: Local governments, including counties, share their states' public trust obligations, and in common-law public trust regimes, they do so even without express legislative delegations of that duty.

II. Holding California counties responsible for protecting public trust resources, including water, is consistent with California's expansive and evolving public trust doctrine.

As demonstrated above, courts in California and elsewhere have properly concluded that California counties share the State's public trust obligations, without any special legislative delegation of those obligations. This conclusion fits with the fundamental purposes and evolution of California's expansive and evolving public trust doctrine. By making both the State and local governments, including counties, responsible for protecting public trust resources, including waters, California's public trust doctrine ensures that all levels of California's government adequately protect the state's natural resources for this generation and future generations.

A. *CBD* is rooted in in basic public trust principles, which apply to waters and mandate protecting shared public resources.

California courts, in defining California's public trust doctrine's scope and enforcement, tether their analyses to the doctrine's guiding principles. The premise of the public trust doctrine is that "certain interests are so particularly the gifts of nature's bounty that they ought to be reserved for the whole of the populace." *Zack's, Inc. v. City of Sausalito* (2008) 165 Cal. App. 4th 1163, 1176 (quotation marks omitted); *see also* Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention* (1970) 68 Michigan. L. Rev. 471,

484 ("[C]ertain interests are so particularly the gifts of nature's bounty that they ought to be reserved for the whole of the populace.").

Water has been at the heart of the public trust doctrine since its birth. Stemming from Roman, English, and Spanish law,[6] the doctrine has affirmed the fundamental shared public value in water. This doctrine was incorporated into English common law[7] and later announced by the U.S. Supreme Court in the seminal public trust case, *Illinois Central Railroad v. Illinois* (1892) 146 U.S. 387, 452 ("*Illinois Central*").

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[6] *See The Institutes of Justinian*, Lib. II, Tit. I, § 1, at 158 (Thomas Collett Sandars trans., Callaghan & Co., 1st Am. ed. 1876) ("By the law of nature these things are common to mankind—the air, running water, the sea, and consequently the shores of the sea"); *Martin v. Waddell's Lessee* (1842) 41 U.S. 367, 394 ("[T]he prerogative rights of the king to rivers, in which the tide ebbs and flows, to the bays and inlets from the sea, to the soil under the rivers, and to the fisheries, are held by him in trust for the use of all his subjects . . . ."); Jan S. Stevens, *The Public Trust: A Sovereign's Ancient Prerogative Becomes the People's Environmental Right* (1980) 14 U.C. Davis L. Rev. 195, 197 (quoting *Las Siete Partidas* 3.28.6 (Scott trans. & ed. 1932)) ("Every man has a right to use the rivers for commerce and fisheries, to tie up to the banks, and to land cargo and fish on them.").

[7] *See Nat'l Audubon Soc'y v. Sup. Ct.* (1983) 33 Cal. 3d 419, 434 (quoting *Colberg, Inc. v. State of California ex rel. Dep't Pub. Works* (1967) 67 Cal. 2d 408, 416) ("English common law evolved the concept of the public trust, under which the sovereign owns 'all of its navigable waterways and the lands lying beneath them.'").

In *Illinois Central*, the state sought to regain title of thousands of acres of submerged Chicago lakefront, which it had previously granted to the railroad in fee simple. The Court upheld the state's claim, signaling, as California courts and Joseph Sax later put it, that "courts should 'look with considerable skepticism upon any governmental conduct which is calculated either to reallocate that resource to more restricted uses or to subject public uses to the self-interest of private parties.'" *Zack's, Inc.*, 165 Cal. App. 4th at 1176 (quoting Sax, 68 Mich. L. Rev. at 525). *Illinois Central* held in no uncertain terms that "the state holds the title to the lands . . . in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties." *Illinois Central*, 146 U.S. at 452.[8]

Besides being expansive, California's public trust doctrine is protective. The doctrine requires the government to vigorously defend public trust resources to ensure their preservation for future generations. The government usually may not privatize or alienate a public trust resource. *Zack's, Inc.*, 165 Cal. App. 4th at

[8] California's public trust doctrine extends beyond waters themselves to the resources within them. *See People v. Truckee Lumber Co.* (1897) 116 Cal. 367, 400-402 (finding that fish are a public trust right in any waters); *Cal Trout v. State Water Res. Control Bd.* (1989) 207 Cal. App. 3d 585, 630 ("[A] variety of public trust interest pertains to non-navigable streams which sustain a fishery.").

1176; *Nat'l Audubon*, 33 Cal. 3d at 438 ("[T]rusts connected with public property . . . cannot be placed entirely beyond the direction and control of the State."); Richard M. Frank, *Forever Free: Navigability, Inland Waterways, and the Expanding Public Interest* (1983) 16 U.C. Davis L. Rev. 579, 605. Furthermore, the State (and its counties) have an affirmative duty to consider and safeguard these resources for the general welfare. *Nat'l Audubon*, 33 Cal. 3d at 446.

B. California's public trust doctrine applies to non-navigable waters, including groundwater, that impact navigable waters.

Given the importance and complexity of water in California, California courts have interpreted the public trust doctrine to robustly protect the State's navigable rivers, streams, marshlands, tidelands, and lakes. And the courts' recent recognition that public trust protections can apply to extractions of groundwater that harm public-trust-protected resources reflects the purposes and expansiveness of the doctrine. *ELF*, 26 Cal. App. 5th at 860.

In *National Audubon*, the California Supreme Court held that "the public trust doctrine, as recognized and developed in California decisions, protects navigable waters from harm caused by diversion of nonnavigable tributaries." 33 Cal. 3d at 437. This holding was supported by the broad scope of public trust uses that the Court had previously discussed in *Marks v. Whitney* (1971) 6 Cal. 3d 251, 259-60.

Relying on *National Audubon*, California courts have emphasized that the public trust covers impacts to non-navigable waters and groundwater that adversely affect navigable surface waters. California's modern public trust doctrine accordingly prohibits any activity that "destroy[s] navigation *and other public interests*" in navigable surface waters. *Nat'l Audubon*, 33 Cal. 3d at 437 (emphasis added) (quoting Ralph W. Johnson, *Public Trust Protection for Stream Flows and Lake Levels* (1980) 14 U.C. Davis L. Rev. 233, 257-58).

Thus, under California law, when groundwater extraction harms navigable surface waters, the action implicates the public trust doctrine. Because any "activity that harms a navigable waterway . . . violates the public trust," any conduct that reduces a river's flow may be proscribed. *ELF*, 26 Cal. App. 5th at 860. Such "activity" includes any filling or extraction activity that damages the public trust resources. *Nat'l Audubon*, 33 Cal. 3d at 437. In *ELF*, the Third District Court of Appeal held that the Scott River, subject to the trust, had been harmed by the extraction of groundwater. 26 Cal. App. 5th at 859. Even though the river itself remained untouched, the court found that the "pumping of interconnected groundwater in the Scott River system . . . ha[d] an effect on surface flows." *Id.* at 853.[9]

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[9] The relationship between groundwater well extraction and surface water levels has been well-documented. *See, e.g.*, Robert Glennon, *The Perils of Groundwater Pumping* (Fall 2002) 19, no.1 Issues in Science & Tech. ("[W]e have dramatically increased our reliance on groundwater. This increase has dried up rivers and

Accordingly, *ELF* is consistent with California's public trust doctrine. *Id.* at 844. The Third District, in applying *National Audubon* to groundwater, reached the unremarkable conclusion that, just as much as the public trust doctrine extends to non-navigable surface waters that may impact a navigable waterway, so does it extend to groundwater with the same effect. *Id.* at 858. Just as in *National Audubon*, the resource at issue was non-navigable water that was being diverted or extracted. *Id.* at 859. And, just as in *National Audubon*, the activity at issue reduced (or threatened to reduce) the flows of a navigable river. *Id.* at 859. *ELF* is, in short, on solid jurisprudential ground.[10]

III. The public trust doctrine imposes a meaningful standard for compliance.

The County argues that its duty to protect the public trust involves a mere "consider[ation]" of the public trust doctrine and "the feasibility of alternative actions." County Opening Brief at 47; County Reply Brief at 41. Again, the County is mistaken.

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lakes, because there is a hydrologic connection between groundwater and surface water."); Laura E. Condon & Reed M. Maxwell, *Simulating the Sensitivity of Evapotranspiration and Streamflow to Large-Scale Groundwater Depletion* (2019) 5 Science Advances (finding that groundwater pumping in some areas has resulted in a flow reduction of 50 percent in some streams and rivers).

[10] We note that the County does not challenge *ELF*'s holding that the public trust doctrine applies to groundwater extractions where such extractions adversely affect navigable surface waters. *See* County Opening Brief at 17, 19, 33-43.

Although the public trust doctrine's procedural requirements are flexible, a trustee must carefully evaluate a proposed activity's potential harm to public trust resources, balance public interests, and mitigate harm wherever feasible.

Before approving a use of public trust resources—at least a use that may adversely affect such resources—the State (including its political subdivisions) must engage in "full consideration of the state's public interest." *Zack's, Inc.*, 165 Cal. App. 4th at 1188; *see also id.* at 1188-89 ("Any action which will adversely affect traditional public rights in trust lands is a matter of general public interest and should therefore be made only if there has been full consideration of the state's public interest in the matter; such actions should not be taken in some fragmentary and publicly invisible way.").

"Full consideration" has never been defined, and California courts have never imposed a specific "procedural matrix." *Id.*; *see also Citizens for East Shore Parks v. State Lands Comm'n* (2011) 202 Cal. App. 4th 549, 576 (holding that the obligation to "consider" public trust uses does not impose particular procedural requirements). But the absence of a one-size-fits-all approach does not vest trustees, including the County, with complete discretion to decide how to satisfy their public trust obligations. And "full consideration" is especially important where, as here, the government's conduct "is calculated *either* to reallocate that resource to more restricted uses *or* to subject public uses to the

self-interest of private parties." *ELF*, 26 Cal. App. 5th at 857 (quoting *Zack's, Inc.*, 165 Cal. App. 4th at 1176).

In the context of this case, "full consideration" means that a trustee like the County should undertake the following steps: (1) investigate and evaluate the effects of groundwater extraction on navigable surface waters of granting well permits; (2) weigh that use against the benefits of foregoing that use; and (3) if the use (i.e., granting well permits) is approved, identify measures to avoid or mitigate the effects of doing so. In the end, the County should be able to determine that its action—approving groundwater-well permits—will not unreasonably burden public trust interests. *CBD*, 166 Cal. App. 4th at 1371.

These steps find firm footing in the case law. First, numerous cases require the County to gather data regarding, and analyze the effects of, a proposed use of a public trust resource. *See, e.g.*, *Nat'l Audubon*, 33 Cal. 3d at 448 (duty to consider the financial and environmental impact of obtaining water from a source other than the Mono Basin); *San Francisco Baykeeper, Inc.*, 242 Cal. App. 4th at 202 (duty to determine whether a project would deplete a public trust resource); *Siskiyou Cnty. Farm Bureau v. Dep't of Fish & Wildlife* (2015) 237 Cal. App. 4th 411, 444-47 (duty to consider the impact of severe drought on habitat health and fish mortality); *United States v. State Water Res. Control Bd.* (1986) 182 Cal. App. 3d 82, 149 (duty to determine the extent of positive and negative impacts on public trust interests when looking at alternatives). This inquiry may

overlap with environmental review under the California Environmental Quality Act, but it is not necessarily co-extensive with it. *See Nat'l Audubon*, 33 Cal. 3d at n.27 (noting that CEQA imposes a similar obligation); *San Francisco Baykeeper v. State Lands Comm'n* (2015) 242 Cal. App. 4th 202, 242 (rejecting argument that the State necessarily "satisfies the public trust doctrine by complying with CEQA").

Second, the County should weigh the benefits of a proposed use against the benefits of foregoing the use. Here, that means the County should balance the impacts of groundwater extraction on navigable waterways against other public uses of those waterways. *See CBD*, 166 Cal. App. 4th at 1366 (describing balancing as the protection of trust resources with the accommodation of other legitimate public-trust interests). At the core of this inquiry is the question of whether the proposed use is "consistent with the public interest." *State Water Res. Control Bd. Cases* (2006) 136 Cal. App. 4th 674, 778; *see also CBD*, 166 Cal. App. 4th at 1358 (considering whether conditions would be materially detrimental to the public welfare); *San Francisco Baykeeper, Inc. v. State Lands Comm'n* (2015) 242 Cal. App. 4th 202, 236-37 (assessing whether evidence in the record was sufficient to establish that the activities authorized would not substantially interfere with the quintessential public trust uses of navigation or fishery); *id.* at 240 (discussing whether an agency implicitly considers its own obligations under the public trust doctrine).

Third, the County should evaluate alternative methods or mitigation measures available to avoid or reduce the adverse effects of the proposed use on public trust resources. *Nat'l Audubon*, 33 Cal. 3d at 426 ("[B]efore state courts and agencies approve water diversions they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests."); *see also Light*, 226 Cal. App. 4th at 1475 (discussing alternative methods for reducing the demand on streamflows); *CBD*, 166 Cal. App. 4th at 1357 (determining whether permitting conditions are available to reduce avian mortality).

In sum, the County, like any other entity acting as a trustee, has a legal duty to "protect public trust uses whenever feasible." *Nat'l Audubon*, 33 Cal. 3d at 446. That duty requires compliance with the standards established by California courts.

CONCLUSION

This Court and other courts have already asked and answered whether counties have a duty to protect public trust resources. They do. Moreover, California courts have made clear that the public trust doctrine imposes flexible but meaningful standards for complying with that duty. The trial court's understanding of the relevant legal principles is on all fours with California's public trust jurisprudence.

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Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to California Rule of Court 8.240(c), I certify that the text of this brief consists of 5,034 words, not including the caption, tables, signature block, and required certifications, as counted by Microsoft Word, the computer processing program used to generate this brief.

DATED: Jan. 2, 2026 *<u>/s/ Matthew J. Sanders</u>*
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