NO. C067839

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, AND SIERRA WATCH

Petitioners and Appellants,

v.

COUNTY OF LASSEN, LASSEN COUNTY BOARD OF SUPERVISORS, AND DOES 1-19,

Defendants and Respondents.

DYER MANAGEMENT, LLC AND DOES 20-40,

Real Party in Interest

Appeal From a Judgment Entered in Favor of Respondent and an Order Denying Petitioners' Motion to Strike Costs
Lassen County Superior Court Case No. 45938
Honorable F. Donald Sokol

APPLICATION OF SIERRA NEVADA ALLIANCE, CALIFORNIA NATIVE PLANT SOCIETY, CALIFORNIA TROUT, CENTER FOR BIOLOGICAL DIVERSITY, DEFENDERS OF WILDLIFE, EBBETTS PASS FOREST WATCH, FOOTHILL CONSERVANCY, FRIENDS OF LASSEN FOREST, HIGH SIERRA RURAL ALLIANCE, LEAGUE TO SAVE LAKE TAHOE, MOUNTAIN AREA PRESERVATION FOUNDATION, PLANNING & CONSERVATION LEAGUE, PLUMAS AUDUBON SOCIETY, SOUTH YUBA RIVER CITIZENS LEAGUE, TROUT UNLIMITED FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANTS MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, AND SIERRA WATCH AND BRIEF OF *AMICI CURIAE*

Deborah A. Sivas, CA Bar No. 135446
Leah J. Russin, CA Bar No. 225336
Margaret Brennan, CA Bar Student Cert. No. 29177
Ben Brysacz, CA Bar Student Cert. No. 29726
Max Friedman, CA Bar Student Cert. No. 29728
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426

Attorneys for Applicant-Amici

NO. C067839

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, AND SIERRA WATCH

Petitioners and Appellants,

v.

COUNTY OF LASSEN, LASSEN COUNTY BOARD OF SUPERVISORS, AND DOES 1-19,

Defendants and Respondents.

DYER MANAGEMENT, LLC AND DOES 20-40,

Real Party in Interest

Appeal From a Judgment Entered in Favor of Respondent and
an Order Denying Petitioners' Motion to Strike Costs
Lassen County Superior Court Case No. 45938
Honorable F. Donald Sokol

APPLICATION OF SIERRA NEVADA ALLIANCE, CALIFORNIA NATIVE PLANT SOCIETY, CALIFORNIA TROUT, CENTER FOR BIOLOGICAL DIVERSITY, DEFENDERS OF WILDLIFE, EBBETTS PASS FOREST WATCH, FOOTHILL CONSERVANCY, FRIENDS OF LASSEN FOREST, HIGH SIERRA RURAL ALLIANCE, LEAGUE TO SAVE LAKE TAHOE, MOUNTAIN AREA PRESERVATION FOUNDATION, PLANNING & CONSERVATION LEAGUE, PLUMAS AUDUBON SOCIETY, SOUTH YUBA RIVER CITIZENS LEAGUE, TROUT UNLIMITED FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANTS MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, AND SIERRA WATCH

Deborah A. Sivas, CA Bar No. 135446
Leah J. Russin, CA Bar No. 225336
Margaret Brennan, CA Bar Student Cert. No. 29177
Ben Brysacz, CA Bar Student Cert. No. 29726
Max Friedman, CA Bar Student Cert. No. 29728
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426

Attorneys for Applicant-Amici

Pursuant to California Rule of Court 8.200(c), the environmental organizations listed below respectfully request permission to file the attached Brief of *Amici Curiae* in Support of Appellants Mountain Meadows Conservancy, Sierra Club, and Sierra Watch. This application is timely made within 14 days of filing of Appellants' reply brief on the merits.

Interests of Potential *Amici*

Amicus Sierra Nevada Alliance ("Alliance") is a regional coalition of more than eighty grassroots groups, spanning the entire 400-mile long Sierra Nevada, working to protect and restore the natural and community values of California's most cherished mountain range. The Alliance has two major programs working to achieve this vision: the Community Group Support Program, which strengthens the work of grassroots member groups; and the Resource Protection and Restoration Program, which protects and restores Sierra wildlife habitat, viewsheds, recreational areas, working landscapes and open spaces throughout the region. Alliance members use and enjoy the natural and scenic resources of the Sierra region.

Amicus California Native Plant Society ("CNPS") is a statewide non-profit conservation organization. CNPS works to protect California's native plant heritage and preserve it for future generations. Its members include both professional and lay botanists and the interested public. It

promotes native plant appreciation, research, education, and conservation through its five statewide programs and 33 regional chapters in California. CNPS members use publicly accessible portions of the Sierra region for recreational, wildlife viewing, scientific, and educational purposes.

Amicus California Trout, Inc. ("CalTrout") is a nonprofit corporation organization. Founded in 1970, CalTrout is a statewide conservation organization supported by recreational anglers and others, with approximately 7,000 individual members and 50 affiliate local angling clubs representing approximately another 4,000 persons. The mission of CalTrout is to protect and restore wild trout, steelhead and salmon and their waters throughout California. CalTrout members recreate and fish throughout the Sierra Nevada.

Amicus Center for Biological Diversity ("CBD") is a non-profit, public interest corporation with more than 42,000 members and offices in Joshua Tree, San Francisco, and Los Angeles, California; as well as offices in Arizona, New Mexico, Oregon, Vermont, and Washington, D.C. CBD and its members are dedicated to protecting diverse native species and habitats through science, policy, education, and environmental law. CBD's Climate Law Institute works to reduce United States greenhouse gas emissions and promote sound conservation strategies in order to protect these interests. CBD members use publicly accessible portions of the

Sierra region for recreational, wildlife viewing, scientific, and educational purposes.

Amicus Defenders of Wildlife ("Defenders") is dedicated to the protection of all native wild animals and plants in their natural communities. Defenders focuses its programs on what scientists consider two of the most serious environmental threats to the planet: the accelerating rate of extinction of species and the associated loss of biological diversity, and habitat alteration and destruction. Defenders has more than 500,000 members and supporters nationwide, 120,000 of whom are in California. Members of Defenders use publicly accessible portions of the Sierra region for recreational, wildlife viewing, scientific, and educational purposes.

Amicus Ebbetts Pass Forest Watch ("EPFW") is a nonprofit corporation whose mission is to protect, promote, and restore healthy forests and watersheds to maintain the quality of life in the Northern Sierra. EPFW supports responsible forest management and logging methods. Members of EPFW use and enjoy the natural and scenic resources of the Sierra region.

Amicus Foothill Conservancy ("FC") is a non-profit organization committed to protecting, restoring, and maintaining the natural and human environment in Amador and Calaveras counties for the benefit of current and future generations. FC searches for community-based solutions to local problems in the foothills of the Sierra Nevada, including efforts to

preserve the rural character and scenic quality of the area, maintaining the natural diversity and habitat of native plants and animals, and ensuring that development is ecologically, economically, and socially sustainable.

Amicus Friends of Lassen Forest ("FLF") is an organization of citizens dedicated to preserving forestlands in Lassen County for future generations. It is organized as a California nonprofit public benefit corporation. FLF seeks to preserve Lassen County's timberlands for their productive, ecological, and recreational values. Members and supporters of FLF use and enjoy the natural and scenic resources of Lassen County's forests, as well as the recreational opportunities there.

Amicus High Sierra Rural Alliance ("HSRA") is a non-profit, advocacy based organization committed to protecting the natural and historical resources and the rural quality of the Sierra Valley region. Members of the HSRA are engaged in the study, protection, enhancement, conservation and preservation of agricultural and forestry lands and of wildlife and natural habitats in the region.

Amicus League to Save Lake Tahoe ("League") is the leading environmental organization advocating for the protection and restoration of Lake Tahoe. The League is a private nonprofit organization with thousands of members from throughout the United States. Since 1957, the League has worked to protect the public interest in the restoration and preservation of Lake Tahoe and the Lake Tahoe Basin, an area surrounding the Lake and

designated for protection under state and federal law. Members of the League use and enjoy the natural, recreational and scenic resources of the Sierra region.

Amicus Mountain Area Preservation Foundation ("MAPF") is a California nonprofit corporation whose mission is to preserve the community character and natural environment of the Truckee region for present and future generations. Members of MAPF use and enjoy the natural and scenic resources of the Sierra region.

Amicus Planning and Conservation League ("PCL") was founded in 1965 as a nonprofit, statewide alliance of thousands of citizens and more than 120 conservation organizations united to protect the quality of California's environment through legislative and administrative action. PCL is committed to work to protect and restore California's natural environment, and to promote and defend the public health and safety of the people of California through legislative and administrative action, and through litigation when appropriate. Members of PCL use and enjoy the natural and scenic resources of the Sierra region.

Amicus Plumas Audubon Society ("Plumas Audubon") is a nonprofit organization whose mission is to promote understanding, appreciation, and protection of the biodiversity of the Feather River Region through education, research, and the restoration and conservation of natural ecosystems. The organization is active with wildlife conservation and

education throughout Plumas and Lassen Counties, including environmental education in schools and on-the-ground projects. Members and supporters of Plumas Audubon use and enjoy the natural and scenic resources of the Sierra region.

Amicus South Yuba River Citizens League ("SYRCL"), which was founded in 1983, is the preeminent voice for the protection and restoration of the Yuba River watershed. With over 3,500 members and volunteers, SYRCL seeks to unite the community to restore creeks and rivers, restore wild salmon populations, and inspire and organize people—from the Yuba's source to the sea. Members and supporters of SYRCL use and enjoy the natural and scenic resources of the Sierra.

Amicus Trout Unlimited ("TU") is the nation's largest coldwater fisheries conservation group, organized in 1959 as a non-profit corporation. TU has approximately 150,000 members nationwide, and is dedicated to protecting, conserving, and restoring North America's trout and salmon resources. In California, TU has more than 10,000 members. TU members use and enjoy the creeks and lakes in the Sierra region for recreational and aesthetic purposes, including, but not limited to fishing, and viewing and enjoyment of the outdoors. TU members, along with the general public, have significant recreational interests attached to healthy rivers, vital trout populations, and productive habitat in the watershed.

The Proposed *Amici* Brief

Amici's proposed brief brings an important perspective that is not represented by the present parties. The parties focus their attention on the procedural inadequacies of Lassen County's Environmental Impact Report for the Dyer Mountain project, providing relatively short treatment of the special vulnerability of the Sierra Nevada to climate change. They also address the implications of the trial court's decision to award costs to the County only briefly. As a constellation of small and large groups dedicated to environmental protection in the Sierra and throughout California, *Amici* are uniquely able to explain the broader legal and scientific consequences of this case. Amici believe that their proposed brief on these issues will help this Court understand the ecological context in which the proposed the development project is set. Specifically, *Amici* can highlight the fundamental inadequacy of Lassen County's Environmental Impact Report in such a vulnerable region. Moreover, *Amici* can offer a special emphasis on the climate change issues present by this case. Finally, *Amici* offer a more extensive briefing of the CEQA cost award question raised by this appeal. This issue is of particular importance to *Amici*, as the allocation of costs powerfully influences the ability of these groups to bring CEQA cases and to engage in citizen-enforcement of environmental laws generally.

No Participation by Parties Other than the Potential *Amici*

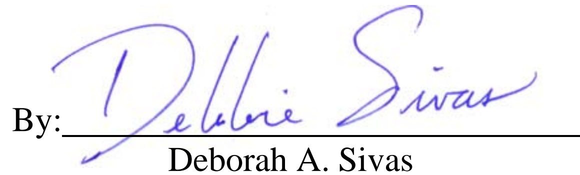
No party or counsel of record authored this brief or contributed funds for the writing of this brief, in whole or in part.

Accordingly, *Amici* respectfully request that the Court accept the accompanying Amici curiae brief for filing in this case.

Dated: May 17, 2012

Respectfully submitted,

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School



By:________________________________
Deborah A. Sivas

Attorneys for Amici Curiae

NO. C067839

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, AND SIERRA WATCH

Petitioners and Appellants,

v.

COUNTY OF LASSEN, LASSEN COUNTY BOARD OF SUPERVISORS, AND DOES 1-19,

Defendants and Respondents.

DYER MANAGEMENT, LLC AND DOES 20-40,

Real Party in Interest

Appeal From a Judgment Entered in Favor of Respondent and
an Order Denying Petitioners' Motion to Strike Costs
Lassen County Superior Court Case No. 45938
Honorable F. Donald Sokol

BRIEF OF *AMICI CURIAE* IN SUPPORT OF APPELLANTS MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, AND SIERRA WATCH

Deborah A. Sivas, CA Bar No. 135446
Leah J. Russin, CA Bar No. 225336
Margaret Brennan, CA Bar Student Cert. No. 29177
Ben Brysacz, CA Bar Student Cert. No. 29726
Max Friedman, CA Bar Student Cert. No. 29728
ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School
559 Nathan Abbott Way
Stanford, California 94305-8610
Telephone: (650) 723-0325
Facsimile: (650) 723-4426

Attorneys for Applicant-Amici

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 3

A. The Sierra Nevada is a Precious Resource upon which California Depends 4

B. The Sierra Nevada Is Especially Vulnerable to Development Pressures and Climate Change Impacts 6

1. Development Pressures Threaten the Sierra Nevada 6

2. Climate Change Will Impact the Sierra Nevada 7

III. ARGUMENT 11

A. The County's Superficial CEQA Analysis Failed to Account for Foreseeable Effects of the Proposed Project 11

1. The County Should Have Prepared a Project EIR for the Dyer Mountain Resort, but Regardless of the Label Attached to Its EIR, the County Must Analyze the Decision It Approved 12

2. In Applying CEQA to the Facts of this Case, the Court Should Look for Further Guidance to the National Environmental Policy Act, Which Similarly Requires Detailed Environmental Review at the Point of Project Approval or Commitment 17

B. The Trial Court's Award of Costs to the County for Preparation of the Record Was Improper under Both CEQA and the Public Records Act 22

1. Factual and Statutory Background 23

2. The Public Records Act Prohibits Respondents from Demanding Indirect Costs for the Collection and Delivery of Documents 25

a. The Language and Purpose of the Public Records Act and Its Federal Counterpart Support the Unimpeded Disclosure of Documents, Including for Use in Litigation 27

b. The Public Records Act Allows Only for Recovery of the Direct Costs of Duplication 30

c. Nothing in CEQA Creates an Exception to the General Rule that Indirect Costs Are Not Recoverable under the Public Record Act 31

3. The Language and Structure of CEQA Section 21167.6 Militate Against Requiring Costs for Document Production or for Review and Certification of the Record 33

a. CEQA Prohibits the Entire Cost Award 33

b. Section 21167.6(f) Is the Basis for the *St. Vincent's* Decision but Is Not Implicated in This Case 36

c. The Structure of CEQA Section 21167.6 Dictates that the Party with the Best Ability to Minimize Costs Must Bear that Cost 38

4. Allowing Agencies to Circumvent CEQA Would Harm the Ability of Public Interest Organizations to Realize the Act's Purpose 40

IV. CONCLUSION 42

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

‘Ilio’ulaokalani Coal. v. Rumsfeld
464 F.3d 1083 (9th Cir. 2006) 18

California v. Block
690 F.2d 753 (9th Cir. 1982) 21

Duncan v. Walker
533 U.S. 167 (2001)... 33

Fund for Animals v. Kempthorne
538 F.3d 124 (2d Cir. 2008) 18

Kern v. U.S. Bureau of Land Mgmt.
284 F.3d 1062 (9th Cir. 2002) 20, 21

Metcalf v. Daley
214 F.3d 1135 (9th Cir. 2000) 19, 21

Pit River Tribe v. U.S. Forest Service
469 F.3d 768 (9th Cir. 2006) 19, 21

Save the Yaak Comm. v. Block
840 F.2d 714 (9th Cir. 1988) 19, 21

Thomas v. Peterson
753 F.2d 754 (9th Cir. 1985) 20

U.S. Dept. of Justice v. Reporters Comm. for Freedom of Press
489 U.S. 749 (1989)... 28

CALIFORNIA CASES

Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners
18 Cal. App. 4th 729 (1993) 15

Black Historical Soc’y v. City of San Diego
134 Cal. App. 4th 670 (2005) 38

Citizens for Quality Growth v. City of Mount Shasta
198 Cal. App. 3d 433 (1988) 38

City of Hemet v. Superior Court
37 Cal. App. 4th 1411 (1995) 28, 32

Cnty. of Los Angeles v. Superior Court (“Axelrad”)
82 Cal. App. 4th 819 (2000) 27, 28

Fairley v. Superior Court
66 Cal. App. 4th 1414 (1998) 32

Hayward Area Planning Ass’n v. City of Hayward
128 Cal. App. 4th 176 (2005) .... passim

Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.
47 Cal.3d 376 (1988) 13

Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.
6 Cal. 4th 1112 (1993) 15, 17

North County Parents Org. v. Dep’t of Educ.
23 Cal. App. 4th 144 (1994) 30

People v. Avanessian
76 Cal. App. 4th 635 (1999) 34

Rogers v. Superior Court
19 Cal. App. 4th 469 (1993) 26

Save Tara v. City of W. Hollywood
45 Cal. 4th 116 (2008) 15

St. Vincent’s Sch. for Boys v. City of San Rafael
161 Cal. App 4th 989 (2008) .... passim

Stanislaus Natural Heritage Project v. Cnty. of Stanislaus
48 Cal. App. 4th 182 (1996) 15, 17

State Bd. of Equalization v. Superior Court
10 Cal. App. 4th 1177 (1992) 27, 28

Wildlife Alive v. Chickering
18 Cal.3d 190 (1976) 18

FEDERAL STATUTES

5 U.S.C. § 552 et seq. 28, 29

42 U.S.C. 4321 et seq. 17

CALIFORNIA CONSTITUTION

Cal. Const. Article I, § 3(b) 30, 32

CALIFORNIA STATUTES

Cal. Code Civ. Proc. § 1033.5 25

Cal. Code Civ. Proc. § 1094.6(c) 34

Cal. Gov't Code § 6250 .... 25, 26

Cal. Gov't Code § 6253(b) 30

Cal. Gov't Code §§ 6254-55 .... 31, 32

Cal. Gov't Code § 6257.5 27

Cal. Pub. Res. Code § 21000 13

Cal. Pub. Res. Code § 21002.1 13

Cal. Pub. Res. Code § 21068.5 .... 12, 13, 14

Cal. Pub. Res. Code § 21081.6(a) 35

Cal. Pub. Res. Code § 21167.6 .... passim

Cal. Pub. Res. Code § 33301(d) 5

FEDERAL REGULATIONS

40 C.F.R. § 1502.4 19

40 C.F.R. § 1502.20 18

CALIFORNIA REGULATIONS

14 C.C.R. § 15151 13

14 C.C.R. § 15152(b) 14

14 C.C.R. § 15168(b) 14

OTHER AUTHORITIES

Elisa Barbour & Lara M. Kueppers, Conservation and Management of Ecological Systems in a Changing California, Climatic Change 135, 137 (2012), http://www.springerlink.com/content/y13m453261031575/fulltext.pdf 6

Cal. Dep't of Fish and Game, California Wildlife: Conservation Challenges 306 (2007), http://www.dfg.ca.gov/wildlife/WAP/docs/report/ full-report.pdf 6

Gian-Reto Walther et al., Ecological Responses to Recent Climate Change, Nature 389 (Mar. 2002), http://eebweb.arizona.edu/courses/ecol206/walther%20et%20al%20nature%202002.pdf 9

California Environmental Protection Agency, Climate Action Team Report to Governor Schwarzenegger and the Legislature, 28 (March 2006), http://www.climatechange.ca.gov/climate_action_team/reports/2006report/2006-04-03_FINAL_CAT_REPORT.PDF 8

James M. Lenihan et al., Response of Vegetation Distribution, Ecosystem Productivity, and Fire to Climate Change Scenarios in California, Climatic Change S215, S216 (2008), http://www.fs.fed.us/pnw/pubs/journals/pnw_2008_lenihan002.pdf 5

Kusler et al., Wetlands and climate change: scientific knowledge and management options, Institute for Wetland Science and Public Policy (Association of Wetland Managers, 1999) 10

Laura Peterson, Researchers Track Significant Decline in American Martens, The Natural Resources Weekly Report (Oct. 27, 2011) 9

Linda Mazur & Carmen Milanes, Cal. EPA, Indicators of Climate Change in California 96 (Apr. 2009), http://oehha.ca.gov/multimedia/epic/pdf/ClimateChangeIndicatorsApril2009.pdf 8

Sierra Nevada Conservancy, Strategic Plan 4 (Sept. 2011), http://www.sierranevada.ca.gov/ aboutus/docs/StratPlan2011.pdf/ 4

I. INTRODUCTION

In the high country between the northern terminus of the Sierra Nevada and the southern edge of the Cascade Range, Dyer Mountain rises to an elevation of 7,476 feet. Its peak along Keddie Ridge sits below tree-line and is flanked by two reservoirs near the headwaters of the Hamilton Branch of the Feather River. The forested upper reaches of Dyer Mountain lie within the Lassen National Forest, where the U.S. Forest Service has designated the nearby Homer/Deerheart Special Interest Area to protect its unique scenic, cultural, and recreational values. The Dyer Mountain development project at the center of this case threatens to destroy the area's resource values by clearing forest lands to make way for a sprawling resort that will greatly increase the existing population of Lassen County.

Amici curiae are a diverse constellation of local, regional, and national environmental organizations working to protect the long-term sustainability of the Sierra Nevada and to conserve the region's ecological resources for the enjoyment of future generations. All of these organizations have long operated in this area and bring a wealth of knowledge about the delicate ecology of the region and the acute threats facing the Sierra. Some of them are small, working in small communities in the northern Sierra. Others are larger, working in the Sierra broadly, or as national groups with deep scientific expertise. Each of them has an enduring interest in the proper application of the state's bedrock

environmental law, the California Environmental Quality Act ("CEQA"), to the facts of this case. Collectively, *Amici* offer an important perspective on the significant ecological and legal implications of the decision below.

The trial court's deeply flawed reading of the applicable law eviscerates CEQA in two fundamental ways. First, by allowing the County to vest development rights for an enormous residential and commercial development project before evaluating and mitigating the project's impacts, the trial court undermined the "look before you leap" principle at the core of CEQA. Second, by awarding the lead agency fees for staff time to produce public documents under the Public Records Act and for the costs of certifying the CEQA administrative record that petitioners properly elected to prepare, the trial court undermined the Legislature's intent that resource-limited citizen enforcers may themselves prepare the record as a cost-saving measure. Both of these legal errors have significant adverse implications beyond the particular circumstances of this case. Accordingly, *Amici* urge the Court to reverse the decision below and remand the matter to the trial court for entry of judgment in petitioners' favor.

II. BACKGROUND[1]

Dyer Mountain lies in the Northern Sierra Nevada, rising from the southern shore of Mountain Meadows Reservoir. Administrative Record ("AR") 13:4345-47; 14:4716. This sparsely populated region, known for its unspoiled beauty, is home to a diverse array of species – including the American bald eagle – and to thousands of acres of forest and riparian land. AR 14:4872-83. Through its approval of a Development Agreement for the Dyer Mountain Resort project, Lassen County – with an existing population of roughly 34,000 (AR 13:4525) – proposes to transform this pristine landscape into a year-round resort that will ultimately accommodate more than 17,000 people. The project, promoted as a place where residents and visitors can enjoy the Sierra Nevada's stunning natural amenities, explicitly seeks to take advantage of the Sierra's valuable landscape and resources. See AR 21:7333, 7406, 7412, and 7421. It is thus all the more important that the EIR adequately identify and evaluate the project's impact on the Sierra Nevada, which is a resource of immeasurable value to the people of California.

---

[1] Throughout this section of the brief, *Amici* provide information, based on their expertise in this area, derived from a number of scientific articles and state-sponsored studies, all of which are publicly available. We include these citations solely to provide additional context for the Court as it considers these significant issues raised by this case. None of this information is necessary for the Court's resolution of the factual and legal issues presented by the appeal, and *Amici* do not offer them for that purpose.

A. The Sierra Nevada is a Precious Resource upon which California Depends.

The Sierra Nevada mountain range, which spans almost 400 miles along the eastern edge of California, is one of the most beautiful and dramatic physical features of the United States. Dubbed the "Range of Light" by Sierra Club founder John Muir, the Sierra is home to such breathtaking amenities as Lake Tahoe, Yosemite Valley, and groves of Giant Sequoia. These destinations and others draw tens of millions of visitors to the Sierra each year. The Sierra provides visitors with countless sightseeing and other recreational opportunities, including skiing, snowboarding, camping, boating, fishing, off-roading, hiking, and climbing. Tourists who take advantage of these unique recreational opportunities contribute not only to the state's economy, but also to over 200 local communities and their 600,000 residents. Sierra Nevada Conservancy, Strategic Plan 4 (Sept. 2011), http://www.sierranevada.ca.gov/ aboutus/docs/StratPlan2011.pdf/ view.

Recognizing the importance of protecting one of the state's most precious resources, the California Legislature created the Sierra Nevada Conservancy in 2004. The Conservancy's enacting legislation embodies the Legislature's understanding that environmental preservation and the protection, restoration, and conservation of the Sierra's physical, cultural, historical, and living resources are closely linked to the economic well-

being of the region's local communities. Cal. Pub. Res. Code § 33301(d). In particular, the Legislature recognized the Sierra's status as a globally significant resource, id. § 33301(a), and the state's principal watershed, supplying up to two-thirds of California's developed water supply. Id. § 33301(c). During the dry spring and summer months, California water users depend on snowpack runoff, which is stored in reservoirs and groundwater basins for year-round domestic, agricultural, and industrial use. AR 30:11082. The Sierra snowmelt provides water for drinking, irrigation, power, commercial and sport fishing, and a multi-million dollar recreation industry.

The Sierra also provides critical habitat for unique biological resources. California is the most biologically diverse area in the country, and the Sierra hosts 60 percent of the state's wildlife species and almost half of its native plant species. Sierra Nevada Conservancy, supra, at 4. Many of these species are unique to the Sierra. See James M. Lenihan et al., Response of Vegetation Distribution, Ecosystem Productivity, and Fire to Climate Change Scenarios in California, Climatic Change S215, S216 (2008), http://www.fs.fed.us/pnw/pubs/journals/pnw_2008_lenihan002.pdf; see also AR 10:3318-19. But after more than a century of intensive logging, mining, railroad building, development, fire suppression, and livestock grazing, only a fraction of the natural habitat of the Sierra remains intact. See Elisa Barbour & Lara M. Kueppers, Conservation and

Management of Ecological Systems in a Changing California, Climatic Change 135, 137 (2012), http://www.springerlink.com/content/y13m453261031575/fulltext.pdf; see also AR 29:10472-73. There are a number of endangered and threatened plant and animal species in the Sierra, and an even greater number of sensitive species.

B. The Sierra Nevada Is Especially Vulnerable to Development Pressures and Climate Change Impacts.

The Sierra is a regional and global treasure that provides irreplaceable benefits to California. A number of phenomena, however, threaten the biological wealth and diversity of the Sierra. The region is particularly susceptible to the pressures of development and to the effects of climate change.

1. Development Pressures Threaten the Sierra Nevada.

Human population growth and development have caused significant habitat loss and species decline in the Sierra over the last century. Between 1970 and 1990, the population in the Sierra increased by 130 percent, fueling single-home and small commercial developments. See David Bunn et al., Cal. Dep't of Fish and Game, California Wildlife: Conservation Challenges 306 (2007), http://www.dfg.ca.gov/wildlife/WAP/docs/report/full-report.pdf. New development, especially without proper planning and mitigation, may cause serious harm to the region's habitat and wildlife.

When development expands into forested areas, it fragments and replaces wildlife habitat. This fragmentation frequently hinders the ability of mammals, birds, and fish to migrate to higher or lower elevations, jeopardizing their ability to survive. AR 10:3320-21; 29:10472-73.

In addition to the harm wreaked on animal life, development projects also require new water diversions, which reduce the amount of water available for aquatic ecosystems and create new sources of pollution. AR 10:3321. These projects also are often accompanied by the introduction of invasive plant species. Finally, development expansions require increased fire suppression, which prevents the regeneration of fire-dependent vegetation and alters plant communities. AR 30:11054-55. Given the severe impact of new development, especially on the forested and largely unpopulated regions of the Sierra Nevada, proper regional planning and environmental review of new development projects are thus especially critical.

2. Climate Change Will Impact the Sierra Nevada.

Anthropogenic greenhouse gas emissions are significantly affecting the Earth's climate, posing a real threat to communities around the globe. Some of the largest temperature increases and precipitation decreases are projected for winters in the Sierra. AR 30:11077-83; California Environmental Protection Agency, Climate Action Team Report to Governor Schwarzenegger and the Legislature, 28 (March 2006),

http://www.climatechange.ca.gov/climate_action_team/reports/2006report/2006-04-03_FINAL_CAT_REPORT.PDF ("Climate Action Team Report").[2] Lake Tahoe is warming at almost twice the rate of the world's oceans. See Linda Mazur & Carmen Milanes, Cal. EPA, Indicators of Climate Change in California 96 (Apr. 2009), http://oehha.ca.gov/multimedia/epic/pdf/ClimateChangeIndicatorsApril2009.pdf. Climate change will have dramatic impacts on the Sierra's rich biodiversity. Much of the scientific work predicting these impacts existed and was available to the County prior to 2007, when it certified the EIR.

The cumulative effects of climate change will cause further major impacts on the Sierra's biodiversity and species distribution. Studies project that climate change will increase some types of vegetation cover and decrease others.[3] A warmer climate may favor invasive species at the expense of endemic flora. AR 30:11053. This change in plant-life will have a corresponding impact on animal species. Precise impacts on specific species are harder to predict, but research suggests that future temperature and precipitation changes will place many plant and animal

---

[2] Appellants expressly incorporated the entire Climate Action Team Report into their July 27, 2007 comment letter by reference. AR 29:10445 (footnote 12). It is thus part of the Administrative Record in this litigation.

[3] For instance, alpine forests at high elevations are likely to be replaced by other vegetation types, evergreen coniferous forests are projected to decline, and grasslands are expected to expand at the expense of shrub-land and woodland ecosystems. AR 30:11053.

species at risk of extinction due to a loss of climatically suitable habitat. See AR 29:10463; Climate Action Team Report at 39.

Some species are already in jeopardy. Migratory songbirds are at risk if warming temperatures force a mismatch between the timing of their "life history" events (like breeding and brooding) and their habitat and food sources. See Gian-Reto Walther et al., Ecological Responses to Recent Climate Change, Nature 389 (Mar. 2002), http://eebweb.arizona.edu/courses/ecol206/walther%20et%20al%20nature%202002.pdf . Species that live primarily in the mountaintop ecosystems are especially at risk. For instance, the American marten, a mink-like mammal once ubiquitous in the Sierra's high elevation forests but increasingly rare as a result of habitat loss and fragmentation, will be unable to move any higher to escape predicted rises in temperatures. Laura Peterson, Researchers Track Significant Decline in American Martens, The Natural Resources Weekly Report (Oct. 27, 2011). Animal species in these areas may find themselves without any suitable habitat as the impacts of climate change become increasingly apparent. The potential loss of species endemic to the Sierra should be of a particular concern since species that lose their Sierra habitat face a much greater threat of extinction.

The Dyer Mountain project site contains diverse types of habitat: Sierra white fir Forest, Sierra mixed conifer forest, and four separate wetland communities. AR 14:4866-67. Each of these will likely suffer

irreversible impacts from climate change. Increased temperatures could have a drying effect on the region's valuable wetlands, which offer critical habitat for a diverse variety of wildlife, and provide a wide variety of ecosystem services such as nutrient retention, flood control, and sediment storage. Kusler et al., Wetlands and climate change: scientific knowledge and management options, Institute for Wetland Science and Public Policy (Association of Wetland Managers, 1999); see also AR 10:3319-20; 29:10643-44. Both white fir and mixed conifer forest have been found to be particularly vulnerable to die-off and reduced growth as a result of climate change. AR 30:11055.

Changes or losses in habitat will negatively impact the area's animal species as well. A number of special status species inhabit the project area, including the bald eagle, California yellow warbler, and the northern goshawk. AR 14:4873-74. These and other species are vulnerable to more than just development pressures – climate change's impact on the landscape can have a substantial effect on the availability of suitable habitat. AR 30:11053-55.

The Sierra is an exceptional and incredibly rich treasure for California and for future generations. The resources of the Sierra, however, face a number of serious threats. Because Dyer Mountain is located in the Sierra, it is all the more important that an environmental analysis take into account the overall health of the region it would impact.

III. ARGUMENT

A. The County's Superficial CEQA Analysis Failed to Account for Foreseeable Effects of the Proposed Project.

While CEQA allows agencies to use so-called "programmatic" EIRs in some circumstances, those circumstances do not exist in this case. Here, the Development Agreement conveyed vested rights to build an expansive new resort community across nearly 7,000 acres of forested landscape. The CEQA "project" is the County's approval of a contract that set in stone the core elements of the Dyer Mountain Resort – housing units, commercial footage, ski lifts, lodges, golf courses, and other facilities. Under these circumstances, CEQA required a project-level EIR before the County committed irreversibly to project approval.

Environmental review prior to project approval is the very essence of CEQA. Without it, CEQA becomes a meaningless paper exercise. Once a lead agency has given away its ability to deny or significantly alter the project to eliminate or reduce environmental impacts – as Lassen County did in approving the Development Agreement – subsequent analysis of project effects, mitigation, and alternatives is of little informational value or consequence. The County's failure to prepare an adequate project-level EIR is especially troubling in this case, where the project threatens large-scale ecological damage to the vulnerable Sierra Nevada landscape.

1. The County Should Have Prepared a Project EIR for the Dyer Mountain Resort, but Regardless of the Label Attached to Its EIR, the County Must Analyze the Decision It Approved.

Because the Dyer Mountain project is a discrete, site-specific project and because the Development Agreement vested rights to build, CEQA required the EIR to evaluate the foreseeable impacts of such a detailed, irreversible agreement. Cal. Pub. Res. Code § 21068.5 (defining a program EIR as appropriate for review of a "policy, plan, program, or ordinance"). At trial, the County "essentially admitted that if the project does not qualify . . . as a programmatic project, it will not qualify under the rules pertaining to a project EIR." JA 9:2175. Because the County vested specific development rights on specific tracts of land, a project-level EIR ought to have been prepared, and the lower court's sanctioning of an EIR that did not evaluate project-level impacts was improper. Alternatively, the program EIR that *was* prepared needed to contain detailed analysis of the effects of vesting those rights. In either case, a proper EIR would have analyzed the indirect population growth resulting from the project, and the cumulative impacts of such growth on the region – both topics that were ignored by the County's analysis.

By failing to analyze the effects of the project it approved, the County's EIR was legally inadequate, whether styled as a program EIR or as a project EIR. CEQA requires lead agencies to give "major

consideration" to preventing environmental damage. Cal. Pub. Res. Code § 21000. In adopting CEQA, the Legislature explained that "[t]here is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state." Id. To serve this informational purpose, CEQA requires public agencies to prepare an EIR before they approve development projects. Cal. Pub. Res. Code § 21002.1. As California Supreme Court has noted, the EIR serves as "the heart of CEQA"; it is an "environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal., 47 Cal.3d 376, 392 (1988) (citations omitted).

An EIR should, therefore, provide the public and decisionmakers with enough information to make reasoned decisions about environmental impacts. 14 C.C.R. § 15151. By necessity, EIRs require some forecasting. While pure speculation is not appropriate, "an agency must use its best efforts to find out and disclose all that it reasonably can." Id. § 15144. Ultimately, the degree of specificity in an EIR "will correspond to the degree of specificity involved in the underlying activity." Id. § 15146.

Agencies may "tier" their analysis to focus on broad, initial concerns before moving on to more specific analyses in subsequent EIRs. Cal. Pub.

Res. Code § 21068.5. A first-tier EIR covers the general environmental effects of a "policy, plan, program or ordinance," to be followed by "narrower or site-specific environmental impact reports." Id. While tiering allows an agency to avoid speculating, the practice "does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR." 14 C.C.R. § 15152(b). Rather, the point is to focus the agency on the "actual issues ripe for decision" at that time. Id.

Program EIRs are one category of first-tier EIRs. Designed to be used where a series of actions relating to the same large project will occur over time, program EIRs have several advantages. They:

> (1) Provide an occasion for a *more exhaustive consideration of effects* and alternatives than would be practical in an EIR on an individual action;
>
> (2) *Ensure consideration of cumulative impacts* that might be slighted in a case-by-case analysis;
>
> (3) Avoid duplicative reconsideration of basic policy considerations;
>
> (4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures *at an early time when the agency has greater flexibility* to deal with basic problems or cumulative impacts; and
>
> (5) Allow reduction in paperwork.

14 C.C.R. § 15168(b) (emphasis added).

Interpreting these regulations, California courts have required agencies to analyze decisions as early and as fully as possible. See, e.g., Save Tara v. City of W. Hollywood, 45 Cal. 4th 116, 134 (2008) (holding that "a development decision having potentially significant environmental effects must be *preceded,* not *followed,* by CEQA review"); Stanislaus Natural Heritage Project v. Cnty. of Stanislaus, 48 Cal. App. 4th 182, 199 (1996) ("But 'tiering' is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause."); Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal., 6 Cal. 4th 1112, 1123 (1993) (citing Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal., 47 Cal.3d 376 (1988) ("[CEQA's] purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made.")).[4]

In the Dyer Mountain case, the use of the program EIR undermined several of the advantages outlined by the regulations. Rather than ensuring

[4] Respondents' reliance on Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners, 18 Cal. App. 4th 729 (1993), is misplaced. The Stanislaus court, distinguishing Al Larson, observed that in Al Larson "the project which was the subject of the first-tier EIR was not the 'approval' of any of the 'anticipated' projects or their locations but rather was instead the aforementioned five-year plan of the Board to increase Port cargo handling capacity in the short-term through the means of the six 'anticipated' projects . . . ." Stanislaus Natural Heritage Project v. Cnty. of Stanislaus, 48 Cal. App. 4th at 199 (1996). In the instant case, the project was no longer anticipated – at least in any legally meaningful sense – since the County had already granted vested development rights.

a more comprehensive examination of cumulative impacts, the County claimed that the programmatic lens justified a more cursory analysis of cumulative impacts. AR 2:261-62. In addition, the County certified the program EIR alongside a Development Agreement that vested development rights to a specific project. Thus, rather than performing a broader analysis at a time when the County retained greater flexibility to deal with problems and alternatives, the EIR and the Development Agreement cemented the project's trajectory by approving site-specific development with minimal review. See, e.g., AR 1:168 (incorporating the project's Development Concept Plan); AR 13:4360 (allocating specific numbers and types of building units); AR 13:4357 (mapping the location of these buildings); AR 1:137-40 (guaranteeing the developer the right to build at this specified level of intensity for thirty years).

In their brief, Respondents argue that the Development Agreement grants no such vested rights, but only sets a maximum level of development allowed under the Agreement. RB at 40. This is a distinction without a difference. While Respondents imply that market forces may ultimately determine that the maximum level of development is not reached, that does not change the fact that the County has guaranteed that it will approve development up to the maximum level specified in the agreement. The grace of the developer and the whimsy of the market are not what matter from the public's perspective. Rather it is the agency's binding

commitments that must be analyzed. See Stanislaus, 48 Cal. App. 4th at 206 ("While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built.")

Subsequent County decisions – individual building permits, for example – may not be significant enough to trigger additional CEQA review and are therefore no guarantee that sufficient environmental review will take place. See Laurel Heights, 6 Cal.4th at 1123-26 (holding that "the addition of new information to an EIR after the close of the public comment period is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect"). In any event, subsequent tiers of analysis will not capture the cumulative impacts of the project as a whole. This strategy of deferring analysis of overall impacts until later stages of development undercuts the program EIR's special emphasis on cumulative impacts.

2. In Applying CEQA to the Facts of this Case, the Court Should Look for Further Guidance to the National Environmental Policy Act, Which Similarly Requires Detailed Environmental Review at the Point of Project Approval or Commitment.

The National Environmental Policy Act (NEPA) requires environmental review of projects undertaken by federal agencies. 42 U.S.C. 4321 et seq. Like CEQA, NEPA requires agencies to analyze the

foreseeable impacts of proposed projects before they reach a point of no return. California courts treat cases interpreting NEPA as persuasive authority when interpreting analogous provisions in CEQA. Wildlife Alive v. Chickering, 18 Cal.3d 190, 201 (1976) ("Recognizing that the California act was modeled on the federal statute, we have consistently treated judicial and administrative interpretation of the latter enactment as persuasive authority in interpreting CEQA."). These federal cases illustrate the proper scope of an EIR and underscore how Lassen County's Dyer Mountain EIR lacked the proper scope and inappropriately postponed various analyses of the project.

Federal law suggests a program EIR was inappropriate for the Dyer Mountain Development Agreement. NEPA, like its California counterpart, encourages agencies to tier their impact statements. 40 C.F.R. § 1502.20. Programmatic review is inappropriate, however, where projects entail site-specific impacts. See, e.g., Fund for Animals v. Kempthorne, 538 F.3d 124, 138 (2d Cir. 2008) ("*In the absence of any certain site-specific action*, then, it was sufficient for the FWS here to prepare only a programmatic EIS." (emphasis added)); 'Ilio'ulaokalani Coal. v. Rumsfeld, 464 F.3d 1083, 1094 (9th Cir. 2006) (holding that a programmatic EIS for an Army policy followed by an EIS for site-specific impacts complied with NEPA). In the NEPA context, site-specific impacts militate against using a programmatic

EIS, at least where there is not a corresponding project EIS addressing the site-specific impacts.

This distinction between project EISs and programmatic EISs demonstrates a more basic tenet of environmental review: No matter the label attached to the EIS, the level of review ought to match the level of detail and site-specificity of the underlying proposed action. In other words, NEPA and CEQA both require that if an agency has enough information to analyze a decision, the agency must analyze it immediately, not promise to do so later.

For this reason, "[p]roper timing is one of NEPA's central themes." Save the Yaak Comm. v. Block, 840 F.2d 714, 718 (9th Cir. 1988). NEPA's implementing regulations provide that environmental review should take place, "before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives." 40 C.F.R. § 1502.4. Thus, an agency must complete its environmental review before the "go-no go" stage of approval, meaning before "making an irreversible and irretrievable commitment" to the project. Metcalf v. Daley, 214 F.3d 1135, 1142-43 (9th Cir. 2000); see also Pit River Tribe v. U.S. Forest Service, 469 F.3d 768, 783 (9th Cir. 2006) (finding that lease agreements that conveyed right to develop constituted irreversible commitment triggering need for EIS). In other words, specific and irreversible decisions that trigger review also

determine the timing and scope of the environmental analysis. As the U.S. Court of Appeals for the Ninth Circuit has explained,

> [o]nce an agency has an obligation to prepare an EIS, the scope of its analysis of environmental consequences in that EIS must be appropriate to the action in question. NEPA is not designed to postpone analysis of an environmental consequence to the last possible moment. Rather, it is designed to require such analysis as soon as it can reasonably be done.

Kern v. U.S. Bureau of Land Mgmt., 284 F.3d 1062, 1072 (9th Cir. 2002). Because NEPA serves an informational purpose, it makes perfect sense that the statute requires that the information be analyzed when it is most relevant, before agencies face a point of no return.

While programmatic EISs offer a chance for agencies to more fully analyze the cumulative effects of a program or policy, this opportunity is lost if the consideration of impacts occurs after the agency has already made a decision. See, Thomas v. Peterson, 753 F.2d 754, 760 (9th Cir. 1985) (holding that "NEPA's purpose requires that the NEPA process be integrated with agency planning 'at the earliest possible time,' and the purpose cannot be fully served if consideration of the cumulative effects of successive, interdependent steps is delayed until the first step has already been taken") (quoting 40 C.F.R. § 1501.2), Thus, agencies may not use programmatic EISs to defer more detailed analysis by claiming that the impacts are unclear or will be addressed by subsequent review when in reality the agency could perform the analysis at this earlier stage. See

California v. Block, 690 F.2d 753, 761 (9th Cir. 1982) (finding that a programmatic EIS was inappropriate because it failed to analyze the site-specific impacts of the "critical decision" being made by the agency).

The NEPA case law highlights the egregiously superficial program EIR that the County prepared for the Dyer Mountain site. With the Development Agreement and the attached maps, the County irrevocably committed itself to approve a certain level of development and permanently abdicated its discretion to limit that development. In the agreement, the County granted the developer "the vested right to develop a maximum of 3259 EDUs [equivalent dwelling units, which account for partial occupancy of hotel rooms and time-shares], 333,800 square feet of commercial uses, mountain resort recreation facilities and supporting facilities." AR 1:138. Whatever power the County still has over the developer, it has given away its ability to halt the development or to change its size.

The Dyer Mountain Development Agreement contains precisely the site-specific and irrevocable commitments of resources that made programmatic review inappropriate in cases like Block, Metcalf, Kern, and Pit River Tribe. It would be an odd interpretation of CEQA, NEPA, and their associated regulations if the very level of specificity that triggered the need for review could be postponed for future analysis, replaced by generalities and broad conclusions. On the contrary, the most natural interpretation of CEQA and NEPA – and the interpretation that best serves

the statutes' informational goals – is that the level of review should match the level of detail contained in the agency's action. Even when couched as a programmatic EIR or EIS, the requisite detailed environmental review must satisfy the public's interest in an informed decision before the agency makes final commitments to the project. The "program" label should not permit agencies to postpone analysis of decisions they are able to analyze today. Lassen County's Dyer Mountain EIR failed to analyze the Development Agreement with the level of specificity required by CEQA and NEPA, and therefore should never have been certified.

B. The Trial Court's Award of Costs to the County for Preparation of the Record Was Improper under Both CEQA and the Public Records Act.

Because petitioners elected to and did prepare the administrative record, as expressly allowed by CEQA, the trial court's award of record preparation costs to the County was improper. Cal. Pub. Res. Code § 21167.6(b)(2). The Legislature enacted section 21167.6(b)(2) to provide resource-limited citizen enforcers with a way to minimize costs by doing the record preparation work themselves. The trial court's decision undermines that legislative intent in two significant ways. First, it allows agencies to charge for staff time in responding to a Public Records Act request simply because the requested documents are part of the record for a challenged agency action, even though the Public Records Act itself does not authorize cost recovery for this staff work. Second, it allows lead

agencies to charge for hundreds of hours spent reviewing the record already prepared by petitioners – in this case, for no benefit to the litigation – thereby driving up the costs of CEQA citizen suits to potential challengers. Like the Public Records Act, CEQA does not authorize cost recovery for such record review activities. By reading cost recovery authorization into statutes that do not provide for it, the trial court not only misinterpreted the law, but also handed lead agencies an offensive weapon with which they can significantly chill the rights of resource-constrained citizens who seek to enforce the requirements of CEQA as the Legislature intended.

1. Factual and Statutory Background.

This case provides a powerful example of the kinds of agency activities that would raise the costs of CEQA litigation to prohibitive levels if the trial court's ruling stands. In responding to Appellants' Public Records request, the County charged over $4,000 in paralegal fees for the time spent locating documents, in direct contravention of the Public Records Act. JA 10:2212-14. During the record certification, the County spent hundreds of hours searching for problems in the record, combing the document for potential errors. JA 10: 2212-24; 2235. Primarily, these efforts yielded over 90 places where an attachment to an attachment was not separately listed, even though no rule of court required this. JA 10:2235; 2437-38. The County also requested 16 missing documents: four did not exist, two were already in the record but "had been overlooked by

the County," and the remainder the County had failed to provide after being asked by Appellants to produce them. Id. The County found no substantive errors, and no party cited in the briefing on the merits to any document that the County flagged. JA 10:2235 ¶ 15. Still, this lengthy process led to approximately $10,000 in further costs. JA 10:2212-14; JA 10:2224.

These costs, however, must not fall upon Appellants because CEQA provides a mechanism for preventing agencies from imposing strategic costs on public interest plaintiffs. CEQA litigation requires the preparation of an administrative record for use at trial. Cal. Pub. Res. Code § 21167.6(a). The statute, however, provides three different mechanisms for the preparation of this record: "[t]he public agency [can] prepare and certify the record of proceedings" within 60 days of being served with the request, id. § 21167.6(b)(1); the "petitioner may [itself] elect to prepare the record of proceedings," id. § 21167.6(b)(2); or "the parties may agree on an alternative method of preparation," id. See also Hayward Area Planning Ass'n v. City of Hayward, 128 Cal. App. 4th 176, 182-83 (2005). The legislature designed this tripartite structure to "advance[] the legislative purpose of enabling the petitioner to minimize costs" by creating options. Hayward Area Planning, 128 Cal. App. 4th at 183. If the agency prepares the record (but only then), CEQA allows it to recover from the petitioner

"any reasonable costs or fees" sustained in "the preparation." Cal. Pub. Res. Code § 21167.6(b)(1); see also Cal. Code Civ. Proc. § 1033.5.

In allowing such costs, however, CEQA imposes on all parties a duty to contain expenses by "striv[ing] to [prepare the record] at reasonable cost in light of the scope of the record." Cal. Pub. Res. Code § 21167.6(f). Courts have used this provision to ensure that costs are incurred by the party with the best ability to keep costs low. See St. Vincent's Sch. for Boys v. City of San Rafael, 161 Cal. App 4th 989, 1018-19 (2008); Hayward Area Planning, 128 Cal. App. 4th at 184-85. By incenting low costs, CEQA makes it feasible for citizens and public interest groups to bring suit under section 21167 to challenge violations of the statute, thereby providing a mechanism for enforcing the Act and protecting environmental quality.

2. The Public Records Act Prohibits Respondents from Demanding Indirect Costs for the Collection and Delivery of Documents.

Respondents misunderstand both the purpose and the specific requirements of the Public Records Act, to the detriment of government transparency and disclosure of public information in California. "Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in [California]." Cal. Gov't Code § 6250. When a party requests that an agency produce documents under the Public Records Act, that agency must "make the

records promptly available," and may recover only those "fees covering direct costs of duplication." Id. § 6253(b). The only exceptions to this rule are that certain *types* of document are exempt from disclosure. Id. § 6254. Further, courts construe those exceptions narrowly. Rogers v. Superior Court, 19 Cal. App. 4th 469, 476 (1993) ("[T]he burden is on the public agency to show that the records should not be disclosed."). There are no exceptions in the Public Records Act for allowing an agency to recover costs beyond the direct costs of duplication.

As a matter of public policy, the requirement that a requesting party reimburse an agency for staff time spent searching for and producing requested documents *is* a significant bar to access. In deciding that public access to government documents is a fundamental right, California has chosen to subsidize disclosure, regardless of the purpose of a request, finding the public good sufficient to warrant the expense. Requiring payment for agency staff time would chill such public disclosure and curtail the law's benefits.

Moreover, a staff time reimbursement requirement would create a perverse incentive, encouraging agencies to impose large fees as a means of withholding documents they do not wish to disclose. This risk is acute where, as here, the agency's interests are adverse to the requesting party. Indeed, where the parties are engaged in litigation, allowing an agency to bill its staff time – and potentially run up significant fees – for producing

public documents would likely dissuade otherwise legitimate challengers from seeking judicial enforcement of CEQA's important environmental review and disclosure requirements. Because Appellants' document request properly falls within the scope of the Public Records Act, as discussed below, the County lacks the statutory authority to recover for staff time spent producing the documents.

a. The Language and Purpose of the Public Records Act and Its Federal Counterpart Support the Unimpeded Disclosure of Documents, Including for Use in Litigation.

Use of documents in litigation does not render them outside the scope of the Public Records Act. Courts may only find documents exempt from the Act based on the documents' actual content. The Public Records Act expressly "does not allow limitations on access to a public record based upon the purpose for which the record is being requested." Cal. Gov't Code § 6257.5; see also Cnty. of Los Angeles v. Superior Court ("Axelrad"), 82 Cal. App. 4th 819, 826 (2000); State Bd. of Equalization v. Superior Court, 10 Cal. App. 4th 1177, 1190-91 (1992) ("The [PRA] does not differentiate among those who seek access to public information. It imposes no limits upon who may seek information or what he may do with it." (citation omitted)). Furthermore, courts have upheld the right to make Public Records Act requests as a means of acquiring documents for litigation. Axelrad, 82 Cal. App. 4th at 826 ("[A] plaintiff who has filed a suit against

a public agency may . . . file a CPRA request for the purpose of obtaining documents for use in the plaintiff's civil action, and [] the documents must be produced . . . ."); City of Hemet v. Superior Court, 37 Cal. App. 4th 1411, 1420 (1995) ("[A] document is protected from disclosure only if it was specifically prepared for use in litigation.").

Moreover, courts interpreting the Freedom of Information Act, the federal antecedent and model for the California Public Records Act, have similarly concluded that refusing a document request based upon the identity of the requester actively undermines the purpose of the statute. 5 U.S.C. § 552 et seq., Axelrad, 82 Cal. App. 4th, at 825. California courts have stated that "[t]he Public Records Act is modeled upon the Freedom of Information Act . . . and we may look to the legislative history of the federal act and its judicial construction as aids in interpreting the California act," State Bd. of Equalization, 10 Cal. App. 4th at 1186 n.10, because the two "have similar policy objectives," Axelrad, 82 Cal. App. 4th at 825. In U.S. Dept. of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 771 (1989), the U.S. Supreme Court affirmed that "[e]xcept for cases in which the objection to disclosure is based on a claim of privilege and the person requesting disclosure is the party protected by the privilege, the identity of the requesting party has no bearing on the merits of his or her FOIA request." In so ruling, the Court advanced legislative intent because "Congress clearly intended the [Freedom of Information Act] to give any

member of the public as much right to disclosure as one with a special interest [in a particular document]." Id. (quotations omitted) (alteration in original). Congress and the California Legislature have both elected to prioritize the broad public interest in government disclosure by focusing on the documents rather than the requester, thus preventing the formation of a complex system of individualized determinations as to whether particular individuals are entitled to material that others could freely obtain.

A judicial rule allowing agencies to circumvent the Public Records Act by challenging the context in which an individual seeks disclosable material would contravene the will of the Legislature and establish troubling precedent. Judges would have to confront an array of new questions regarding the context of the document requesting, attempting to divine whether specific situations warrant an exception to the general rule of full and free disclosure. Under such a regime, the Legislature's vision for an open, transparent, and accountable government could be gradually curtailed, and the insular processes of state administration would thereby become more susceptible to corruption.

Realizing the significance of public disclosure to the commonweal, in 2004 both houses of the California Legislature unanimously approved – and the public overwhelmingly endorsed via referendum – an amendment to the California Constitution establishing access to public documents as a fundamental right of citizenship. The amendment provides that "[t]he

people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny." Cal. Const. Art. I, § 3(b), cl. 1. This articulation of the state's priorities confirms that public disclosure is too important a social value to be subject to the chilling effect of unsanctioned fees.

b. The Public Records Act Allows Only for Recovery of the Direct Costs of Duplication.

The Public Records Act allows an agency to recover only the "direct cost of duplication." Cal. Gov't Code § 6253(b). Courts have construed this language narrowly to cover only "the cost of running the copy machine, and conceivably also the expense of the person operating it," but explicitly excluding "the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted." North County Parents Org. v. Dep't of Educ., 23 Cal. App. 4th 144, 148 (1994). There, the court examined the changes to statutory language over time, finding that the shift from allowing recovery of "a reasonable fee" to "direct cost of duplication" confirmed the Legislature's intent to limit the scope of recoverable costs. Id. at 147-48. The Legislature included the word "direct" specifically to prohibit recovery for the kinds of indirect labor costs that Respondents here seek. Here, the direct cost of duplicating documents produced to Appellants under the

Public Records Act was $155.36. JA 2214. Under the unequivocal language of the Public Records Act, the County is not entitled to any other reimbursement, including the recovery of $4,000 in staff processing time erroneously awarded by the trial court.

c. Nothing in CEQA Creates an Exception to the General Rule that Indirect Costs Are Not Recoverable under the Public Record Act.

The Public Records Act governs the dispute here. Nothing in that statute provides an exception for documents sought by an adverse party in litigation. See Cal. Gov't Code §§ 6254-55 (enumerating statutory exceptions). And nothing in CEQA alters the general rule or applicability of the Public Records Act. Indeed, CEQA's language implicitly supports the Public Record Act's applicability to preparation of an administrative record. CEQA expressly provides that "[n]otwithstanding any other provision of law," section 21167.6 of the statute applies and takes precedence. Cal. Pub. Res. Code § 21167.6. Respondents incorrectly contend that this language supersedes the Public Records Act because section 21167.6 provides its own mechanism for preparing the record. This argument is meritless. While section 21167.6(b)(2) allows the petitioner to prepare the record in order "to control[] costs by its personal assumption of the task," Hayward Area Planning, 128 Cal. App. 4th at 183, CEQA is silent on the means by which the petitioner should acquire the necessary documents to do so. Since acquiring documents is a necessary first step to

preparing the record, CEQA implicitly supports using the Public Records Act to acquire the record documents that inevitably reside in the agency's files. If the petitioner must reimburse the agency for staff time to produce the record documents, there will be little, if any, in the way of cost savings to petitioners, rendering section 21167.6(b)(2) a largely meaningless gesture.

Moreover, none of the specific statutory exceptions contained in section 6254 of the Public Records Act prohibit using the statute in this case. See City of Hemet, 37 Cal. App. 4th at 1420. Indeed, courts have found that "[t]he general policy of disclosures reflected in the Public Records Act can only be accomplished by narrow construction of statutory exemptions." Fairley v. Superior Court, 66 Cal. App. 4th 1414, 1420 (1998) (citation omitted). The 2004 amendment to the California Constitution codified this judicial sentiment, asserting that any "statute . . . shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const. Art. I, § 3(b), cl. 2. Because no provision of the Public Resources Act explicitly prohibits the kind of disclosure at issue here, the County must grant full access to the documents, unimpeded by additional costs not authorized by the statute itself.

3. The Language and Structure of CEQA Section 21167.6 Militate Against Requiring Costs for Document Production or for Review and Certification of the Record.

a. CEQA Prohibits the Entire Cost Award.

Although CEQA does not directly address whether an agency may force a petitioner to pay costs the agency incurred in producing documents under the Public Records Act or reviewing and certifying the record that the petitioner itself compiled, the language of the statute strongly suggests that such cost awards are impermissible. Thus, once a petitioner has elected to prepare the administrative record, cost recovery by the agency is not allowed, barring some abusive behavior that unreasonably drives up the agency's costs in certifying the record.

Section 21167.6(b)(1) of CEQA distinguishes between preparing and certifying the record, indicating that the Legislature saw these two processes as separate and distinct. Only the former warrants a cost award. Paragraph (b)(1) provides that if an agency compiles the record, it must "prepare *and certify* the record" (italics added), but limits recovery of the agency's costs only to those "reasonable costs or fees imposed for the *preparation* of the record" (italics added). The Rule Against Surplusage dictates that a court interpreting a statute should read every word as having a distinct meaning, without finding redundancy unless absolutely necessary. See, e.g., Duncan v. Walker, 533 U.S. 167, 174 (2001) (asserting that the Supreme Court is "reluctan[t] to treat statutory terms as surplusage in any

setting") (quotation omitted) (alteration in original); People v. Avanessian, 76 Cal. App. 4th 635, 641 (1999) (finding this rule to be "[a] basic principle of statutory construction"). Following this canon of construction, the Court should distinguish preparation from certification and hold that costs are recoverable only for the preparation phase of the work. To interpret otherwise – that certification is a component of preparation, as Respondents contend – would inject a redundancy into the statute where none exists. The legislature chose to distinguish these two phases of assembling the record prior to trial, and the Court should honor that legislative choice.

Having made the distinction between certification and preparation, the Legislature was quite clear that a court can only award an agency costs for "preparation." This provision is consistent with the Code of Civil Procedure's admonition that a "local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record." Cal. Code Civil Proc. § 1094.6(c).[5] Thus, both the Code of Civil Procedure and CEQA require payment for preparing the record (which Appellants here compiled at their own expense), but not for the separate

[5] In a remarkable use of brackets, Respondents quote section 1094.6(c) as saying that costs may recovered for "preparing [including production and certification] the record." Respondents' Brief at 90. The statute says no such thing. A page later, they attempt the same sleight of hand again, reading their argument into a quote from River Valley. Id. at 91. In so doing, they seek to cast as settled law one of the core legal questions before this Court.

action of certifying it. The inclusion of this cost allocation language in subsection (b)(1), with no similar language in subsection (b)(2), is further evidences the Legislature's intention to limit recovery for the costs of preparation to situations where the agency itself prepares the record. AOB 53-54.

Finally, Public Resources Code section 21081.6(a) confirms that a lead agency may not recover the cost of gathering and organizing the documents that make up the administrative record. Cal. Pub. Res. Code 21081.6(a). This provision requires that an agency approving a project "specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based." It thereby creates an independent duty to perform the tasks for which the County now requests compensation. In effect, the County has asked petitioners to cover its costs for tasks that it should have completed before this lawsuit was even filed. Had the County met its statutory duty under section 21081.6(a), the work of searching for and organizing documents would have taken very little time at all. The County should not be allowed to recover costs incurred in meeting its preexisting statutory obligations.

b. Section 21167.6(f) Is the Basis for the St. Vincent's Decision but Is Not Implicated in This Case.

Although both St. Vincent's School for Boys v. City of San Rafael, 161 Cal. App. 4th 989 (2008), and this case deal with section 21167.6 of CEQA, it is the language of subsection (f), not subsection (b), that is the basis for the court's decision in St. Vincent's. Subsection (f) requires that "[i]n preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record." Cal. Pub. Res. Code § 21167.6(f). Thus, the question in St. Vincent's was not whether subsection (b)(2) allows an agency to recover costs generally, but whether a wasteful and dilatory petitioner can use subsection (b)(2) as a shield to guard against the cost-containment requirements of subsection (f).

In St. Vincent's, the petitioner (the school) requested a second round of document production for thousands of additional pages of emails after the city presented it with 20 boxes, containing over 58,000 pages of documents, "not because [the school] had identified any 'gaps' in the voluminous planning documents . . . , but because it was not satisfied with the number of emails contained in the 20 boxes." St. Vincent's, 161 Cal. App. 4th at 1017-18. This vague and unbounded request caused a 15-month delay in the litigation, costing tens of thousands of dollars, at the end of which "*St. Vincent's* [*did*] *not mention one single email, obtained in response to its request, which provided information that bolstered any of its*

claims." Id. at 1019. Objecting to this expensive runaround, the court concluded that when "St. Vincent's elected to prepare the record pursuant to [subsection (b)(2)] . . . it undertook the solemn statutory obligation to 'strive [to prepare the record] at reasonable cost' [under subsection (f)]." Id. at 1017. In light of the school's violation of this statutory requirement, the court held that "where necessary to preserve the statutory purposes of cost containment and expediting CEQA litigation, the prevailing party in a CEQA action may recover 'reasonable costs or fees imposed for the preparation' of the record, even if the non-prevailing party elected to prepare the record." Id. at 1019. For this reason, "the court allowed the city to recover *a portion* of its record costs, but only those directly related to the 'cumbersome [computer] retrieval process.'" JA 10:2226 (quoting St. Vincent's, 161 Cal. App. 4th at 1013) (alteration in original). Thus, the court held only that subsection (b)(2) does not shield a recalcitrant petitioner from sanctions pursuant to subsection (f).

Here, the petitioners did everything to keep the costs of record-preparation low and to be expeditious. In requesting documents, they "made no extraordinary or even unusual requests," "merely ask[ing] the County to retrieve from its files the record documents that must be included in the record." JA 10:2226; 2235; 2438. The County mischaracterizes Appellants' document requests as "multiple and broad," Respondents' Brief at 92, but Respondent did nothing more than "follow-up requests, seeking

only documents responsive to the initial request that [the] County had failed to provide." JA 10:2234-36; 2431. Similarly, the initial request was as narrow as possible, confined only to those documents related directly to the litigation and necessary for inclusion in a thorough record. JA 10:2240-42. Because Appellants' requests were entirely standard for a CEQA record (JA 10:2232, 2240-42) and bear no relationship to the unbounded and wasteful requests in St. Vincent's, Appellants are well within section 21167.6(f)'s cost-containment requirement. Neither the statutory provision nor St. Vincent's is relevant to the cost dispute at issue on this appeal.

c. The Structure of CEQA Section 21167.6 Dictates that the Party with the Best Ability to Minimize Costs Must Bear that Cost.

The most coherent reading of CEQA section 21167.6's statutory framework and the case law interpreting it is that the party in the best position to contain costs should be responsible for that cost. Section 21167.6(b)'s tripartite structure serves this end, "enabling the petitioner to minimize the cost of record preparation." Hayward Area Planning, 128 Cal. App. 4th at 183; see also Black Historical Soc'y v. City of San Diego, 134 Cal. App. 4th 670, 678 (2005) (finding that challenger wishing to avoid costs had "alternate means of obtaining the record, for example, preparing the record itself"); Citizens for Quality Growth v. City of Mount Shasta, 198 Cal. App. 3d 433, 447 (1988) ("[P]laintiffs had the option of preparing the administrative record themselves to minimize expenses."). CEQA

petitioners frequently avail themselves of this option, perceiving that agencies have little incentive to keep down costs when petitioner will liable for them and, indeed, have every incentive to inflate costs as an offensive weapon to scare off potential future litigants. If, however, the agency still provides the cheapest mechanism for preparing the record, the petitioner retains the option of asking the agency to accomplish the task.

The requirement that a petitioner reimburse for the actions of a lead agency over which it has no control undermines the statutory mechanism provided by the Legislature to limit petitioners' financial exposure. Despite "the legislative purpose" of keeping costs down for petitioners, Hayward Area Planning, 128 Cal. App. 4th at 183, the trial court's reading of the law here imposes a significant financial risk to challengers, whether or not they elect to contain costs through preparing the record themselves. Such unchecked cost liability undoubtedly creates an enormous chilling effect on the desire and ability of environmental plaintiffs to bring meritorious cases intended to vindicate the public interest in environmental review and disclosure.

Even worse, with assurance that they can pass always along the cost of producing documents or reviewing and certifying the record, lead agencies have no incentive to keep costs low. In fact, the agency would have every incentive to inflate hours and stall litigation by scouring the record prepared by petitioners for minute errors, as did the County in this

case. To date, the courts have sought to avoid creating such perverse incentives by imposing the cost of production on the party in the best position to minimize them. In Hayward, for instance, the court denied cost recovery where the city passed the record-preparation on to the attorneys of the real party in interest, who had every incentive to make as much money as possible, attempting to charge exorbitant rates for this task. 128 Cal. App. 4th at 179-80, 184. The court declined to award costs because "[p]laintiffs had no control over the costs" and because "the skewed incentives caused by the delegation [led to] mounting costs." Id. at 184. In contrast, the court awarded some cost recovery in St. Vincent's, noting that because the challenger there, "like the City of Hayward, did not directly incur any liability for the [additional] costs [of the computer search], it had no incentive to control those costs." St. Vincent's, 161 Cal. App. 4th at 1018 (quotation omitted) (alterations in original). In both cases, the courts enforced section 21167.6(f)'s cost-cutting mandate by assigning a contested expense to the party best situated to contain costs.

4. Allowing Agencies to Circumvent CEQA Would Harm the Ability of Public Interest Organizations to Realize the Act's Purpose.

The inability to keep down costs in the preparation of the administrative record would thwart citizen enforcement of the law because most environmental organizations are resource-constrained and unable to assume uncapped risk of cost liability. Citizen enforcement is the essence

of effective CEQA implementation, and thus effective environmental protection in California. Without it, CEQA is little more than a paper tiger or a full employment act for environmental consultants. Citizen suits are only possible, however, if challengers have some certainty around cost liability – effectuated in the case of CEQA by electing to prepare and control record production themselves. The trial court's decision here undermines that certainty and jeopardizes the future of CEQA litigation.

The seriousness of this threat is evident from the number and range of organizations that are signatories to this *Amici* brief. A judicial rule like the one embraced by the trial court in this case thwarts the Legislature's intent to encourage citizen participation by increasing the price of litigating a CEQA claim beyond what most individual citizens and non-profit organizations can bear. Small local groups like Friends of Lassen Forest would be hardest hit by such a rule, but even larger organizations are likely to find it impossible to raise the tens of thousands of dollars necessary to pay for the lead agency's staff time in producing documents and certifying the record. Virtually all of *Amici* and many other organizations like them rely on grants and member donations to support to fund their work.

Such a limitation on CEQA's citizen-enforcement provision would run counter to the legislature's intention to create a strong enforcement mechanism under the Act. Had the legislature wished to constrain citizen suits, it could and would have done so directly by limiting the scope of such

suits or the context in which they are appropriate. The legislature has amended CEQA many times, including a 2004 amendment to Section 21167, the provision authorizing citizen suits. S.B. 1889, 4/01/2004. Despite ample opportunity, the legislature has never seen fit to meaningfully constrain CEQA's citizen-suit provision. Its decision to maintain this provision while amending those around it indicates a desire to uphold CEQA's tenets with a strong enforcement mechanism. In this context, it defies comprehension that the legislature would also choose, without any clear statement, to render citizen enforcement and thus CEQA itself impotent.

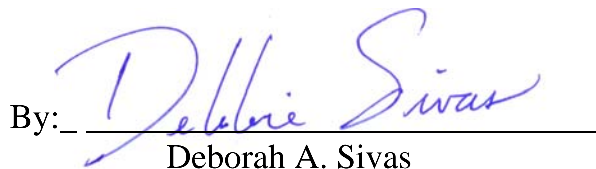
IV. CONCLUSION

For the foregoing reasons, *Amici* respectfully request that the Court set aside (1) the County's certification of the EIR and approval of the Project and (2) the trial court's award of costs to the County for record preparation.

May 17, 2012

Respectfully submitted,

ENVIRONMENTAL LAW CLINIC
Mills Legal Clinic at Stanford Law School



By:_ ______________________________
Deborah A. Sivas

Attorneys for Amici Curiae

CERTIFICATION OF COMPLIANCE

I certify that the text of this Brief of *Amici Curiae* is printed in 13-point Times New Roman font and contains 9,746 words, exclusive of the tables of contents and authorities and this certificate, as calculated by the word processing program used to produce it.

Deborah A. Sivas

PROOF OF SERVICE

LYNDA F. JOHNSTON declares:

I am over the age of eighteen years and not a party to this action. My business address is 559 Nathan Abbott Way, Stanford, California.

On May 17, 2012, I served the foregoing **APPLICATION OF SIERRA NEVADA ALLIANCE, CALIFORNIA NATIVE PLANT SOCIETY, CALIFORNIA TROUT, CENTER FOR BIOLOGICAL DIVERSITY, DEFENDERS OF WILDLIFE, EBBETTS PASS FOREST WATCH, FOOTHILL CONSERVANCY, FRIENDS OF LASSEN FOREST, HIGH SIERRA RURAL ALLIANCE, LEAGUE TO SAVE LAKE TAHOE, MOUNTAIN AREA PRESERVATION FOUNDATION, PLANNING & CONSERVATION LEAGUE, PLUMAS AUDUBON SOCIETY, SOUTH YUBA RIVER CITIZENS LEAGUE, TROUT UNLIMITED FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANTS MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, AND SIERRA WATCH AND BRIEF OF *AMICI CURIAE*** by placing true and correct copies thereof for Federal Express next business-day delivery, addressed as follows:

Rachel B. Hooper, Attorney at Law
Amy J. Bricker, Attorney at Law
Gabriel M.B. Ross, Attorney at Law
Sarah H. Sigman, Attorney at Law
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Attorneys for Petitioners-Appellants MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, and SIERRA WATCH

Daniel P. Selmi
Attorney at Law
919 South Albany Street
Los Angeles, CA 90015

Attorney for Petitioners-Appellants MOUNTAIN MEADOWS CONSERVANCY, SIERRA CLUB, and SIERRA WATCH

Richard L. Crabtree
Law Offices of Richard L. Crabtree
1395 Ridgewood Drive, Suite 300
Chico, CA 95973

Attorney for Respondents-Appellees
COUNTY OF LASSEN, LASSEN COUNTY BOARD OF SUPERVISORS, and DOES 1-19

William W. Abbott, Attorney at Law
Leslie Z. Walker, Attorney at Law
Abbott & Kindermann LLP
2100 21st Street
Sacramento, CA 95818

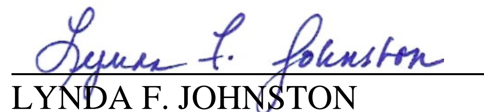
Attorneys for Real Party in Interest
DYER MANAGEMENT, LLC

On May 17, 2012, I also placed one copy of said application and proposed brief in a sealed envelope, with postage thereon fully prepaid, in the United States Mail at Stanford, California, for delivery to the Honorable F. Donald Sokol, as provided in Rule 8.212(c)(1), California Rules of Court, addressed as follows:

Clerk of the Court
Lassen County Superior Court
2610 Riverside Drive
Susanville, California 96130

On May 17, 2012, I also served the California Supreme Court by sending a copy of said application and proposed brief to the Supreme Court's electronic notification address as provided in Rule California Rules of Court.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed May 17, 2012 at Stanford, California.



LYNDA F. JOHNSTON