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Case No. S_____

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

SUNFLOWER ALLIANCE,
Plaintiff and Respondent,

v.

CALIFORNIA DEPARTMENT OF CONSERVATION et al.,
Defendants;

REABOLD CALIFORNIA, LLC,
Real Party in Interest and Appellant.

After a Decision of the Court of Appeal
First Appellate District, Division Five, Case No. A167698
Appeal from Judgment of the Superior Court of California
for the County of Contra Costa, Honorable Edward G. Weil
Case No. N22-1503

PETITION FOR REVIEW

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ISSUES PRESENTED FOR REVIEW

1. Whether an agency can lawfully claim a categorical exemption from environmental review under the California Environmental Quality Act (CEQA) when also adopting conditions of approval to mitigate potentially significant environmental effects.

2. Whether a “negligible” expansion of use required to support a categorical exemption from CEQA should be interpreted to mean a change that requires the lead agency to first determine whether a significant environmental impact may occur.

3. Whether converting a plugged and abandoned gas production well, where no wastewater injection had ever occurred, into an oil and gas wastewater injection well, fits within CEQA’s Class 1 categorical exemption for “Existing Facilities” as a “negligible expansion of a former use.”

REQUEST AND GROUNDS FOR REVIEW

TO THE HONORABLE CHIEF JUSTICE AND THE
HONORABLE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE STATE OF CALIFORNIA:

Pursuant to rule 8.500(b) of the California Rules of Court, Respondent Sunflower Alliance respectfully petitions for review of the First District Court of Appeal’s September 6, 2024 Opinion Certified for Publication (hereafter Opinion) in *Sunflower Alliance v. Department of Conservation* (2024) 104 Cal.App.5th 1135 (modified by the October 7, 2024 Order Denying Respondent’s Petition for Rehearing and Modifying Opinion [No

Change in Judgment] (hereafter Order Modifying Opinion) in *Sunflower Alliance v. Department of Conservation* (Oct. 7, 2024, No. A167698) ___Cal.App.5th___ [2024 Cal. App. LEXIS 630].)

Respondent filed a petition for rehearing with the First District Court of Appeal on September 23, 2024. On October 6, 2024, the Opinion became final, and the following court day, the First District Court of Appeal denied Respondent's Petition for Rehearing and modified its decision without changing its judgment. (Cal. Rules of Court, rule 8.264(b)(1), (c)(1)-(2).) This petition is timely filed under California Rules of Court, rule 8.500(e)(1). A copy of the Opinion and Order Modifying Opinion are attached hereto as Exhibit A and Exhibit B, respectively.

On December 29, 2021, Sunflower Alliance filed a Verified Petition for Writ of Mandate challenging the California Geologic Energy Management Division's (hereafter CalGEM) Notice of Exemption and Project approval on the grounds that the Class 1 exemption did not apply to the project. The trial court agreed and entered judgment in favor of Sunflower Alliance and issued a peremptory writ of mandate directing CalGEM to set aside its Notice of Exemption and approval. Real Party in Interest and project proponent, Reabold California, LLC (hereafter Reabold) appealed the trial court's judgment. CalGEM did not appeal, complied with the writ, and rescinded its Notice of Exemption and Project approval. The Court of Appeal reversed the trial court's decision, applying a new test to conclude that the expansion of the well's use was negligible and thus falls within the Class 1 exemption.

Review of the First District Court of Appeal's Opinion and Order Modifying Opinion is warranted and should be granted for two reasons.

First, review is necessary to settle an important question of law. (Cal. Rules of Court, rule 8.500(b)(1).) The Opinion creates a new test for determining whether a minor physical alteration giving rise to a new use constitutes a negligible change in use, calling into question whether and to what extent a wide spectrum of projects may evade CEQA review as categorically exempt projects.

Second, review is necessary to secure uniformity of decision (Cal. Rules of Court, rule 8.500(b)(1)) regarding (1) an agency's reliance on mitigation measures to exempt a project from CEQA review; (2) the appropriate process for determining whether a CEQA exemption applies; and (3) the scope of the Class 1 exemption.

The Opinion applies *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 816-817 (hereafter *Walters*) to the instant case to conclude that CalGEM's conditions of approval did not mandate CEQA review. The Opinion's reliance on *Walters*, however, creates an inconsistency in applying the law, as the facts of the case and potential environmental harms at issue are highly distinguishable. Notably, the conditions of approval in *Walters* merely involved noise and the project approval required proof that the noise requirements would be satisfied. In contrast, in the instant case, the Central Valley Regional Quality Control Board (hereafter Regional Water Board), the State Water

Resources Control Board (hereafter State Water Board) (collectively the Water Boards), and CalGEM *did not* conclude that the Project, as proposed, would certainly avoid impacts to drinking water. (See AR 790-91, 793-97.) On the contrary, the existing aquifer pressure was “*unknown*”, so Water Board approval was conditioned on CalGEM requiring aquifer pressure testing *to determine* if adverse harms could occur. (AR 778, 782-83.) Thereafter, CalGEM conditioned its approval, in part, by declaring that CalGEM may decrease the Project’s injection rate, based on the pressure test results. (AR 786.) The aquifer pressure test and potential to reduce injection rate in response to the test results, are by definition, “mitigation measures” under CEQA, as neither were “part of the project design” (see *Save the Plastic Bag Coalition v. City and County of San Francisco* (2013) 222 Cal.App.4th 863, 882) but rather attempt to “[a]void the impact altogether by not taking . . . parts of an action” (Cal. Code Regs., tit. 14, § 15370.). Indeed, the conditions of approval imposed by the Water Boards and CalGEM would be necessary to potentially satisfy the Court of Appeal’s new requirement that a project’s effects be “inconsequential” to qualify for the Class 1 exemption, but imposing mitigation measures to qualify for an exemption illegally evades CEQA review.

The instant case is additionally inconsistent with *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165 (hereafter *Azusa*). In *Azusa*, the Water Board imposed mitigation measures, consistent with its regulatory authorities and mandates, to attempt to prevent

contamination of an underground water supply (*Azusa*, 52 Cal.App.4th at 1194) and the court held that the Water Board was not permitted to rely on these mitigation measures to exempt CEQA review. Accordingly, review and reversal of the Opinion are necessary to provide guidance and clarify whether an agency is permitted to rely on conditions of approval in order to comply with its own regulatory standards and to exempt CEQA review.

Furthermore, the Opinion, by treating a negligible expansion in use as one that has no potential for environmental harm, is inconsistent with prior decisions involving the CEQA process for determining whether a CEQA exemption applies. *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1098-1099 (hereafter *Berkeley Hillside Preservation*) discusses the CEQA process and holds that “categorical exemptions would serve little purpose” if an agency must *first* find there is no threat of environmental harm, as this process would require an assessment of environmental impacts before determining whether a project is exempt. (See also *Azusa*, 52 Cal.App.4th at 1165, 1200 [“In determining whether the significant effect exception to a categorical exemption exists, it is the possibility of a significant effect . . . which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR.”] (cleaned up).) Consistent with the Opinion, lead agencies must *first* find that there is no threat of environmental harm before it determines if an exemption applies. As such, review and reversal of the Opinion are necessary to clarify the CEQA process in relation to the

exemptions so as not to render the exemptions and their exceptions superfluous.

The Opinion is also in conflict with the Public Resources Code and CalGEM guidance regarding the scope of the specific exemption in the instant case—the Class 1 Categorical Exemption. The Legislature directed the Secretary of Natural Resources to establish “a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from” CEQA (Pub. Resources Code, § 21084, subd. (a))—a list available within the CEQA Guidelines (Cal. Code Regs., tit 14, § 15300). In *Azusa*, the court of appeal explains that this categorical exemption “should not be so broadly interpreted so to include a class of businesses that will not normally satisfy the statutory requirements for the categorical exemption” (*Azusa*, 52 Cal.App.4th at 1192-93), and held that the class of business involved could not be categorically exempt given, in part, the Legislature’s determination regarding potential threats to groundwater, air quality, and public health. (*Id.* at 1195.) Similarly, the Legislature does not view the class of business involved in this case as categorically inconsequential, as the Legislature has categorically prohibited similar projects if they are within 3200 feet of a residence. (See Pub. Resources Code, §§ 3280, 3281, 3282; Cal. Code Regs., tit.14, §§ 1724.6 – 1724.10.)

Finally, the Opinion and its new test are inconsistent with Supreme Court and Court of Appeal precedent holding that the Court may not simply look to the agency’s regulatory scheme to

determine if the Project’s effects are “inconsequential” and exempt, but instead must look at the Project itself.

In sum, the new interpretation of a “negligible” expansion would conflict with the statutory scheme, render other steps in the CEQA process superfluous, and depart from long-standing jurisprudence by massively expanding the categorical exemption. Thus, the Court’s decision to grant or deny review will have immense practical consequences on the scope of potential projects that may entirely avoid CEQA review.

STATEMENT OF THE CASE

I. Factual Background

Reabold operates the “Ginochio Lease,” situated on and bordering lands of public importance, within the Brentwood Oil Field in Contra Costa County. (See, e.g., AR 40, 43, 431, 446-48, 790.) The Ginochio Lease includes two (2) active production wells and an existing oil and gas production well boring (Ginochio 41-17 (API:01300019) (hereafter the Ginochio Well)). (AR 39-40, 42-43, 790-91.) The Ginochio Well was drilled in 1963 and abandoned in 1984. (AR 1-41.) The Ginochio Well remains “plugged and abandoned,” and has *never been used for wastewater injection* or anything other than oil and gas production. (AR 439, 790.)

Yet, Reabold’s proposed project seeks to convert the “plugged and abandoned” Ginochio Well into a Class II Water Disposal well (hereafter the Project) (AR 795-796) without CEQA review. The Ginochio Well will dispose of produced water from the “Second Massive Sand Interval” production area, and re-

inject it into the “Third Massive Sand Interval.” (AR 402, 441.) Thus, groundwater will be moved from one aquifer formation to another. This wastewater disposal is intended to alter the groundwater pressure in the new receiving formation. (AR 402.)

Reabold’s consultant prepared a Technical Report for UIC Project Application (hereafter Technical Report), providing an initial review of the Project. (AR 65-398). The State and Regional Water Board reviewed the consultant’s Technical Report (AR 762-71), raising several concerns regarding potential adverse environmental impacts, including to the aquifers outside the injection zone, requesting clarifications, and prompting Reabold to submit a revised Technical Report. (See AR 770-71; 766-67 [concerns regarding the water quality of the Second Massive sand compared to the Third Massive sand]; 780-83, 766, 786-88 [concerns and eventual constraints involving reservoir pressure].)

The Technical Report vaguely describes 22 “water wells” in the vicinity, noting that “[t]here are no water wells that penetrate the Third Massive Sand or the Upper Confining Zone. Over 1,000 vertical feet of shale exists to hydraulically isolate the injection zone from the beneficial use regional aquifer.” (AR 437.) Further, “[t]he injection facility has an anticipated injection pressure of at least 1400 psi Injection water volume is anticipated to peak at 1500 bbls/day. The anticipated project duration is 20 years and the anticipated cumulative net volume of fluid to be injected is 10,950,000 bbls.” (AR 439.) Again, the Ginochio Well has *never been used for wastewater injection* and, while the record indicates two other leases have a history of

injection, there is absolutely no description of what was injected, where, when, or under what regulatory auspices. (AR 436.)

One concern raised by the Water Boards involves reservoir pressure from the wastewater injection and potential adverse impacts to nearby aquifers. The Water Boards describe that the reservoir pressure is high enough to push the fluids into the overlying USDW aquifer and expressly question the Operator's interpretation that the "fault is sealing vertically." (AR 767.) Thus, the Water Boards insisted on pre-project pressure testing, and authority for future project modifications, rather than simply relying on the formation alone to confine the injection. (See AR 150 [CalGEM commenting "[t]he application needs a discussion supported with data detailing how fluids would be prevented from migrating upwards through the non-sealing fault into USDW's above".])

Another concern involves the potential adverse impacts of the unknown chemicals that the wastewater will be treated and contaminated with. The Technical Report states that "[t]he produced water is intended to be treated before injection, *but a chemical schedule has not been developed at this time.*" (AR 440 [italics added].) The Technical Report also notes "[a] corrosion inhibitor and oxygen scavenger is expected to be used to treat the injectate." (AR 149.)

Following the technical review process, CalGEM issued the Notice of Exemption and Project approval, applying ten (10) new conditions, and three new monitoring and reporting requirements, related to the non-negligible change in use at the

property, to attempt to reduce or avoid adverse environmental effects. (AR 785-89; 790-1.)

II. Procedural History

On December 29, 2021, Sunflower Alliance filed a Verified Petition for Writ of Mandate (“Verified Petition”) against CalGEM challenging its Notice of Exemption and Project Approval, alleging the Project does not fit within the categorical and statutory exemptions CalGEM applied. The Parties agreed to a briefing schedule to fully resolve the case on cross-motions for judgment, and the Superior Court granted Sunflower Alliance’s cross-motion for judgment, requiring CalGEM to rescind its approval of the Project.

On April 27, 2023, Reabold filed its notice of appeal from the Superior Court’s March 2, 2023 Judgment. CalGEM did not appeal but, on May 10, 2023, filed its return to peremptory writ of mandate, having vacated the Project approvals. The First District Court of Appeal reversed the trial court’s decision, applying a new test to conclude that the expansion of the well’s use is negligible and thus falls within the Class 1 exemption. Respondent filed a petition for rehearing with the Court of Appeal on September 23, 2024, which the Court of Appeal denied on October 7, 2024, with modifications to the Opinion.

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ARGUMENT

I. The Opinion Raises an Important Issue and Threatens Uniformity of Decisions as to Whether an Agency Can Lawfully Claim a Categorical Exemption from Environmental Review When the Agency Adopts Conditions of Approval to Reduce or Avoid Potentially Significant Environmental Effects.

The Opinion creates a split in appellate decisions by failing to adhere to the principles in *Azusa* and *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098 (hereafter *SPAWN*) that prohibit an agency from relying on mitigation measures to fit a project within a categorical exemption.

In *Azusa*, the Regional Water Board imposed mitigation measures, consistent with its regulatory authorities and mandates, to attempt to prevent contamination of an underground water supply. (*Azusa*, 52 Cal.App.4th at 1194). Much like CalGEM's UIC regulations at issue here, in *Azusa*, "the State Board adopted a comprehensive regulatory scheme" for regulating groundwater quality, including effects from municipal solid waste management. (*Id.* at 1181-85.) Nonetheless, the Water Board was not allowed to rely on its conditions of approval—which it imposed to comply with its own regulatory standards—to exempt CEQA review. Instead, the court explained that mitigation measures necessary to avoid potentially significant effects must, at a minimum, follow CEQA's procedures for a mitigated negative declaration. (*Id.* at 1201.)

The present Opinion conflicts with *Azusa*, since here, there was no assurance the project would not contaminate drinking water supplies *but for* the conditions of approval imposed; regardless of the fact that such mitigation measures arose from a comprehensive regulatory scheme to protect drinking water. Reducing the injection rate in response to the future aquifer testing is not an inherent project design, but rather, constitutes a change to the project more in the nature of a mitigation measure, requiring CEQA review.

The Regional Water Board and CalGEM *did not* conclude that the Project, as proposed, would certainly avoid impacts to drinking water. (See AR 790-91, 793-97.) On the contrary, the existing aquifer pressure was “*unknown*”, so Water Board approval was conditioned on CalGEM requiring aquifer pressure testing *to determine* if adverse harms could occur. (AR 778, 782-83.) Thereafter, CalGEM may decrease the Project’s injection rate, based on the pressure test results. (AR 786.) This is, by definition, a “mitigation measure” under CEQA: ““Mitigation” includes: (a) Avoiding the impact altogether by not taking a certain action or parts of an action.” (Cal. Code Regs., tit. 14, § 15370; see also *Save the Plastic Bag Coalition v. City and County of San Francisco* (2013) 222 Cal.App.4th 863, 882 (a mitigation measure is *not* “part of the project design,” but rather, is a “measure to try to alleviate some perceived difficulties in the original plan”) [cleaned up].) The aquifer pressure test, and potential to reduce the injection rate in response to the test results, were *not* “part of the project design” (*id.*) but rather,

would attempt to “[a]void[] the impact altogether by not taking . . . parts of an action” (Cal. Code Regs., tit. 14, § 15370; see also *SPAWN*, 125 Cal.App.4th at 1102 [holding that an agency cannot avoid CEQA review by using a categorical exemption only after adding “dozens of conditions that have been applied to enhance mitigations and reduce to a minimum the possibility of any adverse environmental impacts”].) This required CEQA review.

Instead, the Opinion misapplies *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 816-817 (*Walters*) to conclude that CalGEM’s conditions of approval did not mandate CEQA review, creating a further conflict in appellate precedent. *Walters*, however, is both distinguishable and illustrative. The project at issue in *Walters*—a coffee shop and carwash—does not compare to the potential environmental harms at issue here from injecting oil and gas production wastewater into a new aquifer formation where it may impact drinking water. (See AR 782-3.) In *Walters*, neighbors were concerned about noise. (*Walters, supra*, 1 Cal.App.5th at 824.) “[T]he City concluded that the project, as approved, complies with the noise ordinance requirements, but took a ‘belt and suspenders’ approach by requiring Auto Spa to prove that those requirements are satisfied.” (*Ibid.*) Here, however, there was no assurance Reabold’s injection well would avoid potential impacts to the drinking water aquifer *but for* the conditions of approval imposed by the Water Boards and CalGEM.

In sum, the Opinion creates a conflict among appellate decisions for determining when a condition of approval constitutes a mitigation measure that requires CEQA review.

II. The Opinion Raises an Important Issue as to What Constitutes a “Negligible Expansion or No Expansion” of a Facility’s Use Under CEQA’s Class 1 Exemption.

Review is warranted because the Opinion’s interpretation of the Class 1 exemption conflicts with and undermines statutory and regulatory language and jurisprudence interpreting the CEQA exemptions.

The Legislature directed the Secretary of Natural Resources to establish “a list of classes of projects that have been determined not to have a significant effect on the environment and that shall be exempt from” CEQA. (Pub. Resources Code, § 21084, subd. (a) [emphasis added].) Similarly, the CEQA Guidelines provide that “the following classes of projects . . . do not have a significant effect on the environment,” and are categorically exempt.” (Cal. Code Regs., tit 14, § 15300 [emphasis added].) In turn, the court in *Azusa* explained that “the exemption for existing ‘facilities,’ should not be so broadly interpreted so to include a class of businesses that will not normally satisfy the statutory requirements for a categorical exemption.” (*Azusa*, 52 Cal.App.4th at 1192-93.)

Treating a negligible expansion in use as one that has no potential for environmental harm would render the categorical exemptions, and the exceptions to exemptions, superfluous. This

is borne out by the Supreme Court's discussion in *Berkeley Hillside Preservation*:

we agree with respondents that, under the construction of appellants and the concurring opinion, the categorical exemptions the Legislature, through the Secretary, has established would have little, if any, effect. CEQA specifies that environmental review through preparation of an EIR is required only “[i]f there is substantial evidence ... that the project may have a significant effect on the environment.” (§ 21080, subd. (d).) As a corollary to this principle, CEQA also specifies that, if “[t]here is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment,” then the proposed project is not subject to further CEQA review. (§ 21080, subd. (c)(1).) Guidelines section 15061, subdivision (b)(3), is similar, specifying: “Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

Under these provisions, where there is no substantial evidence a proposed project may have a significant environmental effect, further CEQA review is unnecessary; no categorical exemption is necessary to establish that proposition. According to appellants, under the unusual circumstances exception, the categorical exemptions are inapplicable unless an agency “check[s] its files” and finds no “evidence of potentially significant impacts.” But this is similar to the inquiry an agency makes under Guidelines section 15061, subdivision (b)(3), to determine whether the proposed project is subject to CEQA review in the first instance. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 387 [60 Cal. Rptr. 3d 247, 160 P.3d 116] (*Muzzy Ranch*) [under Guidelines, § 15061, subd. (b)(3), agency must determine whether the evidence in the administrative

record shows no possibility the proposed activity may have a significant effect on the environment].) Thus, under appellants' view, the categorical exemptions would serve little purpose; they would generally apply only when the proposed project is already outside of CEQA review.

(*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1098-1099.)

Such is the case at hand. If, to qualify for the Class 1 exemption, an agency must *first* find that there is no threat of environmental harm, such test would (1) require an assessment of environmental impacts before determining whether a project is exempt (but see *City of Pasadena, supra*, 14 Cal.App.4th at 820 [“the applicability of an exemption must be made before the agency begins its formal environmental evaluation of the project”]), (2) rendering the exemption at Guidelines section 15261, subd. (b)(3) superfluous, and (3) rendering the unusual circumstances exception to the exemption superfluous.

Had the California Natural Resources Agency intended negligible to mean without threat of environmental harm, it could have so stated. Indeed, this concept is largely synonymous with CEQA’s treatment of a “significant effect on the environment,” which includes a “*potentially* substantial, adverse change in any of the physical conditions within the area affected . . .” (Cal. Code Regs., tit. 14, § 15382 [emphasis added].) The Guidelines provide that “[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due

to unusual circumstances.” (Cal. Code Regs., tit 14, § 15300.2, subd. (c).) Consistent with the Opinion, this exception could never be available to a Class 1 exemption, since to qualify for the exemption, the lead agency must *first* find that there is no threat of environmental harm. The Opinion should be reviewed to ensure that the exemption exceptions are not superfluous. (Cf. *Azusa*, 52 Cal.App.4th at 1200 [“In determining whether the significant effect exception to a categorical exemption exists, it is the possibility of a significant effect . . . which is at issue, not a determination of the actual effect, which would be the subject of a negative declaration or an EIR.”] (cleaned up).)

The statutory and regulatory context are further at odds with the Opinion. (See, e.g., *Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003 [to ensure an interpretation is consistent with legislative intent and to avoid “an interpretation that would lead to absurd consequences,” “. . . courts may consider various extrinsic aids, including the purpose of the statute . . . public policy, and the statutory scheme encompassing the statute.”]; *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737-39 [to resolve ambiguity, courts may go beyond the legislative history and consider other aids, such as context of a statute’s purpose]; *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805 [courts must “harmonize statutes, reconcile seeming inconsistencies in them, and construe them to give force and effect to all of their provisions.”]; *BBBB Bonding Corp. v. Caldwell* (2021) 73 Cal.App.5th 349, 366-69 [considering extrinsic

statutes to interpret statute at issue]; *DiCarlo v. County of Monterey* (2017) 12 Cal.App.5th 468, 483-86 [explaining the “same rules of construction and interpretation which apply to statutes govern the construction and interpretation of rules and regulations of administrative agencies’ [and that courts] ‘may look to a variety of extrinsic aids, including the purpose of the regulation, the legislative history, public policy, and the regulatory scheme of which the regulation is a part.’”] (citations omitted); *Becerra v. McClatchy Co.* (2021) 69Cal.App.5th 913, 929, 946.)

For example, in *Azusa*, the court found that the class of project at issue in that case could not be considered categorically insignificant, given, in part, “the legislative determination in 1989 that some of the state’s existing landfills ‘pose a threat to groundwater, air quality and public health.’” (*Azusa*, 52 Cal.App.4th 1165, 1195.) Similarly, in the present case, the Legislature has categorically prohibited these types of projects if they are within 3200 feet of a residence – clearly indicating that the legislature does not view this class of businesses as categorically inconsequential. (See Pub. Resources Code, §§ 3280, 3281, 3282; Cal. Code Regs., tit.14, §§ 1724.6 – 1724.10.) These Legislative enactments clearly indicate that the Legislature *does not* consider underground injection of oil and gas wastewater to be inconsequential. On the contrary, it is subject to extensive regulations and limitations. The change in use is plainly not *per se* inconsequential.

By transmuted “negligible expansion of use” into “inconsequential effect,” the Opinion’s test would allow *any* new use to potentially qualify for the exemption, when the Guidelines are plain that the change in use itself must be negligible. In this way, the Opinion vastly expands the potential scope of the exemption, contravening the courts’ consistent doctrine that exemption categories are not to be expanded beyond the reasonable scope of their language, are to be construed narrowly, and in such a manner as to afford the fullest possible protection to the environment, with a preference for resolving all doubts in favor of environmental review. (See *Tomlinson v. County of Alameda*, 185 Cal.App.4th 1029, 1045.) Without public input – which is at the heart of CEQA – administrative records such as this may not include all relevant evidence to determine whether any significant impact is possible.

The Opinion relies on CalGEM’s regulatory scheme to support its finding of inconsequential effect, but review of the regulatory scheme alone is insufficient to reach a conclusion of significance under CEQA. (See *Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 957 [if agency “had relied entirely on the . . . regulatory program . . . we would agree that CDF failed in its duty to consider and disclose information”].) To the extent CalGEM went beyond its regulations, in this case, to consider the environmental effects of the Project, it did so through conditions of approval that mitigated the Project’s effects, discussed further, above. Moreover, the regulatory program at issue here is analogous to

the facts at issue in *Azusa*, where “the State Board adopted a comprehensive regulatory scheme” for regulating groundwater quality, including effects from municipal solid waste management (*Azusa*, 52 Cal.App.4th at 1181-85), which class of projects was deemed not to be categorically exempt.

In sum, the Opinion would vastly expand the Class 1 exemption, and depart from the stated statutory and regulatory purpose of defining “classes of businesses” with no likely adverse environmental effects. Instead, the Opinion requires the agency to make an effects determination *before* determining whether an exemption applies, which is also contrary to Supreme Court precedent, and the statutory scheme. In so doing, the agency also cannot rely solely on the regulatory scheme to find an exemption, as the Opinion would permit, but should instead look at the type of project at issue. Respondent Sunflower Alliance respectfully requests review and reversal of the Opinion to address these issues.

Review is warranted because the Opinion adopts a new interpretation of CEQA’s Class 1 Categorical Exemption that conflicts with the factual, statutory, and judicial context.

III. The Opinion Misstates and Omits Material Facts, Including Several Environmental Concerns Expressed in the Administrative Record, Leaving Questions Regarding Whether and to What Extent Well Conversion Projects Constitute a Negligible Expansion and May Evade CEQA Review.

The Opinion relies on the following inaccurate facts, as well as omits related material facts, as support for three key conclusions in the Opinion: the project does not fall outside the

scope of the Class 1 exemption; substantial evidence supports CalGEM's determination that the project fits within the Class 1 exemption; and CalGEM did not use mitigation measures to eliminate the project's environmental impacts. Reliance on accurate and relevant facts could produce a different result and/or reasoning, creating further conflict and misguidance in the lower courts. Accordingly, review is necessary to clarify the issues of this case within the appropriate factual context.

The Opinion inaccurately contends that the injected wastewater will certainly be confined to the aquifer it was injected into when applying its new test and as support for its key conclusions. The Regional and State Water Board expressed concerns regarding the reservoir pressure from the wastewater injection, eventually imposing restraints to help mitigate potential leaking from the aquifer. (AR 766, 786-88; AR 791 [10,000,000 bbls of chemical wastewater injected into the underlying aquifer].) One concern expressed by the Water Board was that the reservoir pressure is high enough to push the fluids into the overlying USDW, and expressly questioned whether to agree "with the Operator's interpretation that the fault is sealing vertically." (AR 767.) Only *after* the aquifer pressure test is completed can the agencies determine whether the Project injection fluid will be confined, and even then, the agencies reserved the right to further modify the Project. Thus, as approved, the record *does not* support the conclusion that the approved injection rate will certainly be confined to the aquifer formation it is injected into, and the Opinion inaccurately implies

that Sunflower Alliance concedes this point. (See *Sunflower Alliance*, 104 Cal.App.5th at 1143-1144, 1150.)

In its Respondent's brief, Sunflower Alliance cites that "[o]ver 1,000 vertical feet of shale exists to hydraulically isolate the injection zone from the beneficial use regional aquifer." (Respondent's Brief at 15 [citing AR 437].) However, this statement was used to describe the Technical Report's vague description of the twenty-two (22) water wells in the vicinity. (*Id.*) Further, Sunflower Alliance has repeatedly noted that the State and Regional Water Board expressed concerns regarding potential impacts to the aquifers outside the injection zone, and insisted on testing and authority for future project modifications, rather than simply relying on the formation alone to confine the injection. Sunflower Alliance discussed these concerns in its briefing. (See, e.g., Respondent's Brief at 14, 17-18, 38.) This is a material fact supporting Sunflower Alliance's argument that the project should have been and should be subject to CEQA review.

The Opinion inaccurately describes the wastewater as being injected into the same formation and applies this fact to its new test. As Sunflower Alliance explains in its Respondent's Brief, the wastewater will be injected into a different groundwater formation than that which it was withdrawn from. (Respondent's Brief at 16, 47.) The produced water will be withdrawn from the "Second Massive Sand Interval" production area and will be reinjected into the "Third Massive Sand Interval." (*Id.* [citing AR 402, 441]; see also AR 389 [illustrating the formation and zones within the Well]; AR 766-67 [wastewater

will be injected into a different groundwater formation than from which it was extracted]; AR 402 [the wastewater disposal is intended to alter the groundwater pressure in the new receiving groundwater formation].)

Hence, the re-injection process is *not* simply a reverse of the extraction process, as the Opinion suggests. (See *Sunflower Alliance*, 104 Cal.App.5th at 1147 [“As modified, it will inject water back into the aquifer, minus the oil. The modified well basically just reverses the process.”]; see also *Sunflower Alliance*, 104 Cal.App.5th at 1150 [“new use is limited to the disposal of produced water”].) The Opinion fails to properly recognize and consider that the wastewater will be treated with and contaminated with chemicals—chemicals not reported at the time agencies reviewed the project. (See AR 149 [“A corrosion inhibitor and oxygen scavenger is expected to be used to treat the injectate.”]; AR 440 [“[t]he produced water is intended to be treated before injection, but a chemical schedule has not been developed at this time.”].) Further, the wastewater injection is intended to alter the groundwater pressure in the receiving groundwater formation. (AR 402.) Each of these facts gives rise to environmental effects CalGEM never expressly found to be “inconsequential.”

The Opinion relies on this misconstrued fact, and omits related accurate facts, to determine that the Project’s change in use is “inconsequential,” but the Court of Appeal should not have rendered findings of fact in the first instance. Because the wastewater is *not* simply being put back to where it came from,

the matter should have been remanded to the Superior Court or to CalGEM to determine if this change is or is not inconsequential. As evidenced by the Water Boards' and CalGEM's conditions of approval, it would *not* be plainly inconsequential.

Not only do these disputed material facts warrant Sunflower Alliance's request for review and reversal of the Opinion, they further illustrate the need for public participation under CEQA review, as also discussed in section II above.

CONCLUSION

Respondent Sunflower Alliance respectfully requests that this Court grant review and reverse the Court of Appeal's Opinion.

Dated: October 16, 2024

Respectfully submitted,

/s/ Jason R. Flanders

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CERTIFICATE OF WORD COUNT

I, Jason Flanders, hereby certify that this petition complies with the type-volume limitation of California Rules of Court, rule 8.504(d)(1) because this petition contains 5,712 words, including footnotes but excluding the parts exempted by rule 8.504(d)(3), as counted by Microsoft Word, the program used to prepare this petition.

/s/ Jason R. Flanders

JASON R. FLANDERS

EXHIBIT A

(September 6, 2024 Opinion of the Court of Appeal of the State of California, First Appellate District, Division 5)

Filed 9/6/24

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SUNFLOWER ALLIANCE,

Plaintiff and Respondent,

v.

CALIFORNIA DEPARTMENT OF
CONSERVATION et al.,

Defendants;

REABOLD CALIFORNIA, LLC,

Real Party in Interest and
Appellant.

A167698

(Contra Costa County Super. Ct.
No. N221503)

The California Environmental Quality Act’s regulatory guidelines provide an exemption from CEQA for minor alterations of an existing facility if the project involves only “negligible or no expansion” of the facility’s use. (Cal. Code Regs., tit. 14, § 15301.)¹ The Department of Conservation’s Division of Geologic Energy Management (CalGEM) invoked the exemption in approving a project to convert an oil well, which formerly pumped oil and water from an aquifer, into an injection well, which would pump excess water back into the aquifer. The project requires only minor alterations of the well. The question

¹ All references to “CEQA” are to the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.). All references to “guidelines” are to the state CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.).

is whether injecting water, rather than pumping it, constitutes a negligible expansion of the well's former use.

We conclude that any expansion of the well's use is negligible because, under the facts here, the environmental risks of injecting the water are negligible. The well conversion project falls within the exemption. Because the trial court concluded otherwise, we reverse.

BACKGROUND

A.

CalGEM oversees California's underground injection program and, more generally, regulates oil and gas extraction in the state. (Pub. Resources Code, §§ 3000-3359; Cal. Code Regs., tit. 14, §§ 1724.3-1724.13; see *Center for Biological Diversity v. Department of Conservation* (2018) 26 Cal.App.5th 161, 165-169 (*Center for Biological Diversity*)). Underground injection projects are governed by federal and state law, both of which place strict limitations on the type of injection well at issue here.

The federal Safe Drinking Water Act protects the nation's drinking water supply. (See 42 U.S.C. § 300f et seq.) Federal regulations bar injection into an aquifer unless the Environmental Protection Agency affirmatively exempts the aquifer from the Safe Drinking Water Act. (40 C.F.R. §§ 144.1(g), 146.4, 144.7(a) (2024).) The agency may only exempt an aquifer when, for specified reasons such as poor water quality, it determines the aquifer will never serve as a source of drinking water. (40 C.F.R. § 146.4(a)-(c) (2024); see also, Pub. Resources Code, § 3131, subd. (a)(2).) Aquifers containing significant quantities of oil are among those aquifers, making them eligible for exemption and injection. (40 C.F.R. § 146.4(b)(1) (2024).)

Oil wells commonly pump several barrels of water (called "produced water") with each barrel of oil. Well operators separate the oil from the produced water, but they then must

dispose of the water, which may be very poor quality. One common solution is to inject the water back into an exempt oil-bearing aquifer, using what both federal and state law deem a Class II well. (40 C.F.R. § 144.6(b)(1) (2024); Pub. Resources Code, § 3130, subd. (b).)

CalGEM, in consultation with the State Water Resources Control Board and the Regional Water Quality Control Boards, reviews Class II well applications for compliance with state and federal requirements. (Cal. Code Regs., tit. 14, § 1724.6.) An applicant must demonstrate that the injected water will be confined by the aquifer’s geology and will not escape the exempt aquifer through a well, fault, flaw in the well casing, or other pathway. (Cal. Code Regs., tit. 14, § 1724.7.) This requires a detailed technical review of the aquifer, the proposed injection well, and the other wells in the area, as well as the plan for injection and a monitoring system “to ensure that no damage [to the well] is occurring and that the injection fluid is confined to the approved injection zone.” (Cal. Code Regs., tit. 14, §§ 1724.7, subds. (a)-(e), 1724.7.1.)

State law bars any injection well that allows injected water to escape the exempt aquifer or that will harm people or the environment: “An underground injection project shall not cause or contribute to the migration of fluid outside the approved injection zone, or otherwise have an adverse effect on the underground injection project or cause damage to life, health, property, or natural resources.” (Cal. Code Regs., tit. 14, § 1724.8, subd. (a); see also, Pub. Resources Code, § 3131, subd. (a).)

B.

In 2020, Reabold California LLC filed an application with CalGEM to convert a former oil well into a Class II injection well. The well is in the Brentwood Oil Field, a large oil and gas field in Contra Costa County. The well was drilled in 1963, operated as

an oil well for over 20 years, then plugged. The well is more than 4,000 feet deep.

Since 1963, dozens of wells in the Brentwood field have together pumped over 33 million barrels of water and 3.6 million barrels of oil from the aquifer. In 1982, the Environmental Protection Agency exempted the aquifer from the Safe Drinking Water Act, making it eligible for Class II injection wells. (See 40 C.F.R. § 146.4(b)(1) (2024).) Two wells have been injecting produced water back into the aquifer—about 9.4 million barrels so far.

Reabold operates two nearby oil wells that produce about 300 barrels of water per day from an adjacent oil-bearing aquifer. Currently, Reabold trucks the produced water to a disposal site 32 miles away, 10 times per week. Injecting the water would eliminate these trips.

Reabold proposed minor changes to the proposed injection site—it would remove the well plug, install injection equipment inside the existing well, and use the existing well pad and access road. The site is sparsely vegetated.

Reabold's application includes a technical report from an engineer, a geologist, and a hydrogeologist, with supporting analyses, data, maps, well logs, lab reports, history, and other information required by CalGEM. The report concludes that the injected water would be confined to the aquifer by thick layers (about 1,000 vertical feet) of shale. In the general area there are 22 wells that supply water for domestic or agricultural purposes, the deepest of which is 500 feet deep. None of them penetrates the oil aquifer (3,938 feet deep) or the protective layers of shale.

Three regulatory agencies—CalGEM, the State Water Resources Control Board, and the Regional Water Quality Control Board—reviewed Reabold's application. They posed detailed questions and requested additional data in several

rounds of discussions. Eventually, the Regional Board confirmed that the aquifer is exempt, concluded that all its concerns had been resolved, and allowed the project to proceed. CalGEM also approved the project, with several regulatory conditions.

Regarding CEQA, CalGEM found that the project fits within the Class 1 categorical exemption as a “minor alteration” of an existing facility involving “negligible or no expansion” of the well’s former use. (Guidelines, § 15301.) By regulation, CalGEM has determined that minor well conversions and injection projects may fall within the Class 1 exemption (Cal. Code Regs., tit. 14, § 1684.1). According to CalGEM, the exemption is applied on a case-by-case basis after a fact-intensive inquiry.

In this instance, CalGEM observed, in its notice of exemption, that Reabold’s injection equipment would be installed within the existing well boring and would require no significant surface equipment or new wells. The project would eliminate the need for routine trucking of the produced water, and it would inject water to the aquifer “cleaner than when it was removed.”

C.

Sunflower Alliance filed a petition for writ of mandate challenging CalGEM’s use of the categorical exemption. On the merits, the trial court said it was inclined to agree with CalGEM and Reabold that the physical modifications to the well are minor and fit within the exemption. But the court agreed with Sunflower that the Class 1 exemption did not apply because—as injection is a “significantly different use”—it was “not convinced that changing an oil and gas well into a water injection well involves negligible or no expansion of use.”

The court entered judgment in favor of Sunflower and issued a peremptory writ of mandate directing CalGEM to set aside its notice of exemption and its approval of the project.

Reabold appealed; CalGEM complied with the writ and rescinded both its notice of exemption and its project approval letter.²

DISCUSSION

A.

We begin with a brief overview of categorical exemptions.

CEQA embodies a strong public policy of environmental protection. (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285 (*Tomlinson*)). It establishes a three-step process. First, the lead agency determines whether a proposed action is a “project” within the meaning of the statute. (*Id.* at p. 286; Pub. Resources Code, § 21065.) If so, in the second step, the agency determines whether the project is exempt from CEQA. (*Tomlinson*, at p. 286.) If it is exempt, no further environmental review is required. (*Ibid.*) If it is not exempt, the agency proceeds to the third step—evaluating the project’s environmental impacts, which may include preparing an environmental impact report. (*Ibid.*)

This case concerns the second step—determining whether an exemption applies to the project. Categorical exemptions define classes of projects that, by regulation, the Secretary of the Natural Resources Agency (Secretary) has determined do not

² Although CalGEM chose to comply with the writ, Reabold is free to pursue an appeal. (See *Santa Rita Union School Dist. v. City of Salinas* (2023) 94 Cal.App.5th 298, 324-325.) CalGEM, however, filed a respondent’s brief on the merits and argues that the project is exempt. Sunflower asks us to strike the brief on the ground that CalGEM is not a proper respondent. Sunflower appears to be correct. (See Code Civ. Proc., § 902.) Regardless, we accept CalGEM’s brief as an amicus curiae brief. (Cal. Rules of Court, rule 8.200(c)(7).)

We deny, as irrelevant to the issues in this appeal, the requests for judicial notice filed by Reabold, CalGEM, and Sunflower, which relate to an issue we do not reach.

have a significant effect on the environment. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1092 (*Berkeley Hillside*); Pub. Resources Code, § 21084; guidelines, §§ 15300, 15301.) By statute, CEQA does not apply to the projects within the exempt categories. (Pub. Resources Code, § 21080, subd. (b)(9).)

Categorical exemptions provide a measure of certainty and predictability in the context of a statute that is famously sweeping and imprecise. Our Supreme Court suggested the idea in its seminal case *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 (*Friends of Mammoth*), disapproved on another ground in *Kowis v. Howard* (1992) 3 Cal.4th 888, 896. In *Friends of Mammoth*, the court interpreted CEQA's vague terms expansively to apply to private projects that require government approval, contrary to the general belief that it applied only to public projects (*Berkeley Hillside, supra*, 60 Cal.4th at p. 1100), and the court warned that the full reach of the statute is “not immediately clear.” (*Friends of Mammoth*, at p. 271.)

Anticipating an alarmed reaction to its opinion, the court reassuringly predicted that “[f]urther legislative or administrative guidance may be forthcoming” and suggested the concept that later became categorical exemptions: “[C]ommon sense tells us that the majority of private projects for which a government permit or similar entitlement is necessary are minor in scope . . . and hence, in the absence of unusual circumstances, have little or no effect on the public environment. Such projects, accordingly, may be approved exactly as before the enactment of [CEQA].” (*Friends of Mammoth, supra*, 8 Cal.3d at pp. 271-272.)

The Legislature responded to *Friends of Mammoth* by passing urgency legislation that, among other things, seized on the court's suggestion. The Legislature directed the Secretary to adopt regulations (via the guidelines) that establish classes of projects that the Secretary has found do not have an effect on the

environment and are therefore exempt from CEQA. (*Berkeley Hillside, supra*, 60 Cal.4th at pp. 1100-1102; see Pub. Resources Code, §§ 21083, 21084, subd. (e).)

Categorical exemptions provide certainty for projects that occupy a precarious position—just outside of CEQA’s hazy border—by clarifying that CEQA does not apply to them notwithstanding their potential effect on the environment. (See *Berkeley Hillside, supra*, 60 Cal.4th at p. 1102.) For each exempt class, “the Secretary has determined that the environmental changes typically associated with projects in that class are not significant effects within the meaning of CEQA, even though an argument might be made that they are potentially significant.” (*Id.* at pp. 1104-1105.) The guidelines designate more than 30 categorically exempt classes of projects. (Guidelines, §§ 15301-15333.)

The guidelines also include exceptions to the exemptions. (Guidelines, § 15300.2; *Berkeley Hillside, supra*, 60 Cal.4th at pp. 1100-1101, 1104-1105.) When an agency determines that a project is categorically exempt, it impliedly finds that none of the exceptions applies. (*San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1022-1023 (*San Francisco Beautiful*)). An objecting party bears the burden of producing evidence that an exception does apply. (*Berkeley Hillside*, at p. 1105.)

Here, Sunflower contends that the well conversion project does not fit within the class of projects covered by the Class 1 exemption. Sunflower does not argue that any exceptions apply.

B.

1.

We must decide whether CalGEM abused its discretion when it determined that Reabold’s well conversion project falls within the Class 1 categorical exemption. (Pub. Resources Code,

§ 21168.5; see *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427 [appellate court reviews agency’s decision, not trial court’s].) An abuse of discretion occurs if the agency failed to proceed in a manner required by law or its decision is not supported by substantial evidence. (Pub. Resources Code, § 21168.5)

We apply the de novo standard to CalGEM’s interpretation of CEQA and the guidelines. (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 816-817 (*Walters*).) We treat the guidelines as regulations and interpret them in the same manner that we interpret statutes, using the traditional rules of statutory construction. (*Berkeley Hillside, supra*, 60 Cal.4th at p. 1097.) To the extent that CalGEM’s decision turns on evidence in the administrative record, we apply the substantial evidence standard. (*Walters*, at p. 817.)

When interpreting a categorical exemption, moreover, we must stay within the reasonable scope of the exemption’s language (*World Business Academy v. State Lands Com.* (2018) 24 Cal.App.5th 476, 495; Pub. Resources Code, § 21083.1) and bear in mind its commonsense purpose. (See *Friends of Mammoth, supra*, 8 Cal.3d at p. 272; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175 [emphasizing importance of common sense “at all levels of CEQA review”]; see generally, *Berkeley Hillside, supra*, 60 Cal.4th at pp. 1100-1102, 1107-1108.)

2.

Sunflower’s main argument is that CalGEM misinterpreted the Class 1 exemption because well conversion projects, as a group, are outside the exemption’s scope. (See *Don’t Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 360-361.)

Class 1 categorical exemptions are aimed at projects involving minor alterations of existing structures: “Class 1

consists of the operation . . . permitting . . . or minor alteration of existing . . . private structures, facilities, [or] mechanical equipment . . . involving negligible or no expansion of existing or former use.” (Guidelines, § 15301.) The guidelines emphasize that “[t]he key consideration is whether the project involves negligible or no expansion of use.” (*Ibid.*)

The parties disagree about whether converting an oil well to an injection well can ever involve “negligible or no expansion” of its former use. (Guidelines, § 15301.) Sunflower argues that any *new* use of a modified well is an impermissible expansion. Because the well has never been used to inject water, it says, the exemption does not apply. Reabold argues that the question is not whether the use would change but, instead, the *degree* of change. Formerly, the well pumped oil and water from an aquifer. As modified, it will inject water back into the aquifer, minus the oil. The modified well basically just reverses the process. Similarly, CalGEM equates “use” with “purpose”—whether the well is pumping or injecting, there is no change in the well’s purpose to “transport fluid between the surface and subsurface.”

We are not altogether sold on any of these approaches. In a sense, both sides are right: injection is a new use of the well, but it may not be a significant change. The cases cited by the parties do not address this particular situation, nor do they identify a principle or rule for resolving it. (See, e.g., *Turlock Irrigation Dist. v. Zanker* (2006) 140 Cal.App.4th 1047, 1066 [installation of water meters was not water system expansion]; *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 793-794 [requiring permits for existing parking spaces was not parking expansion]; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 960, 967 [diverting large amount of water from stream for municipal use was expansion of hydro station’s existing use that left water in

stream]; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1193-1196 (*Azusa*) [landfill was not a “facility” within Class 1, and use of landfill was not a “minor” alteration].)

To find the applicable rule, we begin with the Class 1 guideline’s language. If we assume (as Sunflower asserts) that injection is an “expansion” of the well’s use, the key term becomes “negligible.” The guideline uses this term to describe the outer limits of a permissible expansion: only a *negligible* expansion of use is exempt. (Guidelines, § 15301.) To determine the guideline’s intent, we focus on the plain meaning of its language, viewed in the context of the statutory scheme. (*Berkeley Hillside, supra*, 60 Cal.4th at p. 1097; *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1037.) The plain meaning of “negligible” is small, unimportant, or inconsequential. (Merriam-Webster Dict. Online (2024) <<https://www.merriam-webster.com/dictionary/negligible>> [as of Sept. 6, 2024].) We cannot construe “negligible” to mean that *any* new use, or change in use, is disqualifying. Such an interpretation would read “negligible” out of the guideline. (See *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1026 [“ [c]ourts should interpret statutes or written instruments so as to give force and effect to every provision’ ”].)

Focusing instead on the consequences of a change in use is a better approach. CEQA’s objective, of course, is protecting the environment. (*Tomlinson, supra*, 54 Cal.4th at p. 285.) In this context, then, it makes sense that the term negligible is intended to allow changes or expansions in use that are inconsequential and to exclude changes in use that threaten environmental harm. In other words, when a modified project is put to a new use, the change in use is unimportant, as far as CEQA goes, if the risk of environmental harm from the new use is negligible.

Our interpretation finds support in the guidelines, in which the Secretary provides examples of Class 1 projects to which the exemption would apply. For instance, the Secretary states that the exemption applies to a project to modify an existing street by adding new bicycle or transit lanes, but it does not apply to new car lanes. (Guidelines, § 15301, subd. (c).) In this example, the exemption’s application does not turn on whether the additional lanes—for bikes, transit, or cars—constitute a *new* use of the street. More likely the Secretary drew the line based on the degree of environmental risk produced by the change: bikes and transit do not harm air quality, but cars do.³ (See also *id.* at subd. (n) [conversion of single family residence into office use], and *id.* at subd. (o) [installation of steam sterilization unit in existing medical waste generation facility].)

By focusing on environmental risks, our interpretation serves the purpose of categorical exemptions—to exempt from CEQA classes of projects that the Secretary has determined typically do not have a significant environmental effect. (*Berkeley Hillside, supra*, 60 Cal.4th at pp. 1104-1105; Pub. Resources Code, §§ 21083, 21084.) It also appeals to common sense for the Secretary to exempt minor modifications to existing

³ Similarly, the modifications themselves can also cause environmental impacts when they are not “minor.” (Guidelines, § 15301; see, e.g., *id.*, subd. (e) [exempting minor additions to existing structures, based on size and nature of the modifications]; *Azusa, supra*, 52 Cal.App.4th at p. 1194 [“a ‘minor’ alteration cannot be an activity that creates a reasonable possibility of a significant environmental effect”].) Interestingly, the exemption applies to the demolition of three or fewer residences in urban areas—which might seem like a major alteration to the residences but presumably is minor in the sense that it poses few environmental risks. (Guidelines, § 15301, subd. (l)(1).) Together, the limits on modifications and use generally constrain the exempt class to modest, low-risk modification projects.

projects that pose a negligible threat to the environment. (See *Friends of Mammoth, supra*, 8 Cal.3d at p. 272 [as a matter of “common sense,” CEQA does not apply to most projects because they “are minor in scope . . . and . . . have little or no effect on the public environment”].) No purpose is served by myopically focusing on whether a use is new, thereby excluding from the exemption many projects that would cause no environmental harm— precisely the type of borderline projects for which categorical exemptions are useful.⁴

The question remains whether converting a former oil well to an injection well falls within the scope of the exemption. As explained, we reject Sunflower’s blanket argument that the exemption never applies to this kind of project because the change in use (injecting rather than pumping) is new. We conclude that the exemption is appropriate for the relatively modest type of conversion project at issue here.

First, with respect to the physical modifications to the well itself, Sunflower does not dispute (and the trial court agreed) that the project fits within the Class 1 guideline because it only includes “minor alteration[s]” to “existing . . . equipment.” (Guidelines, § 15301.) We agree as well. The conversion entails only modest alterations to the existing well. The project makes no significant changes to existing roads, the well pad, or surrounding vegetation, nor does it entail complicated modifications, deepening, or reconstruction of the well.

⁴ We also note that agencies routinely evaluate potential environmental impacts at this early stage of the CEQA process. Before invoking a categorical exemption, for example, agencies have a duty to consider a project’s environmental impacts when evidence in their records suggests the possibility that it may trigger an exception to the exemption. (*Berkeley Hillside, supra*, 60 Cal.4th at p. 1103; guidelines, § 15300.2, subs. (b), (c).)

Second, the change in the well's use is negligible. The well formerly pumped oil and water from an exempt aquifer. Once converted to a Class II injection well, it would inject water into the same aquifer. The new use is limited to the disposal of produced water. It will not involve any other uses, such as fracking, that may pose significant environmental risks. (See Pub. Resources Code, §§ 3152, 3160.) Part and parcel of the project's approval as a Class II well is a regulatory determination that the injected water cannot escape the aquifer and harm people, property, or the environment because the injected water will be geologically confined within the aquifer. (Cal. Code Regs., tit. 14, § 1724.8, subd. (a); see also, Pub. Resources Code, § 3131, subd. (a).) The environmental risks of the conversion are negligible.

Accordingly, we cannot say that this type of well conversion is categorically outside the scope of the Class I exemption.

3.

Next, we reject Sunflower's argument that substantial evidence does not support CalGEM's use of the Class 1 exemption for this project.

Sunflower baldly says that "no evidence in the record supports a conclusion that this change in use was negligible." But it ignores the regulatory agencies' conclusions and the substantial evidence that supports them. (See *Save the El Dorado Canal v. El Dorado Irrigation Dist.* (2022) 75 Cal.App.5th 239, 263 [CEQA petitioner forfeits argument based on substantial evidence if it fails to lay out evidence favorable to agency finding].) Sunflower does not dispute that almost 1,000 vertical feet of shale would confine the injected water to the aquifer. It does not argue that the agencies made a mistake. Moreover, it has expressly waived any challenge to CalGEM's factual finding that there is nothing unusual about this particular Class II well, or the aquifer's geology, that may cause significant

environmental impacts. (See guidelines, § 15300.2, subd. (c) [unusual circumstances exception]; *San Francisco Beautiful, supra*, 226 Cal.App.4th at p. 1022 [agency’s adoption of categorical exemption constitutes implied finding that no exception exists].)

Instead, at most, Sunflower briefly raises concerns that there “may” be significant adverse impacts although it is “unclear.” Even if Sunflower had not forfeited the issue, we are not persuaded.

First, Sunflower questions whether the injected water will harm the aquifer’s water quality. It asserts that the injected water is somewhat more saline than the aquifer, but it does not explain why any difference in the injected water’s salinity matters.⁵ Similarly, Sunflower speculates the aquifer may be harmed by a corrosion inhibitor added to the injected water. This is pure conjecture—the record simply has no details on the nature or amount of the additive, much less any effect (good, bad, or immaterial) on the already poor-quality water in the aquifer. (See *Walters, supra*, 1 Cal.App.5th at p. 819.) Adding a corrosion inhibitor is presumably intended to prevent the well from leaking. (See Cal. Code Regs., tit. 14, § 1724.7, subd. (a)(3)(G).) The administrative record does not support Sunflower’s speculation about harm to the aquifer.

⁵ In any case, the record does not appear to support Sunflower’s assertion. Sunflower points to a reviewer’s comment that the produced (injected) water “appears” to have higher total dissolved solids (2,600 parts per million, or ppm) than the aquifer (1,712 ppm). But the reviewer seems to have mixed up two different measurements of salinity. The 1,712 ppm figure is for sodium chloride. Sodium and chloride are merely components of the total dissolved solids. We were unable to find a measurement of the aquifer’s total dissolved solids for comparison.

Second, Sunflower notes that, in CalGEM’s initial review of the application, it requested more details on how “fluids would be prevented from migrating upwards through [a] non-sealing fault.” This is one of many questions the regulatory agencies raised on a variety of technical issues early in their review. Later, based on additional analysis, CalGEM was satisfied that “the fault is sealing.” The Regional Board also looked at the issue, and it requested, and received, a requirement to conduct a pressure test to confirm the analysis. The board then stated that all its concerns had been resolved. Sunflower presents no basis to disregard the technical conclusions of these expert agencies.

We conclude that substantial evidence—including the detailed technical review by CalGEM and the water boards—supports CalGEM’s determination that the project fits within the Class 1 exemption.

C.

Lastly, we reject Sunflower’s argument that CalGEM improperly imposed mitigation measures to eliminate the project’s (alleged) environmental impacts.

CalGEM adopted a number of conditions as part of its approval of the Class II well. (See Cal. Code Regs., tit. 14, § 1724.6, sub. (b).) Sunflower asserts vaguely that “numerous conditions” are, in reality, mitigation measures that CalGEM adopted so that the project would qualify for a categorical exemption. In its brief, Sunflower does not discuss any particular condition. At oral argument, it identified a condition (mentioned above) that the Regional Board had requested—a pressure test related to a fault.

An agency may not evade CEQA by adopting mitigation measures simply to qualify a project for a categorical exemption. (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102 (*Salmon Protection*)). In

Salmon Protection, a county acknowledged a residential construction project may have potential adverse impacts on adjacent stream habitat. It then adopted numerous conditions expressly to mitigate the impacts and thereby qualify the project for a categorical exemption. (*Id.* at p. 1104.) The court of appeal pointed out that mitigation measures, under CEQA, are only proper at later stages of the process, which the county evaded by prematurely adopting mitigation measures. (*Id.* at pp. 1107-1108; see also *Azusa, supra*, 52 Cal.App.4th at pp. 1200-1202.)

An agency may, however, impose conditions on a project that address environmental issues for legitimate reasons without running afoul of CEQA. (See *Protect Telegraph Hill v. City and County of San Francisco* (2017) 16 Cal.App.5th 261, 267-268; *San Francisco Beautiful, supra*, 226 Cal.App.4th at pp. 1032-1033.) In *Walters, supra*, 1 Cal.App.5th at pp. 823-824, the court held that a city properly adopted conditions requiring a carwash to ensure noise levels meet existing regulatory standards, to conduct tests to verify that the standards are met, and to make any necessary modifications prior to commencing operations. By requiring the project to meet the standards, the city simply took a “‘belt and suspenders’ approach” to ensure that the project would cause no significant impacts. (*Id.* at p. 824.)

This case is like *Walters*. The pressure test, like the noise test in *Walters*, ensures that the project meets the existing regulatory standards for Class II wells. Those standards require a Class II well to be operated so that injected water remains within a specified zone in the aquifer and cannot escape through any pathway, such as a fault. (Cal. Code Regs., tit. 14, § 1724.7, subs. (a), (a)(2)(A), (a)(2)(C).) There is no significant impact to mitigate.

Indeed, Sunflower fundamentally misconstrues the nature of the conditions and the regulations. CalGEM cannot issue a permit for a Class II well that violates these standards, nor can

Reabold operate one. (Cal. Code Regs., tit. 14, §§ 1724.6, sub. (b), 1724.7, sub. (a).) Compliance with the standards is a legally mandated element of the project, not a CEQA measure to lessen the project's environmental impacts and shoehorn it into a categorical exemption.

In sum, Sunflower has not shown that CalGEM failed to proceed in a manner required by law or that its decision is unsupported by substantial evidence. (Pub. Resources Code, § 21168.5.) The trial court erred by concluding otherwise. We have no need to reach the parties' other arguments, including Reabold's contention that the court should defer to CalGEM's regulation for Class 1 exemptions. (Cal. Code Regs., tit. 14, § 1684.1.)

DISPOSITION

The judgment granting Sunflower's petition for writ of mandate is reversed. The matter is remanded to the superior court with directions to enter a new judgment that (1) denies Sunflower's petition for writ of mandate; (2) recalls the court's peremptory writ of mandate requiring CalGEM to set aside its notice of exemption and approval of the project; and (3) orders CalGEM to reinstate its project approval and notice of exemption. Reabold is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (a)(2).)

BURNS, J.

WE CONCUR:

SIMONS, ACTING P.J.
CHOU, J.

Sunflower Alliance v. Reabold California LLC (A167698)

Contra Costa County Superior Court, No. N221503, Hon. Edward G. Weil.

Aqua Terra Aeris Law Group, Jason R. Flanders and Theresa M. Trillo for Plaintiff and Respondent.

Environmental Law Clinic, Deborah A. Sivas, Amanda Zerbe, Luke Norquist, and Kevin K. Wang for Center for Biological Diversity as Amicus Curiae on behalf of Plaintiff and Respondent.

Rob Bonta, Attorney General, Daniel A. Olivas, Senior Assistant Attorney General, Christina Bull Arndt, Supervising Deputy Attorney General, and Leena M. Sheet and Jackie K. Vu, Deputy Attorneys General, for Defendants.

Paul Hastings LLP, Navi Singh Dhillon, Christopher J. Carr, and Dylan J. Crosby for Real Party in Interest and Appellant.

Alston & Bird LLP, Jeffrey D. Dintzer, Jeffrey P. Carlin, and Ytran L. Hoang for Western States Petroleum Association as Amicus Curiae on behalf of Real Party in Interest and Appellant.

EXHIBIT B

(October 7, 2024 Order Denying Respondent's Petition for Rehearing and Modifying Opinion [No Change in Judgment] of the Court of Appeal of the State of California, First Appellate District, Division 5)

Filed 10/7/24

CERTIFIED FOR PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

SUNFLOWER ALLIANCE,
Plaintiff and Respondent,
v.
CALIFORNIA DEPARTMENT OF
CONSERVATION et al.,
Defendants;
REABOLD CALIFORNIA, LLC,
Real Party in Interest and
Appellant.

A167698

(Contra County
Super. Ct. No. N221503)

**ORDER DENYING
RESPONDENT'S PETITION
FOR REHEARING AND
MODIFYING OPINION
[NO CHANGE IN JUDGMENT]**

BY THE COURT:

Respondent's petition for rehearing is DENIED. The opinion filed on September 6, 2024, shall be MODIFIED as follows:

1. On page eight, in the first sentence of the first full paragraph, the misspelled word "Categorial" is deleted and replaced with: Categorical.
2. On page 13, footnote four is deleted.
3. On page 13, after the first partial paragraph, two new paragraphs are added to read:

In a petition for rehearing, Sunflower argues that the Secretary could not have intended to require an assessment of the project’s environmental impacts at this early stage in the process, i.e., when determining whether a project is exempt. Sunflower is wrong. Numerous categorical exemptions require the agency to do so. Additionally, agencies have a duty to consider a project’s environmental impacts when evidence in their records suggests the possibility that it may trigger an exception to a categorical exemption. (*Berkeley Hillside*, *supra*, 60 Cal.4th at p. 1103; guidelines, § 15300.2, subs. (b), (c).)

These requirements are simply limits that the Secretary has placed on the exemptions. Together with other limits, they restrict the categories to projects that the Secretary is confident will not cause impacts, which is consistent with the purpose of categorical exemptions, as explained above. (See, e.g., guidelines, § 15301 [“minor alternation[s]”]; *Azusa*, *supra*, 52 Cal.App.4th at p. 1194 [“a ‘minor’ alteration cannot be an activity that creates a reasonable possibility of a significant environmental effect”]; *World Business Academy v. State Lands Com.*, *supra*, 24 Cal.App.5th at p. 496 [an agency’s adoption of an exemption “ ‘necessarily includes an implied finding that the project has no significant effect on the environment’ ”].)

4. On page 13, after the third sentence of the first new paragraph added above (“Numerous . . . to do so.”), a new footnote four is added to read:

The following categorical exemptions require agencies to evaluate various potential environmental consequences of a project when determining whether the exemption applies: guidelines, sections 15306 (“serious or major disturbance to an environmental resource”); 15316, subdivision (b) (“change” to an area’s “natural condition” or “substantial adverse change in the significance of the historic or archaeological resource”); 15328, subdivisions (b) (“change” to rate, temperature, dissolved oxygen, or

timing of stream flows), (d) (change to reservoir's "normal maximum surface elevation"), (e) ("significant upstream or downstream passage of fish affected by the project"), (g) (violations of water quality standards), (i) (construction "in the vicinity of any endangered, rare, or threatened species"); 15332, subdivision (d) ("significant effects relating to traffic, noise, air quality, or water quality"); 15333, subdivisions (a) ("significant adverse impact on endangered, rare or threatened species or their habitat"), (b) ("hazardous materials at or around the project site that may be disturbed or removed"), (c) ("impacts that are significant when viewed in connection with the effects of past . . . current . . . [or] future projects"). The exemption for minor alterations to land uses language similar to section 15301: "Minor temporary use of land having negligible or no permanent effects on the environment." (Guidelines, § 15304, subd. (e).) We note that the Secretary did not use uniform terminology across all of these categorical exemptions but instead tailored the language in each category to describe the relevant concern.

5. On page 14, the final paragraph of subsection "2." is deleted and replaced with:

Accordingly, this limited type of well conversion fits within the Class 1 exemption.

6. On page 14, the first paragraph of subsection "3." is deleted and replaced with:

Next, we conclude that substantial evidence supports CalGEM's use of the Class 1 exemption for this project.

7. On page 14, the second paragraph of subsection "3.," which continues into page 15, is modified to read:

Sunflower baldly says that "no evidence in the record supports a conclusion that this change in use was negligible." But it ignores the regulatory agencies' conclusions and the substantial evidence that supports

them. (See *Save the El Dorado Canal v. El Dorado Irrigation Dist.* (2022) 75 Cal.App.5th 239, 263 [CEQA petitioner forfeits argument based on substantial evidence if it fails to lay out evidence favorable to agency finding].) That evidence shows the agencies performed a detailed and conscientious review, and it amply supports CalGEM's findings that the Class 1 exemption is appropriate and that the project will have no significant environmental effects. (See *World Business Academy v. State Lands Com.*, *supra*, 24 Cal.App.5th at p. 496.) Indeed, Sunflower does not dispute that almost 1,000 vertical feet of shale would confine the injected water to the aquifer. It does not argue that the agencies made a mistake. Moreover, it has expressly waived any challenge to CalGEM's factual finding that there is nothing unusual about this particular Class II well, or the aquifer's geology, that may cause significant environmental impacts. (See guidelines, § 15300.2, subd. (c) [unusual circumstances exception]; *San Francisco Beautiful*, *supra*, 226 Cal.App.4th at p. 1022 [agency's adoption of categorical exemption constitutes implied finding that no exception exists].)

8. On page 16, the first paragraph is modified to read:

Second, Sunflower notes that, in CalGEM's initial review of the application, it requested more details on how "fluids would be prevented from migrating upwards through [a] non-sealing fault." This is one of many questions the regulatory agencies raised on a variety of technical issues early in their review. The agencies then reviewed additional data on aquifer pressure "to demonstrate the sealing nature of the fault," a revised cross section of the fault showing that it terminated within the shale layers, and an analysis by Reabold's geologist. Based on this information, CalGEM concluded that "the fault is sealing." The Regional Board also looked at the issue, and it requested, and received, a requirement to conduct a pressure test to confirm the analysis. The board then stated that all its "concerns identified during its technical review of this Project have

been resolved.” Sunflower presents no basis to disregard the technical conclusions of these expert agencies.

9. On page 17, in the third sentence of the first partial paragraph (which begins on page 16), the misspelled word “categorical” is deleted and replaced with: categorical.
10. On page 17, the citation at the end of the first full paragraph is deleted and replaced with: (*Id.* at p. 824; see also, *Historic Architecture Alliance v. City of Laguna Beach* (2023) 96 Cal.App.5th 186, 208 [changes to project design to comply with existing standards were not improper mitigation measures].)
11. On page 18, the first full paragraph is deleted and replaced with the following new paragraphs:

In its petition for rehearing, Sunflower argues that CalGEM should be required to reconsider its decision because the record does not show that CalGEM found the well expansion to be “negligible.” But CEQA does not require an agency to make findings when deciding a project is exempt. (See *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1385-1386.) We have no power to impose new procedural requirements. (Pub. Resources Code, § 21083.1.) We must affirm CalGEM’s decision because it is supported by substantial evidence and the agency followed the correct process. (Pub. Resources Code, § 21168.5.)

We have no need to reach the parties’ other arguments, including Reabold’s contention that the court should defer to CalGEM’s regulation for Class 1 exemptions. (Cal. Code Regs., tit. 14, § 1684.1.)

The modifications make no change to the judgment.

BURNS, J.

WE CONCUR:

SIMONS, ACTING P.J.

CHOU, J.

Sunflower Alliance v. Reabold California LLC (A167698)

Contra Costa County Superior Court, No. N221503, Hon. Edward G. Weil.

Aqua Terra Aeris Law Group, Jason R. Flanders and Theresa M. Trillo for Plaintiff and Respondent.

Environmental Law Clinic, Deborah A. Sivas, Amanda Zerbe, Luke Norquist, and Kevin K. Wang for Center for Biological Diversity as Amicus Curiae on behalf of Plaintiff and Respondent.

Rob Bonta, Attorney General, Daniel A. Olivas, Senior Assistant Attorney General, Christina Bull Arndt, Supervising Deputy Attorney General, and Leena M. Sheet and Jackie K. Vu, Deputy Attorneys General, for Defendant.

Paul Hastings LLP, Navi Singh Dhillon, Christopher J. Carr, and Dylan J. Crosby for Real Party in Interest and Appellant.

Alston & Bird LLP, Jeffrey D. Dintzer, Jeffrey P. Carlin, and Ytran L. Hoang for Western States Petroleum Association as Amicus Curiae on behalf of Real Party in Interest and Appellant.

PROOF OF ELECTRONIC SERVICE

I, Jason Flanders, hereby certify that at the time of service, I was at least 18 years of age and not a party to this action. My business address is Aqua Terra Aeris Law Group, 8 Rio Vista Ave., Oakland, California 94611.

I certify that on October 16, 2024, I served the following document(s):

PETITION FOR REVIEW

[x] By Electronic Service – TrueFiling System: By causing the document(s) listed above to be served via the Supreme Court’s TrueFiling System on all registered parties listed on the attached Service List.

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

Executed on October 16, 2024, at Oakland, California.

/s/ Jason R. Flanders

JASON R. FLANDERS

ELECTRONIC SERVICE LIST

Electronic Service via TrueFiling on the Following Parties

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<p>CALIFORNIA COURT OF APPEAL First Appellate District, Division Five 350 McAllister Street San Francisco, California 94102</p>	<p>SUPREME COURT OF CALIFORNIA 350 McAllister Street Room 1295 San Francisco, CA 94102</p>

PROOF OF SERVICE

I, Theresa Trillo, hereby certify that at the time of service, I was at least 18 years of age and not a party to this action. My business address is Aqua Terra Aeris Law Group, 8 Rio Vista Ave., Oakland, California 94611.

I declare that on October 16, 2024, pursuant to California Rules of Court, rule 8.212(c)(1), I served the following document(s):

PETITION FOR REVIEW

By U.S. Mail: By placing the document(s) listed above in a sealed envelope addressed to the Superior Court of California, as shown below, and depositing the sealed envelope with the United States Postal Service, with postage fully paid.

Clerk of the Court
Attn: Hon. Edward G. Weil
Dept. 39
Superior Court of California
County of Contra Costa
725 Court Street
Martinez, CA 94553

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

Executed on October 16, 2024, at Los Gatos, California.

/s/ Theresa M. Trillo

THERESA M. TRILLO

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Sunflower Alliance, Plaintiff and Respondent, v. California Department of Conservation et al., Defendants; Reabold California, LLC, Real Party in Interest and Appellant.**

Case Number: **TEMP-YJZXSLEQ**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **jrf@atalawgroup.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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PETITION FOR REVIEW	2024.10.16 Sunflower Alliance Petition for Review FINAL

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

10/16/2024

Date

/s/Jason Flanders

Signature

Flanders, Jason (238007)

Last Name, First Name (PNum)

Aqua Terra Aeris Law Group

Law Firm