

Court of Appeal Case No. G051080

**IN THE COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION THREE**

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*
Petitioners and Appellants,

v.

COUNTY OF SAN BERNARDINO, *et al.*
Respondents

CADIZ, INC., *et al.*
Real Parties in Interest

On Appeal from the Superior Court of California, County of Orange
The Hon. Gail Andler, Presiding
Orange County Superior Court Case No. 30-2013-00633936

**APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS
CURIAE BRIEF OF ASSOCIATION OF CALIFORNIA WATER
AGENCIES (ACWA)**

Edward J. Casey, SBN 119571
Andrew Brady, SBN 273675
ALSTON & BIRD LLP
333 S. Hope Street, 16th Floor
Los Angeles, CA 90071
Telephone: (213) 576-1000
Facsimile: (213) 576-1100
E-mail: ed.casey@alston.com
andrew.brady@alston.com

Attorneys for Amicus Curiae
THE ASSOCIATION OF
CALIFORNIA WATER AGENCIES

TO BE FILED IN THE COURT OF APPEAL

APP-008

| | |
|---|--|
| COURT OF APPEAL, APPELLATE DISTRICT, DIVISION | Court of Appeal Case Number G051080 |
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Edward J. Casey, SBN 119571 Andrew Brady, SBN 273675 ALSTON & BIRD LLP 333 S. Hope Street, 16th Floor, Los Angeles, CA 90071 TELEPHONE NO (213) 576-1125 FAX NO (Optional) (213) 576-1100 E-MAIL ADDRESS (Optional): ed.casey@alston.com; andrew.brady@alston.com ATTORNEY FOR (Name): The Association of California Water Agencies | Superior Court Case Number 30-2013-00633936 |
| APPELLANT/PETITIONER: Center for Biological Diversity, et al. RESPONDENT/REAL PARTY IN INTEREST: County of San Bernardino, et al. | FOR COURT USE ONLY |
| CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE | |
| Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed. | |

1. This form is being submitted on behalf of the following party (name): Association of California Water Agencies

2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
 b. Interested entities or persons required to be listed under rule 8.208 are as follows:

| Full name of interested entity or person | Nature of interest (Explain): |
|--|-------------------------------|
| (1) | |
| (2) | |
| (3) | |
| (4) | |
| (5) | |

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: August 24, 2015

Andrew Brady
 (TYPE OR PRINT NAME)

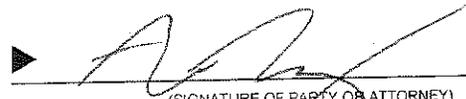

 (SIGNATURE OF PARTY OR ATTORNEY)

TABLE OF CONTENTS

AMICUS BRIEF OF ASSOCIATION OF CALIFORNIA WATER AGENCIES..... 1

I. INTRODUCTION 1

II. GUIDING PRINCIPLES OF CALIFORNIA GROUNDWATER MANAGEMENT..... 3

 A. The California Constitution And State Policy Mandate That Groundwater Resources Be Utilized For Beneficial Purposes To The Fullest Extent Of Which They Are Capable 3

 B. The Well-Established Concepts Of Safe Yield And Overdraft Implement The State Policy Of Putting Water Resources To Maximum Beneficial Use Subject Only To Not Causing Undesirable Results 4

 C. State Laws Regarding Groundwater Management Are Tied To The Policies Of Putting Water Resources To Maximum Beneficial Use Subject To Not Causing Undesirable Results In The Long Term 7

 D. To Achieve The Constitutional Mandates, Courts And State Policy Recognize The Need To Provide Flexibility To The Groundwater Agencies Managing Groundwater Supplies 10

 E. California Law Supports The Application Of Safe Yield And Undesirable Results As The Standard For Determining How Much Groundwater Can Be Extracted From A Basin 12

III. THE DECISION IN *SAN FERNANDO* SHOULD NOT BE LIMITED TO THE FACTS OF THAT CASE..... 13

IV. CONCLUSION..... 14

TABLE OF AUTHORITIES

| | Page(s) |
|--|--------------------|
| <u>STATE CASES</u> | |
| <i>Central and West Basin Water Replenishment Dist. v. Southern Cal. Water Co.</i> (2003) 109 Cal.App.4th 891 | 4, 5, 11 |
| <i>Central Basin Municipal Waste District v. Fossette</i> (1965) 235 Cal. App. 2d 689 | 10, 11 |
| <i>City of Barstow v. Mojave Water Agency</i> (2000) 23 Cal.4th 1224 | 5 |
| <i>City of Los Angeles v. City of San Fernando</i> (1975) 14 Cal.3d 199 | 4, 5, 6, 7, 13, 14 |
| <i>City of Pasadena v. City of Alhambra</i> (1949) 33 Cal.2d 908 | 4 |
| <i>Light v. State Water Resources Control Bd.</i> (2014) 226 Cal. App. 4th 1463 | 14 |
| <i>State of California v. Superior Court</i> (2000) 78 Cal.App.4th 1019 | 3 |
| <u>STATE STATUTES</u> | |
| Chapter 1 of the California Water Code | 3 |
| Respondents' Desert Groundwater Management Ordinance..... | 2 |
| Sustainable Groundwater Management Act of 2014 | 7, 8, 9, 11 |
| Urban Water Management Planning Act..... | 8, 9 |
| Water Code §§ 104, 105 | 3 |
| Water Code § 113 | 7 |

TABLE OF AUTHORITIES
(CONTINUED)

| | Page(s) |
|---|----------------|
| <u>STATE STATUTES</u> | |
| Water Code §§ 10610 <i>et seq.</i> | 8 |
| Water Code § 10631(b)(2)..... | 8 |
| Water Code §§ 10720 <i>et seq.</i> | 7 |
| Water Code § 10720.7 | 9 |
| Water Code § 10721(v)..... | 7, 8 |
| Water Code § 10721(w)..... | 4, 8 |
| Water Code § 10725(b)..... | 11 |
| Water Code § 10727.2(b)..... | 8 |
| Water Code § 12924 | 9 |
| <u>CONSTITUTIONAL PROVISIONS</u> | |
| California Constitution..... | 1, 3, 14 |
| Article X, § 2 of the California Constitution | 3 |

APPLICATION TO FILE

Pursuant to Rule 8.200(c) of the California Rules of Court, the Association of California Water Agencies (“ACWA”) respectfully requests leave to file the accompanying amicus brief in this proceeding in support of Defendants and Respondents County of San Bernardino and Board of Supervisors of County of San Bernardino, and Real-Party-in-Interest and Respondent Santa Margarita Water District.

This brief is being submitted by Edward J. Casey and Andrew Brady of Alston & Bird, LLP, on behalf of ACWA. No party or counsel for a party in the pending case authored the proposed amicus brief in whole or part, or made any monetary contribution intended to fund its preparation. Counsel for ACWA are retained on a pro bono basis in this matter.

STATEMENT OF INTEREST AS AMICUS CURIAE

Since 1910, ACWA has served as a non-profit public benefit corporation organized and existing under the laws of the State of California. ACWA is comprised of over 450 public water agencies, including cities, municipal water districts, county water districts, irrigation districts, municipal utility districts, public utility districts, California water districts, and special act districts. ACWA’s member agencies manage California’s public water systems and provide for the maintenance and beneficial use of

California's water supply, including the production, conservation, treatment, storage, transportation, and distribution of water throughout the state.

ACWA's Legal Affairs Committee, comprised of attorneys representing ACWA member agencies from each of ACWA's ten regional divisions throughout the state, monitors litigation and has determined that this case involves significant issues affecting ACWA's member agencies. Specifically, this case involves issues that could adversely affect the ability of our member agencies to effectively manage groundwater supplies. Groundwater supplies throughout this state are managed according to the constitutional mandates to: (1) put all water to maximum beneficial use subject only to not causing undesirable results, and (2) not waste water. Since certain arguments advanced by Appellants herein are contrary to those fundamental management principles and would unduly restrict the flexibility that water agencies need to achieve those mandates, ACWA submits this amicus curiae brief.

**AMICUS BRIEF OF ASSOCIATION OF CALIFORNIA WATER
AGENCIES**

I. INTRODUCTION

Our California Constitution mandates that all water resources be put to maximum beneficial use and not wasted. Adhering to these mandates is particularly important in times of drought. The current drought is no exception, as it has now extended for over four years and caused unprecedented harm and suffering, as determined by the Governor.¹

Meeting the challenges facing our state's water supplies is a task shouldered by the numerous water agencies throughout California (ACWA represents 450 such agencies). For well over 100 years, water agencies have employed a variety of water management strategies and tools to provide safe, reliable water to our citizens. These management strategies require a substantial degree of legal flexibility to allow water agencies to timely adapt to changing circumstances, such as population growth and new environmental challenges. The need for flexibility in employing management strategies also applies to all water resources, including groundwater resources.

¹ The Governor's January 17, 2014 drought state of emergency declaration can be read at: <http://gov.ca.gov/news.php?id=18379>. The Governor's April 25, 2014 continued drought state of emergency declaration can be read at: <http://gov.ca.gov/news.php?id=18496>.

After reviewing Appellants Center for Biological Diversity, *et al.*'s ("Appellants") briefs on the issue of groundwater management, however, ACWA is concerned that the governing constitutional mandates and the important management strategies needed to achieve those mandates will be eroded if Appellants' legal arguments are embraced by this Court. Appellants contend that their interpretation of Respondents' Desert Groundwater Management Ordinance ("Ordinance")² is consistent with California groundwater law, but Appellants wrongly interpret that body of law. For example, Appellants argue that California groundwater law requires that:

- A basin must be returned to its "natural equilibrium" existing before commencement of groundwater extractions. (Appellants' Opening Brief (AOB), p. 19.)
- Groundwater extractions must be managed to allow for a "periodic true-up." (AOB, p 19.)
- Groundwater extractions should never exceed natural recharge. (AOB, pp. 1, 6, 8-9.)
- The concept of a "temporary surplus" is limited to one particular type of waste. (AOB, pp. 19-22.)

For the reasons discussed herein, Appellants' arguments are contrary to California groundwater law and, if adopted in this case, water agencies will be unduly restricted in their management of our water resources, which

² ACWA takes no position as to the correct interpretation or application of the Ordinance since it is a local matter.

will foreseeably jeopardize their ability to fulfill the constitutional mandate to put all water resources to maximum beneficial use.

II. GUIDING PRINCIPLES OF CALIFORNIA GROUNDWATER MANAGEMENT

A. The California Constitution And State Policy Mandate That Groundwater Resources Be Utilized For Beneficial Purposes To The Fullest Extent Of Which They Are Capable

Water policy in the State of California is set by the state Constitution.

Article X, Section 2 of the California Constitution states:

... because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof.

Cal. Const., art. X, § 2.

These constitutional mandates are carried forward to Chapter 1 of the California Water Code, which sets forth “General State Policy.” In addition to incorporating the constitutional mandates in Section 100, the Water Code also provides that “the people of the State have a paramount interest in the use of all water of the State ...” and “the protection of the public interest in the development of the water resources of the State is of vital concern to the people of the State” (Water Code §§ 104, 105.)

To ensure all water is put to its maximum beneficial use, state law mandates that the corpus of water cannot be privately owned. *State of California v. Superior Court* (2000) 78 Cal.App.4th 1019, 1023, 1025.

Rather, the State of California owns all of the state's water, not as a proprietary owner, but only to supervise and regulate water use for the public's benefit. *Id.* at pp. 1022, 1026. In contrast, individual water rights holders, including public and private water agencies, can have a right to "take and use" only a reasonable amount of water needed for a beneficial purpose. *Central and West Basin Water Replenishment Dist. v. Southern Cal. Water Co.* (2003) 109 Cal.App.4th 891, 905.

B. The Well-Established Concepts Of Safe Yield And Overdraft Implement The State Policy Of Putting Water Resources To Maximum Beneficial Use Subject Only To Not Causing Undesirable Results

"Safe yield" has been defined by the Supreme Court as "[t]he maximum quantity of water which can be withdrawn annually from a groundwater supply under a given set of conditions without causing an undesirable result." *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 278 (quoting *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908, 929). One "undesirable result" to be avoided is "the gradual lowering of the ground water levels resulting eventually in depletion of the supply." *Id.* Examples of other recognized "undesirable results" include significant and unreasonable degraded water quality, seawater intrusion, land subsidence and reduction in groundwater storage. (Water Code § 10721(w).)

Safe yield takes into account all sources of inflow to a basin. *City of San Fernando*, 14 Cal.3d at 278. This includes sources of natural recharge,

but also other sources of inflow. A basin's safe yield also includes groundwater stored as a result of "conjunctive use projects," which have been used for decades by California water agencies to store water through the artificial or enhanced natural recharge of groundwater basins. *See Central and West Basin Water Replenishment Dist.*, 109 Cal.App.4th at 898. A basin's safe yield also includes "return flows," which occur where imported water is used on the land's surface which then percolates into a basin. In *City of San Fernando*, the Supreme Court also held that a basin's safe yield includes a "temporary surplus," which is a condition in which additional pumping is allowable if that pumping will prevent waste and instead allow water to be used beneficially without causing undesirable results (even where it would result in the lowering of a water table). *City of San Fernando*, 14 Cal.3d at 280-81.

The terms "surplus" and "overdraft" are properly understood in relation to the concept of safe yield. *City of San Fernando*, 14 Cal.3d., at 278. A surplus "is that condition which exists when the draft on the ground water supply is less than the safe yield." *Id.* In other words, a groundwater basin "is in a state of surplus when the amount of water being extracted from it is less than the maximum that could be withdrawn *without adverse effects on the basin's long term supply.*" *Id.* at 277-278 (emphasis added). When a surplus exists, a court will not enjoin any beneficial uses of groundwater. *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241.

The closely related concept of overdraft comes about in the absence of a surplus. *City of San Fernando*, 14 Cal.3d. at 278. Put another way, a condition of overdraft exists when groundwater extractions exceed the safe yield. *Id.* Thus, a condition of overdraft exists when the totality of extractions from a groundwater basin are such that the basin will eventually be depleted. *City of Santa Maria*, 211 Cal. App. 4th, at 279; *see also, Mojave Water Agency*, 23 Cal. 4th at 1234 (regarding the Mojave Basin, “[t]he largest increase in overdraft in the basin occurred between 1970 and 1980. During that time, well levels and water quality experienced a steady and significant decline. If overdraft conditions continue, the basin’s water supply will experience significant depletion.”)

Whether a surplus or overdraft exists in a particular case is a fact specific inquiry requiring, among other considerations, an analysis of the total inputs and outputs from a basin and its hydrogeological conditions. But the crucial question is not whether the groundwater table will be lowered by extractions; it is whether all extractions taken together will eventually produce an “undesirable result.” If extractions are managed to avoid an undesirable result, the groundwater supplies are not in an overdraft condition.

C. State Laws Regarding Groundwater Management Are Tied To The Policies Of Putting Water Resources To Maximum Beneficial Use Subject To Not Causing Undesirable Results In The Long Term

Various state laws governing the management of groundwater basins rely on these well-established concepts of safe yield, surplus, and overdraft. For example, state policy requires that “groundwater resources be managed sustainably for long-term reliability and multiple economic, social and environmental benefits for current and future beneficial uses.” (Water Code § 113). The Sustainable Groundwater Management Act of 2014 (“SGMA”) requires the management of groundwater basins through the establishment of local groundwater management agencies with the goal of having all state groundwater basins achieve sustainability within a twenty-year horizon. (Water Code §§ 10720 *et seq.*) The SGMA uses the term “sustainable yield” in accordance with the definition of safe yield set forth in *City of San Fernando*, defining the term as: “the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result.” (Water Code § 10721(v).)

“Undesirable result” is defined by the Act as the “[c]hronic lowering of groundwater levels indicating a significant and *unreasonable* depletion of supply if continued over the planning and implementation horizon.” (Water

Code § 10721(w) (emphasis added).) Thus, the SGMA recognizes that the touchstone for proper groundwater management is avoidance of an undesirable result in the long term. (Water Code §10727.2(b).) Moreover, the SGMA allows for flexibility in management and conjunctive use programs that can rely on heavier use of groundwater resources in the short term to maximize available supplies, so long as they do not cause an undesirable result. (See Water Code § 10721(v).)

The Urban Water Management Planning Act (“UWMPA”) is another state statute governing the management of groundwater supplies that relies on the concept of overdraft. This statute details the management plans that California’s urban water suppliers must adopt every five years in order to ensure the efficient use of urban water supplies. (Water Code §§ 10610 *et seq.*) Agencies subject to the statute are required to prepare and adopt Urban Water Management Plans that, among other things, include:

A description of any groundwater basin or basins from which the urban water supplier pumps groundwater ... For basins that have not been adjudicated, information as to *whether the department has identified the basin or basins as overdrafted or has projected that the basin will become overdrafted if present management conditions continue*, in the most current official departmental bulletin that characterizes the condition of the groundwater basin, and *a detailed description of the efforts being undertaken by the urban water supplier to eliminate the long-term overdraft condition.*

(Water Code § 10631(b)(2) (emphasis added).)

Both the SGMA and the UWMPA identify basins by reference to the California Department of Water Resources' Bulletin 118, a comprehensive report on California's groundwater basins. (See Water Code § 12924.) For example, under the SGMA, only basins determined to be high-priority (critical overdraft) and medium priority (overdraft) by Bulletin 118 that are not subject to adjudicated management require the implementation of plans under the SGMA.³ (Water Code § 10720.7.) Bulletin 118 defines overdraft as "the condition of a groundwater basin or subbasin in which the amount of water withdrawn by pumping *exceeds the amount of water that recharges the basin over a period of years*, during which the water supply conditions approximate average conditions." Department of Water Resources, Bulletin 118 (2003 update), at p. 96 (emphasis added). Bulletin 118 goes on to say "[i]f overdraft continues for a number of years, significant adverse impacts may occur, including increased extraction costs, costs of well deepening or replacement, land subsidence, water quality degradation, and environmental impacts." *Id.* Therefore, Bulletin 118 defines "safe yield" in line with case law as "the amount of groundwater that can be continuously withdrawn from a basin without adverse impact." *Id.* at p. 99. Thus, Bulletin 118 focuses

³ Regarding the groundwater basins at issue in this matter, the Department of Water Resources has identified the Fenner and Cadiz basins as "very low" priority and the Bristol basin as "low" priority due to the absence of overdraft conditions. See http://www.water.ca.gov/groundwater/casgem/pdfs/lists/SRO_BasinName_05262014.pdf.)

attention on groundwater basins where pumping over the safe yield has put a basin in danger of an undesirable result.

D. To Achieve The Constitutional Mandates, Courts And State Policy Recognize The Need To Provide Flexibility To The Groundwater Agencies Managing Groundwater Supplies

In light of ever changing circumstances concerning water supplies and demands, courts and state policy recognize the need to accord flexibility to agencies that manage groundwater resources. For example, in groundwater adjudication cases, the California Supreme Court has recognized that a “physical solution” can be imposed by courts for the long-term maintenance of the basin. *Pasadena v. Alhambra*, 33 Cal.2d at 948. A court judgment embodying such a physical solution must include the “appropriate flexibility to meet pertinent changes and developments.” *Central Basin Municipal Waste District v. Fossette* (1965) 235 Cal. App. 2d 689, 700-01.

Similarly, in Bulletin 118, the Department of Water Resources states that:

Groundwater management must be adapted to an area’s political, institutional, legal, and technical constraints and opportunities. Groundwater management must be tailored to each basin or subbasin’s conditions and needs. Even within a single basin, the management objectives may change as more is learned about managing the resource within that basin. Flexibility is the key, but that flexibility must operate within a framework that ensures public participation, monitoring, evaluation, feedback on management alternatives, rules and regulations, and enforcement.

(Department of Water Resources, Bulletin 118 (2003 update), at p. 38.)

The Legislature also recognized the need for flexibility when it adopted the SGMA last year:

A groundwater sustainability agency has and may use the powers in this chapter to provide the maximum degree of local control and flexibility consistent with the sustainability goals of this part.

(Water Code § 10725(b).)

In line with these principles, courts have allowed water agencies significant flexibility in employing creative groundwater management efforts that do not maintain the original water levels of groundwater basins. *See, e.g., Chino Basin Municipal Water District v. City of Chino et al.*, San Bernardino County Superior Court Case No. RCV 51010, Order Concerning Motion for Approval of Peace II Documents, December 21, 2007 (Approving watermaster project to remove 400,000 acre feet from basin to lower water levels to reduce discharges to Santa Ana River that would be wasted); *Central Basin Municipal Water Dist. v. Fossette* (1965) 235 Cal. App. 2d 689 (Stipulated physical solution provided for underground storage of water utilizing imported water to meet needs of users); *Central and West Basin Water Replenishment Dist.*, 109 Cal. App. 4th at 899 (Physical solution allowed for pumping over safe yield of basin to be replaced by purchase of imported water).

E. California Law Supports The Application Of Safe Yield And Undesirable Results As The Standard For Determining How Much Groundwater Can Be Extracted From A Basin

Contrary to these well-established legal and management principles concerning groundwater resources, Appellants assert a number of incorrect legal positions. First, Appellants argue that, consistent with groundwater law (citing the decision in *San Fernando*), the basin at issue must be allowed to return to its “natural equilibrium” based on “periodic true-ups.” (AOB, pp. 19-20.) Those concepts simply do not exist under California groundwater law. Under the key groundwater management concepts of safe yield, surplus and overdraft, water agencies are not obligated to maintain groundwater basins at pre-withdrawal levels, nor are they obligated to restore groundwater basins to pre-withdrawal levels following use. Such a requirement would contravene the constitutional mandate to put all water to beneficial use by requiring agencies to dedicate water to maintaining certain groundwater levels. Maintaining particular groundwater levels independent of the essential goal of avoiding adverse effects would be arbitrary. Such a standard has never been recognized as a beneficial use of water in this state, and indeed would be a wasteful practice in violation of the constitutional mandates because it would preclude management options that can enhance the supply of water without causing adverse effects.

Further, using annual natural recharge as the sole determinant of how much groundwater can safely be withdrawn has never been the correct legal

standard for determining allowable groundwater extractions. The correct legal standard to measure the acceptable quantity of groundwater extractions is safe yield. The concept of safe yield takes into account natural recharge, all other sources of recharge, and whether an undesirable result or significant impact will occur in the long term. There is no reason here to deviate from that legal standard.

III. THE DECISION IN *SAN FERNANDO* SHOULD NOT BE LIMITED TO THE FACTS OF THAT CASE

Appellants urge this Court to narrowly interpret the Supreme Court's decision in *San Fernando* so that extraction of groundwater in excess of safe yield is "only justified when temporary surplus allows for taking of water that 'does not reduce but increases the total available supply by eliminating waste emanating from insufficient storage space.'" (AOB, p. 20.)

ACWA urges the Court to not interpret *San Fernando* in such a limiting fashion. The Court in *San Fernando* reached its holding in full accordance with the constitutional mandates to (1) maximize the beneficial use of water resources, (2) avoid a waste of water and (3) avoid an undesirable result or effect in the groundwater basin. The Court applied those mandates to the facts of the case before it, finding that the additional extractions would eliminate waste and increase the supply of water available for use, all without any indication of an undesirable result to the basin.

Yet, nowhere in the *San Fernando* decision did the Court limit the import of its decision to the case's facts. Nor should this Court embrace such a narrow interpretation of the *San Fernando* decision. Water agencies must manage water resources under their jurisdiction to avoid unreasonable uses under a variety of circumstances. In fact:

California courts have never defined, nor as far as we have been able to determine, even attempted to define, what constitutes an unreasonable use of water, perhaps because the reasonableness of any particular use depends largely on the circumstances.

Light v. State Water Resources Control Bd. (2014) 226 Cal. App. 4th 1463, 1479 (citing *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 368).

Since water agencies must retain sufficient flexibility to achieve the Constitution's mandates concerning maximum beneficial and avoidance of waste under a variety of circumstances, ACWA urges the Court to decline to accept Appellants' unduly narrow interpretation of the *San Fernando* decision.

IV. CONCLUSION

ACWA urges this Court to apply the well-established legal standards applicable to the management of groundwater resources. Under mandates from the California Constitution, case law and statutory authority, our water resources must be put to maximum beneficial use and not wasted, subject only to not causing an undesirable result in the long term. The legal

arguments advanced by Appellants to the contrary should be disregarded by this Court.

DATED: August 24, 2015

Respectfully submitted,

Edward J. Casey
Andrew Brady
ALSTON & BIRD LLP


EDWARD J. CASEY

Attorneys for Amicus Curiae
THE ASSOCIATION OF
CALIFORNIA WATER AGENCIES

CERTIFICATION OF WORD COUNT

(California Rule of Court 8.204)

Pursuant to California Rules of Court, Rule 8.204, counsel for Amicus Curiae hereby certifies that the Application to file Amicus Brief and Amicus Brief Contains 3,559 words, as counted by the MS Word software used to generate this application.

DATED: August 24, 2015

Respectfully submitted,


FOR
EDWARD J. CASEY

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Alston & Bird LLP, 333 S. Hope Street, 16th Floor, Los Angeles, CA 90071. My electronic notification address is dana.camacho@alston.com.

On August 24, 2015, I served the foregoing document described as AMICUS BRIEF to the email addresses listed below.

I also served the foregoing document by United States mail in sealed envelopes to the persons listed below. I placed the envelopes for collection and mailing, following ordinary business practices. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

| | |
|--|--|
| <p>Aruna Prabhala Chelsea Tu 1212 Broadway, Suite 800 Oakland, California 94612 E-Mail: aprabhala@biologicaldiversity.org ctu@biologicaldiversity.org</p> <p>Adam Keats 303 Sacramento Street, 2nd Floor San Francisco, CA 94111 E-Mail: akeats@biologicaldiversity.org</p> <p><i>Attorneys for Appellants</i> Center for Biological Diversity, San Bernardino Valley Audubon Society, Sierra Club San Gorgonio Chapter</p> | |
| <p>Michael Robinson-Dorn National Parks Conservation Association P.O. Box 5479 Irvine, California 92616 E-Mail: mrobinson-dorn@law.uci.edu</p> | |

| | |
|--|--|
| <p>Christian Marsh DOWNEY BRAND LLP 455 Market Street, Suite 1420 San Francisco, CA 94105 E-Mail: cmarsh@downeybrand.com</p> <p><i>Attorneys for Respondents</i> COUNTY OF SAN BERNARDINO and SAN BERNARDINO BOARD OF SUPERVISORS</p> | |
| <p>Diane De Felice Amy Steinfeld BROWNSTEIN HYATT FARBER SCHRECK, LLP 2049 Century Park East, Suite 3550 Los Angeles, CA 90057 Phone: (310) 500-4600 Fax: (310) 500.4602 E-Mail: ddefelice@bhfs.com</p> <p>Kenneth L. Khachigian BROWNSTEIN HYATT FARBER SCHRECK, LLP 300 South El Camino Real, Suite 203 San Clemente, California 92672-4070 E-Mail: Ekkhachigian@bhfs.com</p> <p><i>Attorneys for Defendants and Respondents</i> CADIZ, INC. and FENNER VALLEY MUTUAL WATER COMPANY</p> | |
| <p>Lois Bobak WOODRUFF, SPRADLIN & SMART 555 Anton Boulevard, Suite 1200 Costa Mesa, California 92626 E-Mail: lbobak@wss-law.com</p> <p><i>Attorneys for Defendants and Respondents</i> CADIZ, INC. and FENNER VALLEY MUTUAL WATER COMPANY</p> | |

Michelle Ouellette
Sarah E. Owsowitz
BEST, BEST & KRIEGER LLP
3900 University Avenue, 5th Floor
Riverside, California 92501
Phone: (951) 686-1450
Fax: (951) 686-3083
E-Mail: michelle.ouellette@bbklaw.co
sarah.owsowitz@bbklaw.com

Attorneys for Defendants and Respondents
**SANTA MARGARITA WATER DISTRICT and
SANTA MARGARITA WATER DISTRICT
BOARD OF DIRECTORS**

Superior Court of California, County of Orange
Clerk of Court
751 West Santa Ana Boulevard
Santa Ana, California 92701

Supreme Court of California
(served via e-submission)
350 McAllister Street
San Francisco, California 94102

Office of the Attorney General
Dan Siegel
1300 I Street, 15th Floor, Suite 1520-19
Sacramento, California 95814

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 24, 2015, at Los Angeles, California.



DANA CAMACHO