S222472

IN THE SUPREME COURT OF CALIFORNIA

Friends of the Eel River and Californians for Alternatives to Toxics,
Plaintiffs and Appellants,
v.
North Coast Railroad Authority and Board of Directors of North Coast Railroad Authority,
Defendant and Respondent,
and,
Northwestern Pacific Railroad Company,
Real Party in Interest and Respondent.

After a Decision by the Court of Appeal,
Fifth Appellate District, Division One
Case Nos. A139222, A139235

Appeal from the Superior Court of California, County of Marin
Case No. CIV11-3605, CIV11-03591
Honorable Roy Chernus, Judge.

APPLICATION OF SIERRA CLUB, COALITION FOR CLEAN AIR, NATURAL RESOURCES DEFENSE COUNCIL, PLANNING AND CONSERVATION LEAGUE, AND COMMUNITIES FOR A BETTER ENVIRONMENT FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT FRIENDS OF THE EEL RIVER AND *[PROPOSED]* BRIEF OF *AMICUS CURIAE*

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TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, Sierra Club, Coalition for Clean Air, Natural Resources Defense Council, Planning and Conservation League, and Communities for a Better Environment respectfully requests leave to file the attached *amicus curiae* brief in support of Appellants Friends of the Eel River and Californians for Alternatives to Toxics.

HOW THIS BRIEF WILL ASSIST THE COURT

This proposed amicus brief will assist the Court by discussing how the Court of Appeal's holding on standing in this case is wrong as a matter of law and policy. If upheld, that holding would disenfranchise tens of thousands of California residents who live near proposed rail projects in California and would have a direct, negative effect on public health. It would also create a new rule of law about when a petitioner/plaintiff in a lawsuit is precluded from litigating an affirmative defense raised by a respondent/defendant.

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Sierra Club. The Sierra Club is a national nonprofit organization of approximately 625,000 members, roughly 147,000 of whom live in California. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and encouraging humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club's concerns encompass ensuring that communities have clean air and helping clean up air pollution in areas that have unhealthy levels of pollution. The Angeles Chapter of the Sierra Club

has approximately 49,000 members in Los Angeles and Orange Counties. Thousands of these members reside near the ports and/or major corridors where major railyards exist or are proposed.

The Sierra Club has deployed several strategies to protect its members from deadly diesel pollution and goods movement-generated noise. In particular, it has worked on developing plans to reduce goods movement pollution and noise such as the Southern California ports' Clean Air Action Plan. In addition, Sierra Club members have participated in development of regional transportation plans through providing input and comment to the Southern California Association of Governments.

Coalition for Clean Air. The Coalition for Clean Air (CCA), founded in 1971, is a nonprofit organization based in California. It has more than 3,000 supporters throughout the state, including many members residing near California ports and railyards. Consistent with its role as an organization committed to restoring clean, healthy air to all of California, CCA has identified port and rail operations as significant sources of diesel pollution in California.

CCA has deployed several strategies to reduce diesel pollution. In particular, CCA has worked on developing state and regional plans to reduce goods movement pollution. For example, CCA participated in the development of the California Air Resources Board's (CARB's) Emission Reduction Plan for Ports and Goods Movement by submitting comments and providing testimony at hearings. CCA has also been actively involved through commenting and providing oral testimony on the development of the Southern California ports Clean Air Action Plan, including predecessor plans such as the Port of Los Angeles' Clean Air Program and the Port of Long Beach's Green Port Policy.

CCA has been a party to several cases related to reducing diesel pollution in California. For example, CCA intervened on behalf of defendant South Coast Air Quality Management District to protect a series of rules requiring that additions to certain fleets of vehicles use alternative fueled engines. *See Engine Mfrs. Assoc. v. South Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031 (9th Cir. 2007). CCA also intervened on behalf of CARB to help defend critical marine vessel regulations aimed at reducing pollution from ship auxiliary engines. *See Pacific Merchant Shipping Assoc. v. Goldstene*, 517 F.3d 1108 (9th Cir. 2008).

Natural Resources Defense Council. The Natural Resources Defense Council (NRDC) is a not for profit membership corporation founded in 1970 and organized under the laws of the State of New York. NRDC maintains offices in New York, NY; Washington, D.C.; Chicago, IL; San Francisco and Santa Monica, CA; and Beijing, China. NRDC has more than 420,000 members nationwide, including more than 63,000 members who live in California. NRDC's purposes include the preservation, protection, and defense of the environment, public health, and natural resources. For 40 years, NRDC has engaged in scientific analysis, public education, advocacy, and litigation on a wide range of environmental and health issues. NRDC has long been active in efforts to reduce the threats to human health and the environment from pollution emitted by rail yards, ports, distribution centers, and other facilities.

Planning and Conservation League. The Planning and Conservation League (PCL) is a statewide, nonprofit alliance of individuals and conservation organizations united to protect California's environment through legislative, administrative, and, where necessary, judicial action. PCL has a longstanding interest and involvement in the California

Environmental Quality Act (CEQA) and litigation under that act. PCL is a steadfast supporter of maintaining the integrity of the CEQA in the Legislature. PCL has been a petitioner in a number of CEQA cases over the years, and has provided numerous amicus curiae briefs to appellate courts on important issues involving CEQA, including to this Court.

Communities for a Better Environment. Communities for Better Environment (CBE) was founded in 1978 and is one of the preeminent environmental justice organizations in the nation. CBE is a nonprofit organization with offices in Huntington Park, California and Oakland, California, with thousands of members throughout the State of California. CBE and its members are dedicated to empowering people in California's communities of color and low-income communities to achieve environmental health and justice with campaigns to thwart pollution, reduce environmental degradation, and promote sustainable community development. CBE relies on CEQA as a vital tool to provide these communities with information about the polluting sources in their neighborhoods. CBE provides residents in blighted and heavily polluted urban communities in California—communities with railroads, rail yards, freeways, and other mobile sources of pollution next to residences, schools, and workplaces—with organizing skills, leadership training and legal, scientific and technical assistance, so that they can successfully confront threats to their health and well-being.

CERTIFICATE REGARDING AUTHORSHIP AND FUNDING

No party or counsel in the pending case authored the proposed amicus curiae brief in whole or in part, or made any monetary contribution intended to fund the preparation or submission of the brief. No person other than the proposed *Amicus Curiae* made any monetary contribution intended to fund the preparation or submission of this brief.

Respectfully submitted,

DATED: May 29, 2015

By:

David Pettit
Natural Resources Defense Council
Attorneys for [proposed] Amicus Curiae Sierra Club, Coalition for Clean Air, Natural Resources Defense Council, Planning and Conservation League, and Communities for a Better Environment

BRIEF OF AMICUS CURIAE

INTRODUCTION AND STATEMENT OF FACTS

This brief focuses on one issue: whether Petitioners in a case brought under the California Environmental Quality Act (CEQA)—usually, local residents concerned about the environmental consequences of a proposed project—can raise in that case the market participant doctrine as a defense to a claim of federal preemption of CEQA when the respondent governmental entity refuses to do so.

That is precisely what happened here. In a dangerous precedent for individuals and community groups throughout California, the Court of Appeal held that people potentially affected by a proposed rail project, who were parties to a CEQA lawsuit, could not raise the market participant doctrine against a defense of federal preemption under the Interstate Commerce Commission Termination Act (ICCTA) pleaded by Respondents below. The Court of Appeal in *Town of Atherton v. California High Speed Rail Authority* (2014) 228 Cal.App. 4th 318, came to the opposite and, in the view of Amici, correct position.

This Court is well aware of the facts in the case at bench but members of Amici live with an equally if not more dangerous set of facts. Amici's members live near operational and proposed railyards in California – facilities that are often located on public land near low income communities of color and are dirty and dangerous places for their employees and neighbors. Diesel-engined locomotives, trucks, and other vehicles and equipment that operate at railyards emit air pollution in the form of diesel particulate matter (DPM). This diesel pollution accumulates near railyard facilities and is transported by wind onto the land, water, and into neighborhoods, where it is inhaled or ingested by people who live nearby. In 1998, California identified DPM as a toxic air contaminant based on its potential to cause cancer, premature death, and other health

problems.[1] The World Health Organization has found that diesel exhaust is carcinogenic to humans, and the United States Environmental Protection Agency classifies diesel exhaust as likely to be carcinogenic to humans.[2]

The California Air Resources Board (CARB) has produced studies of the extra cancer risk caused in railyard-adjacent communities as a result of railyard operations. CARB found in 2005 that over 1.8 million Californians were at elevated cancer risk because of railyard operations.[3] More recently, the draft Multiple Air Toxics Exposure Study (MATES) by the South Coast Air Quality Management District found that levels of black carbon and ultrafine particles—climate change and health risk agents, respectively—were significantly higher at a railyard in San Bernardino than South Coast Basin averages.[4] The most recent MATES study found that diesel emissions contribute nearly 70% of the cancer risk in the South Coast air basin associated with toxic air contaminants.[5] A recent change in the methodology for assessment of health risk by the California Office of Environmental Health Hazard Assessment suggests that the CARB and South Coast health risk numbers may be low by a factor of three.[6]

Local and State governments are landlords of those railyards built on public land and so must deal with railroads that are in the rental market for land. Despite the leverage that this fact gives to government entities, and despite the clear health risks involved, two huge new railyard projects are

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[1] http://www.arb.ca.gov/toxics/dieseltac/de-fnds.htm.

[2] http://www.iarc.fr/en/media-centre/pr/2012/pdfs/pr213_E.pdf (World Health Organization); http://www.epa.gov/region1/eco/diesel/health_effects.html (EPA).

[3] http://www.arb.ca.gov/railyard/hra/hra.htm

[4] http://www.aqmd.gov/docs/default-source/air-quality/air-toxic-studies/mates-iv/mates-iv-final-draft-report-4-1-15.pdf?sfvrsn=7 at pages 5-15 to 5-17.

[5] *Id.* at ES-2.

[6] http://oehha.ca.gov/air/hot_spots/hotspots2015.html

being planned on public land in Southern California, each of which will bring thousands of new diesel rail trips and hundreds of thousands of new diesel truck trips to the surrounding low-income communities of color. These projects have the support of local government, which will be the projects' landlords.

Thus, this case squarely presents the question whether citizens who live near a proposed, polluting project can defeat allegations of CEQA preemption by ICCTA by asserting the market participant doctrine in a pending lawsuit when their local government will not. This seemingly arcane issue has serious, real-life consequences for the health of tens of thousands of California residents.

CEQA

CEQA does not regulate rail transportation in any specific way. It is an environmental review law of general applicability to projects in California that may have a significant effect on the environment. CEQA requires that the environmental consequences of a project be investigated and the results made public and significant impacts of a covered project be mitigated to the extent feasible. A project may be approved even if significant impacts remain after mitigation, if the agency approving the project finds that specific social, economic, or other benefits outweigh those impacts.[7]

ICCTA

ICCTA governs railroad operations, and provides in pertinent part:

> The jurisdiction of the [Surface Transportation Board] over—
>
> (1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating

[7] California Public Resources Code § 21081(b).

rules), practices, routes, services, and facilities of such carriers; and

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

Acting under ICCTA, in 2013 the Surface Transportation Board (STB) ruled that it had jurisdiction over the California high-speed rail system and permitted construction of the Merced to Fresno segment of the line.[8] On December 12, 2014, the STB ruled that ICCTA preempts application of CEQA to the Fresno to Bakersfield segment of the project, and agreed with the *Eel River* court that the market participant doctrine is not applicable when asserted by a nongovernmental entity.[9] On December 30, 2014, the STB issued a nondecision strongly suggesting ICCTA preemption in the context of the modest idling reporting rules for the South

[8] http://www.stb.dot.gov/decisions/readingroom.nsf/UNID/3DA3D75A2453DD2685257B8900680856/$file/43070.pdf

[9] http://www.stb.dot.gov/decisions/readingroom.nsf/UNID/8247A0EE7E3897FF85257DAC007CCF08/$file/44072.pdf. Reconsideration of the December 12, 2014 STB decision was denied on May 4, 2015 on the grounds that the STB was unable to reach a majority decision on the motions for reconsideration. http://www.stb.dot.gov/decisions/ReadingRoom.nsf/UNID/75E8E5FBB1F2FAEB85257E3C006F9985/$file/44436.pdf

Coast air basin that the California Air Resources Board has asked the EPA to add into the California State Implementation Plan.[10]

THE MARKET PARTICIPANT DOCTRINE

The market participant doctrine, originating in Commerce Clause cases, provides that federal laws do not preempt state or local government action where the governmental agency is acting in the market rather than regulating. *E.g. Engine Mfr's Assoc. v. South Coast Air Quality Mgmt. Dist.* (9th Cir. 2007) 498 F.3d 1031. The *Engine Manufacturers* court specifically held that the doctrine applies not just to allow local governments to set price terms, but also to allow a government body to take actions to promote environmental goals such as purchasing less-polluting vehicles. 498 F.3d at 1047.[11] In analyzing whether a particular transaction is subject to the market participant doctrine, courts often look at what private market actors do in similar circumstances. *Hughes v. Alexandria Scrap Corp.* (1976) 426 U.S. 794, 810, 814.

In private California real estate transactions, it is quite common for a party to make the deal contingent on the results of an environmental site assessment. A bank that is financing the transaction may require this, or a prudent buyer may insist in order to see what he or she is getting into and how strong the indemnifications from the seller need to be. The site assessment may or may not be congruent with a CEQA analysis, but in any event is not conducted for any regulatory purpose. As a well-known transactional lawyer wrote:

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http://www.stb.dot.gov/decisions/readingroom.nsf/UNID/E500D0709FCBEB6085257DBE005480CB/$file/44003.pdf

11 One of South Coast's goals in *the Engine Manufacturers* case was to help bring the South Coast air basin into compliance with the federal Clean Air Act.

> When acquiring any interest in real property, whether through a simple real estate purchase or a larger corporate transaction, the importance of undertaking a thorough environmental due diligence investigation cannot be overstated. This is particularly true with respect to the discovery of any actual or potential environmental contamination, the historical use of hazardous substances at or near the project site, or the existence of any hazardous building materials in improvements located on the property. Both federal and state laws impose potentially significant liabilities on owners and operators of properties with environmental contamination.

Falk, et al., Environmental Due Diligence in Real Property Transactions, available at http://media.mofo.com/files/Uploads/Images/EnvironmentalCounselor0108.pdf. *See, e.g., Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133 (real property sale contingent on results of Phase I environmental review). Such a site assessment, which covers topics similar to those analyzed under CEQA, is not conducted for any regulatory purpose.

Here there is, at minimum, a question of fact whether the market participant doctrine applies – specifically, whether the North Coast Railroad Authority was acting as a private party would in assessing the environmental issues present on and concerning the property that it proposed to lease – a well-taken concern given the sorry history of environmental and safety problems described by the Court below.[12] And

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[12] "The line has a history of safety and maintenance issues, and sections were closed to passenger service as early as 1990. After the El Niño storms of 1998, the Federal Railroad Administration issued Emergency Order No. 21, closing the entire line. Limited operations eventually resumed over 41 miles of track near Petaluma, but track repairs, maintenance and upgrades

from the perspective of Amici, application of CEQA to this case is not regulatory but rather is directed to the risk to human health and the environment posed by the project.

SUMMARY OF ARGUMENT

The Court of Appeal in this case conflated the issue of Petitioners' standing with the merits of the market participant defense, and got them both wrong. Petitioners do have standing to litigate the ICCTA preemption affirmative defense pleaded by Respondent, as they would any other affirmative defense. The Court of Appeal can and should be reversed on that issue alone. But if this Court wishes to reach the merits, the market participant exception to ICCTA preemption does apply here because Respondent had a proprietary interest in learning about and fixing environmental problems associated with its property, just as any private landlord would in a commercial real estate transaction.

ARGUMENT

I. PETITIONERS HAVE STANDING TO RAISE AND LITIGATE THE MARKET PARTICIPANT DOCTRINE AS A DEFENSE TO ICCTA PREEMPTION IN THE CIRCUMSTANCES OF THIS CASE

In this case, there is no dispute that the Petitioners, Friends of Eel River and Californians for Alternatives to Toxics, had standing to bring their CEQA claim. Yet Respondents here contend that Petitioners lacked standing to rebut an affirmative defense to that claim. It is highly unusual, to say the least, that a party to a pending lawsuit cannot respond to a claim or defense raised by an opposing party. As the *Town of Atherton* court wrote:

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were required before the line could reopen. *Eel River*, 230 Cal.App.4th 85, ___, 178 Cal.Rptr.3d 752, 761.

> [T[he Authority contends that that it alone can invoke the market participation doctrine as an exception to federal preemption of CEQA. It notes that petitioners and amici cite only cases where the doctrine was used defensively by a public entity to protect actions it elected to take in the market. It provides no authority supporting the argument that the power to "invoke" the doctrine is reserved for it to selectively assert in order to exempt those projects of its choosing from federal preemption...The Authority offers no direct authority for its proposition that only a state entity can invoke the market participation doctrine. It is clear that citizens have standing to bring suits to enforce CEQA. (*See Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 912–916, 146 Cal.Rptr.3d 12 (Rialto).) *Here, invoking the market participation doctrine is part of petitioners' challenge to the final revised PEIR.*

Town of Atherton at 339-340 (emphasis added). There is no case—except the case at bench—that holds to the contrary. And it makes no sense to say that a party to a lawsuit cannot respond to an attack on its position by an opposing party.[13]

In the instant case, the same preemption issue was before the First Appellate District with respect to a state agency's decision to reopen a rail line owned by a state agency. The First Appellate District held that CEQA

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[13] *See* California Code of Civil Procedure §1091: "On the trial, the applicant is not precluded by the return from any valid objection to its sufficiency, and may countervail it by proof either in direct denial or by way of avoidance." *See also Lotus Car Ltd. v. Municipal Court of the Southern Judicial District of San Mateo County* (1968) 263 Cal. App. 2d 264 ("When a question of fact is raised in the answer the petitioner has the right to countervail it by proof either in direct denial or by way of avoidance... Accordingly, when a question of fact is raised by an answer to a petition for writ of mandamus the matter is heard in the same manner as any other trial.") (Internal citations omitted).

was preempted by ICCTA and that the Petitioners could not assert the market participant doctrine as a response to a defense of ICCTA preemption, on this basis:

> Petitioners seek to stand the market participation doctrine on its head and use it to avoid the preemptive effect of a federal statute the state entity is seeking to invoke. None of the cases involving market participation use the doctrine in this context, and such a use would be antithetical to the purpose underlying the doctrine. A private railroad that conducted a voluntary environmental review as part of a project would not be subjected to a challenge to that review by a private citizen's group. The aspect of CEQA that allows a citizen's group to challenge the adequacy of an EIR when CEQA compliance is required is clearly regulatory in nature, as a lawsuit against a governmental entity cannot be viewed as a part of its proprietary action, even if the lawsuit challenges that proprietary action.

Eel River, 230 Cal.App.4th ___, 178 Cal.Rptr.3d 752, 761.

This explanation confuses the standing issue with the merits of ICCTA preemption. Analytically, if Petitioners here did not have standing to raise ICCTA preemption, that would end the discussion and the Court would not need to discuss whether the market participant exception (or ICCTA itself) applies or not.

But that is not what happened. Instead, the Court lumped these issues together.

There cannot be a serious argument that a party to a lawsuit may not respond to an opposing party's attack on its legal position. None of the cases relied on by the Court of Appeal so holds, and the Court of Appeal's holding in this case is antithetical to the theory of California civil

procedure.[14] *See* California Code of Civil Procedure § 431.20(b), stating that: "The statement of any new matter in the answer, in avoidance or constituting a defense, shall, on the trial, be deemed controverted by the opposite party." Here, the affirmative defense of ICCTA preemption was at issue as soon as the Answer was filed and, in the ordinary course of litigation, subject to proof by Respondents on summary judgment or trial.[15] This is how the *Town of Atherton* court analyzed the situation – that rebutting the preemption affirmative defense is part of petitioners' CEQA litigation that petitioners unquestionably have standing to bring. Amici agree.

Thus, the decision below should be reversed on the standing issue alone and Petitioners should be allowed to litigate whether the market participant exception to ICCTA preemption applies here.

This is a particularly important principle where, as in the Southern California railyard cases described above, the lead agencies actively support the projects in close coordination with the prospective railroad tenants of public land. This is a serious problem for the signatories to this brief who are concerned about their health and the health of their members, and about the ability of powerful governmental agencies to approve projects without analyzing and proposing mitigation for the harmful environmental effects on the residents of the surrounding neighborhoods.

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[14]The Court of Appeal relied on a connected series of qui tam cases brought under the New York False Claims Act. *State of New York ex rel. Grupp v. DHL Express (USA), Inc.* (2012) 19 N.Y.3d 278, 947 N.Y.S.2d 368, 970 N.E.2d 391; *State ex rel. Grupp v. DHL Express (USA), Inc.* (2011) 83 A.D.3d 1450, 922 N.Y.S.2d 888; *DHL Express (USA), Inc. v. State ex rel. Grupp* (Fla.Dist.Ct.App.2011) 60 So.3d 426) Those cases have nothing to do with California pleading and practice.

[15] The party raising an affirmative defense has the burden of proving it. *Sargent Fletcher, Inc. v. Able Corp.*, (2003) 110 Cal.App.4th 1658, 1668.

II. THE MARKET PARTICIPANT EXCEPTION TO ICCTA PREEMPTION APPLIES IN THIS CASE

On the merits of preemption, should this Court wish to reach it, there can be little question that Respondent was in the business of leasing the right to use real property that it owned—and thus was a market participant. As such, Respondent had a proprietary interest in understanding the environmental conditions of the property to be leased, for example to protect against liability for claims by the railroad or by people living near the tracks. Such liability could affect the economic health of the North Coast Railroad Authority and also of Northwestern Pacific Railroad Company, and the question of their potential liability is not regulatory in any sense. Thus there is a solid defense to ICCTA preemption that Petitioners should be allowed to litigate.

CONCLUSION

For the reasons set forth herein and in Appellants' briefs, the decision of the Court of Appeal in this case should be reversed.

Respectfully submitted,

DATED: May 29, 2015 By:

David Pettit
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CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520(c)(1) of the California Rules of Court, I hereby certify that this brief contains 2,949 words, including footnotes, but excluding the Application, Table of Contents, Table of Authorities, Certificate of Service, this Certificate of Word Count, and signature blocks. I have relied on the word count of the Microsoft Word program used to prepare this Certificate.

Respectfully submitted,

DATED: May 29, 2015

By:

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PROOF OF SERVICE

I am employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is 1314 2nd Street, Santa Monica, California 90401.

On May 29, 2015 I served true copies of the following document(s) described as **APPLICATION OF SIERRA CLUB, COALITION FOR CLEAN AIR, NATURAL RESOURCES DEFENSE COUNCIL, PLANNING AND CONSERVATION LEAGUE, AND COMMUNITIES FOR A BETTER ENVIRONMENT FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT FRIENDS OF THE EEL RIVER AND *[PROPOSED]* BRIEF OF *AMICUS CURIAE*** by placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached service list as follows:

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this District's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service, with postage thereon fully prepaid at Santa Monica, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on May 29, 2015 at Santa Monica, California.

Daniel Lopez

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(via U.S. Mail & Electronic Transmission)

Clerk of the Court
Marin County Superior Court
P.O. Box 4988
San Rafael, CA 94913