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Sent via Truefiling

Hon. Chief Justice Tani Gorre Cantil-Sakauye
Hon. Carol A. Corrigan
Hon. Goodwin H. Liu
Hon. Leondra R. Kruger
Hon. Joshua P. Groban
Hon. Martin J. Jenkins
Hon. Patricia Guerrero

Re: Supreme Court Case No. S258574, *County of Butte v. Dept. of Water Resources*, Requested Modification to Opinion

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

The signatories to this letter are experienced practitioners of the California Environmental Quality Act (CEQA; Pub. Res. Code § 21000, et seq.). We respectfully request that this Court consider modifying the above-captioned Opinion (Opinion) pursuant to Cal. Rules of Court, Rule 8.532(c), or, in the alternative, consider this letter a petition for rehearing pursuant to Cal. Rules of Court, Rule 8.536(a). The sole purpose of this request is to correct what appears to be an inadvertent error in one sentence of the Opinion, which has no bearing on the Court’s holding and would not result in any change in the judgment.

The current version of the Opinion contains the following sentence, which describes requirements that an Environmental Impact Report (EIR) “must include,” and cites the CEQA Guidelines as the supporting authority:

The document must include a description of the proposed project and its environmental setting and discussions of (1) the possible environmental effects of the project, (2) feasible measures to mitigate any significant, adverse environmental effects of the project, (3) the comparative environmental effects of a range of reasonable alternatives to the proposed project, including a “no project” alternative, (4) the cumulative impact of the project's various environmental effects, and (5) the economic and social effects of the project. (CEQA Guidelines, §§ 15124, 15126, 15126.4, 15126.6, 15131.)

(Slip op. at p. 13, emphases added.)

The CEQA Guidelines state in several places – including in the section cited above – that “[e]conomic or social effects of a project *shall not* be treated as significant effects on the environment.” (Cal. Code Regs. tit. 14 [CEQA Guidelines] § 15131, subd. (a) [emphasis added]; see also CEQA Guidelines, § 15064, subd. (e); [“Economic and social changes resulting from a project shall not be treated as significant effects on the environment”]; see also CEQA Guidelines, § 15382 [“An economic or social change by itself shall not be considered a significant effect on the environment”].) The CEQA Guidelines are consistent with the statutory text, which limits CEQA’s scope to assessing changes to “physical conditions” (Pub. Res. Code § 21100, subd. (d); Pub. Res. Code § 21065) and provides that “evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts” is not substantial evidence of a significant effect on the environment requiring preparation of an EIR. (Pub. Res. Code § 21080, subd. (e)(2); Pub. Res. Code § 21082.2, subd. (c); see also CEQA Guidelines, § 15064, subd. (f)(6) [accord].)

The CEQA Guidelines go on to explain the very limited role that social and economic issues can play in a CEQA analysis: for example, when assessing the significance of a physical change in the environment or when social changes lead directly to physical changes. (See generally CEQA Guidelines, § 15131.) But decades of published authority has re-affirmed the general rule that economic and social effects themselves are outside the scope of CEQA and that an EIR need not analyze them. (See, e.g., *San Franciscans Upholding the Downtown Plan v. City & Cnty. of San Francisco* (2002) 102 Cal.App.4th 656, 697 [“Under CEQA, a project’s social impacts need not be treated as significant impacts on the environment”]; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 455, as modified (Apr. 18, 2007) [conc. opn. of Baxter, J.] [citation omitted] [“[e]conomic or social effects of a project shall not be treated as significant effects on the environment . . . and therefore are beyond the scope of CEQA”]; *Chico Advocs. for a Responsible Econ. v. City of Chico*, 40 Cal.App.5th 839, 847-48 (2019) [“an economic or social change by itself is not considered a significant effect on the environment”]; see also Kostka & Zischke, *Practice Under the California Environmental Quality Act* (2d ed Cal CEB), § 6.36.)

Out of context, the above-cited sentence of the Opinion appears to be a summary of five requirements that any EIR “must include.” Therefore, the passage could be misrepresented to suggest that the CEQA Guidelines generally require an EIR to analyze a project’s social and economic effects. As the CEQA Guidelines, the case law, and the statute are to the contrary, as there is nothing in the Opinion suggesting that the Court intended to make an important change to the law, and as the clause in question has no bearing on the Court’s holding, we respectfully request that the Court avoid unnecessary confusion by modifying the Opinion to delete the clause “the economic and social effects of the project” from the above-cited sentence.

Sincerely,

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cc: Counsel to all parties (served via truefiling)