

SUPREME COURT COPY

CASE NO. S219783

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED

SIERRA CLUB, REVIVE THE SAN JOAQUIN, and
LEAGUE OF WOMEN VOTERS OF FRESNO,
Plaintiffs and Appellants

MAY 12 2015

Frank A. McGuire Clerk

v.

Deputy

COUNTY OF FRESNO,
Defendant and Respondent

FRIANT RANCH, L.P.,
Real Party in Interest and Respondent

After a Decision by the Court of Appeal, filed May 27, 2014
Fifth Appellate District Case No. F066798

Appeal from the Superior Court of California, County of Fresno
Case No. 11CECG00726
Honorable Rosendo A. Pena, Jr.

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
OF LEADERSHIP COUNSEL FOR JUSTICE AND
ACCOUNTABILITY IN SUPPORT OF PLAINTIFF AND
APPELLANT, SIERRA CLUB, REVIVE THE SAN JOAQUIN, AND
LEAGUE OF WOMEN VOTERS OF FRESNO**

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CLERK SUPREME COURT

Counsel for Leadership Counsel for Justice and Accountability

I. APPLICATION TO FILE AMICI CURIAE BRIEF

Pursuant to California Rules of Court, Rule 8.200(c), Leadership Counsel for Justice and Accountability (Leadership Counsel) requests permission from the Chief Justice to file an amici curiae brief in support of Plaintiffs and Appellants, Sierra Club, Revive the San Joaquin and League of Women Voters of Fresno. Pursuant to Rule 8.520(f)(4) of the California Rules of Court, the proposed amicus curiae brief is combined with this Application. This brief addresses the following issue certified by this Court for review:

Does a one paragraph general discussion of the health problems typically associated with criteria air pollutant emissions satisfy CEQA's legal standard for what must be analyzed and explained in an EIR's consideration and discussion of a project's significant air quality impacts?

The Court has granted Leadership Counsel an extension of time to file its application and brief by May 6, 2015 pursuant to Rule 8.200(c)(1). Accordingly, this submission is timely.

A. INTEREST OF LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY AND HOW THE PROPOSED AMICUS CURIAE BRIEF WILL ASSIST THE COURT

Leadership Counsel for Justice and Accountability is a project of the Tides Center, a 501(c)(3) non-profit organization. Based in the Central Valley and East Coachella Valley, Leadership Counsel's mission is to work alongside California's most impacted communities to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income or place.

Leadership Counsel works with rural and urban communities that have some of the nation's highest poverty rates and are predominately, and in some cases almost entirely, made up of people of color. These communities include significant immigrant populations with no or limited English proficiency; are often isolated geographically from more affluent areas; and have historically lacked political power and influence.

These communities frequently lack access to basic public services and amenities such as paved roads, gutters, sidewalks, street lights, potable water, and functioning sewer service -- amenities and services that are considered a right by most Californians and that are essential to human health and well-being. They disproportionately lack access to fresh food; green space; effective public transportation; adequate housing; and quality public schools.

In addition, polluting land uses -- including freeways, industrial facilities, agricultural operations, hazardous waste sites, and landfills, to name a few -- are often concentrated in and around these same communities with which Leadership Counsel works.

These conditions have disastrous impacts on the health outcomes in many of these lower income, communities of color, exhibited in disproportionately high rates of chronic disease such as asthma, obesity, diabetes, and heart disease; and the comparatively short life expectancy.

Leadership Counsel works to undo the disparities impacting the Central and Coachella Valleys' disadvantaged communities by connecting residents with the legal and political tools, structures and processes that impact their lives and shape their communities. Ensuring robust access to public information on issues that impact resident lives is a key component of these goals. Through community education, policy advocacy and legal representation, Leadership Counsel supports the efforts of these communities to secure essential amenities and services; advocate for land

use planning that promotes health and community development; encourage strategic public and private investment; and catalyze robust civic engagement that represents community priorities.

Leadership Counsel's interest in the health and prosperity of California's most vulnerable communities and Leadership Counsel's interest in informed and inclusive decision-making are intimately linked to the Court's resolution of the second issue in this matter: whether a summary discussion of air quality impacts suffices under CEQA as an analysis of a proposed project's air quality impacts.

Issuance of a *carte blanche* by this Court to public agencies to forego analysis of the health impacts of a project subject to the California Environmental Quality Act (CEQA) would further jeopardize and undermine the health of disadvantaged communities already disproportionately burdened by lack of access to essential amenities and services, exposure to environmental pollutants, and poor health outcomes. Leadership Counsel has a strong interest in ensuring that decision-makers and the public – especially residents of low-income communities of color – have access to information about the public health impacts likely to result from a proposed project when weighing the merits of a project and considering the adequacy and feasibility of mitigation measures.

Leadership Counsel's proposed amicus brief will help the Court by providing the Court with information not included in the other parties' briefing regarding the disproportionate pollution burden born by low-income communities of color in California, and their related heightened vulnerability to increased air pollution and other environmental stressors. The proposed amicus brief will highlight the disproportionate adverse impact on such communities that a ruling by this Court would have that allows public agencies to forgo analysis of the health impacts of a project's air emissions. The briefing will also explain the consequent failure of an

EIR lacking such analysis to serve its role as an “informational document” that enables informed decision-making and meaningful public participation.

Pursuant to Rule 8.200(c)(3)(A), the applicant certifies the undersigned authored and financed the preparation of the proposed amicus brief in full and that no other party or counsel authored the brief in whole or in part or made a monetary contribution to fund the preparation or submission of this Brief.

Therefore, Leadership Counsel respectfully requests that this Court grant it permission to file the accompanying amici curiae brief.

Dated: May 5, 2015

LEADERSHIP COUNSEL FOR
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I. BRIEF OF AMICI CURIAE

A. INTRODUCTION

Leadership Counsel for Justice and Accountability submits that the Court of Appeals correctly held that the Friant Ranch Final Environmental Impact Report (EIR) is inadequate under the California Environmental Quality Act (CEQA) because it does not analyze the adverse human health impacts that are likely to result from the air quality impacts identified in the EIR.

The CEQA Guidelines are unequivocal: “[t]he discussion [in an EIR] shall include *relevant specifics* of the area, the resources involved, physical changes.....[and] health and safety problems caused by the physical changes”. (italics added). § 15126.2. An EIR that fails to analyze the human health impacts likely to result from the physical impacts identified therein does not comply with CEQA’s mandate. Neither does such an EIR serve its fundamental role as an “informational document”, since decision-makers and the public are unable to accurately weigh and comment upon the relative costs and benefits of the proposed project on the basis of such an EIR. Pub. Res. Code § 21061; Guidelines §§ 15003(b)-(e).

To rule otherwise would not only undermine the letter and intent of the California Environmental Quality Act but would also disproportionately negatively impact low-income communities of color already disproportionately impacted by environmental stressors and their health consequences. Those communities stand to be most impacted by additional and inadequately mitigated pollution resulting from projects approved pursuant to EIRs lacking analysis of the human health impacts associated with their air emissions. Additionally, those same individuals and communities also stand to lose the most from an EIR lacking sufficient detail for them to meaningfully consider a project’s impacts and instead leaves

them grasping in the dark during the public review process regarding the extent and nature of possible health impacts arising from the project's air emissions. *Laurel Heights Improvement Assn v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 404-405 (*Laurel Heights I*).

B. A FINDING THAT CEQA DOES NOT REQUIRE ANALYSIS OF THE HEALTH IMPACTS LIKELY TO ARISE FROM A PROJECT'S AIR EMISSIONS WILL HAVE A DISPROPORTIONATE NEGATIVE IMPACT ON LOW-INCOME COMMUNITIES OF COLOR ALREADY DISPROPORTIONATELY BURDENED BY POLLUTION

A ruling by this Court that gives public agencies a green light to forego an analysis of the health impacts likely to arise from a project's significant physical impacts will disproportionately negatively impact low-income communities of color that are already disproportionately impacted by pollution.

Across the state, certain communities are disproportionately burdened by, and vulnerable to, multiple sources of pollution compared to others. The California Communities Health Screening Tool, Version 2.0 (CalEnviroScreen, 2.0 or CalEnviroScreen), a rigorous scientific screening methodology developed by the California Environmental Protection Agency (CalEPA) and Office of Environmental Health Hazard (OEHHA), demonstrates this inequity.¹

¹CalEnviroScreen was developed to assist the CalEPA in carrying out its environmental justice mission to conduct its activities in a manner that ensures the fair treatment of all Californians, including minority and low-income populations. California Communities Environmental Health Screening Tool, Version 2.0 (CalEnviroScreen 2.0), Guidance and

CalEnviroScreen evaluates multiple pollution sources in a community while accounting for a community's vulnerability to pollution's adverse effects through population indicators.² CalEnviroScreen recognized the cumulative impact of both multiple environmental stressors and vulnerability to those stressors. Pollution indicators used by CalEnviroScreen measure human exposure to pollution and environmental degradation and include indicators for air quality (ozone, PM 2.5 and diesel particulate matter), traffic density, and toxic releases from facilities, among others. Population characteristic indicators represent demographic factors known to influence vulnerability to environmental stressors including proportion of young and elderly, asthma rate, low birth weight, educational attainment, linguistic isolation, poverty, and unemployment.³ While all of these indicators demonstrate cumulative burden from and increased vulnerability to increased environmental stressors such as air quality degradation, it bears noting that at least four of the indicators (ozone, p.m. 2.5, diesel and asthma) are directly related to air quality and its impacts.

Accordingly, those communities most burdened by and most vulnerable to environmental stressors are those most at risk from adverse health impacts of a project and therefore most reliant on an adequate analysis of a project's health impacts pursuant to CEQA.

Screening Tool, October 2014, p. i, available at <http://oehha.ca.gov/ej/pdf/CES20FinalReportUpdateOct2014.pdf>.

² “[A] number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. The combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact.” OEHHA, Cumulative Impacts: Building a Scientific Foundation, Dec. 2010, p. ix, available at <http://oehha.ca.gov/ej/cipa12311.html>

³ CalEnviroScreen 2.0, pp. 8, 9.

Using CalEnviroScreen, the CalEPA and OEHHA conducted a statewide analysis to identify California's most burdened and vulnerable communities by ranking communities by census tract according to relative vulnerability.

OEHHA's "Analysis of CalEnviroScreen 2.0 Scores and Race / Ethnicity" shows that African Americans and Hispanic / Latinos in California "disproportionately reside in highly impacted communities while other groups tend to reside disproportionately in less impacted communities", while whites are over-represented in the least burdened communities.⁴ Over 19 percent of the state's Hispanic / Latino population lives in one of the 10% most burdened communities per CalEnviroScreen, while fewer than 3 percent of the state's white population live in those communities. Similarly, one in three Latinos and one in four African Americans live in the 20% most burdened communities, compared to only one in fourteen whites.

Other research has also found that low-income communities of color in California are exposed to air pollution more often and at higher levels than other groups.⁵

Additional pollution from all sources, including by "projects" subject to CEQA, disproportionately impacts the health of low-income communities of color that are already disproportionately burdened by pollution and other environmental stressors. As a project with potentially deleterious health impacts is more likely to disproportionately and negatively impact communities of color, so too does an EIR that fails to comprehensively

⁴ OEHHA, Analysis of CalEnviroScreen 2.0 and Race / Ethnicity, August 2014, P. 4., available at <http://oehha.ca.gov/ej/pdf/CES20FinalRaceEthnicity.pdf>.

⁵ Jane Hall, et al. *The Benefits of Meeting Federal Clean Air Standards in the South Coast and San Joaquin Valley Air Basins* (2008) at 22-23.

assess health impacts that disproportionately and negatively impact those communities most often burdened and vulnerable to those very health impacts.

Accordingly, not only does an EIR that glosses over the health impacts of a project fail to assess the true impacts and costs of a project, it does so with particular acuity with respect to the most vulnerable communities of the state. And, as the most vulnerable communities of the state are disproportionately communities of color, it does so with particular disregard for Latino and African American Californians.

C. FAILURE TO ANALYZE A PROJECT'S HEALTH IMPACTS UNDERMINES THE EIR'S ROLE AS AN INFORMATIONAL DOCUMENT

CEQA Guidelines Section 15126.2, subdivision (a), provides that, “An EIR shall identify and focus on the significant environmental effects of the proposed project....Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects. The discussion shall include *relevant specifics* of the area, the resources involved, physical changes....[and] health and safety problems caused by the physical changes”. (italics added)

Failure to analyze a project's health impacts likely to arise from a project's significant physical impacts fails to comply with CEQA's mandate that an EIR include “relevant specifics” of the health and safety problems caused by a project's physical changes and undermines the EIR's crucial role as an “informational document”. Pub. Res. Code § 21061. (“The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.” CEQA Guidelines § 15003(b); “The EIR is to

demonstrate to an apprehensive citizenry that the agency has, in fact, analyze and considered the ecological implications of its action.” *Id.* § 15003(d); see also § 15003(c), (e), (g)).

An EIR’s lack of analysis of the health impacts associated with a project’s physical impacts prevents decision-makers from making a fully informed decision about the project as envisioned by CEQA. Pub. Res. Code § 21061; Guidelines § 15003(b)-(e). As the Appeals Court astutely noted in reference to the Friant Ranch EIR:

“...information about the magnitude of the human health impacts is relevant to the board of supervisor’s value judgement about whether other considerations override the adverse health impacts. In other words, a disclosure of respiratory health impacts that is limited to the better / worse dichotomy does not allow the decision makers to perform the required balancing of economic, legal, social, technological and other benefits of the Project against the adverse impacts to human health because they have not been informed of the weight to place on the adverse impact side of the scales. (See Guidelines, § 15093, subd. (a) [statement of overriding considerations].) *Sierra Club v. County of Fresno* (2014), 226 Cal. App. 4th 704, 744, Footnote 23.

The lack of information about the extent of health effects associated with a project’s physical impacts especially impairs decision-makers’ ability to understand and weigh the costs and benefits of the project as they effect individuals and communities disproportionately burdened by and vulnerable to environmental stressors. Additionally, insufficient information in the EIR provides another obstacle to residents often

marginalized in the political arena to holding their elected leaders accountable for decisions that impact their health and their communities.

In addition, failure to analyze the health impacts associated with a project's physical impact further excludes low-income communities of color from decision-making processes that impact their health and their lives in violation of CEQA.

“To facilitate CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions.’ [Citations.] An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Laurel Heights I, supra*, at 404-405.

Without more than a general discussion of the health effects associated with certain pollutants, an EIR provides insufficient information to individuals reviewing the EIR “to understand and to consider meaningfully the issues raised by the proposed project”, including how the project is likely to impact their own health, their children’s health, and the health of their community. For individuals and communities that are already disproportionately impacted by and vulnerable to environmental stressors and who stand to be disproportionately adversely impacted by additional pollution exposure, a lack of disclosure about the health effects associated with a proposed project renders an EIR all the more inadequate as an “informational document”. Pub. Res. Code § 21061; Guidelines § 15126.2.

**D. FAILURE TO ANALYZE THE HEALTH IMPACTS
OF A PROJECT’S IDENTIFIED AIR EMISSIONS IS
AT ODDS WITH STATE VALUES**

An interpretation of CEQA that alleviates agencies of responsibility to analyze the health impacts likely to arise from a proposed project's air quality impacts would be at odds with state priorities.

The State Planning Priorities, codified in Government Code Section 65041.1, are intended to "promote equity, strengthen the economy, protect the environment, and promote public health and safety" in rural, suburban, and urban communities throughout the state.

Denying CEQA's mandate to evaluate health impacts of proposed projects likely to arise from the significant physical impacts of those projects *ipso facto* runs contrary to the state goal to "promote the public health and safety" by allowing decision-makers to approve projects with no knowledge of the actual health impacts those projects are likely to create and without considering such actual health impacts when weighing the merits of the project and the adequacy of the project's mitigation measures.

E. CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court uphold the Appeal's Court ruling that the Friant Ranch EIR was inadequate, because it does not analyze the adverse human health impacts that are likely to result from the air quality impacts identified in the EIR.

Dated: May 5, 2015

Respectfully Submitted,

By: Ashley E. Werner
Ashley E. Werner
Phoebe S. Seaton
Attorneys at Law
LEADERSHIP COUNSEL FOR
JUSTICE AND ACCOUNTABILITY

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared in compliance with Rule 8.204 of the California Rules of Court. The brief was prepared with 13 point font. The brief, excluding the required tables, attachment, and this certificate, is 1992 words long.

Sierra Club et al. v. County of Fresno, et al.
Supreme Court of California, Case No. S219793
(Fifth District Court of Appeal, Case No. F066798;
Fresno County Superior Court, Case No. 110ECG00726)

PROOF OF SERVICE

I, Olivia Faz, declare as follows: I am employed with the law offices of LEADERSHIP COUNSEL FOR JUSTICE AND ACCOUNTABILITY. My business address is 764 P Street, Suite 012, Fresno, California 93721. I am over the age of 18 years of age, and not a party to this action.

On May 5, 2015, I served the foregoing document entitled:

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF OF LCJA IN SUPPORT OF PLAINTIFF AND APPELLANT,
SIERRA CLUB, REVIVE THE SAN JOAQUIN, AND LEAGUE OF
WOMEN VOTERS OF FRESNO**

AND

**AMICUS CURIAE BRIEF OF LCJA IN SUPPORT OF
PLAINTIFF AND APPELLANT, SIERRA CLUB, REVIVE THE SAN
JOAQUIN, AND LEAGUE OF WOMEN VOTERS OF FRESNO**

on counsel for Respondents/Defendants and Real Parties in Interest at the following address:

SEE ATTACHED LIST

By Mail in accordance with Code of Civil Procedure 1013a(3) as follows:

I am readily familiar with this firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under the practice the correspondence would be deposited with the United States Postal Service on that same day in the ordinary course of business with postage thereon fully prepaid at Fresno, California. Such envelope was sealed and placed for collection and mailing following ordinary business practices.

I declare that I am employed in the office of a member of the bar of California whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 5, 2015, Fresno, California.


OLIVIA FAZ

Sierra Club et al. v. County of Fresno, et al.
Supreme Court of California, Case No. S219793
(Fifth District Court of Appeal, Case No. F066798;
Fresno County Superior Court, Case No. 110ECG00726)

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On behalf of Amicus Curiae
CEQA Research Council