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September 1, 2017

Hon. Cathleen Galgiani
Member of Senate
State Capitol, Room 5097
Sacramento, California 95814

Subject: SB 699 (Galgiani), as amended August 31, 2017 - Oppose

Dear Senator Galgiani,

The Judicial Council regrets to inform you of its opposition to SB 699, as amended August 31, 2017, which would extend for two years the sunset on the expedited judicial review provisions in AB 900 (Stats. 2011, ch. 354) that apply to specified cases filed under the California Environmental Quality Act (CEQA). It is important to note that the Judicial Council's concerns regarding SB 699 are limited solely to the court impacts of the legislation, which are detailed below. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the projects that would be covered by this bill, as those issues are outside the council's purview.

As we noted with other recent bills that have sought to expand AB 900, requiring that a CEQA lawsuit challenging the additional projects that may be certified for this form of expedited judicial review, including any appeals therefrom, be resolved within 270 days is problematic for a number of reasons. First, the timeline is triggered by *the certification of the record*, which is an action that takes place *before* the court has any jurisdiction or control over the proceedings. This

means that the extremely tight 270-day period in which the trial court and Court of Appeal must issue their respective decisions on an action could—and likely would—begin weeks before the lawsuit is even filed. It makes no sense to have something that occurs before the matter even comes to the courts start the courts’ already limited time period to complete their work.

Second, the 270-day timeline will likely be unworkable in practice. During the council’s development process for the rules to implement AB 900, it became clear that 175 days (which was the timeline under the enacted version of that bill) is an unrealistically short timeframe for the Court of Appeal to decide a large CEQA matter. As was the case for initial review in the Court of Appeal, even assuming that no extensions of time are granted for any aspect of the proceeding, it appears that it will take about 175 days just to get to hearing in the superior court, much less to issue a decision, in the majority of these cases. Even if the superior court were able to issue its decision within 175 days, which seems unlikely, that would leave only 95 days for proceedings in the Court of Appeal, which appears to be infeasible.¹

Third, if SB 699 is enacted, the expedited judicial review requirements for any additional projects that may be certified under AB 900 will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding these cases has the practical effect of pushing other cases on the courts’ dockets to the back of the line. This means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, will take longer to decide. Moreover, delays in the administration of justice that would likely result from any expansion of this expedited judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

Fourth, providing expedited judicial review for additional projects that may be covered by the bill’s proposed expansion of AB 900 while other cases proceed under the usual civil procedure rules and timelines undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this special type of case for such preferential treatment appears at odds with how our justice system has historically functioned.

¹ In a typical civil appeal, it takes more than 95 days from when a trial court decision becomes final just for the record on appeal to be prepared and filed in the Court of Appeal. This does not include any time for briefing, oral argument, analysis of the issues, or preparation of a decision by the court.

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For these reasons, the Judicial Council opposes SB 699.

Sincerely,

Mailed September 1, 2017

Daniel Pone

Attorney

DP/jh

cc: Members, Assembly Natural Resources Committee

Mr. Daniel Seeman, Deputy Legislative Affairs Secretary, Office of the Governor

Mr. Martin Hoshino, Administrative Director, Judicial Council of California

Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee

Mr. John Kennedy, Consultant, Assembly Republican Caucus

Ms. Joanne Roy, Consultant, Senate Environmental Quality Committee

Mr. Todd Moffitt, Consultant, Senate Republican Caucus