

C093421

**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
THIRD APPELLATE DISTRICT**

CIVIL CASE NO. C093421

WATER FOR CITIZENS OF WEED CALIFORNIA, *et al.*;

Plaintiffs/Appellants

v.

CHURCHWELL WHITE LLP, *et al.*;

Defendants/Respondents

On Appeal from the Order of Dismissal entered by the Superior
Court, County of Sacramento, on December 17, 2020
HONORABLE DAVID I. BROWN presiding.

Case No. 34-2020-00283365-CU-PO GDS

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF; BRIEF OF AMICUS CURIAE WE ADVOCATE
THOROUGH ENVIRONMENTAL REVIEW
IN SUPPORT OF PLAINTIFFS/APPELLANTS**

BABAK NAFICY (SBN 177709)
LAW OFFICES OF BABAK NAFICY
1124 Nipomo St, Ste. C
San Luis Obispo, CA 93401-3883

Attorneys for Amicus Curiae
We Advocate Thorough Environmental Review

**APPLICATION FOR LEAVE TO
FILE AMICUS CURIAE BRIEF**

**TO THE HONORABLE PRESIDING JUSTICE AND
ASSOCIATE JUSTICES OF THE COURT OF APPEAL FOR
THE STATE OF CALIFORNIA, THIRD APPELLATE
DISTRICT:**

Pursuant to rule 8.200(c) of the California Rules of Court,
We Advocate Thorough Environmental Review (“WATER”) respectfully requests leave to file the attached amicus curiae brief on the third issue set forth in the Opening Brief filed by Water for Citizens of Weed California, *et al.* (“WCWC”), specifically: “Whether the Superior Court erred in interpreting the controlling legal standard regarding quiet title actions.” Opening Brief, p. 8. WATER hereby seeks to file the attached proposed amicus curiae brief in support of WCWC.

1. INTEREST OF WATER

WATER is a California 501(c)(3) non-profit corporation formed to promote quality local and regional planning and land use and development, as well as to preserve a healthy human and natural environment within Siskiyou County and Northern California.

WATER has extensively commented on the use of water, as well as the public nature of water resources, throughout many public processes in Northern California. Over the years, WATER has challenged various agency actions related to the use and allocation of water. *See, e.g., WATER v. County of Siskiyou*, Third District Court of Appeal, Case No. C090841, and *WATER v. City of Mount Shasta*, Third District Court of Appeal Case No. C091012.

Similar to other advocacy groups and citizens, WATER's ability to continue to participate fully in administrative reviews and other public processes will be chilled if the Court accepts respondents/defendants' argument that expressing opinions on water rights, including advocating for the public trust, constitutes a "cloud on title" to water rights capable of supporting a quiet title cause of action against the speaker.

WATER seeks leave to file this brief because this case raises issues of significant concern to community and environmental advocates. Members of these public interest organizations regularly make comments in a variety of public fora every day in California to raise public awareness and bring attention to issues of public interest and effect change in

environmental decisions and policy. WATER is deeply concerned about the novel legal theory advanced by Respondent that individuals may be sued in a quiet title action for the sole reason that they made a public statement questioning the validity of a claimed water right. WATER presents this amicus curiae brief to the Court to underscore the negative consequences that will flow from a legal determination that would permit water users claiming a water right to file quiet title actions against any person who publicly questioned the validity of the right.

WATER respectfully requests that the Court grant this application and file the attached amicus curiae brief. No party or party's counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief.

DATED: February 14, 2022

LAW OFFICES OF BABAK NAFICY

By *Babak Naficy*
Babak Naficy
Attorneys for Amicus Curiae
We Advocate Thorough
Environmental Review

COURT OF APPEAL THIRD APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: C093421
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 177709 NAME: Babak Naficy FIRM NAME: Law Office of Babak Naficy STREET ADDRESS: 1124 Nipomo Street, Suite C CITY: San Luis Obispo STATE: CA ZIP CODE: 93401 TELEPHONE NO.: (805) 593-0926 FAX NO.: (805) 593-0946 E-MAIL ADDRESS: babaknaficy@sbcglobal.net ATTORNEY FOR (name): We Advocate Thorough Environmental Review	SUPERIOR COURT CASE NUMBER: 34-2020-00283365-CU-PO GDS
APPELLANT/ WATER FOR CITIZENS OF WEED CALIFORNIA, et al. PETITIONER: RESPONDENT/ CHURCHWELL WHITE LLP, et al. REAL PARTY IN INTEREST:	
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): We Advocate Thorough Environmental Review
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):
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- (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: 2/14/2022

Babak Naficy
(TYPE OR PRINT NAME)

▶ 
(SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

TABLE OF AUTHORITIES 7

I. INTRODUCTION 8

II. ARGUMENT 10

 A. The trial court erred in finding that Churchwell White had probable cause to file a quiet title action against the WCWC plaintiffs 10

 B. The trial court’s decision will chill public participation, particularly with respect to public trust resources..... 13

 1. The Public Trust Doctrine in California..... 14

 2. The chilling effect of the trial court’s decision 16

III. CONCLUSION 17

CERTIFICATION OF WORD COUNT 18

TABLE OF AUTHORITIES

Cases

Environmental Law Foundation v. State Water Resources Control Board
(2018) 26 Cal.App.5th 844..... 15

Nat'l Audubon Soc'y v. Superior Ct.
(1983) 33 Cal.3d 419..... 14, 15

People v. California Fish Co.
(1913) 166 Cal. 576 14

Santa Teresa Citizen Action Group v. City of San Jose
(2003) 114 Cal.App.4th 689..... 15

Soukup v. Law Offices of Herbert Hafif
(2006) 39 Cal.4th 260 11

Welsher v. Glickman
(1969) 272 Cal.App.2d 134 12

Codes and Statutes

Code of Civil Procedure

425.16 8

425.18(b)(1)..... 9

**BRIEF OF AMICUS CURIAE WE ADVOCATE THOROUGH
ENVIRONMENTAL REVIEW IN SUPPORT OF WATER
FOR CITIZENS OF WEED CALIFORNIA, *et al.***

I. INTRODUCTION

This case brings into focus an aspect of the Anti-SLAPP process that leaves open the possibility for a party filing a SLAPP¹ suit to continue to inflict financial and emotional hardship on the public participants whose lawful participation in public they wish to chill by prolonging the litigation in the appellate courts after the original SLAPP suit has been dismissed. In the case underlying the present action, the Defendants/Respondents, Churchwell White, LLP, *et al.* (“Churchwell White”), filed a SLAPP suit on behalf of their client. However, for years after its dismissal they continued to litigate a frivolous appeal against the individual members of Water for Citizens of Weed California (“WCWC”). *See* WCWC’s Opening Brief (“Open. Brief”), pp. 6 and 9.

The mechanism for recovering damages inflicted by a wrongful SLAPP action was provided by the legislature in 2005

¹ Referring to “Strategic Litigation Against Public Participation.” The Anti-SLAPP statute appears at Code of Civil Procedure section 425.16.

with the enactment of the SLAPPback provisions codified in Code of Civil Procedure section 425.18(b)(1). This provision allows a SLAPP victim to seek damages suffered as a result of the unlawful SLAPP action.

The trial court decision at issue in this appeal found that the Respondent attorneys Churchwell White had probable cause to file their quiet title action against the WCWC plaintiffs.

Appellants' Appendix ("AA") Vol. IV 1227-1232.² In making that determination, the trial court accepted Respondents' argument that an individual who has never claimed an ownership interest in the property in question may be named in a quiet title action for the sole reason that they made public statements asserting that the property is owned by another. IV AA 1228.

The notion that third party commentators who express an opinion in a public forum regarding the true ownership of property can legitimately be named as defendants in a quiet title action relating to that property does not hold up as an objectively tenable legal theory.

² References to the Appellant's Appendix will be as follows: [volume number] AA [page number].

Thus, the trial court’s conclusion that a quiet title action was “tenable” against individual citizens who merely questioned the validity of a water right was in error. The evidence shows the only reason the WCWC plaintiffs were named as defendants in the underlying quiet title action was to silence, intimidate, and chill their participation in the public process. *See* I AA 092. If the trial court’s error is not reversed, public participation will be chilled throughout California, particularly with respect to public issues around water rights. This is especially alarming because in California, water is an important public trust resource, and public welfare is not well-served if citizens hesitate to raise the public trust doctrine for fear of the “tenable” quiet title action that may be filed against them.

II. ARGUMENT

A. The trial court erred in finding that Churchwell White had probable cause to file a quiet title action against the WCWC plaintiffs.

In striking WCWC’s SLAPPback complaint, the trial court found that WCWC had not established a likelihood of prevailing on the merits, finding that the quiet title action had been filed *with* probable cause. IV AA 1227-1232.

The trial court used the malicious prosecution claim standard regarding probable cause, reasoning that the “low threshold” in such cases supported a finding that the Respondent had probable cause to file its quiet title claim against the individual citizens. IV AA 1227. The applicable standard in SLAPPback cases, however, differs from the standard applied by the trial court. In determining whether the prior action was brought without probable cause in the SLAPPback context, “the question . . . is ‘whether as an objective matter, the prior action was legally tenable or not.’” *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 292.

Churchwell White urged the trial court to find that the WCWC plaintiffs’ expression of the opinion that the disputed water rights belonged to the citizens of Weed put a “cloud on the title” and provided Churchwell White with probable cause to file a quiet title action against the speakers. *See*, I AA 71 line 4 to 72 line 6. Churchwell White continues to assert this argument on appeal. Respondents’ Brief (“Resp. Brief”), pp. 17-18.

The trial court embraced Churchwell White’s “cloud on the title” argument that any person who makes a public statement regarding the ownership of property, even without making a

claim of ownership themselves, places a cloud on the title to that property such that the speaker becomes a proper defendant in a quiet title action. IV AA 1230.

The trial court's decision emphasizes the distinction "...between actions to uncloud title and to quiet title." IV AA 1229. In explaining the procedure for "unclouding" title, the trial court emphasized with bold font the following: "the proceeding is for the purpose of stopping the mouth of a person who has asserted or is asserting a claim to the plaintiff's property, whether such claim be founded upon evidence or utterly baseless," citing *Welsher v. Glickman* (1969) 272 Cal.App.2d 134, 138-139. IV AA 1230. The trial court failed to grasp the *lack* of a distinction in its own analysis. The bold language makes clear that in "unclouding title," one may seek to "stop the mouth" of "a person who has asserted or is asserting a claim to the plaintiff's property." This is the *same* analysis as that for quiet title. The purpose of an action to quiet title is to squelch improper assertions of an ownership interest in the plaintiff's property and the proper defendant is the one asserting the interest. No reasonable attorney could conclude from the authorities cited by the trial court that a citizen making public statements that a

water resource belonged to the citizens would provide *any* basis at all for an action to quiet title, unless the speaker claimed an ownership interest. This is particularly true where a public trust resource is involved.

B. The trial court’s decision will chill public participation, particularly with respect to public trust resources.

Unlike most property rights, water rights are subject to the public trust doctrine (*Nat’l Audubon Soc’y v. Superior Ct.* (1983) 33 Cal. 3d 419, 446), and as a result, it is a common occurrence for environmental advocates to assert that the *public* has an interest in water that one or more appropriators believe they are entitled to.

In the present case, the Churchwell White attorneys stated that they wished to “quiet title” with respect to the WCWC plaintiffs’ assertions that the water right in dispute was subject to the public trust. For example, during the hearing on the motion to strike in the underlying quiet title action, Barbara Brenner argued to the trial court that the rights of the City of Weed were at issue, “[b]ut we are also trying to resolve this continued dispute with the citizens themselves that [sic] this

water is a public good, that this water is owned by the citizens, that it's a **public trust interest.**" I AA 84-85, emphasis added.

According to Churchwell White and the trial court, merely by raising the public trust doctrine in the context of a disputed water right, a right that historically had supplied the citizens of Weed, the citizens raising the public trust interest became *personally* subject to a quiet title action. Such a rule will silence the voices of citizens in California wherever public trust resources are involved.

1. The Public Trust Doctrine in California

The public trust doctrine in California derives from the state's role as trustee over tidelands, submerged land, and land underlying inland navigable waters, which the state and its grantees (including cities) hold for public trust purposes. *People v. California Fish Co.* (1913) 166 Cal. 576, 584.

In its landmark 1983 decision, the California Supreme Court in *National Audubon Society v. Superior Court* applied the public trust doctrine to limit the appropriation of water from navigable streams and non-navigable tributaries. Specifically, the court held that "[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water

resources.” *National Audubon Society v. Superior Court* (1983)
33 Cal.3d 419, 446.

In 2003 the California Court of Appeal for the Sixth Appellate District in *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 709 declined to extend *National Audubon*, holding that the doctrine “has no direct application to groundwater.”

Fifteen years later, this Court reached a different conclusion in *Environmental Law Foundation v. State Water Resources Control Board* (2018) 26 Cal.App.5th 844 (“*ELF*”). The Court held that the public trust doctrine applies to groundwater hydrologically connected to navigable waters and that the county defendant had a duty to consider the public trust in administering its well ordinance. *Id.* at 856.

This background on the public trust is provided for the purpose of highlighting the likelihood that California citizens will express opinions regarding the *public right* to water resources, as they have done in the past, and will do so in the future.

The WCWC plaintiffs expressed the view that the water right in dispute was a public trust resource, and it landed them in years

of litigation defending themselves *individually* against a quiet title action.

Like WCWC, the members of amicus WATER monitor and participate in public discourse regarding decisions impacting water resources, including groundwater (see pending appellate litigation cited above), and as a result, are deeply concerned about the trial court's decision.

2. The chilling effect of the trial court's decision.

While the public trust doctrine applies in somewhat limited circumstances, citizens involved in advocating for environmental protection and conservation often raise the public trust doctrine in commentary in order to urge decision makers to take the public interest value of land and water resources into account. The history of published cases is a testament to these vocal citizens, and the recent extensions of the doctrine have opened the door to more awareness of the doctrine and how it can be used by environmental advocates such as WATER.

In the present case, it is essential to consider the chilling effect that the trial court's decision will have on organizations such as WATER. If asserting that the public has a right to water

resources creates an actionable “cloud” on title, the public trust doctrine will fade into history.

III. CONCLUSION

WATER urges the Court to reverse the trial court’s finding that probable cause exists to file a quiet title action against citizens exercising their right to speak out and assert that the public has a right to a water resource.

DATED: February 14, 2022

LAW OFFICES OF BABAK NAFICY

By *Babak Naficy*
Babak Naficy
Attorneys for Amicus Curiae
We Advocate Thorough
Environmental Review

**CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, Rule 8.204(c))**

I certify that this brief contains 1,783 words, not including tables of contents and authorities, signature block, and this certificate of word count as counted by Microsoft Word, the computer program used to produce this brief.

DATED: February 14, 2022

Babak Naficy

Babak Naficy

PROOF OF SERVICE

I am employed in the County San Luis Obispo, California; my business address is 1124 Nipomo Street, Suite C, San Luis Obispo, CA 93401. I am over the age of 18 years and not a party to the foregoing action. On February 14, 2022, I served a true and correct copy of:

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF;
BRIEF OF AMICUS CURIAE WE ADVOCATE THOROUGH
ENVIRONMENTAL REVIEW IN SUPPORT OF
PLAINTIFFS/APPELLANTS**

Via TrueFiling:

Maria Rosenfeld
Hansen, Kohls, Sommer & Jacob, LLP
mrosenfeld@hansenkohls.com

Kim Piceno
Hansen, Kohls, Sommer & Jacob, LLP
kpiceno@hansenkohls.com

Christine Jacob
Hansen, Kohls, Sommer & Jacob
cjacob@hansenkohls.com

Donald B. Mooney
Law Office of Donald B. Mooney
417 Mace Boulevard, Suite J-344
Davis, CA 95618

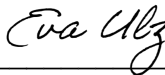
Lauren Regan
Civil Liberties Defense Center
1430 Williamette Street, #359
Eugene, OR 97401

Via First Class Mail:

California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Clerk of the Court
Sacramento County Superior Court
720 9th Street
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.
Executed on February 14, 2022, at San Luis Obispo, California.



Eva Ulz