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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF KERN

10 ASSOCIATION OF IRRITATED RESIDENTS,
11 CENTER FOR BIOLOGICAL DIVERSITY,
and SIERRA CLUB, all California Nonprofit
12 Corporations,

13 Petitioners,

14 v.

15 KERN COUNTY BOARD OF SUPERVISORS
and KERN COUNTY PLANNING AND
16 COMMUNITY DEVELOPMENT
DEPARTMENT,

17 Respondents.

18
19 PARAMOUNT PETROLEUM
CORPORATION, a California Corporation; and
20 ALON U.S.A, a Texas Corporation,

21 Real Parties in Interest.
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Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

1 although the Refinery has not refined crude since 2008. Instead, the EIR should have used the
2 Refinery’s currently non-operational conditions as the “baseline” for measuring impacts.

3 5. The EIR further hides the impacts of the Project by severely underestimating air
4 emissions, rail transport impacts, hazardous material release risks, and greenhouse gas emissions.

5 6. With respect to the Project’s air quality impacts, the EIR severely underestimates air
6 emissions by failing to disclose and analyze the mix of crudes or “crude slate” that will actually be
7 refined, including the impacts of refining Bakken and tar sands crudes. Compared to local San
8 Joaquin crudes analyzed in the EIR, Bakken crude emits higher levels of volatile organic compounds
9 (“VOC”), which lead to fine particulate matter and ozone pollution, for which the San Joaquin
10 Valley is already in “extreme non-attainment.” Refining tar sands crude also leads to higher
11 greenhouse gas, nitrogen, sulfur, and toxic metals emissions, which the EIR entirely fails to disclose.
12 The EIR also improperly uses unidentified emissions reduction credits from past projects to “offset”
13 the Project’s significant VOC emissions, rather than requiring on-site mitigation measures. Lastly,
14 the EIR improperly excludes non-routine emissions, including flaring events, from review. Failure to
15 correct these deficiencies and mitigate the Project’s significant air emissions will result in continued
16 deterioration of the Valley’s air and local residents’ health.

17 7. With respect to the Project’s rail transport activities, the EIR sweepingly brushes
18 aside the Project’s significant mainline rail transportation impacts on air pollution, greenhouse gas
19 emissions, hazardous material release risk, and wildlife, on the assumption that CEQA is preempted
20 by federal law regulating mainline rail activities. This rationale is contrary to CEQA’s requirement
21 that an EIR disclose a project’s significant impacts, regardless of the action agency’s authority to
22 regulate these impacts. It also fails to consider Kern County’s ability to require mitigation that does
23 not involve the direct regulation of mainline rail activities.

24 8. The EIR severely underestimates the safety risks of this Project through sloppy math
25 and an incomplete analysis. Based on a simple mathematical error, the EIR calculates the risk of a
26 train accident involving an oil spill to be once every 150 years and concludes this risk is insignificant
27 because an oil spill is unlikely to occur within the Project’s 30-year lifetime. Correcting the error,
28 however, results in a risk of accident involving an oil spill once every 30 years. Even this corrected

1 figure is still a gross underestimate because it only addresses the risk of an accident in California and
2 not along the entire transport route, and it fails to consider the risk of Bakken-crude transport.

3 9. Finally, the EIR's analysis of greenhouse gas emissions is riddled with flaws. Rather
4 than analyzing how the Refinery's greenhouse gas emissions will be mitigated, it improperly
5 assumes that because oil refineries must participate in cap-and-trade under AB 32, California's
6 global warming law, the Project's refinery emissions will be reduced to zero and concludes these
7 emissions are not significant. The EIR also unlawfully underestimates greenhouse gas emissions,
8 ignoring emissions from the combustion of end products produced from the imported crude.
9 Consequently, the EIR fails to comply with CEQA's requirement to analyze and mitigate a project's
10 significant greenhouse gas emissions.

11 10. As a result of these deficiencies, the EIR fails to fully inform the public and decision-
12 makers of the Project's significant health, safety, and environmental impacts, and fails to analyze
13 and mitigate these impacts as CEQA requires. Petitioners therefore seek relief from this Court to
14 void Kern County's certification of the EIR and approval of the Project.

15 **PARTIES**

16 11. Petitioner ASSOCIATION OF IRRITATED RESIDENTS ("AIR") is a California
17 non-profit corporation based in Kern County. AIR formed in 1991 to advocate for clean air and
18 environmental justice in San Joaquin Valley communities. AIR has several dozen members who
19 reside in Kern, Tulare, Kings, Fresno, and Stanislaus Counties. AIR members through themselves,
20 their families, and friends, have direct experience with the many health impacts that arise from the
21 type of pollution emissions associated with this Project.

22 12. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the "Center") is a non-profit
23 corporation with offices in San Francisco, Los Angeles, and elsewhere throughout California and the
24 United States. The Center is actively involved in environmental protection issues throughout
25 California and North America and has over 50,000 members, including many throughout California
26 and in Kern County. The Center's mission includes protecting and restoring habitat and populations
27 of imperiled species, reducing greenhouse gas pollution to preserve a safe climate, and protecting air
28 quality, water quality, and public health. The Center's members and staff include individuals who

1 regularly use and intend to continue to use the areas in Kern County and elsewhere affected by the
2 Project's refinery operations and rail transportation activities, including members who are
3 particularly interested in protecting the many native, imperiled, and sensitive species and their
4 habitats that may be affected by the Project.

5 13. Petitioner SIERRA CLUB is a national nonprofit organization of approximately
6 600,000 members. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of
7 the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources;
8 to educating and encouraging humanity to protect and restore the quality of the natural and human
9 environment; and to using all lawful means to carry out these objectives. Sierra Club's particular
10 interest in this case and the issues which the case concerns stem from Sierra Club's interests in
11 reducing reliance on fossil fuels and protecting the health of vulnerable communities. Sierra Club
12 has approximately 600 members in Kern County and many more along the crude-by-rail transport
13 route for this Project. These members live, work, and recreate in counties that are affected by the
14 proposed crude-by-rail and Refinery operations.

15 14. By this action, Petitioners seek to protect the health, welfare, and economic interests
16 of their members and the general public and to enforce a public duty owed to them by Kern County.
17 Petitioners' members and staff have an interest in their health and well-being, as well as
18 conservation, environmental, aesthetic, and economic interests in the Central Valley environment.
19 Petitioners' members who live and work in or near the Refinery and along the rail lines radiating out
20 from the terminal have a right to, and a beneficial interest in, Kern County's compliance with
21 CEQA. These interests have been, and continue to be, threatened by Kern County's decision to
22 certify the current EIR and approve the Project in violation of CEQA, and unless the relief requested
23 in this case is granted, will continue to be adversely affected and irreparably injured by the failure of
24 Kern County to comply with the law.

25 15. Respondent KERN COUNTY PLANNING AND COMMUNITY DEVELOPMENT
26 DEPARTMENT is the lead agency that conducted the environmental review of the Project.

27 16. Respondent KERN COUNTY BOARD OF SUPERVISORS is the decision-making
28 body who certified the EIR and issued the Notice of Determination approving the Project.

1 Department's and the Kern County Board of Supervisors' violations of CEQA.

2 STATEMENT OF FACTS

3 **The Community and Environmental Setting**

4 25. The Alon Bakersfield Refinery is located within the City of Bakersfield, a city with
5 one of the highest levels of air pollution in the country. Bakersfield is part of the San Joaquin Valley
6 Air Basin, one of two air basins in the U.S. designated "extreme nonattainment" for federal ozone
7 standards. Recently, the San Joaquin Valley Unified Air Pollution Control District ("Air District")
8 proposed the Valley be downgraded from "moderate" to "serious nonattainment" for the federal fine
9 particulate matter standard.

10 26. The American Lung Association, in its most recent State of the Air Report, gives
11 Kern County a failing grade for both ozone and particulate matter pollution, finding that the region
12 suffers some of the worst air pollution in the nation.¹ These deplorable conditions result in 1,500
13 premature deaths in the San Joaquin Valley each year and almost one in ten residents suffering from
14 asthma.² One in six Valley children will be diagnosed with the disease, which translates into over
15 23,000 asthma attacks and 16,310 days with upper respiratory symptoms for asthmatic children per
16 year.³ Further, recent research has found that almost one-third of residents in Kern County face both
17 high environmental risks (such as toxic air pollution) and social risk factors (such as poverty), which
18 in turn increases susceptibility to environmental hazards and increases risks of health problems. The
19 economic toll of the Valley's poor air quality ranges from \$3 billion to \$6 billion in health costs and
20 lost productivity annually.⁴

21 25. Several schools are within a few miles of the Refinery, including Vista West
22 Continuation High School, which is less than half a mile from the Refinery's nearest area in which a
23 hazardous material release could occur. Residential neighborhoods are approximately one mile
24 away, west and south of the Refinery. The Kern River is 1000 feet south of the Refinery and

26 ¹See generally <http://www.stateoftheair.org>.

27 ²*Ibid.*; <http://www.lung.org/associations/states/california/advocacy/fight-for-air-quality/healthy-growth-leaders/san-joaquin-valley-why-healthy-growth.html>.

28 ³<https://www.fresnostate.edu/chhs/cvhpi/documents/cvhpi-jointcenter-sanjoaquin.pdf>.

⁴*Ibid.*; <http://calstate.fullerton.edu/news/2008/091-air-pollution-study.html>.

1 provides an open space recreation area known as the Kern River Parkway, including parks and trails.
2 Hiking and riding trails run through the area of the Parkway that is directly south of the Refinery and
3 are frequently used by local residents.

4 27. The Refinery is not currently processing crude oil. Due to a bankruptcy of the prior
5 owner, the Refinery ceased refining crude oil in 2008. It was purchased by Alon in 2010, and in June
6 2011, after more than two years of inactivity, it was refashioned to convert intermediate vacuum gas
7 oil into finished products and began intermittently operating. No crude oil refining was resumed.
8 Refining operations were suspended entirely in December 2012, due to increasing prices of local San
9 Joaquin Valley feedstocks.

10 28. A Burlington Northern Santa Fe (“BNSF”) rail line bisects the Project site and
11 downtown Bakersfield in an east-west direction. This line, which will be used for the Project’s
12 crude-by-rail transport, passes immediately adjacent to Bakersfield High School and Mercy
13 Hospital.

14 **The Project**

15 29. On August 23, 2012, Paramount Petroleum applied to the Kern County Planning and
16 Community Development Department for a Modification to the Precise Development Plan for the
17 Alon Bakersfield Refinery, to facilitate the Project.

18 30. The proposed Project would construct and expand rail, transloading, and storage
19 facilities at the Refinery to allow for the offloading of 740 unit trains containing over 63.1 million
20 barrels of crude per year, or over 173,000 barrels per day (nearly 5.5 million gallons). The five-fold
21 expansion of the terminal’s unloading capacity, from 40 tank cars per day to over 200 tank cars per
22 day, is the largest crude-by-rail project in California, twice the size of the next largest project.

23 31. The Project would “allow greater flexibility for the existing Refinery to utilize a
24 variety of crude oils that can be processed on site,” which is to say that the Project would facilitate
25 the transport and refining of cheaper “cost-advantaged” crudes, including Bakken crude oil from
26 North Dakota and tar sands crude oil from Canada.

27 32. Transporting large volumes of crude oil long distances by train carries significant
28 risk. Based on federal rail safety data, this dramatic increase in rail transport of crude oil will

1 increase the likelihood of a rail accident where hazardous materials are released from once every
2 9,000 years in California to once every 30 years in California. This means that this Project is nearly
3 certain to cause an accident in California involving a spill of crude oil in the stated 30-year life of the
4 Project. And this is likely a gross underestimate of the accident risk, since this accident risk does not
5 include the entire length of rail travel from North Dakota and Canada to Bakersfield, California.

6 33. The risk of accident may be even greater than the federal data suggests. The past risk
7 of accidents does not take into account the increased risk posed by increased tonnage and wear and
8 tear on the track and structures from increasing shipments of crude-by-rail. Moreover, California has
9 approximately 5,000-7,000 railroad bridges, many of which are over a century old, but these bridges
10 are not inspected by any entity in the California state government, even though they carry thousands
11 of rail cars containing hazardous materials and thousands of passengers daily. These aging and
12 unmonitored rail lines travel through high hazard areas in the state, including areas of vulnerable
13 natural resources and urban areas. Moreover, earthquake faults in California are located along rail
14 lines in many areas, especially in urban areas. All of these factors contribute to heightened risk of a
15 catastrophic rail accident in California.

16 34. Kern County and the San Joaquin Valley in particular are at high risk of disastrous
17 crude-by-rail derailments. For the trains serving the Project to/from the east, the freight rail track
18 runs through the Tehachapi Mountains, an area identified by the California Interagency Rail Safety
19 Working Group as a “high hazard area.” This rail track includes steep grades, extreme track
20 curvature, and a single track through the majority of the corridor. The elevation loss of this corridor
21 is approximately 3600 feet from Tehachapi to Bakersfield, and the grade is so steep that it includes
22 the famous “Tehachapi loop” where the railroad line must loop back under itself to make the grade.
23 Crude shipments through the Tehachapi Mountains pose significant accident risks threatening public
24 safety and sensitive natural areas.

25 35. A train accident involving Bakken crude oil would be particularly devastating.
26 Bakken crude oil is more volatile and explosive than heavy crude oil, and rail safety regulations have
27 not yet caught up to the boom in Bakken transport. In July 2013, a train carrying Bakken crude
28 derailed in Lac-Mégantic, Canada, and exploded, killing 47 people and decimating half of downtown

1 Lac-Mégantic. Unfortunately, Lac-Mégantic is not the only recent catastrophic accident involving
2 Bakken crude. Since Lac-Mégantic, several other major accidents have occurred involving Bakken
3 crude in the last year, including in Lynchburg, Virginia (derailment causing 30,000 gallons to spill
4 into the James River), Casselton, North Dakota (derailment spilling 400,000 gallons of oil and
5 requiring the evacuation of 2,000 people), Edmonton, Canada (derailment causing a fireball which
6 burned several homes to the ground), and Philadelphia, Pennsylvania (derailment over the Schuylkill
7 River near the University of Pennsylvania). Because of the recent spate in catastrophic Bakken train
8 accidents, the U.S. Transportation Secretary has declared the transport of Bakken crude to be “an
9 imminent hazard,” such that a “substantial likelihood that death, serious illness, severe personal
10 injury, or a substantial endangerment to health, property, or the environment may occur.” 49 U.S.C.
11 § 5102(5).

12 36. Not only would the Project entail the transport of large quantities of crude oil by rail,
13 but the Project would construct process unit upgrades and modifications to allow the Alon
14 Bakersfield Refinery, which has not processed crude oil for over five years, to run at its full capacity
15 of 70,000 barrels per day. The reactivation of this facility will cause significant air impacts in an area
16 already plagued by the worst air quality in the nation.

17 37. Refining these new types of crudes brought in by rail, including Bakken and tar sands
18 crudes, poses unique environmental, health, and safety impacts, compared to the local San Joaquin
19 Valley crudes the Refinery once processed.

20 38. Bakken crude is highly volatile, vaporizes easily, and leaves waxy deposits in rail
21 cars and on equipment, which can be damaging and corrosive. These properties result in a higher
22 risk of accidents and hazardous material release at the Refinery. Bakken crude can contain high
23 levels of benzene, a known human carcinogen, and the refining of Bakken crude can significantly
24 increase VOCs and toxic air contaminant emissions. VOCs are a component in the formation of
25 ozone, and the San Joaquin Valley is already in “extreme non-attainment” of the 8-hour ozone
26 national ambient air quality standards. Thus, refining Bakken crude will only exacerbate the air
27 quality of an already highly-polluted area.

28 39. Refining tar sands crude oil also poses unique air quality and public health risks

1 compared to other crudes. According to the U.S. Geological Survey (“USGS”), tar sands crudes
2 contain more heavy metals and air pollutants than other more commonly used heavy crudes.
3 Specifically, the USGS states that “‘natural bitumen,’ the source of all Canadian tar sands-derived
4 oils, contains 102 times more copper, 21 times more vanadium, 11 times more sulfur, 6 times more
5 nitrogen, 11 times more nickel, and 5 times more lead than conventional heavy crude oil.” The
6 process to remove sulfur and other contaminants can be corrosive. Corrosion of refinery equipment
7 poses a major public health and safety threat, as seen in the August 2012 accident at the Chevron
8 Richmond, California refinery, which was caused by corroded pipes due to increasing the sulfur
9 content of the processed crude. Processing heavier tar sands is also more energy-intensive, emits
10 more greenhouse gases and pollutants, and produces more coke (a solid coal-like product of
11 petroleum refining) than other types of crude, which could result in increased fugitive dust emissions
12 and higher exposure to toxic air contaminants such as lead.

13 40. The Project will also have major climate change impacts. Restarting a petroleum
14 refinery, transporting crude oil in diesel rail cars over 1,500 miles, and bringing in more than 60
15 million barrels of cheap fossil fuels into California to be refined and ultimately combusted, will all
16 produce significant greenhouse gas emissions. This Project will thus frustrate California’s stated
17 efforts to reduce greenhouse gas emissions and combat climate change.

18 41. In sum, by dramatically increasing rail traffic of explosive crude oil, restarting a
19 shuttered refinery in an area with the worst air pollution in the country, and bringing in large
20 quantities of cheap fossil fuels into California, this Project will have significant safety,
21 environmental, health, and climate impacts, all of which should have been properly analyzed under
22 CEQA.

23 **The Approval Process**

24 42. On September 19, 2013, the Kern County Planning and Community Development
25 Department issued a Notice of Preparation of an EIR for the Project, including an Initial Study
26 supporting the need for an EIR.

27 43. On October 14, 2013, the Air District submitted comments on the Notice of
28 Preparation. Among other things, the Air District commented that the County inappropriately used

1 the year 2007 as the baseline year for assessing significance of air quality impacts in its Initial Study.
2 The Air District noted that 2007 “reflects the environmental setting in effect 6-7 years ago, which
3 appears to be remote from the conditions in effect at the time the environmental analysis
4 commenced.”

5 44. On May 22, 2014, the Kern County Planning and Community Development
6 Department released a Draft EIR for public review and comment.

7 45. Despite the Air District’s comments, the Draft EIR failed to correct the baseline for
8 the Project. The Draft EIR also omitted fundamental information necessary to evaluate the EIR’s
9 conclusions, including underlying assumptions and calculations for the EIR’s air emissions analysis,
10 data concerning the properties of Bakken crude, and an objective description of the Project’s crude
11 slate. On June 13, 2014, Petitioners’ counsel requested the missing information from the Kern
12 County Planning and Community Development Department.

13 46. Given these informational gaps that precluded meaningful comment on the EIR and
14 the Project’s complexity, Petitioners’ counsel requested an extension of the 45-day comment period.
15 On June 23, 2014, the Kern County Planning and Community Development Department denied the
16 request. The County’s response also failed to provide the missing information requested by
17 Petitioners’ counsel.

18 47. Association of Irrigated Residents, Center for Biological Diversity, Center on Race,
19 Poverty & the Environment, Communities for a Better Environment, and Sierra Club (collectively,
20 the “Community Groups”) submitted timely comments on July 7, 2014. These comments echoed the
21 Air District’s comments that the Draft EIR was fundamentally flawed because it improperly used the
22 Refinery’s 2007 operations as the baseline, even though the Refinery had not refined crude oil since
23 2008. The comments further explained, among other things, that the Draft EIR failed to fully
24 disclose the impacts of processing Bakken and tar sands crudes brought in by the Project; failed to
25 properly disclose and analyze the Project’s greenhouse gas emissions; and failed to study the
26 mainline rail operations of the Project, including the impacts on air pollution, greenhouse gases,
27 wildlife, and public safety.

28 48. Less than two months later, on August 27, 2014, the Kern County Planning and

1 Community Development Department released the final EIR and response to comments.

2 49. The Community Groups submitted comments on September 8, 2014, explaining that
3 many of the issues raised in their previous comment letter were still unaddressed, and that the EIR
4 included new disclosures that the public had not had a chance to review, including a clear
5 acknowledgment of the Project's potential to process Bakken and tar sands crude oils. These
6 comments also highlighted the simple mathematical error that severely underestimated the risk of a
7 train accident involving a crude oil spill. The comments requested that the EIR be revised and
8 recirculated.

9 50. Dr. Phyllis Fox, an environmental engineer with over 40 years of experience, also
10 submitted comments on the Final EIR. Among other things, Dr. Fox explained that the EIR
11 underestimated VOC and toxic air emissions by basing emissions projections off of "Lost Hills"
12 crude, a San Joaquin Valley crude, rather than the Bakken crudes the EIR acknowledged it was most
13 likely to import. Dr. Fox explained that modeling impacts based on Lost Hills crude "resulted in a
14 significant underestimate of VOC and [toxic air contaminant] emissions and hazards from accidents"
15 because of material differences in physical properties of the two crudes.

16 51. Dr. Fox also criticized the EIR's use of "emission reduction credits," credits
17 previously earned for reducing emissions, to "offset" the Project's significant VOC emissions. She
18 pointed out that "[o]n a common sense level, it is not logical to assume that offsets, which rely on
19 emission reductions that may have occurred decades ago in a different location and with a different
20 chemical makeup, will do anything to counteract contemporary emission increases from petroleum
21 product gases in an air basin plagued with air quality problems."

22 52. Julia May, a senior scientist at Communities for a Better Environment, also submitted
23 comments on the Final and Draft EIRs. Among other things, she criticized the lack of information on
24 potential emergency flaring events at the Refinery, i.e., combustion of excess gases and entrained
25 liquids in an open flame using oxygen from the ambient air to relieve over-pressured refinery
26 equipment. She explained that flaring emissions alone have the potential to exceed CEQA emissions
27 thresholds, and that failure to include these emissions in air emissions calculations resulted in a gross
28 underestimate of the Project's air quality impacts.

1 notice of preparation is published . . . from both a local and regional perspective. This environmental
2 setting will normally constitute the baseline physical conditions by which a lead agency determines
3 whether an impact is significant.” (CEQA Guidelines, § 15125(a).)

4 58. The baseline is the starting point from which to measure whether an impact may be
5 environmentally significant. The baseline must thus accurately depict “real conditions on the
6 ground,” not hypothetical or merely allowable conditions. (*Cmtys for a Better Env’t v. S. Coast Air*
7 *Qual. Mgmt. Dist.* (2010) 48 Cal.4th 310, 321 [quoting *Save Our Peninsula Committee v. Monterey*
8 *Cnty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121].)

9 59. On September 19, 2013, when the Notice of Preparation was published, the Refinery
10 was not processing crude oil. Accordingly, the EIR should have assumed no refining operations as
11 the baseline.

12 60. Instead of using the real conditions on the ground at the Refinery, the EIR uses a
13 baseline reflecting 2007 operating conditions, including the Refinery’s processing of 60,389 barrels
14 of crude oil per day, to assess the Project’s impacts, including the Refinery’s air pollutant and
15 greenhouse gas emissions, motor vehicle, truck, and railcar trips, risk of accidental release of
16 hazardous materials, hazardous materials transport, refinery water demand, wastewater generation,
17 traffic impacts, utilities consumption, pipeline throughput, and cumulative impacts.

18 61. Because the processing of crude oil in the Refinery has not occurred for years, there is
19 no basis to use continuing crude refinery operations as the Project’s baseline. Such a baseline
20 constitutes an improper and unrealistic baseline that does not “give the public and decision makers
21 the most accurate picture practically possible of the project’s likely impacts.” (See *Neighbors for*
22 *Smart Rail v. Exposition Metro Line Const. Auth.* (2013) 57 Cal.4th 439, 449.)

23 62. By certifying an EIR without an accurate baseline, Kern County committed a
24 prejudicial abuse of discretion, failed to proceed in the manner required by law, and acted without
25 substantial evidentiary support. Consequently, Kern County’s findings that the Project’s impacts are
26 less than significant lack evidentiary support.

27 **SECOND CAUSE OF ACTION**
28 **(Violation of CEQA - Inaccurate Project Description)**

1 63. Petitioners incorporate herein by reference the allegations contained in the foregoing
2 paragraphs.

3 64. CEQA requires that the EIR include an accurate project description, and that the
4 nature and objective of a project be fully disclosed and fairly evaluated in the EIR. ““An accurate,
5 stable and finite project description is the *sine qua non* of an informative and legally adequate EIR.’
6 However, ‘a curtailed, enigmatic or unstable project description draws a red herring across the path
7 of public input.’” (*San Joaquin Raptor Rescue Ctr. v. Cnty. of Merced* (2007) 149 Cal.App.4th 646,
8 655 [quoting *Cnty. of Inyo v. City of L.A.* (1977) 71 Cal.App.3d 185, 199, 197-98].)

9 65. With respect to a refinery project that would result in changing the refinery’s
10 feedstock or crude slate, an EIR must “adequately address the issue of whether the Project includes
11 any equipment changes that would facilitate the future processing of [more polluting] crudes at the
12 Refinery.” (*Cmtys for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 83 [emphasis
13 added, internal alterations and quotation marks omitted].) In addressing this issue, the EIR must
14 provide an “*objective quantification* of the continuing mix that the Refinery [project] was designed
15 to process” and how that mix compares to “the mix the Refinery is currently processing.” (*Id.* at 85
16 [emphasis added].)

17 66. The EIR fails to provide an accurate project description, For example:

- 18 a. The EIR states that the Project’s purpose is “to allow greater flexibility for the
19 existing refinery to process a variety of crude oils on-site.” In response to
20 comments, it admits that the Project has the “potential to import and process
21 Bakken and tar sands crude oils, as well as other North American crude oils.”
22 The EIR, however, fails to provide an “objective quantification” of the types
23 and mix of crude oils that will foreseeably be processed at the Refinery, thus
24 precluding full disclosure of the Project’s impacts. This information is critical,
25 because depending on the type of crude oil processed, the Project’s impacts on
26 air quality and safety hazards could differ substantially. *See* ¶¶ 37-39 above.
27 As a result, the EIR fails to adequately disclose and analyze the Project’s
28 impacts, in violation of CEQA.

1 70. The CEQA Guidelines further require that in discussing the environmental effects of
2 a project, an EIR should contain “a sufficient degree of analysis to provide decisionmakers with
3 information which enables them to make a decision which intelligently takes account of
4 environmental consequences.” (CEQA Guidelines, § 15151.)

5 71. An EIR should include “a good faith effort at full disclosure.” (*Ibid.*) “[W]here
6 comments from responsible experts or sister agencies disclose new or conflicting data or opinions
7 that cause concern that the agency may not have fully evaluated the project and its alternatives, these
8 comments may not simply be ignored. *There must be good faith, reasoned analysis in response.*”
9 (*Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357 [italics in original]).

10 72. The EIR fails to adequately evaluate and adequately respond to public comments
11 concerning a variety of significant environmental effects of the Project, including the Project’s
12 direct, indirect, and cumulative impacts. For example:

- 13 a. The EIR fails to adequately evaluate the impacts of processing Bakken crudes
14 by (1) modeling VOC and toxic air contaminant emissions on “Lost Hills”
15 crude, a crude with substantially lower VOC and toxic air contaminant
16 emissions than Bakken crude; and (2) failing to take into account Bakken
17 crude’s unique properties in analyzing the Refinery’s risk of a hazardous
18 material release.
- 19 b. Despite the admission that the Project has the potential to import and process
20 tar sands crudes, the EIR fails to evaluate the impacts of processing these
21 crudes, which pose unique air quality and public health risks compared to
22 other heavy crudes.
- 23 c. The EIR improperly claims that credits previously earned for reducing
24 emissions “offset” the Project’s significant VOC emissions, rendering them
25 insignificant.
- 26 d. The EIR severely underestimates the significance of the Project’s air
27 emissions by failing to disclose and analyze the impacts of flaring events at
28

1 the Refinery, including increased flaring emissions that would result from
2 restarting the Refinery.

- 3 e. The EIR fails to adequately disclose and evaluate greenhouse gas emissions:
- 4 (1) Rather than comparing the Project’s emissions to the Refinery’s actual
5 current emissions, the EIR compares them to a hypothetical “business as
6 usual” baseline; assumes without evidentiary support that the Project
7 will achieve at least a 29 percent reduction in these hypothetical
8 emissions in accordance with state greenhouse gas reduction goals; and
9 improperly concludes that this reduction will render the greenhouse gas
10 emissions less than significant.
- 11 (2) The EIR improperly credits to the Project greenhouse gas reductions
12 resulting from (a) the federal renewable fuels standard and (b)
13 displacement of truck traffic from the San Francisco Bay Area due to a
14 purported increase in pipeline activities contemplated by the Project.
- 15 (3) The EIR improperly omits analysis of greenhouse gas emissions that
16 would result from mainline rail transport, the refining of crudes shipped
17 by the Project to other refineries, and combustion of the end product,
18 thereby grossly underestimating the Project’s total greenhouse gas
19 emissions.
- 20 f. The EIR improperly excludes the study of the impacts of mainline rail
21 operations, including on air pollution, greenhouse gas emissions, wildlife,
22 public safety, and the Project’s cumulative impacts, because it erroneously
23 concludes that review of these impacts is preempted by the Interstate
24 Commerce Commission Termination Act.
- 25 g. The EIR underestimates the risk of a rail accident involving a hazardous
26 material release by (1) grossly inflating the denominator by which this risk is
27 calculated; (2) failing to analyze the risk along the entire transport route; and
28

1 (3) failing to take into account the unique properties of Bakken crude that
2 would increase the risk of a hazardous material release.

3 h. The EIR’s flawed analysis of the Project’s significant impacts led to an
4 improper analysis of the Project’s cumulative impacts.

5 73. By certifying an EIR that fails to fully analyze the Project’s significant environmental
6 impacts, Kern County committed a prejudicial abuse of discretion, failed to proceed in the manner
7 required by law, and acted without substantial evidentiary support. Thus, Kern County’s findings
8 that the Project will not have significant environmental impacts lack evidentiary support.

9 **FOURTH CAUSE OF ACTION**
10 **(Violation of CEQA – Failure to Provide Information upon Which**
11 **Conclusions Are Based)**

12 74. Petitioners incorporate herein by reference the allegations contained in the foregoing
13 paragraphs.

14 75. CEQA requires that an EIR provide an “analytically complete and coherent
15 explanation” of its conclusions. (See *Vineyard Area Citizens for Responsible Growth v. City of*
16 *Rancho Cordova* (2007) 40 Cal.4th 412, 439-40.) “The data in an EIR must not only be sufficient in
17 quantity, it must be presented in a manner calculated to adequately inform the public and decision
18 makers, who may not be previously familiar with the details of the project.” (*Id.* at 442.) Moreover,
19 an EIR that purports to rely upon a future analysis or that does not properly incorporate or reference
20 a separately performed analysis does not adequately inform the public. (*Id.* at 440-41, 443; see also
21 CEQA Guidelines, § 15151 [providing that an EIR should contain “a sufficient degree of analysis to
22 provide decisionmakers with information which enables them to make a decision which intelligently
23 takes account of environmental consequences”].)

24 76. The EIR for the Project fails to properly inform the public and decision-makers of the
25 basis for its conclusions. These failures include, but are not limited to, the following:

26 a. The EIR’s conclusion that VOC emissions would not be significant because
27 previously earned emissions reduction credits would offset them lacks any
28 factual support. The EIR does not disclose the dates the emission reduction

1 credits were created, the location of the reductions, the type of source, and
2 how these past reductions will counteract the Project’s future VOC emissions.

3 b. The EIR’s conclusion that greenhouse gas emissions will not be
4 significant because they will be reduced or offset lacks any evidentiary
5 support. The EIR fails to specifically identify the expected on-site and
6 off-site measures to be implemented and the expected reductions from
7 each, or, with respect to the purchase of offset credits, the specific
8 source of the credits and their reliability. The EIR also fails to impose
9 enforceable requirements for the Project’s claimed reductions.

10 c. The EIR’s conclusion that the transport and processing of Bakken
11 crude does not pose any greater air pollution impacts or hazardous
12 material release risks compared to other crudes lacks any basis in fact.

13 77. By certifying an EIR that does not provide the information upon which its
14 conclusions are based, Kern County committed a prejudicial abuse of discretion and failed to
15 proceed in the manner required by law. Consequently, Kern County’s findings that the Project will
16 not have significant environmental impacts lack evidentiary support.

17 **FIFTH CAUSE OF ACTION**
18 **(Violation of CEQA – Failure to Consider, Discuss, and Adopt Mitigation Measures**
19 **to Minimize Significant Environmental Impacts)**

20 78. Petitioners incorporate herein by reference the allegations contained in the foregoing
21 paragraphs.

22 79. Identification and discussion of proposed and alternative mitigation measures is a
23 core requirement of CEQA. A basic purpose of CEQA is to “[p]revent significant, avoidable damage
24 to the environment by requiring changes in projects through the use of alternatives or mitigation
25 measures.” (CEQA Guidelines, § 15002(a)(3). See also CEQA Guidelines, § 15021(a)(1).)
26 Government agencies “shall mitigate or avoid the significant effects on the environment.” (Pub. Res.
27 Code § 21002.1(b).)

28 80. “Formulation of mitigation measures should not be deferred until some future time.”
(CEQA Guidelines, § 15126.4(a)(1)(B).) “An EIR is inadequate if “[t]he success or failure of

1 mitigation efforts . . . may largely depend upon management plans that have not yet been formulated,
2 and have not been subject to analysis and review within the EIR.” (*Cmtys for a Better Env’t*, 184
3 Cal.App.4th at 92 [quoting *San Joaquin Raptor*, 149 Cal.App.4th at 655-56].) “[V]aguely described .
4 . . mitigation measures” that are “nonexclusive, undefined, untested and of unknown efficacy” must
5 be rejected. (*Id.* at 93.)

6 81. Mitigation measures may not be included as a project component. (*Lotus v. Dep’t of*
7 *Transp.* (2014) 223 Cal.App.4th 645.) Rather, the project must “separately identify and analyze the
8 significance of the impacts [of the project] before proposing mitigation measures.” (*Id.* at 658.)
9 Failure to treat mitigation measures separate from project components “precludes both identification
10 of potential environmental consequences arising from the project and also thoughtful analysis of the
11 sufficiency of measures to mitigate those consequences.” (*Ibid.*)

12 82. The EIR’s treatment of mitigation measures is riddled with flaws. For example:

13 a. The EIR improperly relies on unidentified emissions reduction credits to claim
14 that the Project’s VOC emissions would be less than significant, thereby
15 failing to require feasible mitigation measures such as the use of zero-leak
16 fugitive components and geodesic domes on floating roof tanks.

17 b. The EIR improperly treated future greenhouse gas reductions required under
18 California’s AB 32 as a project component, and erroneously concluded that
19 with these reductions, the Project would not have significant greenhouse gas
20 impacts requiring mitigation. Instead, the EIR should have evaluated the
21 significance of the greenhouse gas emissions and proposed any greenhouse
22 gas emission reductions as mitigation measures. When viewed as mitigation
23 measures, the greenhouse gas reductions required under AB 32 are
24 inadequate. First, mitigation measures must be “additional” to existing
25 regulatory requirements like AB 32. Second, the cap-and-trade pollution
26 permits allocated by AB 32 are not the same as mitigation measures, because
27 they do not necessarily represent actual reductions or offsets. Moreover, even
28 if they did, these reductions would not occur beyond 2020, when AB 32 is due

1 to expire. Finally, even if reliance on AB 32 measures to mitigate greenhouse
2 gas emissions was proper, the EIR fails to disclose the specifics on how these
3 mitigation measures will occur, will be monitored, and will be enforced.

4 c. The EIR fails to include enforceable, specific measures to reduce the Project's
5 hazardous material release risks. Instead, it improperly speculates that federal
6 and state agencies will eventually strengthen rail safety regulations and relies
7 on vague, unenforceable, and unsupported statements by BNSF to claim that
8 any rail transport risks will be adequately reduced.

9 d. The EIR identifies rail transport impacts on biological resources to be
10 significant but unavoidable, on the basis that Kern County lacks authority to
11 regulate mainline rail activities. The EIR, however, fails to consider whether
12 measures which would not involve direct regulation of mainline activities
13 would be feasible, including the creation of wildlife crossings or conservation
14 funds to improve habitat quality for sensitive and special status species.

15 83. By certifying the EIR without mitigating the Project's significant environmental
16 impacts, Kern County committed a prejudicial abuse of discretion, failed to proceed in the manner
17 required by law, and acted without substantial evidentiary support.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Petitioners pray for judgment as set forth below:

20 A. For a writ of mandate or peremptory writ issued under the seal of this Court and
21 directing the Kern County Board of Supervisors and Kern County Planning and Community
22 Development Department to:

- 23 1. Void the EIR for the Alon Bakersfield Refinery Crude Flexibility Project;
- 24 2. Set aside and withdraw approvals of the Project; and
- 25 3. Refrain from granting any further approvals for the Project unless and until the Kern
26 County Board of Supervisors and Kern County Planning and Community
27 Development Department comply fully with the requirements of CEQA.

28 B. For entry of preliminary and/or permanent injunctive relief prohibiting the Kern

1 County Board of Supervisors, Kern County Planning and Community Development Department,
2 Alon U.S.A, and Paramount Petroleum from carrying out, implementing, or otherwise acting in
3 furtherance of any of the changes and expansions to operations at Alon Bakersfield Refinery
4 authorized by the Modification of Precise Development Plans until a lawful approval has been
5 obtained from the Kern County Board of Supervisors, and after the requirements of CEQA have
6 been fulfilled.

7 C. For a declaratory judgment stating that the Kern County Board of Supervisors and
8 Kern County Planning and Community Development Department violated CEQA in approving the
9 Alon Bakersfield Refinery Crude Flexibility Project.

10 D. For a declaratory judgment that the Kern County Board of Supervisors and Kern
11 County Planning and Community Development Department's failure to prepare, consider, and
12 approve or certify an adequate environmental analysis under CEQA is a prejudicial abuse of
13 discretion.

14 E. For Petitioners' fees and costs, including reasonable attorneys' fees and expert
15 witness costs, as authorized by CCP § 1021.5 and any other applicable provisions of law.

16 F. For such other legal and equitable relief as this Court deems appropriate and just.

17
18 DATED: October 9, 2014

Respectfully submitted,

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20 

21 _____
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Attorneys for Petitioners

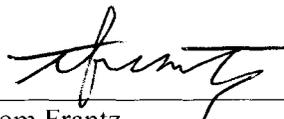
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VERIFICATION

I, Tom Frantz declare:

I am the President of Petitioner Association of Irritated Residents. I have read the above petition for writ of mandate against the Kern County Board of Supervisors, the Kern County Planning and Community Development Department, Paramount Petroleum Corporation, and Alon, U.S.A., and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed October 8, 2014 in Bakersfield, California.



Tom Frantz
President
Association of Irritated Residents

VERIFICATION

I, Kassia Siegel declare:

I am the Director of the Climate Law Institute of Petitioner Center for Biological Diversity. I have read the above petition for writ of mandate against the Kern County Board of Supervisors, the Kern County Planning and Community Development Department, Paramount Petroleum Corporation, and Alon, U.S.A., and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed October ^{9th} 2014 in Joshua Tree, California.



Kassia Siegel
Director of the Climate Law Institute
Center for Biological Diversity

VERIFICATION

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I, Gordon Nipp, declare:

I am the Vice-Chair of the Kern-Kaweah Chapter of Petitioner Sierra Club. I have read the above petition for writ of mandate against the Kern County Board of Supervisors, the Kern County Planning and Community Development Department, Paramount Petroleum Corporation, and Alon, U.S.A., and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed October 8, 2014 in Bakersfield, California.


Gordon Nipp
Vice-Chair of the Kern-Kaweah Chapter
of Sierra Club