SUPERIOR COURT OF CALIFORNIA
COUNTY OF KERN

Minute Order

Date: November 2, 2026 Time: 8:30 AM Location: Bakersfield Metro-Justice Ruling

Case Number: BCV24104003
COMMITTEE FOR A BETTER SHAFTER ET AL VS COUNTY OF KERN ET AL

Judicial Officer:	Marcos R. Camacho	Clerk:	Gricelda Evans
Court Reporter:	None	Finalized by:	Gricelda Evans

Nature of Proceedings: Ruling re: Court Trial CEQA. Hearing on the Merits.

The Court makes the following findings and orders:

See attached ruling incorporated hereto and made a part hereof.

Copy of ruling sent based on the Certificate of Service.

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

COMMITTEE FOR A BETTER SHAFTER, DELANO GURDIANS, COMITE PROGRESO DE LAMONT, CENTRAL CALIFORNIA ENVIORNMENTAL JUSTIVE NETWORK, SIERRA CLUB, AND CENTER FOR BIOLOGICAL DIVERSITY, Petitioner, v. COUNTY OF KERN, BOARD OF SUPERVISORS OF THE COUNTY OF KERN, and DOES 1-20, Respondent, CALIFORNIA RESOURCES CORPORATION and DOES 21-40, Real Parties in Interest	Case No. BCV-24-104003 RULING

A. Factual Summary:

TerraVault I (the Project) is California's first carbon capture and storage (CCS) project. It is situated beneath the Elk Hills Oil Fields. The Project will build two identical capture, compression, and pumping facilities next to the Elk Hills Power Plant. Those units will capture CO2 from the gas in the Elk Hills oil field before it is combusted, then compress it before it is transported through newly constructed pipelines to underground injection wells. Phase 1 consists of four injection wells, and Phase 2 consists of two injection wells, all of which will be located at the Elk Hills field. The Project consist of two reservoirs, 26R and A1-A2, that will store CO2. At full capacity, the project will capture 2,150,000 tons per year of CO2. The project has the capacity to store more than 49 million metric tons of CO2 in the two reservoirs.

In October 2024, the Board of Supervisors conducted a public hearing on the Environmental Impact Report, certified it, approved the Project and approved a Revised Environmental Impact Report (REIR). The County also approved a list of industries that can send CO2 to TerraVault I, with the ultimate purpose of establishing the Project as a massive "carbon hub" in the region.

Petitioners challenge Kern County's failure to comply with the California Environmental Quality Act (CEQA) when it approved the environmental impact report (EIR) for TerraVault I.

B. Standard for Review:

In legal challenges brought under CEQA, judicial review is governed by Public Resources Code sections 21168 and 21168.5. The test is whether the agency committed "a prejudicial abuse of discretion." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) Courts have determined that such abuse of discretion is shown by raising "the same two questions [] under either statute: 1. Whether there is substantial

evidence to support the agency decision; and 2. Whether the agency failed to proceed in the manner required by law." (2 Kostka & Zischke, Practice under the California Environmental Quality Act, § 23.33 (K & Z).)

"As a result of this standard, the court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document." (*Laurel Heights*, *supra*, at p. 392.)

When reviewing an EIR for legal adequacy, a court adjusts its review to fit the alleged defect, depending on whether the challenge is one of improper procedure or a dispute over the facts. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Appellate courts independently determine whether the agency has complied with the procedures mandated by statute while giving deference to the agency's factual determinations under the substantial evidence test. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512; see also K & Z, *supra*, § 11.37.)

The decision to certify an EIR is presumed to be legally adequate, and the party challenging it bears the burden of proof to show otherwise. (*Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 220.)

C. Petitioners' challenges to the REIR:

The Petitioners make eight different challenges to the REIR that was approved by the County. Those challenges are the following:

1. The REIR's Analysis and Mitigation are based on an Informationally Deficient Project Description and Scope that Fails to Consider the Whole of the TerraVault I project.

2. The REIR Fails to Adequately Describe or Analyze Project Alternative 2 (Direct Air Capture) and Alternative 3 (Nature-Based Carbon Storage).

3. The REIR Fails to Adequately Analyze or Mitigate the Project Climate Impacts.

4. The REIR Fails to Adequately Disclose or Analyze the Impacts of Induced Seismicity from the Project.

5. The REIR Fails to Adequately Analyze or Mitigate the Project's CO2 Pipeline Safety Hazards.

6. The REIR Unlawfully Defers Mitigation of the Project's Air Quality Impacts to Sensitive Receptors.[1]

7. The REIR Fails to Adequately Analyze or Mitigate the Project's Cumulatively Considerable Impacts.

8. The REIR's Statement of Overriding Considerations Violates CEQA.

The Court will review each challenge and determine whether the County has properly complied with CEQA.

D. Court findings:

After considering the parties briefs and argument, the Court makes the following findings.

1. The REIR's Analysis and Mitigation Are Based on an Informationally Deficient Project Description and Scope that Fails to Consider the Whole of the Project:

For purposes of CEQA, a project "means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment []." (Cal. Code Regs., tit. 14, § 15378 (Guidelines).)

A proper project description and analysis should include "future action" that is "a reasonably foreseeable consequence of the initial project" and would "be significant in that it

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[1] A sensitive receptor is defined as a dwelling unit, place of assembly, church, institution, school, or hospital. (AR 6112.)

will likely change the scope or nature of the initial project or its environmental effects." (*Laurel Heights*, *supra*, at p. 396.)

The failure to consider "the whole" of the Project is a legal issue that the Court reviews independently. (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1224; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1224.) The Court therefore finds that whether the analysis of the Project Description and "the whole" of the project is legally adequate is reviewed de novo.

Respondents argue that it has properly described the project and its scope in the REIR. This would include all of the physical and operational components needed, this would include the one known and approved source of CO2 (the Elk Hills Field Gas), the two depleted reservoirs (26R and A1-A2) underlying the Elk Hils Oil Field, six EPA Class VI wells, monitoring wells, 11 miles of underground pipeline, and related infrastructure. Respondents argue no additional information is needed for the REIR to properly describe the Project and its scope. Thus, Respondents limits the Project to CO2 produced from pre-combustion natural gas from Elk Hills and claim that inclusion of other potential sources of carbon as part of the Project is not required under CEQA because the inclusion of such sources would be speculative. Any additional sources would require separate CEQA review and permitting.

Petitioners argue that the REIR failed to include and analyze the foreseeable impacts of procuring CO2 from each of the eight industrial sectors the REIR specifically approved. Petitioners argue that the REIR approved eight general industries as sources of CO2, without describing why these particular industries were approved in the first place and analyzing the foreseeable impacts of procurement from them. Petitioners point out that there is record evidence that shows these foreseeable impacts vary among the industries and include air and greenhouse

gas (GHG) emission, energy needs, and health and safety hazards, among other impacts. Thus, Petitioners argue that the scope of the Project should include foreseeable impacts of procuring CO2 from the eight industry sectors described in the REIR that could be potential carbon sources (industry sectors) for underground storage. Those sources are identified as (1) Hydrogen-green and blue, (2) Biomass carbon removal and storage, (3) Cement production, (4) Green steel production, (5) Oilfield field gas streams, (6) Power plants, (7) Direct air capture, and (8) Alternative fuel production. (AR 6155.)

Petitioners point out that the Project is not independently justified without additional CO2 sources. Petitioners argue that the Project is clearly a first step that "practically presumes" future sources, as is evident from the REIR's approval of two large storage reservoirs, the accompanying list of future sources that will fill those reservoirs, and its acknowledgement that GHG analysis assumes full CO2 storage capacity due to those sources.

The Project does not exist without carbon sources and many future sources listed in the REIR depend on carbon capture. Here, the Project includes the full capacity of two reservoirs: 26R and A1-A2. (AR 12712.) "[T]he size of the project reservoirs provides a large-scale opportunity for storage []." (AR 12713.)[2] These reservoirs can accommodate vastly more CO2 than will be produced from the one approved source, pre-combustion natural gas from Elk Hills, which is the only source the Project is purportedly designed and sized for. The current Project by itself "will not provide enough captured CO2 to produce the maximum injection capacity of 2,150,000 tons per year for which the project is being permitted in two EPA permits for the oil and gas reservoirs (26R and/or A1-A2) for permanent sequestration. Additional existing and new

[2] The full passage reads: "Although the size of the project reservoirs provides a large-scale opportunity for storage that would be wasted if additional CO2 sources never came online, the project has independent utility because it is economically feasible without them." (AR 12713).

CO2 sources…will need to be permitted and conveyed…for permanent storage." (AR 6155.) Storage capacity estimates indicate that the A1-A2 reservoir has four times the capacity required for the initial source (pre-combustion natural gas from Elk Hills), and the 26R reservoir has seven times that capacity. (AR 6144, 6154, 6501, 6166, 12711.)

Petitioners further argue that the REIR is the only appropriate place for analysis of questions relating to the approval of the Project as a whole. The REIR must account for the whole of TerraVault I and the reasonably foreseeable consequences of its need to procure carbon from already approved industry categories.

Respondents rely on the WZI Report that found the Project, with only Elk Hills as a source of CO2, is "economically viable, and would proceed based on current economic assumptions without any expectation or reliance on other sources of CO2." (AR 13241.) To the extent Respondents' economic-viability argument bears on whether procurement of additional CO2 sources is a "reasonably foreseeable consequence" of the Project, that is a factual question reviewed for substantial evidence, and the WZI Report does not carry that burden here. Further, other record evidence seems to indicate that for CO2 injection to be cost effective "there will need to be a significant source of CO2--on the scale of millions of metric tons annually--available for injection." (AR 5638.)

For CCS projects like TerraVault I, the need to procure carbon for capture, transport and injection is a reasonably foreseeable consequence of the development of carbon storage. Impacts generated by such a project must be included in the project description and analyzed as part of the EIR. The record evidence shows that all CO2 capture equipment, transportation pipelines, compression facilities, injection and monitoring wells, and underground pore space exist solely to receive and store CO2. Thus, the source facilities and industries unquestionably change the

scope and nature of the Project. The Court finds that the Project should include analysis of the eight industry sectors as part of the Project. As explained above, each of the two reservoirs identified as part of the Project has several times the capacity for storage required for pre-combustion gas from Elk Hills. Though specific individual source facilities have not yet been conclusively identified, it is clear from the REIR that some or all of eight industry sectors are anticipated to be included as part of TerraVault I. Considering these facts, it is not reasonable to omit an analysis of those industries and exclude them from the scope of the Project.

The Court finds that such omission indicates that the whole of the Project was not considered, in violation of CEQA. Therefore, the REIR is inadequate as a matter of law.

2. The REIR Fails to Adequately Describe or Analyze Project Alternative 2 (Direct Air Capture) and Alternative 3 (Nature-Based Carbon Storage):

"[C]ourts have held that an agency failed to proceed as required by law because the EIR's discussion or analysis of a mandatory EIR topic was nonexistent or so cursory it manifestly did not comply with the basic legal requirement that the issue be discussed and analyzed." (K & Z, *supra*, § 11.40.) Courts review the record de novo to assess whether a project's alternative analysis may be "inadequate as a matter of law." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, fn. 10.)

The Court therefore finds that whether the analysis of Alternatives 2 and 3 is legally adequate is reviewed de novo.

One of the "major functions" of an EIR "is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed []." (*Laurel Heights*, *supra*, at p. 400.) A public entity cannot "approve a proposed project if feasible alternatives exist that would substantially lessen its significant environmental effects." (*Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503, 520.) The REIR must include "sufficient information about each alternative to

allow meaningful evaluation, analysis, and comparison with the proposed project." (Guidelines, § 15126.6(d).)

Any discussion of alternatives must be "meaningful" and "must contain analysis sufficient to allow informed decision making." (*San Joaquin Raptor*, *supra*, at p. 735, citing *Laurel Heights*, *supra*, at pp. 403–404.)

Petitioners "are not required to show there are reasonable alternatives. It is the project proponent's responsibility to provide an adequate discussion of alternatives []." (*San Joaquin Raptor*, *supra*, at p. 737.)

Here, in addition to providing a "No Project" Alternative (AR 6898–6903), Alternative 2 Direct Air Capture (DAC) and Alternative 3 Nature-Based Carbon Storage are considered. (AR 6903–6909.)

The analysis of Alternative 2 provides, in pertinent part, as follows: "Under Alternative 2, the project proponent would not capture the gas from the oilfield as the initial source but would instead utilize a DAC system for an unknown location off site to capture atmospheric CO2 emissions in place of a conventional amine-based capture system." (AR 6903.) The discussion generally describes two types of DAC technologies. (AR 6904–6905.)

The analysis only provides a "general discussion of [DAC] technology and facilities and expected impacts." (AR 12786.) No attempt is made to describe the application of that technology to a concrete project. Describing two types of DAC technology does not provide a specific alternative to the Project and therefore does not serve the informational purpose CEQA requires. Respondents, possibly inadvertently, appear to concede this point when, in response to Petitioners' comments on the inadequacy of the alternatives analysis, the REIR states "in the absence of a specific proposed project, the information commenters requested regarding DAC

facility size, infrastructure, selected technology, construction, maintenance and operation does not exist." (AR 12786.)

The REIR's failure to include a "comparative, quantitative analysis of the relative merits and environmental impacts of [a specifically identified DAC project] as an alternative to the proposed [] project" is an omission that "constitute[s] an abuse of discretion." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 733–734.)

Alternative 3 (Nature-Based Carbon Storage) is described in the REIR as the "planting of trees or other type of appropriate crop in order to store atmospheric CO2." (AR 6906.) The REIR limits its analysis to a few paragraphs with no information on the type of trees that would be planted and contains no meaningful analysis. Instead, the REIR references a calculator, found on a webpage, that supposedly produces the conclusion that 3.6 to 9 million trees would sequester the same amount of carbon as the Project. (AR 12786–12787.) Once again, this description does not provide a specific alternative to the Project.

Respondents argue that Petitioners "do not explain how identifying the specific tree species, stating the planting pattern/spacing, and precisely identifying the number of trees to be planted might alter the comparative impact analysis or the relationship with Project objectives. As the REIR explained, '[i]n the absence of a specific proposed project, no more specific information as to configuration or implementation of this alternative available. [] AR 12786).'" (Opp. p. 34, lines 11–15.) Here again, it is clear that Alternative 3 does not provide a specific project as an alternative to the proposed Project.

The REIR provides a table that allegedly addresses a list of sixteen environmental impacts for the Project, the No Project Alternative, Alternative 2, and Alternative 3. (AR 6908.) For each of these impacts, the table concludes that each impact is either less than the Project or

the same as the Project. However, the findings set forth are conclusory as there is no analysis of any kind as to how these conclusions were determined.

For the above reasons, the Court finds that the REIR fails to adequately describe or analyze Project Alternative 2 (Direct Air Capture) and Alternative 3 (Nature-Based Carbon Storage). Therefore, the REIR is inadequate as a matter of law.

3. Does the REIR Adequately Analyze or Mitigate the Project's Climate Impacts:

A. The REIR Fails to Adequately Mitigate the Project's Greenhouse Gas Impacts:

Respondents reference a list of Mitigation Measures (MM) they claim integrate federal regulations (the EPA) and state regulations (the California Geologic Energy Management Division (CalGEM) and the California Air Resources Board (CARB)) to "provide a comprehensive and enforceable framework for permanent CO2 storage and reduced GHG emissions" for the Project. (Opp., p. 37, lines 14–15.)

When a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact, judicial review is de novo (*Sierra Club*, *supra*, pp. 512, 514), and likewise for interpreting whether the cited regulations cover the risk of atmospheric leakage by their own terms. Whether the remaining record nonetheless provides substantial evidence of efficacy despite any mismatch is a factual question reviewed for substantial evidence.

The Court finds that the issue of atmospheric leakage of CO2 is not fully addressed in the REIR. None of the agencies referenced in the MM appears to regulate potential impacts of the Project and, most importantly, none properly addresses potential GHG leaks from the Project. This is a lack of analysis in the REIR, not a disagreement among experts.

The EPA issues Class VI permits for underground CO2 injection under the Safe Drinking Water Act. It is designed to protect underground sources of drinking water, not GHG leakage. These regulations cannot be used as a substitute for analysis of GHG leaks. Respondents rely on

a single sentence in the Class VI permit for the Project prohibiting "movement of fluids into or between [drinking water sources] or into *any unauthorized zones*." (40 C.F.R. § 146.86(a), emphasis added.) Respondents fail to show how this phrase addresses GHG leaks that could occur with this Project.

CalGEM's regulations do not address carbon capture storage projects at all. CalGEM does not have the authority to regulate such projects. (AR 24720.) With respect to the California Air Resources Board (CARB), the County inappropriately applied CARB's Low Carbon Fuel Standards to the Project. These standards are designed to reduce emissions via emission reduction credits, a voluntary option. (AR 13412.) Even if the protocol were applicable, which it is not, reliance on other agencies' regulations is proper only where those regulations are required and "it is reasonable to expect compliance" with them. (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906.)

Respondents also point to expert reports, including the Cornerstone report discussed further below in connection with seismicity and pipeline safety, as evidence that the Project's mitigation measures will still prevent atmospheric leakage despite this regulatory mismatch. The Court disagrees. Those reports are directed at demonstrating compliance with EPA and CalGEM well-integrity and permitting requirements. They do not independently model or analyze the risk of atmospheric release apart from those requirements. Because the reports supply no independent basis for concluding the Project's mitigation measures will prevent aboveground leaks, they do not constitute substantial evidence of efficacy on this record.

The Court finds that the REIR fails to adequately mitigate the Project's Greenhouse Gas impacts. Therefore, the REIR is inadequate as a matter of law.

B. The REIR's Significance Findings for GHG Impacts Violate CEQA:

"An EIR must identify and focus on the 'significant effects of the proposed project on the environment.' (Public Resources Code sec. 21100(b)(1) []). A significant effect on the environment is defined as a substantial or potentially substantial adverse effect on the environment. (Pub. Res. Code sec. 21068, 21100(d))." (K & Z, *supra*, § 13.3.) An EIR must set forth the basis for its findings on environmental impacts and may not rely on bare conclusions. (*Id.*, § 13.27; *Laurel Heights*, *supra*, at p. 404.)

When the significance finding rests on a bare conclusion that fails to disclose its own basis, judicial review is de novo. When the finding instead rests on disputed quantitative or scientific data, that factual determination is reviewed for substantial evidence. The finding at issue here falls within the first category and is addressed on that basis.

Here, the significance findings are admittedly based on regulations issued by the EPA, CalGEM, and CARB. However, those regulations do not address carbon capture storage projects. The regulations relied on in the REIR therefore do not address potential GHG leaks that may occur with the Project. (See discussion above concerning the failure of the REIR to adequately address potential CO2 leaks.)

Therefore, the REIR is inadequate as a matter of law.

C. In Addressing MM 4.8-6, the REIR Did Not Unlawfully Defer Mitigation of the Project's GHG Impacts:

Here, Petitioners raise objections to MM 4.8-6. Whether a mitigation measure impermissibly defers formulation of mitigation is a legal question to be reviewed de novo. It turns on whether the measure's text satisfies Guidelines section 15126.4(a)(1)(B)'s three requirements, not on any disputed fact. (*San Joaquin Raptor Rescue Center v. County of Merced*

(2007) 149 Cal.App.4th 645, 670–672.) The question before the Court is whether that MM by itself unlawfully defers mitigation of the Project's GHG impacts. The Court finds that it does not.

MM 4.8-6 reads as follows:

"The project shall offset all [GHG] emissions associated with the capture facility, and construction equipment not covered by the Cap-and-Trade program or other mandatory [GHG] emission reduction measures through owner/operator reductions of [GHG] emissions as verified by the San Joaquin Valley Air Pollution Control District, through acquisition of offset credits from the California Air Pollution Control Officers Association Exchange Register or other third party GHG reductions as verified by the [SJVAPCD], or through inclusion in an Emission Reduction Agreement, to offset Project-related [GHG] emissions that are not included in the Cap-and-Trade program to assure that no net increase in [GHG] emissions from the Project construction or operation occur. All sources providing CO2 for injection must certify that any additional CO2 generated from the source capture facility has been mitigated to 'no net increase' before injection at Carbon Terra Vault I (Kern County)." (AR 281; 6509–6510.)

Guidelines section 15126.4(a)(1)(B) addresses the deferral of mitigation and provides, in pertinent part, as follows:

"...The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies, the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [sic] considered, analyzed, and potentially incorporated in the mitigation measure..."

"Where an EIR improperly defers mitigation, the approving agency abuses its discretion by failing to proceed as required by law." (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 519.) "Deferred mitigation violates CEQA if it lacks performance standards to ensure the mitigation goal will be achieved." (*Id.* at p. 520.)

In reviewing cases on deferral of mitigation, the Court in *POET, LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 738 stated: "[W]e glean two principles that are important to this case. First, the deferral of the formulation of mitigation measures requires the agency to commit itself to specific performance criteria for evaluating the efficacy of the measures implemented. Second, the 'activity' constituting the CEQA project may not be undertaken without mitigation measures being in place 'to minimize any significant adverse effect on the environment of the activity.' [Citation.] In other, words, the deferral relates only to the *formulation* of mitigation measures, not the mitigation itself." (Emphasis in original.)

MM 4.8-6 applies only to GHG emissions in two categories: (1) those that fall outside the Cap-and-Trade program or other mandatory GHG emission reduction requirement and (2) additional emissions generated from sources providing CO2 for injection.

According to the REIR, for the initial source for the Project, the capture, compression and pumping facilities are comprised entirely of electrically operated equipment powered by electric generating units subject to the cap-and-trade program. In the event the Project relies on fossil fuel powered construction equipment, the fuel supplied to that equipment is also subject to cap-and trade. It is unlikely that any substantial amount of emissions would fall within this MM. However, if emissions not covered by the Cap-and-Trad program or other mandatory GHG emission reduction measures do occur, this MM is a backstop to ensure that amount is not release into the atmosphere unmitigated. (AR 12755.)

Applying Guidelines section 15126.4(a)(1)(B), the Court concludes MM 4.8-6 does not impermissibly defer mitigation. The REIR explains that the quantity of emissions requiring offset depends on final equipment selection and construction scheduling, which were modeled conservatively and were not fixed at the time of review. (AR 6500.) The measure also meets each requirement of the Guideline.

As to the commitment factor, MM 4.8-6 says "The project *shall* offset all [GHG] emissions" not otherwise covered by Cap-and-Trade or other mandatory reduction measures. (AR 6509–6510, emphasis added.) The REIR also treats it as binding: "MM 4.8-6 requires that both the CO2 created by the initial project capture process as well as any outside sources … must mitigate…" (AR 6508.)

As to the specific performance standard, the standard is "no net increase in [GHG] emissions from the Project construction or operation." (AR 6509–6510.) Any outside source must certify that additional CO2 from its capture facility "has been mitigated to 'no net increase' before injection." (AR 6510.) The REIR also quantifies the emissions at issue, so the standard is measurable: construction at 4,456 MT CO2e (AR 6504, Table 4.8-3), and capture-process emissions in Tables 4.8-4 and 4.8-6 (AR 6505–6508).

As to feasible actions, MM 4.8-6 identifies four types of action that can achieve the standard: owner/operator reductions verified by SJVAPCD, credits from the CAPCOA Exchange Register, other third-party reductions verified by SJVAPCD, and inclusion in an Emission Reduction Agreement. (AR 6509–6510; see Guidelines, § 15126.4(c)(3) [recognizing offsets as a legitimate form of GHG mitigation].)

D. The REIR Fails to Adopt All Feasible Mitigation for the Project's GHG Impacts:

The issue of whether these particular EPA/CalGEM cross-references address atmospheric leakage by their own terms is one to be reviewed de novo. Whether the remaining record nonetheless supplies substantial evidence of efficacy is reviewed for substantial evidence.

This Court has found that the REIR fails to adequately mitigate the Project's GHG emissions. (See above.) For the reasons stated there, the REIR fails to adopt all feasible mitigation for this Project.

Respondents fail to show how the MM and their reliance on EPA and CalGEM regulations, which are not designed to address CO2 atmospheric leaks, actually mitigate all potential CO2 leaks that could result from operation of the Project. As discussed earlier, EPA permit conditions are designed to protect water. (AR 13473.) The Air District programs either do not mention CO2 (AR 6276–6284) or discuss offsets that are not related to the Project (AR 12745.) Because this record, like the record discussed above, likewise fails to independently analyze the risk of atmospheric release, it does not supply substantial evidence of efficacy either.

E. The REIR Fails to Disclose or Reconcile the GHG Capture Rate Discrepancy:

The question of whether the REIR disclosed and reconciled the shift from its 95 percent capture-rate assumption (used throughout the REIR's GHG calculations (AR 6159, 12676)) to the 80 to 90 percent figure disclosed for the first time in a staff report shortly before approval (AR 28230) is one to be reviewed de novo. The factual dispute concerning which capture-rate figure is correct, and whether the staff report constitutes substantial evidence for it, is reviewed for substantial evidence, and the Court does not resolve that dispute here.

Nothing in the record shows the County revisited its 49-million-ton storage calculation, or its significance finding, in light of the lower figure, even though the difference between the two figures represents several million additional tons of CO2 that would not be captured.

Regardless of which number is correct, the REIR's failure to disclose any analysis reconciling the discrepancy, or to show whether it would change the 49-million-ton figure or the significance finding, is an independent defect reviewed de novo that does not require resolving whose figure is right. The Court finds that this omission renders the REIR inadequate as a matter of law on this ground as well.

4. The REIR Adequately Analyzes Impacts of Induced Seismic Activity:

The Court finds there is substantial evidence in the record to support the REIR's analysis of impacts from seismicity.

In response to Dr. DiGiulio, the REIR, supported by the Cornerstone report, explained that decades of gas and water injection into the formations proposed for CO2 storage have never resulted in leakage or induced seismic events, and there are no active faults in the area. The nearest significant faults lie 12 to 25 miles away at depths far below CO2 storage. (AR 12760, 12763.)

The REIR found that "the Elk Hills reservoirs and oil and gas infrastructure were unaffected by previous seismic events in the region, including the 1952 Kern County earthquake with estimated magnitude 7.5" (AR 12757.)

Another estimate put the 1952 earthquake at even a greater magnitude of 7.7 but still noted it "did not cause impacts to Elk Hills reservoirs or oil and gas infrastructure." (AR 12760.) Not only was there no damage at Elk Hills, "even in the Edison oilfield, closer to the White Wolf Fault [along which the 1952 earthquake occurred], there was no evidence of damage to subsurface installations." (*Id.*)

The Project's injection pressures remain well below fracture thresholds, insuring no significant risk of seismicity from downward pressure transmission. Conditions physically preclude downward fluid migration or pressure transmission capable of inducing seismicity. (AR

12761–12762.) Well-by-well evaluation in the Project's Area of Review identified no deficiencies in active or idle wells and confirmed that certain wells require pre-operational abandonment before injection begins. (AR 12766.) Completion of these abandonments is a condition of EPA approval, and if deficiencies are later discovered, remediation must occur consistent with CalGEM standards. (*Id.*)

The REIR included comprehensive seismic and structural safeguards, with "21 mitigation measures [] that directly or indirectly mitigate impacts from the risk of CO2 releases [] including but not limited to releases due to natural or induced seismicity." (AR 12768.) MM 4.7-1 requires continuous seismic monitoring and compliance with state seismic design standards. (AR 6096.)

Contrary to Petitioners' assertion that the REIR dismissed risks of induced seismicity, the REIR's analysis of oil and gas activity shows no evidence of such cumulatively induced activity, and that other forms of development are not expected to trigger seismic events. (AR 12763.)

5. The REIR Adequately Disclosed and Analyzed Critical Pipeline Information and Safety Hazards, and Adequately Mitigated the Project's Pipeline Safety Impacts:

Petitioners challenge the pipeline safety analysis and related mitigation based on arguments dealing with phase characterization, reliance on PHMSA standards, and dispersion modeling. Petitioners also challenge the effectiveness of MM 4.9-4 and 4.9-18.[3]

On each of these issues, the Court finds in favor of Respondents. The arguments raised by Petitioners reflect a disagreement among experts or a misunderstanding of the record. "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The court has looked not for perfection but

[3] MM 4.9-4 is set forth in full at AR 287–290. MM 4.9-18 is found at AR 304.

for adequacy, completeness, and a good faith effort at full disclosure." (*Bay Area Citizens v. Assn. of Bay Area Governments* (2016) 248 Cal.App.4th 966, 1021; Guidelines, § 15151.)

As set forth below, the REIR summarizes the main points of disagreement among the experts on the issues involving pipeline information and safety impacts. It presents a good faith effort at full disclosure. The Court finds the REIR has been "prepared with a sufficient degree of analysis to provide decisionmakers with information that enables them to make a decision which intelligently takes account of environmental consequences." (Guidelines, § 15151.)

Petitioners argue that even though the County clarified, in response to comments, that CO2 will be transported in supercritical phase,[4] Petitioners' expert, noted that the REIR's modeling assumes pipelines will be operating at the fluid stage, resulting in erroneous assertions that do not constitute substantial evidence. (AR 12726–12727, 28908.)

Petitioners claim that because CO2 will only be transported in the supercritical stage and because PHMSA regulations only apply to that phase, any attempt to enforce those regulations could fail. PHMSA regulations can only be enforced as codified and, according to Petitioner, "under current regulations this Project *could* be exempted from PHMSA's jurisdiction." (AR 28908, emphasis added.)

Petitioners claim the County attempted to address this gap by finding that "[e]ven in the case of pipelines not regulated by PHMSA, conditions/mitigation measures have been imposed that gives authority to the Kern County Fire Department." (AR 28196, 28288.) Petitioners argue the Fire Department is not a CO2 pipeline expert or regulating body. (AR 28909.)

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[4] "'Supercritical fluid' refers to a phase which occurs at high pressure and/or temperature and has physical properties intermediate between gas and liquid." (AR 12726.)

Petitioners allege that there is no substantial evidence to support the effectiveness of MM 4.9-4 (CUP compliance site plan). This MM requires a site plan that shows the location of the pipelines and compliance with PHMSA regulations. As mentioned above, Petitioners claim PHMSA regulations only cover pipelines operating in supercritical phase CO2, not liquid CO2 pipelines as the REIR's modeling reveals will be the case. (AR 28908; 49 CFR § 195.2.)

They claim MM 4.9-18 (emergency incident response plan) is also ineffective because it relies largely on first responders' use of the "ReadyKern" emergency system to alert people in the event of a pipeline leak. (AR 304.) ReadyKern is a voluntary service with opt-in rates that are often low. Its alerts are therefore not automatic. The system also has a history of failures. (AR 31489–31490, 31496–31507.)

Concerning dispersion modeling, Petitioners' expert, Dr. Kuprewicz, took issue with Respondents' expert engineer, Cornerstone. Dr. Kuprewicz stated that: "Modeling approaches to better understand CO2 plume release possible [sic] impact areas fall into two major categories: 1) Dispersion models and 2) Computational Fluid Dynamic (CFD) model approaches. Dispersion modeling includes a wide range of approaches, many not suitable for heavier than air CO2 plume predictions, especially if they do not prudently capture terrain impacts for heavier than air CO2 vapor clouds involving transmission pipeline ruptures. CFD approaches have the advantage of having the ability to better capture terrain impacts." (AR 28910.)

He concluded that as a result of its deficient modeling, the County produced a "recklessly low" CO2 dispersion range of 867 feet in the event of a catastrophic failure. (AR 28910.) This is problematic because pipeline accidents are frequent.

1. Phase Characterization:

Concerning phase characterization, the Court notes that the REIR, in response to comments, explained that "all pipelines will be operated with the CO2 in supercritical phase due to size of quantities anticipated to be injected." (AR 12726–12727.)

Respondents' expert, Cornerstone, prepared a report which found that "[r]egardless of whether CO2 is in dense or supercritical phase, the pipeline system will [] be designed in accordance with PHMSA regulations to withstand a range of pressures, thrust, and temperature variation that will inform the basis of design." (AR 13469.) The risk analysis modeled pipeline ruptures at various pressures and phases and disclosed worst-case results. (AR 12726–12727.)

2. The Court finds that reliance on PHMSA standards is appropriate:

In response to Dr. Kuprewicz, Cornerstone replied as follows:

"The commenter [Dr. Kuprewicz] [] summarizes a set of concerns regarding liquid CO2 pipelines…The commenter is apparently referring to the fact that PHMSA regulations do not expressly mention authority over 'dense phase' CO2 transport. However, contrary to the commenter's assertion, regulations address CO2 transport under pressures and temperatures that span both dense phase and supercritical phase such that piping systems would be designed for the most robust phase operating temperature and pressure conditions. In other words, the project holds an obligation to comply with existing pipeline regulations regardless of the characterization of the phase of CO2, and PHMSA's regulations appropriately govern CO2 piping systems carrying CO2 in the pressure ranges applicable to Carbon TerraVault 1." (AR 13465–13466.)

The Court adds one qualification. To the extent Cornerstone's reports separately assert that dispersion-modeling results would be substantially the same regardless of the disputed temperature range, that specific assertion is an unquantified conclusion (the record does not

indicate whether "substantially the same" means a difference of ten feet or a thousand) and would not by itself constitute substantial evidence. The Court need not resolve whether it is sufficient on its own, however, because MM 4.9-4 independently requires the pipeline system to be designed to withstand the more robust of the two phases' pressure and temperature specifications regardless of which phase characterization ultimately governs, which supports the adequacy of the REIR's pipeline safety analysis without reliance on that assertion.

3. The Court finds MM 4.9-4 and 4.9-18 adequate:

MM 4.9-4 requires, among other requirements, a site plan showing "compliance with 49 CFR Part 195. The US Department of Transportation [], Pipeline and Hazardous Materials Safety Administration (PHMSA) has delegated CO2 pipeline oversight to the State Fire Marshal, who will evaluate pipelines for compliance with PHMSA. All…conveyances for CO2 not under the authority of PHMSA shall be reviewed and approved for all safety features by the Kern County Fire Marshal." (AR 289.)

"All pipelines, however termed, are subject to MM 4.9-4 which requires safety features that exceed PHMSA requirements. Such requirements, under the jurisdiction of Kern County Fire Department and the State Fire Marshall mandate the inclusion of appropriate spacing of automatic shut off valves, infrastructure cameras for monitoring for leaks, appropriate review for construction details and coatings as well as all other State and Federal Regulations." (AR 12726.)

As mentioned above, MM 4.9-4 requires all pipelines exceed PHMSA requirements. "All pipelines, however termed, are subject to MM 4.9-4 which requires safety features that exceed PHMSA requirements." (AR 12726.) This results in a pipeline system designed to withstand the most robust pressure and temperature requirements, ensuring compliance with PHMSA standards and safe operation regardless of phase characterization. (AR 13468–13469.) "Pipeline depth and

design ensure that modeled plume distance remains within the Project site and does not reach sensitive receptors." (AR 9494.)

The Court finds MM 4.9-18 extends well beyond the voluntary opt-in notifications of the ReadyKern system.

It provides that in addition to the emergency response plan required by the EPA permit, "the owner/operator shall prepare an emergency incident response plan that addresses advance leak detection methods and communication with fire responders, emergency medical response, Kern County Fire and Kern County notification and protocols for incident management, including, but *not limited to*, use of the ReadyKern emergency notification system. The plan shall be reviewed and approved by the Kern County Fire Department in consultation with EPA UIC Program, State of California Fire Marshall, Kern County Sheriff, and all other State agencies identified by the California Air Resources Board." (AR 304, emphasis added.)

4. Dispersion Model:

With regard to dispersion modeling, substantial evidence supports the County's reliance on dispersion modeling using the Process Hazard Analysis Software Tool (PHAST), and industry-standard model for evaluating dispersion and release scenarios. (AR 9499, 9495–9506.)

Petitioners' expert rejects the REIR's worst-case event for a catastrophic failure resulting in a CO2 dispersion range of 867 feet, which he characterizes as "recklessly low" and "smacks of the malfeasance demonstrated by the pipeline operator that caused the Satartia, MS pipeline rupture in February 2020." (AR 28910.)

However, the failure report for that accident noted that "the rupture was caused by excessive strain on the pipeline due to a landslide following heavy rains" and classified it as a "unique situation." "The weather conditions and unique topography of the accident site

prevented the CO2 vapor from rapidly dispersing and allowing a plume to form that migrated toward Satartia." (AR 12728.) Elk Hills does not have the topography and atmospheric conditions that allowed the CO2 plume to form and migrate offsite.

Even under the worst case scenario, which found the CO2 plume would extend only 867 feet (well within the 9,104-acre Project surface area), the REIR imposed MM requiring setbacks beyond the maximum dispersal distance, further ensuring safety. Under MM 4.3-6, injection wells are set back 4,000 feet from any sensitive receptor, and under MM 4.9-4, CO2 pipelines and distribution lines are set back 1,367 feet from the property line. The closest sensitive receptor is actually four miles from the Project site. (AR 229, 287, 12730.)

6. The REIR Unlawfully Defers Mitigation of the Project's Air Quality Impacts to Sensitive Receptors:

MM 4.3-8 is found at AR 231–232 and provides, in pertinent part, as follows:

"Prior to issuance of any construction or grading permits, the owner/operator shall develop a draft Air Monitoring Program for fence line monitoring of all air constituents generated by the CCS Project, including, but not limited to criteria pollutants, CO2, and H2S. The plan shall include details of the schedule for deployment and full operations…The plan shall be reviewed and approved by the Calif. Air Resources Board, with a draft copy to the EPA UIC Program, [SJVAPCD], and Kern County Planning and Natural Resources and implemented before any construction on the CCS facilities can occur…"

Guidelines section 15126.4(a)(1)(B) provides, in pertinent part:

"…Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance

standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards."

Public Resources Code section 71464(c) states:

"A carbon dioxide capture, removal, or sequestration project operator shall do all of the following:

...

> "(c) Create an air monitoring and mitigation plan to measure, track, and minimize potential toxic air contaminants and criteria air pollutants from the site of the carbon dioxide capture, removal, or sequestration project and submit the plan to the state board."

Petitioners cite *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814. In that case, a farm company and environmental organizations challenged an ordinance that facilitated oil and gas exploration, drilling, and production. Among other issues, Petitioners challenged a mitigation measure which stated, in pertinent part, as follows:

"...The five biggest oil industry users of municipal and industrial water shall work together to develop and implement a plan identifying new measures to reduce municipal and industrial water use by 2020. The plan shall address the following activities, as appropriate: steam generation; drilling and completions (including hydraulic fracturing); dust control; compaction activities related to construction; and landscaping..."

The court concluded that the County failed to commit itself to the measures in the plan, and the assignment for implementation to third parties created a lack of enforceability that did not qualify the measure for the exception against deferment of mitigation. Specifically, the court stated:

"To the extent the plan to be developed by the five biggest oil industry users of M&I water is regarded a mitigation measure, there is no question its formulation was deferred. Consequently, we consider whether the plan falls within the exception to the general rule against deferred formulation of mitigation measures. The exception requires the County, as lead agency, to commit itself to specific performance criteria for evaluating the efficacy of the measures implemented. [Citation.]"

"We conclude the measure does not qualify for the exception. First, MM 4.17-2 lacks specific performance standards for the 'plan identifying new measures to reduce municipal and industrial water use by 2020.' Second, nowhere in MM 4.17-2 did the County commit itself to the measures ultimately included in the plan." (*King and Gardiner Farms, supra*, at p. 859.)

The legal question of whether MM 4.3-8 impermissibly defers mitigation is, like MM 4.8-6 above, one to be reviewed de novo, since it turns on whether the measure's language satisfies section 15126.4(a)(1)(B)'s requirements rather than on any disputed fact.

Here, the Court finds that mitigation of the Project's air quality impacts has been improperly deferred.

MM 4.3-8 requires that "[p]rior to issuance of any construction or grading permits, the owner/operator shall develop a draft Air Monitoring Program for fence line monitoring of all air constituents generated by the CCS Project…"

As in *King and Gardiner Farms*, mitigation has been deferred. Deferral is only permitted "when it is impractical or infeasible to include those details [of mitigation] during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve…" (Guidelines, § 15126.4(a)(1)(B).)

There has been no showing that it was impractical or infeasible to include the details of the mitigation. Also, there is no evidence showing that the County committed itself to the mitigation or that it adopted specific performance standards.

7. The REIR Fails to Disclose or Analyze the Cumulative Impacts of Other CCS Projects in the County and Cumulative Impacts of the Project's Future Source Facilities:

This claim implicates two distinct standards. Whether the REIR is silent on a cumulative topic altogether is an omitted-discussion question reviewed de novo. Which projects to include in the cumulative analysis, and how much detail to provide for each, is a scope-and-depth judgment reviewed for abuse of discretion. (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 906–908; *City of Maywood v. L.A. Unified School Dist.* (2012) 208 Cal.App.4th 362, 397–399.)

The REIR acknowledges at least four other CCS (carbon capture and storage) projects, totaling just under 25,000 acres, are planned within Kern County. (AR 6187.)[5] Two of those projects are CarbonFrontier CCS and Eastridge CCS, for which EIRs are currently being prepared. (AR 6187.) Yet, the REIR fails to analyze the cumulative impacts of these projects together with TerraVault I.

Respondents claim these projects were assessed as part of the cumulative analysis for the Project. However, the REIR states that "there are no CCS projects currently operational in

[5] In total, 22 projects are listed in Table 3-8: Cumulative Projects.

California, where the captured CO2 is injected for underground storage. (REDER Vol 1, p. 4.8-28.) The cumulative impact analysis is thus guided by the practicality that no such projects are available for analysis." (AR 12788.)

The REIR further provides that "where the contribution to a cumulative impact from other CCS projects is generic and not distinct from that of other types of development projects, it is not necessary to specifically call out other CCS projects in the cumulative analysis." (AR 12789.) Under the abuse-of-discretion standard set out above, the question is not whether this rationale has independent case support but whether it was unreasonable for the County to rely on it here. It was. The record does not support treating GHG leakage and induced seismicity (impacts the REIR itself elsewhere describes as distinct to CCS technology) as generic or indistinguishable from other industrial development.

Regardless, the REIR still fails to analyze cumulative impacts from these other projects. For example, the REIR's GHG cumulative impacts analysis makes no mention of other CCS projects. (AR 6514.)

Concerning cumulative impacts of the Project's future CO2 source facilities, the initial source's CO2 will comprise only a fraction of the capacity of the Project. (AR 12711–12712.) In other words, the Project as a whole relies on future CO2 sources. These future sources include "hydrogen (green and blue), biomass carbon removal and storage, cement production, green steel production, oilfield field gas streams, power plants, direct air capture and alternative fuel production." (AR 12712.)

The REIR does not provide a more detailed analysis of potential CO2 source facilities or projects claiming "[i]t is not possible to identify potential future sources more specifically or provide more detailed analysis of such projects without engaging in speculation…" (AR 12790.)

However, at least as to the CalCapture project, it was unreasonable for the County to treat further analysis as necessarily speculative.

The County ignored the CalCapture project, which "would explore capturing CO2 emissions from the Elk Hills Power Plant" (AR 6157), even though California Resources Corporation owns the plant, carbon capture from the plant is part of TerraVault I, and CRC provided the County with a detailed engineering design study in the review process.

In summary, the Court finds that the REIR fails to adequately consider cumulative impacts from other CCS projects and also fails to adequately consider cumulative impacts of the Project's future CO2 source facilities.

8. The REIR's Statement of Overriding Considerations Violates CEQA:

"When an agency approves a project with significant environmental effects that will not be avoided or substantially lessened, it must adopt a statement disclosing that because of the project's overriding benefits, it is approving the project despite its environmental harm." (K & Z, *supra*, § 17.32.)

"A public agency may approve a project even though the project would cause a significant effect on the environment if the agency makes a fully informed and publicly disclosed decision that:

(a) There is no feasible way to lessen or avoid the significant effect (see Section 15091); and

(b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project. (See Section 15093.)" (Guidelines, § 15043.)

The court in *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368 held that "[a] statement of overriding considerations is required, and offers a

proper basis for approving a project despite the existence of unmitigated environmental effects, only when the measures necessary to mitigate or avoid those effects have properly been found to be infeasible. (Pub. Resources Code, § 21081, subd. (b).)"

Public Resources Code section 21081 provides, in pertinent part, as follows: "[N]o public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

> "(a) The public agency makes one or more of the following findings with respect to each significant effect…
>
> > (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
>
> "(b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment."

Where an EIR "omit[s] information necessary to understanding both the mitigation measures and the . . . impacts being overridden," the statement must be set aside because "the informational deficiency undermines the foundation upon which the statement of overriding considerations rests." (*King and Gardiner Farms*, *supra*, at p. 870.)

The REIR's failure to mitigate the Project's GHG impacts and improper deferral of air quality impacts to sensitive receptors thus invalidates the SOC. The SOC cannot stand even if its

own stated benefits would otherwise be supported by substantial evidence, a question the Court does not reach.

E. Remedy:

A. Governing Framework:

Public Resources Code section 21168.9 and Guidelines section 15234 govern the scope of relief available once a court finds a public agency has failed to comply with CEQA. Under section 21168.9, subdivision (b), any order "shall include only those mandates which are necessary to achieve compliance" and "only those specific project activities in noncompliance." A court may leave an unaffected portion of a project in place, however, "only if a court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with [CEQA], and (3) the court has not found the remainder of the project to be in noncompliance." (Pub. Res. Code, § 21168.9, subd. (b).)

B. Severance of Project Activities Is Not Available:

Severance of a discrete project activity is appropriate when the defect is independently identifiable and confined to a component that can be excised without disturbing an otherwise adequate environmental review of the balance of the project. (See *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173 [severing an omitted gas station from an otherwise adequately reviewed shopping center project].) That is not this case.

The deficiencies here are not confined to any single, identifiable Project component. They run through the REIR's definition of the Project itself, its analysis of alternatives, its treatment of greenhouse gas impacts and mitigation, its deferral of air-quality mitigation, and its cumulative impacts analysis. Because the Project's description improperly excluded reasonably foreseeable CO2 source facilities, the definition of "the Project" that the remaining chapters of the REIR were built around is itself unsettled. A defect of that character cannot be isolated to one

pipeline segment, one well, or one mitigation measure. It infects the informational foundation for the whole Project. (See *San Joaquin Raptor*, *supra*, at p. 713 [severance unavailable when inadequacies in project description, alternatives, and cumulative impacts extended throughout the EIR "in all major respects"].)

Nor can the Court make the three findings section 21168.9 requires. First, as to severability, the Court cannot identify a discrete, unaffected activity that stands independent of the project-description, alternatives, GHG, and cumulative-impacts defects. Second, as to prejudice, permitting construction or operation of any portion of the Project to proceed while the County redefines the Project's scope and reassesses its impacts would allow the Project to move forward before the analysis the writ requires has been completed. CEQA's front-loaded review process is designed to prevent this harm. Third, the Court has not identified, and Respondents have not shown, any clean remainder unaffected by these deficiencies. The Court therefore finds that severance of any Project activity under section 21168.9, subdivision (b) is not warranted.

C. The Certification of the REIR Must Be Set Aside in Full:

A separate and independent bar to any partial remedy arises from the nature of EIR certification itself. Sections 21100, subdivision (a) and 21151, subdivision (a) require a lead agency to "certify the completion of" an EIR. Certification is not divisible into adequate and inadequate parts. (*LandValue 77, LLC v. Board of Trustees of California State University* (2011) 193 Cal.App.4th 675, 682 ["the concept of completeness is not compatible with partial certification. In short, an EIR is either complete or it is not."].) Partial decertification is unavailable wherever the CEQA violations found "affect the adoption of the statement of overriding considerations and, thus, taint the certification of the EIR as a whole." (*Sierra Club v. County of Fresno* (2020) 57 Cal.App.5th 979, 982.)

That is the circumstance here. The Statement of Overriding Considerations is invalid because the environmental information underlying it is deficient. (See *City of Marina*, *supra*, at pp. 368–369; *King and Gardiner Farms*, *supra*, at pp. 869–870.) An agency's overriding-considerations finding cannot cure an EIR that has failed to disclose the impacts and mitigation the finding purports to override. Because the SOC's invalidity derives from defects that run throughout the REIR, the certification of the REIR is void in its entirety, and the Project approvals that depended on that certification are vacated.

D. Scope of Corrective Work on Remand:

The Court declines to limit the scope of the County's corrective obligations on remand to discrete portions of the REIR. Although induced seismicity and pipeline safety were supported by substantial evidence on the record before the Court, that support was necessarily evaluated against a Project whose scope this Order has now found to be improperly and unlawfully narrowed. The seismicity and pipeline-safety analyses assume a Project sized and sequenced around a single source of CO2 from Elk Hills field gas. Once the Project's scope is corrected to account for the reasonably foreseeable industrial sources the REIR itself contemplates (sources implicating additional volumes, additional infrastructure, and potentially additional pipeline routing), the record no longer establishes that those same conclusions will hold for the Project as properly defined. An analysis premised on an unlawfully truncated project description is not a final, independently sound finding that can be carried forward unchanged into a corrected environmental review. It is, instead, an open question that the corrected project scope necessarily reopens.

Therefore, the Court does not adopt a limited-issue remand of the kind approved in *LandValue 77*. The County shall not treat any chapter of the existing REIR as final or as protected from reconsideration by res judicata, collateral estoppel, or exhaustion. On remand, the

County shall prepare, circulate, and consider a new EIR addressing the whole of the Project as properly defined, consistent with the findings in this Order, before any reapproval of TerraVault I may occur.

F. Order:

For the foregoing reasons, the Petition is GRANTED. A peremptory writ of mandate shall issue directing Respondent County of Kern to: (1) set aside its certification of the REIR in its entirety; (2) set aside its approval of the Project, including the Statement of Overriding Considerations; and (3) refrain from taking any further action to implement the Project unless and until the County has prepared, circulated, and considered a legally adequate EIR addressing the Project as a whole, consistent with this Order, and has taken any subsequent discretionary action required by law.

Petitioners shall prepare a proposed Judgement and Writ consistent with this ruling for the Court's signature pursuant to the California Rules of Court.

Date: 11/2/26

Marcos Camacho
Judge of the Kern County
Superior Court