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	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA
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	COUNTY OF SA COMMUNITIES FOR A BETTER ENVIRONMENT, ASIAN PACIFIC ENVIRONMENTAL NETWORK, SIERRA	AN FRANCISCO Case No. VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR
	COUNTY OF SA COMMUNITIES FOR A BETTER ENVIRONMENT, ASIAN PACIFIC ENVIRONMENTAL NETWORK, SIERRA CLUB, NATURAL RESOURCES DEFENSE	AN FRANCISCO Case No. VERIFIED PETITION FOR WRIT OF
	COUNTY OF SA COMMUNITIES FOR A BETTER ENVIRONMENT, ASIAN PACIFIC ENVIRONMENTAL NETWORK, SIERRA CLUB, NATURAL RESOURCES DEFENSE COUNCIL, Non-Profit Corporations,	AN FRANCISCO Case No. VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
	COUNTY OF SA COMMUNITIES FOR A BETTER ENVIRONMENT, ASIAN PACIFIC ENVIRONMENTAL NETWORK, SIERRA CLUB, NATURAL RESOURCES DEFENSE COUNCIL, Non-Profit Corporations, Petitioners and Plaintiffs,	AN FRANCISCO Case No. VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
	COUNTY OF SA COMMUNITIES FOR A BETTER ENVIRONMENT, ASIAN PACIFIC ENVIRONMENTAL NETWORK, SIERRA CLUB, NATURAL RESOURCES DEFENSE COUNCIL, Non-Profit Corporations, Petitioners and Plaintiffs, v. BAY AREA AIR QUALITY MANAGEMENT	AN FRANCISCO Case No. VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF [California Code of Civil Procedure § 1085;
	COUNTY OF SA COMMUNITIES FOR A BETTER ENVIRONMENT, ASIAN PACIFIC ENVIRONMENTAL NETWORK, SIERRA CLUB, NATURAL RESOURCES DEFENSE COUNCIL, Non-Profit Corporations, Petitioners and Plaintiffs, v. BAY AREA AIR QUALITY MANAGEMENT DISTRICT	AN FRANCISCO Case No. VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF [California Code of Civil Procedure § 1085;

Petitioners and Plaintiffs Communities for a Better Environment ("CBE"), the Asian Pacific Environmental Network ("APEN"), Sierra Club, and the Natural Resources Defense Council ("NRDC") bring this action challenging the Bay Area Air Quality Management District's flagrant disregard of the provisions and protections of the California Environmental Quality Act ("CEQA") on their own behalf, on behalf of their members, on behalf of the general public, and in the public interest.

#### **INTRODUCTION**

1. Early in February 2014, Kinder Morgan began a crude-by-rail operation within a halfmile from Washington Elementary School in Richmond, California. Kinder Morgan's operation brings highly volatile and explosive North Dakotan Bakken crude oil to Bay Area refineries in the same DOT-111 unit trains that derailed last July and exploded, killing nearly fifty people and decimating half the downtown area of Lac-Mégantic, Québec. Ignoring the well-known and potentially catastrophic risk to public health and safety, and turning a blind eye to the environmental injustice of permitting this project in an already polluted and overburdened low-income community of color, the Bay Area Air Quality Management District ("Air District") issued Kinder Morgan a permit to operate its Crude-By-Rail Project without any notice or public process whatsoever.

2. Such clandestine approval of projects that threaten public health and communities is precisely what CEQA was designed to prevent. The range of significant adverse environmental impacts of Kinder Morgan's operation includes a high risk to public health and safety from derailment, significant increases in toxic air contaminants, potential contamination of California's precious waterways (that support entire ecosystems), and significant increases in greenhouse gas emissions. The seriousness and breadth of these impacts warrant disclosure, analysis, and mitigation in a full environmental impact report, subject to public scrutiny and a public vote by the Air District's governing body. Yet, the Air District approved the operation without any attempt to comply with CEQA.

3. The Air District eschewed its CEQA obligations by designating the Crude-By-Rail
Project as "ministerial"—a category of government action that is limited to mechanical approvals,
such as automobile registration, dog licenses, and marriage licenses.

4. The permit to operate 100-car unit trains carrying volatile Bakken crude through urban Bay Area neighborhoods bears no resemblance to a dog or marriage license. To the contrary, the permit was crafted by an Air District engineer, who used his independent judgment to develop permit conditions that are specifically-tailored to Kinder Morgan's operation. For these reasons, the disputed permit is a quintessential discretionary act subject to CEQA.

5. The Air District's failure to follow CEQA is particularly troubling in light of the Project's surroundings—in and near working class communities of color, where residents already bear a disproportionate share of environmental harms, including greatly elevated risks of cancer, asthma, heart attacks, and other serious health problems caused by higher exposures to toxic air contaminants and other pollutants emitted from the nearby Chevron refinery, diesel rail and truck corridors, port facilities, and other industrial facilities in the area. The Air District's failure to hold its evaluation and approval of the Crude-By-Rail project to public scrutiny betrays the local community and violates the basic open government obligations of a properly-functioning democracy. With no other recourse, Petitioners file this action.

#### PARTIES

6. Petitioner and Plaintiff COMMUNITIES FOR A BETTER ENVIRONMENT ("CBE") is a California non-profit environmental health and justice organization with offices in Oakland and Huntington Park. CBE is primarily concerned with protecting and enhancing the environment and public health by reducing air and water pollution and toxics, and equipping residents of California's urban areas who are impacted by industrial pollution with the tools to monitor and transform their immediate environment. CBE has worked to reduce the environmental and health risks to the Richmond community for more than twenty years.

7. CBE has approximately 20,000 members in California. Many CBE members live, work, recreate, and breathe the air in Richmond, California. CBE's members have an interest in their health and safety, as well as conservation, environmental, aesthetic, and economic interests in the Bay Area environment. CBE's members who live and work in the Bay Area have a right to, and a beneficial interest in, the Air District's performance of its duties under CEQA. These interests

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have been, and continue to be, threatened by the Air District's failure to apply CEQA to the Kinder 2 Morgan Project.

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8. By this action, CBE seeks to protect the health, welfare, and economic interests of its members and the general public and to enforce a public duty owed to them by the Air District.

5 9. Petitioner and Plaintiff ASIAN PACIFIC ENVIRONMENTAL NETWORK ("APEN") is a non-profit organization incorporated in California that works to create a world where 6 7 all people have a right to a clean and healthy environment. With offices in Richmond and Oakland, 8 APEN organizes and develops the leadership of low-income Asian immigrants and refugees to 9 achieve environmental and social justice. It has a membership base of over 350 families in the Bay 10 Area. One of the central focuses of APEN has been organizing the Laotian refugee community. The 11 Laotian community, resettled to Contra Costa County in the aftermath of the Vietnam War, has grown to a population of close to 10,000. APEN's Richmond organizing is an intergenerational, 12 13 interethnic, community-led effort that helps Laotian families to come together to transform their 14 community into a place that is safe and healthy to live, work, and play. APEN has a membership base of over 150 families in West Contra Costa County, most of whom live in Richmond. APEN's 15 16 members have an interest in their health, well-being, and enjoyment, as well as conservation, 17 environmental, aesthetic, and economic interests in Richmond, Contra Costa County, and the greater 18 Bay Area. APEN's members who live and work in or near the rail terminal have a right to, and a 19 beneficial interest in the Air District's compliance with CEQA. These interests have been, and 20 continue to be, threatened by the Air District's decision to issue Kinder Morgan a permit to operate 21 without any CEQA review.

22 10. By this action, APEN seeks to protect the health, welfare, and economic interests of its members and the general public and to enforce a public duty owed to them by the Air District.

24 11. Petitioner and Plaintiff the SIERRA CLUB ("Sierra Club") is a national nonprofit 25 organization of approximately 600,000 members. The Sierra Club is dedicated to exploring, 26 enjoying, and protecting the wild places of the earth; practicing and promoting the responsible use of 27 the earth's ecosystems and resources; educating and encouraging humanity to protect and restore the 28 quality of the natural and human environment; and to using all lawful means to carry out these

objectives. The Club's particular interest in this case and the issues which the case concerns stem from the Club's interests in reducing reliance on fossil fuels and protecting the health of vulnerable communities. It has chapters throughout the San Francisco Bay Area, including its San Francisco Bay, Redwood, and Loma Prieta chapters.

12. Sierra Club has over 52,000 members in the Bay Area. These members live, work, and recreate in the nine counties that comprise the greater San Francisco Bay Area. They are affected by the environmental quality of the area. They have an interest in their health and well-being, and have conservation, aesthetic, and economic interests in the Bay Area environment. Sierra Club's members who live and work in or near the rail terminal have a right to, and a beneficial interest in the Air District's compliance with CEQA. These interests have been, and continue to be, threatened by the Air District's decision to issue Kinder Morgan a permit to operate without any CEQA review.

13. By this action, the Sierra Club seeks to protect the health, welfare, and economic interests of its members and the general public and to enforce a public duty owed to them by the Air District.

14. Petitioner and Plaintiff the NATURAL RESOURCES DEFENSE COUNCIL
("NRDC") is a non-profit environmental organization with more than 363,000 members nationwide.
Its mission is to safeguard the Earth, and its people, flora, fauna and natural ecosystems; to foster the
fundamental right of all people to have a voice in decisions that affect their environment; and to help
break down the pattern of disproportionate environmental burdens borne by people of color and
others who face social or economic inequities. NRDC's membership and staff of lawyers, scientists,
and other environmental specialists have a long-standing interest in reducing reliance on fossil fuels
and protecting public health. NRDC maintains offices in San Francisco and Santa Monica,
California, as well as in other states and abroad, and has over 60,000 members in California,
including 281 members in Richmond. NRDC's members have an interest in their health and wellbeing, as well as conservation, environmental, aesthetic, and economic interests in Richmond,
Contra Costa County, and the greater Bay Area. NRDC's members who live and work in or near the
rail terminal have a right to, and a beneficial interest in the Air District's compliance with CEQA.

## VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT CBE et al. v. BAAQMD et al.

These interests have been, and continue to be, threatened by the Air District's decision to issue Kinder Morgan a permit to operate without any CEQA review.

15. By this action, NRDC seeks to protect the health, welfare, and economic interests of its members and the general public and to enforce a public duty owed to them by the Air District..

16. Respondent and Defendant BAY AREA AIR QUALITY MANAGEMENT DISTRICT is the local agency that issued the Permit to Operate that is the subject of this litigation.

17. Real Party in Interest and Defendant KINDER MORGAN MATERIALS SERVICES,
LLC engages in designing, building, and operating multimodal transloading facilities in the United
States. Its transloading facilities provide services in the areas of rail to truck, truck to rail, container
to railcar, railcar to container, truck to barge, and barge to truck services for food grade
commodities, steel, lumber, and paper, as well as flammable commodities and hazardous products.
Kinder Morgan Material Services also provides in-plant services at customer specific locations. The
company is based in Moon Township, Pennsylvania. Kinder Morgan Materials Services, LLC
operates as a subsidiary of Kinder Morgan Energy Partners, L.P.

18. Real Party in Interest and Defendant KINDER MORGAN ENERGY PARTNERS, L.P. ("KMP") holds stakes in 80,000 miles of natural gas and petroleum product pipelines and owns 180 bulk terminals and rail transloading facilities with 200 million barrels of storage capacity that handle100 million tons of coal, petroleum coke, and bulk products annually. KMP transports refined petroleum products (gasoline, diesel, and jet fuel) through its pipelines and stores the products in 60 terminals in the US.

19. Petitioners do not know the true names or capacities of the persons or entities sued as
 DOES 1 through 20, inclusive, and therefore sues these real parties by their fictitious names.
 Petitioners will amend the Petition and Complaint to set forth the names and capacities of the DOE
 defendants along with any additional appropriate allegations when such information is ascertained.

#### JURISDICTION AND VENUE

20. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("CCP") § 1085.

**VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT** *CBE* et al. *v. BAAQMD* et al.

21. This Court has jurisdiction over the Air District because it is an agency, established by the legislature of the State of California under the supervision of the California Air Resources Board and the Environmental Protection Agency, with its principal place of business located in the City of San Francisco.

22. Venue is proper in this court pursuant to CCP §§ 393 and 394 because the Air District is located and operates in the City and County of San Francisco.

23. This action was timely filed within 180 days of the Air District's issuance of February
3, 2014 Permit to Operate Altered Equipment to Kinder Morgan Materials Services, LLC (Air
District Application No. 25180). Cal. Pub. Res. Code § 21167(a); 14 Cal. Code Regs § 15112(c)(5).

24. Petitioners have provided written notice of their intention to file this petition to the Air District and are including the notice and proof of service as Exhibit A pursuant to the requirements of Cal. Pub. Res. Code § 21167.5.

25. Petitioners have served the Attorney General with a copy of their Petition along with a notice of its filing, in compliance with Cal. Pub. Res. Code § 21167.7, and are including the notice and proof of service as Exhibit B.

26. Petitioners do not have a plain, speedy, or adequate remedy at law because Petitioners and their members are being irreparably harmed by the environmental damage caused by the Project and the Air District's violations of CEQA.

## STATEMENT OF FACTS

**CEQA Requires Public Notice and Participation in Decisions that Impact Communities** 

27. CEQA requires public agencies to consider and document the environmental implications of their actions in order to "[e]nsure that long term protection of the environment . . . shall be the guiding criterion in public decisions." (Pub. Res. Code § 21001(d).) In enacting CEQA, the Legislature declared it to be the policy of California to "take all action necessary to provide the people of this state with clean air and water." (*Id.* at § 21001(b); *See Sierra Club v. State Bd. of Forestry* (1994) 7 Cal. 4th 1215.) CEQA requires all agencies to give major consideration to preventing environmental damage while providing a decent home and satisfying living environment for every Californian. (Pub. Res. Code §21000 (g).)

**VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT** *CBE* et al. *v. BAAQMD* et al.

28. The environmental review process created by CEQA carries out this mandate by bringing citizens' environmental concerns about a proposed project to the attention of public agencies. CEQA requires public agencies to determine whether a project may have a significant impact on the environment. (*Id.* at §21151.) The environmental review must be completed prior to approval of a permit, so that environmental damage can be minimized. (Pub. Res. Code §21002.1.)

29. Courts have consistently held that the foremost principle under CEQA is that it is to be "interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Citizens of Goleta Valley*, (1990) 52 Cal.3d at 563-64(*quoting, Friends of Mammoth v. Bd. of Supervisors* (1972) 8 Cal.3d 247, 259.) Courts further held that "[i]t is, of course, too late for a grudging, miserly reading of CEQA." *Laurel Heights Improvement Assn.* v. Regents of California (1988) 47 Cal.3d at 390 (*citing Bozung v. Local Agency Formation Commn.* (1975) 13 Cal.3d 263, 274.) An agency's action violates CEQA if it "thwarts the statutory goals" of "informed decisionmaking" and "informed public participation." (*Kings Cnty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.).

## The Community and Environmental Setting

30. The Kinder Morgan Crude-by-Rail Project is located in the City of Richmond, which is located 16 miles northeast of San Francisco on the western shore of Contra Costa County. Home to more than a 100,000 people, Richmond is historically best known for its role in World War II. Between 1940 and 1945, tens of thousands of workers from all over the country streamed into the City to support wartime industries. The City was home to four Kaiser shipyards that housed the country's most productive wartime shipbuilding operations.

31. Unfortunately, present-day Richmond is a community that already bears a disproportionate share of environmental hazards from the neighboring Chevron oil refinery and other industrial activities. The railyard that houses the Kinder Morgan project abuts low-income neighborhoods of color in north Richmond. In the fourteen neighborhoods surrounding the industrial corridors generally in Richmond, populations range from 72 to 94 percent people of color. The railyard is located within a half mile from Washington Elementary School and 1.1 miles away from Lincoln Elementary School.

# **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT** *CBE* et al. *v. BAAQMD* et al.

32. Asthma and other respiratory illness rates are already at dangerously high levels in 2 these neighborhoods. People living downwind of the industrial area frequently experience severe 3 asthma attacks, dizziness, headaches, and rashes. Indeed, experts have confirmed high levels of 4 indoor pollutants, including metals closely associated with oil refineries, inside neighboring 5 households. This "toxic soup" has forced Richmond residents to live with high levels of air pollution and the resulting health risks. The noxious odors reported by residents are released by the 6 7 production of hydrogen sulfide and other sulfur-based compounds that are present in crude oil and 8 emitted during the process of refining that crude.

## The Deplorable State of California's Railway Infrastructure

33. The California Public Utilities Commission's ("CPUC") Office of Rail Safety publishes annual reports on the conditions and public safety risks of California's railroads pursuant to Cal. Pub. Util. Code §§ 309.7 and 765.6.

34. On November 30, 2013, the Office of Rail Safety published its most recent annual railroad safety report, which listed a number of alarming railway safety concerns associated with the increased movement of crude oil by rail through California. The report specifically identifies California's railroad bridges as a significant rail safety risk. According to the report, most of California's railroad bridges are old steel and timber structures, some over a hundred years old. As the report goes on to explain:

[0]ften, these bridges now reside on properties owned by smaller short line railroads that may not be willing or able to acquire the amount of capital needed to repair or replace degrading bridges. [I]t is unclear if the railroads are able to adequately identify, with a high degree of certainty, the year, model, construction materials, and maximum weight the bridge can carry, as well as maintenance programs and practices. Also, like most transportation infrastructure, the more the bridge is used with greater frequency and with heavier loads, the more the bridge integrity is potentially compromised. There are many unknown questions regarding bridge integrity that need to be answered to ensure the public safety.

24 2013 Rail Safety Report at 8.

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35. The report further warns that "[r]ailroad bridges are not inspected by any entity in the California state government, even though they carry thousands of rail cars containing hazardous materials and thousands of passengers daily," and that only "[o]ne federal inspector is currently

#### VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT CBE et al. v. BAAOMD et al.

3 at 8-9. The reports lists criteria that may affect a ranking of the risk of a bridge, including "whether 4 the bridge exists in high-population areas and/or over major waterways, and the frequency that the 5 bridges support trains that that transport passengers, volatile hazardous materials and petroleum products." Id. at 9 (emphasis added). 6 7 36. Another critical piece of any railway safety assessment includes securing stationary 8 trains. The rail safety report provides context for this issue as it relates to crude-by-rail operations: One example of failure to secure a train is the July 2013 runaway and derailment of a 9 parked but inadequately secured train in Canada. The unattended train and the accompanying crude oil shipment rolled away at very high speed toward the town of 10 Lac-Mégantic, Quebec, Canada, where it derailed, exploded in fire, and resulted in approximately 47 deaths. The Risk Assessment Section uses such worldwide rail 11 incidents in order to gauge the adequacy and effectiveness of California's rail safety program and identify any previously unknown risks in California's rail system. For 12 example, the catastrophe in Canada also highlights concerns over recent increased crude oil rail traffic through California's, refineries, coast, and mountains. These 13 shipments occur over some of California's steepest rail grades-making train securement a timely issue. 14 2013 Rail Safety Report at 11. 15 37. The report advises "consideration of stationary and dynamic braking, structural 16 integrity of cars, train consist, track incline, track curvature, and speed limits," in ensuring adequate 17 train securement. Id. 18 On the subject of earthquake risk, the report explains that California's "railroad tracks 38. 19 and bridges cross active faults in the state, and the *potential for earthquake-induced damage to the* 20 railroad system infrastructure and other rail facilities is high, with consequent risks to public safety 21 and the environment." Id. (emphasis added). 22 39. In the wake of a 2008 head-on collision between a freight train and commuter train 23 that killed twenty-five people and seriously injured 130 more in Chatsworth, California, the CPUC 24 has elevated its efforts to draw attention to the dangers of California's railway system and the need 25 for improved safety measures. For example, the agency reports that the state laws mandating annual 26 railway track safety inspections have not been fulfilled since 2005-2006. 27 28

assigned to cover California, along with 10 other states in the West, and cannot possibly provide

adequate oversight for the approximate 5,000-7,000 bridges in California." 2013 Rail Safety Report

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40. Finally, on the specific threat of crude-by-rail, the CPUC's safety report provided the

following dire warning:

According to the California Energy Commission, more than 200,000 barrels of crude per month were imported into California this summer, a fourfold increase from early 2012. Hauling crude into California involves traversing some of the most challenging mountain passes in the nation. A runaway train, although rare, could render significant consequences. In 2003, a 31-car train rolled downhill for about 30 miles and crashed into the City of Commerce with a load of lumber that damaged property and injured a dozen people. It if had been highly volatile Bakken crude, which can burn like gasoline, the damage would have assuredly been far greater.

2013 Rail Safety Report at 25.

41. The report urges heightened safety measures to address the public safety risks of California's deteriorating railway system, especially in light of the uptick in crude-by-rail projects throughout the state.

## The Project and Associated Approvals

42. According to Kinder Morgan's Air District application, the company's bulk rail terminal, located in the Burlington Northern/Santa Fe railyard, began operation as an ethanol rail-to-truck transloading facility in 2008 or 2009.

43. On February 1, 2013, the Air District received Kinder Morgan's Application No. 25180—Kinder Morgan's proposal to physically alter its facility. The proposal sought Air District approval to introduce four additional pumps to the facility; introduce four additional nozzles/loading arms to the facility; and to introduce highly volatile and explosive Bakken crude oil from the midcontinent to its transloading operation. Collectively, these alterations were designed to transform Kinder Morgan's ethanol terminal into the Crude-By-Rail Project.

44. On July 10, 2013, the Air District conducted an initial engineering evaluation of Kinder Morgan's crude-by-rail proposal. The engineering evaluation included an analysis of the air quality impacts of Kinder Morgan's crude-by-rail proposal and on that basis, suggested new permit conditions that purport to: 1) control methane leak concentrations of railcar domes and tanker truck hatches; 2) ensure proper storage and disposal of disconnect losses, which constitute a significant source of evaporative emissions from rail tank operations; and 3) monitor fugitive emissions of pollution from railcar domes. The engineering evaluation stated that the Air District "would impose

more stringent source testing and monitoring conditions on [Kinder Morgan's transloading facility] 2 to ensure compliance with current permit restrictions and well as all applicable rules and 3 regulations."

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4 45. Responding to Kinder Morgan's requested revision of some of those more stringent emissions monitoring requirements, the Air District conducted a second engineering evaluation, and on that basis, issued an addendum, dated October 9, 2013 that modified the facility's permit conditions once more to weaken monitoring requirements.

8 46. The Air District amended its engineering evaluation yet once more on December 2, 9 2013 in response to rail shipments of "higher than expected" vapor pressure crude oil that forced 10 Kinder Morgan to curtail operations or risk violation of its permit conditions. This prompted the Air 11 District to modify Kinder Morgan's permit conditions yet again—this time to require the use of 12 DOT 407 tanker trucks, which are not certified by the California Air Resources Board.

47. Two months after its second amendment to its engineering evaluation, on February 3, 2014, the Air District issued Kinder Morgan a permit to operate its Crude-By-Rail Project subject to the new conditions resulting from the Air District's engineering evaluation and two addendums. The permit conditions that ultimately formed Kinder Morgan's permit to operate required the interpretation, analysis, and independent judgment of an Air District engineer.

48. Despite its engineering analysis and resulting permit modifications, and despite the growing public concern over increased crude-by-rail operations and the risks and dangers they pose, the Air District characterized the above-described permitting process to be "ministerial." On that basis, the Air District concluded that the California Environmental Quality Act lacked any application to Kinder Morgan's crude-by-rail project.

49. As a result of the Air District's "ministerial" designation, the crude-by-rail project was approved without any public notification, comment period, process, or environmental review under CEQA.

**VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT** *CBE* et al. *v. BAAQMD* et al.

## FIRST CAUSE OF ACTION

### (Violation of CEQA–Illegal CEQA Exemption; CCP §1085, Cal. Pub. Res. Code §21168.5)

50. The primary goal of CEQA is to "[e]nsure that the long-term protection of the environment shall be the guiding criterion in public decisions." Pub. Res. Code § 21001(d).

51. The Air District's issuance of Kinder Morgan's permit to operate, which imposes operational conditions designed to control air pollution, based on the independent judgment of a qualified engineer, was "discretionary" and constituted a "project" that was subject to CEQA. Cal. Pub. Res. Code § 21065; 14 Cal. Code of Regs. §15378.

52. The Air District's failure to conduct any CEQA review before issuing Kinder Morgan a permit to operate its crude-by-rail facility constituted a prejudicial abuse of discretion for failure to proceed in a manner required by law. Cal. Pub. Res. Code §21168.5.

#### SECOND CAUSE OF ACTION

## (Violation of CEQA–Failure to Prepare an Environmental Impact Report; CCP §1085,

#### Cal. Pub. Res. Code §21168.5)

53. Substantial evidence supports a "fair argument" that the Kinder Morgan crude-by-rail project will cause potentially significant and significant impacts to the environment, including, but not limited to a significant risk to the environment, including public health and safety, from risk of explosion due to train derailments coupled with the high volatility and combustion potential of Bakken crude oil; a significant increase in human exposure to volatile organic compounds including benzene, a toxic air contaminant and known carcinogen; a significant increase in hydrogen sulfide emissions; and, a significant increase in greenhouse gas emissions.

54. The Air District's failure to prepare an EIR that discloses, analyzes, and mitigates the environmental impacts of Kinder Morgan's Crude-By-Rail Project constituted a prejudicial abuse of discretion for failure to proceed in a manner required by law. Cal. Pub. Res. Code §21168.5.

#### PRAYER FOR RELIEF

WHEREFORE, CBE, APEN, the SIERRA CLUB and NRDC pray for judgment as set forth below:

**VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT** *CBE* et al. *v. BAAQMD* et al.

A. For a writ of mandate or peremptory writ issued under the seal of this Court and directing the Bay Area Air Quality Management District to:

1. Set aside and withdraw its approval of Kinder Morgan's February 3, 2014 Permit To Operate Altered Equipment (Air District Application No. 25180);

2. Refrain from granting any further approvals of the crude-by-rail Project unless and until the Air District complies fully with the requirements of CEQA; and

3. Circulate a draft EIR studying Kinder Morgan's bulk rail terminal operations for public review and comment.

B. For entry of preliminary and/or permanent injunctive relief prohibiting the Air
District and Kinder Morgan from operating its bulk rail terminal in Richmond, California until a
lawful approval has been obtained from the Air District after the requirements of CEQA have been
fulfilled.

C. For a declaratory judgment stating that the Air District violated CEQA by approving Kinder Morgan crude-by-rail project without complying with CEQA.

D. For a declaratory judgment stating that the Air District's approval of Kinder
Morgan's February 3, 2014 Permit to Operate Altered Equipment (Air District Application No.
25180) is void *ab initio* or otherwise invalid and of no legal effect.

E. For a declaratory judgment that the Air District's failure to prepare, consider, and approve or certify an adequate environmental analysis under CEQA was arbitrary and capricious and constituted a prejudicial abuse of discretion for failure to proceed in a manner required by law.

F. For Petitioners' fees and costs, including reasonable attorneys' fees and expert
witness costs, as authorized by CCP § 1021.5, and any other applicable provisions of law on its
claims regarding the unlawful issuance of Kinder Morgan's February 3, 2014 Permit to Operate
Altered Equipment (Air District Application No. 25180).

**VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT** *CBE* et al. *v. BAAQMD* et al.

1	G. For such other legal and equitable relief as this Court deems appropriate and just.		
2	DATED: March 27, 2014	Respectfully submitted,	
3	DATED. March 27, 2014	Respectivity submitted,	
4		EARTHJUSTICE	
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	VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT <i>CBE</i> et al. <i>v. BAAQMD</i> et al.		