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

Petitioners,

v.

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

Respondents.

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

Real Parties in Interest.
Petitioners Association of Irritated Residents, Center for Biological Diversity, and the Sierra Club (collectively, “Petitioners”) bring this action on their own behalf, on behalf of their members, on behalf of the general public, and in the public interest and hereby allege as follows:

INTRODUCTION

1. On September 9, 2014, the Kern County Board of Supervisors (“Kern County”) approved an Environmental Impact Report (“EIR”) for the Alon Bakersfield Refinery Crude Flexibility Project (“Project”). This Project would entail a five-fold increase in the Alon Bakersfield Refinery’s (“Refinery”) capacity to import crude oil from 40 tank cars per day to 200 tank cars per day, or up to 63.1 million barrels of crude per year. This influx of cheap, mid-continent crudes, including Canadian tar sands crude and Bakken crude from North Dakota, would allow the shuttered Refinery to reopen and run at full capacity, processing 70,000 barrels of crude oil per day.

2. The Project’s massive ramp-up in oil transport and processing poses alarming health and safety threats to the residents of Bakersfield and to those who live along the crude-by-rail route. Restarting the Refinery will significantly increase harmful air pollution that will only exacerbate the poor air quality and respiratory illnesses that plague San Joaquin Valley communities already unfairly burdened with industrial pollution. The Project entails the transport of highly volatile Bakken crude oil across multiple states, over treacherous and poorly maintained mountain passages, and past Bakersfield High School, without adequate federal and state regulation to ensure the safety of crude by rail transport. The U.S. Transportation Secretary has declared the transport of highly explosive Bakken crude to be “an imminent hazard,” as evidenced by a spate of catastrophic train accidents, such as the 2013 derailment of an oil train that exploded and killed 47 people in Lac-Mégantic, Quebec. And by bringing in over 60 million barrels of crude oil into the state each year, the Project will undermine California’s stated goal of transitioning from fossil fuels to clean energy.

3. Rather than recognizing and mitigating the Project’s significant impacts, the EIR systematically obfuscates and underestimates them in violation of the California Environmental Quality Act (“CEQA”).

4. Skewing the entire analysis, the EIR obscures the impact of restarting the Refinery by measuring the Project’s impacts as compared to the 2007 operating conditions at the Refinery.
although the Refinery has not refined crude since 2008. Instead, the EIR should have used the Refinery’s currently non-operational conditions as the “baseline” for measuring impacts.

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

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

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

8. The EIR severely underestimates the safety risks of this Project through sloppy math and an incomplete analysis. Based on a simple mathematical error, the EIR calculates the risk of a train accident involving an oil spill to be once every 150 years and concludes this risk is insignificant because an oil spill is unlikely to occur within the Project’s 30-year lifetime. Correcting the error, however, results in a risk of accident involving an oil spill once every 30 years. Even this corrected...
figure is still a gross underestimate because it only addresses the risk of an accident in California and not along the entire transport route, and it fails to consider the risk of Bakken-crude transport.

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

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

PARTIES

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

12. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-profit corporation with offices in San Francisco, Los Angeles, and elsewhere throughout California and the United States. The Center is actively involved in environmental protection issues throughout California and North America and has over 50,000 members, including many throughout California and in Kern County. The Center’s mission includes protecting and restoring habitat and populations of imperiled species, reducing greenhouse gas pollution to preserve a safe climate, and protecting air quality, water quality, and public health. The Center’s members and staff include individuals who
regularly use and intend to continue to use the areas in Kern County and elsewhere affected by the Project’s refinery operations and rail transportation activities, including members who are particularly interested in protecting the many native, imperiled, and sensitive species and their habitats that may be affected by the Project.

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

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

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

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

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17. Real Party in Interest PARAMOUNT PETROLEUM CORPORATION is a Californian Corporation based in Paramount, California. It is a manufacturer of paving and industrial asphalt products, the applicant and developer of the property upon which the Project is planned to be constructed and operated, and the recipient of the approvals that are the subject of this litigation. The facility at issue here is located at 6451 Rosedale Highway, Bakersfield, California in Kern County.

18. Real Party in Interest ALON U.S.A is headquartered in Texas and is the parent company of Paramount Petroleum Corporation.

**JURISDICTION AND VENUE**

19. This Court has jurisdiction over this action pursuant to Code of Civil Procedure section 1085, or, in the alternative, pursuant to section 1094.5. Judicial review is governed under Public Resources Code section 21168.5, or, in the alternative, pursuant to section 21168.

20. Venue is proper in this court pursuant to Code of Civil Procedure sections 394 and 395 because the Kern County Board of Supervisors and Kern County Planning and Community Development Department are located within Kern County. Venue is also proper in this court pursuant to Code of Civil Procedure section 393(b) because the Refinery is in Kern County, and the Project’s environmental harms will occur in Kern County.

21. This action was timely filed within 30 days of the Kern County Board of Supervisors filing the Notice of Determination on September 10, 2014.

22. Petitioners have provided written notice of their intention to file this petition to the Kern County Board of Supervisors and the Kern County Planning and Community Development Department and are including the notices and proofs of service as Exhibit A pursuant to the requirements of Public Resources Code section 21167.5.

23. Petitioners have served the Attorney General with a copy of their Petition along with a notice of its filing, in compliance with Public Resources Code section 21167.7, and are including the notice and proof of service as Exhibit B.

24. Petitioners do not have a plain, speedy, or adequate remedy at law because Petitioners and their members will be irreparably harmed by the ensuing environmental damage caused by implementation of the Project and the Kern County Planning and Community Development

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

**STATEMENT OF FACTS**

**The Community and Environmental Setting**

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

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

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

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1 See generally http://www.stateoftheair.org.

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

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

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

The Project

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

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

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

32. Transporting large volumes of crude oil long distances by train carries significant risk. Based on federal rail safety data, this dramatic increase in rail transport of crude oil will
increase the likelihood of a rail accident where hazardous materials are released from once every 9,000 years in California to once every 30 years in California. This means that this Project is nearly certain to cause an accident in California involving a spill of crude oil in the stated 30-year life of the Project. And this is likely a gross underestimate of the accident risk, since this accident risk does not include the entire length of rail travel from North Dakota and Canada to Bakersfield, California.

33. The risk of accident may be even greater than the federal data suggests. The past risk of accidents does not take into account the increased risk posed by increased tonnage and wear and tear on the track and structures from increasing shipments of crude-by-rail. Moreover, California has approximately 5,000-7,000 railroad bridges, many of which are over a century old, but these 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. These aging and unmonitored rail lines travel through high hazard areas in the state, including areas of vulnerable natural resources and urban areas. Moreover, earthquake faults in California are located along rail lines in many areas, especially in urban areas. All of these factors contribute to heightened risk of a catastrophic rail accident in California.

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

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

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

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

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

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

39. Refining tar sands crude oil also poses unique air quality and public health risks.
compared to other crudes. According to the U.S. Geological Survey (USGS), tar sands crudes contain more heavy metals and air pollutants than other more commonly used heavy crudes.

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

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

In sum, by dramatically increasing rail traffic of explosive crude oil, restarting a shuttered refinery in an area with the worst air pollution in the country, and bringing in large quantities of cheap fossil fuels into California, this project will have significant safety, environmental, health, and climate impacts, all of which should have been properly analyzed under CEQA.
the year 2007 as the baseline year for assessing significance of air quality impacts in its Initial Study. The Air District noted that 2007 “reflects the environmental setting in effect 6-7 years ago, which appears to be remote from the conditions in effect at the time the environmental analysis commenced.”

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

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

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

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

48. Less than two months later, on August 27, 2014, the Kern County Planning and...
Community Development Department released the final EIR and response to comments.

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

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

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

52. Julia May, a senior scientist at Communities for a Better Environment, also submitted comments on the Final and Draft EIRs. Among other things, she criticized the lack of information on potential emergency flaring events at the Refinery, i.e., combustion of excess gases and entrained liquids in an open flame using oxygen from the ambient air to relieve over-pressured refinery equipment. She explained that flaring emissions alone have the potential to exceed CEQA emissions thresholds, and that failure to include these emissions in air emissions calculations resulted in a gross underestimate of the Project’s air quality impacts.
On September 9, 2014 the Kern County Board of Supervisors held a three-hour public hearing on the Project, but limited public comment to a little over an hour. The Board approved the Project that day – a mere 13 days after the final EIR was released – without correcting the deficiencies identified by the Air District, the Community Groups, Dr. Fox, or Julia May.

**CEQA LEGAL BACKGROUND**

The California Environmental Quality Act, Public Resources Code §§ 21000-21177, is a comprehensive statute designed to provide for long-term protection of the environment. It accomplishes this in two ways. First, CEQA is designed to inform decision-makers and the public about the potential significant environmental effects of a project. (Cal. Code Regs., tit. 14, § 15002(a)(1) (hereinafter “CEQA Guidelines”).) Such disclosure ensures that “long term protection of the environment . . . shall be the guiding criterion in public decisions.” (Pub. Res. Code § 21001(d).) The EIR is the “heart” of this requirement. (See No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 84.) The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (County of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 810.)

Second, CEQA directs public agencies to avoid or reduce environmental damage whenever feasible by requiring changes in projects through the use of alternatives or mitigation measures. (See CEQA Guidelines, § 15002(a)(2) and (3); see also Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564; Laurel Heights Improvement Ass’n v. Regents of the University of California (1988) 47 Cal.3d 376, 400.) Consequently, an EIR must identify feasible mitigation measures and alternatives in order to substantially lessen or avoid otherwise significant environmental effects. (Pub. Res. Code §§ 21002, 21081(a); CEQA Guidelines, § 15126.4(a.).)

**FIRST CAUSE OF ACTION**

(Violation of CEQA – Failure to Define the Proper Baseline)

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

CEQA and its implementing guidelines require that an EIR “include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the
notice of preparation is published . . . from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines, § 15125(a.))

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

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

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

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

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

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

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

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

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

66. The EIR fails to provide an accurate project description. For example:
   a. The EIR states that the Project’s purpose is “to allow greater flexibility for the existing refinery to process a variety of crude oils on-site.” In response to comments, it admits that the Project has the “potential to import and process Bakken and tar sands crude oils, as well as other North American crude oils.” The EIR, however, fails to provide an “objective quantification” of the types and mix of crude oils that will foreseeably be processed at the Refinery, thus precluding full disclosure of the Project’s impacts. This information is critical, because depending on the type of crude oil processed, the Project’s impacts on air quality and safety hazards could differ substantially. See ¶¶ 37-39 above. As a result, the EIR fails to adequately disclose and analyze the Project’s impacts, in violation of CEQA.
b. The EIR fails to disclose that the Project entails restarting the Refinery and misleadingly states that “[r]esuming refining is independent of the proposed project and . . . not caused by the project,” even though it is a necessary step for refinery operations. As a result, the EIR omits critical information concerning the significant impacts of restarting the Refinery, including increased flaring emissions and safety hazards that could arise from restarting mothballed equipment.

c. The EIR’s project description improperly fails to describe the entire mainline routes for crude-by-rail transport and the full distance that trains will travel, by excluding those routes outside Kern County or California. Consequently, the EIR fails to adequately study the Project’s various significant air quality, greenhouse gas, hazardous material release, biological resource, and water quality impacts resulting from mainline activities.

67. By certifying an EIR without a complete and accurate project description, Kern County committed a prejudicial abuse of discretion, failed to proceed in the manner required by law, and acted without substantial evidentiary support. Thus, Kern County’s findings that the Project does not have significant air quality, water quality, greenhouse gas, biological resource, cumulative impacts, and hazardous material release and other safety hazard risks lack evidentiary support.

THIRD CAUSE OF ACTION
(Violation of CEQA – Failure to adequately disclose and evaluate the Project’s significant environmental effects)

68. Petitioners incorporate herein by reference the allegations contained in the foregoing paragraphs.

69. CEQA requires that an EIR describe the proposed project’s significant environmental effects; each such effect must be revealed and fully analyzed in the EIR. (Pub. Res. Code § 21100(b), 21002.1; CEQA Guidelines, § 15126.2(a).) Significant effect on the environment refers to substantial, or potentially substantial, adverse changes in physical conditions. (Pub. Res. Code §§ 21068, 21060.5; see also Pub. Res. Code § 21100(d).)
70. The CEQA Guidelines further require that in discussing the environmental effects of a project, an EIR should contain “a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.” (CEQA Guidelines, § 15151.)

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

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

a. The EIR fails to adequately evaluate the impacts of processing Bakken crudes by (1) modeling VOC and toxic air contaminant emissions on “Lost Hills” crude, a crude with substantially lower VOC and toxic air contaminant emissions than Bakken crude; and (2) failing to take into account Bakken crude’s unique properties in analyzing the Refinery’s risk of a hazardous material release.

b. Despite the admission that the Project has the potential to import and process tar sands crudes, the EIR fails to evaluate the impacts of processing these crudes, which pose unique air quality and public health risks compared to other heavy crudes.

c. The EIR improperly claims that credits previously earned for reducing emissions “offset” the Project’s significant VOC emissions, rendering them insignificant.

d. The EIR severely underestimates the significance of the Project’s air emissions by failing to disclose and analyze the impacts of flaring events at
the Refinery, including increased flaring emissions that would result from
restarting the Refinery.

e. The EIR fails to adequately disclose and evaluate greenhouse gas emissions:

(1) Rather than comparing the Project’s emissions to the Refinery’s actual
current emissions, the EIR compares them to a hypothetical “business as
usual” baseline; assumes without evidentiary support that the Project
will achieve at least a 29 percent reduction in these hypothetical
emissions in accordance with state greenhouse gas reduction goals; and
improperly concludes that this reduction will render the greenhouse gas
emissions less than significant.

(2) The EIR improperly credits to the Project greenhouse gas reductions
resulting from (a) the federal renewable fuels standard and (b)
displacement of truck traffic from the San Francisco Bay Area due to a
purported increase in pipeline activities contemplated by the Project.

(3) The EIR improperly omits analysis of greenhouse gas emissions that
would result from mainline rail transport, the refining of crudes shipped
by the Project to other refineries, and combustion of the end product,
thereby grossly underestimating the Project’s total greenhouse gas
emissions.

f. The EIR improperly excludes the study of the impacts of mainline rail
operations, including on air pollution, greenhouse gas emissions, wildlife,
public safety, and the Project’s cumulative impacts, because it erroneously
concludes that review of these impacts is preempted by the Interstate
Commerce Commission Termination Act.

g. The EIR underestimates the risk of a rail accident involving a hazardous
material release by (1) grossly inflating the denominator by which this risk is
calculated; (2) failing to analyze the risk along the entire transport route; and
(3) failing to take into account the unique properties of Bakken crude that would increase the risk of a hazardous material release.

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

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

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

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

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

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

a. The EIR’s conclusion that VOC emissions would not be significant because previously earned emissions reduction credits would offset them lacks any factual support. The EIR does not disclose the dates the emission reduction...
credits were created, the location of the reductions, the type of source, and how these past reductions will counteract the Project’s future VOC emissions.

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

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

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

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

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

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

80. “Formulation of mitigation measures should not be deferred until some future time.” (CEQA Guidelines, § 15126.4(a)(1)(B).) “An EIR is inadequate if “[t]he success or failure of
mitigation efforts . . . may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.” (Cmtys for a Better Env’t, 184 Cal.App.4th at 92 [quoting San Joaquin Raptor, 149 Cal.App.4th at 655-56].) “[V]aguely described . . mitigation measures” that are “nonexclusive, undefined, untested and of unknown efficacy” must be rejected. (Id. at 93.)

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

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

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

b. The EIR improperly treated future greenhouse gas reductions required under California’s AB 32 as a project component, and erroneously concluded that with these reductions, the Project would not have significant greenhouse gas impacts requiring mitigation. Instead, the EIR should have evaluated the significance of the greenhouse gas emissions and proposed any greenhouse gas emission reductions as mitigation measures. When viewed as mitigation measures, the greenhouse gas reductions required under AB 32 are inadequate. First, mitigation measures must be “additional” to existing regulatory requirements like AB 32. Second, the cap-and-trade pollution permits allocated by AB 32 are not the same as mitigation measures, because they do not necessarily represent actual reductions or offsets. Moreover, even if they did, these reductions would not occur beyond 2020, when AB 32 is due
to expire. Finally, even if reliance on AB 32 measures to mitigate greenhouse gas emissions was proper, the EIR fails to disclose the specifics on how these mitigation measures will occur, will be monitored, and will be enforced.

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as set forth below:

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

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

B. For entry of preliminary and/or permanent injunctive relief prohibiting the Kern...
County Board of Supervisors, Kern County Planning and Community Development Department, Alon U.S.A, and Paramount Petroleum from carrying out, implementing, or otherwise acting in furtherance of any of the changes and expansions to operations at Alon Bakersfield Refinery authorized by the Modification of Precise Development Plans until a lawful approval has been obtained from the Kern County Board of Supervisors, and after the requirements of CEQA have been fulfilled.

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

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

E. 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.

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

DATED: October 9, 2014

Respectfully submitted,

____________________________________
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Attorneys for Petitioners
VERIFICATION

I, Tom Frantz declare:

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

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

[Signature]

Tom Frantz
President
Association of Irritated Residents

VERIFICATION
VERIFICATION

I, Kassia Siegel declare:

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

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

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

I, Gordon Nipp, declare:

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

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

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