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13  
14 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF CONTRA COSTA

15  
16 CENTER FOR BIOLOGICAL DIVERSITY and  
COMMUNITIES FOR A BETTER ENVIRONMENT,

17 Petitioners,

18 v.

19 CALIFORNIA STATE LANDS COMMISSION,

20 Respondent.

21  
22 \_\_\_\_\_  
TESORO REFINING AND MARKETING  
COMPANY LLC, and DOES I through V,

23 Real Party in Interest.  
24  
25  
26  
27  
28

Case No.

**VERIFIED PETITION FOR WRIT OF  
MANDATE**



1 and processing Bakken crude creates numerous health and safety risks. Bakken crude oil is highly  
2 volatile, and, in recent years, a number of trains shipping Bakken crude have derailed and exploded,  
3 claiming dozens of lives and causing significant property damage. Bakken crude is also dirtier than  
4 most other crude feedstocks, releasing high levels of benzene, volatile organic compounds, and toxic  
5 air contaminants when processed.

6 7. Tesoro also plans to process more heavy crude feedstocks, like California heavy  
7 crudes and tar sands from Alberta, Canada, at the Golden Eagle Refinery. Processing heavy crudes  
8 also creates numerous environmental and health risks, since these feedstocks contain high quantities  
9 of heavy metals and air pollutants.

10 8. The Avon and Amorco Terminals will necessarily handle the transportation of crude  
11 feedstocks to the Golden Eagle Refinery and of finished products from the refinery.

12 9. Yet the EIR for the Avon Terminal fails as an informational document as it is  
13 conspicuously silent about the types of crude oil feedstocks that will be handled at the Terminal and  
14 the additional risks that may be created by Tesoro's plans to process lower quality and heavy crudes  
15 at the Golden Eagle Refinery.

16 10. The Avon Terminal EIR is deficient in other ways as well. In analyzing the  
17 environmental effects of renewing the Avon Terminal lease, the EIR considers only the Avon  
18 Terminal's effects and fails to consider the combined effects of Tesoro's integrated facilities,  
19 including those of the Refinery and the Amorco Terminal. This artificial isolation of the Avon  
20 Terminal improperly masks the full extent of the effects of Tesoro's integrated refinery operations.

21 11. The EIR also underestimates the annual number of ships that will dock at the  
22 relicensed Avon Terminal over its thirty-year lease. This deficiency results in underestimation of the  
23 air, water, wildlife, and other impacts of the Avon Terminal's future operations.

24 12. As a result of these and related deficiencies, the EIR fails to fully inform the public  
25 and decision-makers of the Project's significant health, safety, and environmental impacts and fails  
26 to analyze and mitigate these impacts as the California Environmental Quality Act ("CEQA")  
27 requires. Petitioners therefore seek relief from this Court to void CSLC's certification of the EIR and  
28 approval of the Project.

1 **PARTIES**

2 13. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (the “Center”) is a non-profit  
3 corporation with offices in San Francisco, Los Angeles, and elsewhere in California and the United  
4 States. The Center is actively involved in environmental protection issues throughout California and  
5 North America and has over 50,000 members, including many throughout California and 479  
6 members in Contra Costa County. The Center’s mission includes protecting and restoring habitat  
7 and populations of imperiled species, reducing greenhouse gas pollution to preserve a safe climate,  
8 and protecting air quality, water quality, and public health. The Center’s members and staff include  
9 individuals who regularly use and intend to continue to use the areas in Contra Costa County and  
10 elsewhere affected by the Project’s operations, including members who are particularly interested in  
11 protecting the many native, imperiled, and sensitive species and their habitats that may be affected  
12 by the Project.

13 14. Petitioner COMMUNITIES FOR A BETTER ENVIRONMENT (“CBE”) is a  
14 California non-profit environmental health and environmental justice organization with offices in  
15 Oakland and Huntington Park. CBE is dedicated to protecting and enhancing the environment and  
16 public health by reducing air, water, and toxics pollution and equipping residents of California’s  
17 urban areas with the tools to monitor and transform their immediate environment. CBE has  
18 thousands of members in California, many of whom live, work and breathe the air in Contra Costa  
19 County. CBE and its members have worked to reduce the environmental and health risks in Contra  
20 Costa County for more than twenty years and are immediately affected by the Project’s operations.

21 15. By this action, Petitioners seek to protect the health, welfare, and economic interests  
22 of their members and the general public and to enforce the California State Land Commission’s  
23 duties under CEQA. Petitioners’ members and staff have an interest in their health and well-being,  
24 as well as in conservation, environmental, aesthetic, and economic interests in Contra Costa County.  
25 Petitioners’ staff and members who live and work near the Project have a right to and a beneficial  
26 interest in the California State Land Commission’s compliance with CEQA. These interests have  
27 been, and continue to be, threatened by the California State Land Commission’s decision to certify  
28 the EIR and approve the Project in violation of CEQA. Unless the relief requested in this case is

1 granted, Petitioners' staff and members will continue to be adversely affected and irreparably injured  
2 by the California State Lands Commission's failure to comply with CEQA.

3 16. Respondent the CALIFORNIA STATE LANDS COMMISSION ("CSLC") manages  
4 leases and contracts pertaining to use of the State of California's public lands, including marine  
5 terminals located on public tidelands. It is the lead agency responsible for environmental review of  
6 the Project.

7 17. Real Party in Interest TESORO REFINING AND MARKETING COMPANY LLC  
8 ("Tesoro") is a Delaware Corporation with an office at 150 Solano Way, Pacheco, California. It  
9 owns and operates the Golden Eagle Refinery and the Avon and Amorco Terminals that serve it.

10 18. The true names and capacities, whether individual, corporate, or otherwise, of DOES  
11 I through V are unknown to Petitioners. Petitioners will amend this Petition to set forth the true  
12 names and capacities of said Doe parties when they have been ascertained. Petitioners allege that  
13 each of said DOES are Real Parties in Interest.

#### 14 **JURISDICTION AND VENUE**

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

18 20. Venue is proper in this court pursuant to Code of Civil Procedure 393(b) because the  
19 Avon Terminal and Tesoro's Golden Eagle Refinery complex are in Contra Costa County and the  
20 Project's harmful impacts will occur in Contra Costa County.

21 21. This action was timely filed within 30 days of CSLC certifying the EIR and  
22 approving the Avon Terminal Lease on March 20, 2015.

23 22. Petitioners have provided written notice of their intention to file this Petition to the  
24 CSLC and are including the notice and proof of service as Exhibit A pursuant to the requirements of  
25 Public Resources Code section 21167.5.

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



1           29. Tesoro has been cited on numerous occasions for violating various health and  
2 environmental protection standards. In 2014 and 2015, the Golden Eagle Refinery received forty  
3 notices of violation from the Bay Area Air Quality Management District for violating various air  
4 quality standards. It is currently in the process of negotiating settlements regarding these violations.  
5 The United States Chemical Safety Board and California Department of Industrial Relations are  
6 currently investigating the Refinery for various incidents in 2014 involving the accidental release of  
7 of over 84,000 pounds of sulfuric acid, which hospitalized several workers. The EPA is also  
8 investigating the Refinery's compliance with certain federal environmental laws and the Clean Air  
9 Act's Risk Management Plan requirements.

10           30. CalEnviroScreen, the California Environmental Protection Agency's health screening  
11 tool, identifies the area around the Refinery and Terminals as having some of the state's worst scores  
12 for releases of toxic chemicals. Residents in the area suffer from high rates of asthma and many are  
13 ill-equipped to deal with these burdens, as more than half the residents are low-income minorities.

14           31. Certain sensitive populations, like children and those suffering from chronic diseases,  
15 are more susceptible to air pollution and other toxics releases. Several schools and hospitals are  
16 located within a two-mile radius of Tesoro's operations, including the Las Juntas and Sun Terrace  
17 Elementary schools, the Concord Christian and Floyd I. Marcus School, and the Mount Diablo  
18 Regional Cancer Center.

19           32. Tesoro's operations also affect wildlife. The Project area provides habitat for state  
20 and federally listed species, such as coho and Chinook salmon and steelhead; delta smelt; green  
21 sturgeon; black and Ridgway's rails; salt marsh harvest mouse; and three endangered plant species.  
22 The Avon Terminal is also located immediately next to the Point Edith Wildlife area, a 761-acre  
23 tidal area of sloughs and small ponds, which provides habitat to various fish, reptile, amphibian,  
24 bird, and mammal species, including the federally endangered salt marsh harvest mouse and  
25 Ridgway's rail, and is commonly used by duck hunters. The Waterbird Regional Preserve is located  
26 a little over a mile to the southwest of the Avon Terminal. The preserve, which consists of nearly  
27 200 acres of wetlands, provides habitat to numerous bird species, including golden eagles and  
28 osprey. It also serves as a way station for migratory birds.

1           **The Project and Its Potential Environmental Effects**

2           33.     Tesoro’s Golden Eagle Refinery is the fourth-largest refinery in California and has  
3 the capacity to refine nearly 170,000 barrels of crude oil per day. In 2014, it operated close to its  
4 capacity, refining nearly 150,000 barrels of crude oil per day.

5           34.     Tesoro is already processing Bakken crude oil in its Golden Eagle Refinery. During  
6 recent quarterly earnings calls, Tesoro reported that it shipped some 5,000 to 7,000 barrels per day of  
7 Bakken crude into California.

8           35.     Tesoro has told the public that it intends to import and process increasing quantities  
9 of lower quality oil feedstocks, including Bakken crude oil, in its Golden Eagle Refinery over the  
10 coming years. During the February 2014 Simmons Energy Conference, Tesoro stated that its  
11 Golden Eagle Refinery currently processes “up to 45% California Heavy and Bakken,” and that  
12 throughputs will increase “[p]otentially up to 67% California Heavy and Bakken.” Tesoro has also  
13 noted that it intends to more than double its West Coast unloading capacity for Bakken crude.  
14 Tesoro’s plan to refine additional quantities of Bakken crude in California is confirmed by the  
15 Security and Exchange Commission (“SEC”) filings of Tesoro’s logistics arm, Tesoro Logistics LP,  
16 which state that, in the future, Tesoro intends to expand transportation infrastructure “in support of  
17 growing third-party demand for transportation services and Tesoro’s increased demand for Bakken  
18 crude oil in the mid-continent and west coast refining systems.” Industry literature, from sources  
19 like Morningstar.com, also confirms Tesoro’s plans.

20           36.     The shipping and refining of Bakken crude carries additional risks compared to other  
21 types of crude oil feedstocks. In July 2013, a train carrying Bakken crude derailed in Lac-Mégantic,  
22 Quebec and exploded, killing 47 people and destroying half of downtown Lac-Mégantic. Since Lac-  
23 Mégantic, several other major accidents have occurred involving Bakken crude in the last year,  
24 including in Lynchburg, Virginia (derailment spilling 30,000 gallons into the James River),  
25 Casselton, North Dakota (derailment spilling 400,000 gallons of oil and requiring the evacuation of  
26 2,000 people), Edmonton, Alberta (derailment causing a fireball which burned several homes to the  
27 ground), and Philadelphia, Pennsylvania (derailment over the Schuylkill River near the University of  
28 Pennsylvania). Because of the recent spate in catastrophic Bakken train accidents, the U.S.

1 Transportation Secretary has declared the transport of Bakken crude to be “an imminent hazard,”  
2 such that a “substantial likelihood that death, serious illness, severe personal injury, or a substantial  
3 endangerment to health, property, or the environment may occur.” 49 U.S.C. 5102(5).

4 37. Processing additional quantities of Bakken crude at the Golden Eagle Refinery will  
5 also place additional strains on facility equipment. Bakken crude is highly volatile, vaporizes easily,  
6 and leaves waxy deposits in transportation and facility equipment, which can be damaging and  
7 corrosive. These properties result in a higher risk of accidents and hazardous material release during  
8 transportation and also at the Refinery. Bakken crude’s high paraffin content makes it more likely to  
9 clog the pipes and tanks used to transport and store crude feedstocks. Chemical dispersants are used  
10 to clean substances clogging transportation and storage equipment and carry their own  
11 contamination risks. When blended with heavy crudes (as is planned for the shipments to the  
12 Golden Eagle Refinery), the byproducts of the refining process can cause coke deposits to  
13 accumulate inside refinery units, which lead to poor operation of refinery equipment and can  
14 increase the need to shut down units before planned maintenance periods.

15 38. Bakken crude also creates additional pollution when it is refined. Bakken crude can  
16 contain high levels of benzene, a known human carcinogen, and the refining of Bakken crude can  
17 significantly increase emissions of volatile organic compounds (“VOCs”) and toxic air  
18 contaminants. Crude oil from shale formations like the Bakken can also contain high levels of  
19 hydrogen sulfide, which is highly toxic to humans and can create dangerous corrosion of refining  
20 facility equipment, which in turn can lead to accidents, spills, or explosions. Thus, increased refining  
21 of Bakken crude would exacerbate the air quality of an already highly polluted area.

22 39. Industry literature indicates that Tesoro also intends to refine other crudes, like  
23 California heavy crudes and Canadian tar sands, at the Golden Eagle Refinery. Heavy crudes have  
24 high degrees of contaminants like sulfur, vanadium and nickel. Extraction and processing of heavy  
25 crudes can be energy intensive, since extracting heavy crudes often requires enhanced oil recovery  
26 techniques, and once extracted, heavy crudes require additional processing to meet fuel standards.  
27 Consequently, refining tar sands crude oil also poses unique air quality and public health risks  
28 compared to other crudes. According to the U.S. Geological Survey (“USGS”), tar sands crudes

1 contain more heavy metals and air pollutants than other more commonly used heavy crudes.  
2 Specifically, USGS states that “‘natural bitumen,’ the source of all Canadian tar sands-derived oils,  
3 contains 102 times more copper, 21 times more vanadium, 11 times more sulfur, 6 times more  
4 nitrogen, 11 times more nickel, and 5 times more lead than conventional heavy crude oil.” The  
5 process to remove sulfur and other contaminants can be corrosive. Corrosion of refinery equipment  
6 poses a major public health and safety threat, as seen in the August 2012 accident at the Chevron  
7 Richmond, California refinery, which was caused by corroded pipes due to increasing the sulfur  
8 content of the processed crude and which sent approximately 15,000 residents to local hospitals.  
9 Processing heavier tar sands is also more energy-intensive, emits more greenhouse gases and  
10 pollutants, and produces more coke (a solid coal-like product of petroleum refining) than other types  
11 of crude, which could result in increased fugitive dust emissions and higher exposure to toxic air  
12 contaminants such as lead.

13 40. Tesoro owns and operates the Avon and Amorco Marine Terminals, which are  
14 integral parts of Tesoro’s infrastructure for the transportation of crude oil feedstocks and finished  
15 petroleum products at the Refinery. These terminals are connected to the Refinery and related  
16 storage facilities by pipeline and have berths allowing cargo ships to dock while receiving and  
17 offloading materials. Various sources, including the EIR, confirm that these terminals are integral  
18 parts of the Refinery’s operations. Further, the air district permit held by the Golden Eagle Refinery  
19 regulating air pollutant emissions (“Title V permit”) sets limits on loading equipment and storage  
20 tanks at the Avon and Amorco Terminals, in addition to setting refinery limits. Tesoro  
21 Corporation’s SEC filings also refer to the terminals as key parts of the Golden Eagle Refinery’s  
22 transportation infrastructure.

23 41. In 2014, Tesoro applied to the CSLC for a new 30-year lease for the Avon Terminal  
24 for the stated purpose of “enabl[ing] the associated Refinery to continue to export and import  
25 petroleum products from tanker vessels that dock at the Avon Terminal.” (EIR at I-2.)

26 42. The Avon Terminal currently has two berths, only one of which is operational. Under  
27 the new lease, and to meet Marine Oil Terminal Engineering and Maintenance Standards  
28 (“MOTEMS”), Tesoro plans to construct a new berth (Berth 1A) and decommission the currently

1 operational berth (Berth 1). It will also renovate the existing approach way and remove the inactive  
2 berth (Berth 2.)

3 43. The Avon Terminal is connected to the Refinery by pipelines and a trackway, and  
4 Tesoro relies on the Terminal for importing crude oils to and exporting petroleum products from the  
5 Refinery. According to the Avon EIR:

6 The Avon Terminal primarily operates as an export facility, transferring  
7 petroleum products (including premium fuel oil, gas oil, diesel, and cutter stock)  
8 from designated product storage tanks at Tesoro's Golden Eagle Refinery  
9 (Refinery) via pipeline to tanker vessels berthed at the Avon Terminal.

10 Infrequently and as needed, the Avon Terminal imports Refinery feedstocks,  
11 which are transferred via pipeline from tanker vessels to upland storage tanks, and  
12 later transferred to the Refinery process units.

13 (EIR at 2-1.)

14 44. The Amorco Terminal serves primarily as an import facility, transferring crude oil  
15 feedstocks from tanker vessels to Tesoro's storage Tank Farm, from which it is piped to the  
16 Refinery. (Amorco FEIR 2-20.) It is connected by pipeline to Tesoro's Tank Farm, used to store  
17 crude oil feedstocks, and is also connected to the Refinery itself.

18 45. Increasing the quantities of lower quality crudes processed by the Refinery will  
19 necessarily increase the amounts of these crudes shipped through the Avon and Amorco Terminals.  
20 Tesoro depends on the Avon and Amorco Terminals for the import and export of petroleum products  
21 at the Golden Eagle Refinery. Transitioning to other means of transportation for petroleum products,  
22 such as rail, truck, or long-distance pipeline, would require the construction of additional  
23 infrastructure and investment of additional resources for the Refinery. As noted in the Avon and  
24 Amorco Terminal EIRs, Tesoro does not have pipeline infrastructure or access in place to meet  
25 current refinery throughputs and would need to construct additional pipelines and/or acquire  
26 additional pipeline access rights to create such infrastructure. (EIR 3-8 – 9, Amorco EIR 3-8 – 3-9.)  
27 Likewise, Tesoro would need to build up infrastructure to transport petroleum products by truck or  
28 rail. (*Ibid.*)

46. The shipping of finished products from the Refinery creates additional risks.

47. Cargo ships can have accidents causing them to spill their contents. The effects of

1 such spills are long-term and deadly. The 2007 Cosco Busan spill, which occurred when a cargo  
2 ship struck the San Francisco Bay Bridge, spilled over 1,400 barrels of oil (53,569 gallons) into the  
3 Bay, resulting in the closure of 50 area beaches, the deaths of thousands of sea birds, and the  
4 temporary closure of various fisheries. Oil spills have a wide range of lethal and sublethal impacts  
5 on marine species, including immediate and long-term effects. Direct impacts to wildlife from oil  
6 include behavioral alteration, reduced immunity to diseases and parasites, and death. The  
7 persistence of toxic subsurface oil can impact wildlife species and ecosystems for decades. As noted  
8 in the Avon EIR, “light oils, such as fuel oil, are acutely toxic and cause the greatest impacts to  
9 species that live in the upper water column, such as juvenile fish.” (EIR 4.2-41.) Heavy oil  
10 feedstocks, like tar sands, create risky spills as well. They are expensive and extremely difficult to  
11 remediate, as the oil sinks to the bottom of a waterway, requiring frequent dredging and is extremely  
12 sticky, making it difficult to clean off surfaces. A 2010 tar sands spill into Michigan’s Kalamazoo  
13 River has taken years to clean and cost more than \$1 billion to date.

14 48. Cargo vessels, such as oil tankers, can kill or injure marine mammals. The National  
15 Marine Fisheries Service has reported that between 2001 and 2010, nearly 50 whales off the  
16 California coast were struck by ships. Increased vessel traffic increases background noise in the  
17 ocean, which affects marine mammals dependent on vocalization for communication. Cargo ships  
18 are the largest contributors to vessel noise.

### 19 **The Approval Process**

20 49. In July 2009, Tesoro’s lease pertaining to the operation of the Avon Marine Terminal  
21 expired, and Avon Terminal has been operating under a month-to-month “holdover” since that  
22 expiration.

23 50. On April 2, 2014, CSLC issued a Notice of Preparation for the EIR evaluating the  
24 environmental effects of the Avon Marine Terminal lease renewal.

25 51. On September 29, 2014, CSLC released a Draft EIR with a 45-day public comment  
26 period.

27 52. On October 20, 2014, CSLC held a public meeting in Martinez, California, in order to  
28 hear oral testimony and obtain additional written comments.



1 effects of a project. (Cal. Code Regs., tit. 14, § 15002(a)(1) (the regulations at tit. 14, §§ 15000 *et*  
2 *seq.* are hereinafter cited as “CEQA Guidelines”).) Such disclosure ensures that “long term  
3 protection of the environment . . . shall be the guiding criterion in public decisions.” (Pub. Res. Code  
4 § 21001(d).)

5 59. The EIR is the “heart” of this requirement. (See *No Oil, Inc. v. City of Los Angeles*  
6 (1974) 13 Cal.3d 68, 84.) The EIR has been described as “an environmental ‘alarm bell’ whose  
7 purpose it is to alert the public and its responsible officials to environmental changes before they  
8 have reached ecological points of no return.” (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795,  
9 810.)

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

17 **FIRST CAUSE OF ACTION**  
18 **(Violation of CEQA - Inaccurate Project Description)**

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

21 62. CEQA requires that the EIR include an accurate, stable, and finite project description  
22 and that the nature and objective of a project be fully disclosed and fairly evaluated in the EIR.  
23 (CEQA Guidelines §§ 15124, 15126.)

24 63. Where a project involves changes to the crude oil feedstocks that will be handled by a  
25 facility, an EIR must disclose that information as part of an adequate project description.

26 64. The EIR failed to provide an accurate project description. The Avon Terminal is a  
27 key part of Tesoro’s transportation infrastructure and over the renewed 30-year lease the Terminal  
28 will handle imports of the crude oil feedstocks that will be processed at the Refinery and exports of



1 carry out its plans to receive and refine significantly increased quantities of lower quality oil  
2 feedstocks, like Bakken crude and tar sands, at the Refinery. Yet, the EIR focused solely on the  
3 effects of the Avon Marine Terminal and did not consider the effects of Tesoro’s entire integrated  
4 refinery complex, including the Refinery and Amorco Terminal, as part of its analysis.

5 65. By certifying an EIR which engaged in an improper piecemeal analysis of the Avon  
6 Terminal alone, CSLC committed a prejudicial abuse of discretion, failed to proceed in the manner  
7 required by law, and acted without substantial evidentiary support.

8 **THIRD CAUSE OF ACTION**  
9 **(Violation of CEQA – Failure to Analyze Cumulative Impacts)**

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

12 67. An EIR must discuss the cumulative impacts of a project when the project’s  
13 incremental effects are “cumulatively considerable.” (Pub. Res. Code § 21083(b)(2); CEQA  
14 Guidelines § 15130(a).) “Cumulatively considerable” means that “the incremental effects of an  
15 individual project are significant when viewed in connection with the effects of past projects, the  
16 effects of other current projects, and the effects of probable future projects.” (Pub. Res. Code §  
17 21083(b)(2); CEQA Guidelines § 15065(a)(3).)

18 68. The EIR at issue in this case failed to consider or discuss properly the Project’s  
19 cumulative impacts. Among its many shortcomings:

- 20 a. The EIR failed to evaluate the cumulative effects of Tesoro’s  
21 integrated refining operations, namely the Refinery, Amorco Terminal,  
22 and Avon Terminal operations;
- 23 b. The EIR failed to evaluate the cumulative effects of Tesoro’s refining  
24 operations, including terminal operations, in combination with the  
25 impacts of other refining operations occurring in the area, as well as  
26 the likely impacts of currently pending and proposed expansion  
27 projects at those refineries and of the new proposed crude oil terminal,  
28 the WesPac Energy Infrastructure Project, in Pittsburg, California;

1 c. The EIR failed to evaluate the cumulative effects of Tesoro’s refining  
2 operations in relation to other parts of the infrastructure needed to  
3 serve refinery operations (i.e., pipelines, trucks, and rail) in the area.

4 69. By certifying an EIR which failed to properly analyze cumulative impacts, CSLC  
5 committed a prejudicial abuse of discretion, failed to proceed in the manner required by law, and  
6 acted without substantial evidentiary support.

7 **FOURTH CAUSE OF ACTION**  
8 **(Violation of CEQA – Failure to Use Proper Baselines)**

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

11 71. CEQA and its implementing guidelines require that an EIR “include a description of  
12 the physical environmental conditions in the vicinity of the project, as they exist at the time the  
13 notice of preparation is published . . . from both a local and regional perspective. This environmental  
14 setting will normally constitute the baseline physical conditions by which a lead agency determines  
15 whether an impact is significant.” (CEQA Guidelines, § 15125(a).) The baseline is the starting point  
16 from which to measure whether an impact may be environmentally significant.

17 72. CSLC improperly relied on baselines which are not supported by substantial  
18 evidence, thereby skewing the analysis of the Project’s environmental effects. It made the following  
19 erroneous assumptions regarding baseline levels of activity related to Terminal operations:

- 20 a. CSLC used an average of vessel calls from the past ten years to calculate that  
21 the current level of ship traffic at the Avon Terminal is 124 vessel calls per  
22 year. (FEIR 2-31). This average included ship traffic from the period before  
23 2009, when the Avon Terminal had two operational berths. This is not an  
24 accurate reflection of current operating conditions, because in the period  
25 following 2009, the Avon Terminal had only one operational berth;
- 26 b. CSLC assumed, without providing any evidentiary support, that the maximum  
27 levels of ship traffic during the thirty-year lease for the Avon Terminal will be  
28 70 to 120 vessels per year. As explained in comments, the maximum levels of

1 ship traffic over the next thirty years will be far greater, and CSLC thus  
2 underestimated the environmental effects of the Project;

- 3 c. CSLC did not account for a change in the composition of feedstock, thus  
4 understating the increased risk and severity of harm from future operations  
5 compared to past and current operations;
- 6 d. In evaluating operational safety and oil spill risks, CSLC relied on a report  
7 relating to vessel accidents that is more than twenty years old, rather than  
8 current U.S. Coast Guard data, and did not provide accurate evidence of  
9 current-day operational risks;
- 10 e. In evaluating operational safety and oil spill risks, CSLC also erroneously  
11 chose to consider only oil spills of 238 barrels (10,000 gallons) or larger, even  
12 though commenters raised the issue that smaller spills are reported to the U.S.  
13 Coast Guard and can have significant adverse environmental effects;
- 14 f. In evaluating potential wildlife impacts, CSLC relied on out-of-date and  
15 incomplete sources, including a study from 1959, which fail to account for  
16 numerous species currently present in the Project area.

17 73. By certifying an EIR without an accurate baseline, CSLC committed a prejudicial  
18 abuse of discretion, failed to proceed in the manner required by law, and acted without substantial  
19 evidentiary support. Consequently, CSLC's findings that the Project's impacts are less than  
20 significant lack evidentiary support.

21 **FIFTH CAUSE OF ACTION**  
22 **(Violation of CEQA – Failure to Provide Information upon Which**  
23 **Conclusions Are Based)**

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

26 75. CEQA requires that an EIR provide an analytically complete and coherent  
27 explanation of its conclusions and provide sufficient analysis to decision-makers to allow them to  
28 properly evaluate environmental consequences. (*See* CEQA Guidelines § 15151.)



1 concerning a variety of significant environmental effects of the Project, including the Project's  
2 direct, indirect, and cumulative impacts. For example:

- 3 a. By using inaccurate and unsubstantiated estimates of current and projected  
4 levels of ship traffic over the thirty-year lease, CSLC underestimated the air  
5 quality impacts of continued Avon Terminal operations. CSLC assumes with  
6 no basis that the maximum levels of yearly ship traffic will be 70 to 120  
7 vessels per year. However, the throughput limits of the Refinery's and  
8 Terminals' Title V permit and the Avon Terminal throughput data set forth in  
9 the EIR show that the actual maximum levels of ship traffic would range from  
10 191 to 214 ship calls per year. Due to this fundamental error, CSLC's  
11 analysis underestimated the levels of volatile organic compounds, nitrogen  
12 oxides, and particulate matter that continued operation of the Avon Terminal  
13 would produce and erroneously concluded that significance thresholds will  
14 not be exceeded;
- 15 b. By failing to consider how changes in Refinery operations would impact  
16 Terminal operations, and vice versa, the EIR failed to adequately evaluate  
17 cumulative effects;
- 18 c. The EIR failed to consider the most recent air quality standards in evaluating  
19 the impacts of particulate matter pollution produced by the Avon Terminal,  
20 and did not make an adequate response to comments raising this issue;
- 21 d. The EIR omitted analysis of emissions from the on-shore tanks that store  
22 products for import and export purposes. Because lower quality crude oil  
23 feedstocks, such as Bakken crudes and tar sands, have particular chemical and  
24 physical characteristics, like high volatility, flammability, and elevated  
25 concentrations of toxic air pollutants and VOCs, the EIR must account for the  
26 emissions from on-shore tanks;
- 27 e. By tracking only spills of 238 barrels or greater, the EIR ignored the risks,  
28 direct impacts, and cumulative impacts of smaller spills. These spill risks can

1 be quite severe, given that a single gallon of oil can contaminate one million  
2 gallons of clean water, and one quart of oil can create an oil slick two acres in  
3 size;

- 4 f. By relying on a twenty-year-old report, rather than current U.S. Coast Guard  
5 data, the EIR failed to adequately account for oil spill risks;
- 6 g. Likewise, the EIR relied on outdated reports in evaluating the wildlife species  
7 currently present in the San Francisco Bay and failed to adequately represent  
8 the potential harms to wildlife from the Project.

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

13 **SEVENTH CAUSE OF ACTION**  
14 **(Violation of CEQA – Failure to Consider, Discuss, and Adopt Mitigation Measures**  
15 **to Minimize Significant Environmental Impacts)**

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

18 84. Identification and discussion of proposed mitigation measures are core requirements  
19 of CEQA. A basic purpose of CEQA is to “[p]revent significant, avoidable damage to the  
20 environment by requiring changes in projects through the use of alternatives or mitigation  
21 measures.” (CEQA Guidelines, § 15002(a)(3). See also CEQA Guidelines, § 15021(a)(1).)  
22 Government agencies “shall mitigate or avoid the significant effects on the environment.” (Pub. Res.  
23 Code § 21002.1(b).) “Formulation of mitigation measures should not be deferred until some future  
24 time.” (CEQA Guidelines, § 15126.4(a)(1)(B).)

25 85. The EIR failed to consider, discuss, or adopt adequate mitigation measures. For  
26 example:

- 27 a. The EIR does not have a detailed discussion of the mitigation measures that  
28 would be applied when the Project goes into effect;



1 DATED: April 17, 2015

Respectfully submitted,

2  
3 

4  
5 Irene V. Gutierrez (State Bar No. 252927)  
6 Trent W. Orr (State Bar No. 77656)  
7 EARTHJUSTICE  
8 50 California Street Ste. 500  
9 San Francisco, CA 94111  
10 Tel: 415-217-2000  
11 Fax: 415-217-2040  
12 Email: igutierrez@earthjustice.org,  
13 torr@earthjustice.org,

*Attorneys for Petitioners*

14  
15 Roger Lin (State Bar No. 248144)  
16 1904 Franklin Street, Suite 600  
17 Oakland, CA 94612  
18 Tel: 510-302-0430  
19 Fax: 510-302-0437  
20 Email: roger@cbeval.org

*Attorney for Petitioner,  
21 Communities for a Better Environment*

1 **VERIFICATION**

2 I, Vera Pardee, hereby declare:

3 I am Senior Counsel, Supervising Attorney in the Climate Law Institute of the Center for  
4 Biological Diversity, a non-profit corporation with offices in San Francisco, California and  
5 elsewhere in the United States. The facts alleged in the above Petition are true to my personal  
6 knowledge and belief.

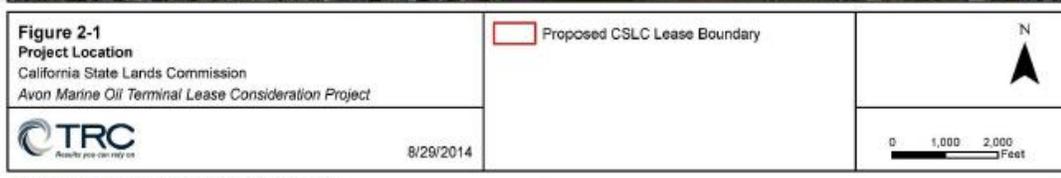
7 I declare under penalty of perjury under the laws of the State of California that the above is  
8 true and correct and that this verification is executed on this 16<sup>th</sup> day of April 2015 at San  
9 Francisco, California.

10 

11 \_\_\_\_\_  
12 VERA PARDEE

**APPENDIX A – PROJECT MAP**

*2.0 Project Description*



Source: Laser Credits. Image courtesy of USGS © 2014 Microsoft Corporation © 2014 Nokia © 2014

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# EXHIBIT A



April 16, 2015

VIA EMAIL

Mr. Mark Meier  
Chief Counsel  
California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825  
Mark.Meier@slc.ca.gov  
(916)574-1850

**Re: Notice of Intent to File California Environmental Quality Act Petition**

Dear Mr. Meier:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that the Center for Biological Diversity and Communities for a Better Environment (“Petitioners”) intend to file a verified petition for writ of mandate against the California State Lands Commission (“CSLC”), challenging CSLC’s certification of the Tesoro Avon Marine Terminal Environmental Impact Report (“EIR”) and approval of the terminal lease.

The petition will be filed in Contra Costa County Superior Court on April 17, 2015. The petition will allege that CSLC violated CEQA when conducting the analysis in the EIR and certifying the EIR. The petition will seek a writ of mandate directing CSLC to set aside the EIR and voiding the Avon Terminal Lease until CSLC complies with CEQA.

Sincerely,

Irene V. Gutierrez  
Trent W. Orr

Counsel for Petitioners

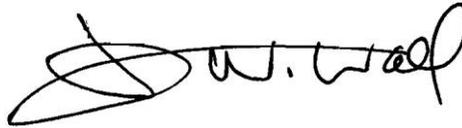
1 **PROOF OF SERVICE**

2 I am a citizen of the United States of America and a resident of the City and County of San  
3 Francisco; I am over the age of 18 years and not a party to the within entitled action; my business  
4 address is 50 California Street, Suite 500, San Francisco, California.

5 I hereby certify that on April 17, 2015, I served by U.S. First Class Mail one true copy of the  
6 document herein on the party listed below:

7 Mr. Mark Meier, Chief Counsel  
8 California State Lands Commission  
9 100 Howe Avenue, Suite 100 South  
10 Sacramento, CA 95825

11 I certify under penalty of perjury that the foregoing is true and correct. Executed on April 17,  
12 2015 in San Francisco, California.

13 

14 \_\_\_\_\_  
15 John W. Wall

# EXHIBIT B

1 Trent W. Orr (State Bar No. 77656)  
2 Irene V. Gutierrez (State Bar No. 252927)  
3 EARTHJUSTICE  
4 50 California Street, Ste. 500  
5 San Francisco, CA 94111  
6 Tel: 415-217-2000  
7 Fax: 415-217-2040  
8 Email: torr@earthjustice.org,  
9 igutierrez@earthjustice.org

10 Attorneys for Petitioners

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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA

CENTER FOR BIOLOGICAL DIVERSITY  
and COMMUNITIES FOR A BETTER  
ENVIRONMENT,

Petitioners,

vs.

CALIFORNIA STATE LANDS COMMISSION,

Respondent.

\_\_\_\_\_  
TESORO REFINING AND MARKETING  
COMPANY,

Real Party in Interest.

) Case No.:

)  
)  
) **NOTICE TO THE ATTORNEY**  
) **GENERAL OF THE STATE OF**  
) **CALIFORNIA OF PETITION FOR**  
) **WRIT OF MANDATE**

1 To the Attorney General of the State of California:

2 PLEASE TAKE NOTICE, under Public Resources Code § 21167.7 and Code of Civil  
3 Procedure § 388, that on April 17, 2015, the Center for Biological Diversity and Communities for a  
4 Better Environment (“Petitioners”), filed a verified petition for writ of mandate against the  
5 California State Lands Commission (“CSLC”), challenging CSLC’s certification of the Tesoro Avon  
6 Marine Terminal Environmental Impact Report (“EIR”) and approval of the terminal lease.

7 The petition alleges that CSLC violated CEQA when conducting the analysis in the EIR and  
8 certifying the EIR. The petition will seek a writ of mandate directing CSLC to set aside the EIR and  
9 void the Avon Terminal Lease until it complies with CEQA. A copy of the petition is attached  
10 hereto as Exhibit A.

11  
12 Sincerely,

13   
14

15 DATED: April 17, 2015

16 \_\_\_\_\_  
17 IRENE GUTIERREZ  
18 TRENT ORR  
19 EARTHJUSTICE  
20 50 California Street, Suite 500  
21 San Francisco, CA 94111  
22 T: (415) 217-2000  
23 F: (415) 217-2040

24 Attorneys for Petitioners  
25  
26  
27  
28

1 **PROOF OF SERVICE**

2 I, John W. Wall, hereby declare:

3 I am over the age of 18 years, not a party to this action, and employed by Earthjustice in the  
4 County of San Francisco, State of California. My business and mailing address is 50 California  
Street, Suite 500 San Francisco, California 94111.

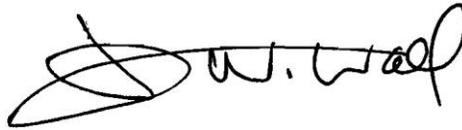
5 On April 17, 2015, I served a copy of the following documents described as:

6 **NOTICE TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA**  
7 **OF PETITION FOR WRIT OF MANDATE**  
8 **and**  
9 **VERIFIED PETITION FOR WRIT OF MANDATE**

10 by addressing the envelopes as set forth below, placing a true and correct copy(ies) of the above  
11 mentioned documents in a sealed envelope with postage affixed hereon fully prepaid in the United  
12 States mail following this organization's ordinary practices with which I am readily familiar.

13 Office of the Attorney General  
14 1515 Clay Street  
15 Oakland, CA 94612-0550

16 I declare under penalty of perjury of the laws of the California that the foregoing is true and correct  
17 and that this was executed on April 17, 2015, in San Francisco, California.

18 

19 \_\_\_\_\_  
20 John W. Wall