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Case Management Conference
2025-03-18 8:30AM in 10C

STK-CV-UWM-2024-0012095

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF SAN JOAQUIN**

17
18 SIERRA CLUB and CENTER FOR
BIOLOGICAL DIVERSITY,

19 Petitioners,

20 v.

21 PORT OF STOCKTON, BOARD OF PORT
22 COMMISSIONERS OF THE PORT OF
STOCKTON, and DOES 1-20,

23 Respondents.
24

25 BAYOTECH, INC. and DOES 21-40,

26 Real Parties in Interest.
27
28

Case No.

California Environmental Quality Act
(CEQA)

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE RELIEF**

Code Civ. Proc. §§ 1085, 1094.5;
Public Resources Code § 21000 et seq.

1 **INTRODUCTION**

2 1. This Verified Petition for Writ of Mandate and Complaint for Injunctive Relief
3 (“Petition”) challenges the August 19, 2024 decision of the Port of Stockton and the Board of Port
4 Commissioners of the Port of Stockton (together, the “Port”) to approve the BayoTech Hydrogen
5 Production and Dispensing Facility Project (“Project”) based on an Initial Study and Mitigated
6 Negative Declaration (“IS/MND”). Because there is a fair argument that the Project will have
7 significant adverse environmental impacts, an environmental impact report (“EIR”), instead of an
8 IS/MND, was required under the law.

9 2. The Port admits that the Project will have a wide range of environmental impacts—
10 including emissions of health-harming air pollutants and greenhouse gases and consumption of
11 fossil-fueled energy, among others—in a community that already bears the brunt of many polluting
12 facilities.

13 3. There are clean and dirty ways of producing hydrogen, and the Port acknowledges
14 that it has opted for the most polluting means: Using fossil gas (here, methane) as the feedstock that
15 is converted to hydrogen through a process known as steam-methane reforming. Hydrogen produced
16 in this way emits air pollutants that are harmful to human health as well as greenhouse gases that
17 contribute to climate change.

18 4. Furthermore, although the Project’s hydrogen could be delivered to customers via
19 electric or fuel-cell powered trucks that do not emit air pollutants, the Port does not commit to using
20 only these clean delivery methods. Instead, the Port states that the Project could rely on diesel trucks
21 that foul the air with toxic and carcinogenic pollutants as well as greenhouse gases.

22 5. These impacts will occur in a region already overburdened by pollution. Located at
23 the intersection of several freight cargo routes congested with dirty trucks and within the polluted
24 San Joaquin Valley Air Basin, the community surrounding the Port suffers from some of the worst
25 air quality in California and the country. Such perpetual and cumulative exposure to unhealthy air
26 can result in illness and death from lung and cardiovascular disease and other health problems.
27 Indeed, according to State-wide health data, the area around the Port is in the 96th percentile for
28 asthma, meaning asthma rates there are higher than 96 percent of all other parts of California.

1 6. In light of these threats, the City of Stockton General Plan, Stockton Climate Action
2 Plan, and Community Emissions Reduction Program seek to reduce community air pollution and
3 greenhouse gas emissions. Despite such efforts to address the public health threats associated with
4 air pollution, the Port failed to adequately analyze the Project’s air quality impacts and its
5 consistency with these plans.

6 7. The Port also failed to explain how the Project, which will increase greenhouse gas
7 emissions, supports California’s goals to reduce greenhouse gas emissions, achieve net zero
8 emissions, and promote deployment of clean, renewable energy resources, including clean hydrogen.

9 8. In addition to air quality and greenhouse gas impacts, the Port acknowledges that the
10 Project will depend on large amounts of fossil-fueled energy, including methane delivered by
11 existing pipelines. The Port further acknowledges that the hydrogen that it will produce, store, and
12 transport is a highly flammable and leakage-prone gas.

13 9. According to the California Department of Fish and Wildlife and members of the
14 public, there is a risk that the Project will adversely affect imperiled species such as Swainson’s
15 hawk (*Buteo swainsoni*) and giant garter snake (*Thamnophis gigas*), among others.

16 10. Despite the repeated attempts of the Sierra Club and the Center for Biological
17 Diversity (collectively, “Petitioners”) and other members of the public to alert the Port to the gravity
18 of these impacts and the deficiencies of its environmental review, the Port failed to ensure that the
19 IS/MND adequately disclosed, analyzed, and mitigated these and other foreseeable environmental
20 impacts. The Port’s IS/MND lacks substantial evidence to support many of its conclusions that the
21 Project’s potential adverse impacts on the environment will not be significant.

22 11. Since a fair argument exists that the Project will have significant adverse impacts to
23 air, climate, energy use, public safety, biological resources and other resources, and since the Port
24 failed to ensure that the IS/MND adequately disclosed, analyzed, and mitigated these impacts, the
25 Port’s approval of the Project violates the California Environmental Quality Act (“CEQA”), Public
26 Resources Code section 21000 et seq., and the CEQA Guidelines, 14 California Code of Regulations
27 section 15000 et seq.

1 will thwart the interest of members' interests in decreasing greenhouse gas emissions and other
2 health-harming pollutants, protecting their health and safety, as well as preserving the native,
3 endangered, imperiled, and sensitive species and habitats found in the area that will be detrimentally
4 impacted by the construction and operation of the Project. The Center submitted comments to the
5 Port which are now part of the administrative record of the Port's decision to approve the Project and
6 the IS/MND.

7 15. Respondent PORT OF STOCKTON is a California Special District and public entity
8 that provides warehousing, handling, and transportation activities enabling the movement of goods
9 by land and by sea. According to the August 20, 2024 Notice of Determination, the Port of Stockton
10 is both the project applicant and lead agency responsible for environmental review of the Project.

11 16. Respondent BOARD OF PORT COMMISSIONERS OF THE PORT OF
12 STOCKTON is the decision-making body of the Port of Stockton and is responsible for granting the
13 various approvals necessary for the Project and for ensuring that the Port has conducted an adequate
14 and proper review of the Project's environmental impact under CEQA. The Port Board and its
15 members are sued in their official capacities.

16 17. Petitioners do not know the true names and capacities, whether individual, corporate,
17 associate, or otherwise of Respondents DOE 1 through DOE 20, inclusive, and therefore sue said
18 Respondents under fictitious names. Petitioners will amend this Petition to show their true names
19 and capacities when they are known.

20 18. Petitioners are further informed and, on that basis, believe that BAYOTECH, INC., a
21 fossil hydrogen producer, is a Real Party in Interest insofar as it would develop and operate the
22 Project subject to the Port's actions pursuant to the Port's Project approvals and Project related
23 actions.

24 19. Petitioners do not know the true names and capacities, whether individual, corporate,
25 associate or otherwise, of Real Parties in Interest DOE 21 through DOE 40, inclusive, and therefore
26 sue said Real Parties under fictitious names. Petitioners will amend this Petition to show their true
27 names and capacities when they are known.

1 The maintenance and prosecution of this action will confer a substantial benefit upon the public by
2 protecting the public from environmental and public health harms alleged in this Petition. Petitioners
3 are acting as private attorneys general to enforce these public policies and prevent such harm.

4 **STATEMENT OF FACTS**

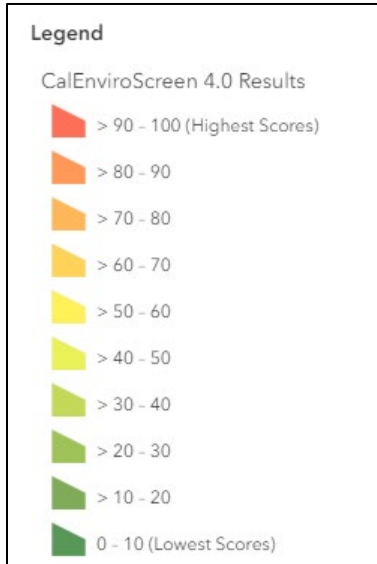
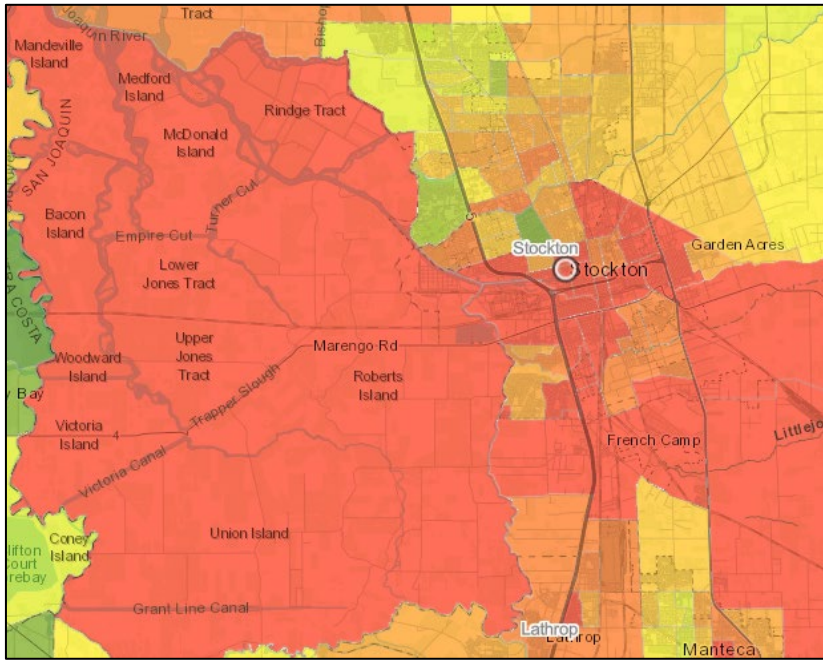
5 **I. Environmental Setting**

6 29. The Project proposes a fossil-methane hydrogen plant at the Port of Stockton, which
7 sits on the Sacramento/San Joaquin Delta and provides shipping access to the San Francisco Bay
8 approximately 75 miles away. The Port is located on key transportation corridors and has rail links
9 to the nation’s two largest freight railways. Heavily industrialized for decades, it encompasses a
10 former naval facility, as well as petroleum, coal, and biomass storage facilities.

11 30. The community near the Project site is a community of color housing mostly Black,
12 Asian, and Latino residents who are exposed to disproportionate environmental burdens.

13 31. People, neighborhoods, and other places that may have a significantly increased
14 sensitivity to air contaminants near the Project site include homes located 4,600 feet from the
15 proposed Project site and Washington Elementary School, located 7,200 feet from the proposed
16 Project site.

17 32. The health of these community members is already severely compromised by existing
18 Port operations and nearby transportation corridors and industrial activities. Under the California
19 Environmental Protection Agency’s CalEnviroScreen methodology, which identifies communities
20 that are disproportionately burdened by multiple sources of pollution, neighborhoods nearest the Port
21 rank among the most burdened by multiple sources of pollution in the State of California. As shown
22 below, compared to other census tracts in California, the tract adjacent to the Port ranks in the 99th
23 percentile for overall pollution, the 91st percentile for diesel particulate matter (PM) air pollution,
24 and the 83rd percentile for toxic chemical releases into the air. As a result, residents around the Port
25 have among the highest asthma and cardiovascular disease incidences in the entire State. The
26 CalEnviroScreen figure below demonstrates the dire pollution burden that already exists in and
27 around the City of Stockton and the Port.



Census Tract: 6077000801 (Population: 7,624)
 The results for each indicator range from 0-100 and represent the percentile ranking of census tract 6077000801 relative to other census tracts.

Overall Percentiles

CalEnviroScreen 4.0 Percentile	99
Pollution Burden Percentile	99
Population Characteristics Percentile	92

Exposures

Ozone	47
Particulate Matter 2.5	58
Diesel Particulate Matter	91
Toxic Releases	83
Traffic	63
Pesticides	70
Drinking Water	42
Lead from Housing	52

Environmental Effects

Cleanup Sites	90
Groundwater Threats	97
Hazardous Waste	77
Impaired Waters	99
Solid Waste	85

Sensitive Populations

Asthma	96
Low Birth Weight	82
Cardiovascular Disease	89

Socioeconomic Factors

Education	87
Linguistic Isolation	71
Poverty	84
Unemployment	53
Housing Burden	59

33. Because of these alarming pollution levels, the California Air Resources Board has directed investments to the most polluted parts of the City of Stockton for air quality improvement resources and attention under Assembly Bill 617, which seeks to reduce air pollution exposure in the California’s disadvantaged communities.

34. The locally elevated pollution burden also reflects, in part, that the City of Stockton is situated within one of the most polluted air basins in the United States. San Joaquin Valley Air Basin has been designated by the U.S. Environmental Protection Agency as an extreme nonattainment area

1 for federal ozone standards and a severe nonattainment area for PM standards. These standards
2 provide air pollution thresholds designed to protect human health, and a nonattainment classification
3 means that the area has failed to meet even the minimum thresholds needed to protect human health.

4 35. The Project is located near two other facilities that already adversely impact air
5 quality and human health. Immediately adjacent to the Project site is the Pelican Renewables, LLC
6 facility which includes an ethanol biofuel production plant and a proposed carbon capture and
7 sequestration project. The Pelican Renewables facility also stores hazardous chemicals including
8 sodium hydroxide and sodium bisulfite, both hazardous corrosives. Additionally, the DTE Energy
9 biomass plant, known as Stockton Biomass, is located less than a mile from the Project site.
10 According to the San Joaquin Valley Air Pollution and Control District, the DTE facility relies on
11 both biomass and methane for its operations, and the facility is one of the largest sources of air
12 pollution within the City of Stockton.

13 36. The Project site is also near sensitive estuary and marine habitat, including the
14 Sacramento/San Joaquin Delta and the San Joaquin River, which is located approximately 485 feet
15 west of the Project site. Both the Sacramento/San Joaquin Delta ecosystem and San Joaquin River
16 provide habitat for species such as Swainson’s hawk and giant garter snake that are considered at
17 risk of extinction under state and federal law, as well as numerous migratory birds protected under
18 the federal Migratory Bird Treaty Act such as the California gull, Belding’s savannah sparrow, and
19 Bullock’s oriole, among others.

20 **II. The Project and Environmental Impacts**

21 37. The Project proposes to produce hydrogen by reacting fossil methane, a greenhouse
22 gas, with high temperature steam and to transport the hydrogen via truck trailer throughout the
23 region for a wide range of uses. The IS/MND acknowledges that the Project could cause an array of
24 adverse environmental impacts to air quality, climate, energy use, and biological resources, among
25 other impacts.

26 38. For example, the Port admits that its steam-methane-reforming process will emit air
27 pollutants that pose risks to human health—including but not limited to nitrous oxides (NOx), PM,
28 and air toxics—as well as significant levels of greenhouse gases. The IS/MND explains that these

1 emissions would occur on a virtually continuous basis as the Project would operate to produce
2 hydrogen 24 hours per day, 7 days per week, 350 days a year.

3 39. The Port acknowledges that numerous scientific studies have linked exposure to
4 airborne PM to increased severity of asthma attacks, development of chronic bronchitis, decreased
5 lung function in children, respiratory and cardiovascular hospitalizations, and even premature death
6 in people with existing heart or lung disease. It explains that NO_x also harms human health and that
7 much of the PM in the region is secondary PM, formed in atmospheric reactions of NO_x. Similarly,
8 the Port acknowledges that ozone—which results from emissions of NO_x and hydrocarbon
9 compounds reacting in the presence of sunlight—is considered a regional pollutant that can
10 adversely affect the human respiratory system and aggravate cardiovascular disease.

11 40. According to the IS/MND, the methane used to produce the Project’s hydrogen will
12 be supplied by Pacific Gas and Electric Company via existing Port pipelines that will not be
13 upgraded or modified to support the Project.

14 41. The Port acknowledges that there are clean ways to produce hydrogen, including the
15 creation of hydrogen from water (rather than methane) via electrolysis that is powered by renewable
16 energy like solar and wind power. As Petitioners explained, this method of hydrogen production
17 does not emit harmful air pollutants like PM, NO_x, and air toxics and emits fewer greenhouse gases.

18 42. According to the Port, the Project’s hydrogen would be stored at the Project site and
19 distributed to consumers by trucks, a large portion of which could run on diesel fuel and emit toxic
20 and carcinogenic PM and other health-harming pollutants.

21 43. The Port admits that there are other ways to transport the Project’s hydrogen which
22 do not emit these pollutants, such as by trucks that are powered by electricity or hydrogen fuel cells.

23 44. As Petitioners repeatedly explained to the Port, the Project’s emissions will affect
24 people who live and work near the Port and already experience high levels of air pollution as a result
25 of Port operations and other polluting activities in the region.

26 45. The Port also acknowledges that hydrogen is highly flammable and an indirect
27 greenhouse gas and that there is a risk that the Project’s hydrogen may leak into the atmosphere
28 during its production, storage and transport.

1 46. In addition, the Port explains that the Project’s construction and operation will use
2 energy produced from fossil fuels and could affect biological resources, such as imperiled bird and
3 reptile species, among others.

4 47. Finally, while the Port showcases the end uses of hydrogen that do not emit air
5 pollution (such as use in hydrogen fuel cells), it admits that hydrogen produced by the Project could
6 be used by any sector where there is demand, including at polluting facilities like oil refineries.

7 **III. The Port’s Environmental Review Process and Project Approval**

8 48. On or around May 30, 2023, the Port circulated a Notice of Intent to adopt a
9 Mitigated Negative Declaration along with a Draft IS/MND for the Project.

10 49. Government agencies, petitioners, and other members of the public submitted
11 comments to the Port highlighting numerous deficiencies in the Draft IS/MND.

12 50. Petitioners and other commenters noted that the Draft IS/MND failed to adequately
13 describe the Project, its environmental setting, and the need for the Project. Petitioners also
14 explained that the Draft IS/MND failed to describe and analyze various environmental impacts
15 including, but not limited to, air quality, greenhouse gas emissions, energy, public safety, biological
16 resources, and cumulative impacts. For example:

- 17 a. Regarding the project description, Petitioners noted, among other deficiencies, that
18 the Draft IS/MND’s description did not disclose current conditions of the Port’s gas
19 infrastructure pipelines for conveying methane from Pacific Gas and Electric
20 Company’s supply pipeline to the Project.
- 21 b. With respect to the need for the Project, among other concerns, Petitioners noted that
22 the section of the Draft IS/MND discussing the need for the Project failed to
23 acknowledge that using fossil fuels to produce hydrogen locks in dependence on this
24 polluting resource, harming communities. Petitioners also noted that the Project
25 misleadingly touts clean end uses of hydrogen when the Project will produce dirty
26 hydrogen from fossil methane and therefore not support the State’s decarbonization
27 goals.

- 1 c. Regarding air quality impacts, Petitioners asserted that estimates of air emissions
2 impacts, and the assumptions underlying those estimates, were not adequately
3 disclosed or mitigated. For example, they explained that the Draft IS/MND’s
4 projection of emissions from vehicles lacked support because it was based on
5 uncertain and flawed predictions of daily and annual vehicle traffic at the Project site
6 and vehicle trip lengths, among other deficiencies.
- 7 d. Petitioners also noted that the Draft IS/MND did not consider air quality impacts to
8 nearby environmental justice communities that are already exposed to severe air
9 pollution.
- 10 e. Petitioners asserted that the Draft IS/MND failed to adequately assess the Project’s
11 health risks from emissions of particulate matter, ammonia, and other health-harming
12 pollutants, even though the San Joaquin Valley is one of the nation’s most polluted
13 regions and CalEnviroScreen data demonstrates that residents near the Project site
14 endure a pollution burden heavier than most of the State of California.
- 15 f. With respect to greenhouse gas emissions, Petitioners questioned, among other issues,
16 the Port’s decision to use a greenhouse gas significance threshold that was outdated
17 and from an air district in another area of the state.
- 18 g. Petitioners also asserted that the Port’s greenhouse gas emissions estimates were
19 unsupported and further explained that the Draft IS/MND lacked adequate
20 greenhouse gas mitigation measures in addition to other flaws. For instance,
21 Petitioners stated that the Project’s proposed mitigation based on purchase of so-
22 called “renewable natural gas” credits through a “book-and-claim” mechanism lacked
23 support. Petitioners explained that because this proposed mechanism does not ensure
24 real, quantifiable, and verifiable emissions reductions, the Project’s significant
25 greenhouse gas emissions will not be mitigated.
- 26 h. Regarding energy impacts, among other issues, Petitioners expressed concern that the
27 Draft IS/MND did not adequately analyze or mitigate its energy use and that it
28

1 ignored significant effects from the Project’s reliance on fossil fuels rather than
2 renewable energy sources.

3 i. Regarding public safety, in addition to health-harming impacts from the Project’s air
4 pollution, Petitioners raised concerns about the fact that hydrogen is highly
5 flammable and prone to leakage and noted that information about a community
6 hazard analysis was not provided in the Draft IS/MND. Petitioners also noted the
7 Draft IS/MND’s failure to disclose information about the condition of the gas pipeline
8 that would deliver methane to the Project.

9 j. Regarding impacts to biological resources, Petitioners asserted among other concerns
10 that the Draft IS/MND did not disclose or mitigate potential adverse impacts to the
11 San Joaquin River, historic wetlands, and special status wildlife and plant species
12 located within and near the Project area. According to Petitioners’ comments, the
13 Draft IS/MND assumed without justification that the Project would not impact
14 migrating bird species. They also noted that the Project area is along the Pacific
15 Flyway, an established air route of waterfowl and other birds migrating between
16 wintering grounds in Central and South America and nesting grounds in the Pacific
17 Coast states and provinces of North America.

18 k. With respect to cumulative impacts, Petitioners also stated that the Draft IS/MND
19 failed to evaluate the Project’s cumulative environmental impacts when added to
20 emissions from existing Port operations and nearby closely related Projects such as
21 the Pelican Renewables and DTE Energy facilities.

22 51. In addition to Petitioners’ comments on biological impacts, the California Department
23 of Fish and Wildlife (“DFW”) expressed numerous serious concerns about impacts to biological
24 resources and argued that such impacts would be significant. Among other impacts, DFW explained
25 that artificial light can disrupt species’ circadian rhythms, photoperiod cues for communication,
26 foraging, thermoregulation behaviors, and feeding patterns for species like Swainson’s hawk and
27 giant garter snake, both state-listed threatened species. DFW also commented that several of the
28

1 Draft IS/MND’s biological mitigation measures were voluntary, vague, and likely insufficient to
2 avoid potentially significant impacts to imperiled species.

3 52. Repeatedly across various comment letters, Petitioners and other members of the
4 public stated that the IS/MND lacked substantial evidence to support its conclusions and requested
5 that the Port conduct a full environmental analysis through an EIR, given that the record
6 demonstrates a fair argument that the Project may result in significant environmental impacts.

7 53. On or around March 27, 2024, the Port issued a Recirculated Draft IS/MND and
8 responded to comments on the Draft IS/MND.

9 54. Petitioners, along with several other public agencies and community members,
10 submitted comments to the Port concerning the analysis in the Recirculated Draft IS/MND.

11 55. Petitioners asserted that the Recirculated Draft IS/MND remained substantially the
12 same as it was originally proposed, despite requests from the public for a more robust analysis. They
13 asserted concerns about the Port’s deficient characterization of the Project and the need for improved
14 analysis of air quality, greenhouse gas, energy, public safety, biological resource, and cumulative
15 impacts, among others. For example:

- 16 a. With respect to project description and need, Petitions reasserted their concerns that
17 the Port failed to describe key aspects of the Project and the need for the Project,
18 given that it relies on fossil fuels and will emit pollutants to the detriment of nearby
19 residents and attainment of California’s clean energy and climate goals.
- 20 b. With respect to air quality, Petitioners highlighted, among other issues, that the
21 Recirculated Draft IS/MND lacked critical information about the trucks that will be
22 used to transport hydrogen from the Project. As a result, Petitioners explained, it was
23 impossible for the Port to accurately assess or estimate operational air quality
24 impacts.
- 25 c. On greenhouse gas emissions, Petitioners noted that the Recirculated Draft IS/MND
26 failed to address the Draft IS/MND’s flawed analysis of the Project’s greenhouse gas
27 emissions and the proposed mitigation measures.

- 1 d. Among other issues, Petitioners again questioned the Port’s greenhouse gas emissions
2 significance threshold and reliance on the purchase of book-and-claim renewable
3 natural gas credits to mitigate the Project’s greenhouse gas emissions.
- 4 e. With respect to energy impacts, Petitioners, among other issues, repeated their prior
5 concerns regarding the Project’s reliance on fossil fuels and also asserted that the
6 Project had failed to disclose its impact on countywide methane gas use.
- 7 f. Regarding public safety concerns, Petitioners repeated the prior concerns, among
8 others, about the lack of information and analysis regarding community safety and
9 emergency responses during project operations. They also stated that the Project
10 failed to properly analyze and disclose the risk of methane gas supply pipeline leaks
11 and other associated safety risks.
- 12 g. Regarding biological resources, Petitioners reasserted concerns about impacts to
13 imperiled species and their habitat and noted that the Port had not sufficiently
14 addressed issues raised by the Department of Fish and Wildlife.
- 15 h. Regarding cumulative impacts, Petitioners reasserted concerns about impacts from
16 existing Port operations and closely related nearby facilities.

17 56. On June 6, 2024, the Port issued a Final IS/MND responding to public comments on
18 the Recirculated Draft IS/MND.

19 57. On or around July 11, 2024, the Port’s Board of Commissioners issued a notice that it
20 would consider approval of the Project and the Final IS/MND at a Board of Port Commissioners
21 meeting on July 15, 2024.

22 58. On July 15, 2024, Petitioners submitted comments to the Port on the Final IS/MND.
23 These comments highlighted the Final IS/MND’s failure to correct errors identified by comments on
24 the Recirculated IS/MND and failure to comply with CEQA and other laws. As Petitioners noted in
25 their comments, the Final IS/MND continued to fail to adequately disclose and analyze the Project’s
26 significant impacts on the environment, including but not limited to the Project’s air quality,
27 greenhouse gas emissions, energy, public safety, biological resource, and cumulative impacts.
28 Petitioners once again detailed how the IS/MND failed to consider, discuss, or adopt adequate,

1 feasible, and enforceable mitigation measures to minimize the Project’s significant and detrimental
2 impacts. For example:

- 3 a. With respect to air quality, Petitioners noted, among other deficiencies, that the Final
4 IS/MND failed to explain the basis for its adjustment of the particulate matter
5 estimates and the assumptions that it was making about the types of trucks that would
6 be used to deliver the Project’s hydrogen.
- 7 b. Petitioners also emphasized again that the Final IS/MND’s flawed analysis of air
8 quality health risks, despite the Project’s location in an environmental justice
9 community. According to Petitioners, this omission was reflected in the Port’s
10 inadequate health risk assessment which fails to fully quantify emissions of toxic air
11 contaminants and assess those impacts on area residents.
- 12 c. With respect to greenhouse gas emissions, Petitioners once again raised concerns
13 about the proposed greenhouse gas mitigation, among other problems. Also, as an
14 attachment to Petitioners’ comments on the Final IS/MND, Petitioners included an
15 expert report from the former chief of the Low Carbon Fuel Standard program at the
16 California Air Resources Board, a program that seeks to lower greenhouse gas
17 emissions from California’s transportation fuels. The expert found that the Final
18 IS/MND did not adequately explain how the Project’s greenhouse gas emissions will
19 be mitigated by the purchase of book-and-claim renewable natural gas credits. Per the
20 expert’s conclusion, Petitioners explained that the Port’s reliance on such renewable
21 natural gas credits does not ensure real, additional, verifiable, or enforceable
22 greenhouse gas reductions. Petitioners noted that the Port’s modification to the
23 greenhouse gas mitigation measure did not address these concerns.
- 24 d. Petitioners also asserted that the Port failed to explain how the Project, which will
25 increase greenhouse gas emissions, was consistent with and would support attainment
26 of California’s climate, clean energy, and greenhouse gas reduction goals.

- 1 e. Petitioners also raised concerns that the Project failed to properly analyze consistency
2 with provisions of applicable land use plans such as the Stockton General Plan,
3 Stockton Climate Action Plan, and Community Emissions Reduction Program.
- 4 f. Regarding energy use, Petitioners reasserted their concerns given the Final IS/MND's
5 failure to address the problems asserted in prior comments.
- 6 g. Regarding public safety, Petitioners reasserted their concerns given the Final
7 IS/MND's failure to address the problems asserted in prior comments.
- 8 h. Regarding biological resources, Petitioners reasserted their concerns given the Final
9 IS/MND's failure to address the problems asserted in prior comments by either
10 Petitioners or DFW. Notably, Petitioners stated that the Port did not directly respond
11 to comments from DFW in the Recirculated IS/MND, leaving no opportunity for the
12 public to comment on the adequacy of the Final IS/MND's changes to mitigation
13 measures for biological resources.
- 14 i. Among several deficiencies, Petitioners noted that, with respect to impacts to
15 Swainson's hawk and giant garter snake, the Final IS/MND merely acknowledges
16 that there is a minor potential for the species to use the site but does not evaluate the
17 evidence presented by DFW that the Project would significantly impact these species.
- 18 j. Petitioners also noted that the Final IS/MND's changes to its artificial light mitigation
19 measures were insufficient and unsupported by substantial evidence.
- 20 k. With respect to cumulative impacts, Petitioners reasserted their concerns given the
21 Final IS/MND's failure to address the problems asserted in prior comments.

22 59. On July 15, 2024, the Board of Port Commissioners held a public hearing at which it
23 considered approval of the Project and the Final IS/MND.

24 60. Petitioners submitted oral comments at the July 15 public hearing, reiterating their
25 concerns from their written comments on the Final IS/MND. Petitioners were joined by other
26 members of the public who similarly urged the Port to conduct a full EIR for the Project.

27 61. At the July 15, 2024 public hearing, the Port's counsel alleged through statements to
28 the Board of Port Commissioners that Petitioners' comment letter, submitted prior to the July 15

1 hearing and prior to any vote on Project approvals or certification of the IS/MND, was untimely and
2 disallowed.

3 62. The Board of Port Commissioners voted to continue the public hearing to allow the
4 Board to further consider the public comments that had been submitted.

5 63. On July 31, 2024, counsel for Petitioners submitted a letter to the Port clarifying that
6 per Public Resources Code section 21177, comments alleging noncompliance with CEQA can be
7 “presented to the public agency orally or in writing by any person during the public comment period
8 provided . . . or prior to the close of the public hearing on the project before the issuance of a notice
9 of determination.” The letter explained that all of Petitioners’ public comments were submitted prior
10 to the close of the public hearing for this Project.

11 64. On August 15, 2024, as part of the agenda for an August 19, 2024 Board of Port
12 Commissioners meeting, the Port publicly released an Interoffice Memo responding to public
13 comments on the Final IS/MND.

14 65. On August 16, 2024, Petitioners submitted written comments in response to the
15 Interoffice Memo. Petitioners asserted that the Port’s Interoffice Memo confuses the applicable law
16 and incorrectly asserts that the Port has conducted an adequate environmental review for the Project.
17 Moreover, the Port’s responses to public comments did not resolve any of the many issues identified
18 in Petitioners’ prior comments and even contradicted its own prior rationale with respect to
19 particulate matter emissions. Petitioners also alerted the Port that its proposed Mitigation Monitoring
20 and Reporting Program (“MMRP”) had not been made available for public review and comment,
21 despite the fact that a July 15, 2024 staff report, released in advance of the July 15, 2024 public
22 hearing, stated that it was attached to that document. Petitioners requested clarification from the Port
23 as to which document includes the complete contents of the final MMRP. Further, Petitioners
24 requested that the Port publish the MMRP and provide the public with the opportunity to comment
25 on it.

26 66. On August 19, 2024, the Board of Port Commissioners held its continued public
27 hearing on the Project.

1 direct physical change in the environment or a reasonably foreseeable indirect physical change in the
2 environment” including “an activity that involves the issuance of a lease, permit, license, certificate,
3 or other entitlement for use by one or more public agencies.” (Pub. Resources Code § 21065.)

4 73. With a limited number of exceptions, it is the responsibility of the lead agency to
5 prepare an EIR for all projects that may have a significant effect on the environment. Significant
6 effect on the environment means a “substantial, or potentially substantial, adverse change in the
7 environment.” (Pub. Resources Code § 21068.) An EIR is a detailed statement describing, among
8 other items, all of the proposed project’s significant environmental effects, mitigation measures to
9 minimize these significant effects, and alternatives to the project. (Pub. Resources Code §§ 21061,
10 21100.)

11 74. CEQA requires a mandatory finding of significance where, among other effects, (1)
12 the project has the potential to reduce the number or restrict the range of an endangered, rare, or
13 threatened species; (2) the project has the potential to achieve short-term environmental goals to the
14 disadvantage of long-term environmental goals; (3) the project impacts may be cumulatively
15 considerable; and/or (4) the environmental effects of the project will cause substantial adverse
16 effects on human beings, either directly or indirectly. (CEQA Guidelines § 15065(a).)

17 75. The lead agency typically prepares a preliminary report called an “Initial Study” to
18 identify a project’s potential environmental effects and to determine whether an EIR must be
19 prepared. (*See* CEQA Guidelines § 15365.) The purpose of the Initial Study is to provide the lead
20 agency with adequate information regarding a project to determine the appropriate environmental
21 review document.

22 76. If the agency determines that the proposed project will not have a significant effect on
23 the environment, it must adopt a “Negative Declaration.” (Pub. Resources Code § 21080(c).) A
24 Negative Declaration describes the reasons why the proposed project will not have a significant
25 effect on the environment and why an EIR is not required. (CEQA Guidelines § 15371.) A Negative
26 Declaration must contain, among other items, a description of the proposed project and a proposed
27 finding that the project will not have a significant effect on the environment. (*Id.* at § 15071.)
28

1 82. In carrying out its review and approval activities with respect to the Project, the Port
2 was, and is at all times, mentioned herein under a mandatory duty to comply with the provisions of
3 CEQA and the CEQA Guidelines.

4 **I. Failure to Prepare an Environmental Impact Report**

5 83. An EIR must be prepared if substantial evidence in the record supports a fair
6 argument that a project may have a significant effect on the environment.

7 84. Here, substantial evidence in the record supports a fair argument that the Project may
8 have a significant effect on the environment notwithstanding proposed mitigation measures. An EIR
9 is necessary to evaluate the Project’s impacts on the environment, including, but not limited to, the
10 Project’s air quality, greenhouse gas emissions, energy, public safety, and biological resource
11 impacts, as well as cumulative impacts.

12 85. In addition, CEQA requires the Port to issue a mandatory finding of significance
13 because the Project (1) has the potential to reduce the number and/or restrict the range of listed
14 species, (2) results in a cumulatively considerable environmental effect, (3) undermines long-term
15 climate and air quality goals, and (4) directly or indirectly causes substantial adverse effects on
16 human beings. Accordingly, CEQA demands a mandatory finding of significance and the
17 preparation of an EIR.

18 86. The Port’s failure to prepare an EIR is not supported by substantial evidence and
19 represents a failure to proceed in the manner required by law.

20 **II. Inadequate Analysis of Project’s Environmental Impacts**

21 87. CEQA requires that the Port’s IS/MND provide sufficient analysis to support a
22 finding that the Project would not have a significant effect on the environment. However, the
23 IS/MND’s analysis of the Project’s potential environmental impacts, including, but not limited to,
24 the Project’s air quality, greenhouse gas emissions, energy, public safety, and biological resource
25 impacts, is inadequate.

26 88. The IS/MND also fails to adequately analyze the Project’s consistency with
27 California’s climate, clean energy, and greenhouse gas reduction goals and mandates.
28

1 89. The Port's inadequate evaluation of the Project's environmental impacts is not
2 supported by substantial evidence and represents a failure to proceed in the manner required by law.

3 **III. Inadequate Mitigation of Significant Environmental Impacts**

4 90. CEQA requires that the IS/MND must include mitigation measures that reduce the
5 Project's identified significant environmental effects to the point where clearly no significant effects
6 on the environment would occur.

7 91. The IS/MND, however, does not include mitigation measures sufficient to reduce the
8 Project's significant environmental impacts, including, but not limited to, the Project's air quality,
9 greenhouse gas emissions, energy, public safety, and biological resource impacts.

10 92. The effectiveness of the proposed mitigation measures is not supported by substantial
11 evidence. The Port's failure to adopt mitigation measures that would clearly reduce the Project's
12 identified environmental effects to a less than significant level represents a failure to proceed in the
13 manner required by law.

14 **IV. Failure to Disclose the Mitigation Monitoring and Reporting Program**

15 93. CEQA requires the Port to prepare a Mitigation Monitoring and Reporting Program
16 that specifically describes how the adopted mitigation measures will be implemented. The Port failed
17 to disclose and accept public comment on the Project's Mitigation Monitoring and Reporting
18 Program document. This failure deprived the public of an opportunity to understand and comment
19 on the Project's proposed Mitigation Monitoring and Reporting Program.

20 **V. Inadequate Project Description and Environmental Setting**

21 94. Under CEQA, a MND must include a complete description of the proposed project
22 and environmental setting. Here, however, the IS/MND omits necessary components of the Project
23 and affected environment. The environmental setting, for example, is deficient for numerous
24 reasons, including, but not limited to, its omission of nearby related projects and failure to disclose
25 current conditions of the Port of Stockton gas infrastructure pipelines. Moreover, the IS/MND does
26 not adequately show why the Project is necessary to achieve the IS/MND's stated Project objectives,
27 especially when compared to less harmful alternatives. The IS/MND also fails to adequately disclose
28 and analyze the environmental context in both the immediate and regional setting.

1 **V. Failure to Analyze Consistency with Land Use Plans**

2 95. Under CEQA, lead agencies must analyze whether a proposed project is inconsistent
3 with applicable land use policies, such as the governing general plan. The IS/MND fails to
4 adequately analyze whether the Project is inconsistent with applicable land use plan policies adopted
5 for the purpose of avoiding or mitigating environmental impacts. The IS/MND thereby fails to alert
6 the public and decision-makers of the numerous inconsistencies of the Project with the Stockton
7 General Plan, Community Emissions Reduction Program, and Stockton Climate Action Plan and
8 fails to effectively mitigate the impacts of the Project.

9 96. Fossil-fuel derived hydrogen, which this Project proposes to produce, prolongs the
10 use of fossil fuels and diverts attention and resources from clean renewable energy. However, the
11 IS/MND does not explain how fossil fuel-derived energy sources are compatible with policies that
12 seek to reduce greenhouse gas emissions. Both the Community Emissions Reduction Program and
13 the Stockton Climate Action Plan contain overarching goals and targets designed to alleviate the
14 pollution and health problems burdening the community. The IS/MND does not describe whether the
15 Project is consistent with these plans nor does it evaluate whether the Project's anticipated
16 construction and operational impacts would advance or obstruct the plans' air quality goals or its
17 emissions reductions targets for particulate matter and cancer risk exposure.

18 **VI. Adoption of Inadequate Findings**

19 97. The Port violated CEQA by adopting inadequate findings. In many instances the
20 Project's findings do not provide the reasons or analytic route from facts to conclusions, as required
21 by law. For example, the Port's findings fail to explain how the Project would not have a significant
22 effect on the environment. The Port's findings also fail to explain the basis for adopting the
23 Mitigation Monitoring and Reporting Program, which was not disclosed to the public, or how that
24 program would ensure compliance with mitigation measures, lease measures, or standard conditions
25 to avoid or lessen significant effects on the environment.

26 98. For all of the above reasons, the Port prejudicially abused its discretion and failed to
27 comply with the law.

28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitions pray for judgment as follows:

3 1. For alternative and peremptory writs of mandate directing Respondents to vacate and
4 set aside their approval of the Project;

5 2. For alternative and peremptory writs of mandate directing Respondents to vacate and
6 set aside the IS/MND, related findings, and Mitigation Monitoring and Reporting Program for the
7 Project;

8 3. For alternative and peremptory writs of mandate directing the Respondents to comply
9 with the requirements of CEQA and the CEQA Guidelines and take any other action required by
10 Public Resources Code Section 21168.9 or otherwise required by law;

11 4. For a temporary stay, temporary restraining order, and preliminary and permanent
12 injunctions restraining Respondents and Real Parties in Interest and their representative agents,
13 servants, and employees, and all others acting in concert with Respondents or Real Parties in
14 Interest on their behalf, from taking any action to implement the Project pending full compliance
15 with the requirements of CEQA and the CEQA Guidelines;

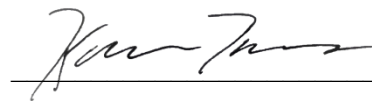
16 5. For costs of the suit;

17 6. For Petitioners' attorneys' fees under Code of Civil Procedure Section 1021.5 and
18 other applicable authority; and

19 7. For such other and future relief as the Court deems just and proper.
20
21
22
23

24 DATED: September 19, 2024.

Respectfully submitted,

25 
26 _____

27 Katrina A. Tomas (State Bar No. 329803)
28 Nina Robertson (State Bar No. 276079)
EARTHJUSTICE

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Attorneys for Petitioner CENTER FOR
BIOLOGICAL DIVERSITY

1 **VERIFICATION**

2 **STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

3 I, Eric Parfrey, am a member of Sierra Club, one of the Petitioners to this action, and I have
4 been authorized to make this verification on behalf of Sierra Club. I have read the foregoing Petition
5 for Writ of Mandate and Complaint for Injunctive Relief and know its contents. The matters stated in
6 the foregoing document are true based on my own knowledge, except as to those matters stated on
7 information and belief, and as to those matters I believe them to be true.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing
9 is true and correct.

10 Executed on September 18, 2024, at Stockton, California.

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12 

13 _____
14 Eric Parfrey
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Exhibit A



CALIFORNIA REGIONAL OFFICE | SAN FRANCISCO

50 CALIFORNIA ST. SUITE 500

SAN FRANCISCO, CA 94111

T: 415.217-2000

F: 415.217-2040

Via E-Mail and First-Class Mail

September 17, 2024

Board of Port Commissioners
Port of Stockton
c/o Secretary Melanie Rodriguez
P.O. Box 2089
Stockton, CA 95201
E-Mail: mrodriguez@stocktonport.com

Re: Notice of Commencement of CEQA Litigation

Dear Ms. Rodriguez:

This letter is to notify you that the Sierra Club and the Center for Biological Diversity (together, “Petitioners”) will file suit against the Port of Stockton and the Board of Port Commissioners of the Port of Stockton (together, the “Port”) for failure to observe the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq. in the administrative process that culminated in the approval of the BayoTech Hydrogen Production and Dispensing Facility Project (State Clearinghouse No. 2023050692) (“Project”) and certification of an Initial Study and Mitigated Negative Declaration (“IS/MND”) for the Project. This notice is given pursuant to Public Resources Code section 21167.5.

Among other relief, Petitioners will request that the Court issue a writ of mandate to vacate the IS/MND certification and set aside all Project approvals. Additionally, Petitioners will seek costs and attorney’s fees.

Most respectfully,

Katrina A. Tomas
Nina Robertson
EARTHJUSTICE
Counsel for Petitioner Sierra Club

[Signatures continued on next page]

Margaret A. Coulter

Margaret A. Coulter

Victoria Bogdan Tejada

David Pettit

CENTER FOR BIOLOGICAL DIVERSITY

*Counsel for Petitioner Center for Biological
Diversity*

PROOF OF SERVICE

Sierra Club, et al. v. Port of Stockton, et al.

Superior Court of the State of California – County of San Joaquin

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 50 California Street, Ste. 500, San Francisco, CA 94111.

On September 17, 2024, I served true copies of the following document(s) described as:

NOTICE OF COMMENCEMENT OF CEQA LITIGATION

on the parties in this action as follows:

Board of Port Commissioners
Port of Stockton
c/o Secretary Melanie Rodriguez
P.O. Box 2089
Stockton, CA 95201
E-Mail: mrodriguez@stocktonport.com

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at 490 Lake Park Avenue, Oakland, CA 94610.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from the e-mail address jgriffin@earthjustice.org to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 17, 2024, at Oakland, California.



Joseph Griffin