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

11 COMMITTEE FOR A BETTER ARVIN,
12 COMMITTEE FOR A BETTER SHAFTER,
13 GREENFIELD WALKING GROUP, NATURAL
14 RESOURCES DEFENSE COUNCIL, SIERRA
15 CLUB, and CENTER FOR BIOLOGICAL
16 DIVERSITY,

15 Petitioners / Plaintiffs,

16 v.

17 COUNTY OF KERN, KERN COUNTY BOARD
18 OF SUPERVISORS, KERN COUNTY
19 PLANNING COMMISSION, KERN COUNTY
20 PLANNING AND COMMUNITY
21 DEVELOPMENT DEPARTMENT, and DOES 1-
22 20, inclusive,

20 Respondents / Defendants.

22 WESTERN STATES PETROLEUM
23 ASSOCIATION, CALIFORNIA INDEPENDENT
24 PETROLEUM ASSOCIATION, INDEPENDENT
25 OIL PRODUCERS AGENCY, and DOES 21-40,
26 inclusive,

25 Real Parties in Interest.

Case No. **BCV-15101679**

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

[Code Civ. Proc., §§ 1060, 1085, 1094.5;
California Environmental Quality Act
("CEQA"), Pub. Resources Code, § 21000 et
seq.; State Planning & Zoning Law, Gov. Code
§ 65300 et seq.]

BY FAX
CA Rule 2.304(a)

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1 **INTRODUCTION**

2 1. This action challenges amendments to Chapter 19.98 and related chapters of the Kern
3 County Zoning Ordinance (Title 19 of the Kern County Code of Ordinances), prepared by the
4 County’s Planning and Community Development Department, recommended by its Planning
5 Commission, and approved by its Board of Supervisors on November 9, 2015. The revised
6 ordinance (“Ordinance”) institutes a new process for permitting exploration, development, and
7 production of oil and gas within unincorporated areas of Kern County. Proposed and paid for by the
8 oil industry, the Ordinance and the accompanying Final Environmental Impact Report (“Final EIR”)
9 purport to authorize the development of up to 3,647 new oil and gas wells and extensive associated
10 construction and operational activities, each year for 20 to 25 or more years, without any further,
11 site-specific assessment of those activities’ health and other environmental impacts. The Ordinance
12 jeopardizes the health and well-being of hundreds of thousands of people across Kern County.

13 2. The scope of heavy industrial development contemplated by the Ordinance and
14 purportedly addressed by the Final EIR is difficult to fathom. According to the County, the
15 Ordinance will allow, as a matter of right and with no further environmental review, the construction
16 of roughly 10 wells per day every day for at least the next two decades—a total of 72,940 or more
17 new wells—across a 2.3 million-acre expanse of Kern County. The Ordinance also will greenlight,
18 without further review, a wide range of related oil and gas activities including everything from the
19 construction of well pads, roads, and pipelines to the stimulation of wells using toxic chemicals to
20 the disposal of vast quantities of toxic wastewater via pumping into earthen pits or injection into
21 underground aquifers. Such extensive industrial development will dramatically transform the
22 character of Kern County and will expose the County’s residents and natural resources to all manner
23 of significant harms.

24 3. The Final EIR prepared for the Ordinance fails to inform County decision makers and
25 the public about the extent and severity of the Ordinance’s impacts. The Final EIR’s analysis is
26 general and cursory and only addresses impacts at a regional or landscape level without ever
27 addressing the tens of thousands of individual wells and associated activities that the County insists
28 are covered by the report. This lack of any real detail is a symptom of the flawed and unlawful

1 premise of the Final EIR, namely, that the Ordinance—along with such an enormous number of
2 individual activities, to be undertaken by many different independent actors, across such extensive
3 spatial and temporal scales—can be analyzed under the California Environmental Quality Act
4 (“CEQA”) as a single, one-time “project.”

5 4. Even at a higher, more programmatic level, the Final EIR fails to fully analyze or
6 adequately mitigate the Ordinance’s impacts. For example, air quality in the San Joaquin Valley air
7 basin already is among the worst in the country, due in part to existing oil and gas operations. Yet
8 the Final EIR concludes that significant new impacts to air quality can be avoided despite all of the
9 additional activities the Ordinance authorizes. This conclusion rests upon untenable assumptions,
10 including an assumption that increases in air pollution in Kern County might be “offset” by funding
11 pollution-reducing projects for totally different pollutants, at some undetermined date in the future,
12 in locations as far away as San Joaquin or Stanislaus counties. Such measures offer no immediate
13 health protections to people living and working in Kern County. The Final EIR opts for this poorly
14 defined and untested approach to mitigation while ignoring measures of proven effectiveness that
15 have been adopted in other jurisdictions.

16 5. The Final EIR’s analysis and mitigation of impacts to water supply and water quality
17 likewise are grossly inadequate. In the midst of a severe drought and historically low water supplies,
18 the Ordinance allows the County to authorize new, water-intensive oil and gas development at an
19 unprecedented rate. This industrial development is slated to occur despite the County’s admission
20 that water supplies are already inadequate to meet demand; it also threatens the availability of water
21 for other users and contributes to harmful land subsidence as underground aquifers are taxed further.
22 Such widespread development also threatens further contamination of scarce water supplies, as the
23 massive quantities of wastewater generated by oil and gas activities often are discharged into earthen
24 pits or injected back into the ground. Water contamination has already been documented in Kern
25 County, and expanded oil and gas activities increase the risk that toxins, radioactive materials, and
26 other harmful substances will pollute valuable surface and groundwater supplies.

27 6. The Final EIR eliminates other common sense, environmentally superior mitigation
28 measures and alternatives from consideration without substantial evidence or credible reasoning.

1 For example, the County concludes that the identical, “one-size-fits-all” mitigation measures the
2 Ordinance prescribes for all future activities subject to its “ministerial” review process will be more
3 protective than those it might otherwise adopt through later, site-specific environmental reviews.
4 The Final EIR reaches this conclusion even though a site-specific review process would allow the
5 County to account for site variation and changing conditions and to adopt more tailored and more
6 protective mitigation measures. The Final EIR also improperly dismisses numerous alternatives that
7 would better limit oil and gas development and its environmental impacts.

8 7. By approving the Ordinance, the County also acted inconsistently with the provisions
9 of its own General Plan and the associated Metropolitan Bakersfield General Plan, which require it
10 to better account and plan for the strains that future oil and gas activities will put on the County’s
11 already overtaxed groundwater supplies.

12 8. Despite the Ordinance’s far-reaching and long-term significance, the County made
13 meaningful public participation in its decision making impossible. The County afforded the public
14 just over 60 days to review its 1,800-page Draft Environmental Impact Report (“Draft EIR”) and its
15 6,000 pages of appendices, and just over 30 days to review the Final EIR, even though these reports
16 reportedly took County staff and an army of outside consultants more than two years to prepare.
17 Several thousand pages of additional material, including the County’s assessment of cumulative
18 health impacts, were made public just a week before the Ordinance was adopted.

19 9. The County failed to provide Spanish-language copies of its notices or environmental
20 review documents, even though many residents are monolingual Spanish speakers, and even though
21 translated documents were requested repeatedly. Latino and Hispanic community members
22 currently bear a disproportionate share of the County’s pollution burden. Much of that burden is due
23 to existing oil and gas development, which is overwhelmingly located in close proximity to
24 communities of color. The Ordinance permits this development to continue at an alarming rate,
25 placing more communities at risk and increasing the risk to already overburdened communities.
26 Despite the direct impact the Ordinance would have on their lives, monolingual Spanish-speaking
27 residents were excluded from meaningful participation in the decision-making process.

28 //

1 10. For all of these reasons and others set forth herein, the County’s approval of the
2 Ordinance and certification of the Final EIR must be overturned.

3 **PARTIES**

4 11. Petitioner COMMITTEE FOR A BETTER ARVIN (“CBA”) is a 501(c)(3) nonprofit
5 organization and resident of Kern County whose fifty members reside and, in some cases, own
6 property in Arvin, California, population of nearly 20,000. CBA’s mission is to improve the quality
7 of life in Arvin, to inform and unite the community, to address problems facing the community, and
8 to secure equality for all residents. CBA and its members have engaged in advocacy for improved
9 local and regional air quality for many years and are concerned about the impacts of increased oil
10 and gas development in the San Joaquin Valley. In particular, in light of the fact that a gas pipe leak
11 in 2014 forced eight Arvin families from their homes for about nine months, CBA’s members are
12 very concerned about the safety and health impacts from the Ordinance and the industrial
13 development it purports to authorize without site-specific environmental review or mitigation.

14 12. Petitioner COMMITTEE FOR A BETTER SHAFTER (“CBS”) is a 501(c)(3)
15 nonprofit organization and resident of Kern County whose members reside and, in some cases, own
16 property in Shafter, California, population of 20,000. CBS has twelve full-time members and thirty
17 families that partner in its community garden. CBS’s mission is to advocate for environmental
18 health, to support the development of economically and environmentally sustainable jobs, to develop
19 and promote community garden projects, and to support community development programs in south
20 San Joaquin Valley and Shafter. In addition, CBS strives to empower community members to be
21 active and involved in civic engagement. CBS and its members actively engage on climate issues,
22 particularly the issue of oil and gas development, locally, regionally and statewide. CBS developed
23 and sustains a community garden in Shafter. Members and community gardener participants are
24 especially concerned about water, soil, and air pollution from oil and gas wells contaminating their
25 crops because multiple wells are located less than 1,200 feet away. CBS, whose volunteers and
26 members all live in Kern County, is concerned with the health of local residents and the impacts that
27 the Ordinance will have on their communities.

28 //

1 13. Petitioner GREENFIELD WALKING GROUP (“GWG”) is a 501(c)(3) nonprofit
2 organization and resident of Kern County that is composed of and works with community members,
3 in particular residents in Greenfield, a community south of Bakersfield with a population of nearly
4 4,000. GWG’s mission is to promote health, safety, and community within the neighborhood by
5 beautifying garden spaces and public parks and subsequently hosting fitness classes in such areas in
6 order to create a safe space for people to come together, care for the environment, and engage in
7 healthy activities. GWG has fifty members, all of whom reside or own property in Kern County.
8 GWG has been engaged with other rural communities in south Kern County to work on water and
9 air pollution issues. Its members also are part of a subcommittee of local residents engaged on
10 issues of local and statewide oil and gas development. GWG and its members are concerned with
11 their health and the health of other Kern County residents and the impacts that the Ordinance will
12 have on their communities.

13 14. Petitioner NATURAL RESOURCES DEFENSE COUNCIL (“NRDC”) is a national
14 non-profit membership organization with approximately 300 Kern County and 55,000 California
15 members, and offices in Santa Monica and San Francisco. NRDC’s purpose is to safeguard the
16 earth; its people, plants, and animals; and the natural systems upon which all life depends. NRDC
17 works in California cities and counties, including Kern County, to address serious threats that oil and
18 gas activities, including hydraulic fracturing and disposal of wastewater through underground
19 injection, pose to public health and the environment. NRDC members live, own property, and/or
20 recreate in parts of Kern County that are threatened by oil and gas activities the Ordinance
21 authorizes.

22 15. Petitioner SIERRA CLUB is a national non-profit organization with approximately
23 630,000 members, roughly 147,000 of whom live in California. Sierra Club’s Kern-Kaweah
24 Chapter has approximately 800 members in Kern County. The Sierra Club is dedicated to exploring,
25 enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use
26 of the earth’s ecosystems and resources; to educating and encouraging humanity to protect and
27 restore the quality of the natural and human environment; and to using all lawful means to carry out
28 these objectives. The Sierra Club has been actively working in California, including in Kern

1 County, to address the serious threats to public health and the environment posed by the lack of
2 oversight and safeguards for oil and gas drilling activities, including well stimulation by the process
3 of hydraulic fracturing. Sierra Club members live, own property, and/or recreate in Kern County
4 and are affected by the Ordinance and oil and gas approvals expected as a consequence.

5 16. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is a non-profit
6 corporation with offices in San Francisco, Los Angeles, and elsewhere throughout California and the
7 United States. CBD is actively involved in environmental protection issues throughout California
8 and North America and has over 50,000 members, including many throughout California and in
9 Kern County. CBD’s mission includes protecting and restoring habitat and populations of imperiled
10 species, reducing greenhouse gas pollution to preserve a safe climate, and protecting air quality,
11 water quality, and public health. CBD’s members and staff include individuals who are affected by
12 the Ordinance, including numerous members who are particularly interested in protecting the native,
13 endangered, imperiled, and sensitive species and habitats found in Kern County’s oil and gas fields,
14 which will be detrimentally impacted by the Ordinance.

15 17. Petitioners participated extensively in the administrative process the County followed
16 to develop and approve the Ordinance. Petitioners submitted scoping comments, filed comments
17 identifying deficiencies in the County’s Draft and Final EIRs, and testified at hearings.

18 18. Petitioners bring this action on their own behalf, on behalf of their members, on
19 behalf of the general public, and in the public interest.

20 19. Respondent COUNTY OF KERN is a political subdivision of the State of California
21 organized and existing under the laws of the State of California, with the capacity to sue and be sued.

22 20. Respondent KERN COUNTY BOARD OF SUPERVISORS (“Board of
23 Supervisors”) is the governing body of the County of Kern. The Board of Supervisors approved the
24 Ordinance, certified the Final EIR, and made related findings pursuant to CEQA on November 9,
25 2015, and filed its Notice of Determination for these actions on November 10, 2015.

26 21. Respondent KERN COUNTY PLANNING AND COMMUNITY DEVELOPMENT
27 DEPARTMENT (“Planning and Community Development Department”) is an agency that performs
28 land use planning and community development services for the County. The Planning and

1 Community Development Department prepared the Final EIR and related CEQA findings that
2 ultimately were certified and adopted by the Board of Supervisors.

3 22. Respondent KERN COUNTY PLANNING COMMISSION (“Planning
4 Commission”) is the five-member hearing and review body that, *inter alia*, advises the Board of
5 Supervisors on planning and zoning matters. On October 5, 2015, the Planning Commission
6 recommended that the Board of Supervisors adopt the Final EIR and related findings prepared, in the
7 first instance, by the Planning and Community Development Department.

8 23. As referred to herein, “the County” consists of all boards, commissions, and
9 departments, including the Board of Supervisors, Planning and Community Development
10 Department, and Planning Commission.

11 24. On information and belief, Real Party in Interest WESTERN STATES
12 PETROLEUM ASSOCIATION (“WSPA”) is a trade association that represents companies that
13 explore for, produce, refine, and transport oil.

14 25. On information and belief, Real Party in Interest CALIFORNIA INDEPENDENT
15 PETROLEUM ASSOCIATION (“CIPA”) is a trade association that represents crude oil and natural
16 gas producers, royalty owners, and service and supply companies operating in California.

17 26. On information and belief, Real Party in Interest INDEPENDENT OIL
18 PRODUCERS AGENCY (“IOPA”) is a corporation that exists under the laws of California.

19 27. The County’s November 10, 2015 Notice of Determination identified WSPA, CIPA,
20 and IOPA as “Applicant[s]” receiving approval. (*See* Pub. Resources Code, § 21167.6.5, subd. (a).)

21 28. The true names and capacities, whether individual, corporate, or otherwise, of DOES
22 1 through 20, inclusive, and DOES 21 through 40, inclusive, are unknown to Petitioners. Petitioners
23 will amend this Petition and Complaint to set forth the true names and capacities of said Doe parties
24 when they have been ascertained.

25 **JURISDICTION AND VENUE**

26 29. This Court has jurisdiction to issue a writ of mandate to set aside the County’s
27 decisions and to issue declaratory and injunctive relief pursuant to Code of Civil Procedure sections

28 //

1 1060 and 1094.5 and Public Resources Code sections 21168 and 21168.9. Alternatively, this Court
2 has jurisdiction pursuant to Code of Civil Procedure section 1085.

3 30. Venue is proper in this Court pursuant to Code of Civil Procedure section 394
4 because this is an action against the County. Venue also is proper under Code of Civil Procedure
5 section 393 because the causes of action alleged in this Petition arose in Kern County and the
6 impacts of the County's actions will be felt in Kern County.

7 31. In accordance with Public Resources Code section 21167 subdivision (c), this Petition
8 has been filed within 30 days of the County's November 10, 2015 Notice of Determination
9 approving the Ordinance and certifying the Final EIR. (*See also* Cal. Code Regs., tit. 14 ("CEQA
10 Guidelines"), §§ 15112, subd. (c)(1) and 15094, subd. (g).)

11 32. Petitioners have complied with Public Resources Code section 21167.5 by serving
12 upon the County a letter indicating their intent to file this petition. (Attachment A.)

13 33. Petitioners have complied with Public Resources Code section 21167.6 by filing
14 concurrently with this Petition a notice of their election to prepare the record of administrative
15 proceedings relating to this action.

16 34. Petitioners have complied with Public Resources Code section 21167.7 by furnishing
17 the California Attorney General with a copy of this Petition. (Attachment B.)

18 35. Petitioners have performed any and all conditions precedent to filing this action and
19 have exhausted any and all available administrative remedies to the extent required by law.

20 36. Petitioners do not have a plain, speedy, or adequate remedy at law because Petitioners
21 and their members will be irreparably harmed by the County's violations of CEQA and the Planning
22 and Zoning Law in approving the Ordinance, and by the ensuing public health and environmental
23 impacts of the oil and gas activities the Ordinance allows without further environmental review.

24 **STATEMENT OF FACTS**

25 **A. Environmental Setting**

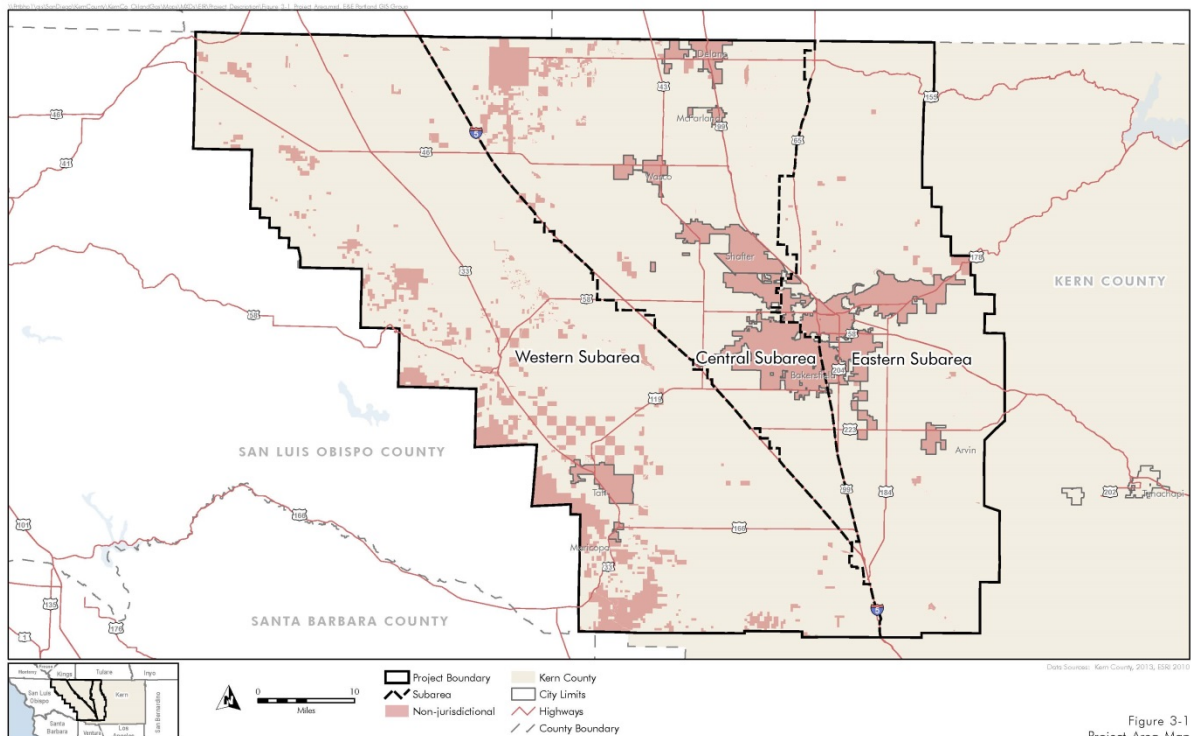
26 37. Kern County is California's third-largest county in land area, encompassing 8,202
27 square miles. The County is ecologically diverse and contains mountains, river valleys, deserts, and
28 rich agricultural lands.

1 38. Kern County is home to approximately 850,000 people. The County’s population is
2 majority Latino or Hispanic. More than 40 percent of county residents speak a language other than
3 English at home.

4 39. The western half of Kern County occupies the San Joaquin Valley floor. This area
5 includes cities like Bakersfield and Delano and smaller unincorporated communities like Greenfield.

6 40. In the Final EIR it prepared for the Ordinance, the County delineates a “Project Area”
7 of 3,700 square miles (or more than 2.3 million acres) that encompasses the majority of Kern County
8 within the San Joaquin Valley floor—an area larger than the entire State of Delaware. This “Project
9 Area” is bounded on the west by the San Luis Obispo, Monterey, and Santa Barbara county lines; on
10 the north by the Kings and Tulare county lines; on the east by the 2,000-foot elevation contours,
11 squared off to the nearest section line; and on the south by the northern boundary of the Los Padres
12 National Forest and portions of the San Emigdo and Tehachapi Mountains.

13 41. The County issued this map, designating the Project Area as those portions of Kern
14 County (which is shaded) enclosed within the bold, unbroken black lines:



Admin. Draft Environmental Impact Report
Amendment to Chapter 19.9B (Oil and Gas Production) - Kern County Zoning Ordinance

Figure 3-1
Project Area Map

May, 2015

1 42. The San Joaquin Valley region of Kern County is home to the majority of Kern
2 County’s agricultural production, including diverse croplands, orchards, and grazing lands. The
3 State has designated 580,000 acres of “prime” farmland, 211,000 acres of “farmland of state
4 importance,” and 86,000 acres of “unique farmland” in western Kern County.

5 43. Oil and gas extraction also occurs in the western portion of the County, where 76 oil
6 and gas production fields and tens of thousands of active and idle wells are located.

7 44. The San Joaquin Valley region of Kern County is located within the San Joaquin
8 Valley air basin, which has some of the worst air quality in the nation. The portion of Kern County
9 comprising the Project Area has been designated an extreme non-attainment area for federal ozone
10 pollution standards; it also has been designated a non-attainment area for federal fine particulate
11 matter standards and for state coarse particulate matter standards.

12 45. Kern County’s San Joaquin Valley residents live in some of the most heavily polluted
13 communities in the state, including in 55 census tracts that have been identified by the California
14 Environmental Protection Agency’s health screening tool as in the top 20th percentile for combined
15 pollution threats, including air pollution and toxic releases. These tracts are home to 330,000
16 people, 122,000 of whom already live within one mile of an oil or gas well. Of these 122,000
17 residents, 76 percent are people of color; 64 percent are Latino.

18 46. California is in the midst of an extended, extreme drought. Kern County has been
19 particularly hard hit. The Tulare and Kern groundwater basins, which underlie the Project Area and
20 the oil and gas activities the Ordinance authorizes, are already critically overdrawn. The state has
21 classified virtually all of the groundwater basins underlying the Project Area as “high priority”
22 water-conservation areas under a new state planning law. Water demand in the Project Area already
23 significantly exceeds supply.

24 47. Oil and gas operations in Kern County use vast amounts of groundwater, including
25 substantial amounts that are clean enough for municipal and industrial use. Oil and gas activities
26 already have contributed to a considerable drop in groundwater levels and groundwater shortages.
27 They also have contributed to subsidence of overlying lands; significant land subsidence has
28 occurred throughout the San Joaquin Valley, including in the Project Area.

1 48. Kern County is home to a wide array of species and habitats, including roughly 166
2 species listed as endangered or threatened under the federal Endangered Species Act or otherwise
3 recognized as in need of special protection. For example, federally designated endangered species
4 such as the southwestern willow flycatcher and the San Joaquin kit fox, as well as state “Fully
5 Protected” species such as the blunt nosed leopard lizard, inhabit the County. The Bitter Creek
6 National Wildlife Refuge, home to some of the world’s last remaining California condors, also is
7 located there.

8 **B. The Ordinance and the Significant Environmental Impacts of the New Oil and**
9 **Gas Activities It Authorizes**

10 49. On or about January 22, 2013, following a request by representatives of the oil and
11 gas industry, the Board of Supervisors directed its staff to identify potential changes to the County’s
12 zoning ordinance that would expedite permitting for oil and gas operations. The Board of
13 Supervisors decided that the costs would be fully funded by the oil industry.

14 50. Working closely with industry representatives, County staff developed and proposed
15 the Ordinance, which revises Chapter 19.98 and related chapters of the Kern County Zoning
16 Ordinance. The Ordinance’s defining feature is its adoption of a so-called “ministerial” permitting
17 process for new oil and gas wells. As conceived by the County, the first 3,647 applications for new
18 well permits received each year will be granted as of right—ministerially—following review
19 processes that direct County officials to grant permits, purportedly without exercising any discretion,
20 as soon as permit applicants provide “documentation in sufficient detail to allow the County to
21 determine that all conditions [specified in the Ordinance] will be complied with, including all
22 applicable mitigation measures.” (Kern County Ord. No. G-8605, section 23, adding §§ 19.98.080 E
23 (11) and 19.98.110 E to Ord. Code of the County of Kern.) The County must make an initial
24 determination whether an application is complete and, if it decides that it is, “shall” issue the
25 permit—all within seven business days. (*Id.*, adding §§ 19.98.090 B and 19.98.120 B.)

26 51. For purposes of its CEQA review, the County defined the Ordinance and “the
27 implementation of future oil and gas development activities expected to be undertaken pursuant to
28 the [Ordinance]” to constitute a single “project.” That designation purportedly allows the County to

1 rely on the “ministerial” processes described above to approve as many as 3,647 wells annually for
2 the next 20 years or more (up to a minimum of 72,940 individual wells, according to the Final EIR),
3 and all related oil and gas activities, without any further CEQA review.

4 52. The Ordinance authorizes a full range of associated construction and operational
5 activities for each of the 72,940 individual oil or gas wells. These activities include: geophysical
6 surveys and monitoring; access road and well pad construction; oil and gas treatment facility
7 construction and operation; water extraction and use; water treatment facility construction and
8 operation; steam generator construction; construction of tankage and containment structures;
9 construction of sumps, evaporation ponds, and percolation ponds to dispose of contaminated
10 wastewater; drilling of oil and gas wells; drilling of separate injection wells for contaminated
11 wastewater disposal; well completion and testing; distribution line construction; distribution by
12 tanker trucks; restoring idled wells; well stimulation treatments, including hydraulic fracturing, acid
13 fracturing, and acid matrix stimulation; cyclic steam injection; and well abandonment.

14 53. The oil and gas activities the Ordinance authorizes will subject Kern County residents
15 to a host of environmental and health harms and risks, including those caused by air and water
16 pollution, toxic exposure, increasingly severe water shortages, and harm to wildlife and habitat.

17 54. For example, air pollution from the new oil and gas activities will impair and threaten
18 public health, particularly in communities that are already disproportionately exposed to such
19 activities. Pre-production emissions (e.g., truck traffic, well pad preparation, drilling, and well
20 stimulation) include methane, benzene, toluene, ethylbenzene, xylene, numerous volatile organic
21 compounds (“VOCs”), nitrogen oxides, fine particulate matter including diesel particulate matter,
22 hydrogen sulfide, and silica dust. During production, methane and non-methane VOCs, including
23 numerous toxic air contaminants, may continue to be released from the wellhead and other
24 equipment such as condensate tanks, compressor stations, and open wastewater impoundment pits.
25 Oil and gas transmission and storage release VOCs and methane. Improper plugging of a well at the
26 end of its life cycle can cause continued leakage of methane and other VOCs even after the well has
27 ceased production. A broad range of health effects are associated with exposure to these air
28 pollutants, including mild to severe respiratory and neurological problems, cardiovascular damage,

1 endocrine disruption, birth defects, cancer, and even premature death. VOCs and nitrogen oxides
2 also contribute to the formation of regional ground-level ozone, which causes smog and harms the
3 respiratory system. High emissions of methane, a gas that traps 87 times more heat than carbon
4 dioxide over a 20-year period, contribute to climate change.

5 55. The new oil and gas activities the Ordinance authorizes, particularly when hydraulic
6 fracturing and related stimulation techniques are used, will contaminate and threaten contamination
7 of water and soils. The water that returns to the surface following well drilling and stimulation
8 (often called “produced water”) may contain toxins, radioactive materials, and other harmful
9 substances. This water often is unfit for reuse, and must be treated or properly disposed of to protect
10 surface and groundwater from contamination. Contamination can occur at many points in the oil and
11 gas development process, through spills and leaks, leaching of wastewater from earthen pits, and
12 other means. Well blowouts, fluid migration to nearby wells, and faulty well casings are other
13 potential pathways of contamination, particularly when unconventional extraction methods such as
14 hydraulic fracturing or acidizing are applied to older wells or conducted at shallower depths.

15 56. Wastewater from oil and gas wells in Kern County is typically disposed of (and under
16 the Ordinance, may continue to be disposed of) through injection wells that present unique and
17 serious hazards to public health, air quality, and water quality. To date, the California Department of
18 Conservation, Division of Oil, Gas and Geothermal Resources (“DOGGR”) has ordered the
19 emergency shutdown of 23 oil and gas waste injection sites after finding the injections posed a
20 danger to life, health, property, and natural resources. All but one of these were in Kern County.
21 DOGGR also closed 31 additional injection wells in Kern County in October 2015 for improperly
22 injecting wastewater into aquifers containing high-quality groundwater that was supposed to be
23 protected under state and federal law. The full extent of the harm to aquifers is not yet understood,
24 but DOGGR has acknowledged that hundreds more wastewater disposal wells, mainly in Kern
25 County, improperly have been allowed to dump waste into protected aquifers.

26 57. Injection wells pose special risks. For example, they have been linked to induced
27 seismic activity. They also have unique and serious water-supply impacts, particularly in times of

28 //

1 drought: once water is injected into an underground injection well, that water typically exits the
2 water cycle permanently and is unavailable for treatment and reuse.

3 58. The new oil and gas activities the Ordinance authorizes will also use and pollute large
4 volumes of fresh water, including scarce groundwater that is clean enough to use for municipal and
5 industrial purposes. This reduces how much water is available to other users and can lead to other
6 negative environmental impacts, such as subsidence. This is a significant concern, particularly in
7 light of California’s prolonged and extreme drought. The Final EIR anticipates that under the
8 Ordinance, DOGGR will have to monitor developed areas of the County for subsidence, and may
9 have to order oilfield operators to curb their groundwater pumping or to reinject water into local
10 aquifers “to stabilize the ground.”

11 59. The new oil and gas activities the Ordinance authorizes also will subject neighboring
12 communities to serious noise and light pollution. Well pad preparation, drilling, and well
13 stimulation generate significant noise levels for nearby residences, schools, and work places.
14 Produced gas that is not captured and sold may be flared (i.e., burned off) at the well site, polluting
15 the air and causing a constant roar and bright light. Noise—from trucks, generators, drilling
16 operations, and pumps—can occur intermittently for days at a time over several years as wells are
17 drilled and then repeatedly stimulated to increase production. The health problems associated with
18 noise and light pollution include sleep disturbance, fatigue, reduced school and work performance,
19 hypertension, and cardiovascular problems.

20 60. The new oil and gas activities the Ordinance authorizes also will harm plants and
21 wildlife. The types of harm include road mortality caused by the significant truck traffic at each
22 individual site, and habitat destruction or degradation from grading, construction, and air, water,
23 noise, and light pollution.

24 61. The County’s Final EIR, in assessing the Ordinance, does not analyze the potential
25 environmental impacts that might be expected at any particular oil or gas well or oil or gas field, or
26 particular communities in Kern County. The Final EIR and the County’s accompanying findings of
27 fact do, however, note a multitude of significant impacts expected to occur as a consequence of the
28 Ordinance—even with the County’s adopted mitigation measures. Those significant, unavoidable

1 impacts of the Ordinance acknowledged by the County include but are not limited to: (a)
2 contributing to a cumulatively significant net increase in air pollution, including air pollutants for
3 which the County already violates applicable health-based air quality standards; (b) contributing to
4 cumulatively significant greenhouse gas emissions and climate change impacts, in conflict with
5 applicable plans and policies; (c) causing objectionable odors that will affect a substantial number of
6 residents; (d) creating a demand for water that exceeds existing supplies; (e) causing water shortages
7 and a significant, additional reduction in already historically low groundwater levels and aquifer
8 volumes; (f) contributing to a cumulatively significant conversion of prime farmland, unique
9 farmland, or farmland of statewide importance to non-agricultural use; (g) causing a substantial
10 reduction in the scenic qualities of Kern County as the landscape is degraded from rural, agricultural,
11 or natural to more industrial; (h) causing substantial light pollution and nighttime glare; (i)
12 contributing to cumulatively significant negative impacts on biological resources; and (j)
13 contributing to cumulatively significant adverse impacts upon historical, archaeological, and
14 paleontological resources.

15 62. The Final EIR also identifies many potentially significant impacts that the County
16 believes will be reduced in significance, based on the implementation of mitigation measures set
17 forth in the Final EIR and incorporated by reference into the Ordinance. Those potentially
18 significant impacts that the County purports to have mitigated to an insignificant level include but
19 are not limited to: (a) exposing sensitive members of the community—including children, the
20 elderly, and those with chronic illnesses—to substantial air pollutant concentrations; (b) causing an
21 increase in air emissions that would impede implementation of the region’s federally enforceable air
22 quality plans; (c) substantially degrading water quality; (d) creating a significant hazard to the public
23 and the environment through the routine transport, use, or disposal of hazardous materials; (e)
24 causing direct harm to special-status species and indirect harm through habitat modification; (f)
25 exposing communities to the risk of loss, injury, or death as a consequence of rupturing a known
26 earthquake fault; (g) exposing communities to noise levels in excess of established standards; (h)
27 emitting substantial quantities of greenhouse gases; and (i) contributing to cumulatively significant
28 transportation and traffic problems.

1 **C. The County’s Public Review Process for and Approval of the Ordinance**

2 63. On or about August 30, 2013, the County issued a Notice of Preparation and an Initial
3 Study. Comments on the appropriate scope and content of the County’s planned environmental
4 review were accepted for a 30-day period, including at four scoping meetings held by the County.
5 Petitioners submitted comments in response to the County’s Notice of Preparation and Initial Study.

6 64. On information and belief, the County never provided the public with Spanish-
7 language copies of the Initial Study, Notice of Preparation, or scoping meeting notices.

8 65. On or about July 8, 2015, the County issued a Notice of Availability advising other
9 agencies and the public that the County had prepared a Draft EIR for the Ordinance. Noting that 45
10 days is the minimum public review period for a draft environmental impact report, the Notice of
11 Availability set the comment deadline for August 24, 2015, the first business day following the
12 expiration of the statutory minimum period. The County set this initial deadline despite the massive
13 length of the Draft EIR—approximately 1,800 pages with an additional 6,000 or so pages of
14 appendices. The County never provided the public with Spanish translations or summaries of the
15 Draft EIR and its appendices.

16 66. Petitioners requested a 60-day extension of the comment period, noting the scope,
17 length, and complexity of the Draft EIR. The North Kern Water Storage District expressed a similar
18 concern about the short comment period, stating that “the District does not have resources available
19 to review the voluminous documents comprising the Draft EIR . . . within the allotted 45 day review
20 period.”

21 67. The County subsequently extended the comment deadline to September 11, 2015,
22 providing a total of 64 days for input from other agencies, organizations, and community members.

23 68. Petitioners submitted five sets of comments on the Draft EIR, along with an expert
24 report on air quality. They identified critical flaws in the Ordinance and the County’s public review
25 process as well as in the Draft EIR’s analyses of impacts, appropriate mitigation measures, and
26 alternatives.

27 69. With respect to the County’s review process, Petitioners criticized the County for
28 failing to ensure meaningful and adequate public participation in its deliberations, noting that it was

1 extremely difficult if not impossible to fully review and analyze the Draft EIR’s thousands of pages
2 of technical information in the time allotted. They also noted that because the Draft EIR was not
3 translated into Spanish, Kern County’s substantial monolingual Spanish-speaking population, which
4 is particularly likely to be exposed and vulnerable to the new oil and gas activities the Ordinance
5 authorizes, effectively was precluded from providing input.

6 70. With respect to the County’s substantive CEQA analysis, Petitioners noted that the
7 County could not adequately review the impacts of such extensive oil and gas activities in a single
8 environmental review document. Petitioners noted that the Draft EIR lacked an accurate, stable, and
9 finite project description and that it was improper for the County to characterize its CEQA review as
10 a “project-level” analysis but to omit, as the County’s review did, any site-specific analysis of future,
11 individual oil and gas wells and related activities.

12 71. Relatedly, Petitioners noted that the Ordinance affords County officials discretion in
13 their oil and gas permitting decisions and thus cannot foreclose CEQA review for future well
14 approvals— notwithstanding the County’s insistence to the contrary.

15 72. Petitioners also identified myriad shortcomings in the Draft EIR’s resource-specific
16 analyses of impacts and mitigation measures. For example, Petitioners expressed serious concerns
17 about the Draft EIR’s failure to adequately analyze or mitigate: air quality impacts; greenhouse gas
18 emissions; impacts on water quality and water supply; public health consequences; impacts on soil
19 and geology, including seismic risks; impacts to biological resources; aesthetic impacts; agricultural
20 impacts; noise impacts; traffic impacts; and cumulative impacts, particularly upon Kern County
21 communities already burdened with pollution. Petitioners also noted that the Draft EIR failed to
22 identify and require all feasible mitigation measures, and relied on measures that are impermissibly
23 vague and unenforceable.

24 73. Petitioners further explained that the Draft EIR unlawfully rejected or refused to
25 analyze various alternatives based on a combination of false or unsubstantiated assumptions and
26 incorrect legal conclusions. For example, the Draft EIR asserted that its institution of identical
27 mitigation measures for all future activities authorized by the Ordinance necessarily would be more
28 protective than mitigation measures adopted through later, site-specific environmental reviews,

1 though a site-specific review process readily would allow the County to adopt better tailored and
2 more protective mitigation measures. The Draft EIR also improperly dismissed several other
3 alternatives that would better limit oil and gas development.

4 74. Other commenters on the Draft EIR noted that, by amending its zoning ordinance to
5 authorize more oil and gas development without first verifying that there is sufficient water to
6 support that development, the County contravened the provisions of its own General Plan and of the
7 Bakersfield Metropolitan Area General Plan, a joint plan by the County and City of Bakersfield that
8 covers some unincorporated lands within the Project Area. This violated California's Planning and
9 Zoning Law, which requires zoning ordinances to be consistent with county and city general plans.
10 For example, the Ordinance conflicts with plan policies and goals that require the County to verify
11 that adequate water supplies, other than local groundwater, exist to support new high-consumptive
12 activities and that those activities will not create water shortages.

13 75. Just two weeks after the submission deadline for public comments and input from
14 other agencies on the Draft EIR, on or about September 25, 2015, the County issued its response to
15 comments. It did not translate the response to comments into Spanish.

16 76. On October 5, 2015, the Planning Commission held a hearing on the Ordinance.
17 Petitioners and others spoke in opposition to the Ordinance. The Planning Commission voted to
18 recommend that the Board of Supervisors adopt the Ordinance and related CEQA findings and
19 documentation recommended by County staff.

20 77. On or about November 2, 2015, the week before the Board of Supervisors was
21 scheduled to vote on whether to adopt the Ordinance, the County released its Final EIR along with
22 new appendices not previously available to the public. On information and belief, none of these
23 documents were translated into Spanish or summarized in Spanish.

24 78. The Final EIR was issued to consolidate in one place the County's clarifications and
25 modifications to the previously issued CEQA review documents. For example, the Final EIR notes
26 that in the County's previously issued responses to comments, the County erroneously defended its
27 air pollution analysis on the basis of a cumulative health risk assessment that, at the time, it had not
28 yet prepared. The County posted its nearly 1,700-page cumulative health risk assessment the week

1 of November 2, 2015, as an appendix to Chapter 12 of the Final EIR. The cumulative health risk
2 assessment apparently was prepared after its conclusions were cited as substantial evidence.

3 79. In addition to the cumulative health risk assessment, the County posted other new and
4 significant information on or about November 2, 2015, including: a technical analysis correcting
5 mathematical errors in the County’s earlier air emission modeling and analyzing the efficacy of
6 potential projects to offset and thus “mitigate” expected air pollution from the oil and gas activities
7 the Ordinance allows; a draft agreement between the County and the San Joaquin Valley Air
8 Pollution Control District that would allow the District to use fees paid by applicants for new oil and
9 gas permits to fund air pollution-reducing projects elsewhere within the San Joaquin Valley air
10 basin; a previously unreleased, 1,700-page traffic impact study and roadway assessment; and a new,
11 technical analysis of the noise impacts from flaring.

12 80. In supplemental written comments submitted to the Board of Supervisors and in
13 testimony at the hearing itself, Petitioners noted that the County had not addressed their concerns
14 and, in fact, had made changes for the worse. For example, citing a recent, independent scientific
15 assessment completed by California Council on Science and Technology, they noted that the most
16 significant health impacts from well stimulation techniques occur within one-half mile of a well,
17 necessitating that newly permitted wells be set back at a sufficient distance from homes and schools.
18 Consequently, Petitioners protested a post-Draft EIR change in the Ordinance that reduced the
19 required setback for schools from 300 feet to only 210 feet because even 300 feet is insufficient.
20 Petitioners also submitted a second expert report addressing the Final EIR’s failure to include
21 feasible mitigation measures for air pollution and its improper adoption, instead, of mitigation
22 measures that either would fail to reduce air pollution or—in the case of the Final EIR’s new
23 endorsement of road construction as a mitigation measure—cause countervailing negative impacts
24 that the County did not address.

25 81. Petitioners noted the County’s obligation to recirculate the Final EIR in light of the
26 substantial new information and analyses included after issuance of the Draft EIR. They also
27 explained why the Ordinance does not, as a matter of law, establish a ministerial permit scheme for
28 new oil and gas wells. They also noted that the County neglected to respond adequately to

1 Petitioners' previous comments and identified many deficiencies that the County failed to remedy in
2 the Final EIR including, *inter alia*: the lack of an accurate, stable, and finite project description; the
3 absence of a true, "project-level" analysis of expected future oil and gas activities; the failure to
4 adequately analyze or mitigate impacts upon air quality, water quality, water supply, biological
5 resources, and public health including environmental justice concerns; and the County's inadequate
6 and unsupported analysis of alternatives.

7 82. At a special meeting of the Board of Supervisors on November 9, 2015, the Board of
8 Supervisors heard testimony on and enacted the Ordinance, with amendments to three sections that
9 were introduced for the first time at the hearing and adopted without further reading. At the same
10 special meeting, the Board of Supervisors certified the Final EIR and adopted findings of fact, a
11 statement of overriding considerations, and the mitigation measures prescribed in the Final EIR.

12 83. In approving the Ordinance in reliance on what it characterized as a "project-level"
13 Final EIR, the County has taken the position that specific oil and gas projects approved pursuant to
14 the ministerial permitting processes the Ordinance establishes will not be subject to further
15 environmental review under CEQA. According to the County, the Final EIR provides sufficient,
16 project-level information for other agencies with oversight of oil and gas activities in Kern County to
17 forego further environmental review, including but not limited to the San Joaquin Valley Air
18 Pollution Control District, Central Valley Region of the Regional Water Quality Control Board,
19 Kern County Water Agency, California Department of Fish and Wildlife, and DOGGR.

20 84. The County's Final EIR for the Ordinance does not describe the full extent of the
21 environmental impacts of the oil and gas activities it authorizes, or explain how those impacts will
22 be felt at specific oil and gas sites or by specific communities within the County.

23 85. For example, with respect to air pollution, the County does not explain how it will
24 assure that the decades of new oil and gas activities the Ordinance allows will comply with
25 California's state-mandated greenhouse gas reduction targets, nor does the County explain its
26 assumption that such compliance would make the greenhouse gas impacts insignificant. It also does
27 not explain or substantiate its assumptions that the impacts of other air pollutants, such as fine and
28 coarse particulate matter, will be "offset" and reduced to insignificant levels by air-pollution-

1 reduction measures elsewhere in Kern County or in the multi-county San Joaquin Valley Air
2 District.

3 86. With respect to water supply, the County acknowledges that “existing entitlements
4 and resources are insufficient to meet current and projected future” demand for municipal and
5 industrial-quality groundwater, and that the oil and gas activities the Ordinance authorizes will lead
6 to shortages through the year 2035 and contribute to “significant and unavoidable impacts” to
7 regional water supplies. But the County downplays how serious these potential shortages may be,
8 and the extent to which new oil and gas activities may exacerbate them. To project future water
9 supply and demand, the County relies heavily on historic hydrological data and does not account
10 adequately for climate change, which is expected to exacerbate water shortages and groundwater
11 overdraft problems in the state. The County also arbitrarily assumes that groundwater is pooled in
12 large zones, rather than divided among numerous smaller aquifers that limit what supplies are
13 actually available to oil and gas producers and competing municipal, agricultural, and other users in
14 various parts of the County. And in modeling water demands, the County does not account
15 adequately for the prospect that further oil and gas extraction in some areas may require the use of
16 high-volume hydraulic fracturing wells that use much more water than the typical California oil well
17 described in the Final EIR.

18 87. With respect to water pollution, the County assumed arbitrarily that contaminated
19 wastewater and other fluids will no longer be injected illegally into aquifers that are potential
20 drinking-water sources, even though this has happened repeatedly in Kern County in recent years.

21 88. With respect to cumulative pollution impacts and impacts on sensitive communities,
22 the County failed to account for the fact that residents of color and low-income residents within the
23 vast Project Area, which is home to about 330,000 people, are already disproportionately burdened
24 by multiple sources of pollution and are known to have increased sensitivity to environmental
25 contaminants due to a variety of economic, social, and biological factors.

26 89. With respect to biological resources, the County failed to evaluate the impacts of the
27 oil and gas activities the Ordinance authorizes on numerous species that are entitled to special
28 protection under federal or state law, including the endangered southwestern willow flycatcher.

1 90. According to the County, the Final EIR is expected to remain sufficient and current
2 for at least 20 years, though likely even longer and potentially indefinitely. For example, the County
3 claims it need not even consider doing further environmental review of new wells subject to the
4 Ordinance’s ministerial permitting processes unless the number of new wells exceeds 3,647 per year,
5 or a minimum of 72,940 total new wells. The County does not commit to additional review even at
6 that point.

7 **FIRST CAUSE OF ACTION**

8 **(Violations of CEQA – Public Resources Code sections 21000 et seq. and**
9 **CEQA Guidelines sections 15000 et seq.)**

10 91. Petitioners hereby re-allege and incorporate herein by reference the allegations
11 contained in the foregoing paragraphs.

12 92. The County violated CEQA by approving the Ordinance in violation of the Act’s
13 requirements and by certifying a legally deficient EIR. The County’s CEQA violations include the
14 following:

15 A. The County did not write its Final EIR and other environmental review
16 documents in plain language so that members of the public could readily understand the
17 documents. In particular, by refusing to translate any CEQA documents into Spanish, the
18 County precluded meaningful and adequate public participation by monolingual Spanish-
19 speaking residents, many of whom live in the communities that will be most affected by the
20 oil and gas activities the Ordinance authorizes. These individuals were deprived of their
21 statutory rights to inform themselves about and to comment meaningfully on the Ordinance
22 and its environmental consequences before the Board of Supervisors approved it.

23 B. The County failed to re-circulate the Final EIR in light of significant new
24 information. Such significant new information includes but is not limited to the cumulative
25 health risk assessment and other documents belatedly released by the County or posted for
26 public review the week before the Ordinance was adopted.

27 C. The County did not base its Final EIR on an accurate, stable, and finite project
28 description. For example, the Final EIR purports to characterize as one CEQA “project” the

1 development of roughly 73,000 oil and gas wells and a wide range of associated oil and gas
2 activities, over an approximately 2.3 million-acre area, for 20 or more years into the future.
3 By lumping together such a large number and wide variety of activities, to be undertaken by
4 many different independent permit holders, over such a large area and so many years, the
5 County applied an unreasonable and unlawful “project” definition and undermined CEQA’s
6 informational and decision-making purposes.

7 D. The County failed to conduct a legally adequate, project-level review of the
8 impacts of the multitudinous oil and gas activities allowed under the Ordinance and defined
9 as part of the “Project.” Although the County has characterized the Final EIR as a “project-
10 level” document, the EIR offers largely regional-scale analyses, and does not analyze the
11 site-specific or other impacts of the oil and gas activities the Ordinance authorizes with
12 adequate specificity to stand alone under CEQA.

13 E. In an effort to sidestep the further review CEQA requires, the County also
14 misinterpreted and misapplied the statute by characterizing as “ministerial” the primary
15 permitting procedures the Ordinance establishes for new oil and gas activities in the County.
16 These procedures, as described in the Ordinance and Final EIR and despite the County’s use
17 of the “ministerial” label, require officials to exercise discretion in oil and gas permitting
18 decisions. CEQA applies to all discretionary agency decisions. As a matter of law,
19 therefore, the permitting decisions the County has labeled “ministerial” require further
20 CEQA review.

21 F. The County also failed to adequately evaluate the direct, indirect, and
22 cumulative environmental impacts of the oil and gas activities the Ordinance authorizes in its
23 Final EIR, even after commenters identified numerous review gaps in their comments on the
24 Draft EIR. The deficiencies in the County’s Final EIR include the following:

- 25 i. The County failed to adequately analyze air quality impacts and relied
26 on assumptions that are unsupported if not demonstrably false. For example, the
27 Final EIR acknowledges that drilling deeper wells generates more air pollution but
28 assumes for purposes of calculating “maximum emissions” that no wells will be

1 drilled deeper than 10,000 feet—even though some wells in Kern County are, in fact,
2 already drilled at much greater depths. The County also sanctioned road building as a
3 method of reducing air pollution without addressing an expert report stating that road
4 construction is not effective at reducing emissions and may, in fact, increase
5 emissions of certain pollutants.

6 ii. The County failed to adequately support its conclusion that certain
7 potentially significant air quality impacts can be avoided or reduced to insignificance
8 with mitigation. For example, the Final EIR assumes that emissions of so-called
9 “criteria” air pollutants caused by new oil and gas wells and associated activities
10 authorized by the Ordinance will be offset fully by separate, unrelated pollution-
11 reducing projects carried out elsewhere in the multi-county San Joaquin Valley air
12 basin. But the Final EIR does not identify any mechanism for offsetting increases in
13 some of these pollutants, and does not address expert testimony that there are
14 insufficient pollution-reducing projects to offset the remaining pollutants. The Final
15 EIR also unlawfully purports to allow increases in one pollutant (fine particulate
16 matter) to be offset by reductions in a different pollutant (coarse particulate matter)
17 that causes distinct health consequences and therefore is regulated separately.

18 iii. The County failed to adequately analyze the impacts of the
19 considerable water-supply demands and subsidence risks of the oil and gas activities
20 the Ordinance authorizes, and to account adequately for the risk that these activities
21 will worsen future water shortages.

22 iv. The County failed to account adequately for many of the
23 environmental impacts of injecting water, chemical additives, and other pollutants
24 into the new oil and gas wells the Ordinance authorizes. The County also failed to
25 account adequately for the impacts of storing, treating, and disposing of the large
26 volumes of polluted water those wells will produce.

27 v. In analyzing whether the pollution from the new oil and gas activities
28 the Ordinance authorizes will significantly affect neighboring communities, the

1 County did not adequately account for the fact that low-income communities and
2 communities of color are already disproportionately exposed to and sensitive to
3 environmental contaminants.

4 vi. The County failed to adequately analyze the cumulative impacts of the
5 pollution from the new oil and gas activities the Ordinance authorizes, and the
6 existing, severe pollution in the Project Area, on its residents.

7 vii. The County failed to adequately analyze impacts to biological
8 resources, including significant habitat impacts caused by the additional
9 fragmentation, pollution (noise, light, water and air), traffic, and supporting
10 infrastructure that will come with the oil and gas activities the Ordinance authorizes.

11 G. The County also relied on ineffective and invalid mitigation measures and
12 failed to impose other effective and legally required mitigation measures.

13 i. The mitigation measures set forth in the Final EIR and adopted by
14 reference in the Ordinance lack fixed standards or objectives. For example:

15 a. With respect to the use of scarce groundwater supplies, the
16 measures imposed by the Ordinance generally require permit holders to
17 reduce their municipal and industrial and other water use only “as
18 appropriate” or “feasible”—without reference to concrete standards.

19 b. With respect to impacts on biological resources, certain
20 mitigation measures provide simply that permit holders must follow “feasible
21 avoidance and minimization measures” for species identified in the area, or
22 use buffers “where effective and feasible.”

23 c. With respect to risks from the transport, use, and disposal of
24 hazardous materials, the Final EIR specifies that an oil or gas permit applicant
25 may determine for itself which measures are “practical.”

26 ii. The County unlawfully characterized as “mitigation” measures that
27 simply reference existing requirements that would apply to permit holders even if the
28 Ordinance were not in effect.

1 iii. The County unlawfully deferred the implementation of certain
2 mitigation measures.

3 iv. The County also unlawfully neglected to require other feasible
4 measures for reducing the substantial environmental impacts of new oil and gas
5 activities, including measures that have been implemented successfully in other
6 jurisdictions. For example:

7 a. The County refused to adopt protective setbacks from schools,
8 dwellings, commercial establishments, and highways.

9 b. The County did not address an expert-supplied list of
10 mitigation measures to address construction-generated air emissions adopted
11 by other authorities.

12 c. With respect to wildlife, the County failed to require the use of
13 feasible habitat avoidance requirements, restrictions on the amount of habitat
14 that may be destroyed, and stricter light and noise pollution restrictions.

15 v. The County also failed to support with substantial evidence its
16 conclusions that certain mitigation measures would reduce to insignificant levels
17 otherwise significant impacts, including the air pollution and greenhouse gas impacts
18 of the new oil and gas activities the Ordinance authorizes.

19 H. The County failed to adequately analyze, or arbitrarily dismissed, a reasonable
20 range of alternatives that would substantially lessen the significant environmental effects of
21 the Project. For example:

22 i. The County did not provide an adequate comparative analysis of the
23 impacts of each alternative.

24 ii. The County determined that an alternative requiring site-specific
25 environmental reviews for individual oil and gas permits would necessarily produce
26 environmentally inferior results, even though a review process for individual wells
27 would allow the County to adopt better tailored and more protective mitigation
28 measures.

1 iii. The County improperly dismissed or refused to adopt numerous
2 alternatives that would do more to limit oil and gas development.

3 iv. The County also improperly dismissed or refused to adopt other
4 reasonable alternatives that would have reduced the Ordinance’s environmental
5 impacts. For example, the County did not adequately analyze a recycled-water
6 alternative that would have required operators to help offset their use of scarce
7 municipal and industrial-quality groundwater by treating an equivalent amount of the
8 polluted water that they would otherwise dispose of in underground injection wells.

9 I. The County did not base its findings about the impacts of the oil and gas
10 activities the Ordinance authorizes on substantial evidence, including the findings made in its
11 statement of overriding considerations.

12 93. An actual controversy exists between the parties concerning their respective rights
13 and duties because Petitioners contend, and the County disputes, that the Ordinance does not, within
14 the meaning of CEQA, establish a “ministerial” decision-making process for authorizing individual
15 oil and gas activities that would allow the County to forego further CEQA review. A judicial
16 declaration therefore is necessary and appropriate at this time in order that the parties may ascertain
17 the County’s duties, under CEQA, with respect to the approval of future, individual oil and gas
18 projects.

19 **SECOND CAUSE OF ACTION**

20 **(Violation of State Planning & Zoning Law – Government Code section 65860)**

21 94. Petitioners hereby re-allege and incorporate herein by reference the allegations
22 contained in the foregoing paragraphs.

23 95. California’s Planning and Zoning Law states that county zoning ordinances “shall be
24 consistent with” county general plans. An ordinance is consistent with a general plan “only if” the
25 land uses it authorizes “are compatible with the objectives, policies, general land uses, and programs
26 specified in the plan.”

1 C. For a declaration that the Ordinance:

- 2 1. Does not, within the meaning of CEQA, establish a ministerial, non-
3 discretionary permitting scheme for approving future oil and gas activities
4 such that the County's decisions under the Ordinance are exempt from further
5 CEQA review; and
6 2. Is inconsistent with the Kern County and Metropolitan Bakersfield General
7 Plans, and hence invalid from the time of its enactment.

8 D. For an award of their fees and costs, including reasonable attorneys' fees and expert
9 costs, as authorized by Code of Civil Procedure section 1021.5 and any other applicable provisions
10 of law.

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

12 DATED: December 10, 2015

Respectfully submitted,

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1 **VERIFICATION**

2 I, Gordon Nipp, hereby declare:

3 I am the Vice Chair of the Kern-Kaweah Chapter of the Sierra Club. Sierra Club is one of
4 the Petitioners in this action and I am authorized to execute this verification on Petitioners' behalf.
5 The facts alleged in the above Petition and Complaint are true to my personal knowledge and belief.

6 I declare under penalty of perjury under the laws of the State of California that the above is
7 true and correct and that this verification is executed on this tenth day of December 2015 at
8 Bakersfield, California.

9
10 

11
12 Gordon Nipp

EXHIBIT A



December 8, 2015

VIA U.S. MAIL and EMAIL

County of Kern
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
caomailbox@co.kern.ca.us

Clerk of the Board of Supervisors
County of Kern
1115 Truxtun Avenue, 5th floor
Bakersfield, CA 93301 - 4617
clerkofboard@co.kern.ca.us

Lorelei Oviatt
Director, Planning and Community
Development Department
Secretary, Kern County Planning Commission
Public Services Building
2700 M Street, Suite 100
Bakersfield, CA 93301
LoreleiO@co.kern.ca.us
planning@co.kern.ca.us

Re: Notice of Intent to File Suit Under the California Environmental Quality Act and the State Planning and Zoning Law

To Whom It May Concern:

PLEASE TAKE NOTICE that the Committee for a Better Arvin, Committee for a Better Shafter, Greenfield Walking Group, Natural Resources Defense Council, Sierra Club, and Center for Biological Diversity will file suit against the County of Kern, including its Board of Supervisors, Planning Commission, and Planning and Community Development Department, challenging the County's failure to comply with the California Environmental Quality Act and the State Planning and Zoning Law when approving the project titled "Revisions to the Kern County Zoning Ordinance – 2015 (C) (Title 19, Kern County Ordinance Code)." The Board of Supervisors approved the amended ordinance on November 9, 2015. A notice of determination for the project was issued on November 10, 2015.

This notice is provided pursuant to Public Resources Code section 21167.5.

Sincerely,

William B. Rostov
A. Yana Garcia

*Counsel for Petitioners Natural Resources Defense
Council and Sierra Club*



Sofia Parino
CENTER ON RACE, POVERTY
& THE ENVIRONMENT
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Oakland, CA 94612
sparino@crpe-ej.org
Tel: (415) 346-4179 x 301

*Attorney for Petitioners Committee for a Better
Arvin, Committee for a Better Shafter, and
Greenfield Walking Group*



Hollin N. Kretzmann
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Oakland, CA 94612
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Tel: (510) 844-7133

*Attorney for Petitioner Center for Biological
Diversity*

Selena Kyle
Giulia C.S. Good Stefani
NATURAL RESOURCES DEFENSE COUNCIL
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San Francisco, CA 94108
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Fax: (415) 875-6161

*Attorneys for Petitioner Natural Resources Defense
Council*

Elizabeth Benson
SIERRA CLUB
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San Francisco, CA 94105
elly.benson@sierraclub.org
Tel: (415) 977-5500
Fax: (415) 977-5793

Attorney for Petitioner Sierra Club

PROOF OF SERVICE

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

I hereby certify that on December 8, 2015, I served by U.S. first class mail and by electronic mail one true copy of the following document:

Notice of Intent to File Suit Under the California Environmental Quality Act and the State Planning and Zoning Law

on the parties listed below:

County of Kern
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
caomailbox@co.kern.ca.us

Clerk of the Board of Supervisors
County of Kern
1115 Truxtun Avenue, 5th floor
Bakersfield, CA 93301 - 4617
clerkofboard@co.kern.ca.us

Lorelei Oviatt
Director, Planning and Community
Development Department
Secretary, Kern County Planning Commission
Public Services Building
2700 M Street, Suite 100
Bakersfield, CA 93301
LoreleiO@co.kern.ca.us
planning@co.kern.ca.us

I certify under penalty of perjury that the foregoing is true and correct. Executed on December 8, 2015 in San Francisco, California.



Rikki Weber

EXHIBIT B

1 William Rostov, State Bar No. 184528
A. Yana Garcia, State Bar No. 282959
2 EARTHJUSTICE
50 California Street, Suite 500
3 San Francisco, CA 94111
wrostov@earthjustice.org
4 ygarcia@earthjustice.org
Tel: (415) 217-2000
5 Fax: (415) 217-2040

6 *Attorneys for Petitioners Natural Resources Defense Council and Sierra Club*

7 (List of Counsel continued on next page)

8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF KERN

11 COMMITTEE FOR A BETTER ARVIN,)
12 COMMITTEE FOR A BETTER SHAFTER,)
13 GREENFIELD WALKING GROUP, NATURAL)
14 RESOURCES DEFENSE COUNCIL, SIERRA)
15 CLUB, and CENTER FOR BIOLOGICAL)
16 DIVERSITY,)

17 Petitioners / Plaintiffs,)

18 v.)

19 COUNTY OF KERN, KERN COUNTY BOARD)
20 OF SUPERVISORS, KERN COUNTY)
21 PLANNING COMMISSION, KERN COUNTY)
22 PLANNING AND COMMUNITY)
23 DEVELOPMENT DEPARTMENT, and DOES 1-)
24 20, inclusive,)

25 Respondents / Defendants.)

26 _____)
27 WESTERN STATES PETROLEUM)
28 ASSOCIATION, CALIFORNIA INDEPENDENT)
PETROLEUM ASSOCIATION, INDEPENDENT)
OIL PRODUCERS AGENCY, and DOES 21-40,)
inclusive,)

Real Parties in Interest.)

Case No.

**NOTICE TO THE ATTORNEY
GENERAL OF THE STATE OF
CALIFORNIA OF VERIFIED
PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 To the Attorney General of the State of California:

2 PLEASE TAKE NOTICE, under Public Resources Code section 21167.7 and Code of Civil
3 Procedure section 388, that on November 10, 2015, Committee for a Better Arvin, Committee for a
4 Better Shafter, Greenfield Walking Group, Natural Resources Defense Council, Sierra Club, and
5 Center for Biological Diversity filed suit against the County of Kern, including its Board of
6 Supervisors, Planning Commission, and Planning and Community Development Department,
7 challenging the County's failure to comply with the California Environmental Quality Act and the
8 State Planning and Zoning Law when approving the project titled "Revisions to the Kern County
9 Zoning Ordinance – 2015 (C) (Title 19, Kern County Ordinance Code)." The Board of Supervisors
10 approved the amended ordinance on November 9, 2015. A notice of determination for the
11 Ordinance was issued on November 10, 2015. A copy of the petition is provided with this notice.

12 DATED: December 10, 2015

Respectfully submitted,

13 

14
15 William Rostov, State Bar No. 184528
16 A. Yana Garcia, State Bar No. 282959
17 EARTHJUSTICE
18 50 California Street, Suite 500
19 San Francisco, CA 94111
20 wrostov@earthjustice.org
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24 *Attorneys for Petitioners Natural Resources Defense
25 Council and Sierra Club*

26 Selena Kyle, State Bar No. 246069
27 Giulia C.S. Good Stefani, State Bar No. 262228
28 NATURAL RESOURCES DEFENSE COUNCIL
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*Attorneys for Petitioner Natural Resources Defense
Council*

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Attorney for Petitioner Sierra Club



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Committee for a Better Shafter, and Greenfield Walking
Group*



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Tel: (510) 844-7133
Fax: (510) 844-7150

Attorney for Petitioner Center for Biological Diversity

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

6 I hereby certify that on December 10, 2015, I served by U.S. first class mail one true copy of
7 the following document(s):

8 **NOTICE TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA OF**
9 **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
10 **DECLARATORY AND INJUNCTIVE RELIEF;**

11 **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
12 **DECLARATORY AND INJUNCTIVE RELIEF**

13 on the party listed below:

14 Kamala D. Harris
15 Office of the Attorney General
16 455 Golden Gate, Suite 11000
17 San Francisco, CA 94102-7004
18 Telephone: (415) 703-5500

19 I certify under penalty of perjury that the foregoing is true and correct. Executed on
20 December 10, 2015 in San Francisco, California.
21

22 

23 _____
24 Rikki Weber
25
26
27
28