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

COMMUNITIES FOR A BETTER
ENVIRONMENT, SIERRA CLUB,
FORESTETHICS, CENTER FOR BIOLOGICAL
DIVERSITY, and ASSOCIATION OF
IRRITATED RESIDENTS

Petitioners,
v.

SAN JOAQUIN VALLEY AIR POLLUTION
CONTROL DISTRICT

Respondent.

BAKERSFIELD CRUDE TERMINAL LLC;
PLAINS MARKETING, L.P.; PLAINS LPG
SERVICES, L.P.; and PLAINS ALL AMERICAN
PIPELINE L.P.,

Real Parties in Interest.

**VERIFIED PETITION FOR WRIT
OF MANDATE**

INTRODUCTION

1. As cheap, landlocked crudes from North Dakota and Canada have recently become available, California has seen a frenzied effort to bring these crudes to state refineries by rail. Transporting large quantities of crude by rail, however, carries startling risks. In July 2013, a train carrying highly volatile North Dakota crude derailed in Lac-Mégantic, Canada, and exploded, killing 47 people and decimating half of downtown Lac-Mégantic. As a result of this and other derailments, the U.S. Transportation Secretary has declared the transport of North Dakota crude to be “an imminent hazard.”

2. The Bakersfield Crude Terminal is a crude-by-rail terminal in Taft, California, and is slated to be one of the largest crude-by-rail terminals in the state. The terminal will ultimately receive two one-hundred-car “unit” trains of crude oil per day, carrying as much as 61 million barrels a year, including the type of crude involved in the explosion in Lac-Mégantic. The crude slated to arrive at the Bakersfield Crude Terminal alone represents a 1,000% increase over the total amount imported by rail into California in 2013, substantially increasing the risk that California will experience accidents and derailments with catastrophic human and environmental consequences.

3. The Bakersfield Crude Terminal is also a major source of volatile organic compound emissions—a precursor to ozone air pollution. Breathing ozone is hazardous to respiratory health, and the San Joaquin Valley is already one of two air basins in the United States designated as in “extreme nonattainment” of federal ozone standards. The degraded state of the San Joaquin Valley’s air results in more than a thousand premature deaths each year, and one in six Valley children is diagnosed with asthma.

4. Unlike almost all other major crude-by-rail projects in the state, which have undergone or are undergoing extensive environmental review under the California Environmental Quality Act (“CEQA”), the BCT has never undergone environmental review. In 2012, the BCT convinced the San Joaquin Valley Air Pollution Control District (“Air District”) to permit a portion of the facility without public notice, without environmental review required under CEQA, and without pollution controls called for by the Clean Air Act so that it could “get the terminal built and

1 establish [itself] in the market ASAP.” Because the Air District also omitted all public notice, this
2 decision went unchallenged.

3 5. In April 2014, the Air District gave public notice that it was proposing to issue five
4 additional permits to build the Terminal’s oily water sewer system. The Air District stated that its
5 authority over the permits was “discretionary,” triggering CEQA review, but that it did not need to
6 prepare an environmental impact report. Seven environmental groups submitted comments,
7 highlighting the extraordinary derailment risk and air quality impacts of the project, and calling for
8 the Air District to prepare an environmental impact report before moving forward.

9 6. In response to the public outcry, the Bakersfield Crude Terminal withdrew its
10 application for the permits. A month later, it submitted a new permit application for the same oily
11 water sewer system with slight changes. Despite having concluded that its approval of the oily water
12 sewer system was discretionary, and even though it added numerous, individually crafted permit
13 conditions which required independent engineering judgment, on September 23, 2014, the District
14 issued the “Authority to Construct” oily water sewer system permits as “ministerial” permits without
15 public notice or any environmental review under CEQA. According to news reports, the facility
16 began operating in December.

17 7. The Air District’s approval of the Bakersfield Crude Terminal was not ministerial.
18 Petitioners, a coalition of environmental groups, therefore seek relief from this Court to void the Air
19 District’s approval of the oily water sewer system permits, and to enjoin the facility from operating
20 until it undergoes environmental review.

21 **PARTIES**

22 8. Petitioner COMMUNITIES FOR A BETTER ENVIRONMENT (“CBE”) is a
23 membership-based California non-profit environmental health and justice organization with offices
24 in Oakland and Huntington Park. CBE’s mission is to build people’s power in California’s
25 communities of color and low income communities, to achieve environmental health and justice by
26 preventing and reducing toxics, air and water pollution, and by building green healthy and
27 sustainable communities. CBE specifically works to equip residents of California who are
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1 disproportionately impacted by industrial pollution with the tools to monitor and transform their
2 immediate environment.

3 9. Petitioner ASSOCIATION OF IRRITATED RESIDENTS (“AIR”) is a California
4 non-profit corporation based in Kern County. AIR formed in 2001 to advocate for clean air and
5 environmental justice in San Joaquin Valley communities. AIR has several dozen members who
6 reside in Kern, Tulare, Kings, Fresno, and Stanislaus Counties. AIR members, through themselves,
7 their families, and friends, have direct experience with the many health impacts that arise from the
8 type of pollution emissions associated with the Bakersfield Crude Terminal.

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

20 11. Petitioner SIERRA CLUB is a national nonprofit organization of approximately
21 600,000 members. Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of
22 the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources;
23 to educating and encouraging humanity to protect and restore the quality of the natural and human
24 environment; and to using all lawful means to carry out these objectives. Sierra Club’s particular
25 interest in this case and the issues which the case concerns stem from Sierra Club’s interests in
26 reducing reliance on fossil fuels and protecting the health of vulnerable communities. Sierra Club
27 has approximately 600 members in Kern County and many more along the crude-by-rail transport
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1 route for the Bakersfield Crude Terminal. These members live, work, and recreate in counties that
2 are affected by the Bakersfield Crude Terminal.

3 12. Petitioner FORESTETHICS is a nonprofit environmental group committed to
4 protecting North America's forests and wild places, and the wildlife and people that depend on them.
5 ForestEthics has opposed new crude-by-rail terminals in North America and has raised awareness of
6 the risks of transporting crude oil in outdated rail cars. It recently released an online mapping tool
7 revealing that 25 million North Americans live in a one mile "blast zone" of the rail lines on which
8 oil trains carry crude oil.

9 13. By this action, Petitioners seek to protect the health, welfare, environmental and
10 economic interests of their members and the general public and to enforce a public duty owed to
11 them by the San Joaquin Valley Air Pollution Control District. Petitioners' members and staff have
12 an interest in their health and well-being, as well as conservation, environmental, aesthetic, and
13 economic interests in the Central Valley environment. Petitioners' members who live and work near
14 the Bakersfield Crude Terminal and along the rail lines radiating out from the terminal have a right
15 to, and a beneficial interest in, the San Joaquin Valley Air Pollution Control District's compliance
16 with CEQA. These interests have been, and continue to be, threatened by the Air District's decision
17 to approve the Bakersfield Crude Terminal in violation of CEQA. Unless the relief requested in this
18 case is granted, they will continue to be adversely affected and irreparably injured by the failure of
19 the San Joaquin Valley Air Pollution Control District to comply with the law.

20 14. Defendant SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT is
21 the local agency that issued the Authority to Construct permits that are the subject of this litigation.

22 15. Real Party in Interest BAKERSFIELD CRUDE TERMINAL LLC is a Delaware
23 limited liability company authorized to do business in California and is the recipient of the Authority
24 to Construct permits that are the subject of this litigation.

25 16. Real Party in Interest PLAINS MARKETING, L.P., is a Texas limited partnership
26 authorized to do business in California. Plains Marketing, L.P. represented to the Air District in
27 March, 2013 that it acquired all of the assets of the Bakersfield Crude Terminal, LLC.

17. Real Party in Interest PLAINS LPG SERVICES, L.P., is a Texas limited partnership authorized to do business in California. Plains LPG Services, L.P. is listed on the letterhead for the application for the permits at issue.

18. Real Party in Interest PLAINS ALL AMERICAN PIPELINE, L.P. is a Delaware limited partnership and is listed by the U.S. Securities and Exchange Commission as the parent company of the Bakersfield Crude Terminal LLC, Plains Marketing, L.P., and Plains LPG Services, L.P. Signage at the Bakersfield Crude Terminal carries the Plains All American Pipeline logo, and instructs visitors to “check into the Plains office,” indicating that Plains All American controls or operates the Bakersfield Crude Terminal.

JURISDICTION AND VENUE

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

20. Venue is proper in this court pursuant to Code of Civil Procedure sections 394 and 395 because the San Joaquin Valley Air Pollution Control District is located within Kern County. Venue is also proper in this court pursuant to Code of Civil Procedure section 393(b) because the Bakersfield Crude Terminal is in Kern County, and the Bakersfield Crude Terminal's environmental harms will occur in Kern County.

21. This action was timely filed within 180 days of the San Joaquin Valley Air Pollution Control District's issuance of the Authority to Construct permits for the oily water sewer system at issue.

22. Petitioners have provided written notice of their intention to file this petition to the San Joaquin Valley Air Pollution Control District and are including the notices and proofs of service as Exhibit A pursuant to the requirements of Public Resources Code section 21167.5.

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

24. Petitioners do not have a plain, speedy, or adequate remedy at law because Petitioners and their members will be irreparably harmed by the Air District's failure to provide public notice and conduct environmental review as required by CEQA before permitting the Bakersfield Crude Terminal and by the ensuing environmental damage caused by operation of the Bakersfield Crude Terminal.

STATUTORY BACKGROUND

The California Environmental Quality Act

25. The California Environmental Quality Act, California Public Resources Code §§ 21000-21177, is a comprehensive statute designed to provide for long-term protection of the environment.

26. CEQA has substantive, procedural, and informational mandates. CEQA’s substantive mandates include a prohibition on approving projects with significant adverse environmental impacts when feasible mitigation measures can reduce, eliminate, or lessen such impacts. (Pub. Resources Code, § 21002; Pub. Resources Code, § 21081, subd. (a); 14 Cal. Code. Regs. § 15370 (“CEQA Guidelines”).) Review of whether an exemption from CEQA requirements was validly granted is governed by Pub. Resources Code, § 21168.5, which requires the Court to determine whether there was a “prejudicial abuse of discretion” because the agency either has not proceeded in a manner required by law or “[because] the determination or decision is not supported by substantial evidence.”

27. CEQA applies to “discretionary” but not to “ministerial” projects. (Pub. Resources Code, § 21080, subd. (a).)

28. Whether an activity is ministerial or discretionary is a question of law and subject to *de novo* review. (*Great Oaks Water Co. v. Santa Clara Valley Water Dist.*, (2009) 170 Cal. App. 4th 956, 967.)

29. CEQA Guidelines define discretionary projects as actions requiring “the exercise of judgment, deliberation or decision” (CEQA Guidelines § 15357), and further provide in part that “CEQA applies in situations where a governmental agency can use its judgment in deciding whether

1 and how to carry out or approve a project. A project subject to such judgmental controls is called a
2 ‘discretionary project.’” (CEQA Guidelines § 15002, subd. (i).)

3 30. When making a ministerial decision, the agency official may use only “fixed
4 standards” or “objective measurements” and “cannot use personal, subjective judgment in deciding
5 whether or how the project should be carried out.” (CEQA Guidelines § 15369.) “The term
6 ‘ministerial’ is limited to those approvals which can be legally compelled without substantial
7 modification or change.” (*Friends of Westwood, Inc. v. City of Los Angeles*, (1987) 191 Cal. App. 3d
8 259, 269 (hereafter *Friends of Westwood*)). Typical examples of ministerial permits include
9 automobile registration, dog licenses, and marriage licenses.

10 31. Any doubt about whether a project is ministerial or discretionary should be resolved
11 in favor of the latter characterization. (*Friends of Westwood, supra*, 191 Cal.App.3d at page 271;
12 *NRDC v. Arcata Nat’l Corp.*, (1976) 59 Cal.App.3d 959, 970.)

13 32. CEQA must be interpreted “to afford the fullest possible protection to the
14 environment within the reasonable scope of the statutory language.” (*CBE v. Calif. Res. Agency*, 103
15 Cal. App. 4th 98, 109 (2002).) “[F]ailure to comply with the law subverts the purposes of CEQA if it
16 omits material necessary to informed decisionmaking and informed public participation. Case law is
17 clear that, in such cases, the error is prejudicial.” (*Cnty. of Amador v. El Dorado Cnty. Water*
18 *Agency*, (1999) 76 Cal. App. 4th 931, 946.)

19 **The Clean Air Act**

20 33. The Clean Air Act establishes a comprehensive scheme “to protect and enhance the
21 quality of the Nation’s air resources so as to promote the public health and welfare and the
22 productive capacity of its population.” (42 U.S.C. § 7401, subd. (b)(1).)

23 34. As one of its central features, the Clean Air Act requires the Administrator of the U.S.
24 Environmental Protection Agency (EPA) to set national ambient air quality standards (NAAQS) for
25 certain air pollutants at a level “requisite to protect the public health” with “an adequate margin of
26 safety.” (42 U.S.C. § 7409, subd. (b)(1).) Ozone is a designated NAAQS pollutant.

1 35. EPA is required to designate those areas failing to meet these standards as
2 “nonattainment” areas. (42 U.S.C. § 7407.) The San Joaquin Valley is in “extreme nonattainment”
3 with EPA’s standard for ozone. (40 C.F.R. § 81.305.)

4 36. Under 40 C.F.R. Part 51, all new and modified major sources of air pollution in areas
5 that are not in attainment with the NAAQS must comply with strict Nonattainment New Source
6 Review permit conditions.

7 37. Nonattainment New Source Review requirements include (1) the installation of the
8 lowest achievable emission rate; (2) the facility’s receipt of emission offsets; (3) an analysis of
9 alternative sites, sizes, production processes, and environmental control techniques; and (4) an
10 opportunity for public participation. (*See* 42 U.S.C. § 7503.)

11 38. In the San Joaquin Valley, a new or modified source is a “Major Source” of air
12 pollution if it emits more than 10 tons per year (or 20,000 lbs per year) of volatile organic
13 compounds (VOCs), a precursor to ozone. (*See* 42 U.S.C. § 7511a, subd. (e); 40 C.F.R. § 51.165,
14 subd. (a)(1)(iv)(A)(iv).)

15 39. The Clean Air Act requires states with nonattainment areas to adopt implementation
16 plans to achieve the NAAQS by the applicable attainment dates under the Act. (42 U.S.C. § 7410.)
17 The collection of plans and rules designed to attain the various NAAQS are referred to collectively
18 as the State Implementation Plan (“SIP”). SIP provisions must satisfy the requirements of the Act
19 before EPA can approve a state’s SIP submission. (42 U.S.C. § 7410(k); 40 C.F.R. § 51.165.) The
20 San Joaquin Valley Air Pollution Control District administers the Clean Air Act and the “Major
21 Source” permitting program within the San Joaquin Valley, under California’s SIP.

22 40. EPA has approved Air District Rules, including Air District Rule 2201, as part of
23 California’s SIP. (69 Fed.Reg. 27837.) Rule 2201 includes the Nonattainment New Source Review
24 requirements of 40 C.F.R. Part 51. (*See, e.g.*, Rule 2201, §§ 4.5, 4.15.1 & 5.4) Rule 2201 also
25 requires a stationary source of pollution that is expanded or modified to purchase emissions offsets
26 for VOC emissions when the source’s potential to emit exceeds 20,000 pounds per year, Rule 2201,
27 § 4.5, and requires the Air District to provide public notice of proposed Air District permits when
28 there are “[m]odifications that increase the Stationary Source Potential to Emit (SSPE1) from a level

1 below the emission offset threshold level to a level exceeding the emission offset threshold level for
2 one or more pollutants.” (Rule 2201, § 5.4.3.)

3 41. Air District Rule 2201 provides the Air District with discretion over permitting. For
4 example, Rule 2201 section 5.2 provides discretion for the Air District to decide “whether an
5 Authority to Construct permit should be approved, conditionally approved, or disapproved.” (*See*
6 *Friends of Westwood, supra*, 191 Cal. App. 3d at page 269 [“[T]he term ‘ministerial’ is limited to
7 those approvals which can be legally compelled without substantial modification or change.”].) Rule
8 2201 section 5.6.3 similarly provides the Air District with discretion to impose necessary permit
9 terms. (“An [Authority to Construct permit] shall include all those conditions which the [Air
10 Pollution Control Officer] *deems necessary* to assure construction and operation in the manner
11 assumed in making the analysis to determine compliance with this rule.” (Emphasis added.))

12 42. EPA has recognized that major sources may attempt to skirt the onerous requirements
13 of New Source Review permitting by obtaining minor source permits with “operating restrictions
14 limiting their potential to emit to minor or de minimis levels for the purpose of allowing them to
15 commence construction prior to receipt of a major source permit.” (EPA Guidance, *Limiting*
16 *Potential to Emit in New Source Permitting* (1989) at 10.) In these “sham permit” cases, where the
17 permit applicant intends to ultimately operate the source at major source levels, EPA considers “the
18 minor source construction permit void ab initio.” (*Id.* (emphasis in original).) EPA believes that
19 “[a]ttempts to expedite construction by securing several minor source permits and avoiding major
20 modification requirements should be treated as circumvention.” (EPA Guidance, *Applicability of*
21 *New Source Review Circumvention Guidance to 3M--Maplewood, Minnesota* (1993) at 2; *see also*
22 EPA Guidance, *Limiting Potential to Emit in New Source Permitting* (1989) at 10 [“[A] major
23 source application filed after the minor source application, but either before operation has
24 commenced or after less than a year of operation should be looked at closely.”].)

1 **STATEMENT OF FACTS**

2 **The Community and Environmental Setting**

3 43. The Bakersfield Crude Terminal is located within the San Joaquin Valley Air Basin,
4 one of only two air basins in the United States designated “extreme nonattainment” for federal ozone
5 standards.

6 44. Ground level ozone is created by chemical reaction between nitrogen oxides (NOx)
7 and volatile organic compounds (VOCs). According to EPA, “breathing ozone can trigger a variety
8 of health problems including chest pain, coughing, and throat irritation. It can worsen bronchitis,
9 emphysema and asthma. Ground level ozone also can reduce lung function and inflame the linings of
10 the lungs. Repeated exposure may permanently scar lung tissue.”¹

11 45. The American Lung Association, in its most recent State of the Air Report, gives
12 Kern County a failing grade for both ozone and particulate matter pollution, finding that the region
13 suffers some of the worst air pollution in the nation.² These deplorable conditions result in 1,500
14 premature deaths in the San Joaquin Valley each year and almost one in ten residents suffering from
15 asthma.³ One in six Valley children will be diagnosed with the disease, which translates into 23,000
16 asthma attacks and 16,310 days with upper respiratory symptoms for asthmatic children per year.⁴
17 Further, recent research has found that almost one-third of residents in Kern County face both high
18 environmental risks (such as toxic air pollution) and social risk factors (such as poverty), which in
19 turn increases susceptibility to environmental hazards and increases risks of health problems.⁵ The
20 economic toll of the Valley’s poor air quality ranges from \$3 billion to \$6 billion in health costs and
21 lost productivity annually.⁶

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23
24 ¹ <http://www.epa.gov/air/ozonepollution/health.html>.

25 ² *See generally* <http://www.stateoftheair.org>.

26 ³ *Ibid.*; <http://www.lung.org/associations/states/california/advocacy/fight-for-air-quality/healthy-growth-leaders/san-joaquin-valley-why-healthy-growth.html>.

27 ⁴ <https://www.fresnostate.edu/chhs/cvhpi/documents/cvhpi-jointcenter-sanjoaquin.pdf>.

28 ⁵ Jonathan London et al., *Land of Risk, Land of Opportunity*, U.C. Davis Center for Regional Change (Nov. 2011), *available at* <http://regionalchange.ucdavis.edu/ourwork/publications/ceva-sjv/full-report-land-of-risk-land-of-opportunity/view>.

⁶ *Ibid.*; <http://calstate.fullerton.edu/news/2008/091-air-pollution-study.html>.

Transport of Crude Oil by Rail

46. Transporting large volumes of crude oil over long distances by train carries significant risk.

47. Crude by rail incidents, particularly incidents involving crude oil from the Bakken region in North Dakota, can be devastating. Bakken crude oil is more volatile and explosive than heavy crude oil, and rail safety regulations have not yet caught up to the boom in Bakken transport. In July 2013, a train carrying Bakken crude derailed in Lac-Mégantic, Canada, and exploded, killing 47 people and decimating half of downtown Lac-Mégantic. Unfortunately, Lac-Mégantic is not the only recent catastrophic accident involving Bakken crude. Since Lac-Mégantic, several other major accidents have occurred involving Bakken crude the last year and a half, including in Lynchburg, Virginia (derailment causing 30,000 gallons to spill into the James River), Casselton, North Dakota (derailment spilling 400,000 gallons of oil and requiring the evacuation of 2,000 people), and Aliceville, Alabama (derailment resulting in an undetermined amount of crude oil released into a wetland). As a result of the recent spate in catastrophic Bakken train accidents, the U.S. Transportation Secretary has declared the transport of Bakken crude to be “an imminent hazard,” such that a “substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur.” (U.S. Dep’t of Transp. Emergency Order, (May 7, 2014, Dock. No. DOT-OST-2014-0067) <<http://www.dot.gov/briefing-room/emergency-order>>.)

48. The amount of crude oil transported into California by rail has historically been a very small percentage of the state’s oil imports, and California has so far experienced only a small-scale increase in the number of crude-by rail incidents. In 2012, California imported about 1 million barrels of oil per year by rail. In 2013, California imported 6.3 million barrels.⁷

49. As increasing amounts of crude oil are transported into the state, the potential for high-consequence incidents will increase. Crude by rail transport is particularly risky in California because California crude transport routes “include travel through some of the state’s most densely

⁷ <http://www.caloes.ca.gov/HazardousMaterials/Pages/Oil-By-Rail.aspx>

1 populated areas, as well as some of the most sensitive ecological areas” and because “there are
2 significant gaps in local emergency response capabilities.”⁸

3 50. The Bakersfield Crude Terminal would ultimately receive two one-hundred-car
4 “unit” trains of crude oil per day, carrying as much as 61 million barrels a year. This is a 1,000%
5 increase as compared to the entire amount of crude California imported by rail in 2013.

6 **The Bakersfield Crude Terminal Air District Approvals**

7 51. On May 16, 2012, the Bakersfield Crude Terminal submitted an Authority to
8 Construct permit package to the Air District to construct a “rail-to-pipeline transfer” to “transfer
9 crude from incoming railcars into outbound pipelines” and “two 150,000-barrel internal-floating roof
10 (IFR) tanks for storing crude oil.” The terminal stated that it was proposing to “offload up to two
11 unit trains (168,000 bbl) per day” and that the “maximum throughput for rail-to-pipeline transfer is
12 . . . 61,320,000 bbl per year.” The application identified Bakken crude as among the crudes that
13 would be imported.

14 52. In June of 2012, the Bakersfield Crude Terminal’s Project Manager, Michael Ernst,
15 expressed to the Air District the Terminal’s desire to avoid public notice and stringent Clean Air Act
16 Major Source permitting requirements. In an email to Kristopher Rickards, Senior Air Quality
17 Engineer for the Air District, Mr. Ernst requested that the Air District recalculate the emissions for
18 the facility with different operating parameters in order to avoid emissions over 20,000 lbs/year of
19 VOCs, which would trigger stringent Clean Air Act requirements:

20 Please rerun run [sic] your numbers and let me know if those two things get us
21 under the 20,000 lb threshold. We are trying to avoid [Major Source permitting]
22 at this time because BCT feels the need to get the terminal built and establish
23 themselves [sic] in the market ASAP. They asked me to give them the maximum
24 throughput that would keep them under the threshold. They are fine with
[obtaining a Major Source permit] in the future if they have the need to expand
things, but would rather not right now.

25 53. On July 16, 2012, Mr. Rickards proposed ways that the facility could “avoid public
26 noticing of these tanks” by changing design and operation parameters to keep the facility under
27 20,000 pounds per year of VOC emissions.

28 ⁸ <http://www.caloes.ca.gov/HazardousMaterials/Pages/Oil-By-Rail.aspx>

1 54. On July 31, 2012, the Air District issued the Authority to Construct permits for the
2 rail-to-pipeline transfer and floating roof tanks without public notice, without a Clean Air Act Major
3 Source permit, and without complying with CEQA.

4 55. The Air District's calculations projected the total VOCs emissions for the facility to
5 be 19,992 lb/year, just eight pounds under the threshold for Clean Air Act Major Source permits.

6 56. In January of 2014, the Bakersfield Crude Terminal submitted an application for
7 Authority to Construct permits for four sump tanks and a 2,000 gallon oil-water separator. The sump
8 tanks would be used as "lift stations for crude oil and water collected from equipment drains and
9 surface water equipment pads," and the oil water separator would "pump the separated water to
10 retention basin(s); the separated oil will be removed via vacuum trucks."

11 57. The equipment covered by this application is the oily water sewer system for the
12 Terminal and should have been included in the original 2012 application because the system is an
13 integral, necessary part of the terminal. As noted by Argonne National Laboratory, "[a]ll pipeline
14 terminals need to handle the drainage of lubricants and pipeline products, sampling dump stations,
15 contaminated condensates, etc."⁹

16 58. The Air District recognized that this equipment was part of the larger facility it had
17 permitted in 2012, and that when combined with the earlier permit, the facility exceeded Major
18 Source permitting thresholds. In a February 6, 2014 email, Kristopher Rickards at the Air District
19 wrote to Patia Siong, also at the Air District, acknowledging that the 2014 permits "appear[] to be
20 additional equipment of the same larger project that we permitted [in 2012]." He followed up by
21 saying "[a]nd of course we have total VOC emissions > 10 tons/year [over the Clean Air Act Major
22 Source threshold] between the two projects."

23 59. The Air District nonetheless proceeded to permit the sump tanks and oil-water
24 separator as a separate project, rather than finding that the Bakersfield Crude Terminal had
25 piecemealed its permit applications to circumvent Clean Air Act New Source Review in 2012.

26 ⁹ T.C. Pharris and R.L. Kolpa, Overview of the Design, Construction, and Operation of Interstate
27 Liquid Petroleum Pipelines, Argonne National Laboratory Report ANL/EVS/TM/08-1, November
28 2007, p. 5, Available at:
http://corridoreis.anl.gov/documents/docs/technical/APT_60928_EVS_TM_08_1.pdf.

1 60. In February of 2014, the Air District began working with the Bakersfield Crude
2 Terminal to negotiate the permits' terms. On February 14, 2014, David Torri, an Air Quality
3 Engineer at the Air District, called Scott Falkenburger, consultant for the Bakersfield Crude
4 Terminal, inquiring whether "two in-series carbon canisters will be used or if only one will be used."
5 On February 18, 2014, Nicholas Diercks, Environmental Consultant for the Bakersfield Crude
6 Terminal, emailed Mr. Torri stating that "[t]he operator would like to go with the option to install a
7 single carbon canister with weekly breakthrough monitoring with a VOC detection device."

8 61. On April 24, 2014, the Air District issued a public notice that it was proposing to
9 issue Authority to Construct permits for four sump tanks and a 2,000 gallon oil-water separator at
10 the Bakersfield Crude Terminal. The Air District indicated that it issued public notice because the
11 VOC emissions from the sump tanks, when combined with the previously permitted floating roof
12 tanks, exceeded 20,000 lbs/year, making the Bakersfield Crude Terminal a Major Source and
13 triggering public notice requirements under Air District Rule 2201, § 5.4.3.

14 62. The Authority to Construct application review for the sump tanks and oil-water
15 separator addressed the Air District's role under CEQA. The Air District acknowledged that it had
16 "discretionary approval over the project via its Permits Rule (Rule 2010) and New Source Review
17 Rule (2201)." The Air District believed, however, that because stationary source emissions from the
18 project would be reduced "to levels below the District's thresholds of significance for criteria
19 pollutants," and "the District does not have authority over any of the other project impacts," "no
20 additional findings [were] required" under CEQA.

21 63. On May 30, 2014, Petitioners Communities for a Better Environment, Sierra Club,
22 and ForestEthics submitted comments informing the Air District that, under CEQA, the Air District
23 was required to prepare an environmental impact report on the Bakersfield Crude Terminal before
24 permitting the tanks.

25 64. The comments highlighted the significant impacts of the Bakersfield Crude Terminal,
26 including the risk of catastrophic accident and the fact that the terminal would exacerbate the already
27 highly unhealthy air quality in the San Joaquin Valley.

28 65. On August 15, 2014, the Bakersfield Crude Terminal withdrew the application.

1 66. On September 8, 2014, the Bakersfield Crude Terminal resubmitted the application
2 with slight changes in the configuration of the sump tanks which, when added to the emissions
3 counted as part of the 2012 permit, brought the total VOC emissions of the Bakersfield Crude
4 Terminal down to 20,501 lbs/year. The Terminal also requested that the Air District expedite the
5 new application because “[d]elays in receipt of the permit will result in a loss of \$108,000 per day
6 due to lost revenue.” At no time did the Bakersfield Crude Terminal or the Air District publicly
7 announce or notice the resubmission of the application or otherwise inform the Petitioners who had
8 submitted comments regarding the withdrawn application that a new application was pending.

9 67. The Air District’s forty-page review of the Authority to Construct application
10 included a detailed analysis of the assumptions, terms, and requirements of the proposed permits,
11 most of which called for the exercise of independent engineering judgment.

12 68. The Air District also conducted a Health Risk Assessment, in accordance with Air
13 District Policy APR 1905 – *Risk Management Policy for Permitting New and Modified Sources*.
14 This guidance provides for discretion in how to analyze the health risk for the project. For instance,
15 the guidance allows a variety of models to be used:

16 Health Risk Assessments [are] performed in accordance with [California Air
17 Pollution Control Officers Association’s] Toxic “Hot Spots” Facility Risk
18 Assessment Guidelines or other guidelines issued by [the California Office of
19 Environmental Health Hazard Assessment]. A Health Risk Assessment consists of
20 a comprehensive analysis of the dispersion of hazardous substances in the
21 environment, and a quantitative assessment of health risks resulting from
22 exposure to these substances.

23 69. The Air District chose to use the AERMOD model to model risk, chose to use
24 meteorological data from 2004-2008, and noted that the conclusions of the Health Risk Assessment
25 “are based on the data provided by the applicant and the project engineer” and therefore are “valid
26 only as long as the proposed data and parameters do not change.”

27 70. On September 23, 2014, the Air District issued the Authority to Construct oily water
28 sewer system permits. The permits included the single carbon canister design negotiated between the
Bakersfield Crude Terminal and the Air District. The permits also contained numerous conditions

1 that required the interpretation, analysis, and independent judgment of an Air District engineer,
2 including:

- 3 • “The tank shall be equipped with a vapor recovery system consisting of a closed vent
4 system that collects all VOCs from the storage tank, and a VOC control device. The
5 vapor recovery system shall be APCO-approved and maintained in gas-tight
6 condition. The VOC control device shall be a carbon canister system that reduces the
7 inlet VOC emissions by at least 95% by weight as determined by the test method
8 specified in Section 6.4.”
- 9 • “Tank fluid throughput shall not exceed 3.1 bbl/day.”
- 10 • “VOC emission from the outlet of the carbon canister shall not exceed 0.3 lb/day.”
- 11 • “If the VOC concentration at the outlet of the carbon canister exceeds 10,000 ppmv,
12 carbon canister shall be replaced with a fresh carbon canister.”
- 13 • “Permittee shall measure and record the VOC concentration at the outlet of the
14 carbon canister at least once each week.”

15 71. Despite previously determining that its approval of the sump tanks and oil water
16 separator was discretionary, despite negotiating the design of the project, despite carefully crafting
17 individual permit terms, despite choosing to permit the sump tanks and oil water separator separately
18 from the floating roof tanks, and despite determining that, even though the facility’s emissions were
19 now over the Major Source Clean Air Act threshold, it was not required to issue a Major Source
20 permit, the Air District issued the Authority to Construct permits as “ministerial” permits, therefore
21 not triggering review under CEQA. On that basis, the Air District issued the permits without public
22 notification, comment period, process, or environmental review.

23 **CLAIM FOR RELIEF**

24 **Failure to Comply With the California Environmental Quality Act**

25 72. Plaintiffs hereby incorporate all previous paragraphs by reference.

26 73. The Air District’s issuance of the September 23, 2014 Authority to Construct permits
27 for the Bakersfield Crude Terminal’s oily water sewer system was discretionary.
28

1 74. The Air District's failure to conduct any CEQA review before issuing these permits
2 constituted a prejudicial abuse of discretion.

3 **RELIEF REQUESTED**

4 WHEREFORE, Plaintiffs respectfully request that the Court:

- 5 A. Issue a writ of mandate or peremptory writ under the seal of this Court directing the
6 San Joaquin Valley Air Pollution Control District to:
- 7 1. Set aside and withdraw its approval of the Bakersfield Crude Terminal,
8 September 23, 2014 Authority to Construct permits;
- 9 2. Refrain from granting any further approvals of the Bakersfield Crude
10 Terminal unless and until the Air District conducts environmental review
11 under CEQA;
- 12 B. Enter a preliminary and/or permanent injunction prohibiting the Air District and the
13 Bakersfield Crude Terminal from carrying out, implementing, or otherwise acting in
14 furtherance of the September 23, 2014 Authority to Construct permits until the Air
15 District has conducted environmental review under CEQA;
- 16 C. Enter a preliminary and/or permanent injunction prohibiting the Bakersfield Crude
17 Terminal from operating until approval has been obtained from the Air District after
18 the Air District has conducted environmental review under CEQA;
- 19 D. Enter a declaratory judgment stating that the Air District violated CEQA by
20 approving the September 23, 2014 Authority to Construct permits without complying
21 with CEQA;
- 22 E. Enter a declaratory judgment stating that the Air District's approval of the September
23 23, 2014 Authority to Construct permits is void *ab initio* or otherwise invalid and of
24 no legal effect;
- 25 F. Enter a declaratory judgment that the Air District's failure to prepare, consider, and
26 approve or certify an adequate environmental analysis under CEQA constituted a
27 prejudicial abuse of discretion for failure to proceed in a manner required by law;
28

- 1 G. Award Petitioners' fees and costs, including reasonable attorneys' fees and expert
2 witness costs, as authorized by California Code of Civil Procedure § 1021.5, and any
3 other applicable provisions of law;
4 H. Grant such other relief as the Court deems just and proper.
5

6 Respectfully submitted,

7 DATED: January 28, 2015

8 

9 ELIZABETH B. FORSYTH, State Bar No. 288311
10 PAUL R. CORT, State Bar No. 184336
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13 San Francisco, CA 94111
14 eforsyth@earthjustice.org
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16 Tel: 415-217-2000/Fax: 415-217-2040

17 *Attorneys for Petitioners Sierra Club, ForestEthics,*
18 *Center for Biological Diversity, and Association of*
19 *Irrigated Residents*

20 

21 A. YANA GARCIA, State Bar No. 282959
22 Communities for a Better Environment,
23 1904 Franklin, Suite 600
24 Oakland, CA 94612
25 ygarcia@cbecal.org
26 Tel: 510-302-0430/Fax: 510-302-0437

27 *Attorney for Petitioner Communities for a Better*
28 *Environment*

VERIFICATION

I, Byron Gudiel declare:

I am the Executive Director at Communities for a Better Environment. I have read the above petition for writ of mandate against the San Joaquin Valley Air Pollution Control District, the Bakersfield Crude Terminal LLC, Plains Marketing, L.P., Plains LPG Services, L.P., and Plains All American Pipeline L.P., and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed January 24, 2015 in Oakland, California.



Byron Gudiel
Communities for a Better Environment

VERIFICATION

VERIFICATION

I, Gordon Nipp, declare:

I am the Vice-Chair of the Kern-Kaweah Chapter of Petitioner Sierra Club. I have read the above petition for writ of mandate against the San Joaquin Valley Air Pollution Control District, the Bakersfield Crude Terminal LLC, Plains Marketing, L.P., Plains LPG Services, L.P., and Plains All American Pipeline L.P., and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed January 26, 2015 in Bakersfield, California.



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

VERIFICATION

VERIFICATION

I, Matt Krogh declare:

I am the Director of the Extreme Oil Campaign of ForestEthics. I have read the above petition for writ of mandate against the San Joaquin Valley Air Pollution Control District, the Bakersfield Crude Terminal LLC, Plains Marketing, L.P., Plains LPG Services, L.P., and Plains All American Pipeline L.P., and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed January 27, 2015 in Bellingham, Washington.




Matt Krogh
ForestEthics

VERIFICATION

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I am an attorney for Petitioner Center for Biological Diversity. I have read the above petition for writ of mandate against the San Joaquin Valley Air Pollution Control District, the Bakersfield Crude Terminal LLC, Plains Marketing, L.P., Plains LPG Services, L.P., and Plains All American Pipeline L.P., and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge except for those stated on information and belief, and as to those matters I believe them to be true.



Vera Pardee
Center for Biological Diversity

VERIFICATION

I, Tom Frantz declare:

I am the President of Petitioner Association of Irritated Residents. I have read the above petition for writ of mandate against the San Joaquin Valley Air Pollution Control District, the Bakersfield Crude Terminal LLC, Plains Marketing, L.P., Plains LPG Services, L.P., and Plains All American Pipeline L.P., and know its contents. All of the facts alleged in the petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed January 27 2015 in Bakersfield, California.



Tom Frantz
President
Association of Irritated Residents

VERIFICATION

EXHIBIT A



EARTHJUSTICE

Because the earth needs a good lawyer

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

January 28, 2015

Via Certified U.S. Mail, Return Receipt Requested

San Joaquin Valley Air Pollution Control District
34946 Flyover Court
Bakersfield, CA 93308

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

To the San Joaquin Valley Air Pollution Control District:

PLEASE TAKE NOTICE, under Public Resources Code section 21168.5, Communities for a Better Environment, Sierra Club, Forest Ethics, Center for Biological Diversity, and Association of Irrigated Residents intend to file a verified petition for writ of mandate against the San Joaquin Valley Air Pollution Control District in Kern County Superior Court. The petition challenges the Air District's approval of permit numbers S-8165-9-0, S-8165-10-0, S-8165-11-0, S-8165-12-0, and S-8165-13-0 for the Bakersfield Crude Terminal without complying with the California Environmental Quality Act.

The petition seeks a writ of mandate to compel the San Joaquin Valley Air Pollution Control District to comply with CEQA and a preliminary and permanent injunction prohibiting the Bakersfield Crude Terminal from operating until the requirements of CEQA have been fulfilled.

DATED: January 28, 2015

Elizabeth Forsyth
Associate Attorney
Earthjustice

EXHIBIT B

PAUL R. CORT, State Bar No. 184336
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Attorney for Petitioner Communities for a Better Environment

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

COMMUNITIES FOR A BETTER
ENVIRONMENT, SIERRA CLUB,
FORESTETHICS, CENTER FOR BIOLOGICAL
DIVERSITY, and ASSOCIATION OF
IRRITATED RESIDENTS,

Petitioners,
v.

SAN JOAQUIN VALLEY AIR POLLUTION
CONTROL DISTRICT,

Respondent.

BAKERSFIELD CRUDE TERMINAL LLC;
PLAINS MARKETING, L.P.; PLAINS LPG
SERVICES, L.P.; and PLAINS ALL
AMERICAN PIPELINE, L.P.,

Real Parties in Interest.

Case No.

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

To the Attorney General of the State of California:

PLEASE TAKE NOTICE that under California Public Resources Code section 21167.7 and California Code of Civil Procedure section 388, Petitioners COMMUNITIES FOR A BETTER ENVIRONMENT, SIERRA CLUB, FOREST ETHICS, CENTER FOR BIOLOGICAL DIVERSITY, and ASSOCIATION OF IRRITATED RESIDENTS will file the attached verified petition for writ of mandate under the provisions of the California Environmental Quality Act, California Public Resources Code section 21000, *et seq.* (CEQA) against Respondent SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT, and Real Parties in Interest BAKERSFIELD CRUDE TERMINAL LLC, PLAINS MARKETING, L.P., PLAINS LPG SERVICES, L.P., and PLAINS ALL AMERICAN PIPELINE L.P., in Kern County Superior Court.

The petition challenges the San Joaquin Valley Air Pollution Control District's actions in approving certain permits for the Bakersfield Crude Terminal without complying with CEQA.

DATED: January 28, 2015

Respectfully submitted,



ELIZABETH B. FORSYTH, State Bar No. 288311
PAUL R. CORT, State Bar No. 184336
Earthjustice
50 California Street
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*Attorneys for Petitioners Center for Sierra Club,
Forest Ethics, Center for Biological Diversity, and
Association of Irrigated Residents*

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PROOF OF SERVICE

I, John W. Wall, hereby declare:

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

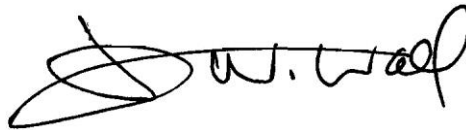
On January 28, 2015, I served a copy of the following documents described as:

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

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

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

I declare under penalty of perjury of the laws of the California that the foregoing is true and correct and that this was executed on January 28, 2015, in San Francisco, California.



John W. Wall