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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,
COMMITTEE FOR A BETTER SHAFTER,
12 COMITÉ PROGRESO DE LAMONT, NATURAL
RESOURCES DEFENSE COUNCIL, SIERRA
13 CLUB, and CENTER FOR BIOLOGICAL
DIVERSITY

14 Petitioners,

15 v.

16 COUNTY OF KERN, BOARD OF SUPERVISORS
17 OF THE COUNTY OF KERN, KERN COUNTY
PLANNING AND NATURAL RESOURCES
18 DEPARTMENT, and DOES 1-20,

19 Respondents.

20 CALIFORNIA INDEPENDENT PETROLEUM
21 ASSOCIATION, WESTERN STATES
PETROLEUM ASSOCIATION, and DOES 21-40,

22 Real Parties in Interest.
23
24
25
26
27
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) Case No.

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

) CCP §§ 1085, 1094.5; Public Resources
Code § 21000 et seq. (CEQA)

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1 **INTRODUCTION**

2 1. This Verified Petition for Writ of Mandate and Complaint for Injunctive Relief
3 (“Petition”) challenges the March 8, 2021 decision of the Board of Supervisors of the County of
4 Kern to approve a project entitled “Revisions to the Kern County Zoning Ordinance – 2020 (A)
5 Focused on Oil and Gas Local Permitting” (“2021 Ordinance” or “Project”). As explained below, the
6 actions of Respondents (collectively, “the County”) in approving the Project, certifying an
7 inadequate Supplemental Recirculated Environmental Impact Report (“SREIR”), and adopting
8 related findings and a statement of overriding considerations violated the California Environmental
9 Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and the CEQA Guidelines, 14
10 California Code of Regulations section 15000 et seq.

11 2. The challenged Project amends the existing Kern County zoning ordinance to
12 implement a new land use approval process for oil and gas exploration, extraction, operation, and
13 production activities. The 2021 Ordinance and SREIR authorize the drilling of 2,697 new producing
14 wells each year, along with a wide range of related development that includes everything from the
15 construction of well pads, roads, and pipelines, to the stimulation of wells using harmful chemicals,
16 to the disposal of vast quantities of contaminated wastewater via pumping into earthen pits or
17 injection into underground aquifers. Under the 2021 Ordinance and SREIR, these intense industrial
18 activities will occur over a land area of approximately 3,700 square miles (“Project Area”).
19 The 2021 Ordinance purports to institute a ministerial permitting system that will allow future oil
20 and gas development to occur as a matter of right on nearly all unincorporated County land within
21 the Project Area. Under this ministerial permitting system, there will be no opportunity for further
22 environmental review or additional mitigation for as long as the 2021 Ordinance remains in place.
23 The 2021 Ordinance has no expiration date, nor does the SREIR. Furthermore, the County intends
24 for the SREIR to relieve all other agencies, including regional and state entities, from any future
25 obligation to conduct more detailed, site-specific CEQA review for most future oil and gas activities
26 in the County.

27 3. The 2021 Ordinance is a new version of the oil and gas ordinance enacted by the
28 County in November 2015 (“2015 Ordinance”). The 2015 Ordinance was entitled “Revisions to the

1 Kern County Zoning Ordinance – 2015 (C) Focused on Oil and Gas Local Permitting.”

2 4. Committee for a Better Arvin, Committee for a Better Shafter, Greenfield Walking
3 Group, Natural Resources Defense Council, Sierra Club, and Center for Biological Diversity (“2015
4 Arvin Petitioners”) filed a timely challenge to the 2015 Ordinance, alleging that the Environmental
5 Impact Report (“2015 EIR”) for that project failed to comply with CEQA.¹

6 5. In February 2020, the Fifth District Court of Appeal issued a lengthy decision holding
7 that the 2015 EIR violated CEQA in multiple ways. This Court thereafter issued a peremptory writ
8 of mandate directing the Board of Supervisors to set aside its approval of the 2015 Ordinance, its
9 certification of the 2015 EIR, and its approval of related findings and statement of overriding
10 considerations. The writ specified, inter alia, that in the event the County decides to present the 2015
11 Ordinance in its original or a modified form to the Board for reapproval, the County must prepare a
12 revised EIR correcting the CEQA violations identified in the appellate opinion.

13 6. The County prepared the SREIR in a purported effort to correct the numerous errors
14 in the 2015 EIR so that it could approve the 2021 Ordinance and resume issuing permits for oil and
15 gas drilling. However, it largely failed to rectify the CEQA violations the Court of Appeal identified.
16 Not only do several of the most serious analytic errors persist in the SREIR, but key mitigation for
17 significant environmental impacts of the 2021 Ordinance remains wholly ineffective. Furthermore,
18 in some areas the County has created new problems, compounding its original CEQA violations.

19 7. The Court of Appeal faulted the 2015 EIR because it did not discuss the impact of the
20 County’s proposed mitigation on the Project’s emissions of dangerous fine particulate matter (PM_{2.5})
21 pollution. The Court of Appeal also directed the County to adopt an enforceable mitigation measure
22 to address such PM_{2.5} pollution or, alternatively, to explain why such mitigation was not feasible.
23 Despite clear instructions from the Court of Appeal, the SREIR still does not adequately discuss the
24 severity of PM_{2.5} emissions from the 2021 Ordinance remaining after mitigation, nor does it adopt an
25

26
27 ¹ Arvin Petitioners’ lawsuit was consolidated with two other actions challenging the 2015 Ordinance.
28 The consolidated case, entitled *Vaquero Energy Inc. et al. v. County of Kern*, is currently pending in
this Court under Case No. BCV-15-101645-EB. This Petition will refer to this consolidated case as
the “Ongoing Action.”

1 enforceable mitigation measure that directly targets PM_{2.5}, even though the County does not dispute
2 that such mitigation for PM_{2.5} is feasible.

3 8. Beyond the harmful impacts posed specifically by PM_{2.5} emissions, the County’s
4 analysis and mitigation of the 2021 Ordinance’s exposure of residents to harmful air pollution at
5 home, school, and other sensitive locations also fails to comply with CEQA. The Court of Appeal
6 ordered the County to circulate a “multi-well” or cumulative health risk assessment that the County
7 previously failed to make adequately available for public review in 2015. This assessment, intended
8 to evaluate the hazards and health risks of community exposure to toxic air pollution from multiple
9 oil and gas wells, is premised on unrealistic assumptions that do not reflect the close proximity of
10 drilling and other activities allowed under the 2021 Ordinance or the high density of wells operating
11 in the County. Further, the cumulative health risk assessment neglected to evaluate any health risks
12 other than cancer. This analysis and the mitigation measure premised upon it are wholly inadequate.

13 9. The County also failed to comply with CEQA in carrying out its obligations under the
14 writ to reconsider water supply impacts and mitigation. In the midst of an unprecedented statewide
15 effort to preserve groundwater through implementation of the Sustainable Groundwater Management
16 Act, the 2021 Ordinance and SREIR allow the oil and gas industry to continue using scarce
17 municipal and industrial quality water for its operations at progressively increasing rates. The
18 County allows this expansion even though it recognizes that much of the Project Area overlies water
19 basins that are critically overdrafted, and that existing water supply is insufficient to sustainably
20 meet demand. Industry’s use of water therefore threatens water availability for other users, including
21 people who rely on vulnerable water systems for their drinking water. The County failed to properly
22 describe these impacts in the SREIR, and likewise failed to prescribe feasible and adequate
23 mitigation.

24 10. The County’s analysis and mitigation of noise impacts likewise is inadequate and
25 fails to meet CEQA’s requirements. The SREIR acknowledges that the 2021 Ordinance will
26 authorize oil and gas construction activities that are uniquely noisy due to the height of drill rigs and
27 the round-the-clock and lengthy duration of these activities. Nevertheless, the SREIR fails to fully
28 analyze the direct, indirect, and cumulative noise impacts of the Project, including likely adverse

1 health outcomes. The SREIR’s noise analysis also reflects invalid assumptions and the County used
2 two different and incompatible noise level metrics to assess whether additional mitigation is
3 necessary to prevent significant increases in oilfield noise. Because of these and other errors,
4 residents at home, school, and other sensitive locations could experience substantial, unmitigated,
5 and undiscussed noise-related impacts, particularly in quiet parts of the County.

6 11. The County’s analysis of the 2021 Ordinance’s impact on Kern County’s wildlife also
7 is inadequate. Specifically, the SREIR fails to disclose, evaluate, and mitigate likely harms to the
8 imperiled Temblor legless lizard, a recently discovered species that lives in only a few locations in
9 Kern County, and on earth. Oil and gas activity may wipe out the majority of habitat for this species.
10 CEQA requires the County to incorporate new information regarding the changed circumstances and
11 the true severity of harm and to properly address these impacts.

12 12. The County’s findings and statement of overriding considerations, adopted in
13 connection with the 2021 Ordinance, are invalid. They are flawed both because they unlawfully
14 purport to override impacts that can and should have been analyzed and mitigated more fully, and
15 because they are not based on substantial evidence supporting either the purported benefits of the
16 Project nor the environmental effects being outweighed, including, inter alia, the adverse economic
17 consequences of such effects.

18 13. Finally, the County’s CEQA process for the 2021 Ordinance and SREIR prevented
19 many of the County’s residents who are most affected by oil and gas development from participating
20 meaningfully. In particular, the County failed to provide Spanish-language versions of its notices or
21 the executive summaries of the draft and final SREIRs. In the face of repeated requests, the County
22 declined to make these basic materials available in Spanish even though a substantial portion of
23 Kern County residents only speak or primarily speak Spanish. Oil and gas development already is
24 overwhelmingly located in proximity to predominantly Hispanic or Latinx communities, and the
25 2021 Ordinance and SREIR will increase the harm to these already overburdened communities.

26 14. For all these reasons, this Court should (a) direct the Board of Supervisors to set aside
27 its approval of the 2021 Ordinance, certification of the SREIR, and adoption of related findings and
28 statement of overriding considerations; (b) decline to discharge the writ of mandate concerning the

1 prior 2015 Ordinance and 2015 EIR in the Ongoing Action until such time as the County fully
2 complies with CEQA; and (c) direct the County to publish any future notices, as well as the
3 executive summaries of any future environmental impact reports, in Spanish as well as in English.

4 **PARTIES**

5 15. Petitioner COMMITTEE FOR A BETTER ARVIN is a 501(c)(3) nonprofit
6 organization and resident of Kern County whose fifty members reside and, in some cases, own
7 property in Arvin, California. Committee for a Better Arvin’s mission is to improve the quality of
8 life in Arvin, to inform and unite the community, to address problems facing the community, and to
9 secure equality for all residents. Committee for a Better Arvin and its members have engaged in
10 advocacy for improved local and regional air quality for many years and are concerned about the
11 impacts of ongoing oil and gas development in the San Joaquin Valley. In 2014, a gas pipe leak
12 forced eight Arvin families to evacuate from their homes for about nine months. There are currently
13 more than 70 oil and gas wells located within a half mile from homes, schools, and healthcare
14 facilities in the Arvin area. Committee for a Better Arvin’s members are very concerned about the
15 health and safety impacts from the additional oil and gas development the 2021 Ordinance and
16 SREIR purport to authorize without site-specific environmental review or mitigation. Committee for
17 a Better Arvin submitted comments concerning the SREIR for the 2021 Ordinance.

18 16. Petitioner COMMITTEE FOR A BETTER SHAFTER is a 501(c)(3) nonprofit
19 organization and resident of Kern County whose members reside and, in some cases, own property
20 in Shafter, California. Committee for a Better Shafter has twenty-five members and thirty families
21 that partner in the community garden it developed and sustains. Committee for a Better Shafter’s
22 mission is to advocate for environmental health, to support the development of economically and
23 environmentally sustainable jobs, to develop and promote community garden projects, and to
24 support community development programs in the South San Joaquin Valley and in Shafter. In
25 addition, Committee for a Better Shafter strives to empower community members to be active and
26 involved in civic engagement. Committee for a Better Shafter and its members actively engage on
27 climate issues—particularly the issue of oil and gas development locally, regionally, and statewide.
28 Committee for a Better Shafter members and community gardener participants are especially

1 concerned about water, soil, and air pollution because multiple oil and gas wells are located fewer
2 than 2,000 feet away from their garden. Further, there are more than 240 oil and gas wells located
3 within a half mile from homes, schools, and healthcare facilities in the Shafter area. Committee for a
4 Better Shafter members are concerned that the 2021 Ordinance and SREIR will adversely affect their
5 health and the health of their community and cause other adverse environmental impacts. Committee
6 for a Better Shafter submitted comments concerning the SREIR for the 2021 Ordinance.

7 17. Petitioner COMITÉ PROGRESO DE LAMONT is a community group in Kern
8 County. Lamont is a farming community located south-southeast of Bakersfield. Comité Progreso de
9 Lamont has 35 members. Comité Progreso de Lamont's mission is to achieve a healthy environment
10 in Lamont and to improve community infrastructure and the quality of the lives of Lamont residents
11 by involving the community and creating a voice to advocate for and address issues that Lamont is
12 facing. Comité Progreso de Lamont's members actively engage on issues relating to oil and gas
13 activity, both locally and statewide. There are almost 140 wells located within a half mile from
14 homes, schools, and healthcare facilities in the Lamont area. Comité Progreso de Lamont and its
15 members are concerned with their health and the health of other Kern County residents and the
16 impacts the 2021 Ordinance and SREIR will have on their communities. Comité Progreso de
17 Lamont submitted comments concerning the SREIR for the 2021 Ordinance.

18 18. Petitioner NATURAL RESOURCES DEFENSE COUNCIL ("NRDC") is a national
19 non-profit membership organization with approximately 250 Kern County and 77,250 California
20 members, and offices in Santa Monica and San Francisco. NRDC's purpose is to safeguard the earth;
21 its people, plants, and animals; and the natural systems upon which all life depends. NRDC works in
22 California cities and counties, including Kern County, to address serious threats that oil and gas
23 activities, including enhanced oil recovery, hydraulic fracturing, and disposal of wastewater through
24 underground injection, pose to public health and the environment. NRDC members live, own
25 property, and/or recreate in parts of Kern County that are threatened by oil and gas activities the
26 2021 Ordinance authorizes. NRDC and its members submitted comments concerning the SREIR for
27 the 2021 Ordinance.

28 19. Petitioner SIERRA CLUB is a national non-profit organization with approximately

1 840,000 members, roughly 171,000 of whom live in California. Sierra Club’s Kern-Kaweah Chapter
2 has approximately 1,500 members. The Sierra Club is dedicated to exploring, enjoying, and
3 protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s
4 ecosystems and resources; to educating and encouraging humanity to protect and restore the quality
5 of the natural and human environment; and to using all lawful means to carry out these objectives.
6 The Sierra Club has been actively working in California, including in Kern County, to address the
7 serious threats to public health and the environment posed by the lack of oversight and safeguards
8 for oil and gas drilling activities, including well stimulation by the process of hydraulic fracturing.
9 Sierra Club members live and recreate in Kern County and are affected by the 2021 Ordinance and
10 oil and gas approvals expected as a consequence. Sierra Club submitted comments concerning the
11 SREIR for the 2021 Ordinance.

12 20. Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“CBD”) is a nonprofit,
13 public interest environmental organization dedicated to the protection of native species and their
14 habitats through science, policy, and environmental law. CBD’s Climate Law Institute works to
15 reduce greenhouse gas emissions and other air pollutants, conserve natural resources, and minimize
16 the public health risks facing communities exposed to industrial pollution. Specific objectives
17 include addressing the adverse impacts of oil and gas operations to climate, water, air, wildlife,
18 public health, and environmental justice. CBD has 84,333 members, including 17,679 members who
19 reside in California, about 125 of whom live in Kern County. CBD’s members and staff include
20 individuals who live, work, and recreate in areas threatened by the adverse impacts of oil and gas
21 development. CBD, its members, and staff have ongoing recreational, scientific, and educational
22 interests harmed by the 2021 Ordinance. Members and staff include those who are particularly
23 interested in protecting the many native, imperiled, and sensitive species and their habitats that may
24 be affected by oil and gas development. Members and staff include those who regularly use and
25 intend to continue to use the areas affected by the oil and gas well approvals at issue here. CBD has
26 actively participated in the SREIR process, submitting multiple comment letters and participating in
27 hearings on this matter.

28 21. Petitioners are collectively referred to herein as “Arvin Petitioners.”

1 22. Respondent COUNTY OF KERN (also “Kern County”), a political subdivision of the
2 State of California, is responsible for regulating and controlling land use in the unincorporated
3 territory of Kern County, including, but not limited to, implementing and complying with the
4 provisions of CEQA and the CEQA Guidelines. Kern County is the “lead agency” for purposes of
5 Public Resources Code section 21067, with principal responsibility for conducting environmental
6 review and approving the 2021 Ordinance.

7 23. Respondent BOARD OF SUPERVISORS OF THE COUNTY OF KERN (“Board”)
8 is the duly elected legislative body for Kern County responsible for compliance with CEQA and the
9 CEQA Guidelines, and for adopting any amendments or revisions to the Kern County Code of
10 Ordinances.

11 24. Respondent KERN COUNTY PLANNING AND NATURAL RESOURCES
12 DEPARTMENT (“Planning Department”) is an agency that provides land use planning and
13 community development services for the County, including preparation of environmental documents
14 under CEQA. The Planning Department processed the 2021 Ordinance for the County, and managed
15 preparation of the SREIR and CEQA findings and statement of overriding considerations. The
16 County’s March 9, 2021 Notice of Determination for the Project lists the Planning Department as
17 “Applicant, or sponsoring agency or department.”

18 25. As noted above, “the County” refers to all Respondents. As used herein, it also refers
19 to all boards, departments, and commissions, including the Board of Supervisors, Planning and
20 Natural Resources Department, and Planning Commission.

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

25 27. Real Party in Interest WESTERN STATES PETROLEUM ASSOCIATION
26 (“WSPA”) is a trade association that represents companies that account for the bulk of petroleum
27 exploration, production, refining, transportation and marketing in five western states including
28 California. The County’s March 9, 2021 Notice of Determination for the 2021 Ordinance lists

1 WSPA as “Applicant, or sponsoring agency or department.”

2 28. Real Party in Interest CALIFORNIA INDEPENDENT PETROLEUM
3 ASSOCIATION (“CIPA”) is a trade association representing approximately 500 independent crude
4 oil and natural gas producers, royalty owners, and service and supply companies operating in
5 California. The County’s March 9, 2021 Notice of Determination for the 2021 Ordinance lists CIPA
6 as “Applicant, or sponsoring agency or department.”

7 29. Arvin Petitioners do not know the true names and capacities, whether individual,
8 corporate, associate or otherwise, of Real Parties in Interest DOE 21 through DOE 40, inclusive, and
9 therefore sue said Real Parties under fictitious names. Arvin Petitioners will amend this Petition to
10 show their true names and capacities when they are known.

11 **JURISDICTION AND VENUE**

12 30. This Court has jurisdiction over the matters alleged in this Petition pursuant to Code
13 of Civil Procedure sections 1085 and 1094.5, and Public Resources Code sections 21168, 21168.5,
14 and 21168.9.

15 31. Because this is an action or proceeding against a county, venue is proper in this Court
16 pursuant to Code of Civil Procedure section 394, subdivision (a). Moreover, the 2021 Ordinance is
17 proposed for implementation in Kern County, Respondents approved the 2021 Ordinance in Kern
18 County, and the environmental harm caused by the 2021 Ordinance will be felt in Kern County. As
19 such, venue is proper in this Court because the cause of action alleged in this Petition arose in Kern
20 County.

21 32. In accordance with Public Resources Code section 21167, subdivision (c), this
22 Petition has been filed within 30 days of the County’s March 9, 2021 Notice of Determination
23 approving the 2021 Ordinance and certifying the SREIR.

24 33. Arvin Petitioners have complied with the requirements of Public Resources Code
25 section 21167.5 by serving a written notice on March 9, 2021 of Arvin Petitioners’ intention to
26 commence this action against Respondents. A copy of this written notice and proof of service is
27 attached as Exhibit A to this Petition.

28 34. Arvin Petitioners are complying with the requirements of Public Resources Code

1 section 21167.6 by concurrently filing a notice of its election to prepare the administrative record for
2 this action.

3 35. Arvin Petitioners will promptly send a copy of the Petition to the California Attorney
4 General, thereby complying with the requirements of Public Resources Code section 21167.7.

5 36. Arvin Petitioners have performed any and all conditions precedent to filing this
6 instant action and have exhausted any and all available administrative remedies to the extent
7 required by law.

8 37. Arvin Petitioners have no plain, speedy, or adequate remedy in the course of ordinary
9 law unless this Court grants the requested writ of mandate to require Respondents to set aside their
10 approval of the 2021 Ordinance and SREIR. In the absence of such remedies, Respondents'
11 approvals will remain in effect in violation of State law.

12 **STATEMENT OF FACTS**

13 **I. Environmental Setting**

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

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

19 40. In the SREIR it prepared for the 2021 Ordinance, the County delineates a "Project
20 Area" of 3,700 square miles (or more than 2.3 million acres) that encompasses the majority of Kern
21 County within the San Joaquin Valley floor—an area larger than the entire State of Delaware. This
22 "Project Area" is bounded on the west by the San Luis Obispo, Monterey, and Santa Barbara county
23 lines; on the north by the Kings and Tulare county lines; on the east by the 2,000-foot elevation
24 contours, squared off to the nearest section line; and on the south by the northern boundary of the
25 Los Padres National Forest and portions of the San Emigdo and Tehachapi Mountains.

26 41. The County is already one of the most air-polluted regions in the United States. The
27 San Joaquin Valley air basin, including the Valley portion of Kern County and the Project Area, has
28 been designated a nonattainment area for federal PM_{2.5} standards. According to the American Lung

1 Association’s 2020 “State of the Air” Report, for the years 2016 to 2018, Kern County endured the
2 worst annual PM_{2.5} levels nationally and experienced the third worst 24-hour levels of PM_{2.5}. The
3 same report identified Bakersfield as the most polluted metropolitan area for annual levels of PM_{2.5}
4 pollution and the second most polluted area for 24-hour levels. Scientists have determined that there
5 is no safe level of exposure to PM_{2.5} and low levels of PM_{2.5}, far below current levels in the County,
6 are associated with increases in premature mortality, adverse birth outcomes (low birth weight and
7 preterm birth), cardiovascular disease, chronic lung disease, asthma, dementia, and other poor health
8 outcomes. Even small and short-term increases in PM_{2.5} are associated with increased rates of
9 premature death and incidence of disease.

10 42. Although many Kern County residents struggle to access affordable clean drinking
11 water, oil and gas operations in the County use substantial amounts of water that is clean enough for
12 municipal and industrial use. Oil and gas activities already have contributed to a considerable drop in
13 groundwater levels. The state has classified virtually all of the groundwater basins underlying the
14 Project Area as “high priority” water-conservation areas under the Sustainable Groundwater
15 Management Act, Wat. Code, § 10720 et seq. (“SGMA”), a relatively new state planning law that
16 will be implemented to achieve a balanced water budget over the coming decades. This balancing
17 will require significantly reduced use of groundwater, and the County acknowledges that
18 disadvantaged community interests in groundwater supplies have not been sufficiently considered in
19 the development of plans under SGMA.

20 43. Kern County is home to approximately 900,000 people. The County’s population is
21 majority Hispanic or Latinx. Among County residents ages five and over, 39 percent speak Spanish
22 at home, and approximately 16 percent speak Spanish and have limited English proficiency.

23 44. Nearly 20 percent of operational oil and gas wells in the County are located within
24 two miles of major population centers Bakersfield, Shafter, Lost Hills, Lamont, and Arvin.

25 45. These communities are home to substantial numbers of Spanish-speaking residents.
26 For example, more than 90 percent of households in Lost Hills speak Spanish as their primary
27 language, and more than 52 percent speak limited English. Similarly, in Lamont and Arvin, more
28 than 86 percent and 80 percent of households speak Spanish as their primary language, respectively;

1 and more than 32 percent and 28 percent speak limited English, respectively.

2 46. Many residents of these communities also are economically disadvantaged. For
3 instance, more than 59 percent of Lost Hills households make \$40,000 or less annually—which is
4 approximately 80 percent of the Kern County annual median income. The majority of households in
5 Lamont and Arvin likewise have incomes that are at or below 80 percent of the County’s annual
6 median income.

7 **II. History of the 2015 Ordinance**

8 **A. Administrative Proceedings**

9 47. The County initiated the 2015 Ordinance at the request of project applicants that
10 included oil and gas industry organizations WSPA and CIPA. The 2015 Ordinance consisted of
11 revisions to Title 19 of the Kern County Zoning Ordinance, with emphasis on Chapter 19.98 (Oil
12 and Gas Production). These revisions provided new procedures, implementation standards, and
13 conditions for future oil and gas exploration, development, and production activities in the
14 unincorporated areas of Kern County. Along with the specific zoning ordinance revisions, the
15 project included all oil and gas development permitted by these revisions. Because there was no
16 expiration date or mandate to update the County’s zoning at any time, the 2015 Ordinance could
17 have remained in effect indefinitely.

18 48. The 2015 Ordinance revised the County’s zoning ordinance with the goal of
19 establishing ministerial permitting procedures for oil and gas activities in nearly all of the
20 unincorporated land in the Project Area. These procedures included an “Oil and Gas Conformity
21 Review” permitting process for drilling and completion activities and a “Minor Activity Review” for
22 so-called “minor” activities that did not directly involve drilling. The County would issue these
23 permits “over the counter” if an application indicated that the applicant would comply with the
24 mitigation measures identified in the 2015 EIR. Oil and gas activities proposed in the County’s
25 limited residential and commercial zones required a discretionary conditional use permit issued after
26 a public hearing.

27 49. The oil and gas industry project applicants entirely funded the environmental review
28 for the 2015 Ordinance.

1 50. Arvin Petitioners and other members of the public submitted extensive comments
2 warning the County that the 2015 EIR failed to comply with CEQA. The County refused to correct
3 the errors and, on or about November 9, 2015, the Board approved the 2015 Ordinance.

4 **B. 2015 Arvin Petitioners’ Lawsuit Challenging the 2015 Ordinance**

5 51. On or about December 9, 2015, King & Gardiner Farms, LLC (“KGF”) filed a
6 petition for peremptory writ of mandate and complaint for injunctive and declaratory relief,
7 challenging the County’s approval of the 2015 Ordinance, alleging that the 2015 EIR was inadequate
8 under CEQA. On or about December 10, 2015, the 2015 Arvin Petitioners filed a separate writ
9 petition and complaint for injunctive and declaratory relief challenging the 2015 EIR’s adequacy.
10 These two actions were consolidated with a third challenge to the 2015 Ordinance, filed by
11 petitioners Vaquero Energy Inc. et al. (collectively, “Vaquero”). This Ongoing Action is currently
12 pending in Kern County Superior Court.

13 52. Over three days in and around June and August 2017, this Court conducted a writ
14 hearing in the consolidated cases. On or about March 12, 2018, this Court issued its ruling, granting
15 the petitions of 2015 Arvin Petitioners and KGF in part. Regarding 2015 Arvin Petitioners’ claims, it
16 held that the 2015 EIR failed to analyze the environmental impacts resulting from road paving, a
17 purported mitigation measure for the 2015 Ordinance’s air quality impacts. Regarding KGF’s
18 claims, this Court held that the 2015 EIR’s failure to analyze the 2015 Ordinance’s impacts on
19 rangeland/grazing lands violated CEQA. This Court denied all the other CEQA claims asserted by
20 2015 Arvin Petitioners and KGF.

21 53. On or about April 20, 2018, this Court issued a single judgment in the 2015 Arvin
22 Petitioners and KGF cases. The Court ordered the issuance of a peremptory writ of mandate that
23 directed the County to correct the deficiencies it identified in the 2015 EIR and to reconsider its
24 approval of the 2015 Ordinance in light of any new information in the revised analysis.

25 54. 2015 Arvin Petitioners and KGF each appealed from the judgment. Neither the
26 County nor the Real Parties in Interest cross-appealed.

27 55. By separate judgment, the Superior Court denied all claims asserted by Vaquero.
28 Vaquero appealed. In August 2019, the Court of Appeal bifurcated the Vaquero appeal from the

1 other consolidated appeals. The Court of Appeal issued a decision in December 2019, rejecting
2 Vaquero’s claims in their entirety. *Vaquero Energy, Inc. v. County of Kern* (2019) 42 Cal.App.5th
3 312.

4 56. On or about February 25, 2020, the Court of Appeal issued a 150-page decision,
5 reversing the Superior Court’s judgment in part and affirming in part. Regarding 2015 Arvin
6 Petitioners’ claims, the Court of Appeal held that the County violated CEQA in two areas:

7 a. The 2015 EIR failed to adequately analyze or mitigate the 2015 Ordinance’s
8 impacts to air quality. Specifically, the 2015 EIR failed to discuss the impact of Mitigation Measure
9 4.3-8 on PM_{2.5} emissions or, alternatively, to provide an explanation for why there was no separate
10 discussion of the measure’s impacts on PM_{2.5} emissions. Mitigation Measure 4.3-8 also did not
11 provide for enforceable mitigation of PM_{2.5} emissions, and there was no finding that mitigation for
12 this specific pollutant was not feasible.

13 b. The 2015 EIR failed to identify effective mitigation for the 2015 Ordinance’s
14 impacts to water supply. Specifically, the County unlawfully deferred mitigation for these impacts
15 by adopting measures that lacked specific, mandatory performance criteria. Further, it delayed
16 implementation of the mitigation until after activities under the 2015 Ordinance commenced.

17 57. The Court of Appeal also ruled for KGF in three areas:

18 a. The 2015 EIR failed to identify effective mitigation for the 2015 Ordinance’s
19 significant impacts on agricultural land conversions.

20 b. The 2015 EIR failed to provide an adequate analysis of the 2015 Ordinance’s
21 noise impacts. Specifically, it failed to analyze whether the 2015 Ordinance’s permanent or
22 temporary increases in ambient noise levels in the project vicinity would result in a significant
23 environmental impact. Instead, it analyzed only whether noise related to the 2015 Ordinance would
24 exceed a “maximum” standard of 65 decibels (dB) set forth in the County’s general plan.

25 c. The County erred in failing to recirculate the so-called “Cumulative Health
26 Risk Assessment,” also known as the “Multi-Well Health Risk Assessment” for the 2015 Ordinance.
27 The County’s draft EIR had included no analysis of the health risks posed to sensitive receptors
28 located near the 2015 project’s multiple wells, and the County did not release the Cumulative Health

1 Risk Assessment until just five business days before the Board approved the 2015 Ordinance and
2 2015 EIR. Members of the public and other government agencies thus had no meaningful
3 opportunity to review the Cumulative Health Risk Assessment and evaluate its adequacy.²

4 58. The Court of Appeal provided specific direction on the appropriate remedy. It
5 specified that the County must (a) set aside its approval of the 2015 Ordinance as of the date the
6 court’s decision became final; and (b) set aside its certification of the 2015 EIR and related findings
7 and statement of overriding considerations. In the event the County decided to present the 2015
8 Ordinance in its original or a modified form to the Board for reapproval, the Court of Appeal held
9 that the County was required to (c) prepare a revised EIR correcting the CEQA violations identified
10 in the Appellate Opinion; and (d) recirculate the Cumulative Health Risk Assessment for public
11 review and comment. Finally, the court held that any permits issued pursuant to the 2015 Ordinance
12 on or after the date the court’s decision became final were invalid.

13 59. The Court of Appeal further noted that, as a result of the ongoing implementation of
14 the Sustainable Groundwater Management Act, “the information about groundwater supply and use
15 has increased since the preparation of the draft EIR.” The court thus required the County to revisit its
16 discussions of water supply impacts and the baseline environment with regard to water supply in any
17 subsequent EIR.

18 60. On or about March 11, 2020, the County and Real Parties in Interest filed petitions
19 for rehearing with the Court of Appeal, arguing that the court had erred in its remedy directions. On
20 or about March 20, 2020, the court denied the petitions for rehearing and modified the opinion in
21 minor respects that did not affect its CEQA rulings or alter its directions regarding remedy. The
22 Appellate Opinion became final on or about March 26, 2020, and the remittitur issued on or about
23
24
25
26

27 ² The Court of Appeal denied other CEQA claims asserted by 2015 Arvin Petitioners and KGF and
28 declined, on ripeness grounds, to decide 2015 Arvin Petitioners’ claim that approval of permits
under the 2015 Ordinance was discretionary rather than ministerial.

1 May 27, 2020.³

2 61. On or about May 12, 2020, the Superior Court issued a minute order directing KGF to
3 prepare a proposed modified judgment (“Modified Judgment”), a proposed second peremptory writ
4 of mandate (“Second Writ”), and a proposed order (“Order”) consistent with the Appellate Opinion.
5 On or about June 12, 2020, the Court signed the Modified Judgment and Order. On or about June 17,
6 2020, KGF filed a notice of entry of the Modified Judgment and Order. On or about the same day,
7 the Court issued the Second Writ.

8 62. On or about May 19, 2020, the Board adopted Resolution No. 2020-116, which (a) set
9 aside the Board’s approval of the 2015 Ordinance effective as of March 26, 2020; (b) set aside the
10 Board’s certification of the 2015 EIR; and (c) set aside the findings of fact and statement of
11 overriding considerations adopted in connection with the Board’s approval of the 2015 Ordinance.
12 On or about August 31, 2020, the County filed an initial return to the Second Writ. The return, inter
13 alia, described the County’s adoption of Resolution No. 2020-116 and stated that the County had
14 ceased issuing permits pursuant to the 2015 Ordinance effective at the close of business on March
15 25, 2020.

16 63. The Modified Judgment provided that this Court would retain jurisdiction over (a) the
17 Ongoing Action (including consolidated case nos. BCV-15-101666-EB and BCV-15-101679-EB) to
18 ensure compliance with the Modified Judgment and Second Writ; and (b) “any new CEQA
19 challenge that may be filed by KGF or Arvin with respect to any action the County may take to
20 approve or reapprove the [2015] Ordinance (in its present or a modified form).” Accordingly, Arvin
21 Petitioners will promptly seek to consolidate the instant Petition with the Ongoing Action and with
22 any new CEQA action KGF may file to challenge the 2021 Ordinance.⁴

23 _____
24 ³ This Petition uses the term “Appellate Opinion” to refer to the Court of Appeal’s slip opinion dated
25 February 25, 2020, as supplemented by the Court’s order dated March 20, 2020 modifying its
26 opinion and denying the County’s and Real Parties’ petitions for rehearing. Large portions of the
27 Appellate Opinion are published at *King and Gardiner Farms, LLC v. County of Kern* (2020) 45
28 Cal.App.5th 814.

⁴ Under state law, Arvin Petitioners may elect to file a new action to challenge the County’s failure
to comply with the Second Writ and its violations of CEQA in connection with adoption of the 2021
Ordinance. *Planning & Conservation League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th
210, 228; *City of Carmel-By-The-Sea v. Bd. of Supervisors* (1982) 137 Cal.App.3d 964, 971.

1 **III. The County’s Approval of the 2021 Ordinance and SREIR**

2 64. Following the Court of Appeal’s issuance of its February 25, 2020 decision in the
3 Ongoing Action, the County decided to consider approval of the 2021 Ordinance and to prepare a
4 supplemental recirculated EIR for the Project. According to the County, the zoning revisions
5 comprising the 2021 Ordinance are the same as the 2015 Ordinance with the exception of the
6 following changes: it updates names of County departments and State agencies that have changed
7 since 2015, references to CEQA documents, and implementation details; it reduces the number of
8 new wells permitted in each calendar year; it clarifies the process for monitoring a permitting
9 process related to split estates; and it adjusts some maps for technical geographic information system
10 errors identified from 2015.

11 **A. The August 2020 Draft SREIR**

12 65. On or about April 29, 2020, the County issued a Notice of Preparation of a draft
13 supplemental recirculated EIR for the 2021 Ordinance.

14 66. The County never provided the public with a version of the Notice of Preparation in
15 Spanish, despite a direct request by the Center on Race, Poverty & the Environment dated May 11,
16 2020.

17 67. On or about May 13, 2020, the County held a virtual scoping meeting.

18 68. On or about May 29, 2020, Arvin Petitioners submitted comments on the Notice of
19 Preparation, urging the County to closely follow the Court of Appeal’s detailed directives regarding
20 the revised analysis necessary to comply with CEQA.⁵

21 69. Arvin Petitioners’ scoping comments also urged the County, among other things, to
22 translate the Notice of Preparation, the forthcoming draft supplemental recirculated EIR, or
23 important portions thereof, and any future notices into Spanish.

24 70. On or about August 3, 2020, the County released an initial draft SREIR (“August
25

26 ⁵ This petition references several comment letters that Arvin Petitioners submitted to the County
27 during the CEQA review process. Each of these comment letters was signed by the majority of
28 Arvin Petitioners, but not every letter was signed by every Arvin Petitioner, and the letters had
additional signatories. For the sake of simplicity, this petition refers to these letters as submissions
by Arvin Petitioners.

1 DSREIR”) and circulated the document for a 45-day period of public comment.

2 71. The County did not publish the notice of availability for the August DSREIR or any
3 portion of the August DSREIR in Spanish.

4 72. On August 12, 2020, Arvin Petitioners submitted a written request that the County
5 extend the comment period by an additional 45 days to allow for adequate evaluation of the lengthy
6 and highly technical August DSREIR, particularly in light of the illness and other extreme stresses
7 facing Arvin Petitioners and Kern residents during the global COVID-19 pandemic. In addition,
8 Arvin Petitioners requested that the County republish the notice of availability of the August
9 DSREIR in Spanish, translate into Spanish the executive summary and other key portions of the
10 August DSREIR, and postpone a scheduled public workshop until after these materials were made
11 available to the public in Spanish. The County declined to extend the comment period and did not
12 publish Spanish copies of the notice of availability or any other materials.

13 73. On or about August 17, 2020, the County held a virtual public workshop on the
14 August DSREIR to “explain the public process for [the] reconsideration of the Zoning Ordinance [sic]
15 and present the structure of the SREIR.” The County provided closed captions in Spanish and a
16 phone line where callers could listen to live English-to-Spanish interpretation of the meeting but no
17 written materials were made available in Spanish.

18 74. During the August 17, 2020 workshop, members of the public, including members of
19 Committee for a Better Arvin and Committee for a Better Shafter, requested that the County provide
20 Spanish copies of key portions of the August DSREIR to reliably inform Spanish-speaking residents
21 about the impacts of the 2021 Ordinance on the environment and the health of their communities.
22 The Director of the Planning Department, Lorelei Oviatt, verbally declined to translate documents
23 into Spanish, stating that the County was “not required to do so by law or by the Court.”

24 75. Numerous organizations and individuals submitted comments criticizing the August
25 DSREIR.

26 76. Arvin Petitioners submitted a letter to the County regarding the August DSREIR
27 dated September 16, 2020. Incorporated into the letter were expert reports from Petra Pless, D.Env.
28 and H. Andrew Gray, PhD. The letter and reports explained that the August DSREIR failed to

1 correct the errors identified in the Appellate Opinion, comply with the Second Writ, or otherwise
2 comply with CEQA in the following respects:

3 a. The August DSREIR did not adequately analyze or mitigate air quality
4 impacts. For example, it did not disclose deficiencies in the County’s air quality mitigation measures
5 that were made apparent by the County’s experience implementing the same measures for more than
6 four years under the 2015 Ordinance and 2015 EIR. The August DSREIR did not acknowledge the
7 lag time between the issuance of new oil and gas permits and the later implementation of pollution-
8 reducing mitigation projects, frequently outside of the County. The August DSREIR also failed to
9 institute enforceable mitigation to address PM_{2.5} emissions. Although the text of Mitigation Measure
10 4.3-8 was edited in the August DSREIR to mention PM_{2.5}, the County declined to similarly amend
11 the implementing agreement for Mitigation Measure 4.3-8—i.e., the “Oil and Gas Emission
12 Reduction Agreement” or “OG-ERA” that the County and Air District entered into on August 18,
13 2016. Further, the August DSREIR lacked an adequate description of the health effects of PM_{2.5}
14 emissions which it improperly conflated with the health effects of coarser particulate matter (PM₁₀).

15 b. The County’s recirculated Cumulative Health Risk Assessment was rife with
16 assumptions that were not properly documented or adequately supported, assumptions that led to an
17 underestimation of air quality impacts and related health risks. Further, the modeling conducted for
18 the Cumulative Health Risk Assessment was not performed as claimed. Whereas the Cumulative
19 Health Risk Assessment asserted that air-polluting wells were modeled at distances of “1/8th of one
20 mile” and “1/4th of one mile” from a hypothetical sensitive receptor, the wells actually were
21 modeled at further distances, leading to a much lower estimate of risk.

22 c. Rather than revising the County’s defective mitigation for water supply
23 impacts as the Court of Appeal directed, the August DSREIR abandoned any attempt to reduce or
24 avoid the 2015 Ordinance’s significant impacts to water supplies. Specifically, the County revoked
25 the 2015 EIR’s three water supply mitigation measures and then drew the unsupported conclusion
26 that there were no feasible measures that could mitigate water supply impacts. In their comments,
27 Arvin Petitioners explained that the August DSREIR’s conclusion was incorrect and specifically
28 noted several mitigation measures that the County could feasibly implement, including: (1)

1 maximizing use of recycled and produced water in the oil and gas industry to limit use of municipal
2 and industrial water, and (2) implementing a drinking water protection program to mitigate harms to
3 those residents most impacted by the 2021 Ordinance’s water supply impacts. The August DSREIR
4 further failed to consider the feasibility of adopting mitigation measures that are either identical to or
5 similar to projects and management actions contained in Groundwater Sustainability Plans and
6 management area plans prepared in the Project Area pursuant to SGMA.⁶ These projects and
7 management actions, or very similar measures to mitigate groundwater loss, would be facially
8 feasible for the County to implement, and they were specifically defined in materials attached to
9 Arvin Petitioners’ comments.

10 d. The August DSREIR also failed to consider new modeling information and
11 evidence of significant impacts to the Temblor legless lizard (*Aniella analexanderae*), a recently
12 discovered species whose habitat and survival is threatened by oil and gas activity.

13 e. With respect to the County’s CEQA review process, Arvin Petitioners
14 continued to urge the County to translate into Spanish and publish the notice of availability for, and
15 key portions of, the August DSREIR to inform Kern County’s monolingual and primarily Spanish-
16 speaking populations about the environmental impacts of the 2021 Ordinance and to allow these
17 community members to participate meaningfully in the County’s decision-making process.

18 77. KGF also submitted a letter to the County, dated September 16, 2020, commenting on
19 the August DSREIR.

20 a. KGF criticized the August DSREIR for, among other things, failing to provide
21 adequate mitigation for the 2021 Ordinance’s significant noise impacts. For example, as discussed in
22 a report by KGF’s noise experts Salter and Associates, the August DSREIR failed to require ambient
23 noise measurements at project sites or noise-sensitive receptors and failed to use ambient noise

24 _____
25 ⁶ Under SGMA, local and regional authorities in certain water basins and subbasins must form
26 Groundwater Sustainability Agencies that are responsible for developing and implementing
27 Groundwater Sustainability Plans to provide for the sustainable long-term management of
28 groundwater. In service of this goal, many Groundwater Sustainability Plans and subsidiary
management area plans in the County propose to implement specific “projects” and “management
actions” in the coming years to augment groundwater supplies. Cal. Code Regs., tit. 23, § 354.44.

1 measurements in developing mitigation. The August DSREIR also failed to provide adequate
2 mitigation for operational noise impacts.

3 b. KGF also identified deficiencies in the County’s Cumulative Health Risk
4 Assessment noting, for example, that the recirculated assessment failed to evaluate health risks based
5 on realistic assumptions reflecting the actual density of wells in Kern County. KGF’s comments on
6 the Cumulative Health Risk Assessment were supported by a report from air quality expert Phyllis
7 Fox, PhD, PE.

8 78. In a letter to the County dated October 2, 2020, Arvin Petitioners submitted additional
9 comments noting, among other things, that the majority of oil and gas permits issued in Kern County
10 from 2015 through May 2020 were issued in areas with substantial Hispanic or Latinx and
11 linguistically isolated populations.

12 **B. The October 2020 Draft SREIR**

13 79. On or about October 30, 2020, the County released a revised version of the draft
14 SREIR (“October DSREIR”) for the 2021 Ordinance.

15 80. The County did not publish the notice of availability or any portion of the October
16 DSREIR in Spanish.

17 81. On or about November 10, 2020, the County held a virtual workshop on the October
18 DSREIR. County staff provided an overview of the structure and process for the SREIR and
19 summarized select mitigation measures that were amended in the October DSREIR. The County
20 provided closed captions in Spanish and a phone line where callers could listen to live English-to-
21 Spanish interpretation of the meeting but no written materials were made available in Spanish.

22 82. During the November 10, 2020 workshop, a member of the public requested that the
23 County provide copies of the notices related to the October DSREIR as well as key portions of the
24 October DSREIR in Spanish. Director Oviatt declined to provide these requested materials, stating
25 that the County was not directed to do so by the Court.

26 83. Numerous organizations and individuals submitted comments criticizing the October
27 DSREIR.

28 84. Arvin Petitioners submitted a letter to the County regarding the October DSREIR

1 dated December 14, 2020. Incorporated into the letter were new expert reports from Petra Pless,
2 D.Env. and Phyllis Fox, PhD, PE, along with an initial expert report from Tanja Srebotnik, PhD. The
3 letter and reports explained that the October DSREIR, like the August DSREIR, failed to correct the
4 errors identified in the Appellate Opinion, comply with the Second Writ, or otherwise comply with
5 CEQA in the following respects:

6 a. The October DSREIR, like the August DSREIR before it, failed to provide
7 adequate analysis of or mitigation for air quality impacts.

8 i. Among other flaws, the County still refused in the October DSREIR to
9 institute enforceable mitigation for PM_{2.5} emissions and made no claim that such targeted mitigation
10 would be infeasible.

11 ii. Further, the October DSREIR neglected to adequately discuss the
12 effect of Mitigation Measure 4.3-8 on PM_{2.5} emissions. The October DSREIR did not estimate local
13 increases in PM_{2.5} emissions remaining after mitigation, even though modeling easily could be
14 performed; it likewise did not describe quantitatively or even qualitatively the adverse health
15 consequences that such local emissions will cause; nor did it convey the severity of the health effects
16 caused by expected increases in PM_{2.5} pollution.

17 b. The October DSREIR continued to fail to adequately analyze and mitigate
18 impacts to water supply. For example:

19 i. The October DSREIR offered a new mitigation measure, Mitigation
20 Measure 4.17-5, which requires applicants to pay a fee that is deposited into a “Disadvantaged
21 Community Drinking Water Grant Fund.” Under the measure, Kern County Public Health
22 subsequently will select and award grants for projects relating to water system improvements in
23 disadvantaged communities in the Valley portion of the County. Arvin Petitioners noted this
24 mitigation was not a lawful fair-share fee because it was vague and undefined, and because it failed
25 to disclose information necessary to determine whether it was part of a reasonable, enforceable plan
26 or program that is sufficiently tied to the actual mitigation of the water supply impacts at issue.

27 ii. Like the August DSREIR, the October DSREIR did not adequately
28 justify declining to adopt a mitigation measure that would restrict industry use of municipal and

1 industrial water supplies.

2 iii. The October DSREIR also continued to fail to adequately consider
3 mitigation measures that would leverage the considerable research and analysis already done under
4 SGMA. For example, the October DSREIR provided an inadequate general explanation for declining
5 to adopt any mitigation measures that are either identical to or similar to projects and management
6 actions contained in Groundwater Sustainability Plans and management area plans prepared in the
7 Project Area pursuant to SGMA. The October DSREIR likewise failed to consider paying to
8 Groundwater Sustainability Agencies the 2021 Ordinance’s fair share of the costs of mitigating
9 water supply impacts.

10 c. While the County addressed some of the flaws in the August DSREIR’s
11 treatment of noise impacts, the October DSREIR contained both ongoing and some new errors in
12 analysis and mitigation. For example, the County updated its noise-related mitigation measures with
13 certain “mitigation trigger distances” that were calculated using a particular noise metric (Leq) that
14 differed from the metric (DNL) utilized by the October DSREIR’s thresholds of significance. Arvin
15 Petitioners pointed out that the use of these two differing metrics could result in setting mitigation
16 trigger distances that were too close to sensitive receptors like homes and schools to achieve
17 effective mitigation, including protection of residents from loud nighttime noise and sleep
18 disturbance. The County also did not analyze or adequately discuss the indirect impacts threatened
19 by noise from the Project.

20 d. The October DSREIR still failed to adequately consider the impacts to the
21 Temblor legless lizard. Due to newly established data about the species’ limited range and proximity
22 to oil and gas fields, Arvin Petitioners notified the County that CBD had filed a petition to list the
23 species as federally endangered or threatened.

24 e. With respect to the County’s CEQA review process, Arvin Petitioners
25 criticized the County for failing to ensure meaningful public participation by those residents who
26 would be most affected by the 2021 Ordinance. Arvin Petitioners again requested that the County
27 both provide Spanish-language copies of and recirculate all notices published to date as well as key
28 sections of the October DSREIR.

1 85. In a letter to the County dated December 14, 2020, Petitioners Committee for a Better
2 Arvin and Committee for a Better Shafter separately urged the County to provide Spanish-speaking
3 residents a reasonable opportunity to participate in the CEQA process. They reiterated the request
4 that the County translate all notices as well as key portions of the October DSREIR into Spanish.

5 86. Other commenters also expressed related concerns.

6 87. KGF submitted a letter to the County, dated December 14, 2020, identifying
7 numerous ways in which the October DSREIR failed to correct the errors identified in the Appellate
8 Opinion, comply with the Second Writ, or otherwise comply with CEQA. For example:

9 a. KGF, supported by a further expert report from Dr. Phyllis Fox, noted that the
10 October DSREIR failed to revise the Cumulative Health Risk Assessment to address deficiencies
11 previously identified by Dr. Fox and Dr. H. Andrew Gray. Instead, the October DSREIR relied on a
12 technical memorandum that claimed the Cumulative Health Risk Assessment’s assumptions were
13 “conservative.” That memorandum, however, was flawed because it focused solely on cancer risks
14 associated with temporary drilling operations while ignoring health risks associated with the longer-
15 term operation and maintenance of wells and production facilities at high densities.

16 b. KGF, backed by another report from noise experts Salter and Associates, also
17 noted new errors regarding the mitigation of noise impacts in the October DSREIR. Like Arvin
18 Petitioners, KGF pointed out that the October DSREIR inexplicably used two different metrics for
19 measuring noise. It established a general noise standard that was expressed as dB DNL, which
20 adjusts upward to “penalize” for nighttime noise. However, the “trigger” distances used by the
21 October DSREIR for certain operations (e.g., diesel well-drilling) to determine whether additional
22 mitigation would be required employed the Leq metric, which does not adjust for nighttime
23 noise. As a result of this mismatch, in certain locations within the Project Area, a substantial noise
24 increase could exceed the DNL standard but not fall within the mitigation “trigger” distances
25 calculated using Leq. As a result, no mitigation would be imposed even where noise levels clearly
26 exceeded established significance thresholds.

27 88. In a letter to the County dated December 14, 2020, the California Air Resources
28 Board (“CARB”) criticized the October DSREIR’s analysis and mitigation of health risks posed by

1 the 2021 Ordinance. Among other things, CARB found that the Cumulative Health Risk Assessment
2 contained numerous deficiencies that “may severely underestimate potential health risks to residents
3 and communities near drilling and production activities.”

4 89. In a letter to the County dated December 21, 2020, Arvin Petitioners submitted
5 additional comments describing how the October DSREIR failed to correct the errors identified in
6 the Appellate Opinion, comply with the Second Writ, or otherwise comply with CEQA.

7 **C. The Responses to Comments and Final SREIR**

8 90. On or about January 12, 2021, the County issued a notice of hearing regarding the
9 2021 Ordinance and the SREIR before the Kern County Planning Commission.

10 91. The County did not provide Spanish versions of the notice of hearing or the
11 instructions on how to participate in the virtual hearing.

12 92. On or about January 29, 2021, the County released its responses to comments on, and
13 further revisions and “errata” to, the August 2020 DSREIR and October 2020 DSREIR. These
14 responses to comments, together with the other finalized sections of the SREIR, constitute the “Final
15 SREIR” or “the SREIR.” The Final SREIR indicates that the County made only minimal changes to
16 the October DSREIR, failing to remedy the vast majority of errors identified by Arvin Petitioners,
17 KGF, CARB, and others.

18 93. The County did not provide the public with a Spanish version of the Final SREIR, or
19 any portions thereof.

20 94. On or about February 5, 2021, the County released a staff report for the Kern County
21 Planning Commission (“Planning Commission Staff Report”) containing its proposed findings of
22 fact and statement of overriding considerations to be adopted with the approval of the 2021
23 Ordinance.

24 95. On or about February 11 and 12, 2021, the Planning Commission held a hearing at
25 which it recommended that the Board of Supervisors certify the Final SREIR and approve the 2021
26 Ordinance.

27 96. On or about February 19, 2021, the County issued a notice of hearing regarding the
28 2021 Ordinance and the Final SREIR before the Board.

1 97. The County did not provide the public Spanish versions of the hearing notice or the
2 instructions on how to participate in the virtual hearing.

3 98. In a letter to the Board and Planning Commission dated February 22, 2021, Arvin
4 Petitioners noted discrepancies between the Planning Commission Staff Report and statements made
5 by a County official at the Planning Commission meeting, on the one hand, and the 2021 Ordinance
6 and Final SREIR, on the other hand. In particular, while the staff report and official’s comments
7 described the 2021 Ordinance and Final SREIR as having a lifespan of 15 years, with a cumulative
8 cap of 40,445 wells, the Final SREIR and 2021 Ordinance confirm that the 2021 Ordinance has no
9 expiration date and they contain no requirement that the County ever perform additional
10 environmental review.

11 99. On or about March 1, 2021, the County issued an additional staff report for the Board
12 (“Board Staff Report”) containing several revisions to the Final SREIR along with the County’s
13 proposed findings of fact and statement of overriding considerations to be adopted with the approval
14 of the 2021 Ordinance.

15 100. Arvin Petitioners submitted a letter to the County regarding the Final SREIR dated
16 March 5, 2021. Incorporated into the letter were further expert reports from Petra Pless, D.Env.; H.
17 Andrew Gray, PhD; and Clair Brown, PhD, Julia Walsh, MD, M.Sc., and James Bono, PhD. The
18 letter and these reports explained that the Final SREIR failed to correct the errors identified in the
19 Appellate Opinion, comply with the Second Writ, or otherwise comply with CEQA in the following
20 respects:

21 a. The Final SREIR does not adequately respond to Arvin Petitioners’ comments
22 on the August DSREIR and October DSREIR. Instead, the County dismisses in a cursory fashion
23 Arvin Petitioners’ requests for additional information and rejects, without justification, suggestions
24 for feasible mitigation measures.

25 b. The Final SREIR and Board Staff Report inadequately describe the true scope
26 and duration of the 2021 Ordinance and the Final SREIR itself, preventing meaningful public
27 participation. In particular, the Board Staff Report asserts “an anticipated 15 year (2036) use of the
28 SREIR.” The Board Staff Report ultimately acknowledges, however, that “[a]bsent a sunset date

1 actually adopted in the ordinance, the zoning ordinance provisions continue until a future Board
2 directs changes,” and “[t]he SREIR (2020/2021) . . . can be utilized for implementation of the
3 Zoning Ordinance as long as the ordinance is in effect.” Thus, contrary to the Board Staff Report’s
4 assertions of a 15-year time horizon, the 2021 Ordinance and Final SREIR will last in perpetuity,
5 absent further action by the Board.

6 c. The Final SREIR continues to fail to adequately analyze and mitigate impacts
7 to air quality. For example:

8 i. Mitigation Measure 4.3-8 still fails to establish enforceable mitigation
9 for increased PM_{2.5} emissions caused by the 2021 Ordinance. The County tweaked the language of
10 Mitigation Measure 4.3-8 to refer to PM_{2.5} explicitly but declined to make a corresponding change in
11 the agreement (OG-ERA) that implements the measure. The County’s response to comments argues
12 that the County and Air District “always intended for the OG-ERA to reduce both PM_{2.5} and PM₁₀ to
13 net zero as mitigation” but mere intentions do not create enforceable requirements.

14 ii. The Final SREIR fails to inform the public and decision makers about
15 the impact of Mitigation Measure 4.3-8 on PM_{2.5} emissions in three respects: (1) it makes wholly
16 contradictory assertions about the effect of the measure on PM_{2.5}, which is confusing to the public
17 and decision makers; (2) it fails to differentiate between the effect of Mitigation Measure 4.3-8 on
18 PM_{2.5} emissions at the scale of the San Joaquin Valley air basin and the consequences of the measure
19 for residents living in close proximity to new oil and gas drilling sites in Kern County; and (3) the
20 Final SREIR finds that PM_{2.5} emissions will be significant but does not explain the nature and
21 magnitude of the impact, failing to connect the project’s air quality impacts to likely health
22 consequences quantitatively (though tools are readily available) or even qualitatively.

23 iii. The Final SREIR does not adequately analyze or mitigate air quality
24 impacts from the 2021 Ordinance as a consequence of its reliance on the County’s fundamentally
25 flawed Cumulative Health Risk Assessment. Among its many deficiencies, the assessment only
26 evaluated emissions and risks from well drilling, not operations; it failed to model emissions and
27 risks at well densities observed in Kern County; and it only evaluated cancer risks to the exclusion of
28 other chronic and acute health risks. Further, the assessment did not evaluate the impact of any wells

1 nearer to a sensitive receptor than approximately 1,000 feet, even though the 2021 Ordinance allows
2 drilling as close as 210 feet from a residence. Like the assessment, the Final SREIR also continues to
3 misstate the modeling distances used. As a consequence of these serious errors, the Final SREIR
4 fails as an informational document and the setback distances reflected in Mitigation Measure 4.3-5—
5 premised on the Cumulative Health Risk Assessment—must be reevaluated and strengthened to
6 ensure that oil and gas operations will not be allowed at a distance that exceeds significant cancer
7 and non-cancer risk thresholds.

8 d. The Final SREIR continues to fail to adequately analyze and mitigate impacts
9 to water supply. For example:

10 i. The Final SREIR’s discussion of water supply in relation to
11 disadvantaged communities is inadequate, precluding informed decision making and rendering
12 Mitigation Measure 4.17-5 inadequate. For example, the Final SREIR does not describe adequately
13 the environmental baseline with regard to water supply issues facing disadvantaged communities. It
14 does not contain information about how many people live in disadvantaged communities, how many
15 of those people rely on vulnerable water sources, whether these vulnerable sources suffer from
16 contamination issues, or whether water affordability is a local issue. Arvin Petitioners pointed to
17 resources that the County could have used to provide information regarding these issues.

18 ii. Although the Final SREIR concludes that the 2021 Ordinance’s use of
19 water supplies would contribute to cumulatively significant impacts on disadvantaged communities,
20 the Final SREIR does not describe these impacts. Indeed, it is not even clear what impacts the Final
21 SREIR identifies as significant: Will wells go dry? Will water become less affordable? Will the
22 decreased water supply lead to increased water contamination? The Final SREIR does not
23 acknowledge, much less answer, these questions. Furthermore, the Final SREIR does not supply a
24 definition of “disadvantaged community” or provide any information about the severity of
25 cumulative impacts. Arvin Petitioners pointed to resources that describe the potential harms that an
26 expected decrease in water supplies would have on under-resourced communities in the Project
27 Area.

28 iii. The Final SREIR does not establish that Mitigation Measure 4.17-5 is

1 part of a reasonable, enforceable plan or program that is sufficiently tied to the actual mitigation of
2 the impacts at issue. For instance, the Final SREIR does not limit funding to vulnerable drinking
3 water systems or even to drinking water systems in general, does not provide a timeline for
4 improvements, does not provide any criteria by which Kern County Public Health would determine
5 how to choose between qualifying projects, and, as noted, does not define “disadvantaged
6 community.”

7 iv. Arvin Petitioners noted that the County could have avoided the legal
8 inadequacies of Mitigation Measure 4.17-5 if it had instead instituted a drinking water protection
9 program targeted at the County’s most vulnerable drinking water users to facilitate continued access
10 to clean drinking water, as suggested in their letter dated September 16. For instance, advocacy
11 groups in the San Joaquin Valley have prepared a framework for a Drinking Water Well Impact
12 Mitigation Program that could provide a structure for the County to identify and mitigate the most
13 significant likely harms to water security. As the comments noted, this example framework contains
14 specific mitigation measures the County could feasibly implement, as well as methodologies for
15 identifying the most vulnerable communities, modeling impacts, and conducting outreach and
16 education.

17 e. The Final SREIR does not adequately respond to Arvin Petitioners’ comments
18 identifying feasible measures that would mitigate the 2021 Ordinance’s water supply impacts. For
19 example:

20 i. The Final SREIR does not contain adequate justification for allowing
21 use of municipal and industrial water for steam generation in enhanced oil recovery (EOR)
22 operations, which makes up the vast majority of the oil and gas industry’s use of municipal and
23 industrial water supplies. At the very least, the 2021 Ordinance could have required a conditional use
24 permit for use of municipal and industrial water for such steam generation, or it could have capped
25 industry’s use of municipal and industrial water at current levels. The Final SREIR itself establishes
26 that it is feasible to treat and use produced water for steam generation.

27 ii. The Final SREIR concludes, without adequate justification, that
28 paying Groundwater Sustainability Agencies implementing Groundwater Sustainability Plans

1 pursuant to SGMA a fair-share fee to mitigate water supply harms is not adequate mitigation. Such a
2 fair-share fee would be feasible—it is legal and calculable—and would reliably mitigate the 2021
3 Ordinance’s water supply impacts.

4 iii. The Final SREIR continues to provide an inadequate general
5 explanation for declining to adopt any mitigation measures that are either identical to or similar to
6 projects and management actions contained in Groundwater Sustainability Plans and management
7 area plans prepared in the Project Area pursuant to SGMA. Such mitigation, as above, would be
8 feasible and would reliably mitigate the 2021 Ordinance’s water supply impacts.

9 f. The Final SREIR makes no changes to the October DSREIR’s analysis and
10 mitigation of noise impacts. The County thus refused to correct the problems associated with the
11 document’s erroneous use of two different metrics for measuring noise and determining whether to
12 require additional mitigation for noise increases. Arvin Petitioners also pointed out additional errors
13 in the County’s analysis, including that the Final SREIR does not provide a quantitative or even
14 qualitative analysis of noise-related health impacts from the 2021 Ordinance, and that the Final
15 SREIR’s proposed mitigation does not adequately account for all important noise sources.

16 g. The Final SREIR improperly continues to evaluate and mitigate the impacts of
17 oil and gas development upon multiple legless lizard species together, even though potential impacts
18 to the Temblor legless lizard are new and far more severe than what is disclosed in either the 2015
19 EIR or the 2021 Final SREIR. The County amended the Final SREIR to apply a 30-foot buffer for
20 “all” legless lizards rather than just the silvery legless lizard. But the Final SREIR does not include
21 an analysis of the impacts to the Temblor legless lizard or provide justification for the finding that
22 this mitigation would reduce the impacts to the species to less than significant. In contrast, multiple
23 studies show that the limited locations and range of this particular species, together with its
24 proximity to oil and gas activity, is likely to result in previously unknown and substantially more
25 severe impacts under the 2021 Ordinance.

26 101. Arvin Petitioners’ March 5, 2021 letter also warned the County that its findings of
27 fact and proposed statement of overriding considerations were legally inadequate because they
28 purported to override impacts notwithstanding the availability of feasible and enforceable mitigation

1 that could have reduced such impacts, in particular mitigation of PM_{2.5} and water supply impacts.
2 The County cannot simply “override” impacts where it has failed to adopt available mitigation
3 measures to minimize them. Moreover, the findings are unsupported by substantial evidence in that
4 they, inter alia, fail to describe the actual impact of the 2021 Ordinance on the oil industry, fail to
5 quantify the cost and magnitude of impacts being overridden, and are grounded in demonstrably
6 flawed and deficient data and analysis.

7 102. KGF submitted a letter to the County, dated March 5, 2021, that also noted that the
8 County’s findings of fact and proposed statement of overriding considerations were legally
9 inadequate because the Final SREIR’s analysis and mitigation of various environmental impacts,
10 including noise impacts, were improper.

11 103. On or about March 8, 2021, the County conducted a public hearing at which the
12 Board certified the SREIR, approved the 2021 Ordinance, and adopted related findings and a
13 statement of overriding considerations. Arvin Petitioners appeared at the hearing to protest the
14 Board’s actions as violating CEQA, the Appellate Opinion, and the Second Writ.

15 104. On or about March 9, 2021, the County filed a Notice of Determination for the 2021
16 Ordinance.

17 **FIRST CAUSE OF ACTION**

18 **(Violations of CEQA: Inadequate SREIR, Findings of Fact, and Statement of Overriding** 19 **Considerations; Failure to Comply with Appellate Opinion and Second Writ;** 20 **Failure to Provide Meaningful Opportunity for Spanish-Speaking Residents to Participate.)**

21 105. Arvin Petitioners hereby reallege and incorporate the allegations contained in
22 paragraphs 1 through 104, inclusive.

23 **I. Applicable CEQA Requirements**

24 106. CEQA is designed to ensure that the environmental consequences of proposed
25 projects are disclosed, considered, and feasibly avoided at the earliest opportunity. CEQA requires
26 the lead agency for a project with the potential to cause significant environmental impacts to prepare
27 an EIR that complies with the requirements of the statute, including, but not limited to, the
28 requirement to analyze the project’s potentially significant environment impacts. Pub. Resources

1 Code §§ 21002.1, subd. (a), 21080, subd. (d). The EIR must provide sufficient environmental
2 analysis to ensure that the decision makers can intelligently consider environmental consequences
3 when acting on the proposed project. *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.*
4 (1988) 47 Cal.3d 376, 405.

5 107. An EIR must “provide the public with an accurate, stable and finite description of the
6 project.” *Washoe Meadows Community. v. Dept. of Parks & Recreation* (2017) 17 Cal.App.5th 277,
7 285. “[A] project description that gives conflicting signals to decision makers and the public about
8 the nature and scope of the project is fundamentally inadequate and misleading.” *Id.* at p. 287.

9 108. An EIR “must delineate environmental conditions prevailing absent the project,
10 defining a ‘baseline’ against which predicted effects can be described and quantified.” *Neighbors for*
11 *Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 447. An EIR’s
12 description of this environmental setting should be sufficiently comprehensive to allow the project’s
13 significant impacts “to be considered in the full environmental context.” CEQA Guidelines, § 15125,
14 subd. (c).

15 109. An EIR must disclose and analyze the direct and the reasonably foreseeable indirect
16 environmental impacts of a proposed project if they are significant. CEQA Guidelines, §§ 15126.2,
17 15064, subd. (d)(3). “[A] sufficient discussion of significant impacts requires not merely a
18 determination of whether an impact is significant, but some effort to explain the nature and
19 magnitude of the impact.” *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519 (“*Friant*
20 *Ranch*”).

21 110. An EIR must discuss a cumulative impact if a project’s incremental effect combined
22 with the effects of other projects is “cumulatively considerable.” CEQA Guidelines, § 15130, subd.
23 (a). The discussion of cumulative impacts must be more than “a conclusion utterly devoid of any
24 reasoned analysis.” *Whitman v. Bd. of Supervisors* (1979) 88 Cal.App.3d 397, 411.

25 111. CEQA also mandates that the lead agency identify feasible mitigation measures that
26 will reduce or avoid a project’s significant environmental impacts. Pub. Resources Code, §§ 21002,
27 21002.1, subd. (b). Even where a public agency cannot completely eliminate a project’s significant
28 impacts, CEQA requires that it nonetheless reduce those impacts to the extent feasible. *Friant*

1 *Ranch, supra*, 6 Cal.5th 502, 524-25.

2 112. An EIR must respond to comments making specific suggestions for mitigating a
3 significant impact unless the suggested mitigation is “facially infeasible.” *L.A. Unified School Dist.*
4 *v. City of L.A.* (1997) 58 Cal.App.4th 1019, 1029. If an agency rejects a suggested measure as
5 infeasible, the rejection must be supported by substantial evidence and free of legal error. Pub.
6 Resources Code, § 21168.5.

7 113. CEQA instructs that “[a] public agency shall provide that measures to mitigate or
8 avoid significant effects on the environment are fully enforceable through permit conditions,
9 agreements, or other measures.” Pub. Resources Code, § 21081.6, subd. (b). The agency must assure
10 that its mitigation is “effective” and will “present a viable solution” to mitigating the adverse effect.
11 *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1116. The EIR must include facts and
12 analysis to support its conclusions regarding the effect of its mitigation measures. *Friant Ranch,*
13 *supra*, 6 Cal.5th at p. 522 (“The EIR must accurately reflect the net health effect of proposed air
14 quality mitigation measures”), citing *Cleveland Nat. Forest Foundation v. San Diego Assn. of*
15 *Governments* (2017) 3 Cal.5th 497, 514.

16 114. Requiring a project to implement or fund its fair share of a measure designed to
17 mitigate a cumulative impact is a legally acceptable mechanism of addressing the project’s
18 contribution to the impact. CEQA Guidelines, § 15130, subd. (a)(3). Fair-share contributions to a
19 mitigation fund may be adequate mitigation if they are “part of a reasonable, enforceable plan or
20 program that is sufficiently tied to the actual mitigation of the . . . impacts at issue.” *Anderson First*
21 *Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189.

22 115. CEQA requires a lead agency to address new information before certifying an EIR
23 when “[s]ubstantial changes occur with respect to the circumstances under which the project is being
24 undertaken which will require major revisions in the environmental impact report” or “[n]ew
25 information, which was not known and could not have been known at the time the environmental
26 impact report was certified as complete, becomes available.” Pub. Resources Code, § 21166, subds.
27 (b), (c). This includes significant effects not discussed in the previous EIR and impacts that are
28 “substantially more severe” than what the previous EIR disclosed. CEQA Guidelines, § 15162, subd.

1 (a)(3)(B).

2 116. CEQA prohibits a lead agency from approving a project with significant
3 environmental effects unless it has made written findings for each of those effects, accompanied by
4 an explanation of the rationale for each finding. Pub. Resources Code, § 21081, subd. (a). These
5 findings must support the ultimate decision, be based on substantial evidence in the record, and trace
6 the analytical route between the evidence in the record and the agency’s conclusions.

7 117. CEQA provides that where a project’s significant environmental effects cannot
8 feasibly be mitigated, the lead agency may still approve the project if it finds that “specific
9 overriding economic, legal, social, technological or other benefits of the project outweigh the
10 significant effects on the environment.” Pub. Resources Code, § 21081, subd. (b). However, an
11 agency’s statement of overriding considerations constitutes an abuse of discretion where it is not
12 supported by substantial evidence. *Id.* § 21168.5; CEQA Guidelines, § 15093, subd. (b). The
13 statement’s core “purposes are undermined if its conclusions are based on misrepresentations of the
14 contents of the EIR or it misleads the reader about the relative magnitude of the impacts and benefits
15 the agency has considered.” *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150
16 Cal.App.4th 683, 718.

17 118. An agency’s statement of overriding considerations provides “a proper basis for
18 approving a project despite the existence of unmitigated environmental effects, only when the
19 measures necessary to mitigate or avoid those effects have properly been found to be infeasible.”
20 *City of Marina v. Bd. of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 368. Where an agency
21 improperly determines that significant impacts cannot feasibly be mitigated, it “necessarily follows”
22 that the statement of overriding consideration is invalid. *Ibid.*

23 119. Among CEQA’s basic purposes are to “[i]nform . . . the public about the potential,
24 significant environmental effects of proposed activities” and to “[d]isclose to the public the reasons
25 why a governmental agency approved the project in the manner the agency chose if significant
26 environmental effects are involved.” CEQA Guidelines, §§ 15002, subs. (a)(1), (a)(4). “Public
27 participation is an essential part of the CEQA process,” *id.*, § 15201, and a CEQA lead agency like
28 Kern County possess inherent authority and discretion to provide translations of CEQA documents

1 in Spanish.

2 **II. Failure of SREIR to Comply with CEQA, the Appellate Opinion, and the Second Writ**

3 120. Respondents violated state law by certifying a SREIR in connection with the 2021
4 Ordinance that fails to comply with the requirements of CEQA and the CEQA Guidelines. The
5 SREIR also fails to follow the directives of the Appellate Opinion and the Second Writ. The
6 SREIR's legal inadequacies include, but are not limited to:

7 a. The SREIR lacks an accurate, stable, and finite project description.

8 b. The County does not adequately evaluate the direct, indirect, and cumulative
9 air quality impacts of the oil and gas activities the 2021 Ordinance authorizes in the SREIR. The
10 County also relies on ineffective and invalid mitigation measures to address air quality impacts and
11 fails to impose other effective and legally required mitigation measures. The deficiencies in the
12 SREIR's analysis and mitigation of air quality impacts include, for example:

13 i. Mitigation Measure 4.3-8 fails to establish enforceable mitigation for
14 increased PM_{2.5} emissions caused by the 2021 Ordinance and does not otherwise assert that targeted
15 mitigation of PM_{2.5} emissions is infeasible.

16 ii. The SREIR fails to inform the public and decision makers about the
17 impact of Mitigation Measure 4.3-8 on PM_{2.5} emissions. It makes contradictory and confusing
18 assertions about the level of mitigation achieved; it fails to address the emissions increases allowed
19 locally under Mitigation Measure 4.3-8; and it finds that the increase in PM_{2.5} emissions will be
20 significant but does not explain the nature and magnitude of the significant impact, failing to connect
21 the project's air quality impacts to likely health consequences.

22 iii. The SREIR does not adequately analyze or mitigate the Project's
23 significant exposure of sensitive receptors to substantial pollutant concentrations that pose health
24 risks. Despite comments from CARB and other air quality experts, the County refused to revise its
25 defective Cumulative Health Risk Assessment. The assessment fails to evaluate health risks based on
26 actual well density in Kern County, fails to consider emissions from well operations, and fails to
27 evaluate non-cancer health risks. It likewise ignores that the 2021 Ordinance allows drilling to occur
28 much closer to homes than the assessment considered. And the SREIR and Cumulative Health Risk

1 Assessment continue to misstate the distances at which the assessment’s modeling was performed.
2 These flaws invalidate Mitigation Measure 4.3-5, which prescribes inadequate drilling setback
3 distances based on the faulty Cumulative Health Risk Assessment.

4 c. The County does not adequately evaluate the direct, indirect, and cumulative
5 water supply impacts of the oil and gas activities the 2021 Ordinance authorizes in the SREIR. The
6 County also relies on ineffective and invalid mitigation measures to address water supply impacts
7 and fails to impose other effective and legally required mitigation measures. The deficiencies in the
8 SREIR’s analysis and mitigation of water supply impacts include, for example:

9 i. The SREIR fails to describe the baseline environmental setting with
10 regard to disadvantaged communities’ interests in water supplies, preventing the public from
11 understanding the 2021 Ordinance’s potential impacts.

12 ii. The SREIR fails to describe the 2021 Ordinance’s contribution to
13 cumulative impacts to disadvantaged communities’ interests in water supplies. Despite identifying
14 these impacts as significant, the SREIR contains no information about their nature or severity,
15 precluding meaningful public engagement.

16 iii. The SREIR fails to adequately inform the public of the nature of its
17 mitigation of cumulative impacts to disadvantaged communities’ interests in water supply in
18 Mitigation Measure 4.17-5. In particular, the SREIR fails to establish that Mitigation Measure 4.17-5
19 will actually mitigate those impacts, given that both the impacts and the mitigation are poorly
20 defined.

21 iv. The SREIR rejects, without adequate justification, specific and
22 feasible mitigation measures that Arvin Petitioners proposed, including: (1) barring the oil and gas
23 industry from using municipal and industrial water supplies for steam generation in EOR operations
24 or, in the alternative, at least requiring a conditional use permit for such use or capping the oil and
25 gas industry’s annual use of municipal and industrial water pursuant to the SREIR at current levels;
26 (2) adopting a fee program to pay the 2021 Ordinance’s fair-share of mitigation costs for water
27 supply impacts to Groundwater Sustainability Agencies; (3) adopting any mitigation measures that
28 are either identical to or similar to projects and management actions contained in Groundwater

1 Sustainability Plans and management area plans prepared in the Project Area pursuant to SGMA;
2 and (4) adopting a drinking water protection program to facilitate access to clean drinking water.

3 d. The County does not adequately evaluate the direct, indirect, and cumulative
4 noise impacts of the oil and gas activities the 2021 Ordinance authorizes in the SREIR. The County
5 also relies on ineffective and invalid mitigation measures to address noise impacts and fails to
6 impose other effective and legally required mitigation measures. The deficiencies in the SREIR's
7 analysis and mitigation of noise impacts include, for example:

8 i. Despite identifying noise impacts from oil and gas construction and
9 operation as significant, the SREIR fails to analyze and disclose how noise from such activities
10 could result in negative health effects such as sleep disturbance, fatigue, stress, headaches, and
11 cardiovascular problems.

12 ii. The SREIR utilizes two different methods for measuring noise, one to
13 establish background conditions and relevant noise standards (dB DNL), and the other to measure
14 actual noise from drilling and production equipment (Leq) for purposes of triggering mitigation. This
15 approach results in a mismatch that likely will allow noise to increase well beyond the significance
16 thresholds used in the SREIR without triggering the imposition of noise mitigation. As a result, in
17 certain locations in the Project Area, substantial, unmitigated noise increases due to the 2021
18 Ordinance could occur, despite the availability of feasible mitigation.

19 e. The SREIR fails to adequately disclose, analyze, and mitigate impacts to the
20 Temblor legless lizard, despite a substantial change in circumstances under which the Project is
21 being proposed and in light of significant new information demonstrating a significant impact not
22 discussed in the 2015 EIR. To the extent the 2015 EIR had information on the Temblor legless
23 lizard, the impacts to the species are today known to be far more severe. The County improperly
24 considered the impacts to distinct species of legless lizard as the same, ignoring and omitting
25 analysis of much more serious impacts to the newly identified Temblor legless lizard. The County
26 abused its discretion by ignoring this new information, failing to adequately analyze the impacts to
27 this species, and refusing to adopt feasible mitigation measures that could prevent harm, including
28 measures that were found feasible for other species. The SREIR's finding that impacts to this species

1 are less than significant after mitigation is unsupported by substantial evidence.

2 f. The County did not adequately respond to comments on the August DSREIR
3 and October DSREIR, including, but not limited to, by dismissing expert comments, requests for
4 additional information, and suggestions of feasible mitigation measures.

5 121. As a result of these actions, Respondents prejudicially abused their discretion by
6 failing to proceed in the manner required by law and by failing to act on the basis of substantial
7 evidence.

8 **III. Failure of County’s Findings of Fact and Statement of Overriding Considerations to**
9 **Comply with CEQA**

10 122. Respondents also violated CEQA and the CEQA Guidelines by adopting findings of
11 fact and a statement of overriding considerations in connection with the 2021 Ordinance that are
12 invalid. Because the County’s analysis of impacts and feasible mitigation is flawed, and it
13 improperly declined to implement mitigation that could have reduced the identified significant
14 environmental impacts, including impacts to air quality, water supply, noise, and biological
15 resources, its override findings are necessarily flawed as well. The County cannot simply “override”
16 impacts where it has failed to adopt feasible mitigation to mitigate them. Moreover, the findings are
17 conclusory and unsupported by substantial evidence in that they, inter alia, fail to describe the actual
18 impact of the 2021 Ordinance on the oil industry, fail to quantify the cost and magnitude of impacts
19 being overridden, and are grounded in demonstrably flawed and deficient data and analysis.

20 **IV. Failure to Provide Meaningful Opportunity for Spanish-Speaking County Residents to**
21 **Participate in the CEQA Process**

22 123. Despite repeated requests from residents, the County declined to translate CEQA
23 notices or any portion of the DSREIRs or the SREIR into Spanish. This decision was not supported
24 by substantial evidence. Indeed, the County did not provide any factual evidence to support its
25 decision. To the contrary, available evidence shows that a substantial portion of Kern County
26 residents are monolingual or primarily Spanish-speaking, and many areas of oil and gas development
27 are located near population centers with numerous Spanish-speaking residents with limited English
28 proficiency. As a consequence of the County’s refusal to translate any CEQA documents into

1 Spanish, especially notices and executive summaries of the SREIRs, a sizeable portion of Kern
2 County’s residents were deprived of opportunities to be informed and to comment meaningfully on
3 the 2021 Ordinance and the SREIR before the Board adopted them.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Arvin Petitioners pray for judgment as follows:

6 1. For alternative and peremptory writs of mandate directing Respondents to vacate and
7 set aside their approval of the 2021 Ordinance, certification of the SREIR, and adoption of findings
8 of fact and a statement of overriding considerations in connection with their approval of the 2021
9 Ordinance;

10 2. For alternative and peremptory writs of mandate directing Respondents to vacate and
11 set aside all permits reliant on the SREIR for CEQA compliance;

12 3. For alternative and peremptory writs of mandate directing Respondents to comply
13 with CEQA and the CEQA Guidelines, and to take any other action as required by Public Resources
14 Code section 21168.9 or otherwise required by law;

15 4. For a temporary stay, temporary restraining order, and preliminary and permanent
16 injunctions restraining Respondents and Real Parties in Interest and their agents, servants, and
17 employees, and all others acting in concert with them or on their behalf, from taking any action (a) to
18 approve any permits, entitlements, licenses, or authorizations pursuant to the 2021 Ordinance, or (b)
19 to implement any portion or aspect of the 2021 Ordinance, pending Respondents’ full compliance
20 with the requirements of CEQA and the CEQA Guidelines;

21 5. For an order denying any request by Respondents or others to discharge the Second
22 Writ, issued on or about June 17, 2020 in the Ongoing Action, pending Respondents’ full
23 compliance with the requirements of CEQA and the CEQA Guidelines with respect to the 2021
24 Ordinance;

25 6. For alternative and peremptory writs of mandate directing the County to publish any
26 future CEQA notices concerning the Project, as well as the executive summaries of any future
27 environmental impact reports concerning the Project, in Spanish, as well as English;

28 7. For costs of the suit;

1 8. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and/or
2 other provisions of law; and

3 9. For such other and further relief as the court deems just and proper.
4

5 Dated: March 10, 2021

6 

7 _____
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19 *Attorneys for Petitioners Natural Resources Defense
20 Council and Sierra Club*

21 

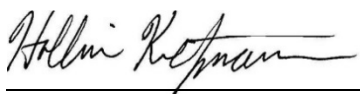
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*Attorneys for Petitioners Committee for a Better Arvin,
Committee for a Better Shafter, and Comité Progreso
de Lamont*

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Attorney for Petitioner Center for Biological Diversity

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 March 2021 at Bakersfield,
8 California.

9
10 

11
12

Gordon Nipp

EXHIBIT A



March 9, 2021

VIA U.S. MAIL and EMAIL

Kathleen Krause
Clerk of the Kern County Board of
Supervisors
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
clerkofboard@kerncounty.com

Lorelei Oviatt
Director, Planning and Natural Resources
Department
2700 M Street, Suite 100
Bakersfield, CA 93301
loreleio@kerncounty.com

County of Kern
1115 Truxtun Avenue, 5th Floor
Bakersfield, CA 93301
caomailbox@kerncounty.com

Re: Notice of Intent to File Suit Under the California Environmental Quality Act

To Whom It May Concern:

PLEASE TAKE NOTICE that the Committee for a Better Arvin, Committee for a Better Shafter, Comité Progreso de Lamont, Natural Resources Defense Council, Sierra Club, and Center for Biological Diversity will file suit against the County of Kern, the Kern County Board of Supervisors, and the Kern County Planning and Natural Resources Department (collectively, “County”), challenging the County’s failure to comply with the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq., in the administrative process that culminated in the County’s March 8, 2021 decisions to (1) approve Revisions to the Kern County Zoning Ordinance – 2020 (A), focused on Oil and Gas Local Permitting (“Project”), (2) certify the Supplemental Recirculated Environmental Impact Report for the Project, and (3) adopt Findings of Fact and a Statement of Overriding Considerations in connection with the Project.

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

Sincerely,



Colin C. O'Brien
Richard M. Franco
Gregory D. Muren
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PROOF OF SERVICE

I am a citizen of the United States of America and a resident of the City and County of Los Angeles; I am over the age of 18 years and not a party to the within entitled action; my business address is 707 Wilshire Blvd., Suite 4300, Los Angeles, California 90017.

I hereby certify that on March 9, 2021 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

on the parties listed below:

Kathleen Krause
Clerk of the Kern County Board of Supervisors
1115 Truxtun Avenue, 5th Floor
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I certify under penalty of perjury that the foregoing is true and correct. Executed on March 9, 2021 in Los Angeles, California.



César Nije