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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

COUNTY OF KERN, a political subdivision
of the State of California

Petitioner,

v.

GAVIN NEWSOM, in his capacity as
Governor of the State of California, and
DOES 1 through 20, inclusive,

Respondents.

Case No.:

**PETITION FOR WRIT OF MANDATE,
PROHIBITION OR OTHER
APPROPRIATE RELIEF (CODE OF
CIVIL PROCEDURE §§ 1085, 1102) AND
DECLARATORY RELIEF**

Petitioner County of Kern (“County”) hereby petitions for a writ of mandate, prohibition or other appropriate relief pursuant to Code of Civil Procedure sections 1085 and/or 1102 directed to, and a declaratory judgment pursuant to Code of Civil Procedure section 1060 with respect to the unlawful actions of, respondent Gavin Newsom (“Newsom”) in his capacity as the Governor of the State of California (“State”), and DOES 1 through 20, inclusive, and each of them (collectively, “Respondents”) based on the following facts:

THE PARTIES

1. The County, a general law county with its seat of government in Bakersfield, is one of California’s 58 counties. In 2019, Kern County ranked first among California’s oil producing counties and seventh overall in the United States, with 76 active oilfields producing 119 million barrels of oil and 129 billion cubic feet of gas, contributing 71% of California’s oil production and

1 78% of the California’s natural gas production.

2 2. At all relevant times, Newsom was, and continues to be, California’s Governor,
3 acting or purporting to act in that capacity.

4 3. The County is ignorant of the true names and capacities of respondents sued herein
5 as DOES 1 through 20, inclusive, and therefore, sues the DOE respondents by fictitious names.
6 Kern County will amend this petition to allege the DOE respondents’ true names and capacities
7 when ascertained. Kern County is informed and believes, and thereon alleges, each DOE
8 respondent is legally responsible in some manner, means or degree for the matters and harm alleged
9 herein, and is subject to the relief requested herein. Kern County is informed and believes, and
10 thereon alleges, the actions and/or inactions of the DOE respondents, and each of them, proximately
11 caused or otherwise contributed to the injuries and damages to the County and its citizenry as herein
12 alleged.

13
14 **JURISDICTION AND VENUE**

15 4. This Court has jurisdiction pursuant to Article I, section 19 of the California
16 Constitution, and Code of Civil Procedure sections 1060 and 1085.

17 5. Venue is proper in this Court because the harm caused by Respondents’ unlawful
18 actions described herein, including Newsom’s unilaterally imposed, unconstitutional moratorium on
19 the issuance of well stimulation and underground injection permits for oil and gas development,
20 occurred and continues to occur within and throughout the County to the great and continuing harm
21 of the County and its approximate 900,000 residents. The causes of action alleged herein, or some
22 material part thereof, therefor arose, and the violations of Petitioner’s rights occurred, in Kern
23 County.

24
25 **GENERAL ALLEGATIONS AND FACTS**

26 **Introduction and Summary**

27 6. Newsom took office in January 2019. Since then, under his direction, the State’s
28 executive branch has pursued an unmistakable pattern and practice of impeding, delaying and/or

1 outright blocking the issuance of oil and gas permits in a manner that thwarts existing law and
2 implements substitute policies never approved by the duly elected California State Legislature
3 (“Legislature”) in violation of Article III, section 3 of the California Constitution (referred to as the
4 “Separation of Powers” clause). To date this illegal, as well as arbitrary and capricious, activity has
5 included, among other things, firing a State official who dared to enforce the law contrary to
6 Newsom’s professed “values,” unilaterally seeking to ban or phase out statutorily authorized oil and
7 gas production methods without any legislative authorization to do so, erecting a host of
8 unauthorized arbitrary administrative roadblocks to indefinitely delay the California Geologic
9 Energy Management Division’s (“CalGEM”) statutorily-mandated review and issuance of
10 statutorily authorized oil and gas permits, unilaterally deciding that California’s climate change
11 planning process must encompass and include the planned elimination of all of California’s in-state
12 oil and gas production, refusing to acknowledge or follow statutory mandates and CalGEM’s own
13 regulations, having a Newsom political appointee/bureaucrat unilaterally decide that an undeclared
14 “climate emergency” justifies CalGEM’s rejection of such permits, and otherwise taking action
15 Newsom has repeatedly acknowledged he lacks authority to take.

16 7. To curry political favor with supporters fundamentally opposed to fossil fuels,
17 Newsom has pursued this illegal pattern and practice notwithstanding overwhelming evidence that
18 his unconstitutional “executive law making” will cause, and in part has already caused, great and
19 potentially irreparable harm to the approximately 23,900 California residents who, directly or
20 indirectly, depend on the County’s 76 active oilfields to earn a living, general and potentially
21 crippling harm to the County’s economy and tax base, as well as widespread harm to California’s
22 environment, particularly its air quality. In the latter regard, headlines and political maneuvering
23 aside, California’s demand for hydrocarbon-based energy vastly exceeds, and is projected to
24 continue to exceed, its in-state supplies for decades. According to State-funded scientific studies
25 prepared by CalGEM itself,¹ and by the independent and highly respected California Council on
26 Science and Technology,² Newsom’s unilateral curtailment of California’s in-state supply of the oil

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28 ¹ Final Environmental Impact Report, Analysis of Oil and Gas Well Stimulation Treatments in California, State
Clearinghouse No. 2013112046 (July 2015) (“WST FEIR”).

² See, fn. 29 below.

1 and gas needed to fuel California’s economy necessarily will increase dependence on foreign
2 imports, which increased volume of imports will unquestionably cause markedly higher global
3 greenhouse gas (“GHG”) emissions, higher emissions of localized pollutants, particularly in
4 disadvantaged California communities, along with other adverse environmental impacts. Such
5 known environmental harm aside, the executive branch, including Newsom himself, has long
6 recognized the curtailment of California’s oil and gas industry cannot be implemented without
7 explicit legislative approval. Yet, heedless of the law and unfaithful to the California Constitution
8 he swore to uphold, Newsom continues to pursue this unauthorized course. The executive branch’s
9 violation of the Separation of Powers clause dispassionately, disproportionately, substantially and
10 irreparably harms Kern County, the jurisdiction that accounts for the significant majority of
11 California’s oil and gas exploration and development.

12 **California’s Reliance on Oil and Gas**

13 8. In 2019, the last full year before the worldwide economic upheaval caused by the
14 COVID-19 pandemic, California consumed over 661,825,000 barrels of petroleum, the second
15 highest level of consumption in any state in the United States. Before that, for almost a quarter of a
16 century (from 1995 forward), California’s average annual in-state oil use was 643,428,000 barrels.
17 Between 2015-2019, California’s oil use increased to 653,306,000 barrels annually (362,000 barrels
18 per day³), about 10,000,000 barrels more than the prior two decades’ average.⁴ According to the
19 California Energy Commission, gasoline is the most used transportation fuel in California, with
20 97% of all gasoline being consumed by light-duty cars, pickup trucks and sport utility vehicles.⁵
21 According to the State Board of Equalization, in 2015, 15.1 billion gallons of gasoline were sold.⁶
22 California is also our Nation’s largest consumer of jet fuel and gasoline.⁷

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25 ³ <https://www.eia.gov/state/data.php?sid=CA>.

26 ⁴ https://www.eia.gov/state/seds/data.php?incfile=/state/seds/sep_use/tx/use_tx_CA.html&sid=CA.

27 ⁵ <https://www.energy.ca.gov/data-reports/energy-almanac/transportation-energy/california-gasoline-data-facts-and-statistics>.

28 ⁶ *Ibid.*

⁷ <https://www.eia.gov/state/index.php?sid=CA>

1 9. California has the fifth largest share of the United States’ known oil reserves.
2
3 Nonetheless, due to several factors, including regulatory constraints, California’s annual oil
4 production declined from 278,977,000 barrels in 1995 to just 156,350,000 barrels in 2019. By
5 2019, less than 30% of California’s total petroleum demand was supplied by in-state producers.
6 Correspondingly, more than 70% was imported, mainly by waterborne supertankers inbound from
7 producers in the Middle East, South America, Africa and Alaska.⁸ This is because, logistically
8 speaking, California is what experts call a petroleum “island,” physically isolated from North
9 America’s petroleum pipeline distribution networks.⁹ Only a small amount of California’s demand
10 can be supplied from Canadian or other American sources, most of which is delivered by rail.¹⁰

11 10. California is also our Nation’s second largest consumer of natural gas. As with oil,
12 in-state gas production is declining. Today, California imports over 90% of its required natural gas
13 supply, mainly through pipelines connecting with other U.S. producers.¹¹

14 **Oil and Gas Production in Kern County**

15 11. Oil drilling in Kern County dates back to the 19th century,¹² with the first fields
16 developed in 1898 (McKittrick) and 1899 (Kern River).¹³ In 2019, Kern County was California’s
17 top oil-producing county and seventh highest oil producer in the Nation. As stated above, Kern
18 County has 76 active oilfields which produced 119,000,000 barrels of oil and 129 billion cubic feet
19 of gas in 2019, accounting for 71% of all oil and 78% of all natural gas production in the State. Oil
20 and gas industry employers paid over \$1.3 billion in wages to approximately 16,103 Kern County
21 workers. The oil and gas industry’s average annual wage of \$80,874 was nearly double the

22 ⁸ <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries>.

23 ⁹ Los Angeles Economic Development Corporation, Oil & Gas In California: The Industry, Its Economic Contribution
24 and User Industries at Risk (2019), at 4.

25 ¹⁰ <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries-0>.

26 ¹¹ <https://www.eia.gov/state/index.php?sid=CA>

27 ¹² Environmental Impact Report-Revisions to Kern County Zoning Ordinance-2015 C Focused on Local Oil and Gas
28 Permitting (July 2015) (“Kern Oil and Gas EIR”), Vol. 1 at 3-15.¹³ *Ibid.*

¹³ *Ibid.*

1 County’s average wage of \$49,751.¹⁴ In 2017, the industry’s direct, indirect and induced economic
2 effects accounted for an estimated 23,900 jobs and \$9.1 billion of the County’s total economic
3 output.¹⁵

4 12. As more particularly detailed below, in fiscal year 2018-2019 the Kern County oil
5 and gas sector paid over \$197 million in taxes, including \$80.5 million to the County, \$103.8
6 million to Kern County school districts, \$12.2 million to fire, police, water and other special
7 districts, and \$600,000 to incorporated cities.¹⁶ If the oil and gas sector did not exist, the County
8 would lose 7.4% of its total general fund revenue, 13% of its total County fire fund revenue, 85.1%
9 of its funding for the Kern County Superintendent of Schools and 7.6% of total funding for the
10 Kern Mosquito and Vector Control District. In addition, at least a dozen elementary, secondary or
11 high schools and districts, and six recreation and parks, cemetery, healthcare and mosquito
12 abatement districts would lose at least 20% to up to 100% of their funding.¹⁷

13 13. In November 2015, the Kern County Board of Supervisors adopted a zoning
14 ordinance¹⁸ and certified an environmental impact report¹⁹ to establish a new oil and gas permitting
15 program, requiring compliance with 88 environmental mitigation measures identified in the report
16 including, for the first time, collection of mitigation fees to reduce the environmental impacts of oil
17 and gas drilling and operations. From 2016 to March 26, 2020, when the ordinance was rescinded
18 pending issuance of a supplemental environmental impact report as discussed further below,
19 \$136,565,899 had been collected under the program to mitigate air quality, roadway, public service
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23 ¹⁴ Kern Economic Development Foundation, The Economic Contribution of the Oil and Gas Industry in Kern County
(2021), at 3.

24 ¹⁵ Los Angeles Economic Development Corporation, Oil & Gas In California: The Industry, Its Economic Contribution
and User Industries at Risk (2019), at 50.

25 ¹⁶ Kern Economic Development Foundation, The Economic Contribution of the Oil and Gas Industry in Kern County
(2021), at 5.

26 ¹⁷ The Natelson Dale Group, Inc., Kern County Oil and Gas Property Tax Revenue Analysis (2020) at 11-12, 17-49.

27 ¹⁸ Kern County Zoning Ordinance 2015 C, amending Chapter 19.98, Sections 19.98.010 - 19.98-160 (“Kern Oil and
Gas Permitting Ordinance”).

28 ¹⁹ See, fn. 12 above.

1 and other oil and gas activity impacts in the County.²⁰

2 **Well Stimulation Treatment and Enhanced Oil Recovery**

3 14. The great majority of Kern County’s current oil and gas production takes place in
4 mature fields that have been operating for many decades, drawing down available reserves. Over
5 the years, improved drilling technologies such as well stimulation treatments (“WST”) and
6 enhanced oil recovery (“EOR”) have kept Kern County’s oil and gas production viable.²¹ The most
7 common form of WST is hydraulic fracturing, often referred to as “fracking,” which injects fluids
8 mixed with sand or other materials that act as proppants into a well, opening fracture pathways to
9 increase the permeability of hydrocarbon-containing geological formations and facilitate
10 extraction.²² Other types of WST involve injecting acid to increase permeability by dissolving
11 and/or fracturing rock, or injecting gravel and fracturing fluid to open formations.²³ Hydraulic
12 fracturing has led to substantial increases in domestic oil and gas production, thereby a significant
13 reduction in our Nation’s dependence on, and need to import primarily by sea, foreign oil. By
14 contrast, EOR techniques inject gas (usually steam) or water to reduce oil viscosity and increase
15 flow without altering formation permeability. EOR methods are excluded from the definition of
16 WST.²⁴ WST was first used in California in the 1940’s and steam flooding EOR in 1968.²⁵ In
17 many mature oil fields, oil and gas operators cannot economically drill and produce from wells
18 without using WST or EOR techniques. An analysis of 2017 data estimated that 95% of all State
19 oil production is attributable to certain EOR techniques (water flooding, steam flooding and cyclic
20 steam operations).²⁶

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22 ²⁰ Kern County Oil and Gas Permitting Annual Progress Report December 1, 2019 to November 30, 2020 (December
23 2020), at 10. The ordinance was readopted and a supplemental recirculated environmental impact report was certified
24 by Kern County on March 8, 2021.

25 ²¹ Kern Oil and Gas EIR, Vol. 1, p. 2-22.

26 ²² EPA article, *The Process of Unconventional Natural Gas Production Hydraulic Fracturing*,
27 <https://www.epa.gov/uog/process-unconventional-natural-gas-production>.

28 ²³ Kern Oil and Gas EIR, Vol. 1., at 3-49 - 52.

²⁴ *Id.* at 3-60-62; see 14 Cal. Code Regs sec. 1761(a)(2), (b) (definition of WST).

²⁵ *Id.* at 2-22.

²⁶ Capitol Matrix Consulting, *Impacts of SB 467 and Other Restrictive Oil Production Policies on Jobs and Retail Prices*
(2021). at 3.

1 15. In 2015, CalGEM determined that “the immediate effect” of a statewide ban on
2 WST alone:

3 [W]ould be an expected decrease around 25 percent of oil production in California. It is not
4 certain that all oil wells currently using stimulation treatments would be uneconomical using
5 conventional drilling but given the cost-benefit analysis well operators perform prior to using
6 well stimulation, it is likely that the well operators consider the practice necessary. Between
7 80 and 90 percent of the potential decreased production would be in Kern County.²⁷

8 16. A 2021 study comparing several published WST estimates concluded that about 17%
9 of total California production in 2019 relied on WST technologies in particular. In Kern County,
10 WST supported 6,900 jobs, \$595 million of labor income, \$1.7 billion of gross regional output and
11 \$100 million in local taxes in 2019. More than 90% of all oil recovery using WST in California
12 occurred in Kern County.²⁸

13 17. Notwithstanding CalGEM’s implementation of Newsom’s directive to *de facto* halt
14 WST permitting, WST remains a significant contributor to oil and gas production in Kern County
15 and the State.

16 **Overview of California’s Oil and Gas Legislation and Regulatory Framework**

17 18. By enacting Division 3 of the California Public Resources Code (“PRC”),
18 California’s Legislature created a comprehensive statutory framework for the executive branch’s
19 regulation and oversight of in-state oil and gas production. PRC section 3106(a) directs CalGEM
20 (formerly the Division of Oil, Gas and Geothermal Resources) to oversee “the drilling, operation,
21 maintenance, and abandonment of wells ... so as to prevent, as far as possible, damage to life,
22 heath, property and natural resources.” PRC section 3106(d) directs “to best meet oil and gas needs
23 in this state, the [CalGEM] supervisor shall administer this division so as to encourage the wise
24 development of oil and gas resources.” In particular, PRC section 3106(b) directs CalGEM to
25 supervise the “drilling, operation, maintenance, and abandonment of wells so as to permit the
26 owners or operators of the wells to *utilize all methods and practices known to the oil industry for
27 the purpose of increasing the ultimate recovery of underground hydrocarbons* and which, in the
28 opinion of the supervisor, are suitable for this purpose in each proposed case.” (Italics added.)

27 CalGEM, WST FEIR, Vol. 1, at 8-7 - 8-8.

28 ²⁸ Capitol Matrix Consulting, Economic Impacts of Oil Production Tied to Well Stimulation Treatments in California (February 2021), at 2, 11-12.

1 PRC section 3106(b) similarly states, “[t]o further the elimination of waste by *increasing the*
2 *recovery of underground hydrocarbons*” State policy “*is deemed to allow*” oil and gas operators “*to*
3 *do what a prudent operator using reasonable diligence would do ... in producing and removing*
4 *hydrocarbons, including, but not limited to, the injection of air, gas, water, or other fluids into the*
5 *productive strata, the application of pressure heat or other means for the reduction of viscosity of*
6 *the hydrocarbons, the supplying of additional motive force, or the creating of enlarged or new*
7 *channels for the underground movement of hydrocarbons into production wells.*” (Italics added.)

8 19. In other words, as a part of the same statutory scheme from which CalGEM derives
9 its operational authority, the Legislature expressly directed CalGEM to allow “known” and
10 “prudent” injection technologies such as WST and EOR to effectuate California’s long standing
11 public policy of increasing its recovery of underground hydrocarbons.

12 20. PRC section 3011(a) recites the “purposes” of the State’s oil gas laws, which
13 purposes, besides CalGEM’s mandate to increase recovery of underground hydrocarbons, “include
14 protecting public health and safety and environmental quality, including reduction and mitigation of
15 greenhouse gas emissions associated with the development of hydrocarbon and geothermal
16 resources in a manner that meets the energy needs of the state.” PRC section 3011(b) directs
17 CalGEM “to coordinate with other state agencies and entities ... in furtherance of the goals of the
18 California Global Warming Solutions Act ... and to help support the state’s clean energy goals.”
19 PRC section 3013 endues CalGEM with “the authority to adopt rules and regulations, which may be
20 necessary to carry out the purposes” of the State’s oil and gas legislation.

21 21. Addressing WST operations in light of such coexistent environmental concerns, in
22 2013 the Legislature enacted SB 4 (PRC §§ 3150-3160). Governor Brown signed SB 4 into law on
23 September 20, 2013. Among other things, SB 4 required CalGEM to obtain an independent
24 scientific assessment with regard to the safety, environmental and other known and foreseeable
25 impacts of WST; adopt and implement new WST regulations in light of CalGEM’s statutory
26 mandate to protect the environment (see, e.g., PRC § 3106(a) discussed *supra*); and prepare an
27 environmental impact report addressing the impacts of WST in the State. In compliance with SB 4
28 and in the manner prescribed by California’s Administrative Procedure Act (Gov’t Code § 11340 et

1 seq., hereinafter “APA” discussed *infra*), CalGEM adopted its final WST rules and regulations in
2 December 2014. CalGEM certified its final 5,500 page WST environmental impact report (WST
3 FEIR) in July 2015. CalGEM obtained the legislatively required independent and comprehensive
4 scientific assessment from the California Council on Science and Technology on the safety,
5 environmental and other impacts of WST in July 2015.²⁹ CalGEM’s WST regulations, since
6 updated, now require some of the strongest well construction and operational standards in the
7 Nation with extensive safeguards for public health and safety and the environment.³⁰ CalGEM
8 successfully defended its WST FEIR in litigation that ended in May 2019.³¹

9 22. Likewise, in early 2019 CalGEM updated its regulations to ensure California’s
10 implementation of the Underground Injection Control (“UIC”) program under the federal Safe
11 Drinking Water Act (“SDWA”). Those updated regulations include more rigorous testing
12 requirements designed to identify potential migration of injection fluids, increased data
13 requirements for proposed projects, continuous well pressure monitoring, and new chemical
14 additives disclosures for injection wells located in proximity to water supply wells.³² The updated
15 regulations further prohibit any “surface expression ... of fluid or other material such as oil, water,
16 steam, gas, formation solids, formation debris, material ... outside of a wellbore and that appears to
17 be caused by injection operations.”³³

18 23. In addition to State regulation, oil and gas exploration and production operations in
19 Kern County, including WST and EOR, require overlapping permits from the County under the
20 Kern Oil and Gas Permitting Ordinance. The County’s permitting program incorporates procedures
21 and compliance standards, including mitigation measures identified in the Kern Oil & Gas EIR, to
22 reduce or eliminate adverse environmental consequences from oil and gas activities and to protect

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24 ²⁹ California Council on Science and Technology, *An Independent Scientific Assessment of Well Stimulation in
California Summary Report: An Examination of Hydraulic Fracturing and Acid Stimulations in the Oil and Gas
Industry* (July 2015).

25 ³⁰ [https://www.conservation.ca.gov/index/documents/12-30-
26 14%20final%20statement%20of%20reasons%20for%20sb%204%20wst%20regulations.pdf](https://www.conservation.ca.gov/index/documents/12-30-14%20final%20statement%20of%20reasons%20for%20sb%204%20wst%20regulations.pdf).

27 ³¹ *Center for Biological Diversity v. California Department of Conservation* (2019) 36 Cal.App.5th 210.

28 ³² [https://www.conservation.ca.gov/calgem/Documents/UIC%20regulations/UIC%20Final%20Text%20of%20Regulation
29 ns.pdf](https://www.conservation.ca.gov/calgem/Documents/UIC%20regulations/UIC%20Final%20Text%20of%20Regulations.pdf).

³³ 14 CCR Sections 1720.1(n) and 1724.11(a).

1 the environment, health and safety.

2 24. As explained below, notwithstanding all the foregoing -- that is, notwithstanding the
3 Legislature's express directive to "increase production"; notwithstanding all the hard work since
4 performed by CalGEM and the California Council on Science and Technology to evaluate WST
5 impacts and to promulgate WST and UIC regulations designed to simultaneously ensure safety and
6 increase production, as well as ensure compliance with the federal SDWA; notwithstanding the
7 County's overlapping permitting requirements, Newsom and his political allies are on record as
8 fundamentally disagreeing with the Legislature. Rather than seek to increase production for the
9 benefit of Kern County and all California consumers, they are on record as wanting to completely
10 shut down California's oil and gas production industry. Thus, shortly after taking office, Newsom
11 began to focus on reducing or phasing out WST and, in September 2020, asked the Legislature to
12 overturn the above described long-standing law. As explained below, in April 2021 the Legislature
13 declined to do so.

14 25. Within days of suffering this legislative rebuke, Newsom instructed CalGEM's
15 senior leadership to ignore a critical part of that agency's statutory mandate, its duty to increase
16 production. Having seen its previous supervisor criticized and fired for following the law, CalGEM
17 has since dutifully carried out Newsom's *de facto* "no new permits" directive, all to the end of
18 carrying out Newsom's expressly stated ultimate goal of eliminating all oil and gas production in
19 California as soon as possible.

20 **Prior Executive Branch Analysis of the Environmental Value of Instate Production**

21 26. Activist groups have repeatedly urged California's governors and regulatory
22 agencies to curtail in-state oil and gas operations by withholding necessary operating permits,
23 including for WST.³⁴ In 2015, then Governor Jerry Brown publicly rejected these demands by
24 noting "California imports 70 percent of our petroleum products; our cars drive over 330 billion
25 miles mostly on petroleum. If we reduce our oil drilling on California ... we'll import more oil by
26 train or by boat [and] that doesn't make a lot of sense. What we need to do is to move to electric

27 ³⁴ Los Angeles Economic Development Corporation, *Oil & Gas In California: The Industry, Its Economic Contribution*
28 *and User Industries at Risk* (2019).

1 cars, more efficient buildings and more renewable energy....”³⁵ CalGEM referenced Governor
2 Brown’s comments verbatim in the WST FEIR as substantial evidence for rejecting a proposed
3 permitting moratorium that would have, as Newsom now insists, reduced California oil and gas
4 operations.³⁶

5 27. CalGEM’s certified WST FEIR thus rejected the professed regulatory alternative of
6 immediately curtailing in-state oil and gas operations and replacing fossil fuels with renewable
7 energy. CalGEM found “dependence on fossil fuels will continue in the State during the period of
8 transition to greater use of renewable energy sources ... Oil consumption in California is not
9 dependent upon California’s in-state oil production; rather, it is tied directly to consumer demand
10 and indirectly to global oil prices.” In so doing, after extensive analysis and opportunity for public
11 comment, the administrative agency created by California’s Legislature for the express purpose of
12 administering California’s oil and gas laws previously concluded that if California reduces its in-
13 state oil and gas production, “the lost oil that would otherwise have come from the State will likely
14 be produced in the Middle East, North Dakota, or other parts of the nation and world with less
15 stringent environmental laws. On a global scale, this switch to a greater reliance on imported fuels
16 will lead to more GHG emissions, as those emissions will not be subject to offset requirements or
17 caps as they would be in California.”³⁷

18 28. Equally important, CalGEM further determined the increased imports that would
19 inevitably result from reduced in-state production would have significant adverse air quality, safety
20 and environmental justice impacts. Air quality would suffer because additional imports would
21 “increase the activity of tanker ships delivering Alaskan and foreign oil to California via ports and
22 marine terminals in Los Angeles, Long Beach, and the San Francisco Bay Area, and it would
23 increase the activity of rail trains hauling crude oil primarily from North Dakota and Canada ... The
24 resulting levels of NOx and other emissions from tanker ships, locomotives, and terminal facilities

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26 ³⁵ Energy In Depth, “Gov. Jerry Brown: Fracking Ban ‘Doesn’t Make a Lot of Sense,’” March 23, 2015, available at
<http://energyindepth.org/california/gov-jerry-brown-fracking-ban-doesnt-make-sense/>.

27 ³⁶ CalGEM, WST FEIR, Vol. 1, Global Response GR-4, at C.2-23 (June 2015).

28 ³⁷ CalGEM, WST FEIR, Vol. 1, Global Response GR-19, at C.2-84 (June 2015).

1 would remain at levels potentially inconsistent with the forecasts of air quality plans, resulting in a
2 potential conflict with local air quality plans.”³⁸ Safety impacts would be greater because
3 “[i]ncreased transport of imported oil to refineries to offset supplies that would not materialize”
4 from in-state production “would increase the opportunities for spills or accidents....”³⁹ Significant
5 adverse environmental justice impacts would occur because imports would result in “[i]ncreased
6 ship, rail, and truck traffic hauling imported oil and gas to refineries” which would “increase traffic
7 through communities located on existing transportation corridors, many of which may be
8 “disproportionately comprised of minority and low-income populations” and subject to higher
9 impacts from “diesel emissions ... and from risk of upset.”⁴⁰

10 29. Oil and gas import trends since the WST FEIR was first certified support these
11 factual findings. In 2019, California imported 146,331,000 barrels of crude oil from Saudi Arabia
12 and Iraq, an amount approximately the same as total in-state production and a 15% increase from
13 2017 levels. None of these imports were extracted, processed or shipped in accordance with
14 California oil and gas regulations. According to the Yale University Environmental Performance
15 Index, in 2020 Saudi Arabia and Iraq ranked in the lower half of all countries for environmental
16 protection, far below U.S. levels.⁴¹ Both countries also ranked in the bottom 25% on the Freedom
17 House index of political and civil rights in 2020.⁴² Total imports, including from Alaska, rose by
18 36,446,000 barrels from 2015 to 2019, significantly increasing shipborne emissions in transit and in
19 the vicinity of vulnerable communities near California ports.⁴³ Yet, on a national scale, pursuing
20 similar unilateral executive action to decrease domestic oil and gas production, in mid-August 2021
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24 ³⁸ CalGEM, WST FEIR, Vol. 3, 12.2-2 (June 2015).

25 ³⁹ *Id.* at 12.2-40.

26 ⁴⁰ *Id.* at 12.2-28.

27 ⁴¹ <https://epi.yale.edu/epi-results/2020/component/epi>.

28 ⁴² <https://freedomhouse.org/countries/freedom-world/scores?sort=desc&order=Total%20Score%20and%20Status>.

⁴³ <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries>.

1 President Joe Biden ironically urged OPEC to boost oil production.⁴⁴

2 30. The volume of oil transported by rail, and associated diesel emissions affecting
3 communities adjacent to rail routes, also rose from 1,762,369 barrels in 2015 to 8,245,000 barrels in
4 2019, a nearly 500% increase.⁴⁵

5 31. Finally, CalGEM’s certified and judicially upheld WST FEIR also explains, in
6 detail, how the Legislature never authorized the executive branch to ban any specific form of
7 hydrocarbon recovery method, including WST or other extraction technologies. “Some
8 commenters wish [the executive branch] to focus on the first mandate (‘to prevent ... damage to life,
9 health ... natural resources’) in Section 3106 to the exclusion of the second mandate (‘to permit ...
10 operators of the wells to utilize all methods),” CalGEM noted in its WST FEIR. “But [the
11 executive branch] does not have the luxury of selecting which sections of existing statutes it will
12 follow and implement” and “has only as much rulemaking power as is invested in it by statute.”⁴⁶
13 To ban even one form of extraction technology, WST, “action by the California Legislature would
14 be necessary.”⁴⁷ Based on this analysis, the State’s own WST FEIR concluded that the Governor
15 “lacks legislative authority” to ban or issue a moratorium on legally permitted extraction methods
16 by decree, executive order or emergency powers without violating the “separation of powers
17 doctrine.”⁴⁸

18 32. Yet, as explained below, Newsom has done, and unless and until restrained will
19 continue to do, precisely what he and CalGEM previously concluded he lacks the power and
20 constitutional authority to do ... effectively ban further WST permitting in California.

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24 ⁴⁴ <https://www.reuters.com/world/middle-east/us-call-opec-its-allies-increase-oil-production-cnb-2021-08-11/>;
25 <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/11/statement-by-national-security-advisor-jake-sullivan-on-the-need-for-reliable-and-stable-global-energy-markets/>.

26 ⁴⁵ <https://www.energy.ca.gov/data-reports/energy-almanac/californias-petroleum-market/oil-supply-sources-california-refineries-0>.

27 ⁴⁶ CalGEM, WST FEIR, Vol. 1, Global Response GR-4, at C.2-23 (June 2015).

28 ⁴⁷ CalGEM, WST FEIR, Vol. 1, Global Response GR-5, at C.2-24 to C.2.-25 (June 2015).

⁴⁸ CalGEM, WST FEIR, Vol. 1, Global Response GR-4, at C.2-22 (June 2015).

1 **The Newsom Administration’s Illegal Effort to Eliminate California’s Entire**
2 **Oil and Gas Production Industry**

3 33. Almost immediately after his inauguration, Newsom unilaterally and without
4 legislative authorization caused the State’s executive agencies to pursue an illegal pattern and
5 practice aimed at the eventual complete elimination of California’s oil and gas industry. In his May
6 2019 summary of the State’s revised budget, Newsom called for “careful study and planning to
7 *decrease demand and supply* of fossil fuels.” (Italics added).⁴⁹ This targeted reduction on
8 California’s in-state supply was hailed by environmental activists as the “first public
9 acknowledgement by a California Governor of the need to address the state’s fossil fuel extraction
10 and comes after years of advocacy ... for a phase out of fossil fuel production.”⁵⁰

11 34. Seizing on Newsom’s initiative, activists then heavily criticized his administration’s
12 continued issuance of WST permits and asserted that certain CalGEM employees had a financial
13 interest in oil and gas securities. Professing to be “very angry”, in July 2019 Newsom announced
14 he had “fired the person responsible for signing those permits” and would be “appointing a
15 replacement that shares my values.” Newsom conceded, however, all the WST permits signed by
16 the public servant he shortly thereafter indeed fired, former CalGEM Supervisor Ken Harris, had
17 been lawfully issued. Newsom also confirmed he lacked authority to unilaterally change the law to
18 prohibit WST permits. “Legally, the governor of California cannot” impose a permit moratorium,
19 he said. “I explored that during my transition.”⁵¹

20 35. The California Legislature has never authorized Newsom to substitute his “values”
21 for the State’s duly-enacted policies or to unilaterally block WST or any other form of extraction
22 technology.

23 36. In November 2019, Newsom and CalGEM issued a press release identifying “new
24 initiatives” to “*manage the decline of oil production* and consumption in the state.” (Italics added.)
25 His new initiatives included a moratorium on the issuance of high-pressure cyclic steam injection

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⁴⁹ <http://www.ebudget.ca.gov/2019-20/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>, at 74.

27 ⁵⁰ <https://lastchancealliance.org/governor-newsoms-budget-revision-highlights-need-for-managed-decline-of-fossil-fuel-supply-in-california/>.

28 ⁵¹ <https://www.latimes.com/politics/la-pol-ca-gavin-newsom-oil-fracking-20190712-story.html>.

1 permits -- despite the fact that such permits are currently and specifically authorized by California
2 law -- and a new requirement, nowhere authorized by legislation or regulation, that all WST permits
3 henceforth must be reviewed by the Lawrence Livermore National Laboratory (“LLNL”) before
4 issuance.⁵²

5 37. The actions taken by Newsom at the end of 2019 set in motion an illegal pattern and
6 practice of defying statute, as well as ignoring CalGEM’s WST FEIR and other previously duly
7 promulgated permitting regulations, and acting without Legislative authorization as set forth in
8 detail below.

9 **Illegal Curtailment of WST Permits**

10 38. Despite express findings in CalGEM’s WST FEIR that in-state production using
11 WST and other extraction technologies is environmentally superior to annually importing millions
12 of barrels by sea or rail -- which administrative fact finding and action was, again, upheld by the
13 California Court of Appeal in May 2019⁵³ -- from the very start of his administration Newsom
14 irrationally focused on eliminating WST. “I don’t think anyone who was paying attention,” he said
15 in July 2019, “is unaware of my position on fracking. I’ve been very explicit about it.”⁵⁴
16 Consistent with this expressed antipathy toward WST, in 2020 under his direction CalGEM issued
17 only 83 WST permits, as compared with an average of more than 200 WST permits annually
18 between 2016 and 2019.⁵⁵

19 39. As noted above, by late 2020 Newsom decided to completely ban WST permits in
20 California. In September 2020, he issued an Executive Order calling for the Legislature to “end the
21 issuance of new hydraulic fracturing permits by 2024.”⁵⁶ When pressed, his ensuing comments
22 clarified he was merely “asking the Legislature to end the issuance of new hydraulic fracturing
23

24 ⁵² <https://www.conservation.ca.gov/index/Pages/News/California-Establishes-Moratorium-on-High-Pressure-Extraction.aspx>.

25 ⁵³ See, fn. 31 *supra*.

26 ⁵⁴ <https://www.latimes.com/politics/la-pol-ca-gavin-newsom-oil-fracking-20190712-story.html>.

27 ⁵⁵ <https://www.conservation.ca.gov/calgem/Pages/permits.aspx>.

28 ⁵⁶ <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf>.

1 permits by 2024,”⁵⁷ and again acknowledged California’s executive departments “simply don’t
2 have that authority” and “need the Legislature to approve” a WST ban.⁵⁸

3 40. In February 2021, Senate Bill 467 (SB 467) was introduced for consideration by
4 California’s Senate Committee on Natural Resources and Water. SB 467 would have, at Newsom’s
5 invitation, added PRC section 3162 to ban the issuance and renewal of all WST permits by January
6 1, 2022.⁵⁹ On April 13, 2021, however, SB 467 failed on its first committee vote, thus it never even
7 reached the Senate floor.⁶⁰

8 41. Just ten days later, contradicting his own statements that he lacked authority to ban
9 WST permits, Newsom issued a press release unilaterally directing CalGEM to “*initiate regulatory*
10 *action to end the issuance of new permits for hydraulic fracturing* (“fracking”) by January 2024.”⁶¹
11 (Italics added.) On May 21, 2021, CalGEM issued a so-called “informal” notice of “pre-
12 rulemaking draft regulations ... for the purpose of receiving public input on the development of a
13 rule that *ends permitting for well stimulation treatments in 2024.*”⁶² (Italics added.)

14 42. No formal rulemaking has since been initiated to consider or adopt Newsom’s WST
15 ban and the Legislature, as noted above, never approved such a current or prospective ban.
16 Nonetheless, Newsom’s administration has since imposed a *de facto* ban on California WST
17 permits. Before SB 467’s failure and Newsom’s ensuing April 2021 executive directive, during the
18 first two months of 2021 CalGEM approved a dozen WST permits, denying 21 others. Since then,
19 no WST permits whatsoever have been approved or issued in the State of California. In July and
20 August 2021 alone, CalGEM denied 85 WST permits, all for fields within Kern County.⁶³ By
21 contrast, before Newsom resorted to brazenly violating the law, in the second half of 2019 CalGEM

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23 ⁵⁷ <https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-dramatically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change/>.

24 ⁵⁸ <https://calmatters.org/environment/2021/04/newsom-ban-new-oil-fracking/>.

25 ⁵⁹ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB467.

26 ⁶⁰ https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202120220SB467.

27 ⁶¹ <https://www.gov.ca.gov/2021/04/23/governor-newsom-takes-action-to-phase-out-oil-extraction-in-california/>.

28 ⁶² <https://www.conservation.ca.gov/index/Documents/Public%20Notice%20-WST%20permitting%20phase-out.pdf>.

⁶³ <https://www.conservation.ca.gov/calgem/Pages/Well-Stim-National-Lab-Scientific-Review.aspx>.

1 received approximately 1,272 new drill notices and approved 1107.⁶⁴ 83 of the approved permits
2 were for WST extraction.

3 43. Certain of CalGEM’s post-February 2021 WST denials have been premised on
4 vague and unsubstantiated assertions by CalGEM’s new leadership that denying in-state production
5 permits is necessary “to protect public health and safety and environmental quality, including [the]
6 reduction and mitigation of greenhouse gas emissions associated with the development of
7 hydrocarbon ... resources.” In public comments, CalGEM Supervisor Uduak-Joe Ntuk (“Ntuk”)
8 stated “[i]n the face of the effects of the climate emergency, the risks to everyday Californians are
9 too high to approve these permits.”⁶⁵ These highly politicized policy pronouncements,
10 conveniently mirroring Newsom’s stated “values,” not coincidentally coming shortly after
11 Newsom’s legislative defeat, are tantamount to the same sort of executive power grab rebuked by
12 the United States Supreme Court on August 26, 2021 in *Ala. Ass’n of Realtors v. HHS*, No. 21A23,
13 2021 U.S. LEXIS 3679 (Aug. 26, 2021). Simply put, neither the Governor nor CalGEM have
14 authority to unilaterally rewrite the law. Nor does Newsom’s political appointee, Ntuk, have the
15 authority as CalGEM’s Supervisor to refuse to apply CalGEM’s own rules and regulations based on
16 an undeclared climate emergency. Moreover, as stated above, this new executive policy
17 pronouncement is contradicted by CalGEM’s own prior findings in its certified and judicially tested
18 WST FEIR.

19 44. In summary, our Legislature never authorized Newsom, CalGEM or any other
20 executive agency to ban WST in California. To the contrary, in April 2021 our Legislature
21 considered and declined to enact such a ban. Nor has our Legislature altered CalGEM’s statutory
22 mandate to “increase production” by authorizing “known” and “prudent” technologies like WST.
23 Nor has our Legislature endorsed Newsom’s “values” that include eliminating all in-state oil and
24 gas production. Nor have Newsom or CalGEM identified any new factual findings justifying
25 CalGEM’s current deviation from its judicially tested WST FEIR and other permitting regulations.

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27 ⁶⁴ Based on tally of weekly summary data available at: ftp://ftp.consrv.ca.gov/pub/oil/weekly_summary/; data limited to
this timeframe due to incomplete submittal data available for first half of 2019.

28 ⁶⁵ https://www.bakersfield.com/news/state-exercises-discretion-to-deny-kern-fracking-permits-ahead-of-formal-ban/article_cf3905f2-e0e0-11eb-be63-370d54b769b9.html.

1 Nonetheless, Newsom’s political appointee now says “the risks to everyday Californians are too
2 high to approve these [WST] permits.” The combination of these factors, combined with the other
3 procedural roadblocks conceived to avoid the further processing or approval of WST applications,
4 combined with the fact CalGEM has not issued a single WST permit since Newsom issued his April
5 2021 directive, thwarts the law. This unlawful pattern and practice not only violates our State’s
6 Constitution, it also and directly harms the environment, employment and essential public revenue
7 sources in Kern County.

8 **Concurrent Illegal Curtailment of High Pressure Cyclic Steam Injection Permits**

9 45. Another “known” and proven form of oil and gas extraction is high pressure cyclic
10 steam injection. Regulations updated by CalGEM in 2019 specifically allow for the approval of
11 HPCS permits to recover hydrocarbon resources in California.⁶⁶ Yet, at virtually the same time
12 these new regulations with corresponding environmental protections were being finalized, CalGEM
13 issued a press release announcing its purported imposition of a legislatively unauthorized statewide
14 moratorium on the issuance of HPCS permits. The stated rationale was to provide CalGEM time
15 for “partnering with independent experts from the Lawrence Livermore and Sandia National
16 Laboratories to assess underlying conditions in the Cymric formation” where “recent leaks of oil
17 and water, known as surface expressions” had occurred.⁶⁷ This publicly stated rationale aside, no
18 reports or information have ever been released by CalGEM, LNLL or the Sandia National
19 Laboratories concerning the Cymric formation or high pressure cyclic steam processes in general.
20 The unilaterally imposed moratorium is still in place. CalGEM never provided a schedule for its
21 completion of its purported “technical review.” In the meantime, since the moratorium was
22 announced, no HPCS injection permits have been processed or approved.

23 46. As with the current *de facto* ban on the processing and approval of WST permits,
24 Newsom and CalGEM lack the legislative power or authority to impose a statewide ban on HPCS.
25 In SB 467, the Legislature considered banning this technology, along with other forms of WST and
26 EOR extraction, but declined to do so. Given this simple fact, whether Newsom and his appointees

27 ⁶⁶ 14 CCR § 1724.10.3(b).

28 ⁶⁷ <https://www.conservation.ca.gov/index/Pages/News/California-Establishes-Moratorium-on-High-Pressure-Extraction.aspx>.

1 disagree with the law or not, PRC section 3106(b) continues to require CalGEM to consider
2 whether each proposed form of extraction technology, including HPCS injection, is “suitable ... in
3 each proposed case” for hydrocarbon recovery. According to CalGEM, no surface expressions
4 have occurred “near populated regions” and all have been “[i]solated from drinking water sources”
5 and “[c]oncentrated within oil field productive limits and within contained areas.”⁶⁸ Accordingly,
6 there is no known substantive basis for CalGEM’s purported imposition of a statewide permit
7 moratorium in conflict with applicable legislation and regulations. The moratorium significantly
8 and adversely affects oil and gas operations in Kern County where most HPCS injection occurs.

9 47. Again, the County is informed and believes, and thereon alleges, the sudden shelving
10 of CalGEM’s own regulations and continuing moratorium on HPCS is another instance of
11 unauthorized actions against the state’s oil and gas industry.

12 **Illegal Plan to Completely End California’s Oil and Gas Industry**

13 48. For the first time in California history, Newsom’s September 2020 executive order
14 directed “the California Environmental Protection Agency and the California Natural Resources
15 Agency” to “*expedite* regulatory processes to repurpose and transition upstream and downstream oil
16 production facilities” and “*expedite* the “*closure and remediation of former oil extraction sites as
17 the State transitions to a carbon-neutral economy.*”⁶⁹ (Italics added.) In July 2021, Newsom further
18 directed the California Air Resources Board (“CARB”) “to achieve carbon neutrality no later than
19 2035 as part of its 2022 Climate Change Scoping Plan,” including an “analysis of how to reduce or
20 eliminate demand for fossil fuel in California *and end oil extraction in our state.*”⁷⁰ (Italics added.)

21 49. The Legislature never authorized the Governor, CARB or any other state agency to
22 plan for, or take other steps to bring about, the extinction of an entire industry, much less one
23 essential to California’s economy, its citizenry’s production and trade of goods, health and safety
24 and freedom of movement.

25 ///

26 ⁶⁸ <https://cadoc.maps.arcgis.com/apps/MapJournal/index.html?appid=4f6b21eb4e224cab9e86fbb763a41307>.

27 ⁶⁹ <https://www.gov.ca.gov/wp-content/uploads/2020/09/9.23.20-EO-N-79-20-Climate.pdf>.

28 ⁷⁰ https://www.gov.ca.gov/wp-content/uploads/2021/07/CARB-Letter_07.09.2021.pdf.

1 50. According to legislative analysis, SB 467 would have banned most forms of WST
2 and EOR in California by 2027 thereby affecting or curtailing approximately 95 percent of all
3 California oil and gas production.⁷¹ Again, however, SB 467 almost immediately died in
4 committee. The Legislature therefore never saw fit to enact (or never chose to endure the political
5 backlash of enacting) a law authorizing the executive branch to eliminate the oil and gas industry,
6 unemploy thousands of Californians, forego billions of dollars in in-state economic activity, cause
7 the loss of hundreds of millions of dollars of public service revenues in Kern County alone, increase
8 U.S. dependence on imported foreign oil and, for good measure, significantly increase both GHG
9 and conventional air pollution. The Governor’s attempted use of the CARB Scoping Plan process
10 as a means to curtail in-state oil and gas production is unlawful, violates the Separation of Powers
11 clause, and directly and irreparably harms environmental, economic, public service and
12 employment conditions in Kern County.

13 **Illegal Delay in the Processing of Routine Well Permits**

14 51. As stated above, the Newsom administration is now indefinitely delaying the
15 issuance of routine injection permits in violation of existing legislation. This unlawful deny-by-
16 never-ending-delay strategy is being carried out by requiring, without legislative approval or new
17 rulemaking, submission of extensive new so-called “Area of Review” data by operators who wish
18 to install additional wells within the boundaries of existing, permitted UIC projects. The executive
19 branch’s pattern and practice of thus unlawfully delaying routine oil and gas industry permits
20 irreparably and disproportionately harms Kern County, the location of the majority of in-state oil
21 and gas production.

22 **Economic Harm Specific to Kern County**

23 52. As noted above, in 2019 oil and gas industry employers paid over \$1.3 billion in
24 wages to workers in Kern County. Including ripple effects from purchases by oil and gas
25 employees and by businesses serving the industry, the industry directly and indirectly contributes a
26 total of \$1.9 million for every \$1 million of oil and gas expenditures.⁷² Based on 2020 data, the

27 _____
28 ⁷¹ https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB467.

⁷² See, fn. 14 *supra*.

1 average annual salary of oil and gas sector jobs in the County was \$80,874, with highly-skilled oil
2 and gas extraction jobs earning an average of \$131,168, far higher than the annual average salary
3 for all industries of \$49,751.⁷³ Economic activity associated with the oil and gas industry in Kern
4 County generated an estimated \$925 million in state and local tax revenues in 2017, of which \$392
5 million came from sales taxes; \$331 million came from property taxes paid by households and
6 businesses; \$68 million from personal and corporate income taxes, and \$134 million from other
7 categories.⁷⁴

8 53. Property taxes paid by the oil and gas industry play a major role in the support of
9 local infrastructure, including schools, hospitals, public safety, streets and parks. The assessment
10 value of oil and gas industry property in Kern County is approximately \$15.6 billion, generating
11 over \$197 million in property tax revenue in Kern County in fiscal year 2018-2019 including over
12 \$80 million for County funds, over \$103 million for school districts and over \$12 million for special
13 districts.⁷⁵ In 2018-2019, seven of Kern County's top ten taxpayers were from the oil and gas
14 industry and comprised over 15% of total general taxes due with bills totaling \$154.3 million.⁷⁶ If
15 100% of oil and gas-related assessed valuation were removed from the tax rolls, the County's
16 General Fund would suffer a 23.1% reduction in total property tax revenue and a 7.4% reduction in
17 revenue from all sources, while the County's Fire Fund would suffer a 20.4% reduction in total
18 property tax revenue and a 13.0% reduction in revenue from all sources.⁷⁷ The property tax
19 revenue generated by the oil and gas industry cannot be replaced by new solar energy projects, as
20 the Governor and energy transition advocates have urged, because commercial-scale solar energy
21 projects in California are subject to a Solar Tax Exclusion which provides that solar equipment
22 cannot be reassessed for property taxes until 2024.⁷⁸ A 2020 report on the existing large scale solar

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⁷³ *Id.* at 3.

24 ⁷⁴ *Id.* at 4.

25 ⁷⁵ The Natelson Dale Group, Inc., Kern County Oil and Gas Property Tax Revenue Analysis (2020), at 3-4.

26 ⁷⁶ *Ibid.*

27 ⁷⁷ *Id.* at 11.

28 ⁷⁸ State Board of Equalization, Guidelines for Active Solar Energy Systems New Construction Exclusion (2012), at <https://www.boe.ca.gov/proptaxes/active-solar-energy-system.htm#Guidelines>.

1 projects built in Kern County demonstrates that the County has lost \$103 million in property tax
2 revenue over the last 10 years due to this exemption.⁷⁹

3 54. In 2015, to establish procedures and compliance standards to protect health, safety
4 and the environment, while encouraging oil and gas industry economic development that creates
5 high-paying jobs and promotes investment in Kern County, the Kern County Board of Supervisors
6 adopted a zoning ordinance that established a new local oil and gas permitting program.⁸⁰ Under
7 the ordinance, the County collects fees from oil and gas permit applicants to pay for administration
8 of the permit program and implementation of mitigation measures to reduce the environmental
9 impacts of oil and gas drilling and operations. Between December 2018 and November 2019, the
10 County collected \$45,172,714 in environmental mitigation fees, including \$38,896,506 for air
11 quality mitigation.⁸¹ The cumulative fees collected since inception of the County's oil and gas
12 permit program total \$136,564,899 for environmental mitigation, including \$114,099,132 for air
13 quality mitigation.⁸²

14 **Environmental Harm to Kern County and California Generally**

15 55. California is currently the third-largest gasoline consumer in the world, behind only
16 China and the United States as a whole.⁸³ California oil production, most of which comes from
17 Kern County, meets only about 30% of California's current demand. In 2019, California imported
18 58% (360 million barrels) of its crude oil supply from foreign sources with approximately 42%
19 coming from Saudi Arabia and Iraq -- countries that do not impose stringent environmental
20
21

22 ⁷⁹ Kern County Planning and Natural Resources Department, Response to Board Referral of October 5, 2020 for Report
23 on Large Scale Commercial Solar Historic Property Tax Revenue and Legislative Exclusion (December 2020), at 2.

24 ⁸⁰ Kern County Zoning Ordinance 2015 C, amending Chapter 19.98, Sections 19.98.010 - 19.98.160.

25 ⁸¹ Kern County Oil and Gas Permitting Annual Progress Report December 1, 2018 to November 30, 2019 (December
26 2019), at 10.

27 ⁸² *Ibid.* In that reporting period, the County collected \$29,362,734 in environmental mitigation fees, including
28 \$25,161,193 in air quality mitigation fees, before permitting was halted on March 25, 2020 by court order, in a
challenge to the County's oil and gas permitting ordinance and accompanying environmental impact report.

⁸³ Kern Economic Development Foundation, The Economic Contribution of the Oil and Gas Industry in Kern County
(2021), at 7.

1 constraints or standards. In 2019, California’s reliance on imports cost the state an estimated \$23
2 billion.⁸⁴

3 56. If in-state production is substantially reduced or eliminated in accordance with
4 Newsom’s “values” and, now, unilaterally imposed dictates, oil imports correspondingly must
5 substantially increase to satisfy demand. As more particularly explained above, multiple studies
6 have shown this will measurably increase adverse GHG, air quality, safety and environmental
7 justice impacts. For climatic and geographic reasons, emissions from the San Francisco Bay Area
8 (where increased emissions from imports at ship terminals would occur) will be transported to, and
9 worsen air quality impacts in, the Central Valley, including Kern County.⁸⁵

10 **Strategic Harm to California and the Nation Generally**

11 57. Increased compelled dependence on foreign oil will make California and the United
12 States increasingly vulnerable to foreign controlled oil production, energy shortages and price
13 spikes. This inevitable strategic consequence further illustrates why the Legislature, not the
14 executive branch, should be entrusted with overall public policy making authority when it comes to
15 the planned extinction of an essential component of California’s economy.

16
17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF SEPARATION OF POWERS**

19 **(Against all Respondents)**

20 58. Kern County repeats, re-alleges and incorporates all of the foregoing paragraphs.

21 59. Newsom’s public statements and executive orders amount to a direct instruction to
22 CalGEM to cease approving new WST, HPCS and similar extraction technology permit
23 applications. CalGEM promptly imposed the functional equivalent of a statewide ban, or *de facto*
24 moratorium, on WST permit approvals, as well as an outright moratorium on HPCS permits. “[I]t
25 is settled in this state that in an appropriate case a writ of mandate will issue against the Governor of
26 the state.” (*Hollman v. Warren* (1948) 32 Cal.2d 351, 354.) Here is such a case.

27 _____
⁸⁴ *Ibid.*

28 ⁸⁵ San Joaquin Valley Air Pollution Control District, Extreme Ozone Attainment Demonstration Plan (2004) at 2-3, 2-6,
available at https://www.valleyair.org/Air_Quality_Plans/docs/final_1hr_Oct/Chp%202.pdf.

1 60. Article V, section 1 of the California Constitution provides: “The supreme executive
2 power of this State is vested in the Governor. The Governor shall see that the law is faithfully
3 executed.” Additionally, Section 12010 of the Government Code provides: “[t]he Governor shall
4 supervise the official conduct of all executive and ministerial officers.”

5 61. Article III, section 3 of the California Constitution further provides: “The powers of
6 state government are legislative, executive, and judicial. Persons charged with the exercise of one
7 power may not exercise either of the others except as permitted by this Constitution.” “The
8 separation of powers doctrine limits the authority of one of the three branches of government to
9 arrogate to itself the core functions of another branch.” (*Marine Forests Society v. California*
10 *Coastal Commission* (2005) 36 Cal.4th 1, 25, citing *Carmel Valley Fire Protection Dist. v. State of*
11 *California* (2001) 25 Cal.4th 287, 297.)

12 62. When a public official’s authority to act in a particular area derives wholly from
13 statute, the scope of that authority is measured by the terms of the governing statute. “It is well
14 settled in this state and elsewhere, that when a statute prescribes the particular method in which a
15 public officer, acting under a special authority, shall perform his duties, the mode is the measure of
16 the power.” (*Cowell v. Martin* (1872) 43 Cal. 605, 613–614; see, e.g., *County of Alpine v. County*
17 *of Tuolumne* (1958) 49 Cal.2d 787, 797; *California State Restaurant Assn. v. Whitlow* (1976) 58
18 Cal.App.3d 340, 346–347 [“[a]dministrative bodies and officers have only such powers as have
19 expressly or impliedly been conferred upon them by the Constitution or by statute”]; *Lockyer v.*
20 *City & Cty. of S.F.* (2004) 33 Cal.4th 1055, 1086.)

21 63. Courts have jurisdiction to enjoin a public official’s ultra vires acts. “[P]alpably
22 unreasonable and arbitrary” acts by a public official indicate an abuse of discretion as a matter of
23 law, thus constitute ultra vires acts that should be struck down. (*People ex rel. Harris v. Rizzo*
24 (2013) 214 Cal.App.4th 921, 941.)

25 64. Because current law expressly provides for the use of WST, HPCS and similar
26 “known” and “prudent” extraction technologies to “increas[e] the recovery of underground
27 hydrocarbons”; because current law directs CalGEM to “encourage the wise development of oil and
28 gas resources”; because current law expressly sanctions the use of WST, HPCS and similar

1 extraction technologies subject to carefully conceived, publicly disclosed and regularly updated
2 regulations designed for the protection of the environment and health and safety; because current
3 law is based on legislative and administrative findings that hitherto concluded banning WST, HPCS
4 and similar extraction technologies would be environmentally harmful; because banning WST,
5 HPCS and similar extraction technologies is in fact environmentally and economically harmful,
6 particularly to the residents of Kern County; because current law does not allow Newsom and his
7 administration to unilaterally ignore or exceed their statutory authority; because, as Newsom
8 himself heretofore repeatedly acknowledged, he and his subordinates lack authority to unilaterally
9 change the law, much less plan for or take steps to purposefully cause the ultimate extinction of an
10 entire industry; because Newsom and his administration similarly lack authority to act outside
11 statutory mandates or arbitrarily abandon regulations developed based on facts, scientific study and
12 extensive public comment; and because Newsom appears to be pursuing his present unlawful
13 course of action in response to or retaliation immediately after the Legislature refused to enact
14 radically new and destructive policies in line with his stated “values,” the above-stated actions
15 violate the Separation of Powers (Art. III, section 3) and Executive Authority (Art. V, section 1)
16 clauses of the California constitution. They are also arbitrary and capricious for these same reasons,
17 and thus in excess of statutory authority. As such, they should be preliminarily and permanently
18 enjoined.

19
20 **SECOND CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA’S ADMINISTRATIVE PROCEDURE ACT**

22 **(Against all Respondents)**

23 65. Kern County repeats, re-alleges and incorporates all of the foregoing paragraphs.

24 66. The APA prohibits the Governor, or anyone purporting to act pursuant to the
25 authority legislatively granted to a state agency, from making or enforcing any rule outside of the
26 APA’s rulemaking procedures. Specifically, Government Code section 11340.5(a) provides: “No
27 state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin,
28 manual, instruction, order, standard of general application, or other rule, which is a regulation as

1 defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order,
2 standard of general application, or other rule has been adopted as a regulation and filed with the
3 Secretary of State pursuant to this chapter.” A “regulation” as defined in Government Code section
4 11342.600 is defined broadly: “‘Regulation’ means every rule, regulation, order, or standard of
5 general application or the amendment, supplement, or revision of any rule, regulation, order, or
6 standard adopted by any state agency to implement, interpret, or make specific the law enforced or
7 administered by it, or to govern its procedure.” The APA’s rulemaking procedures require, among
8 other necessary processes to ensure public notice and opportunity to comment: (1) public notice of
9 the proposed regulation (Gov. Code §§ 11346.4, 11346.5); (2) publicly publishing the complete text
10 of the proposed regulation (*id.* § 11346.2(a)) with a statement of reasons (*id.* § 11346.2(b)); (3)
11 providing the public an opportunity to comment (*id.* § 11346.8); (4) written responses to comments
12 (*id.* §§ 11346.8(a), 11346.9); and (4) “maintain a file of each rulemaking” containing “[a]ll data and
13 other factual information, technical, theoretical, and empirical studies or reports, if any, on which
14 the agency is relying[.]” (*Id.* § 11347.3(a), (b)(7).)

15 67. Government Code section 11350 provides the judiciary with the power to declare a
16 regulation void if not promulgated in substantial compliance with the APA. “The regulation or
17 order of repeal may be declared to be invalid for a substantial failure to comply with this chapter...”
18 (Gov. Code § 11350; *see also* Cal. Code Regs., tit. 1, § 250.)

19 68. As directed by Newsom, CalGEM violated the APA by promulgating and enforcing
20 new *de facto* regulations that have now materially changed the rules, regulations and guidelines for
21 consideration and approval of permits seeking to employ WST, HPCS and similar extraction
22 technologies without complying with any of the APA’s procedural requirements for adopting or
23 amending regulations. That is to say, CalGEM heeded Newsom’s call to immediately stop or
24 perpetually stymie processing of WST, HPCS and similar extraction technology permits without
25 advance public notice, without publicly publishing the complete text of their proposed new rules,
26 regulations and guidelines, without a statement of reasons, without providing the public any
27 opportunity to comment, without written responses to such public comments, and without
28

1 “maintain[ing] a file of each rulemaking” containing “[a]ll data and other factual information,
2 technical, theoretical, and empirical studies or reports, if any, on which” CalGEM purported to rely.

3 69. As stated above, PRC section 3106(b) specifically permits, indeed encourages, the
4 use of WST, while PRC section 3011(a) charges CalGEM with responsibility to “protect[]public
5 health and safety and environmental quality, including [the] reduction and mitigation of greenhouse
6 gas emissions associated with the development of hydrocarbon and geothermal resources in a
7 manner that meets the energy needs of the state.” CalGEM’s own analysis in the WST FEIR
8 demonstrates that ending WST in the state would lead to increased, rather than decreased, imports
9 and GHG emissions in violation of PRC section 3011(a). CalGEM has approved the use of WST
10 via regulations properly promulgated under the APA which are now final. (*See* 14 Cal. Code. Regs.
11 §§ 1780 *et seq.*)

12 70. CalGEM’s WST regulations provide a procedure for submitting applications for
13 permits to conduct WST. (14 Cal. Code Regs. § 1783.) The PRC requires such WST applications
14 must be reviewed by the State Oil and Gas Supervisor or district deputy: “The supervisor or district
15 deputy shall review the well stimulation treatment permit application and may approve the permit if
16 the application is complete.” (PRC § 3160(d)(3)(A).)

17 71. By his executive orders and public pronouncements set forth herein, Governor
18 Newsom has *de facto* usurped the statutory role of CalGEM in reviewing and processing WST
19 permit applications and may be enjoined via writ of mandate from violating his legal duties.

20 72. Because the Governor usurped CalGEM’s statutory authorization to review and
21 make a decision whether to grant or deny WST permit applications, the Governor’s decisions are
22 governed by the same standard as a decision by CalGEM, *i.e.*, the decision(s) may not be “arbitrary,
23 capricious, entirely lacking in evidentiary support, [or] unlawful[.]” (*Khan v. Los Angeles City*
24 *Employees’ Retirement System* (2010) 187 Cal.App.4th 98, 106.) Governor Newsom’s executive
25 orders and public pronouncements *de facto* imposing a statewide ban or moratorium on approving
26 WST permit applications were “arbitrary and capricious.” The County is informed and believes,
27 and thereon alleges, Governor Newsom did not review any WST permit applications submitted by
28 oil and gas developers in Kern County; yet, based on political considerations alone, took it upon

1 himself to cause the denial of all WST applications since March 2021. Such denials were arbitrary
2 and capricious as unsupported by any scientific evidence, and therefore constitute an abuse of
3 discretion.

4 73. Code of Civil Procedure section 1085(a) allows this Court to issue a writ of mandate
5 to Governor Newsom to “compel the performance of an act which the law specially enjoins, as a
6 duty resulting from an office” “Mandamus will lie to compel a public official to perform an
7 official act required by law.” (*Marken v. Santa Monica-Malibu Unified Sch. Dist.* (2012) 202
8 Cal.App.4th 1250, 1266.) In particular, “[m]andamus may issue, however, to compel an official
9 both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper
10 interpretation of the applicable law.” (*Ibid.*, quoting *Common Cause v. Board of Supervisors*
11 (1989) 49 Cal.3d 432, 442 and citing *V.S. v. Allenby* (2008) 169 Cal.App.4th 665, 670).

12 74. Furthermore, Rule of Court 3.1103(a)(2) includes petitions for writs of mandate as
13 “law and motion” matters.

14 75. The County is entitled to a writ of mandate, prohibition or other appropriate relief
15 directing Governor Newsom to cease and desist any and all actions and statements directing --
16 directly or indirectly -- CalGEM to deny all WST permits and/or prohibiting Governor Newsom
17 from issuing any executive orders, or taking any other action, in violation of the law and the powers
18 of the Office of the Governor of the State of California that interferes with or purports to delay,
19 obstruct, or prohibit the issuance of WST permits upon duly presented permit applications to
20 appropriate regulatory agencies.

21 76. There is no other plain, speedy and adequate remedy at law available to Kern County
22 other than by seeking the relief requested herein. Unless this Court grants the relief requested,
23 Governor Newsom will continue to instruct CalGEM to fail and refuse to perform its legal duties.
24 No money damages or other legal remedy could adequately compensate Kern County for the
25 hardship caused by Governor Newsom’s actions exceeding his Constitutional and statutory powers
26 and authority.

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THIRD CAUSE OF ACTION

DECLARATORY RELIEF

(Against all Respondents)

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3
4 77. Kern County repeats, re-alleges and incorporates all of the foregoing paragraphs.

5 78. A present and actual controversy has arisen and now exists among the parties. The
6 County, on the one hand, contends Newsom lacks the constitutional authority to establish unlawful
7 State policies to (1) unilaterally ban the use of WST, HPCS and similar extraction technologies; (2)
8 ban or place a moratorium on the processing or granting of permits calling for the use of such
9 statutorily authorized technologies; (3) delay, “slow walk,” thwart or otherwise intentionally
10 frustrate CalGEM’s processing and approval of permits duly submitted in full compliance with
11 CalGEM’s duly adopted administrative regulations and procedures including, *inter alia*, 14 Cal.
12 Code Regs. § 1783; (4) unilaterally impose new and additional arbitrary administrative roadblocks
13 to the processing and approval of such permits; (5) circumvent the requirements of the APA in a
14 new unilateral “underground” rule making; and (6) otherwise carry out Newsom’s April 2021
15 directive to “expedite” the “closure and remediation” of California’s oil extraction sites “and end oil
16 extraction in our state.” The County is informed and believes, and thereon alleges, Newsom
17 conversely contends he has the power to take such acts in furtherance of his professed “values” and
18 the Legislature’s failure to do so.

19 79. The County therefore requests a judicial determination and declaration of the parties’
20 respective rights and duties, specifically, a declaration from this Court finding Newsom’s public
21 pronouncements, directives and executive orders, as described herein, and CalGEM’s above-
22 described actions in response thereto, to be in flagrant violation of the California Constitution, in
23 violation and/or excess of their statutory powers, arbitrary and capricious as well as in violation of
24 the APA.

25 80. A judicial determination and declaration is necessary and appropriate at this time so
26 that the County will not continue to be adversely affected by its loss of tax revenue, unemployment
27 of a significant portion of its residents, and all other adverse effects proximately caused by
28 Newsom’s unconstitutional and otherwise illegal activities.

1 81. Government Code section 11350(a) provides, in relevant part, “[a]ny interested
2 person may obtain a judicial declaration as to the validity of any regulation or order of repeal by
3 bringing an action for declaratory relief in the superior court in accordance with the Code of Civil
4 procedure.” The County is such an “interested person.”

5 82. Declaratory relief is necessary and proper for the Court to issue under all the
6 circumstances under Code of Civil Procedure section 1061.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, the County prays for the issuance of a writ of mandate and declaratory
10 judgment against Respondents, and each of them, as follows:

11 **AS TO THE FIRST CAUSE OF ACTION**

12 1. The issuance of a writ of mandate directing Respondents, and each of them, to cease
13 and desist any and all actions -- directly or indirectly -- calculated or undertaken to carry out
14 Newsom’s directive to:

- 15 a. unilaterally ban the use of WST, HPCS and similar extraction technologies;
16 b. ban or place a moratorium on the processing or granting of permits calling for the
17 use of such statutorily authorized technologies;
18 c. delay, “slow walk,” thwart or otherwise intentionally frustrate CalGEM’s processing
19 and approval permits duly submitted in full compliance with CalGEM’s duly
20 adopted procedures including, inter alia, 14 Cal. Code Regs. § 1783;
21 d. unilaterally impose new and additional arbitrary administrative roadblocks to hinder
22 or delay the processing and approval of such permits;
23 e. circumvent the requirements of the APA in their new unilateral rule making; and
24 f. otherwise carry out Newsom’s April 2021 directive to “expedite” the “closure and
25 remediation” of California’s oil extraction sites “and end oil extraction in our state.”

26 2. The issuance of a writ of prohibition prohibiting Newsom from issuing further
27 unlawful executive orders, or taking other action, in violation of the law and the powers of the
28 Office of the Governor of the State of California that interferes with or purports to delay, obstruct,

1 or prohibit CalGEM’s timely processing and approval of permit applications calling for the use of
2 WST, HPCS and similar extraction technologies submitted in compliance with statute and
3 CalGEM’s duly promulgated existing rules and regulations.

4 **AS TO THE SECOND CAUSE OF ACTION**

5 3. For a judicial finding and decree that CalGEM, pursuant to Newsom’s executive
6 orders and/or directives, violated the APA, and continues to violate the APA, by:

- 7 a. promulgating and enforcing a host of new rules, regulations, guidelines and
8 roadblocks in a manner contrary to, *inter alia*, 14 Cal. Code Regs. § 1783, for the
9 purpose of delaying, “slow walking,” thwarting or otherwise avoiding its duty to
10 timely process and, where warranted in accordance with the standards prescribed in
11 its pre-existing regulations, approve permits seeking to employ WST, HPCS and
12 similar extraction technologies; and
13 b. “shelving,” abandoning and/or ignoring its duly adopted pre-existing APA-compliant
14 rules and regulations governing CalGEM’s processing and approval of such permits.

15 4. For a judgment declaring all CalGEM’s non-APA compliant rules, regulations and
16 guidelines pertaining to its processing and approval of permits seeking to employ WST, HPCS and
17 similar extraction technologies null and void *ab initio*.

18 5. For the issuance of a writ of mandate requiring CalGEM to forthwith resume
19 processing and approval of permits seeking to employ WST, HPCS and similar extraction
20 technologies in accordance with those rules, regulations and guidelines previously adopted by
21 CalGEM in compliance with the APA.

22 **AS TO THE THIRD CAUSE OF ACTION**

23 6. For a judgment declaring Newsom does not have the power to unilaterally direct
24 CalGEM or any other State agency not to process or approve permit applications calling for the use
25 of WST, HPCS and similar extraction technologies duly submitted in compliance with statute and
26 CalGEM’s duly promulgated existing rules and regulations except for provable good cause, or
27 otherwise alter the statutory and CalGEM’s duly promulgated administrative requirements for the
28 processing and/or approval of such applications;

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7. For a judgment declaring that any and all executive orders and or statements, directions, or instructions Newsom has issued purporting to impose a moratorium on granting permit applications calling for the use of WST, HPCS and similar extraction technologies are null and void and have no effect on CalGEM’s duties to process and approve WST applications within the bounds of the law;

8. For a judgment declaring that any and all executive orders and or statements, directions, or instructions Newsom has issued purporting to direct CalGEM or any other State agency to plan or otherwise take steps to “expedite” the “closure and remediation” of California’s oil extraction sites “and end oil extraction in our state” are similarly null and void and exceed the bounds of the law;

AS TO ALL CAUSES OF ACTION

- 9. For costs of suit herein; and
- 10. For such other and further relief as this Court deems just and proper.

Dated: September 13, 2021

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By: 
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Attorneys for Petitioner County of Kern