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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF CONTRA COSTA

COMMUNITIES FOR A BETTER ENVIRONMENT, A Non-Profit Corporation,

Petitioner and Plaintiff,

v.

CONTRA COSTA COUNTY; CONTRA COSTA COUNTY BOARD OF SUPERVISORS; and DOES 1 through 10, inclusive,

Respondents and Defendants.

PHILLIPS 66 COMPANY, a Delaware Corporation; and DOES 11 through 20, inclusive,

Real Parties in Interest and Defendants.

Case No. MSN15-0301

PETITIONER AND PLAINTIFF'S CASE MANAGEMENT CONFERENCE SUMMARY OF ISSUES

[CEQA CASE]

Dept: 17
Judge: Honorable Barry Goode

Filing Date of Action: March 4, 2015

Pursuant to the Court's order at the June 17, 2015 Case Management Conference for the above captioned matter, Petitioner, Communities for a Better Environment ("CBE"), hereby offers the following summary of issues.

I. INTRODUCTION

The Phillips 66 Propane Recovery Project ("Project") Environmental Impact Report ("EIR") fails as an informational document under the California Environmental Quality Act ("CEQA") because the EIR's project description fails to disclose the true scope of the Project: to enable Phillips 66 to process a greater quantity of a new and different crude oil feedstock at its San Francisco Refinery. Those include tar sands diluted bitumen ("tar sands dilbit") and Bakken oil.[1] The quality of crude oil refined directly impacts what substances a refinery produces, recovers, and emits, and also what public and worker hazards may be anticipated and adequately mitigated. Failure to disclose a switch to refining a greater amount of extreme crude precludes an adequate assessment of resultant environmental impacts, and therefore, informed decision making. Consequently, the EIR is inadequate as a matter of law.

II. SUMMARY OF ISSUES

The Phillips 66 Propane Recovery Project is an integral component of the company's larger project to enable increased processing of extreme crude. The Project's stated objective fails to disclose this overarching goal. Instead, telling only half of the story, the draft EIR states that the Project's objective is to "modify and augment" existing equipment at the refinery so that Phillips 66 can recover 8,000 barrels per day ("b/d") of liquefied petroleum gas ("LPG"), specifically, 4,200 b/d of propane and 3,800 b/d of butane. Without the additional action of changing its basic oil feedstock processing, however, the Rodeo facility's current feedstock will continue to yield only approximately half of its LPG design goal, thus failing the stated Project objective.

Crude feedstock and oil products are inherently interrelated, since the quality of feedstock determines the amount of products and by-products that can be produced. Processing different

[1] "Tar sands dilbits" are bitumen oils that are diluted for transport with lighter oils, including LPG. "Bakken" refers to hydraulic fractured light oil from the Bakken region in North Dakota. Collectively, these oils are termed "unconventional" in reference to their extraction methods, "advantaged" in reference to Phillips 66 refinery cost discount objectives, and "extreme" in reference to their extremely high environmental hazard during extraction and refining.

quality oil thus yields different amounts of LPG. As supported by the administrative record, Phillips 66 can meet the LPG recovery objective only pursuant to the Project's obscured, primary objective: to refine greater amounts of extreme crude. Furthermore, the evidence shows that Phillips 66 told its investors it was switching its San Francisco Refinery to tar sands and fracked oils. Consistent with that plan, Phillips 66 applied for permits to increase the refinery's ability to process that new feedstock and recover increased amounts of LPG.

The relationship between this change in oil feedstock processing and the proposed expansion of LPG recovery capacity is the central problem in the EIR and question in this case. Ultimately, the EIR is fatally flawed because it fails to disclose the baseline oil feedstock quality, the project-design oil feedstock quantity and quality, and the change in oil feedstock that the proposed Project would enable and require.

A. The EIR's Project Description is Inadequate as it Fails to Disclose a Shift in Crude Quality.

If a final EIR does not adequately apprise all interested parties of the true scope of a project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law. (*CBE v. City of Richmond et al.* (2010) 184 Cal. App. 4th 70, 82-83.)

While the true objective of the Project is to enable the refining of extreme crudes, the EIR states in mere conclusory terms that the Project will not require new and different quality crude oil feedstocks. To the contrary, the evidence shows that current baseline feedstock processing cannot meet the proposed LPG recovery objectives. Importantly, the EIR never disclosed or compared oil feedstock quality in the Project design period versus the baseline period. Access to new and different feedstocks, that would yield sufficient LPG for Project purposes, requires additional Project components detailed below. The EIR project description, however, fails to reflect the whole of this action and true scope of the Project.

B. The EIR Improperly Segments Review of Project Components.

An EIR must include an analysis of the environmental effects of reasonably foreseeable consequences of a project that will likely alter the scope and environmental impact of the project.

(*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 394-396.) In addition, significant cumulative effects of a project must be considered in an EIR. (CEQA Guidelines § 21083(b).)

Phillips 66 reports its Rodeo and Santa Maria facilities to industry and government monitors as a single entity – the "San Francisco Refinery." The facilities are physically linked by a pipeline and inextricably intertwined. The Santa Maria facility semi-refines liquid products that it then delivers to the Rodeo facility for conversion into finished products. The evidence shows that this Project cannot meet its LPG production objectives without extreme crude obtained from other recent, ongoing, or proposed Phillips 66 project components in the region. Those projects meet the *Laurel Heights* test, and include: the Santa Maria Rail Spur Project, which allows the rail-import of a full range of extreme crude oils to the Santa Maria facility; the Santa Maria Throughput Increase Project, which then delivers that extreme crude to the Rodeo facility; and the Rodeo Marine Terminal Throughput Increase Project, which also increases deliveries of extreme crude oil feedstock to Rodeo. Nevertheless, the EIR fails to disclose and evaluate these interdependent projects and their environmental impacts. The EIR also fails to properly address the cumulative impacts from the Project and these other polluting sources.

C. The EIR Fails to Establish, Analyze and Consider a Lawful Environmental Baseline.

An adequate baseline under CEQA must reflect actual, pre-project operational conditions in order to fully inform the public as to the environmental effects of a proposed project. (*Id.* at 89.) Further, "when an EIR omits relevant baseline information, the agency cannot make an informed assessment of the project's impact." (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 952.)

Despite independent expert opinions that concur on the need to do so, the EIR failed to compare the amount of LPG produced and recoverable from current versus future oil feedstock. Instead, the EIR asserts that the change in oil feedstock processing is irrelevant based on its conclusion that measurements of LPG production Phillips 66 used to design the future Project *also* represent the amount of current, baseline recoverable LPG. This is a logical fallacy: unrebutted

record evidence indicates that those project "design basis" measurements were taken during a short period when the refinery imported extreme crude. Those baseline measurements represent future, post-Project conditions, and do not, and cannot, represent *current* baseline conditions.

The EIR admits that baseline oil feedstock data is the same data used to design the Project. The EIR's analysis incorrectly assumes that the switch to extreme crude has already occurred, significantly inflating the baseline for LPG recovery at Rodeo. The series of inconsistent and misleading responses to comments in each revised version of the EIR reveal this error.

The initial draft and final EIRs assert a baseline of LPG recovery at the Phillips 66 Rodeo facility of approximately 4,200 b/d of propane and 9,300 b/d of butane. The draft and final EIRs base these figures on measured flow data and lab analysis of propane and butane content provided by Phillips 66. An analysis of that data, however, reveals that with its current feedstock at Rodeo, Phillips 66 can recover only approximately 2,700 b/d of propane and 2,200 b/d of butane, far below the Project's stated objective.

The recirculated draft EIR ("RDEIR") then revised its estimate to a small shortfall below the project design basis of 5,580 b/d of propane and 4,996 b/d of additional butane. The RDEIR supported its new LPG recovery amounts with new and summary data from 2011 and 2013. Expert reports noted that the new data still estimated improbable high LPG production, partly due to inclusion of an LPG stream that is not feasible to recover. Moreover, the expert reports point out that in 2013, Phillips 66 had already begun to boost crude feedstock volume, in part, on tar sands dilbit oil feedstock.

The final recirculated EIR again switched gears and emphasized that 2011 data actually represents the baseline and 2013 data was presented for merely informational purposes. CBE then submitted data highlighting that 2011 was an outlier when the Rodeo facility used crude oil imported from Russia similar in composition and quality to fracked Bakken oil. This "baseline," then, actually represents *future* conditions after implementation of the Project, rather than the *current* crude oil baseline for LPG production at the Rodeo facility. The County failed to provide any adequate response to CBE's comments or data requests regarding the Project's flawed baseline calculations and assumptions.

D. The EIR Fails to Analyze Significant Impacts or a Reasonable Range of Alternatives.

As a result of failing to disclose that the Project will increase the Refinery's ability to process extreme and more contaminated crude, the EIR does not address the public health or other environmental consequences of processing that different feedstock, let alone analyze, quantify or propose measures to mitigate those impacts. The EIR is further precluded from providing any informed or reasonable alternatives analysis. As compared to the Rodeo facility's true baseline, the refining of extreme crudes necessary for the Project will result in increased emissions of air pollutants, including toxic air contaminants, hazardous air pollutants, and greenhouse gases, increased water pollution as a result of "once through cooling" system expansion, as well as an increased risk of dangerous chemical spills, flaring fires, and explosions. The transport and storage of those crudes also result in additional risks to the community, in particular, an increased risk of catastrophic derailments from the transport of crude by rail.

III. CONCLUSION

For these reasons, CBE requests that the Court enjoin the Project until the County produces, recirculates for public review, and certifies a revised EIR that complies with CEQA and fully informs decision-makers of the Project's environmental impacts.

DATED: August 21, 2015

Respectfully submitted,

COMMUNITIES FOR A BETTER ENVIRONMENT

/s/

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PROOF OF SERVICE

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action; my business address is 1904 Franklin Street, Suite 600, Oakland, California 94612.

On August 21, 2015, I served the document entitled:

PETITIONER AND PLAINTIFF'S CASE MANAGEMENT CONFERENCE SUMMARY OF ISSUES

By using the File & ServeXpress system, which automatically sends an e-mail notification to all attorneys of record:

[Related Cases MSN15-0345; MSN15-0381]

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I declare under penalty of perjury, pursuant to the laws of the State of California, that the above is true and correct.

Executed on August 21, 2015 at Oakland, California.

/s/

Roger Lin