

CASE NO. S219783

SUPREME COURT COPY

IN THE SUPREME COURT OF CALIFORNIA

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SIERRA CLUB, REVIVE THE SAN JOAQUIN, and  
LEAGUE OF WOMEN VOTERS OF FRESNO,

Plaintiffs and Appellants

v.

COUNTY OF FRESNO

Defendant and Respondent

FRIANT RANCH, L.P.

Real Party in Interest and Respondent

SUPREME COURT  
FILED

MAY 12 2015

Frank J. McGuire Clerk  
Deputy

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After a Published Decision by the Court of Appeal, filed May 27, 2014  
Fifth Appellate District Case No. F066798

Appeal from the Superior Court of California, County of Fresno  
Case No. 110ECG00726  
Honorable Rosendo A. Peria, Jr.

---

**APPLICATION OF ASSOCIATION OF IRRITATED RESIDENTS,  
MEDICAL ADVOCATES FOR HEALTHY AIR AND COALITION FOR  
CLEAN AIR FOR LEAVE TO FILE AMICI CURIAE BRIEF**

**AND AMICI CURIAE BRIEF** *In support of Appellants*

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**APPLICATION OF ASSOCIATION OF IRRITATED RESIDENTS,  
MEDICAL ADVOCATES FOR HEALTHY AIR AND COALITION FOR  
CLEAN AIR FOR LEAVE TO FILE AMICI CURIAE BRIEF**

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE  
AND HONORABLE ASSOCIATE JUSTICES:

Pursuant to Rule 8.520(f) of the California Rules of Court, Association of Irrigated Residents, Medical Advocates for Healthy Air and Coalition for Clean Air respectfully request leave to file an amici curiae brief in this appeal.

**The Applicants and Their Interests**

***Interests of Association of Irrigated Residents:***

Association of Irrigated Residents (AIR) is a California non-profit corporation. AIR has members residing in Kern, Tulare, Kings, Fresno, and Stanislaus Counties. AIR's mission is to advocate for clean air and environmental health in the San Joaquin Valley. AIR has a longstanding interest in the California Environmental Quality Act (CEQA) and litigation under that act. AIR is a steadfast supporter of maintaining the integrity of CEQA in the Legislature, and has been a petitioner in a number of cases over the years.

***Interests of Medical Advocates for Healthy Air:***

Medical Advocates for Healthy Air (MAHA) is a non-profit organization consisting of medical professionals living in the San Joaquin Valley who regularly treat patients suffering from respiratory ailments caused or greatly exacerbated by the unhealthy levels of air pollution in the area. MAHA's mission is to advocate

for the expeditious attainment of state and federal health-based air quality standards in the San Joaquin Valley.

***Interests of Coalition for Clean Air:***

Coalition for Clean Air (CCA) is a statewide nonprofit organization, with offices in Los Angeles and Sacramento, that has advocated for improved air quality throughout California since 1971. CCA is the only statewide organization exclusively dedicated to improving air quality in California. CCA has participated in CEQA litigation in several cases in the San Joaquin Valley regarding the need for a thorough assessment of air quality impacts.

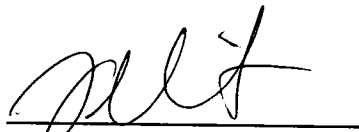
Rules of Court, Rule 8.520(f)

This amici brief was authored by Chatten-Brown & Carstens LLP and the costs for preparation and submission of the brief were paid solely by Chatten-Brown & Carstens LLP.

Respectfully submitted,

May 6, 2015

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Coalition for Clean Air

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**BRIEF OF AMICI CURIAE ASSOCIATION OF  
IRRITATED RESIDENTS, MEDICAL  
ADVOCATES FOR HEALTHY AIR AND  
COALITION FOR CLEAN AIR**

Amici Curiae Association of Irritated Residents, Medical Advocates for Healthy Air and Coalition for Clean Air support the Court of Appeal's decision in *Sierra Club v. County of Fresno* (2014) 226 Cal.App.4th 704.

**Introduction**

The Court of Appeal's decision in this matter highlights the importance of the missions of AIR, MAHA and CCA by upholding CEQA's requirement for an environmental impact report (EIR) to analyze air quality related health impacts of projects and to include fully enforceable mitigation measures for significant air quality impacts.

The San Joaquin Valley has some of the worst air pollution in the United States, and is designated an extreme nonattainment area for ozone and fine particulate matter, the worst possible designations.<sup>1</sup> According to the California Air Resources Board, the San Joaquin Valley's exceedences of federal particulate matter standards are estimated to cause hundreds of premature deaths per year.<sup>2</sup> As a result of the dismal air quality, children in the San Joaquin Valley have high

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<sup>1</sup> <http://www2.epa.gov/sanjoaquinvalley/epa-activities-cleaner-air>

<sup>2</sup> <http://www.arb.ca.gov/research/aaqs/pm/pm.htm>

[http://www.arb.ca.gov/research/health/pm-mort/pm-report\\_2010.pdf](http://www.arb.ca.gov/research/health/pm-mort/pm-report_2010.pdf)



incidence of asthma and visit emergency rooms for asthma treatment much more frequently other California children.<sup>3</sup>

The Friant Ranch Project (the “Project”) would produce air emissions greatly in excess of the thresholds set by the San Joaquin Valley Air Pollution Control District to protect the public health. The thresholds of significance are 15 tons per year for particulate matter 10 microns in diameter or smaller (PM10), 10 tons per year for reactive organic gases (ROG) and 10 tons per year for of nitrogen oxides (NOx). The Project would emit 117.38 tons per year of PM10<sup>4</sup>, 109.52 tons per year of ROG and 102.19 tons per year NOx.

AIR, MAHA and CCA are greatly concerned about projects in the San Joaquin Valley that would worsen existing air quality conditions. Amici rely on the EIRs prepared for proposed projects to obtain information regarding the impacts new projects would have on air quality and public health. Informed public participation is a central goal of the CEQA process. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84, 86.)

As the information is presented in the Friant Ranch EIR, it is nearly impossible for Amici to ascertain the degree of health risks the Project could pose to its members and other members of the public. Many members of Amici

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<sup>3</sup> <http://www.csufresno.edu/chhs/cvhpi/documents/aqr-web.pdf>  
<http://www.bakersfieldcalifornian.com/health/x860821917/Valley-study-links-ER-visits-with-bad-air-days>

<sup>4</sup> The Project would also produce significant levels of PM2.5. The draft EIR treated these as a subset of the PM10 emissions, and the final EIR acknowledged the Project would also have a significant impact due to PM2.5 emissions.

organizations breathe the air that would be impacted by the Friant Ranch Project's emissions on a daily basis. While the EIR reports impacts would occur, it fails to include any information regarding the magnitude of the public health impacts that would result from the Project's substantial exceedence of thresholds of significance. This does not allow for informed public participation in the environmental review process because it fails to inform the reviewing public of how it may be impacted by the Project. Additionally, this information was necessary to determine whether an alternative could substantially lessen those health impacts. Further, the true environmental costs of this Project must be disclosed so that Amici's members can hold their public officials accountable if they approved a project that would greatly impact the public's health. (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 842.) The Friant Ranch EIR does not provide the public with a means of determining the magnitude of the risk to public health their public officials have found acceptable.

The EIR also failed as an informational document in its discussion of mitigation measures for the significant air emissions. The vagueness of the measures coupled with the lack of clear enforceability make it unclear whether any measures will be implemented. This violates CEQA. (*Lincoln Place Tenants Ass'n v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508.) Additionally, the EIR improperly allows the County to substitute different measures, without setting performance standards for those substitute measures.

Amici urge the Court to uphold the sound decision of the Court of Appeal.

**I. The EIR's Lack of Sufficient Information Regarding Health Impacts of Air Emissions Violates CEQA's Information Disclosure Requirements.**

**A. The Public Was Not Informed of the Magnitude of Public Health Impacts.**

The Court of Appeal correctly determined that “the EIR's discussion of air quality impacts failed to explain in adequate detail how the air pollutants emitted by this project would impact public health.” (Opinion p. 45.) The EIR failed to disclose health related air emission impacts of *this Project* because it included only a general discussion of adverse health impacts. It did not connect the levels of PM10, ROG and NOx emissions that would be emitted by the Project with potential health impacts. The EIR also stated adverse health impacts depend upon the composition of the particulate matter, but “provided no information about the composition of the particulate matter that was expected to be produced by the project.” (Opinion p. 46.)

Based upon the limited information provided in the EIR, impacted members of Amici and the general public are unable to discern whether the health impacts associated with emission levels seven to ten times above thresholds of significance would be catastrophic or minor for the affected area. To make matters even more obscure, the EIR uses different units for its discussion of health impacts (parts per million) than for air emissions (tons/year), making it nearly impossible for the public to understand how increases in emissions impact the public health.

Members of the public that will be impacted by these emissions should not be required to “infer” that the air quality and human health will generally be worse. CEQA requires more than that. CEQA requires that the EIR discuss and disclose the impacts of this Project. (CEQA Guidelines § 15126.2(a).)

Real Party has focused on the use of the word “correlate” in the Court of Appeal’s decision to claim the decision requires it to prepare a specific correlation analysis that it asserts is infeasible. Amici believe the important word from the decision is not “correlate”, but “magnitude.” The Court of Appeal does not require a specific type of analysis, but does require the EIR to discuss the potential magnitude of the health impact. (Opinion pp. 49-50.) This is important to give the impacted public an understandable concept of health effects that would result from this Project.

Additionally, if there is no information regarding the potential magnitude of the air emission related health impacts, decision makers and the public are unable to compare the project with alternatives that produce fewer emissions. How great of a reduction in the number of units or square footage of commercial uses would it take to substantially lessen the public health impacts associated with the air emissions? The EIR does not provide the public with a way to discern this answer.

Further, information regarding the potential magnitude of the Project’s public health impacts is required for the County to adopt a statement of overriding considerations.

[I]nformation about the magnitude of the human health impacts is relevant to the board of supervisors' value judgment about whether other considerations override the adverse health impacts. In other words, a disclosure of respiratory health impacts that is limited to the better/worse dichotomy does not allow the decision makers to perform the required balancing of economic, legal, social, technological and other benefits of the project against the adverse impacts to human health because they have not been informed of the weight to place on the adverse impact side of the scales. (See Guidelines, § 15093, subd. (a) [statement of overriding considerations].)

(Opinion p. 49, footnote 23.) “Projects which significantly affect the environment can go forward, but only after the elected decision makers have their noses rubbed in those environmental effects, and vote to go forward anyway.” (*Vedanta Society of So. California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 530.)

Moreover, this information is required for the public to hold its elected officials accountable for approving a project with significant impacts. (*People v. County of Kern, supra*, 39 Cal.App.3d at 842 [“Only by requiring the County to fully comply with the letter of the law...will the public be able to determine the environmental and economic values of their elected and appointed officials, thus allowing for appropriate action come election day should a majority of the voters disagree.”].) The EIR must disclose whether the Board of Supervisors approved a project that would contribute to a major public health crisis or make little discernible difference in air quality related health impacts.

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**B. The Court of Appeal Correctly Applied the Independent Judgment Standard of Review in Determining the Sufficiency of the EIR as an Informational Document.**

The Court of Appeal correctly applied *de novo* review to the EIR's failure to address the magnitude of the Project's air quality related public health impacts. This case does not involve disputes regarding the County's conclusions or factual determinations. The facts regarding the air quality analysis are undisputed. The EIR relied upon the San Joaquin Valley Air Pollution Control District's thresholds of significance in determining the significance of the project's air quality impacts. (Opinion p. 43.) The EIR found the project would exceed these thresholds of significance for PM10, ROG and NOx by seven to ten times. (Opinion p. 45.) The conclusion reached by the County that the Project would have significant air quality impacts because it would exceed the thresholds of significance is not disputed.

Additionally, all parties agreed the EIR only includes a general discussion of the health impacts that result from PM10, ROG and NOx emissions and does not discuss the magnitude of the health impacts that could result from the Project's emissions. (Opinion p. 48.) At issue in this decision is whether the EIR was required to discuss the magnitude of the health impacts that could result from the Project's emissions. The Court of Appeal found the EIR was inadequate because it failed to provide decision makers and the public with information regarding the health impacts that could result from the substantial exceedance of thresholds of significance by the project. (Opinion pp. 46-47, 50.) This is not a factual question

to which the Court owed the County deference. Whether this information is required by CEQA is a question of law and was thus correctly reviewed *de novo* by the Court of Appeal under the information disclosure standard of review.

*(Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4<sup>th</sup> 412, 426-427.)

Subsequent to the Court of Appeal's decision, Real Party has claimed it would not be reasonably feasible to provide a correlation study of the Project's air quality related health impacts. As discussed above, this is not what the Court of Appeal required. The Court simply required the EIR to discuss the magnitude of the Project's public health impacts. Similar information was required by the Court of Appeal ten years ago in *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-1220. The City of Fresno requested the EIR discuss the Project's public health impacts in its comments on the draft EIR, giving the County the opportunity to respond regarding the feasibility of providing such information. The Court of Appeal decision does not require any specific type of analysis. (Opinion pp. 49-50.) The EIR presented no reason to conclude it would be infeasible to provide some type of information regarding the magnitude of the public health impacts. There is no support for a claim that including any type of discussion of the magnitude of health impacts of the Project would be infeasible.

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**II. Public Resource Code Section 21083.1 Does Not Limit Analysis of a Project's Impacts.**

Real Party has claimed that Public Resources Code section 21083.1 prevents the Court of Appeal from requiring the EIR to discuss the Project's public health impacts. Contrary to this claim, Amici agree with Amicus South Coast Air Quality Management District's arguments regarding the applicability of Public Resources Code section 21083.1. (SCAQMD Amicus Brief pp. 25-26 and footnote 19). Requiring an EIR to discuss a project's human health impacts is not imposing a new substantive requirement under CEQA. CEQA requires all significant impacts of the project on the environment to be analyzed in an EIR and the Court of Appeal's decision is in keeping with that requirement.

**III. The Court of Appeal Correctly Determined Mitigation Measure 3.3.2 Is Vague, Lacks Enforceability and Is Improperly Deferred.**

Mitigation Measure 3.3.2 includes several separate provisions for addressing the significant air emissions that would be produced by the Project, although provisions would not mitigate the impacts to a less than significant level. Amici agree with the Court of Appeal's conclusion that the EIR lacks sufficient detail regarding the effectiveness of this mitigation measure, the measure lacks necessary enforceability and the measure includes improper deferral of substitute measures.

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**A. The EIR Lacks Sufficient Detail Regarding the Effectiveness of Mitigation Measure 3.3.2.**

The lack of information in Mitigation Measure 3.3.2 is similar and related to the lack of discussion regarding the magnitude of the Project's health impacts. The EIR claims Mitigation Measure 3.3.2 will substantially reduce the Project's air quality impacts, but as held by the Court of Appeal, there is no information to support that conclusion. (Opinion pp. 58-59.) The EIR again fails to discuss the magnitude of the Project's public health impacts, here, after the implementation of mitigation.

The reviewing public is unable to discern from the information included in the EIR whether the provisions in this mitigation measure would alleviate the public health risks presented by the Project and if so by how much. This lack of information is exacerbated by the fact the EIR's analysis of the Project did not disclose the magnitude of the Project's public health impacts. A qualitative analysis, or at least a discussion of the magnitude of reduction that could be provided by these provisions, needs to be discussed in the EIR.

This assessment is relevant to the analysis of alternatives to the Project, allowing for the necessary comparison of public health impacts. Additionally, Mitigation Measure 3.3.2 allows the County and the San Joaquin Valley Air Pollution Control District to "substitute different air pollution control measures for individual projects, that are equally effective or superior to those proposed." (Opinion p. 60.) Without an assessment of the magnitude of reduction that could

be provided by the identified provisions, it is impossible to ascertain whether substitute provisions are equally effective or superior.

**B. Mitigation Measure 3.3.2 is Not Fully Enforceable as Required By CEQA.**

CEQA requires “measures to mitigate or avoid significant effects on the environment [to be] fully enforceable through permit conditions, agreements, or other measures.” (Pub. Resources Code § 21081.6, subd. (b).) As held by the Court of Appeal, Mitigation Measure 3.3.2 fails meet this requirement because it fails to identify the means by which the County will make the measures enforceable, nor does it “clearly state who is to do what and when that action must be taken.” (Opinion p. 56.)

Without a clear identification of the enforcement mechanism and the actions to be taken, the public cannot be assured the mitigation measure will actually be implemented. This problem is compounded by the likelihood that there will be no public process in the future regarding the implementation of mitigation measures in which members of the public can participate. The necessary information must be presented now to comply with CEQA’s public participation goals.

Amici are also very concerned that Mitigation Measure 3.3.2 states that the provisions of this measure “be required where feasible and appropriate.” (Opinion pp. 57-58.) It is the purpose of the EIR and the findings adopted by the County to determine the feasibility of mitigation measures for the Project’s impacts. Such

decisions should not be deferred until some later date, at which point Amici's ability to object to a finding of infeasibility is uncertain.

Amici have often seen a well meaning agency impose mitigation measures during the CEQA review process, but then the measures are not implemented. How to enforce mitigation measures is a serious dilemma when the measure does not include a clear statement regarding enforceability. (Opinion p. 56, footnote 25.) If the measures are not implemented due to a lack of clarity or enforceability, the impacts of the project will change. When a project is approved, the public is informed of its impacts and the agency makes findings approving the project based on its impacts with the mitigation in place. Courts have recognized the importance of CEQA's requirement that mitigation measures be fully enforceable. "The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented...and not merely adopted and then neglected or disregarded." (*Federation of Hillside and Canyon Association v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261, italics omitted; see also *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508 ["Mitigating conditions are not mere expressions of hope."].)

**C. The Ability to Substitute Mitigation Measures in the Future Results in Improperly Deferred Mitigation Due to the Lack of Performance Standards.**

It is well settled the CEQA prohibits deferring the development of mitigation measures for a project with significant impacts, unless the EIR includes performance standards with which the future mitigation measures must comply.

(CEQA Guidelines § 15126.4, subd. (a)(1)(B); *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 95-96; *POET, LLC v. California Air Resources Board* (2013) 217 Cal.App.4th 681, 734.)

The Court of Appeal found Mitigation Measure 3.3.2 was improperly deferred because it provides: “The County and [Air District] may substitute different air pollution control measures for individual projects, that are equally effective or superior to those proposed herein...” (Opinion p. 60.) Amici would certainly support the implementation of more effective mitigation measures in the future, particularly those resulting from technological advances. However, based on the information contained in the EIR, it will be impossible to determine whether future mitigation measures are more or less effective at reducing the Project’s public health impacts because the EIR does not evaluate the effectiveness of the provisions included in Mitigation Measure 3.3.2 at reducing this impact.

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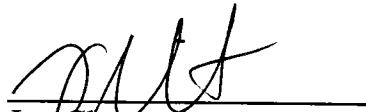
## Conclusion

For all of the reasons set forth herein, Amici urge this Court to uphold the Court of Appeal's determination that the Friant Ranch EIR was required to discuss the magnitude of the Project's air quality induced health impacts and that the mitigation for this impact is inadequate because it lacks sufficient detail and enforceability and includes improper deferral.

Respectfully submitted,

May 6, 2015

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**CERTIFICATE OF WORD COUNT**

(Calif. Rules of Court, rules 8.204)

The text of this brief consists of 3,116 words as counted by the Microsoft Word 2010 word-processing program used to generate the document.

May 6, 2015

CHATTEN-BROWN & CARSTENS LLP

A handwritten signature in black ink, appearing to read 'AMT', written over a horizontal line.

Amy Minter

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*Sierra Club et al. v. County of Fresno et al.*  
**Supreme Court of California Case No. S219783**  
(Fifth District Court of Appeal Case No. F066798;  
Fresno County Superior Court Case No.  
110ECG00726)

**PROOF OF SERVICE**

I am employed by Chatten-Brown & Carstens LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2200 Pacific Coast Highway, Ste. 318, Hermosa Beach, CA . On May 6, 2015, I served the within documents:

**APPLICATION OF ASSOCIATION OF IRRITATED RESIDENTS,  
MEDICAL ADVOCATES FOR HEALTHY AIR AND COALITION  
FOR CLEAN AIR FOR LEAVE TO FILE AMICI CURIAE BRIEF  
AND AMICI CURIAE BRIEF**



VIA UNITED STATES MAIL. I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth above.

**SEE ATTACHED SERVICE LIST**

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 6, 2015, at Hermosa Beach, California.

  
Amy Minter

*Sierra Club et al. v. County of Fresno et al.*  
Supreme Court of California  
Case No. S219783

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***Sierra Club et al. v. County of Fresno et al.***  
**Supreme Court of California**  
**Case No. S219783**

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