

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - CALIFORNIA**

### **Association of Irrigated Residents v. Kern County Board of Supervisors**

**Court of Appeal, Fifth District, California - November 21, 2017 - Cal.Rptr.3d - 2017 WL 5590096 - 17 Cal. Daily Op. Serv. 11, 188**

Objectors filed mandamus action challenging county's certification of environmental impact report (EIR) issued under California Environmental Quality Act (CEQA) and ensuing approval of project to modify an oil refinery.

The Superior Court denied writ of mandate. Objectors appealed.

The Court of Appeal held that:

- Substantial evidence supported county's finding that existing physical conditions of oil refinery included an operating refinery, in determination of appropriate baseline for use in EIR;
- Compliance with state cap-and-trade program could be considered in evaluation, preparation, and approval of EIR;
- Interstate Commerce Commission Termination Act of 1995 (ICCTA) did not preempt CEQA review of environmental effects associated with off-site rail activity.

Substantial evidence supported county's finding that existing physical conditions of oil refinery included an operating refinery, in determination of appropriate baseline for use in environmental impact report (EIR) under California Environmental Quality Act (CEQA) for proposed project to modify refinery, even though operations had previously been shut down after operator and its subsidiary declared bankruptcy; refinery operations of up to 70,000 barrels per day had been approved by issuance of permits or other entitlements that were still in effect, refinery did actually process crude oil and other hydrocarbons until bankruptcy filing, and processing of other hydrocarbons resumed approximately three years after bankruptcy.

State's cap-and-trade program for greenhouse gas emissions constituted regulations adopted to implement a statewide plan for the reduction or mitigation of greenhouse gas emissions, and thus, pursuant to California Environmental Quality Act (CEQA) guidelines, program was properly considered by county in its evaluation, preparation, and approval of the environmental impact report (EIR) for proposed project to modify oil refinery.

Interstate Commerce Commission Termination Act of 1995 (ICCTA) did not categorically preempt environmental impact report (EIR) issued under California Environmental Quality Act (CEQA) from describing and analyzing environmental effects associated with off-site rail activity, such as the emission of criteria pollutants by train locomotives, in analysis of proposed project for modification of oil refinery, where such review under CEQA could not have been used to deny a rail carrier the ability to conduct operations and transport crude oil to the refinery, and conducting CEQA review did not create possibility of rail carrier being subject to state or local requirements which addressed a matter within Surface Transportation Board's exclusive jurisdiction.

Interstate Commerce Commission Termination Act of 1995 (ICCTA) did not preempt, as applied, an environmental impact report (EIR) issued under California Environmental Quality Act (CEQA) from describing and analyzing environmental effects associated with off-site rail activity, such as the emission of criteria pollutants by train locomotives, in analysis of proposed project for modification of oil refinery; words set down in an EIR would have no actual effect on actions taken by a rail carrier or how or when those actions were taken.