

MANATT, PHELPS & PHILLIPS, LLP
MATTHEW WILLIAMSON (CA Bar No. 247627
E-mail: mwilliamson@manatt.com
695 Town Center Drive, 14th Floor
Costa Mesa, California 92626
Telephone: (714) 371-2500
Facsimile: (714) 371-2550

ZACHARY J. HOWE (CA Bar No. 343798)
E-mail: zhowe@Manatt.com
12730 High Bluff Dr, Suite 300
San Diego, CA 92130
Telephone: (619) 205-8500
Facsimile: (619) 205-8599

C.J. LAFFER (CA Bar No. 260546)
E-mail: claffer@manatt.com
2049 Century Park East, Suite 1700
Los Angeles, California 90067
Telephone: (310) 312-4000
Facsimile: (310) 312-4224

Attorneys for Real Party in Interest
KERN ENERGY

**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT
SOUTHERN REGION HEARING BOARD**

184 COMMUNITY ACTION GROUP, an
unincorporated association; COMITÉ
PROGRESO DE LAMONT, an unincorporated
association,

Petitioners,

vs.

SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT,

Respondent.

KERN ENERGY,

Real Party in Interest.

S.R.H.B. Case No.: S-26-11A

**REAL PARTY IN INTEREST
KERN ENERGY'S JOINDER TO
RESPONDENT SAN JOAQUIN VALLEY
UNIFIED AIR POLLUTION CONTROL
DISTRICT'S MOTION TO STRIKE**

1 **I. ARGUMENT AND JOINDER**

2 “[T]he hearing board is charged with deciding only whether the [Air Pollution Control
3 Officer] ‘properly’ enforced the district’s orders, regulations[,] and rules Nothing more.”
4 *Valero Ref. Co. v. California v. Bay Area Air Quality Mgmt. Dist. Hearing Bd.*, 49 Cal. App. 5th
5 618 (2020), *disapproved of on other grounds by Meinhardt v. City of Sunnyvale*, 16 Cal. 5th 643
6 (2024). Since AB 617 and the California Environmental Quality Act (CEQA) are not the District’s
7 orders, regulations, and rules—and since neither the Air Pollution Control Officer nor the hearing
8 board are the entities charged with enforcing AB 617 and CEQA compliance—Kern Energy joins
9 the District’s motion to strike Petitioners’ claims asking the hearing board to review the District’s
10 Authority to Construct permit (“ATC”) for Kern Energy’s project under AB 617 and CEQA.

11 Declining to hear these claims, which are beyond the Board’s narrow appellate jurisdiction,
12 is especially important here because Kern Energy’s project exemplifies the State’s policy-driven
13 acceleration of emissions reductions in hard to decarbonize industrial sectors by repurposing
14 existing equipment and refinery infrastructure to capture and purify hydrogen co-product and
15 generate zero-emissions electricity for onsite use. The project is narrowly circumscribed while
16 being beneficial to both the environment and the economy. However, unduly delaying or diverting
17 resources from the project through unnecessary and unauthorized appeal proceedings before the
18 Board would serve only to jeopardize those environmental and economic benefits. As set forth in
19 the District’s motion to strike, the Board should reject Petitioners’ *ultra vires* attempt to do so.

20 Accordingly, Kern Energy joins the District’s motion to strike Petitioners’ AB 617 and
21 CEQA claims in their appeal of the ATC. Striking those claims is important both to reaffirm the
22 proper scope of the Board’s jurisdiction and to support the viability of the project.

1 **II. RELEVANT BACKGROUND**

2 The District's motion is legal in nature and is, therefore, appropriately focused on the
3 Board's narrow appellate jurisdiction, detailing, legally, the numerous reasons why Petitioners'
4 AB 617 and CEQA claims are beyond the Board's jurisdiction. To assist the Board in assessing
5 the District's motion, and the issues CEQA and AB 617 issues raised by Petitioners, Kern Energy
6 provides this supplemental background information explaining the limited scope of the project and
7 its associated environmental benefits.
8

9 **A. Kern Energy's project will purify hydrogen at its facility to generate zero-**
10 **emissions electricity without creating new hydrogen or expanding existing**
11 **facilities.**

12 To advance California's carbon neutrality, greenhouse gas emission reduction, and
13 pollution reduction goals, and to reduce its overall environmental footprint, Kern Energy is
14 improving operations and production at its existing refinery facility in Bakersfield, which produces
15 gasoline, diesel, and renewable diesel daily. The project at issue here is an important step in Kern
16 Energy's evolution toward cleaner, lower carbon energy production. It does not entail new or
17 expanded petroleum refining, increased operational capacity or new facilities, but is instead an
18 innovative initiative to use existing facilities more efficiently with clear environmental benefits.
19

20 Kern Energy's current permitted refinery operations inherently result in the production of
21 hydrogen. Under the approved ATC, the project will allow Kern Energy to capture that hydrogen
22 co-product to generate zero-emissions electricity for use in Kern Energy's existing refinery, im-
23 proving facility efficiency and reducing its environmental footprint and its impacts on the electrical
24 grid. Specifically, the project will integrate a hydrogen purification unit, fuel cells, and an energy
25 storage system into the refinery facility infrastructure. That equipment will generate electricity
26 onsite using existing sources of hydrogen already produced during Kern Energy's refining process.
27 The project will not generate new hydrogen.
28

1 The hydrogen-purification system removes impurities and returns any hydrocarbons back
2 to existing fuel systems at the facility. The purified hydrogen, meanwhile, is directed to seven new
3 hydrogen fuel cells. Those cells generate three megawatts of electricity per day by combining
4 hydrogen with oxygen in an electrochemical reaction without any combustion. This process results
5 in one of the cleanest forms of onsite power generation, as fuel cells produce zero emissions of
6 nitrogen oxides (NO_x), particulate matter (PM), sulfur oxides (SO_x), carbon monoxide (CO), or
7 volatile organic compounds (VOC). Because these fully-enclosed fuel cells are zero-emission
8 units, they are exempt from District permitting requirements. But they are nevertheless listed on
9 Kern Energy's new hydrogen recovery unit permit for transparency.

11 Any purified hydrogen that is not sent immediately to fuel cells for electricity generation
12 will be sent to new "hydrogenation" and "dehydrogenation" systems. Those systems will enable
13 Kern Energy to safely store the purified hydrogen in two 5,000-barrel storage tanks and utilize it
14 as needed. However, instead of storing hydrogen as a highly flammable gas, Kern Energy's
15 proposed system will use a process that temporarily binds hydrogen into a liquid form that is both
16 safer and easier to store. The process involves combining purified hydrogen with toluene to create
17 methylcyclohexane, which is a stable liquid at ambient temperatures and can be safely stored in
18 tanks. The result is safe, on-demand clean hydrogen. When that hydrogen is needed, the
19 methylcyclohexane is simply converted back into hydrogen and toluene. The purified hydrogen
20 can then be used in the fuel cells to generate zero-emissions electricity, and the toluene is reused
21 in the system.

24 Piping with valves, seals, and fittings connect the new system. Those components can
25 release *de minimis* amounts of VOCs. While part of the system carries hydrogen, which is not a
26 regulated air pollutant, the District's review and analysis conservatively assumed that all new
27 system components could contain VOC. Accordingly, a calculation using standard statewide

1 emission factors estimated that the piping system would have low emissions of only 1.3 pounds
2 (approx.) of VOCs per day, or 483 pounds (approx.) per year. Nevertheless, to control those
3 potential emissions, the project's components will meet all applicable "Best Available Control
4 Technology" requirements for VOC emissions. The components will also be routinely inspected
5 for leaks, and any leaks must be repaired quickly in accordance with District Rule 4455.

6
7 In addition, a health-risk assessment was completed using conservative, State-approved
8 methods to evaluate potential health impacts to nearby residents and workers. The review found
9 that the project's emissions are below all applicable State and local thresholds for cancer risk,
10 chronic health effects, and short-term (acute) health effects.

11 **B. Kern Energy's project will reduce the environmental footprint of its existing**
12 **facility in numerous ways.**

13 The project will increase the reliability, efficiency, and safety of Kern Energy's existing
14 refinery operations by purifying hydrogen co-product, providing zero-emissions electricity, and
15 making clean hydrogen readily available for electricity generation as needed. By generating up to
16 3 megawatts of on-site electricity through fuel cells, the project will significantly reduce demand
17 on the broader electrical grid. The project accomplishes all of this without expanding existing
18 facilities, increasing refinery capacity or creating any new health or environmental risks.

19
20 In addition, by leveraging an existing source of hydrogen for purification and electricity
21 generation, Kern Energy's project will eliminate more than 20,000 metric tons of direct and
22 indirect carbon dioxide (CO₂) emissions, reduce smog-forming NO_x emissions, curtail flaring of
23 excess gases, and reduce chemical imports for fuel blending.

24
25 The scope of the District's review for the ATC is limited to assessing the direct effects of
26 potential emissions at Kern Energy's refinery from the proposed equipment and processes to be
27 used in the hydrogen-purification and electricity-generation project. As noted, the project's *de*
28

1 *minimis* emissions were found to be below all applicable State and local thresholds for cancer risk,
2 chronic health effects, and short-term (acute) health effects. Yet the broader positive effects of the
3 project on the refinery facility's overall environmental footprint, many of which are not captured
4 within the scope of the District's permitting process, show that the project – by producing
5 electricity with clean hydrogen and without expand existing facilities or overall refining capacity
6 – will in fact have material environmental benefits.
7

8 **III. CONCLUSION**

9 The Board should strike Petitioners' claims under AB 617 and CEQA.

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MANATT, PHELPS & PHILLIPS, LLP

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13 By: 
14 Zachary J. Howe
15 Matthew D. Williamson
16 C.J. Laffer
17 Counsel for Kern Energy
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