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**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

**RESPONDENT SAN JOAQUIN VALLEY
UNIFIED AIR POLLUTION CONTROL
DISTRICT'S REPLY TO PETITIONERS'
OPPOSITION TO MOTION TO STRIKE**

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1 **I. PETITIONERS FAIL TO ARTICULATE VALID REASONS TO PREVENT**
2 **GRANTING THIS MOTION**

3 **A. The Phrase “Properly Issued” In § 42302.1 Does Not Extend To Claims Arising**
4 **Under CEQA**

5 There is no dispute that the Hearing Board’s authority is limited to the jurisdiction the
6 Legislature has conferred upon it. Administrative agencies possess only those powers granted by
7 statute, either expressly or by necessary implication. (*PaintCare v. Mortensen* (2015) 233
8 Cal.App.4th 1292, 1305; *California Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal.2d 287,
9 302.) Nevertheless, the thrust of Petitioners’ argument is that the Hearing Board’s charge to
10 decide whether a permit was “properly issued” should be construed so broadly as to include any
11 and every legal theory they contend bears on the APCO’s decision to approve a permit, including
12 whether the District complied with the California Environmental Quality Act (“CEQA”). That
13 argument misapprehends the scope of § 42302.1 within the context of the particular statutory
14 scheme in which the Hearing Board’s authority is embedded.

15 The phrase “properly issued” in § 42302.1 must be construed narrowly, consistent with
16 the statute’s codification within Article 1 (Permits), Chapter 4 (Enforcement), Part 4
17 (Nonvehicular Air Pollution Control), Division 26 (Air Resources) of the Health and Safety
18 Code. Under established California canons of statutory interpretation, the organizational
19 structure of a code — its divisions, chapters, and articles — is an interpretive aid that defines the
20 scope and purpose of individual provisions. (See *In re Jennings* (2004) 34 Cal.4th 254, 264 [In
21 interpreting a statutory code section, the court must interpret the section “in context with the
22 entire statute and statutory scheme.”]; *Van Voorhis v. Workmen’s Comp. Appeals Bd.* (1974) 37
23 Cal.App.3d 81, 84, fn. 1 [“the context in which a section is found must be considered in
24 determining its scope, meaning and intent.”])

25 California courts have consistently held that the organizational placement of a statute
26 within a code is an authoritative interpretive aid. In *People v. Hull* (1991) 1 Cal.4th 266, the
27 California Supreme Court held that the Legislature’s intent is most accurately discerned by
28 reading together all the provisions contained in the chapter in which the statute resides.

1 Applying this principle directly to an environmental regulatory permit statute, the court in *City of*
2 *Brentwood v. Cent. Valley Reg'l Water Quality Control Bd.* (2004) 123 Cal.App.4th 714 held
3 that “a court may consider the overall scheme in which an ambiguous statute is included in order
4 to ascertain its intended meaning,” and that “the organization of the division, chapters, and
5 articles is an aid to understanding its purpose.”

6 In this case, as the limited appellate procedure set forth in Health and Safety Code §
7 42302.1 is entirely embedded within a statutory scheme addressing the air district’s technical air
8 pollution permit requirements, and CEQA contains its own separate and self-contained
9 procedural framework for environmental review, a hearing board convened under § 42302.1
10 lacks subject matter jurisdiction over CEQA compliance challenges.

11 Specifically, § 42302.1 provides that any aggrieved person who participated in the
12 permitting action may “request the hearing board of the district to hold a public hearing to
13 determine whether the permit was properly issued.” The statute does not define “properly issued”
14 and contains nothing to suggest that compliance with CEQA or any other statute external to
15 Division 26 must be considered to determine if a permit was properly issued. This silence is
16 significant. The provision was added by Stats. 1988, c. 1568, § 28.5, well after the adoption of
17 CEQA, and sits within a carefully organized statutory scheme: Division 26 (Air Resources), Part
18 4 (Nonvehicular Air Pollution Control), Chapter 4 (Enforcement), Article 1 (Permits). Every
19 section surrounding § 42302.1 — §§ 42300 through 42316 — addresses the technical
20 requirements for issuing, conditioning, modifying, and enforcing air pollution permits. None
21 addresses CEQA compliance.

22 Section 42301 specifically defines the scope of an APCO’s decision-making authority,
23 prohibiting “the *issuance* of a permit unless the [APCO] is satisfied” that the project “will
24 comply with... (1) All applicable orders, rules and regulations of the district and of the state
25 board” and “(2) All applicable provisions of [Division 26]” of the Health and Safety Code.
26 Notably, § 42301, by its terms, *does not* prohibit “issuance” of a permit if the APCO fails to
27 properly comply with CEQA, notwithstanding the fact that a local air district is generally
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1 required to comply with CEQA in these circumstances. Given that the “proper issuance” of a
2 permit by an APCO is expressly limited to evaluating expected compliance with applicable
3 district and state board orders, rules and regulations, there is no basis for determining that
4 “proper issuance” extends beyond such district or state board orders, rules and regulations for
5 purposes of the Hearing Board’s jurisdiction.

6 Petitioners attempt to avoid this fundamental jurisdictional limitation by asserting that
7 they are not bringing “CEQA claims,” but merely arguing that CEQA compliance forms part of
8 whether the permit was “properly issued.” Labels, however, do not alter the substance of the
9 issues they ask the Hearing Board to decide. Namely, Petitioners seek determinations by the
10 Hearing Board regarding whether the District properly acted as the responsible agency, invoked
11 CEQA exemptions, and should have prepared additional environmental review. Those CEQA
12 questions are generally committed by the Legislature to judicial review through CEQA’s writ
13 procedures, and are not necessarily matters within the jurisdiction of an air district hearing board.
14 (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 191-193; Pub.
15 Resources Code, §§ 21168, 21168.5, 21168.9.)

16 The court in *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43
17 Cal.App.5th 867, 873, directly confronted the argument that § 42302.1 and district permit rules
18 required a petitioner to exhaust administrative remedies to an air district hearing board before
19 bringing a CEQA challenge. The court rejected that argument, holding that the exhaustion
20 requirements for CEQA actions “are set forth in Public Resources code section 21177,” not
21 Health and Safety Code § 42302.1. By treating the two statutes as governing separate and
22 distinct administrative processes — permit challenges under § 42302.1, and CEQA challenges
23 under Public Resources Code § 21177 — the court in *Covington* implicitly confirmed that
24 § 42302.1’s hearing board jurisdiction does not extend to CEQA compliance issues and that a
25 hearing board’s appellate jurisdiction over CEQA claims cannot be simply implied from an
26 exhaustion requirement.

1 This conclusion finds further support in *City of Morgan Hill v. Bay Area Air Quality*
2 *Mgmt. Dist.* (2004) 118 Cal.App.4th 861, where a hearing board dismissed a CEQA-based
3 appeal of a district permit for lack of subject matter jurisdiction. The Court of Appeal affirmed,
4 holding that the applicable reviewing body — whether a district hearing board or a federal
5 environmental appeals board — is confined solely to the issues directly cognizable under the
6 governing permit statute, and that CEQA compliance is a state law matter falling outside the
7 permit review process. The court's analysis reinforces the conclusion that CEQA compliance is
8 reviewable through a distinct judicial pathway — a petition for writ of mandate under Public
9 Resources Code § 21168 — not through an air district hearing board convened under § 42302.1.

10 Petitioners' reliance on *Friends of Outlet Creek v. Mendocino County Air Quality*
11 *Management District* and *Grist Creek Aggregates, LLC v. Superior Court* does not support a
12 different result. Both cases merely establish that an air district's compliance with CEQA may be
13 challenged through CEQA's judicial review procedures under an administrative mandamus
14 proceeding pursuant to Public Resources Code § 21168 and Code of Civil Procedure § 1094.5.
15 They do not hold that an air district hearing board possesses jurisdiction to adjudicate CEQA
16 compliance in an administrative permit appeal. In *Friends of Outlet Creek*, the petitioner
17 challenged the air district's issuance of an Authority to Construct through a petition for writ of
18 mandate, asserting that the district had failed to comply with CEQA. The court addressed
19 whether the district's permitting action was subject to CEQA review, not whether a hearing
20 board must determine CEQA compliance in the first instance. Likewise, *Grist Creek Aggregates*
21 involved judicial review of a hearing board decision and simply confirmed that challenges to
22 agency action proceed through the courts, not that hearing boards necessarily have independent
23 authority under § 42302.1 to adjudicate CEQA claims.

24 Petitioners' efforts to distinguish the authority relied upon by the District fare no better.
25 *No Wetlands Landfill Expansion v. County of Marin* (2012) 204 Cal.App.4th 573 concerns the
26 substantive application of CEQA and the appellate review of a local lead agency's CEQA
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1 determinations by an “elected decision-making body” of that lead agency, “if any.” In *No*
2 *Wetlands*, the court reasoned:

3 CEQA provides: “If a nonelected decision-making body of a local lead agency certifies
4 an environmental impact report ... that certification ... may be appealed to the agency's
5 *elected decision-making body*, if any.” (California Public Resources Code §21151(c),
6 italics added; accord, Guidelines, Cal. Code Regs. tit. 14, §15090(b).) CEQA regulations
7 define a decision-making body as “any person or group of people within a public agency
8 permitted by law to approve or disapprove the project at issue.” (Cal Code Regs. tit. 14,
9 §15356.) The Board of Supervisors has no power to approve or disapprove the project at
10 issue and thus is not an elected decision-making body empowered to hear plaintiffs’
11 appeal.

12 (*No Wetlands*, 204 Cal.App.4th at 584.)

13 As in *No Wetlands*, the Hearing Board is not an “elected decision-making body” of a lead
14 agency, otherwise has no power to approve or disapprove the Kern Energy Project, and thus is
15 not expressly empowered by statute or air district rules to hear Petitioners’ CEQA appeal.

16 Likewise, *Valero Refining Co. v. Bay Area Air Quality Management District Hearing*
17 *Board* (2020) 49 Cal.App.5th 618 does not support Petitioners’ expansive interpretation of
18 § 42302.1, but rather is consistent with the settled principle that hearing boards possess only the
19 authority the Legislature has expressly or impliedly delegated to them.

20 Further, Petitioners mischaracterize the District’s position in *Communities for a Better*
21 *Environment v. San Joaquin Valley Unified Air Pollution Control District* (June 23, 2017) [2017
22 Cal.App.Unpub. LEXIS 4323, at *2]. The District did not argue that CEQA challenges to an
23 Authority to Construct must first be brought before the Hearing Board pursuant to § 42302.1.
24 Rather, the District argued that challenges to its permitting determinations under the California
25 Clean Air Act, such as collateral attacks on the District’s emissions calculations and application
26 of its permitting rules, were subject to the administrative appeal process set forth in § 42302.1.
27 (*Id.* at p. 23.) The Court rejected that argument because the plaintiffs disclaimed any challenge
28 under the California Clean Air Act, and only alleged CEQA violations. The Court therefore held
that CEQA’s own exhaustion provisions governed those claims and that 42302.1 was “irrelevant
to whether plaintiffs may bring a cause of action under CEQA.” (*Id.* at p. 25.) Thus,

1 *Communities for a Better Environment* reinforces the distinction between statutory permit
2 appeals under the Health and Safety Code and judicial CEQA claims governed exclusively by
3 the Public Resources Code.

4 Petitioners' asserted construction of § 42302.1 is incompatible with the settled principle
5 that administrative tribunals are bodies of limited jurisdiction and with the Legislature's decision
6 to establish a separate statutory framework for judicial review of alleged CEQA violations
7 through petitions for writ of mandate. (Pub. Resources Code, §§ 21167, 21168, 21168.5.)
8 Petitioners' broad interpretation of the phrase "properly issued" would effectively eliminate the
9 Hearing Board's jurisdictional limits by permitting any alleged violation of *any* statutory scheme
10 to be litigated before the Hearing Board simply because it allegedly affected permit issuance.

11 Thus, for example, § 42302 authorizes an applicant for a permit that the APCO has
12 denied to request a hearing before the Hearing Board on whether the permit was "properly
13 denied." Hypothetically, if an APCO denied an ATC applicant's project for a discriminatory
14 reason on the basis of a protected classification, such as race or gender, Petitioners' broad
15 construction of the Hearing Board's appellate jurisdiction would also extend to whether a
16 District's permit decision was in violation of state or federal discrimination laws, civil rights
17 laws, or constitutional principles. The Hearing Board's jurisdiction is clearly not so expansive as
18 to encompass *any* legal issue that may bear upon whether a permit is "properly issued."

19 Construing "properly issued" in light of the Article 1, Chapter 4, Part 4, Division 26
20 framework means the Hearing Board's review is limited to whether the permit was issued in
21 conformity with the applicable requirements of the nonvehicular air pollution control permit
22 scheme — the technical emission standards, permit conditions, and procedural requirements
23 prescribed by Division 26. The Hearing Board is not an elected decision-making body and it has
24 no formally established procedures governing CEQA appeals. (Pub. Resources Code § 21151(c),
25 14 CCR §§ 15061 (e), 15185 (a).) Accordingly, the Hearing Board lacks any jurisdiction to
26 consider Petitioners' CEQA claims.

1 **B. The District's Internal CEQA Procedures Do Not Expand The Hearing Board's**
2 **Statutory Jurisdiction.**

3 Petitioners' attempted reliance on the District's internal permitting procedures fares no
4 better. Despite the District making a CEQA determination in connection with the permitting
5 process, that practice by itself cannot expand the Hearing Board's statutory authority or confer
6 jurisdiction the Legislature has not explicitly extended.

7 CEQA itself assigns non-elected hearing boards no express role in resolving disputes
8 concerning categorical exemptions, lead agency determinations, or the adequacy of
9 environmental review. Petitioners cite no statute or published decision holding that an air district
10 hearing board is automatically conferred authority to adjudicate CEQA compliance in a permit
11 appeal under Health and Safety Code § 42302.1, absent an express delegation or election of such
12 authority. Petitioners' authorities instead address the availability of judicial review following
13 agency action or the procedural relationship between administrative proceedings and subsequent
14 court review. Neither holds that a non-elected air district hearing board has appellate jurisdiction
15 to adjudicate CEQA compliance.

16 Unable to identify any statute authorizing the Hearing Board to adjudicate CEQA
17 compliance, Petitioners instead attempt to rely upon the District's Environmental Review
18 Guidelines ("ERG"), Administrative Policy and Procedure 2010 ("APR 2010"), and
19 informational material published on the District's website. (*Ptrs' Opp.*, pp. 6–9.) Their reliance is
20 misplaced. These materials are internal administrative guidance documents. They are not duly
21 adopted permitting regulations that incorporate CEQA into the District's permit appeal process,
22 and they do not confer jurisdiction upon the Hearing Board, expand the authority granted by the
23 Legislature, or establish a procedure for administrative CEQA appeals.

24 The ERG, APR 2010, and the District's permitting guidance are internal administrative
25 documents intended to guide District staff in carrying out the District's existing statutory
26 responsibilities. They were not adopted to define the jurisdiction of the Hearing Board or to
27 authorize the Hearing Board to adjudicate CEQA compliance. California law distinguishes
28 between legislative rules adopted pursuant to delegated authority, which may have the force of

1 law, and interpretive policies or guidance documents, which merely reflect an agency's
2 understanding of the statutes it administers and do not themselves create legal obligations or
3 expand statutory authority. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19
4 Cal.4th 1, 10-11.) Likewise, an administrative agency possesses only those powers delegated by
5 the Legislature, together with those necessarily implied from the statutory scheme (*Morris v.*
6 *Williams* (1967) 67 Cal.2d 733, 748), and administrative procedures may implement, but not
7 alter or enlarge, the powers granted by statute. (*California Drive-In Restaurant Assn. v. Clark*
8 (1943) 22 Cal.2d 287, 302.) Accordingly, neither the ERG, APR 2010, nor the District's website
9 can create adjudicatory authority that the Legislature has not conferred.

10 Petitioners correctly observe that the District, like every public agency, must comply with
11 CEQA before approving discretionary projects subject to CEQA. Respondent has never argued
12 otherwise. But, it does not follow that simply because CEQA review may occur during the
13 District's permitting process, the Hearing Board thereby acquires appellate jurisdiction to
14 adjudicate whether the District complied with CEQA. CEQA compliance and the authority to
15 adjudicate CEQA claims are separate issues. CEQA compliance is a statutory obligation, while
16 authority to adjudicate CEQA claims must be affirmatively conferred by law. Nothing in the
17 District's ERG, APR 2010, or website materials supplies that missing grant of jurisdiction.

18 Petitioners' reliance on the District's policies and procedures also fails because those
19 materials do not establish an administrative process for appealing CEQA compliance
20 determinations to the Hearing Board. The District's permitting procedures address the processing
21 and issuance of permits, including the steps District staff must follow in evaluating permit
22 applications. They do not separately create a mechanism for administrative appellate review of
23 CEQA determinations by the Hearing Board or any other District body.

24 That omission is consistent with CEQA's statutory framework. CEQA does not expressly
25 require administrative appeals before air district hearing boards, to determine whether a local
26 responsible agency complied with CEQA. Instead, CEQA establishes a judicial review process
27 through which alleged violations of CEQA may be challenged by petition for writ of mandate.

1 (Pub. Resources Code, §§ 21167, 21168, 21168.5.) Thus, to the extent Petitioners contend that
2 the District improperly conducted CEQA review, those claims should have been pursued through
3 the judicial procedures established by CEQA, not through a permit appeal proceeding under
4 § 42302.1.

5 Allowing Petitioners to pursue their CEQA claims before the Hearing Board would
6 effectively create an administrative CEQA appeal process that neither the Legislature nor the
7 District has authorized. The District's policies and procedures do not establish such a process; at
8 most, they provide internal guidance regarding how District staff evaluate permit applications.
9 Such interpretive guidance does not carry the force of law, does not establish appellate
10 procedures, and cannot expand the Hearing Board's statutory jurisdiction or create authority that
11 the Legislature has not conferred. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998)
12 19 Cal.4th 1, 10–11.) Nor can the District's internal procedures transform a statutory permit
13 appeal under § 42302.1 into a forum for adjudicating CEQA compliance.

14 Petitioners likewise overread Professor Manaster's observation that whenever an air
15 district has incorporated CEQA requirements into its permitting rules, a hearing board's
16 authority "would seem" to encompass certain CEQA issues. (Ptrs.' Opp., p. 8.) That observation
17 does not support Petitioners' sweeping proposition that a hearing board automatically acquires
18 jurisdiction to adjudicate all matters of CEQA compliance whenever CEQA is a component of
19 the air district's permitting process. Professor Manaster neither analyzes § 42302.1 nor identifies
20 any statutory grant of authority empowering hearing boards to decide CEQA claims. At most, the
21 scholarly article recognizes that CEQA issues may arise in connection with permit decisions. It
22 does not, however, suggest that incorporating CEQA into a district's permitting process
23 necessarily expands the Hearing Board's appellate jurisdiction beyond that conferred on it by the
24 Legislature. For the same reason, Petitioners' repeated references to the District's website and
25 permitting guidance are beside the point. Those materials explain how District staff process
26 permit applications; they do not, and cannot, define the jurisdiction of the Hearing Board. The

1 jurisdictional question presented by Respondent's Motion is controlled by statute, not by
2 administrative guidance.

3 Accordingly, Petitioners' reliance on the ERG, APR 2010, and the District's website does
4 not cure the fundamental jurisdictional defect in their Petition. Because Petitioners identify no
5 statute authorizing this Hearing Board to adjudicate the alleged CEQA violations, those
6 allegations remain outside the Board's appellate jurisdiction and should be stricken.

7 **C. Petitioners' CERP-Based Arguments Do Not Supply "Applicable" ATC**
8 **Issuance Criteria**

9 Petitioners' Opposition readily demonstrates the District's point – that a CERP is not, in
10 and of itself, applicable permitting criteria which expands the District's permitting authority
11 pursuant to § 43201(b). Petitioners concede that the CERP is "not a permit standard." (*Ptrs'*
12 *Opp.*, 18:10.) This acknowledgement, alone, undercuts their contention that the District
13 improperly failed to "consider" the findings and emission reduction targets of the Arvin/Lamont
14 CERP prior to acting on the Kern Energy project ATC application.

15 Petitioners' do not dispute that § 42301(b) governs ATC issuance, and, by its terms,
16 limits the APCO's permit application review to expected compliance with "[a]ll applicable
17 orders, rules, and regulations of the district and of the state board," and with "[a]ll applicable
18 provisions of [Division 26]" of the Health & Safety Code. Yet Petitioners fail to explain for the
19 Hearing Board how a CERP is, on its own, an applicable permitting requirement.

20 Instead, dwelling exclusively on the language in § 42301(b) which requires the APCO to
21 apply "criteria adopted by the district board" in its permitting evaluation, Petitioners seem to
22 advance the theory that the Arvin/Lamont CERP, as a Governing Board approved document,
23 consists of "criteria," which, they therefore assume, must be "considered" as part of the District's
24 permit evaluation for the Project.

25 In context with the statutory language, an APCO may not decide in the abstract whether a
26 permitting project will comply with all applicable rules and regulations, but rather must be
27 guided by objective "criteria" to prevent arbitrary decisions. These "criteria" require Governing
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1 Board adoption to specifically guide the evaluation, to the APCO's "satisfaction", of whether the
2 permitting project is expected to comply with all applicable rules and regulations. The District
3 has therefore adopted specific rules which provide the criteria that an APCO must follow
4 specifically in the context of a permitting project, such as Rule 2070 – *Standards for Granting*
5 *Applications*, Rule 2080 – *Conditional Approval*, Rule 2092 – *Standards for Permits to Operate*,
6 and Rule 2020 – *Exemptions*, among others.

7 The Arvin/Lamont CERP does not consist of criteria which an APCO must follow in
8 reaching its "satisfaction" determination regarding expected compliance with applicable rules
9 and regulations. In fact, the Arvin/Lamont contains no "criteria" at all short of the recitation of
10 existing District rules which are authorized independently of the CERP. The CERP is simply a
11 programmatic plan implemented through existing authorities, not a per-permit criterion in and of
12 itself.

13 For example, Petitioners cite the CERP's identification of the District's BACT
14 requirements, whereby the District "conducts an analysis to determine if, based on specific
15 criteria, cleaner technologies that are not commonly used for these type[s] of equipment could be
16 used to further reduce emissions from the proposed equipment." (See *Ptrs' Opp.*, 17:6-12, citing
17 *CERP*, p. 41.) Petitioners appear to imply that this BACT Policy is a CERP "finding" which
18 must be considered as permit criterion by virtue of its inclusion in the CERP. What Petitioners'
19 characterize as a "finding," however, is an existing, enforceable permitting requirement of Rule
20 2201 that the District must apply independently of the CERP. A CERP's explanation of a District
21 rule cannot elevate the CERP into an enforceable commitment independently of the rule itself.

22 Petitioners fail to point to language within § 44391.2 or within the CERP itself which
23 mandates enforceable permitting criteria, separate and apart from existing District enforceable
24 permitting requirements, that the District must "consider" on a per-project basis when evaluating
25 and deciding whether and how to act upon a permit application; indeed there is none. CERP
26 considerations are nothing more than nonbinding, aspirational "emission reduction targets."

1 (§ 44391.2(c)(2)(A).) Whether or not a project's emissions serve to achieve such "targets" is
2 irrelevant to whether or not a particular permit was "properly issued."

3 **D. Petitioners' Quantitative Target Narrative Misstates The Nature Of CERP**
4 **Goals**

5 Petitioners also confusingly juxtapose project-level VOC increases against CERP-wide
6 reduction goals to claim inconsistency, arguing that the District failed to reconcile Project
7 emissions with CERP emission reduction targets.

8 For example, Petitioners assert that their reference to Rule 4455 demonstrates that the
9 District somehow ignored its CERP commitments by applying the current, more stringent
10 version of Rule 4455 without explaining that the emissions thresholds of the rule were
11 strengthened sufficiently to meet the emission reduction targets of the CERP, or that the VOC
12 emissions associated with the Kern Energy project would be reduced through compliance with
13 the amended Rule 4455. (*Ptrs' Opp. 17:16-18:9.*) The District is unaware of any state law,
14 District rule, or commitment within the CERP itself which obligates the District to allocate a
15 quantitative emissions threshold on a per-project basis.

16 By definition, a CERP includes "emissions reduction *targets*" As such, they consist
17 of aspirational goals, not per-project issuance thresholds. Again, the APCO applies enforceable
18 permit standards (Rule 2201, BACT, offsets, prohibitory rules), not nonbinding emission
19 reduction goals developed in a planning context. The APCO is obligated to apply enforceable
20 permitting standards, not to allocate emission reduction targets in a planning document across
21 permits.

22 **E. Even If Any CEQA/CERP Points Were Considered, The Challenged Petition**
23 **Sections Should Be Stricken As Framed**

24 Petitioners argue the Motion is overbroad because the challenged sections include factual
25 allegations relevant to whether the ATC was properly issued. They seek, at minimum, to
26 preserve factual allegations or to amend if any claims exceed jurisdiction.

1 The Motion, however, targets legal claims that seek CEQA adjudication and to impose
2 CERP-consistency as permit-issuance criteria. As discussed above, those are improper and
3 should be stricken to streamline issues within the Hearing Board's proper, limited jurisdiction.

4 Striking the identified sections does not preclude Petitioners from presenting admissible,
5 relevant facts tied to actual permit-issue questions at the merits stage; the Hearing Board can
6 regulate evidence consistent with its limited role.

7 **II. CONCLUSION**

8 For the foregoing reasons, the Hearing Board should grant Respondent District's Motion
9 to Strike in its entirety.

10
11 Dated: August 5, 2026

SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT

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14 By: 
Annette A. Ballatore
Counsel for Respondent