

1 ANNETTE A. BALLATORE, #192176
ISELA G. WELZ, #337658
2 SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT
3 1990 E. Gettysburg Avenue
Fresno, California 93726
4 T: (559) 230-6034
E: annette.ballatore@valleyair.org
5 E: isela.welz@valleyair.org

6 Attorneys for Respondent
SAN JOAQUIN VALLEY UNIFIED AIR
7 POLLUTION CONTROL DISTRICT

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

11 184 COMMUNITY ACTION GROUP, an
12 unincorporated association; COMITÉ
13 PROGRESO DE LAMONT, an unincorporated
association,

14 Petitioners,

15 vs.

16 SAN JOAQUIN VALLEY UNIFIED AIR
17 POLLUTION CONTROL DISTRICT,

18 Respondent,

19 KERN ENERGY,

20 Real Party in Interest.

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

) **RESPONDENT SAN JOAQUIN VALLEY**
) **UNIFIED AIR POLLUTION CONTROL**
) **DISTRICT'S OBJECTIONS TO**
) **PETITIONERS' TRIAL BRIEF AND**
) **MOTION TO STRIKE**

) Date: October 14, 2026
) Time: 10:00 a.m.
)
)
)

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22 Respondent San Joaquin Valley Unified Air Pollution Control District ("the District")
23 objects to Petitioners' Trial Brief. Petitioners' Trial Brief addresses new factual arguments that
24 were not raised in the Petition. Petitioners should be precluded from raising them now at this late
25 hour.

1 Administrative pleadings are construed liberally, but that flexibility does not eliminate
2 the requirement of fair notice and a meaningful opportunity to respond. A variance becomes
3 material when it actually prejudices the opposing party's ability to defend on the merits. (*Stearns*
4 *v. Fair Employment Practice Commission* (1971) 6 Cal.3d 205, 212–214; *Cooper v. Board of*
5 *Medical Examiners* (1975) 49 Cal.App.3d 931, 942; *Hayes v. Richfield Oil Corp.* (1952) 38
6 Cal.2d 375, 382.)

7 Petitioners' permit appeal, filed pursuant to Health & Safety Code § 42302.1, seeks
8 revocation of the permit. District Rule 5030 – *Contents of Petition*, at §1.7 requires, "Petitions
9 for revocation of permits shall identify the District rule under which the permit was granted and
10 the District rule which is or will be alleged to have been violated, *together with a brief statement*
11 *of the facts constituting such alleged violation.*" (Emphasis added.)

12 The District's objection concerns newly introduced grounds requiring additional factual
13 analysis and technical evidence, rather than the mere addition of legal citations. Because the
14 parties agreed to, and did, mutually exchange their briefs on the merits at approximately the
15 same time on Friday, October 9, 2026 – a mere 3 business days before the hearing, the District
16 lacked a meaningful opportunity to fully respond to them in its Staff Report. As a consequence,
17 the District has been prejudiced in its ability to defend against them.

18 **A. Petitioners' Trial Brief Improperly Argues That The ERC Did Not Satisfy**
19 **Criteria That The ERC Be "Real" And "Surplus"**

20 The Petition filed May 29, 2026, alleged and argued that the ERC relied upon by Kern
21 Energy to satisfy federal offset requirements did not satisfy the "permanent" criteria. The Trial
22 Brief, however, articulates additional factual theories for why the ERC fails to meet the criteria
23 for also being "real" and "surplus."

24 Although the Petition labels the ERC "not surplus," its substantive ERC discussion
25 identified only an alleged failure of permanence based on possible source shifting. (*Petition*, pp.

1 7, 11.) The Trial Brief now advances materially different factual grounds: that regulatory
2 requirements may have caused the original closure, that subsequently adopted requirements may
3 reduce the credit's current value, and that the District's Rule 4612 analysis rests on an
4 inadequately established coating classification. (*Trial Brief*, p. 18.) A general reference to the
5 creditability criteria as alleged in the Petition did not identify these alleged defects or the facts
6 necessary to answer them. As such, the introduction of these additional factual arguments
7 contravenes §1.7 of Rule 5030, that the Petition articulate the factual grounds for the alleged
8 violation.

9 Accordingly, the District moves to strike those portions of the Trial Brief at pp. 17:4-
10 19:8.

11 **B. Petitioners' Trial Brief Improperly Adds The Theory That Equipment Must Be**
12 **Grouped Together Because It Is Part Of A "Continuous Process"**

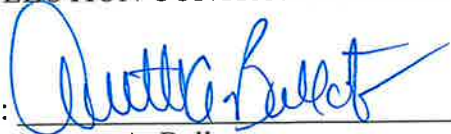
13 The Petition challenged the exclusion of specified equipment, such as the naptha
14 reformer, platformer, chloride scrubber, etc., from the District's permit evaluation on the ground
15 that the equipment would undergo modifications within the meaning of Rule 2201. (Petition, p.
16 12.) The Trial Brief, however, now adds a separate permit-unit *aggregation* theory under APR
17 1025, contending that the equipment must be grouped because it participates in a "continuous
18 process." (Trial Brief, pp. 20-23, 27-28.) Whether an existing emissions unit undergoes a
19 modification requiring changed permit conditions and whether multiple units should be grouped
20 under permit-unit guidance present distinct questions. The latter theory requires an equipment-
21 specific examination of independent operation, shared functions, and process connections that
22 the Petition did not identify as a ground for relief. (*Petitioner's Trial Brief*, pp. 20:7-23:7.)

23 Once again, the Trial Brief advances this materially different factual bases for why the
24 permit was not properly issued. Because this was not raised in the Petition as grounds for
25 revocation of the permit, the District moves to strike pp. 20:7-23:7 of the Trial Brief.

1 Dated: October 13, 2026

SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT

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3 By:



4 Annette A. Ballatore
5 Counsel for Respondent
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