

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

Attorneys for Respondent
SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT

**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 OBJECTIONS TO
PETITIONERS' ADDITIONAL
EXHIBITS AND EVIDENCE; MOTION
TO STRIKE RE SAME**

Date: October 14, 2026

Time: 10:00 a.m.

Respondent San Joaquin Valley Unified Air Pollution Control District (the "District") objects to certain of the exhibits contained in Petitioners' Additional Exhibits and Evidence pursuant to District Rule 5120, §1.4, on the grounds that the exhibits are irrelevant to the issues properly before the Hearing Board. The exhibits do not tend to prove or disprove any material fact concerning whether the challenged permit was properly issued based on the grounds raised in the Petition for Hearing and Appeal. Evidence that supports only speculative inferences lacks the requisite tendency in reason to establish a disputed fact and is therefore irrelevant. (*People v. Williams* (2018) 23 Cal.App.5th 396, 416.) Because irrelevant evidence is inadmissible as a

matter of law, the Hearing Board should exclude the exhibits identified below. (*People v. Covarrubias* (2015) 236 Cal.App.4th 942, 948; Evid. Code, §§ 210, 350.)

	Petitioners' Additional Exhibits and Evidence	Respondent's Objection to Petitioners' Additional Exhibits and Evidence
1.	Exhibit Q, CARB, Review of the San Joaquin Valley Air Pollution Control District Emission Reduction Credit System (2020) <i>Petitioners' Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 18-19</i>	Objection – Irrelevance. Petitioners' Exhibit Q is irrelevant to whether the permit was properly issued. Exhibit Q addresses CARB's systemwide review of the District's Emission Reduction Credit (ERC) program and its federal offset-equivalency demonstration; it does not evaluate or address the specific Fruehauf credit relied upon in issuing the permit at issue. Accordingly, Exhibit Q has no demonstrated connection to the specific permitting determination before the Board and does not satisfy the applicable standard for relevance. The exhibit should therefore be excluded.
2.	Exhibit R, San Joaquin Valley Unified Air Pollution Control District, Federal Offset Equivalency, District Advisory (2022) <i>Petitioners' Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 17</i>	Objection – Irrelevance. The surplus-at-issuance requirement is already imposed on the District by Rule 2201 and the applicable federal regulation, which the District applies directly. A document merely restating the governing requirements adds no fact of consequence to the issues before the Board and is cumulative. Moreover, Petitioners' Exhibit R does not address the specific ERC at issue. It contains no analysis of Certificate C-1579-1, the 1992 Fruehauf shutdown, or whether the credit was real, surplus and permanent when generated. Instead, Exhibit R principally concerns the District's programmatic offset equivalency system. The validity of that program, however, is not among the four grounds pleaded in the Petition for Hearing and Appeal under Rule 2201. Petitioners' reliance on Exhibit R for that purpose therefore exceeds the permissible scope of this appeal. Finally, Exhibit R is temporally inapposite. The document took effect in 2022 and governs offsets prospectively, whereas the credit at issue was banked in 1992. A document governing a later regulatory framework does not establish facts

		concerning the status or validity of a credit when it was originally generated. The exhibit should therefore be excluded.
3.	Exhibit S, "CalEPA Kern Energy August 2024 and June 2026 Activity Logs <i>Petitioners' Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 3</i>	Objection – Irrelevance. Lack of foundation. Petitioners' Exhibit S consists of two CalEPA "Update on Environmental Compliance" reports summarizing inspection and enforcement activities Kern Energy during discrete time periods among by-8 different regulatory agencies. Petitioners offer these reports solely to establish Kern Energy's purported "extensive history of regulatory violations." The report, which was not prepared by the District, does not document such a "history", and in any event is irrelevant to the narrow issue before the Hearing Board: whether the District properly issued the permit at issue. Evidence of sporadic regulatory inspection and enforcement activities of various operations at a facility which may or may not coincide with the type of permit units at issue in this matter does not establish that the District erred in calculating emissions, determining offset requirements, or otherwise processing or issuing this particular permit. Accordingly, Exhibit S has no tendency to prove or disprove any fact material to the permit appeal and should be excluded.
4.	Exhibit T, Kern County Grand Jury Report on Kern County Fire Department Office of Emergency Services Disaster Readiness <i>Petitioners' Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 3</i>	Objection – Irrelevance. Petitioners' Exhibit T concerns Kern County's ability to notify and evacuate disabled, non-ambulatory, and elderly residents during an emergency. The document does not reference Kern Energy, the refinery, the Permit, or District Rule 2201. Nor does it address the District's emissions calculations, offset determinations, or any other aspect of the permitting decision at issue. Accordingly, a county emergency-preparedness audit concerning emergency notification and evacuation procedures has no apparent relevance to the issues presented in this permit appeal and does not tend to prove or disprove any fact material to the Hearing Board's determination. The exhibit should therefore be excluded.
5.	Exhibit U, "Kern Oil & Refining Co., Permit Application for Authority to Construct for a Modification of	Objection – Irrelevance. Petitioners' Exhibit U consists of April 23, 2004 permit applications for a Kern Energy project,

1	Emission Unit with Valid PTO/Valid ATC, Application No. S-37-77-10	seeking authorization to modify the Diesel Hydrotreater and construct new Reformer and Sulfur Recovery facilities. Exhibit U does not concern Project No. S-1251187. Petitioners rely on Exhibit U to support their assertion that the Project modifies existing refinery equipment and to illustrate “the current way hydrogen moves through the refining process”. Neither the 2004 permit applications nor the accompanying January 2004 flow diagram establishes the scope of the modifications proposed under Project No. S-1251187 or the refinery’s current configuration. Petitioners acknowledge that the 2004 diagram “differs significantly from the flow diagram proposed in the Project.” (<i>Petitioners’ Trial Brief, p. 21</i>)
2	<i>Petitioners’ Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 7, 21</i>	Accordingly, Exhibit U does not tend to prove or disprove any material fact relevant to whether the permit challenged in this proceeding was properly issued. Because the exhibit concerns a separate project from a different time period and does not reliably establish the conditions or equipment configuration relevant to the present permit appeal, it is irrelevant and should be excluded.
3	6. Exhibit V, “San Joaquin Valley Air Pollution Control District, Final Authority to Construct, Application No. S-37-4-22 (Apr. 8, 2025)	Objection – Irrelevance. Petitioners’ Exhibit V is a separate Final Authority to Construct (“ATC”), Permit No. S-37-4-22, issued on April 8, 2025, for modifications to Kern Energy’s platformer unit and installation of a chloride scrubber. It is not the permit challenged in this proceeding, which concerns Project No. S-1251187.
4	<i>Petitioners’ Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 25</i>	The project authorized under Exhibit V is separate and distinct from the project that is the subject of this permit appeal. The chloride scrubber projects were separately proposed to improve facility operations and address equipment-related concerns, including corrosion, plugging, and other equipment damage, thereby reducing maintenance requirements. These improvements serve independent operational purposes and are necessary or beneficial to the facility regardless of whether Project No. S-1251187 is implemented.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

		Installation of the chloride scrubbers is unrelated to the proposed power generation project at issue in this proceeding. The scrubber projects were independently proposed, do not depend on the implementation of Project No. S-1251187, and are not necessary for the proposed power generation project to function. Their purpose is to improve the operation and maintenance of existing facility equipment, not to facilitate or establish the necessity, design, or operational requirements of the new power generation project. Accordingly, Exhibit V has no tendency to prove or disprove a material fact at issue in this permit appeal. Petitioners have not demonstrated how the separate ATC bears on whether the District properly issued the permit for Project No. S-1251187. Therefore, it is irrelevant and should be excluded from consideration.
7.	Exhibit W, "San Joaquin Valley Air Pollution Control District, Proposed Authority to Construct, Application No. S-37-4-22 (Feb. 19, 2025)." <i>Petitioners' Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 25</i>	Objection – Irrelevance. Lack of Foundation. Petitioners' Exhibit W concerns a proposed version of a separate 2025 permitting action for a different project (S-1233158) and does not address the District's VOC calculation, ERC determination, permit-unit scoping, or BACT analysis for Project S-1251187. The description cited by Petitioners relates to the scrubber's role in ordinary refining operations, a function Petitioners acknowledge is not new. Petitioners' further inference of anticipatory intent is speculative and unsupported by evidence relevant to the permit appeal at issue. Accordingly, Exhibit W is irrelevant to the issues before the Hearing Board and should be excluded.
8.	Exhibit AA, "Environmental Protection Agency Emission Reduction Banking Manual." <i>Petitioners' Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 16-17</i>	Objection – Irrelevance. Petitioners' Exhibit AA is the U.S. Environmental Protection Agency's <i>Emission Reduction Banking Manual</i>, a first-edition guidance document published in September 1980 addressing how state and local agencies might develop emission reduction banking programs. The Manual is advisory guidance directed to agencies and industry developing banking systems. Petitioners cite the Manual only for general propositions concerning

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	whether the Project constitutes a major modification and the meaning of “real” and “permanent” emission reductions. These general propositions do not establish any material fact at issue in this proceeding. The applicable creditability criteria – real, quantifiable, surplus, permanent, and enforceable – are expressly set forth in 42 U.S.C. § 7503, 40 C.F.R. § 51.165(a)(3)(ii), and District Rule 2201. The Manual merely restates general principles already embodied in the governing legal framework and is cumulative. The banking action that generated the ERC is not the permitting action challenged in the Petition, and the Manual speaks only to the former. The sole action before the Hearing Board is the District’s issuance of the ATC to Kern Energy on April 30, 2026. The ERC at issue, by contrast, was banked decades earlier, in 1992, as a separate and independent administrative determination arising from the shutdown of the Fruehauf Trailer Corporation truck trailer coating operation. A guidance document addressed to how an agency should <i>conduct a banking determination</i> therefore has no bearing on the only question properly before the Board: whether the District lawfully issued the challenged ATC permit. The Manual does not address the specific ERC at issue: the certificate arising from the 1992 shutdown. It provides no evidence as to whether the emission reduction underlying that certificate satisfied the applicable creditability criteria when <u>the reduction was generated and the credit was banked</u>. The Manual cannot fill that evidentiary gap, because it addresses how programs should be structured in the abstract, not whether this particular credit qualified under the rules that governed its creation. Its relevance is further undermined by its temporal remoteness. Published in 1980, the Manual predates both the 1992 banking action at issue and the current Rule 2201 framework, and therefore does not establish the standards applicable to either the original generation of the credit or the challenged permit.
--	---

		Because Exhibit AA neither addresses the specific credit at issue nor tends to establish whether the challenged permit was properly issued under the applicable legal requirements, it has no probative value as to any material issue before the Hearing Board. The exhibit should therefore be excluded.
9.	Exhibit BB, "Arvin/Lamont CERP Appendix C: Source Apportionment and Community Inventories (June 9, 2022)" <i>Petitioners' Trial Brief for Hearing and Appeal of Approval of Authority to Construct Permit for Kern Energy Refinery Project No. S-1251187, p. 3</i>	Objection – Irrelevance. Petitioners' Exhibit BB is Appendix C to the <i>Arvin/Lamont Community Emissions Reduction Program</i> ("CERP"), titled "Source Apportionment and Community Inventories" (June 9, 2022), which presents a community-wide emissions inventory for the Arvin/Lamont AB 617 community. Petitioners cite the exhibit only once, in their background section, to assert that Kern Energy is the largest source of air pollution in the community. That generalized information regarding community-wide emissions is immaterial to the narrow issue before the Hearing Board: whether the District properly issued the challenged permit under the applicable legal requirements. Specifically, the exhibit does not tend to prove or disprove any of the four grounds at issue in this appeal. To the extent Petitioners offer Exhibit BB to support their contention that the District failed to evaluate the Project's consistency with the Arvin/Lamont CERP, that issue is outside the scope of this proceeding. By order dated August 18, 2026, the Hearing Board struck Petitioners' CERP and CEQA claims. The exhibit therefore cannot properly be used to reintroduce or substantiate claims that have already been excluded from the appeal. Accordingly, Exhibit BB has no tendency to prove or disprove any material fact bearing on whether the challenged permit was properly issued. The exhibit should be excluded.
10.	Exhibit CC, "Sasan Saadat and Sara Gersen, Reclaiming Hydrogen for a Renewable Future: Distinguishing Oil & Gas Industry Spin from Zero-Emission Solutions (2021)."	Objection – Irrelevance. Petitioners' Exhibit CC is an advocacy report published by Earthjustice addressing hydrogen and decarbonization policy. Petitioners cite the report once, in their background section, for

1 *Petitioners' Trial Brief for Hearing and*
2 *Appeal of Approval of Authority to*
3 *Construct Permit for Kern Energy*
4 *Refinery Project No. S-1251187, p. 4*

general propositions concerning hydrogen's physical hazards, including its flammability, potential to cause pipe embrittlement, and associated leak and explosion risks. These generalized statements regarding hydrogen's physical properties are immaterial to the narrow issue before the Hearing Board: whether the District properly issued the challenged permit under the applicable legal requirements. The report does not tend to prove or disprove any of the four grounds at issue in this appeal.

To the extent Petitioners offer Exhibit CC to establish the Project's broader environmental or public-safety impacts, those matters fall outside the scope of this proceeding. By order dated August 18, 2026, the Hearing Board struck Petitioners' CEQA and CERP claims. The report's generalized discussion of hydrogen-related hazards cannot serve to reintroduce or substantiate issues excluded from the appeal.

Accordingly, Exhibit CC has no tendency to prove or disprove any material fact bearing on whether the challenged permit was properly issued. The exhibit should therefore be excluded.

17 Dated: October 13, 2026

SAN JOAQUIN VALLEY UNIFIED AIR
POLLUTION CONTROL DISTRICT

19 By: 
20

Annette A. Ballatore
Counsel for Respondent