

~~PROPOSED~~ ORDER ON RESPONDENT'S
MOTION TO STRIKE

The Motion presented two issues for the Hearing Board to decide:

Petitioner: 184 Community Action Group, Comité Progreso De
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- 1.) Whether the Hearing Board has jurisdiction to decide whether the District properly complied with CEQA in its evaluation of whether to issue an Authority to Construct permit; and
- 2.) Whether a Community Emission Reduction Program (CERP) developed pursuant to Health & Safety Code § 44391.2, is “applicable” permitting criteria that must be evaluated by the District for expected compliance in determining to approve the ATC.

By Stipulation of the parties, and Order of the Hearing Board, the Hearing Board set a preliminary August 12, 2026 hearing regarding the District’s Motion to Strike. The hearing on the Motion to Strike was held before the Southern Region Hearing Board of the San Joaquin Valley Unified Air Pollution Control District. Vivyana Prado, Counsel from Leadership Counsel for Justice and Accountability, appeared for and represented Petitioner 184 Community Action Group and Natalia Ospina, Counsel from Center On Race, Poverty & the Environment, appeared for and represented Comité Progreso de Lamont. Zachary Howe, from Manatt, Phelps & Phillips, LLP, appeared for and represented Kern Energy. Annette Ballatore, District Counsel, and Isela Welz, Assistant District Counsel, appeared for and represented the District. Philip Jay, from Kahn, Soares & Conway, LLP, also appeared to advise the Hearing Board on the Motion to Strike.

After considering all moving papers and briefs, hearing oral argument and giving the parties and all interested members of the public the opportunity to provide testimony or public comment, the Hearing Board closed the hearing and took the matter under submission for a decision on the Motion. The Hearing Board found and decided as follows.

FINDINGS OF FACT

Kern Energy is an independent refinery located in rural western Kern County at 7724 East Panama Lane, Bakersfield, which produces gasoline and various distillates, including renewable diesel fuel. The facility first became regulated by the Kern County Air Pollution Control District, a predecessor agency of the District, in 1969, and has been continuously regulated by the District since unification of the eight counties in the San Joaquin Valley occurred in 1991. Kern Energy is a Title V stationary source, and recently renewed their Title V Permit on June 13, 2023. Currently, there are over 100 active permits issued by the District to Kern Energy.

On March 12, 2025, Kern Energy submitted an Authority to Construct Application, designated as Project No. S-1251187, to install a hydrogen recovery process unit to utilize existing hydrogen already being produced at the refinery for use in the production of electricity to support the refinery power needs (“the Project”). On April 30, 2026, having determined that the Project satisfied all applicable District, state, and federal regulations, and was categorically exempt from CEQA on multiple grounds, the District issued Authority to Construct S-37-178-0 to Kern Energy, authorizing it to construct the proposed hydrogen recovery unit and duly filed a Notice of Exemption with the State Clearinghouse on May 1, 2026 and the Kern County Clerk on May 4, 2026.

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CONCLUSIONS AND ORDER

Health & Safety Code § 42302.1 provides:

Within 30 days of any decision or action pertaining to the issuance of a permit by a district, or within 30 days after mailing of the notice of issuance of the permit to any person who has requested notice, or within 30 days of the publication and mailing of notice provided for in Section 1 of Chapter 1131 of the Statutes of 1993, any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the action before the district may request the hearing board of the district to hold a public hearing to determine whether the permit was properly issued.

After hearing and considering all moving papers and briefs, oral argument and public comments, the Hearing Board finds that:

- 1.) The Hearing Board does not have jurisdiction to decide whether the District properly complied with CEQA in issuing the ATC permit; and
- 2.) A Community Emission Reduction Program (CERP) developed pursuant to Health & Safety Code § 44391.2, is not applicable permitting criteria that must be evaluated by the District for expected compliance in determining whether Authority to Construct S-37-178-0 was properly issued pursuant to Health & Safety Code § 42302.1.

It is therefore ordered that the District's Motion to Strike is granted.

MOTION: Penner **SECOND:** Weber

Ayes: Stovall, Penner, Weber
Noes: None
Abstained: None
Recused: None
Absent: Chang Na, M.D.

THE FOREGOING ORDER IS APPROVED:

DocuSigned by:

D22714CED8064DA

John F. Stovall, Chair
Hearing Board – Southern Region
San Joaquin Valley Unified APCD

8/18/2026

Date

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ATTEST:

Signed by:



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Katrina Rojas, Deputy Clerk to the Boards

8/18/2026

Date



San Joaquin Valley

AIR POLLUTION CONTROL DISTRICT

PROOF OF SERVICE

I, Esthela Soto, declare:

I am a resident of the State of California and over the age of 18 years, and not a party to the within action; my business address is San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, California 93726.

On September 15, 2026, I served the within documents:

ORDER ON RESPONDENT'S MOTION TO STRIKE – **DOCKET No. S-26-11A**

_____ by placing the document(s) listed above in a sealed envelope, and placing the same for mailing in the United States mail at Fresno, California, in accordance with the company's ordinary practices, and addressed as set forth below.

X based on an agreement of the parties with email addresses below, to accept service by transmitting via email, the above listed document(s) to the email addresses set forth below on this date before 5 p.m.

_____ by personally delivering the document(s) listed above to the person(s) at the address(s) set forth below:

Thomas Landeros
Kern Energy
7724 E. Panama Lana
Bakersfield, CA 93307
tlanderos@kernenergy.com

Grecia Orozco
gorozco@crpe-ej.org

Zach Howe
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variance@arb.ca.gov

Viviana Prado
vprado@leadershipcounsel.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 15, 2026, at Fresno, California.

Esthela Soto

Esthela Soto
Senior Air Quality Specialist

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