

1 **WHEREAS**, in California Building Industry Association et. al. v. San Joaquin Valley
2 Unified Air Pollution Control District (2009) 178 Cal.App.4th 120, the court held that the
3 District had statutory authority to impose ISR fees, and that the District's ISR fees were
4 valid, properly calculated regulatory fees; and

5 **WHEREAS**, in National Ass'n of Home Builders v. San Joaquin Valley Unified Air
6 Pollution Control District (9th Cir. 2009) 627 F.3d 730, the court held that the District's
7 ISR rule was authorized by the federal Clean Air Act's "indirect source review program"
8 provision (CAA §110(a)(5)), and that the rule was not preempted; and

9 **WHEREAS**, proposed amendments to Rule 9510 clarify rule applicability, remove
10 outdated references, and contain minor administrative enhancements.

11 **WHEREAS**, proposed amendments to Rule 9510 define large development projects,
12 clarify the Rule's applicability to such and clarify and enhance several other aspects of
13 the rule definitions; and

14 **WHEREAS**, proposed amendments to Rule 9510 are intended to ensure that the rule
15 is consistently applied to large development projects throughout the Valley; and

16 **WHEREAS**, a public hearing for the adoption of proposed amendments to Rule 9510
17 was duly noticed for December 21, 2017 in accordance with CH& SC Section 40725.

18 **NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

19 1. The Governing Board hereby adopts the proposed amendments to Rule 9510
20 (Indirect Source Review Rule). Amendments to Rule 9510 (Indirect Source Review)
21 shall become effective 90 days after the date of this adoption.

22 2. The Governing Board hereby finds, based on the evidence and information
23 presented at the hearing upon which its decision is based, all notices required to be
24 given by law have been duly given in accordance with CH&SC Section 40725, and the
25 Board has allowed public testimony in accordance with CH&SC Section 40726.

26 3. In connection with this rulemaking, the Board makes the following findings as
27 required by CH& SC Section 40727:

28 a. **NECESSITY.** The Governing Board finds, based on the staff report, on

1 public and industry testimony, and on the record for this rulemaking proceeding, that a
2 need exists for rule amendments. Proposed amendments would ensure consistent
3 rule applicability throughout the Valley and enhance and clarify the rule.

4 b. **AUTHORITY.** The Governing Board finds that it has the legal authority for
5 rulemaking under the CH&SC Sections 40000 and 40001.

6 c. **CLARITY.** The Governing Board finds that this rule is written or
7 displayed so that the meaning can be easily understood by those persons or
8 industries directly affected by said rule.

9 d. **CONSISTENCY.** The Governing Board finds that this rule is in harmony
10 with, and not in conflict with or contradictory to, existing statutes, court decisions, or
11 state or federal regulations.

12 e. **NONDUPLICATION.** The Governing Board finds that this rule does not
13 impose the same requirements as any existing state or federal regulation.

14 f. **REFERENCE.** The Governing Board finds that said rule implements
15 CH&SC Sections 40604, 40702, and 40716 as well as federal Clean Air Act
16 §110(a)(5)(A)(i).

17 4. The Governing Board finds that because this amendment to Rule 9510 is an
18 action taken by a regulatory agency, as authorized by state law to assure the
19 maintenance, restoration, enhancement, or protection of air quality, the rule
20 amendment is exempt from the provisions of the California Environmental Quality Act
21 of 1970 (CEQA) pursuant to Section 15308 (Actions by Regulatory Agencies for
22 Protection of the Environment) of the CEQA Guidelines. The Governing Board further
23 finds that because this rulemaking will have no possible significant adverse effect on
24 the environment, the rule amendment is exempt from the provisions of CEQA
25 pursuant to Section 15061(b)(3) of the CEQA Guidelines.

26 5. The Executive Director/Air Pollution Control Officer is directed to file a Notice of
27 Exemption with the County Clerks of each of the counties in the District.

28 6. The Executive Director/Air Pollution Control Officer is directed to file with all

1 appropriate agencies certified copies of this resolution and the rule adopted herein
2 and is directed to maintain a record of this rulemaking proceeding in accordance with
3 CH&SC 40728.

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1 **THE FOREGOING** was passed and adopted by the following vote of the Governing
2 Board of the San Joaquin Valley Unified Air Pollution Control District this 21st day of
3 December 2017, to wit:

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5 **AYES:** Capitman, Couch, Elliott, Fugazi, Mendes,
6 Pedersen, Reyes, Sherriffs, Worthley, Baines

7 **NOES:** Olsen

8
9 **ABSENT:** Ayers, Pareira, Vierra, Wheeler

10
11 SAN JOAQUIN VALLEY UNIFIED
12 AIR POLLUTION CONTROL DISTRICT

13 By 
14 Oliver L. Baines III, Chair
15 Governing Board

16 **ATTEST:**
17 Deputy Clerk of the Governing Board

18 By 
19 Michelle Franco