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## BEFORE THE GOVERNING BOARD OF THE SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

IN THE MATTER OF: PROPOSED AMENDMENTS TO RULE 9510 (INDIRECT SOURCE REVIEW RULE)

) RESOLUTION NO. 17-12-23

WHEREAS, the San Joaquin Valley Unified Air Pollution Control District (District) is a duly constituted unified air pollution control district, as provided in California Health and Safety Code (CH&SC) Sections 41050 to 40161; and

WHEREAS, the District is authorized by CH&SC Section 40702 to make and enforce all necessary and proper orders, rules, and regulations to accomplish the purpose of Division 26 of the Health and Safety Code; and

WHEREAS, pursuant to Section 107 of the federal Clean Air Act, the United States Environmental Protection Agency has designated the San Joaquin Valley Air Basin as nonattainment for the national health-based air quality standards for ozone and particulate matter 2.5 microns and smaller (PM2.5); and

WHEREAS, the District does not have direct regulatory authority over mobile sources, which continue to account for about 85% of the Valley's emissions of oxides of nitrogen (NOx), the key precursor to the formation of ozone and PM2.5; and

WHEREAS, the District adopted Rule 9510 (Indirect Source Review) in 2005 to reduce mobile source NOx and particulate matter emissions associated with the construction and operation of new development projects in the Valley, one of the fastest growing regions in the state, through both on-site and off-site mitigation; and

WHEREAS, annual reports on the District's ISR program document that ISR is effective in reducing emissions associated with the construction and operation of new development projects in the Valley; and

WHEREAS, both federal and state courts have upheld the District's authority to adopt and implement its Indirect Source Review rule; and

Resolution For Proposed Amendments to Rule 9510

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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.

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

In connection with this rulemaking, the Board makes the following findings as

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required by CH& SC Section 40727:

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rule applicability throughout the Valley and enhance and clarify the rule.

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

public and industry testimony, and on the record for this rulemaking proceeding, that a

need exists for rule amendments. Proposed amendments would ensure consistent

- c. CLARITY. The Governing Board finds that this rule is written or displayed so that the meaning can be easily understood by those persons or industries directly affected by said rule.
- d. **CONSISTENCY.** The Governing Board finds that this rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or state or federal regulations.
- e. **NONDUPLICATION.** The Governing Board finds that this rule does not impose the same requirements as any existing state or federal regulation.
- f. REFERENCE. The Governing Board finds that said rule implements CH&SC Sections 40604, 40702, and 40716 as well as federal Clean Air Act §110(a)(5)(A)(i).
- 4. The Governing Board finds that because this amendment to Rule 9510 is an action taken by a regulatory agency, as authorized by state law to assure the maintenance, restoration, enhancement, or protection of air quality, the rule amendment is exempt from the provisions of the California Environmental Quality Act of 1970 (CEQA) pursuant to Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the CEQA Guidelines. The Governing Board further finds that because this rulemaking will have no possible significant adverse effect on the environment, the rule amendment is exempt from the provisions of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.
- 5. The Executive Director/Air Pollution Control Officer is directed to file a Notice of Exemption with the County Clerks of each of the counties in the District.
- 6. The Executive Director/Air Pollution Control Officer is directed to file with all

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Resolution For Proposed Amendments to Rule 9510

THE FOREGOING was passed and adopted by the following vote of the Governing 1 Board of the San Joaquin Valley Unified Air Pollution Control District this 21st day of 2 December 2017, to wit: 3 4 AYES: Capitman, Couch, Elliott, Fugazi, Mendes, 5 Pedersen, Reyes, Sherriffs, Worthley, Baines 6 NOES: Olsen 7 8 9 ABSENT: Ayers, Pareira, Vierra, Wheeler 10 11 SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT 12 By 13 Oliver L. Baines III Chair Governing Board 14 15 ATTEST: 16 Deputy Clerk of the Governing Board 17 By 18 Michelle Franco 19 20 21 22 23 24 25 26 27 28

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