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October 18, 2006

Via Federal Express

Catherine Witherspoon
Executive Officer
California Air Resources Board
P.O. Box 2815
1001 I Street
Sacramento, CA 95812



Re: Petition for a Public Hearing on San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201

Dear Ms. Witherspoon:

The Center submits this Petition on behalf of the Association of Irrigated Residents ("AIR"), an unincorporated association of Kern, Tulare, Fresno, and Stanislaus county residents whose organizational mission is to advocate for air quality and environmental health in the San Joaquin Valley. AIR submitted comments and appeared at the September 21, 2006 public hearing at which the Governing Board for the San Joaquin Valley Unified Air Pollution Control District ("District") amended Rules 2020 and 2201.¹

AIR petitions the Air Resources Board to hold a public hearing and determine that the District's rule amendments are unlawful under S.B. 288, and restore the pre-existing NSR program. AIR objects to the proposed amendments because they violate Senate Bill 288, on two grounds: (1)

¹The September 21, 2006 versions of Rules 2020 and 2201 are attached as Exhibits 1 and 2, respectively.

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the amendment to Rule 2020 would exempt certain agricultural sources from the duty to obtain a permit; (2) the amendment to Rule 2201 would exempt agricultural sources from the duty to obtain offsets (or emission reduction credits).

On December 19, 2002, the District removed the agricultural exemption from Rule 2020, rather than suffer looming federal sanctions. The December 19, 2002 version of Rule 2201 likewise has no exemption for agricultural sources from the duty to obtain offsets. As such, the December 19, 2002 versions of Rules 2020 and 2201 fall within the scope of SB 288; the District has no authority to amend the rules to reduce requirements applicable to agricultural sources of air pollution. Because the amendments to the rules weaken the NSR program that existed on December 30, 2002, the ARB should rescind the District's recent amendments.

I. BACKGROUND

On July 19, 2001 EPA finalized a limited approval and limited disapproval of District Rules 2020 and 2201. EPA disapproved Rule 2020 on the grounds that it exempted agricultural sources, and required the District to remove the blanket exemption for such sources. 66 Fed. Reg. 37587, 37590 (July 19, 2001). EPA also disapproved aspects of Rule 2201. *Id.* Effective August 20, 2001, EPA started the "sanctions clock" to impose sanctions and adopt a federal implementation plan if the District did not correct the deficiencies. *Id.*

On December 19, 2002, the District Governing Board adopted amendments to Rules 2020 and 2201.² The District addressed the agricultural exemption deficiency in Rule 2020 by deleting the exemption entirely, without conditioning the rule on changes in state law. *See* Rule 2020 (December 19, 2002 version), attached as Exhibit 3.

Effective January 1, 2004, California Senate Bill 700 removed the agricultural exemption from Health & Safety Code § 42310(e). Section 9 of SB 700 prohibits a district from requiring permits for agricultural sources with actual emissions of less than one-half of any applicable major source threshold unless a district makes certain findings. *See* Health & Safety Code § 42301.16(c).

Section 11 of SB 700 added section 42301.18 to the Health & Safety Code, which states:

²The December 19, 2002 versions of Rules 2020 and 2201 are attached as Exhibits 3 and 4, respectively.

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A district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions.

Health & Safety Code § 42301.18(c).

Finally, SB 700 preserved District rules regulating agricultural sources that predated SB 700. Section 3 of SB 700 required agricultural sources' compliance with already-adopted rules and preserved the authority of an air district to regulate agricultural sources pursuant to rules adopted before January 1, 2003. Health & Safety Code §§ 39011.5(b) and (c).

EPA approved the December 19, 2002 versions of Rules 2020 and 2201 as consistent with the Clean Air Act and included the rules in the State Implementation Plan. 68 Fed. Reg. 7330 (Feb. 13, 2003); 69 Fed. Reg. 27837 (May 17, 2004). The Final Rule approving the rules incorporated by reference the rules into the State Implementation Plan. 69 Fed. Reg. 27837, 27843 (May 17, 2004); 40 C.F.R. § 52.220(c)(311)(i)(B)(1). Once approved by EPA, the Rules became a federally enforceable strategy. *See Bayview Hunters Point Community Advocates v. Metropolitan Transportation Commission*, 366 F.3d 692, 695 (9th Cir. 2004).

II. SENATE BILL 288 PROHIBITS THE DISTRICT FROM WEAKENING RULES 2020 AND 2201 TO FAVOR AGRICULTURAL SOURCES OF AIR POLLUTION

Senate Bill 288 specifically prohibits the District from weakening the December 19, 2002 versions of Rules 2020 and 2201. Section 42504(a) of the Health & Safety Code contains a general prohibition against air districts amending their new source review rules to be less stringent than those that existed on December 30, 2002. This "catch-all" provision applies to any NSR revisions, except for those expressly provided for in 42504(b) and (c).

Under Health & Safety Code § 42504(b)(1), air districts may not revise the following elements of rules that existed on December 30, 2002 if the revisions would "exempt, relax, or reduce" the obligations of a stationary source:

- (A) The applicability determination for new source review.
- (B) The definition of modification, major modification, routine maintenance, or repair or replacement.
- (C) The calculation methodology, thresholds or other procedures of new source review.
- (D) Any definitions or requirements of the new source review regulations.

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Health & Safety Code § 42504(b)(1)(A)-(D).

Moreover, the rule components listed in section 42504(b)(1) may not be amended if doing so would exempt, relax, or reduce the obligations of a source with regard to the following requirements:

- (A) Any requirements to obtain new source review or other permits to construct, prior to commencement of construction.
- (B) Any requirements for BACT.
- (C) Any requirements for air quality impact analysis.
- (D) Any requirements for recordkeeping, monitoring and reporting in a manner that would make record keeping, monitoring, or reporting less representative, enforceable, or publicly accessible.
- (E) Any requirements for regulating any air pollutant covered by the new source review rules and regulations.
- (F) Any requirements for public participation, including a public comment period, public notification, public hearing, or other opportunities or forms of public participation, prior to issuance of permits to construct.

Health & Safety Code § 42504(b)(2)(A)-(F)

Therefore, any district changes to NSR rules must be at least as stringent as the existing requirements, or, where a district amends its NSR rules covering the enumerated items above, it may only do so if its new rules are more stringent than those existing on December 30, 2002. *See* Health & Safety Code § 42504(c); *see also* California Air Resources Board Guidance, New source Review and Senate Bill 288 (August 2004, as amended April 2006), attached as Exhibit 4 (“ARB Guidance”).

As noted above, the December 19, 2002 version of 2020 provides no agricultural permit exemption nor does the rule incorporate by reference the now-defunct state law exemption in Health & Safety Code § 42301(e) (2003). The December 19, 2002 version of Rule 2201 likewise contains no agricultural offset exemption.

The September 21, 2006 version of rule 2020 incorporates Health & Safety Code § 42301.16(c) by reference to exempt ag sources with actual emissions below one-half of the applicable major source thresholds from the duty to get an Authority to Construct and operating permits. *See* Rule 2020 § 6.1, attached as Exh. 1. The September 21, 2006 version of rule 2201

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incorporates Health & Safety Code § 42301.18(c) to provide an exemption for agricultural sources from the duty to obtain offsets. *See* Rule 2201 § 4.6.9, attached as Exh. 2.

Under SB 288, the District may not weaken these rules by exempting stationary sources at agricultural sources, including but not limited to confined animal facilities and diesel internal combustion engines, from the obligation to obtain a permit, install Best Available Control Technology, or purchase offsets. The District may only amend the rules to make them more stringent.³ Absolving agricultural sources of permit requirements in Rule 2020 and offset requirements in Rule 2201 makes the NSR program less stringent than NSR rules existing on December 30, 2002.

III. SB 700 DOES NOT MANDATE THE DISTRICT'S RULE AMENDMENTS

The District mistakenly relies on certain provisions of SB 700 as a basis to amend Rules 2020 and 2201. The District ignores other provisions of SB 700 which preserved air districts' rules that regulated agriculture before the effective date of SB 700.

Section 39011.5(b) of the Health & Safety Code mandates that "any district rule or regulation affecting stationary sources on agricultural operations adopted on or before January 1, 2004, is applicable to an agricultural source." The plain language of this provision makes the December 19, 2002 versions of the District's NSR program applicable to agricultural stationary sources.

Further, section 39011.5 does not limit the District's authority here.

Nothing in this section limits the authority of a district to regulate a source, including, but not limited to, a stationary source that is an agricultural source, over which it otherwise has jurisdiction pursuant to . . . any rules or regulations adopted pursuant to that act that were in effect on or before January 1, 2003[.]

Health & Safety Code § 39011.5(c).

Notwithstanding other provisions in SB 700, section 39011.5 specifically requires agricultural sources' compliance with the December 19, 2002 versions of Rules 2020 and 2201.

³The ARB Guidance specifically calls into questions amendments "broadening the scope of exemptions from, or changing the thresholds for applicability of, BACT/LAER, offsets, or other NSR requirements." ARB Guidance at 6.

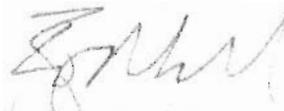
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Nor does SB 700 limit the authority of the District to regulate agricultural sources under the December 19, 2002 versions of Rules 2020 or 2201. The Legislature could not have spoken more clearly on this issue: agricultural sources must comply with the December 19, 2002 versions of Rules 2020 and 2201 and the District has the authority to mandate such compliance.

IV. CONCLUSION

The ARB should hold a hearing on the District's amendments to Rules 2020 and 2201, determine that those amendments violate S.B. 288, and reinstate the pre-existing Rules. Thank you for your time and attention to this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Newell", is written over a light gray rectangular background.

Brent Newell