

## SETTLEMENT AGREEMENT

This Settlement Agreement and General Release (the "Agreement") is made, entered into and executed this 1<sup>st</sup> day of February 2013, by and between SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, its predecessors, successors, assigns, subsidiaries, parents, affiliates, agents, representatives, attorneys, insurers, officers, directors and employees (hereinafter referred to as "DISTRICT"), and GREENACTION FOR HEALTH AND ENVIRONMENTAL JUSTICE (hereinafter collectively referred to as "GREENACTION"), its predecessors, successors, assigns, subsidiaries, parents, affiliates, agents, representatives, attorneys, insurers, officers, directors and employees.

Whereas, the DISTRICT works to continually improve its internal operations and processes, and strives to streamline District operations through optimally utilizing information technology and human resources; and

Whereas, the DISTRICT strives to provide meaningful opportunities for public input and be responsive to all public inquiries; and

Whereas, GREENACTION advocates for meaningful and equal opportunities for public involvement in government decision-making processes for environmental justice communities and other communities, including but not limited to non-English speaking and limited English speaking residents; and

Whereas, GREENACTION and the DISTRICT agreed to work together in a collaborative setting to explore increasing opportunities for meaningful public involvement; and

Whereas, GREENACTION and the DISTRICT acknowledge that the commitments made in this agreement go beyond what is currently required within District regulations and are not specifically enumerated in Title VI of the Civil Rights Act of 1964; and

Whereas, GREENACTION upon signing this agreement agrees to withdraw the Title VI complaint (Docket # 11Rr-09-R9) submitted to the U.S. Environmental Protection Agency in reference to the DISTRICT's actions on the proposed Avenal Power Plant; and

NOW, THEREFORE, in consideration of the covenants, promises, and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, GREENACTION and the DISTRICT agree that the above Recitals are incorporated into this Agreement and further agree as follows:

1. The parties have settled the Title VI Civil Rights complaint (Docket # 11Rr-09-R9) filed by GREENACTION effective with the execution of this agreement. This document constitutes a global, mutual release among all parties (except for the executory provisions hereof), including a waiver of the provisions of Civil Code Section 1542, as to the specific issues relating to the Avenal power plant approval to date.

2. This agreement memorializes a mediated settlement between/among the parties to the Action. Pursuant to the provisions of Evidence Code Section 1123, the parties understand and agree that this settlement agreement, however skeletal, is subject to disclosure once signed by all parties.
3. This agreement may be used as evidence in a subsequent proceeding in which either of the parties alleges a breach of the Agreement.
4. This agreement does not constitute an admission by either party that there has been a violation of any law or regulation.
5. This agreement, including attached Exhibit 1, constitutes the complete understanding between GREENACTION and the DISTRICT. No other promises or agreements shall be binding unless in writing and signed by both parties.
6. Signature on this document is voluntary and is done without coercion, duress, or pressure on the part of either party.
7. The terms of this Mediated Settlement Agreement are as follows:

The District commits to use its best efforts to immediately implement the following actions intended to increase Public Notice and participation in air quality permitting decisions throughout the San Joaquin Valley Air District:

**A. New Initial Project Notification/Request for Comment**

For those project proposals that trigger a Public Comment Notice, APCD will now provide the option to receive short, basic information about the opportunity to provide public comment on a proposal. For the purposes of this agreement these Notices will be referred to as “basic” notices.

All interested parties will continue to receive the full notice package, unless they have opted to receive the basic notice. The full notice package includes the basic notice plus the engineering evaluation of the applicant’s proposal, the bases of any preliminary decisions, and copies of proposed draft permits, if applicable.

- 1) Translation of Basic Notices: All basic notices will be distributed in English and Spanish languages, on a single notice.
- 2) EMAIL to Individuals: APCD will email basic Public Notices to those that have signed up (indicated interest) by one of the location options and/or by facility (noted below in Part B). The basic Public Notice information in the email will be provided in both English and

Spanish. This will include a description of methods to receive additional information in English or Spanish, and to provide written or verbal comments in English or Spanish.

- 3) COMMENT PERIOD: The current comment period is 30 days for proposals that have triggered a Public Notice. APCD will maintain the current practice of extending the comment period by request to address valid concerns as determined by the District.

#### **B. New Database/Listserv**

For all interested parties APCD will now maintain an interested party/community database-listserv. This will provide for anyone to sign up to:

- a) Always receive Public Notice information by email
- b) Have the choice to receive either the basic notice or the full notice package.

This database-listserv will include the ability to sign up for Public Notice information by email for different geographic ranges. The choices will include:

- All District
- Specific Regions

GREENACTION will communicate with its constituency about the availability of this listserv, and will provide information on how to sign up for the basic or full packet Public Notices by email (and the facility specific notices by mail discussed in C, below). Requests to be identified as an interested party through these listserv options must be made through the District's listserv webpage.

#### **C. Facility-specific Notification**

APCD will maintain lists of parties interested in receiving notification of District permitting activities associated with any specific existing District-permitted facility. Interested parties will be able to specify whether they prefer the basic notice or the full notice package, and whether they prefer to receive the notices via email or mail. Requests to be identified as an interested party for a specific facility should be in writing, and may be delivered to the District via mail, email, or in person. The District may drop an individual from the list after three (3) years unless a new request is filed. The District will attempt to notify individuals in advance of the three-year list purge.

#### **D. General Reference Materials**

In order to support public comment on the technical aspects of proposed permits APCD will develop and provide the following general reference materials translated into lay language (in English and Spanish or other languages as requested) and made available online or by mail if requested:

- a. Explanations of what a Human Health Risk Analysis is and how it is conducted
- b. FAQs about common project technical details

**E. Full Packet of Project Information/Request for Comments/Documents and Ongoing Project Communications**

The “full packet” of information about a proposed project developed by APCD currently includes:

- The basic notice
- Complete project compliance analysis and engineering evaluation
- Rationale for approval or denial
- Proposed or final permits if appropriate

This is currently sent to:

- The project applicant
- California Air Resources Board
- Federal EPA
- Any Interested Parties that have requested to receive full packets

APCD currently provides an English and Spanish language summary of these documents upon request.

8. The parties recognize that, despite the District’s best efforts, situations may arise from time to time that affect the District’s ability to fully and/or timely perform its obligations under this Agreement due to force majeure. For purposes of this Agreement, force majeure is defined as any event arising from a mistake or causes beyond the reasonable control of the District that delay or prevent the performance of any obligation under this Agreement despite the District’s best efforts to fulfill the obligation. Force Majeure may include the District’s inability to perform any obligation under this Agreement due to constraints in District’s financial and/or human resources. Performance failures due to force majeure shall not constitute a breach of this Agreement.
9. GREENACTION and the DISTRICT agree to engage in good faith efforts to resolve any disputes arising under this Agreement informally. A dispute shall be considered to have arisen when one Party sends the other Party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. Once a Notice of Dispute is received by a Party, GREENACTION and DISTRICT staff shall meet and confer either in person or telephonically in a good faith attempt to resolve the dispute. If GREENACTION and the DISTRICT cannot resolve the dispute within thirty (30) days from the date of the first meet and confer session, either party may pursue other available remedies.
10. The Effective Date of this Agreement shall be the latest date set forth in the signature lines below.

11. This Agreement may be executed in counterparts, and each of those counterparts shall be deemed an original for all purposes.

## EXHIBIT 1

### **Regarding Public Statements Associated with the Public Involvement Agreement reached between The San Joaquin Valley Unified Air Pollution Control District and Greenaction for Health and Environmental Justice**

The San Joaquin Valley Unified Air Pollution Control District and Greenaction for Health and Environmental Justice agree that they shall not use any language or statements when communicating with non-parties regarding the scope and content of the Public Involvement Agreement other than the text of that Agreement and the following statement:

#### **Joint Public Statement by the San Joaquin Valley Air Pollution Control District and Greenaction for Health and Environmental Justice**

On October 19, 2006, the San Joaquin Valley Unified Air Pollution Control District (District) Governing Board adopted the District's core values that guide District activities in fulfilling the agency's mission. Two of these core values are (1) open and transparent public processes ("the District shall continue to provide meaningful opportunities for public input and be responsive to all public inquiries") and (2) continuous improvement ("the District works to continually improve its internal operations and processes, and strives to streamline District operations through optimally utilizing information technology and human resources"). The District believes that the agency already complies with all applicable laws including those of Title VI. Greenaction for Health and Environmental Justice (Greenaction) is grateful for the District's openness and willingness to consider new ideas solely due to the District's own core values as stated above. The District has been involved for some time in an effort to enhance public involvement in agency decision-making relating to permits issued by the District. Towards that end, and consistent with the above mentioned core values, the District has been soliciting input from a number of stakeholders including the regulated businesses and community organizations which led to the formulation of the actions enumerated under Section 7 of the attached agreement. Notwithstanding the Title VI complaints filed by Greenaction, the District was on track to implement these actions. Furthermore, although not covered by the terms of the attached agreement, the District intends to continue a public process to solicit input from business representatives, community members, and environmental justice organizations on additional measures to enhance public participation.

As an organization founded and led by grassroots community leaders from low-income, working class and communities of color impacted by pollution, Greenaction is dedicated to carrying out its mission to protect community health and achieve environmental justice for all. To achieve environmental justice, Greenaction advocates for increasing meaningful public involvement in governmental decision-making for all people, regardless of their race, economic status or language spoken.

Over the past four months, the District and Greenaction have worked together to enhance meaningful public involvement in the District's permit processing actions. The District and Greenaction are pleased with the results of this process and believe it meets the mutual interest of both parties in enhancing public participation.

**GREENACTION FOR HEALTH  
AND ENVIRONMENTAL JUSTICE**

By: \_\_\_\_\_  
Bradley Angel  
Executive Director

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Maricela Mares-Alatorre

Dated: \_\_\_\_\_

**SAN JOAQUIN VALLEY UNIFIED AIR  
POLLUTION CONTROL DISTRICT**

By:   
Seyed Sadredin  
Executive Director / APCO

Dated: 2/1/13

Approved as to legal form:

By:   
Catherine T. Redmond  
District Counsel

Dated: 2.1.13

**GREENACTION FOR HEALTH  
AND ENVIRONMENTAL JUSTICE**

By: Bradley Angel  
Bradley Angel  
Executive Director

Dated: 2/1/13

By: \_\_\_\_\_  
Maricela Mares-Alatorre

Dated: \_\_\_\_\_

**SAN JOAQUIN VALLEY UNIFIED AIR  
POLLUTION CONTROL DISTRICT**

By: \_\_\_\_\_  
Seyed Sadredin  
Executive Director / APCO

Dated: \_\_\_\_\_

Approved as to legal form:

By: \_\_\_\_\_  
Catherine T. Redmond  
District Counsel

Dated: \_\_\_\_\_



**GREENACTION FOR HEALTH  
AND ENVIRONMENTAL JUSTICE**

**SAN JOAQUIN VALLEY UNIFIED AIR  
POLLUTION CONTROL DISTRICT**

By: \_\_\_\_\_  
Bradley Angel  
Executive Director

By: \_\_\_\_\_  
Seyed Sadredin  
Executive Director / APCO

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: Maricela Mares-Álatorre  
Maricela Mares-Álatorre

Dated: 2/1/13

Approved as to legal form:

By: \_\_\_\_\_  
Catherine T. Redmond  
District Counsel

Dated: \_\_\_\_\_