CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Diego Regional Water Quality Control Board

February 8, 2016

VIA E-MAIL ONLY

S. Wayne Rosenbaum, Partner
Opper & Varco, LLP
220 Broadway, Suite 1900
San Diego, California 92101
swr@envirolawyer.com

Laura Drabandt, Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Laura.Drabandt@waterboards.ca.gov

Subject: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2015-0110, SAN ALTOS-LEMON GROVE, LLC; CHAIR'S RULING ON PROSECUTION TEAM'S FEBRUARY 2, 2016, REQUEST TO SUBMIT ADDITIONAL EVIDENCE

Mr. Rosenbaum and Ms. Drabandt:

The purpose of this letter is to transmit the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Chair's preliminary rulings on the San Diego Water Board Prosecution Team's request to submit additional evidence in the record for Administrative Civil Liability Complaint (ACLC) No. R9-2015-0110 (San Altos–Lemon Grove, LLC (San Altos or Discharger)).

The Prosecution Team submitted its request on February 2, 2016. San Altos opposed the request on February 2. The San Diego Water Board's Advisory Team requested that the Prosecution Team submit its proposed evidence together with a response to San Altos's opposition by noon on February 4 and directed the Prosecution Team to explain why the Discharger will not be prejudiced by the submittal, why the evidence was not submitted earlier, and to confirm that the evidence was not submitted to support changes to the complaint. The Prosecution Team submitted such a response on February 4. San Altos submitted further objection to the Prosecution Team's request via e-mail on February 3. Although on February 4 the Advisory Team extended the deadline for San Altos to submit its case-in-chief by one week to February 10, San Altos submitted its case-in-chief at close of business February 3. The Technical and Legal Analysis and supporting Declaration of S. Wayne Rosenbaum in San Altos's case-in-

chief included additional objection and legal argument opposing the Prosecution Team's request. As provided below, San Altos has a further opportunity to respond to the Prosecution Team's request with its rebuttal submittal.

The following evidence is provisionally accepted:

1. To the extent the Prosecution Team's proposed evidence was submitted by the Discharger on February 3, such proposed evidence is accepted as part of the record. Such evidence includes, but may not be limited to, the Prosecution Team's proposed Exhibit No. 36, Exhibit No. 37 G and H, and Exhibit No. 41.

2. To the extent the Prosecution Team's proposed evidence is better quality (larger or clearer) copies of photographs that are already in the record through other submittals [e.g., Exhibit Nos. 32 and 39], it is accepted as part of the record.

3. It appears to the Advisory Team that some of the Prosecution Team's proposed evidence may actually be rebuttal evidence, submitted early in anticipation of the Discharger's arguments based on matters the Discharger raised during discovery. In that case, the submission of this evidence before the deadline for rebuttal evidence works to the Discharger's advantage. To the extent the Prosecution Team can demonstrate that its other proposed evidence is properly characterized as rebuttal evidence, it will be accepted as part of the record.

4. Other evidence even if not properly characterized as rebuttal if it became available to the Prosecution Team through discovery after its deadline for submitting the case in chief on December 4, 2015.

The following evidence is excluded, pending possible resubmittal as rebuttal evidence:

Exhibit No. 33 [San Diego Water Board photographs not already in the record].

The Parties should include with their rebuttal submittals any legal argument in support of or opposition to the proposed evidence being accepted into the record and should include any evidentiary objections to specific pieces of proposed evidence. Objections to any evidence on the basis of lack of foundation should be included with other evidentiary objections. Upon resolution of evidentiary objections, the Chair will issue final rulings.

The Parties originally proposed that rebuttal testimony and evidence be submitted on February 23. The Final Hearing Procedures/Schedule established February 17 as the rebuttal deadline. **The February 17 deadline is extended to February 23** to allow more time for the Parties to prepare rebuttal testimony and evidence and to submit specific evidentiary objections and related legal argument. The Hearing Procedures/Schedule will be modified to reflect this change.

No additional discovery will be allowed. Additional discovery for the purpose of responding to evidence the Discharger adduced during discovery is not warranted. If Prosecution Team Exhibit No. 33 is allowed into the record, the Discharger will have the opportunity to cross-examine staff about it at the hearing.

Sincerely,

Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board

cc: David W. Gibson, San Diego Water Board Executive Officer [Via E-mail Only]

James G. Smith, San Diego Water Board Asst. Executive Officer [Via E-mail Only]

Adriana Nunez, Staff Counsel, Office of Chief Counsel, State Water Resources Control Board [Via E-mail Only]

David De Vries, Principal Planner, City of Lemon Grove [Via E-mail Only]

Ben Carrier, Deputy City Attorney, City of San Diego [Via E-mail Only]

Linda Beresford, Esq.
Josh Rosenbaum
Opper & Varco, LLP [Via E-mail Only]