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SECRETARY FOR
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San Diego Regional Water Quality Control Board

December 4, 2015

VIA E-MAIL ONLY

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Subject: ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2015-0110, SAN ALTOS-LEMON GROVE, LLC

Mr. Rosenbaum and Ms. Drabandt:

The purpose of this letter is to rule on objections submitted by San Altos–Lemon Grove, LLC (San Altos) in correspondence dated November 20 and 25, 2015, and to distribute final hearing procedures for Administrative Civil Liability Complaint (ACLC) No. R9-2015-0110, issued by the San Diego Regional Water Quality Control Board's (San Diego Water Board) Prosecution Team to San Altos on October 19, 2015. The prehearing rulings herein are by Executive Officer David Gibson, head of the Advisory Team, acting as the San Diego Water Board Chair's designee for prehearing matters in the above ACLC.¹ San Altos's objections are to the proposed hearing procedures, including proposed procedural schedule, distributed by the Prosecution Team on November 13, 2015. The rulings are as follows.

1. San Altos objects to the Prosecution Team's proposed deadlines for submitting objections to the draft hearing procedures and for submitting and opposing requests for designation as a party. The Advisory Team extended these

¹ See Mem. from Michael Lauffer, State Water Resources Control Board, to California Regional Water Board Members (Sept. 30, 2014) at http://www.waterboards.ca.gov/board_reference/2014fall/docs/roles_responsibilities_of_regional_water_board_members_and_ex_officers.pdf.

deadlines by email dated November 23, 2015. San Altos has submitted two sets of objections and written requests that the Cities of Lemon Grove and San Diego be designated as parties to the ACLC proceeding. It does not appear San Altos requests further extension of these deadlines and no further extension is necessary.

2. San Altos objects to the language in the draft hearing procedures regarding deemed waiver of procedures per section 648(d) of title 23 of the California Code of Regulations.² As provided in the proposed and final hearing procedures, section 648(b) is applicable in its entirety to this proceeding. Section 648(b) specifically provides that chapter 4.5 of the Government Code (with exceptions noted in section 648(c)), Evidence Code sections 801-805 and Government Code section 11513 are also applicable to this proceeding.
3. San Altos requests that its proposed schedule(s) be substituted for the Prosecution Team's November 13 proposed schedule. The Advisory Team has considered both proposed schedules and attaches the final hearing procedures for this proceeding. The final hearing procedures provide reasonable intervals between milestones leading up to the evidentiary hearing, and, for the reasons discussed below, do not add new milestones proposed by San Altos.
4. The final hearing procedures do not add milestones and associated deadlines regarding settlement discussions (e.g., meet and confer, settlement discussions and settlement briefs) as proposed by San Altos. The designated parties may engage in settlement discussions in parallel with the procedural schedule issued for the hearing. If at some point the parties jointly inform the Advisory Team that they have finalized a settlement agreement for San Diego Water Board consideration, they may submit a joint request to the Advisory Team to suspend the hearing schedule in favor of considering an order approving a settlement agreement.
5. The final hearing procedures do not add deadlines for issuance of subpoenas or for discovery cut-off. The attorney of record for designated parties may issue subpoenas for attendance at hearing or for deposition in accordance with Article 11 of Chapter 4.5 of the Government Code, commencing with section 11450.05. Attached is a form subpoena for designated party use. The designated parties are advised that absent a change in the final hearing schedule, deposition transcripts must be submitted in accordance with otherwise applicable written submittal deadlines.
6. San Altos requests that the draft hearing procedures be modified to allow for submittal of written testimony. The draft hearing procedures do not preclude submittal of written testimony. However, any written testimony must be

² All regulatory references herein are to title 23 of the California Code of Regulations unless otherwise noted.

submitted in accordance with deadlines for submitting written materials established in the hearing procedures. The designated parties are advised that any witness submitting written testimony must appear in person at the hearing to affirm the truth of the written testimony.

7. San Altos requests that the draft hearing procedures be modified and that the Advisory Team designate the Cities of Lemon Grove and San Diego as parties to the proceeding. The proposed hearing procedures appropriately allow only a person other than an already designated party to provide specified information supporting their request to participate as a party to the proceeding. The Advisory Team did not receive any requests for designation from non-designated parties and notes that the City of San Diego objects to being designated. (See November 23, 2015 e-mail from Ben Carrier on behalf of the City of San Diego.) The Cities of Lemon Grove and San Diego may participate as interested persons with rights as indicated in the hearing procedures and applicable regulations.³
8. San Altos objects to lack of specified review procedures for prehearing rulings. If San Altos is dissatisfied with prehearing rulings herein, San Altos may renew objections to the San Diego Water Board Chair upon his return to the United States mid-December and may renew objections to the full Board at the administrative hearing to consider the ACLC.
9. San Altos requests that each designated party be allowed four hours in which to present evidence, cross examine witnesses and make closing statements. The Advisory Team agrees that the parties should have more than 20 minutes each at the evidentiary hearing. At this time, the final hearing procedures allow for 90 minutes per party, inclusive of presentation of evidence, cross-examination and opening and closing statements. The hearing procedures specify that the Advisory Team may modify the procedures to allow more hearing time in advance of the hearing and the San Diego Water Board may, at its discretion, allow more time upon request at the hearing. Decisions to grant more time will ordinarily be based on demonstration of good cause for additional time.

Sincerely,



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

Attachments and cc's on next page

³ If it becomes apparent during a hearing that it may be appropriate to have a complaint directed at additional entities, the San Diego Water Board is free to direct the Prosecution Team to consider reissuing a complaint.

