

1 **OPPER & VARCO, LLP**
2 S. WAYNE ROSENBAUM (Bar No. 182456)
3 LINDA C. BERESFORD (Bar No. 199145)
4 225 BROADWAY, SUITE 1900
5 SAN DIEGO, CALIFORNIA 92101
6 TELEPHONE: 619.231.5858
7 FACSIMILE: 619.231.5853

8 ATTORNEYS FOR SAN ALTOS – LEMON GROVE, LLC

9 **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**
10 **SAN DIEGO REGION**

11 IN THE MATTER OF:

12 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
13 NO. R9-2015-0110
14 AGAINST SAN ALTOS – LEMON GROVE, LLC

15) **DECLARATION OF S. WAYNE**
16) **ROSENBAUM IN SUPPORT OF SAN**
17) **ALTOS – LEMON GROVE, LLC’S**
18) **EVIDENTIARY OBJECTIONS AND**
19) **REBUTTAL EVIDENCE**
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17 I, S. WAYNE ROSENBAUM, hereby declare as follows:

18 1. I am a Partner with the law firm of Opper & Varco, and represent San Altos –
19 Lemon Grove, LLC (“San Altos”) regarding the Administrative Civil Liability Complaint
20 (“ACLC”) No. R9-2015-0110 issued on October 19, 2015.

21 2. Attached as Exhibit A to this declaration is a true and correct copy of the
22 Prosecution’s Evidence and Policy Statements, ACL Complaint No. R9-2015-0110, dated
23 December 4, 2015.

24 3. In reliance on the Prosecution’s Evidence and Policy Statements, San Altos issued
25 subpoenas, collected hundreds (perhaps thousands) of documents, and conducted depositions of
26 nine witnesses. The purpose of this discovery was to determine the basis of the Prosecution’s
27 claims against San Altos so that it could defend against the claims. In order to do this, counsel
28

1 for San Altos spent hundreds of hours and tens of thousands of dollars to conduct discovery and
2 prepare its Legal and Technical Arguments and Analysis and supporting evidence, which, up
3 until 4:32 p.m. on February 2, San Altos was required to submit on February 3, 2016.

4 4. Attached as Exhibit B to this declaration is a true and correct copy of an e-mail
5 from Laura Drabandt, a member of the Prosecution Team, dated February 2, 2016, asking to
6 supplement the Prosecution's evidence.

7 5. Attached as Exhibit C to this declaration is a true and correct copy of an e-mail
8 that I sent to Catherine Hagan of the Advisory Team on February 2, 2016, objecting to the
9 Prosecution's request to submit supplemental evidence. This e-mail further states that if the
10 Advisory Team allowed the Prosecution Team to submit its proposed evidence, San Altos
11 requested a reasonable opportunity to review the evidence and provide objections.

12 6. Attached as Exhibit D to this declaration is a true and correct copy of an e-mail
13 from Catherine Hagan of the Advisory Team dated February 2, 2016, 4:32 p.m., allowing the
14 Prosecution Team to submit its proposed evidence. This e-mail did not include an opportunity
15 for San Altos to provide a response to the Prosecution Team's proposed evidence; the e-mail
16 states that, "The Advisory Team will rule on the Prosecution Team's request as soon as
17 practicable after receiving the Prosecution Team's response."

18 7. Attached as Exhibit E to this declaration is a true and correct copy of an e-mail
19 that I sent to Catherine Hagan on February 3 raising procedural concerns and stating that an
20 extension of one week for San Altos to submit its Legal and Technical Arguments and Analysis
21 was insufficient for a variety of reasons, including the fact that San Altos had not yet seen the
22 proposed evidence and the Advisory Team likely would not rule on whether the proposed
23 evidence would be admissible until only one or two business days before the February 10
24 submission date, making it impossible to address the evidence in its submission.

25 8. Attached as Exhibit F to this declaration is a true and correct copy of the brief
26 submitted by the Prosecution on February 4, 2016, seeking to submit its supplemental evidence.

27 9. Attached as Exhibit G to this declaration are true and correct copy of an e-mail
28 from Malik Tamimi of the City of Lemon Grove to Wayne Chiu of the San Diego Regional

1 Water Quality Control Board, dated September 24, 2015. This e-mail transmits documents and
2 three photographs. The three photographs are included in the 70 photographs that the
3 Prosecution seeks to submit as Exhibit 40.

4 10. Attached as Exhibit H to this declaration is a true and correct copy of e-mail
5 exchanged between Malik Tamimi of the City of Lemon Grove and Frank Melbourn of the San
6 Diego Regional Water Quality Control Board between September 23 – 28, 2015 in which Mr.
7 Melbourn is asking for photographs.

8 11. Attached as Exhibit I to this declaration is a true and correct copy of an e-mail
9 that I sent to Catherine Hagan on February 8, 2016 asking to be able to respond to the
10 Prosecution's proposed evidence by February 11, 2016. I received no specific response to this
11 request.

12 12. Attached as Exhibit J to this declaration is a true and correct copy of an e-mail
13 that I received from Catherine Hagan on February 8, 2016 which attached a copy of the Chair's
14 Rulings on the Prosecution's proposed evidence and a new letter from the Advisory Team setting
15 forth new Hearing Procedure dates. One of the dates set in the Advisory Team's letter was a
16 deadline of February 17, 2016 to submit a letter requesting a pre-hearing conference and
17 identifying the issues to be discussed during that conference. San Altos submitted a letter
18 requesting such a conference and identifying its issues on February 17, 2016.

19 13. In its proposed evidence submitted on February 4, 2016, the Prosecution seeks to
20 submit 5 photographs allegedly taken by representatives of San Altos. Attached as Exhibit K to
21 this declaration are true and correct copies of two e-mails from Ben Anderson to Wayne Chiu
22 dated December 19, 2014 in which Mr. Anderson conveys multiple photographs. In the e-mail
23 with the time of 4:53 p.m., Mr. Anderson conveys 4 of the 5 photographs which the Prosecution
24 seeks to admit as Exhibit 38. In the e-mail with the time of 5:06 p.m., the fifth photograph which
25 the Prosecution seeks to admit in Exhibit 38 was transmitted by this e-mail.

26 14. In its proposed evidence submitted on February 4, 2016, the Prosecution seeks to
27 submit 6 QSP reports dated December 2, 3, 4, 5, 10, and 15, 2014. Attached as Exhibit L to this
28 declaration is a true and correct copy of an e-mail from Ben Anderson to Wayne Chiu dated

1 December 19, 2014 in which Mr. Anderson indicates he is conveying these QSP reports to
2 RWQCB staff.

3 15. Attached to this declaration at Exhibit M is a true and correct copy of an e-mail
4 sent by Laura Drabandt on behalf of the Prosecution dated February 22, 2016 identifying the
5 issues that the Prosecution wants to discuss during the pre-hearing conference.

6 16. Attached to this declaration at Exhibit N are seven photographs with exemplars of
7 construction sites which San Altos intends to introduce at the hearing to explore the
8 identification of "active" and "inactive" construction areas.

9 I declare under penalty of perjury under the laws of the state of California that the
10 foregoing is true and correct.

11 Executed this 23rd day of February, 2016 at San Diego, California.

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14 S. Wayne Rosenbaum
15 Attorney for San Altos – Valencia Hills, LLC
16 Oppen & Varco, LLP
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EXHIBIT A

San Diego Regional Water Quality Control Board

December 4, 2015

Catherine Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
2375 Northside Drive, Suite 100
San Diego, California 92108-0002
chagan@waterboards.ca.gov

In reply refer to: SM-828060:FMelbourn

Evidence and Policy Statements, ACL Complaint No. R9-2015-0110

In accordance with the Hearing Procedure for Administrative Civil Liability (ACL) Complaint No. R9-2015-0110, issued to San Altos-Lemon Grove, LLC, the Prosecution Team submits the following information:

1. ACL Complaint No. R9-2015-0110, its technical analysis, and all attachments (ACL Complaint package) thereto;¹
2. United States Postal Service Domestic Return Receipt No. 7011 0470 0002 8952 5263 proving service via certified mail of the ACL Complaint package to Ben C. Anderson, Legally Responsible Person for San Altos-Lemon Grove, LLC, attached and marked as Exhibit No. 30;
3. California Stormwater Quality Association (CASQA) Construction Storm Water Best Management Practice (BMP) EC-1 Scheduling, attached and marked as Exhibit No. 31; and
4. State Water Resources Control Board (State Board), Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System, General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities, as amended. The document is incorporated by reference and can be downloaded from the State Board's website at http://www.swrcb.ca.gov/water_issues/programs/stormwater/constpermits.shtml.

Legal and Technical Arguments or Analysis

This information was provided with the ACL Complaint package.

¹ The ACL Complaint package was provided to the Advisory Team and San Altos-Lemon Grove, LLC on October 19, 2015.

Witnesses

The following people may be used as Prosecution Team witnesses:

Name	Subject	Estimated Testimony Time	Qualifications
Wayne Chiu, San Diego Water Board	Technical and Administrative analysis of San Diego Water Board's regulatory oversight of the site including inspections (12/15/2014, 05/13/2015) and issuance of Notice of Violation No. R9-2014-0153.	5 minutes	Water Resource Control Engineer, Storm Water Management Unit, P.E., ² M.S. ³
Chiara Clemente, San Diego Water Board	Administrative analysis of San Diego Water Board's regulatory oversight of the site.	None. Available upon request during ACL Hearing.	Senior Environmental Scientist, Supervisor of the Compliance Assurance Unit.
Jeremy Haas, San Diego Water Board	Administrative analysis of San Diego Water Board's regulatory oversight of the site.	None. Available upon request during ACL Hearing.	Environmental Program Manager and Chief of the Healthy Waters Branch.
Frank Melbourn, San Diego Water Board	Technical and Administrative analysis of San Diego Water Board's regulatory oversight of the site including inspections (05/08/2015 & 05/13/2015, 05/15/2015).	15 minutes	Water Resource Control Engineer, Compliance Assurance Unit, P.E.
Madalene Ransom, State Board	Economic Benefit analysis.	None. Available upon request during ACL Hearing.	Economist
James Smith, San Diego Water Board	Administrative analysis of San Diego Water Board's regulatory oversight of the site.	None. Available upon request during ACL Hearing.	Assistant Executive Officer, Head of the Prosecution Team.

² Professional Engineer (P.E.).

³ Master of Science (M.S.) degree.

Leon Firsh, City of La Mesa	City of Lemon Grove's enforcement response to non-compliance at the site; including citations (12/11/2014 & 12/15/2014).	None. Available upon request during ACL Hearing.	City of Lemon Grove's Public Works Director and City Engineer until March 24, 2015. P.E.
Gary Harper, City of Lemon Grove	Inspected site and issued Stop Work/Notice of Violations (12/02/2014 & 12/04/2014); Inspections (12/08/2014 & 03/24/2015); Correct Work Notice (12/09/2014); Citations (09/15/2015 & 10/05/2015).	None. Available upon request during ACL Hearing.	Engineering Inspector.
John Draminski, D-Max Engineering, Inc.	Inspected site and wrote report related to site inspection (03/01/2015).	None. Available upon request during ACL Hearing.	Staff Engineer, E.I.T. ⁴
Tad Nakatani, D-Max Engineering, Inc.	Inspected site and wrote reports related to site inspections (12/09/2014, 12/11/2014, 12/12/2014, 12/16/2014, 12/17/2014, 12/31/2014, 01/06/2015, 01/14/2015, 03/18/2015, & 09/15/2015).	None. Available upon request during ACL Hearing.	Storm Water Inspector, M.S., CPSWQ, ⁵ QSD ⁶ /P ⁷
Brian Nemerow, D-Max Engineering, Inc.	Inspected site and wrote report related to site inspection (12/17/2014).	None. Available upon request during ACL Hearing.	Staff Scientist
John Quenzer, D-Max Engineering, Inc.	Inspected site and wrote report related to site inspections (12/12/2014, & 12/31/2014).	None. Available upon request during ACL Hearing.	Senior Project Scientist, M.S., CPSWQ, QSD/P

⁴ Engineer In Training (E.I.T.).

⁵ Certified Professional in Storm Water Quality (CPSWQ).

⁶ Qualified SWPPP (Storm Water Pollution Prevention Plan) Developer (QSD).

⁷ Qualified SWPPP Practitioner (QSP).

Catherine Hagan
Office of Chief Counsel
State Water Resources Control Board
ACL Complaint No. R9-2015-0110

- 4 -

December 4, 2015

In the subject line of any response, please include the requested "**In reply refer to:**" information located in the heading of this letter. For questions pertaining to the subject matter, please contact me at (619) 521-3372 or fmelbourn@waterboards.ca.gov.

Respectfully,



FRANK MELBOURN
Water Resource Control Engineer

Enclosures:

1. Exhibit No. 30: United States Postal Service Domestic Return Receipt No. 7011 0470 0002 8952 5263
2. Exhibit No. 31: CASQA Construction Storm Water BMP EC-1 Scheduling

cc with attachments:

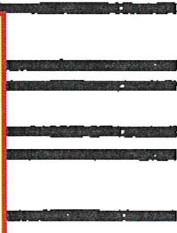
Ben C. Anderson, San Altos-Lemon Grove, LLC, kimberlyv@bcadevelopment.com
Wayne Chiu, San Diego Water Board, wchiu@waterboards.ca.gov
Chiara Clemente, San Diego Water Board, cclemente@waterboards.ca.gov
Laura Drabandt, State Water Resources Control Board, ldrabandt@waterboards.ca.gov
Jeremy Haas, San Diego Water Board, jhaas@waterboards.ca.gov
Deborah Jayne, San Diego Water Board, djayne@waterboards.ca.gov
S. Wayne Rosenbaum, Oppen & Varco, LLP, swr@envirolawyer.com
James Smith, San Diego Water Board, jsmith@waterboards.ca.gov
Malik Tamimi, City of Lemon Grove, mtamimi@lemongrove.ca.gov
Laurie Walsh, San Diego Water Board, lwalsh@waterboards.ca.gov

SMARTS:

Place ID: SM-828060
WDID No: 9 37C369143
Enforcement ID: 420236

Exhibit No. 30

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

23 OCT '05

PM 11

• Sender: Please print your name, address, and ZIP+4 in this box •

SM-828060; FMELBOURN

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

SUITE 100

2375 NORTHSIDE DR.

SAN DIEGO CA 92108-2700

QH # 2040019



SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BEN C. ANDERSON
 SAN ALTON LEMON GROVE, LLC
 SUITE 22500
 5780 FLEET ST
 CARLSBAD, CA 92008

2. Article Number
 (Transfer from service label)

53

7011 0470 0002 8952 5263

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Carolee Westbran

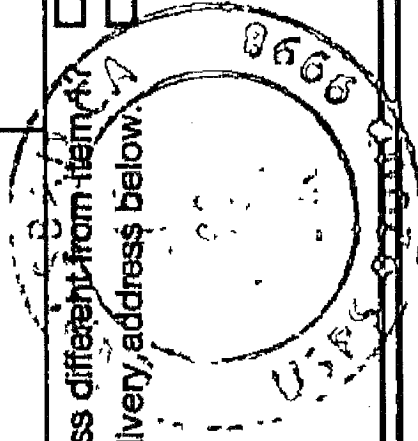
- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?
 If YES, enter delivery address below.

- ☐ Yes
- ☐ No



3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

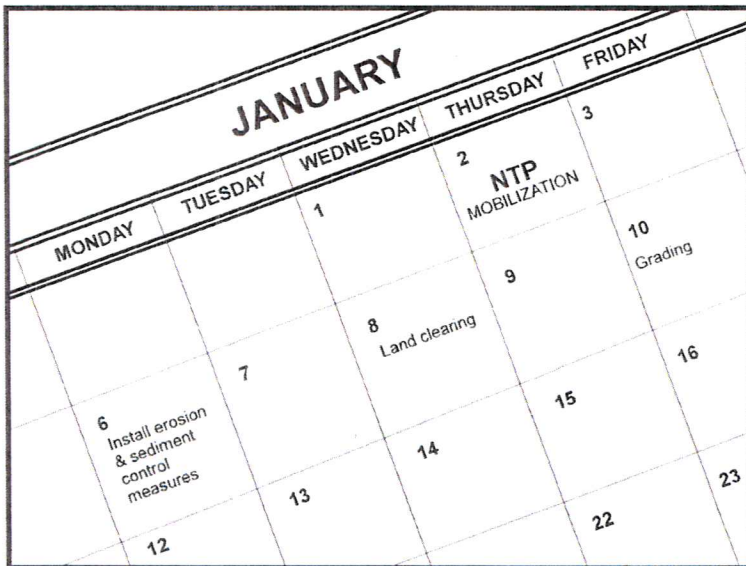
☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

- ☐ Yes

Scheduling

EC-1



Description and Purpose

Scheduling is the development of a written plan that includes sequencing of construction activities and the implementation of BMPs such as erosion control and sediment control while taking local climate (rainfall, wind, etc.) into consideration. The purpose is to reduce the amount and duration of soil exposed to erosion by wind, rain, runoff, and vehicle tracking, and to perform the construction activities and control practices in accordance with the planned schedule.

Suitable Applications

Proper sequencing of construction activities to reduce erosion potential should be incorporated into the schedule of every construction project especially during rainy season. Use of other, more costly yet less effective, erosion and sediment control BMPs may often be reduced through proper construction sequencing.

Limitations

- Environmental constraints such as nesting season prohibitions reduce the full capabilities of this BMP.

Implementation

- Avoid rainy periods. Schedule major grading operations during dry months when practical. Allow enough time before rainfall begins to stabilize the soil with vegetation or physical means or to install sediment trapping devices.
- Plan the project and develop a schedule showing each phase

Categories

EC	Erosion Control	<input checked="" type="checkbox"/>
SE	Sediment Control	<input checked="" type="checkbox"/>
TC	Tracking Control	<input checked="" type="checkbox"/>
WE	Wind Erosion Control	<input checked="" type="checkbox"/>
NS	Non-Stormwater Management Control	
WM	Waste Management and Materials Pollution Control	

Legend:

- ☒ Primary Objective
- ☒ Secondary Objective

Targeted Constituents

Sediment	<input checked="" type="checkbox"/>
Nutrients	
Trash	
Metals	
Bacteria	
Oil and Grease	
Organics	

Potential Alternatives

None



of construction. Clearly show how the rainy season relates to soil disturbing and re-stabilization activities. Incorporate the construction schedule into the SWPPP.

- Include on the schedule, details on the rainy season implementation and deployment of:
 - Erosion control BMPs
 - Sediment control BMPs
 - Tracking control BMPs
 - Wind erosion control BMPs
 - Non-stormwater BMPs
 - Waste management and materials pollution control BMPs
- Include dates for activities that may require non-stormwater discharges such as dewatering, sawcutting, grinding, drilling, boring, crushing, blasting, painting, hydro-demolition, mortar mixing, pavement cleaning, etc.
- Work out the sequencing and timetable for the start and completion of each item such as site clearing and grubbing, grading, excavation, paving, foundation pouring utilities installation, etc., to minimize the active construction area during the rainy season.
 - Sequence trenching activities so that most open portions are closed before new trenching begins.
 - Incorporate staged seeding and re-vegetation of graded slopes as work progresses.
 - Schedule establishment of permanent vegetation during appropriate planting time for specified vegetation.
- Non-active areas should be stabilized as soon as practical after the cessation of soil disturbing activities or one day prior to the onset of precipitation.
- Monitor the weather forecast for rainfall.
- When rainfall is predicted, adjust the construction schedule to allow the implementation of soil stabilization and sediment treatment controls on all disturbed areas prior to the onset of rain.
- Be prepared year round to deploy erosion control and sediment control BMPs. Erosion may be caused during dry seasons by un-seasonal rainfall, wind, and vehicle tracking. Keep the site stabilized year round, and retain and maintain rainy season sediment trapping devices in operational condition.
- Apply permanent erosion control to areas deemed substantially complete during the project's defined seeding window.

Costs

Construction scheduling to reduce erosion may increase other construction costs due to reduced economies of scale in performing site grading. The cost effectiveness of scheduling techniques should be compared with the other less effective erosion and sedimentation controls to achieve a cost effective balance.

Inspection and Maintenance

- Verify that work is progressing in accordance with the schedule. If progress deviates, take corrective actions.
- Amend the schedule when changes are warranted.
- Amend the schedule prior to the rainy season to show updated information on the deployment and implementation of construction site BMPs.

References

Stormwater Quality Handbooks Construction Site Best Management Practices (BMPs) Manual, State of California Department of Transportation (Caltrans), November 2000.

Stormwater Management for Construction Activities Developing Pollution Prevention Plans and Best Management Practices (EPA 832-R-92-005), U.S. Environmental Protection Agency, Office of Water, September 1992.

EXHIBIT B

From: Drabandt, Laura@Waterboards <Laura.Drabandt@waterboards.ca.gov>
Sent: Tuesday, February 02, 2016 9:25 AM
To: Hagan, Catherine@Waterboards; Wayne Rosenbaum
Cc: Linda Beresford; 'Josh Rosenbaum' (jtrosenb@gmail.com); Boyers, David@Waterboards; Clemente, Chiara@Waterboards; Melbourn, Frank@Waterboards
Subject: ACL R9-2015-0110 Request to Submit Additional Evidence - San Altos Lemon Grove, LLC

Dear Ms. Hagan,

As you are already aware, the attorneys for Discharger San Altos Lemon Grove, LLC, have deposed San Diego Regional Board staff, along with City of Lemon Grove staff and their subcontractor's employees in preparation for the hearing on this ACL now scheduled for March 9, 2016. As a result of these depositions, the Prosecution Team is requesting to supplement the evidence already submitted with additional photos and reports, rainfall data, and better quality copies of some photos already in evidence.

The Discharger's attorneys subpoenaed documents from the City of Lemon Grove staff and D-Max Engineering, Inc., employees who inspected the site on behalf of the City. The City's document production included numerous photos of the site that were not previously in Regional Board staff's possession. The Prosecution now seeks to include 75 photos from the City. Both parties have possessed these photos since late December.

We also seek to admit six reports from the Discharger's contracted Qualified Stormwater Professional (QSP) that contain additional photos of the site and weather information; a memo from D-Max Engineering describing a site visit in May; City inspector notes and a letter from December 2014; notes from the Discharger's BMP walk in January 2015; the Discharger's NOV Response; and the site's Storm Water Pollution Prevention Plan (SWPPP). The Discharger has possessed these items since before the complaint was issued. The Prosecution also asks to admit rainfall data from nearby NOAA stations and 29 more photos taken by Regional Board staff to facilitate discussion on specific topics that arose during the depositions. Finally, we seek to submit full-sized copies of 32 photos already contained in the Exhibits submitted on December 4, 2015, and one in the Technical Analysis for easier use at the hearing.

The Discharger's evidence submittal is due this Wednesday, February 3. We can provide two hard copies and one electronic copy of the information to you and an electronic copy to the Discharger on the same day (we can also provide a hard copy to the Discharger's attorneys if they would like one). The Discharger would have until February 17 to rebut any of the evidence. If there are any objections to the new evidence, we will agree to any date before or by February 17 to accommodate the Advisory Team to make any necessary rulings on it.

Thank you for your consideration,
Laura Drabandt
Attorney for the Prosecution

*Laura J. Drabandt, Staff Counsel III
Office of Enforcement
State Water Resources Control Board
1001 I Street, P.O. Box 100
Sacramento, CA 95812
(916) 341-5180*

EXHIBIT C

From: Wayne Rosenbaum
Sent: Tuesday, February 02, 2016 1:49 PM
To: Hagan, Catherine@Waterboards
Cc: Linda Beresford; 'Josh Rosenbaum' (jtroseb@gmail.com); Boyers, David@Waterboards; Clemente, Chiara@Waterboards; Melbourn, Frank@Waterboards; Drabandt, Laura@Waterboards
Subject: ACL R9-2015-0110 Opposition to Request to Submit Additional Evidence - San Altos Lemon Grove, LLC

Dear Ms. Hagan,

San Altos strenuously objects to the Prosecution's request to submit additional evidence at this late date. Submission of surprise evidence contemporaneously with the requirement for San Altos to submit its opening brief and evidence is a gross violation of due process and a clear violation of the State Water Board's Water Quality Enforcement Policy which mandates that enforcement actions be "firm, fair and consistent." If the Prosecution wishes to amend its complaint or supplement the evidence it relies on to support the complaint at this late date it must be required to adhere to one of the three options below.

The Prosecution seeks to introduce a raft of new evidence including:

- Seventy five additional photos allegedly taken by the City of Lemon Grove
- Six reports from the Discharger's contracted Qualified Stormwater Professional (QSP) that contain additional photos of the site and weather information;
- A memo from D-Max Engineering describing a site visit in May;
- City inspector notes and a letter from December 2014;
- Notes from the Discharger's BMP walk in January 2015;
- The Discharger's NOV Response; and the site's Storm Water Pollution Prevention Plan (SWPPP);
- Rainfall data from nearby NOAA stations;
- Twenty nine more photos taken by Regional Board staff; and
- Full-sized copies of 32 photos already contained in the Exhibits

First, the submission of this evidence is improper. The Prosecution spent 200 hours drafting its complaint and had over a month to collect and submit its evidence following the issuance of the Complaint. The Prosecution had a full and fair opportunity to take its own depositions, subpoena documents, and collect the evidence on which it intended to rely. It chose not to do so. Furthermore, the Prosecution had either possession of or access to many (if not all) of these documents before December 4, 2015, including the Discharger's NOV Response, the site Storm Water Pollution prevention Plan, rainfall data from nearby NOAA stations, all of the

photos taken by Regional Board staff, or full-sized copies of any photos. The fact that both parties may have possessed these additional documents is completely irrelevant.

Second, San Altos has already undertaken extremely expensive and time-consuming discovery based on the Prosecution's submission of evidence. San Altos is submitting its evidence tomorrow in reliance on the testimony provided by Water Board staff regarding what information it relies on for the basis of its complaint. San Altos has no idea what the Prosecution intends to use these documents to prove. Moreover, based on the current schedule approved by the Chair of the Regional Board the Prosecution suggests that San Altos would have ten business days to conduct additional discovery regarding this mountain of new evidence, depose the 3rd parties or members of the prosecution and prepare a rebuttal brief is grossly unfair (both in terms of time and cost) and in fact an impossibility given that subpoenas are expected to provide ten days' notice of any deposition. To adequately address these tasks in ten business days is an impossibility. Such a schedule is arbitrary, capricious and makes a mockery of due process guarantees.

If the Prosecution believes that the evidence it has already submitted is inadmissible or insufficient to prove up the allegations in the complaint, the Prosecution has three alternative remedies to which San Altos would not object:

1. The Prosecution can request that the advisory team toll the schedule while the Parties enter into meaningful settlement discussions. The Water Quality Enforcement Policy provides "It is appropriate to adjust the administrative civil liabilities calculated pursuant to the methodology in consideration of hearing and/or litigation risks including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses in the enforcement action that the prosecution reasonably believes may adversely affect the team's ability to obtain the calculated liability from the administrative hearing body." If San Altos and the Prosecution cannot come to a settlement, then the schedule would be restarted and the Prosecution could either appeal the schedule or dismiss the complaint with leave to amend.
2. The Prosecution can comply with the procedures set forth in your letter dated December 28, 2015 and seek a modification to the schedule from the Chair of the Regional Water Quality Control Board, during which time the schedule would proceed as outlined in your letter. Your letter states, "Any further request for reconsideration of the above ruling should be submitted in writing with any legal argument to [Ms. Hagan]." "[Ms. Hagan] will provide an opportunity for a response before making any recommendations to the Chair." Before responding to this request, we ask that the Prosecution be required to submit a legal argument to you, that we be provided a more reasonable opportunity to fully respond (as the parties did when San Altos requested an extension of time in mid-December), and that both arguments be submitted to the Chair of the Board.

3. The Prosecution can dismiss the ACL with leave to amend.

Any other approach is extremely prejudicial and a violation of due process to San Altos.

S. Wayne Rosenbaum

Opper & Varco LLP

The Environmental Law Group

225 Broadway, Suite 1900

San Diego, CA 92101

Phone: (619) 231-5858

Cell: (619) 518-6618

Fax: (619) 231-5853

SWR@EnviroLawyer.com

www.envirolawyer.com

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EXHIBIT D

From: Hagan, Catherine@Waterboards <Catherine.Hagan@waterboards.ca.gov>
Sent: Tuesday, February 02, 2016 4:32 PM
To: Drabandt, Laura@Waterboards; Wayne Rosenbaum
Cc: Linda Beresford; 'Josh Rosenbaum' (jtrosenb@gmail.com); Clemente, Chiara@Waterboards; Melbourn, Frank@Waterboards; Boyers, David@Waterboards; Gibson, David@Waterboards; Nunez, Adriana@Waterboards; Jayne, Deborah@Waterboards
Subject: ACL Complaint No. R9-2015-0110, San Altos-Lemon Grove, LLC

To the Parties to ACLC No. R9-2015-0110:

The Advisory Team has received both the Prosecution Team's request to supplement their evidence in support of ACL Complaint No. R9-2015-0110 and San Altos-Lemon Grove, LLC's (Discharger) objections to the Prosecution Team's request. By noon **Thursday, February 4**, the Prosecution Team shall submit to the Advisory Team the proposed evidence (electronically and one hard copy) together with a response to the Discharger's objections. The Prosecution Team's response should explain why the Discharger will not be prejudiced by the submittal, why the evidence was not submitted earlier, and confirm that the evidence is not submitted to support changes to the complaint. The Prosecution Team shall copy the Discharger on the response and must provide the Discharger with copies of any proposed evidence the Discharger may not already have. **The February 3 deadline for the Discharger to submit Evidence and Policy Statements is extended one week to February 10 at 5 p.m.** The Advisory Team will rule on the Prosecution Team's request as soon as practicable after receiving the Prosecution Team's response.

Sincerely,

Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
Tel. 619-521-3012
Fax 619-516-1994
E-mail: catherine.hagan@waterboards.ca.gov

EXHIBIT E

From: Wayne Rosenbaum
Sent: Wednesday, February 03, 2016 8:51 AM
To: Hagan, Catherine@Waterboards
Cc: Drabandt, Laura@Waterboards; Linda Beresford; 'Josh Rosenbaum' (jtrosenb@gmail.com); Clemente, Chiara@Waterboards; Melbourn, Frank@Waterboards; Boyers, David@Waterboards; Gibson, David@Waterboards; Nunez, Adriana@Waterboards; Jayne, Deborah@Waterboards
Subject: ACL Complaint No. R9-2015-0110, San Altos-Lemon Grove, LLC

Dear Ms. Hagan,

As you know, the schedule you provided on December 28 stated that San Altos was to submit its evidence by February 3. Responding to a Complaint alleging 136 violations and seeking more than \$800,000 in penalties is no small undertaking. As of 4:32 p.m., Feb. 2, when we received your email, our legal and technical analysis, along with our evidentiary support, was essentially complete with many pieces out for copying given that we are required to submit two hard copies. This submission is significant and not something that can easily be changed in a matter of days to address scores of new evidence that the Prosecution now wants to submit (even though it had possession of and access to most of the evidence before December 4). We will therefore be submitting our evidence by close of business today.

The submission of new evidence at this time violates San Altos' due process rights, Title 23 of the California Code of Regulations section 648.4 and the hearing procedures set forth by the advisory team in in your letters dated October 19, 2015 and December 28, 2019 state: "In accordance with Title 23, California Code of Regulations, section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding." Absent an extension of the schedule by at least three months (the same amount of time San Altos was granted to prepare its opening brief in the December 28, 2019 schedule) San Altos will be severely prejudiced by the inclusion of this new evidence or any testimony related there to. In the event that the Prosecution is allowed to submit additional evidence (to which we strenuously object), we will request a reasonable time in which to provide a response to the new evidence by moving the hearing in this matter to the July board meeting.

We must note for the record that we further object to the continuing changes to the procedural aspects of this matter. When San Altos wanted to request a modification to the schedule, we were required to submit a request to the Chair of the Board. We submitted our

letter on December 15, 2015. In an email dated December 17, the Advisory Team then provided the Prosecution Team until December 22 (5 days) to provide a response. Following that, a decision – solely on the issue of the schedule – did not arrive until 3:37 p.m. December 28, requiring San Altos to proceed with six depositions during the week between Christmas and New Year's.

However, now that the Prosecution is seeking a modification to the schedule, they only need to submit a request to you and not the Chair of the Board. Your letter of December 28 states that you will "provide an opportunity for response before making any recommendations to the Chair." Our email response from yesterday – written as quickly as possible while trying to complete our evidentiary submission due the next day – was not a true opportunity to respond. Requiring San Altos to respond within hours is another violation of Due Process. We also note that San Altos is not given an opportunity to respond to the issues that the Prosecution is required to address in its submission on Feb. 4, such as why San Altos won't be prejudiced and that the evidence is not submitted to support changes to the complaint. Surely San Altos should be given a reasonable opportunity to respond to those issues. We find it extremely prejudicial and unjust that the Prosecution was provided with days to respond when the only issue was the schedule. Now that the issue involves submissions of evidence, a much more substantive issue, San Altos is essentially provided with no opportunity to respond.

Finally, if the Advisory Team continues with this schedule and allows the Prosecution to submit this evidence, presumably that decision will be issued on February 5 at the earliest. Under the Advisory Team's schedule, this would give San Altos two working days (not including February 10, which is essentially needed to make copies) to change its entire submission and respond to the new evidence. This is an unreasonable and prejudicial timeline.

We object to this process and we renew our objections to the submission of any new evidence.

S. Wayne Rosenbaum
Opper & Varco LLP
The Environmental Law Group
225 Broadway, Suite 1900
San Diego, CA 92101
Phone: (619) 231-5858
Cell: (619) 518-6618
Fax: (619) 231-5853
SWR@Envirolawyer.com
www.envirolawyer.com

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prohibited. You are also asked to notify us immediately by telephone and to return the original document to us immediately by mail at the address above. Thank you in advance for your cooperation.

EXHIBIT F

1 CHRISTIAN CARRIGAN, Director (SBN 197045)
2 DAVID M. BOYERS, Assistant Chief Counsel (SBN 199934)
3 LAURA J. DRABANDT, Senior Staff Counsel (SBN 235119)
4 Office of Enforcement
5 State Water Resources Control Board
6 1001 I Street, 16th Floor
7 Sacramento, California 95814
8 Telephone: 916-341- 5180
9 Fax: 916-341-5896
10 E-mail: laura.drabandt@waterboards.ca.gov

11 Attorney for Prosecution

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BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

IN THE MATTER OF:)	PROSECUTION'S RESPONSE TO
)	DISCHARGER'S OBJECTIONS TO
LOS ALTOS-LEMON GROVE, LLC)	ADMIT SUPPLEMENTAL EVIDENCE
)	
)	Administrative Complaint
)	No. R9-2015-0110

I. Introduction

The Prosecution Team submitted its evidence, equivalent to its case-in-chief, on December 4, 2015, consistent with the Hearing Procedures issued on the same day. At the Los Altos-Lemon Grove, LLC's (Discharger's) request, the February 10, 2016 hearing was subsequently moved to March 9, 2016, and the Discharger's evidence, arguments or analysis due date was moved from January 4 to February 3, 2016. After the Discharger's attorneys deposed nine potential witnesses, new information arose leading the Prosecution Team to request an opportunity to submit additional evidence on February 2. After the Discharger objected, the Advisory Team requested the Prosecution Team to submit the proposed evidence for its review along with a response to the objections. This brief responds to the Discharger's objections, describes the timing of the request and why the evidence should be included in the record, confirms that there are no changes to the Complaint issued October 19, 2015, and confirms the Prosecution is ready to proceed with having this administrative liability hearing on March 9, 2016.

1 **II. The Advisory Team should admit the City of Lemon Grove photos and Regional**
2 **Board staff photos that are already in the record but are of a better quality,**
3 **more accurately depicting site conditions.**

4 The Discharger subpoenaed City of Lemon Grove (City) staff and D-Max
5 Engineering, Inc., employees for depositions, and to produce all documents,
6 communications, etc. related to inspections at the Valencia Hills construction site (Site)
7 the last week in December 2015. Contained in the documents produced by the City were
8 better copies of the photos that accompanied the City and D-Max Engineering site
9 inspection reports. Prior to the depositions, Regional Board staff had pdf copies of the
10 reports with the photos already imbedded, which were blurry and small. With the original
11 photos in their jpeg form from the City's document production, one can best view the
12 images, providing the Board Members with more and better information.

13 The Prosecution Team seeks to provide these five photos in an electronic and 8 ½" x
14 11" hard copy format for the ease of all parties to use at hearing, and to make it easier for
15 the Board Members and members of the public to view. The Prosecution Team is also
16 offering 40 better quality photographs that accompanied its own site inspections after
17 recognizing that the higher resolution photos would benefit the Board's consideration of
18 the violations alleged in this matter.

19 The Discharger has failed to state how better quality pictures could possibly
20 prejudice its case. It is unfathomable to suggest better quality pictures are sufficient
21 reason for a three month delay in the Board hearing this administrative civil liability.

22 **III. The Advisory Team should admit the new City of Lemon Grove photos because**
23 **they supplement existing evidence and the Discharger has had sufficient time**
24 **to consider these additional photos.**

25 The Prosecution Team is seeking to admit 70 photos from the City that are not
26 presently in the record. These photos were produced in accordance with the Discharger's
27 subpoenas to City staff and D-Max employees on December 28, 2015. Not allowing the
28 Prosecution to submit them now, over four weeks before the hearing date, would
prejudice the Prosecution because the Prosecution did not possess these photos before
its December 4, 2015 evidence submission due date. The photos are only offered to

1 support violations already alleged in the Complaint and to supplement existing evidence in
2 the record. City staff and D-Max Engineering employees can verify the accuracy of the
3 photos relaying site conditions, and the photos would assist in providing the Board
4 Members with a broader context of the site conditions. There should be no surprise to the
5 Discharger as the photos were taken at the site to document site conditions known to the
6 Discharge at the time the photos were taken.

7 The Discharger has had a sufficient amount of time to consider this set of photos in
8 building its evidence, legal and technical argument or analysis. The Discharger also has
9 the opportunity to respond to these photos by submitting any rebuttal evidence it may
10 have on February 17, 2016. There is no detriment in admitting them into the record at this
11 point in time.

12 **IV. The Advisory Team should admit the December 2014 City inspector notes and**
13 **letter, January 2015 BMP walk notes and photos, the May 15, 2015 D-Max**
14 **Engineering Memo, additional Regional Board staff photos, weather data, and**
15 **the Stormwater Pollution Prevention Plan (SWPPP) because they provide a**
more comprehensive understanding of the site conditions and permit¹
violations for the Board Members

16 The evidence package the Prosecution Team submitted on December 4, 2015,
17 combined with testimony at hearing, sufficiently supports the violations for the Regional
18 Board to find the allegations in the Complaint true. However, over the course of
19 defending numerous depositions and reviewing documents produced by the City and D-
20 Max Engineering in response to the Discharger's subpoenas, the Prosecution Team has
21 discovered additional evidence that supplements and supports the evidence already in the
22 record related to certain alleged violations. The evidence is offered now to give the Board
23 a complete and accurate picture of the site conditions that resulted in the Complaint being
24 issued. The Discharger, as the owner of the site, should be well aware of the site
25

26
27 ¹ State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-
28 DWQ and 2012-0006-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for
Storm Water Discharges Associated with Construction and Land Disturbance Activities.*

1 conditions throughout the history of the project. The additional evidence is not being
2 offered to support any new violations. The supplemental evidence offered by the
3 Prosecution Team includes: the City's December 16, 2014 letter and December 24, 2014
4 inspection report; the Discharger's January 1, 2015 Response to Notice of Violation
5 (NOV); the Discharger's January 19, 2015 BMP walk notes and photos; the D-Max
6 Engineering May 15, 2015 memo; additional Regional Board staff photos, and the
7 SWPPP. These items will assist in explaining the specific nuances to each violation, such
8 as which portions of the site were considered active or inactive pursuant to the
9 Construction General Permit's language, and when it was raining. None of these items
10 were solely relied upon in issuing the Complaint, but are offered now to provide a more
11 complete picture to the Regional Board.

12 The Discharger has not asserted whether or how it will be prejudiced by these
13 specific items. Procedurally, the Discharger will have an opportunity to rebut them on
14 February 17, removing any due process concerns. In fact, much of this information would
15 likely be included in the Prosecution's rebuttal; admitting it now provides the Discharger
16 with additional time to review and respond to it.

17 **V. The Prosecution is Ready to Proceed with the Hearing on March 9, 2016**

18 None of the supplemental proffered evidence changes the violations alleged in the
19 Complaint issued October 19, 2015. The Prosecution will not seek to add violations for
20 liability to the Complaint or for the Board to find true at the Hearing. The better quality
21 photos that are already in the record that the Prosecution seeks to add now do not
22 change anything substantial but are offered to the Discharger and the Board for easier
23 viewing at hearing. The additional photos not already in the record will provide better
24 visual understanding of the site conditions during the time periods alleged in the
25 Complaint, including weather conditions and views of the same BMPs from different
26 angles. The Prosecution will not seek to add additional violations for liability based upon
27 these photos.
28

1 The SWPPP is essentially a reference item. Instead of merely providing a location
2 of where one could find it in the public file (23.CCR 648.3), the Prosecution is offering to
3 have copies available at the hearing for the ease of the Board Members to review.
4 Having the SWPPP present at hearing does not change the nature or the Complaint in
5 any manner.

6 The Prosecution intends on using the remaining items for additional support for the
7 alleged violations already contained in the Complaint. It does not intend to add violations
8 for liability at the hearing or to amend the violations alleged in the Complaint.

9 The proposed supplemental evidence support and add to the evidence for the
10 Complaint that is already in the record. It is not intended to modify the Complaint or
11 alleged violations. Therefore, the Prosecution is ready to proceed to hearing on March 9,
12 2016, and does not intend on requesting a continuance or to withdraw the Complaint
13 based on the Advisory Team's ruling on the supplemental evidence.

14 The Prosecution does, however, reserve the right to submit a portion, all, or more
15 evidence as responsive to the Discharger's evidence upon rebuttal.

16 **VI. Conclusions**

17 The San Diego Water Board endeavors to avoid surprise testimony or evidence.
18 None of the proposed supplemental evidence is a surprise since it supports what is
19 already in the record pertaining to site conditions, and the Discharger knows the site
20 conditions better than anyone else as it is the property owner. The Prosecution is not
21 expanding on any of the alleged violations. The Discharger is not prejudiced by the
22 proposed supplemental evidence, and has an opportunity to respond to it when rebuttal
23 evidence is due February 17, 2016. The Prosecution Team respectfully requests to admit
24 the proposed supplemental evidence for hearing on March 9, 2016.

25 DATED: February 4, 2016

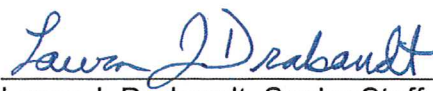
26 
27 Laura J. Drabandt, Senior Staff Counsel
28 Office of Enforcement
State Water Resources Control Board

EXHIBIT G

From: Malik Tamimi <mtamimi@lemongrove.ca.gov>
Sent: Thursday, September 24, 2015 4:13 PM
To: Chiu, Wayne@Waterboards
Cc: Melbourn, Frank@Waterboards; Tim Gabrielson; 'Tad Nakatani'; Gary Harper; Jeremiah Harrington
Subject: Valencia Violatin Sept 15, 2015
Attachments: Valencia Inspection 2105-09-15.pdf; Valencia Citation.pdf; IMG_6842.jpg; IMG_6866.jpg; IMG_6883.jpg

Hi Wayne,

Attached you will find the inspection form for Valencia 9/15/15, the Citation for \$1000.00 and select photos demonstrating discharge and non-compliance failure to implement erosion control measures. We have more pictures should you request them. Please let me know that you received this email.

Thank you

-Malik

09/15/2015 14:02



09/15/2015 14:24



09/15/2015 14:34



EXHIBIT H

From: Melbourn, Frank@Waterboards
Sent: Monday, September 28, 2015 3:49 PM
To: mtamimi@lemongrove.ca.gov
Subject: FW: JPG Files Request

Hi Malik,
Any luck acquiring those photographs?
Frank

From: Malik Tamimi [<mailto:mtamimi@lemongrove.ca.gov>]
Sent: Wednesday, September 23, 2015 4:37 PM
To: Melbourn, Frank@Waterboards
Cc: Chiu, Wayne@Waterboards
Subject: RE: JPG Files Request

Hi Frank,
I will work on getting you those photos. Also, as I mentioned to Wayne last week, we just cited Valencia another \$1,000 for failing to implement adequate erosion control and signs of illegal discharge of sediment. I'm waiting on our inspector to provide me the photos to forward with the citation and inspection form to both of you.

Aside from NOV, has the RB issued any monetary fines to Valencia? I am curious to know and if so, how much was the fine?

Thank you
-Malik

From: Melbourn, Frank@Waterboards [<mailto:Frank.Melbourn@waterboards.ca.gov>]
Sent: Wednesday, September 23, 2015 4:26 PM
To: Malik Tamimi
Cc: Chiu, Wayne@Waterboards
Subject: JPG Files Request

Hi Malik,
Can you please send me five jpg files that were taken by the City of Lemon Grove staff.
I've attached four City of Lemon Grove inspection/violation documents. I've outlined in red five photographs that I would like.
Please let me know if you can provide the photo files.
Thanks,
Frank

Frank Melbourn
Water Resource Control Engineer

California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108

Tele (Direct Line): 619-521-3372

Tele (Front Desk): 619-516-1990

E-mail: FMelbourn@waterboards.ca.gov

Office Web Site: www.waterboards.ca.gov/sandiego/



EXHIBIT I

From: Wayne Rosenbaum
Sent: Monday, February 08, 2016 8:27 AM
To: Drabandt, Laura@Waterboards
Cc: Hagan, Catherine@Waterboards; Linda Beresford; 'Josh Rosenbaum' (jtrosenb@gmail.com); Clemente, Chiara@Waterboards; Melbourn, Frank@Waterboards; Boyers, David@Waterboards
Subject: Re: ACL R9-2015-0110 Evidence Objection Response - San Altos-Lemon Grove, LLC
Importance: High

Dear Ms. Hagan,

I have not had a response to my e-mail of February 4 requesting that San Altos be granted until this Thursday to prepare a formal response to the surprise evidence submitted by the Prosecution last Wednesday. Given the amount of material the Prosecution is seeking to admit at this late hour and the fact the Prosecution has failed to relate any of the surprise evidence to any one of the 136 alledged violations, San Altos renews its request for a reasonable amount of time to review the materials and file its opposition thereto.

Please advise,

S. Wayne Rosenbaum
Opper & Varco LLP
The Environmental Law Group
225 Broadway, Suite 1900
San Diego, CA 92101
Phone: (619) 231-5858
Cell: (619) 518-6618
Fax: (619) 231-5853
SWR@Envirolawyer.com
www.envirolawyer.com

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Dear Ms. Hagan

Both I and Ms. Beresford are out of office and unavailable until Monday. We request that we be allowed until close of business next Thursday to file formal objections to the Prosecutions motion received today.

Thank you

Sent from my iPhone

On Feb 4, 2016, at 11:43 AM, Drabandt, Laura@Waterboards <Laura.Drabandt@waterboards.ca.gov> wrote:

Dear Ms. Hagan and Mr. Rosenbaum,

As requested in Ms. Hagan's February 2, 2016 e-mail, the Prosecution Team is providing its proposed supplemental evidence and a written response to the San Altos-Lemon Grove, LLC (Discharger) objections. The hard copy of the evidence will be delivered to Ms. Hagan's office, and the electronic version containing all the supplemental evidence is available on the ftp site:
ftp://swrcb2a.waterboards.ca.gov/pub/rwqcb9/Valencia_Hills/

The written response brief is attached and I will mail you the original copy for your records. Also attached are the cover pages identifying the proposed supplemental evidence. The only supplemental evidence that the Discharger does not already possess is the weather information (some of this information was provided to the Discharger during depositions). I have attached it here separately from the ftp site for easy reference.

Thank you,
Laura Drabandt
Attorney for the Prosecution

*Laura Drabandt
Senior Staff Counsel
Office of Enforcement
State Water Resources Control Board
1001 I Street, P.O. Box 100
Sacramento, CA 95812
(916) 341-5180*

<PT Response Evid Objs 2.4.16.pdf>
<2016-02-04 Supl cover.pdf>
<Combined NOAA-Weather Underground Rainfall.pdf>

EXHIBIT J

From: Hagan, Catherine@Waterboards <Catherine.Hagan@waterboards.ca.gov>
Sent: Monday, February 08, 2016 4:34 PM
To: Wayne Rosenbaum; Drabandt, Laura@Waterboards
Cc: Linda Beresford; 'Josh Rosenbaum' (jtrosenb@gmail.com); bcarrier@sandiego.gov; ddevries@lemongrove.ca.gov; Smith, James@Waterboards; Gibson, David@Waterboards; Jayne, Deborah@Waterboards; Griffey, Beatrice@Waterboards; Clemente, Chiara@Waterboards; Melbourn, Frank@Waterboards; Haas, Jeremy@Waterboards; Nunez, Adriana@Waterboards
Subject: Administrative Civil Liability Complaint No. R9-2015-0110 (San Altos-Lemon Grove LLC)
Attachments: 020816 Revised Hearing Procedure.pdf; 020816 Ruling.pdf

Mr. Rosenbaum and Ms. Drabandt,

Please see attached (1) Ruling by Chair Abarbanel and (2) revised hearing procedures to reflect an extension of the deadline for rebuttal submittal.

Sincerely,

Catherine George Hagan
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
Tel. 619-521-3012
Fax 619-516-1994
E-mail: catherine.hagan@waterboards.ca.gov



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
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-

HENRY ABARBANEL, PH.D, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, California 92108-2700 | www.waterboards.ca.gov/sandiego

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:

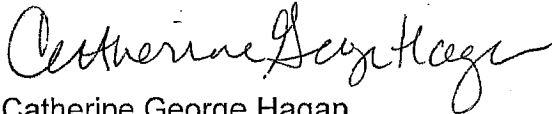
Exhibit No. 33 [San Diego Water Board photographs not already in the record].

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
Oppen & Varco, LLP [Via E-mail Only]

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

REVISED HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R9-2015-0110
ISSUED TO

SAN ALTOS-LEMON GROVE, LLC
VALENCIA HILLS CONSTRUCTION SITE

SCHEDULED FOR MARCH 9, 2016

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (Water Code) sections 13323 and 13385 against San Altos-Lemon Grove, LLC (Discharger) alleging it has violated California State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended; Water Code section 13376; the Water Quality Control Plan for the San Diego Basin; and Clean Water Act section 301. The ACL Complaint proposes that administrative civil liability in the amount of **\$848,374** be imposed as authorized by Water Code section 13385. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board on **March 9, 2016**, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment. The hearing will be held at the San Diego Water Board office at 2375 Northside Drive, Suite 100, in San Diego. An agenda for the hearing will be issued at least ten (10) days before the hearing and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedure

The hearing will be conducted in accordance with this hearing procedure. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with section 648(d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), section 648(b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURE AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE PROPOSED PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN NOVEMBER 20,¹ 2015, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are either "designated parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff, or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated parties in this proceeding:

1. San Diego Water Board Prosecution Team; and
2. San Altos-Lemon Grove, LLC.

¹ By email dated November 23, 2015, this deadline was extended to November 25.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and are not already listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5:00 p.m. on **November 20, 2015**,² to Catherine Hagan, Senior Staff Counsel, at the address set forth below. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5:00 p.m. on **November 23, 2015**. The parties will be notified by 5:00 p.m. on **December 4, 2015**, as to whether the request has been granted or denied.

Contacts

Advisory Team:³

Catherine George Hagan, Senior Staff Counsel
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David Gibson, Executive Officer
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Deborah Jayne, Senior Environmental Scientist

² By email dated November 23, 2015, this deadline and the deadline for opposition to requests were extended to November 25 and November 30 respectively.

³ Additional staff may be designated as advisory staff with the Final Hearing Procedures or at a later date.

**Hearing Procedure
San Altos-Lemon Grove, LLC
Valencia Hills Construction Site
ACL Complaint No. R9-2015-0110**

**December 28, 2015
Revised February 8, 2016**

California Regional Water Quality Control Board, San Diego Region
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Prosecution Team:

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**Hearing Procedure
San Altos-Lemon Grove, LLC
Valencia Hills Construction Site
ACL Complaint No. R9-2015-0110**

**December 28, 2015
Revised February 8, 2016**

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Laurie Walsh, Sr. Water Resource Control Engineer
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Wayne Chiu, Water Resource Control Engineer
California Regional Water Quality Control Board, San Diego Region
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Discharger:

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Josh Rosenbaum
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jtrosenb@gmail.com

Ben C. Anderson, Legally Responsible Person
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Suite 225
5780 Fleet Avenue
Carlsbad, CA 92008
kimberlyv@bcadevelopment.com
(714) 966-1544

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Team) have been separated from those who will provide advice to the San Diego Water Board (Advisory Team). Members of the Advisory Team¹ include Catherine George Hagan and Adriana Nunez, Staff Counsel, Deborah Jayne, Senior Environmental Scientist and Beatrice Griffey, Engineering Geologist. Members of the Prosecution Team are: Laura Drabandt, Senior Staff Counsel; James Smith, Assistant Executive Officer; Jeremy Haas, Environmental Program Manager; Chiara Clemente, Senior Environmental Scientist; Laurie Walsh, Senior Water Resource Control Engineer; Wayne Chiu, Water Resource Control Engineer; and Frank Melbourn, Water Resource Control Engineer.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Team or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Hearing Time Limits To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined ninety (90) minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three (3) minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team no later than **February 19, 2016**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, California Code of Regulations, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."
6. (Discharger only) If the Discharger would like to propose a Supplemental Environmental Project (SEP) or Enhanced Compliance Action (ECA) in lieu of paying some or all of the civil liability in accordance with the State Water Board's Water Quality Enforcement Policy, the Discharger shall submit a detailed SEP or ECA proposal including a specific implementation timetable.

The Prosecution Team shall submit two (2) hard copies and one (1) electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5:00 p.m. on **November 30, 2015**.⁴

⁴ By email dated November 23, 2015, this deadline was extended to December 4, 2015.

The remaining designated parties shall submit two (2) hard copies and one (1) electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5:00 p.m. on **February 3, 2016**.

In addition to the foregoing, each designated party shall send one (1) copy of the above information to each of the other designated parties by 5:00 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **February 19, 2016**. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5:00 p.m. on **February 17, 2016**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5:00 p.m. on **February 23, 2016**,⁵ to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

⁵ By ruling dated February 8, 2016, this deadline was extended from February 17 to February 23.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 2375 Northside Drive, Suite 100, San Diego, California 92108. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the San Diego Water Board. Many of these documents are also posted online at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to ensure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

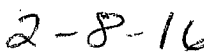
Questions

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

IMPORTANT DEADLINES

October 19, 2015	Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.
November 20, 2015 ⁶	Objections due on proposed Hearing Procedure.
November 20, 2015	Deadline for submission of request for designated party status.
November 23, 2015 ⁷	Deadline for opposition to request for designated party status.
November 30, 2015 ⁸	Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
December 4, 2015	Advisory Team issues Hearing Procedure, and issues decision on requests for designated party status, if any.
February 3, 2016	Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
February 17, 2016	All Designated Parties' deadline for submission of request for pre-hearing conference.
February 23, ⁹ 2016	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
February 19, 2016	Interested Parties' deadline for submission of non-evidentiary policy statements.
March 9, 2016	Hearing.


CATHERINE GEORGE HAGAN


Date

⁶ By email dated November 23, this and the next deadline were extended to November 25.

⁷ By email dated November 23, this date was extended to November 30.

⁸ By email dated November 23, this date was extended to December 4.

⁹ By ruling dated February 8, 2016, this deadline was extended from February 17 to February 23.

EXHIBIT K

From: BENANDERSO@aol.com
Sent: Friday, December 19, 2014 4:53 PM
To: wayne.chiu@waterboards.ca.gov
Cc: Leon Firsht; Gary Harper; Carol B. Dick; dsturgeon@whitsoncm.com; timanderson62@gmail.com
Subject: WDID 937C369143 - Photos Before
Attachments: ValenciaBeforeRain.zip; ValenciaBeforeRain2.zip

Wayne-
See Attached photos Before.
Ben-









From: BENANDERSO@aol.com
Sent: Friday, December 19, 2014 5:06 PM
To: Chiu, Wayne@Waterboards
Cc: lfirsht@lemongrove.ca.gov; gharper@lemongrove.ca.gov; cdick@lemongrove.ca.gov; dsturgeon@whitsoncm.com; timanderson62@gmail.com
Subject: WDID 937C369143 - Photos After 12/15.
Attachments: ValenciaBMPPAfter1.zip

Wayne-

See attached photos after 12/15.

Ben-



EXHIBIT L

From: BENANDERSO@aol.com
Sent: Friday, December 19, 2014 4:39 PM
To: wayne.chiu@waterboards.ca.gov
Cc: Leon Firsh; Carol B. Dick; jpl@lfap.com; dsturgeon@whitsoncm.com; timanderson62@gmail.com; Gary Harper
Subject: WDID 937C369143
Attachments: ValenciaBMPDailyRpt121914.xlsx; VAlenciaBMPSchedule121914.xlsx

Wayne-

Per your email dated December 15th, we are submitting the following: Due to size we will need to send multiple emails.

1. Copies of QSP Reports from November 1st - December 17th. See attached Zip file from Whitson CM. Also copies of City of Lemon Grove Daily Reports 12/15 - 12/19.
2. Photos of BMP's BEFORE 12/15. See attached files.
3. Photos AFTER 12/15. See attached files.
4. Schedule of BMP work thru 12/24. Meeting with City to discuss. See attached.

We are putting together Formal Report for January 2, 2015 as requested today.

Contact me at (949) 233-6700 with any questions.

Ben-

EXHIBIT M

From: Drabandt, Laura@Waterboards <Laura.Drabandt@waterboards.ca.gov>
Sent: Monday, February 22, 2016 3:07 PM
To: Hagan, Catherine@Waterboards
Cc: Wayne Rosenbaum; 'Josh Rosenbaum' (jtrosenb@gmail.com); Linda Beresford; Clemente, Chiara@Waterboards; Melbourn, Frank@Waterboards; Boyers, David@Waterboards
Subject: ACL R9-2015-0110 Pre-Hearing Conference

Good afternoon,

The Prosecution Team is amenable to a pre-hearing conference that would assist in working out issues to make the hearing on March 9 run efficiently pursuant to Government Code section 11511.5.

1. Exploration of settlement possibilities. _____

At this time, the parties have not reached a provisional settlement to share with the Advisory Team. This topic does not need to be addressed during a pre-hearing conference.

2. Preparation of stipulations

The Prosecution Team is willing to discuss stipulating to the authenticity of documents for both parties. The Prosecution Team is not willing to stipulate to "unique circumstances" as the Discharger requested in its February 17, 2016 letter because their request was vague, and because the application of facts to the law and policy can be attorney-client privileged. Many of the facts specific to this case are already described in the Technical Analysis and the Complaint, with more being recorded at the depositions. The Prosecution Team will not stipulate that all inspections performed by the City or D-Max Engineering were not for compliance with the statewide General Construction Permit because that may cause confusion. The City is obligated to comply with the MS4 permit, which works together with the General Construction Permit. We want to avoid any confusion over the City's permit compliance. The Discharger has documented well the inspector's qualifications and inspection intentions in its depositions.

3. Clarification of issues

The Prosecution Team does not have any objection to the Discharger's request for clarification on rulings. The Prosecution Team does not have any of its own requests for clarification.

4. Rulings on identity and limitation of the number of witnesses

The Prosecution Team does not object to confirming the identity and number of witnesses, and the process of witnesses to confirm statements in their declarations. We would like to ask for confirmation that any witness whose declaration is submitted into evidence be available for cross-examination at the hearing.

5. Objections to proffers of evidence

The Prosecution Team does not object to any of the evidence the Discharger has proffered at this time, but reserves the ability to object after the rebuttal evidence is submitted.

6. Order of presentation of evidence and cross-examination

This subject under the Government Code relates to procedure at hearing. We do not object to discussing procedure during the pre-hearing conference, but do object to being asked to speculate what witnesses we may want to cross-examine at hearing. Any cross-examination will be contained within the Prosecution Team's allotted time period, and the evidence submitted prior to the hearing supports the alleged violations.

7. Rulings regarding issuance of subpoenas and protective orders

The Prosecution Team is not requesting to discuss this topic at the pre-hearing conference.

8. Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing

The Prosecution Team does not have any scheduling requests, but is willing to engage in a dialogue.

9. Exchange of witness lists and of exhibits or documents to be offered in evidence at hearing

The Prosecution Team does not have any requests at this time.

10. Motions for intervention

None are pending. It is the Prosecution Team's understanding that attorneys Jonathan Shardlow and Martin Stratte, on behalf of Cal West Engineering, are not seeking to intervene in the hearing process.

11. Alternative Dispute Resolution

The Prosecution Team does not wish to engage in any ADR process because a hearing before the Board is the proper venue for this case, and ADR takes a significant amount of time, is costly, and would tie up staff time and resources that are needed for other matters. There is no need to add this topic to the pre-hearing conference agenda.

12. Other Matters

The Prosecution Team does not have any other matters to address at the pre-hearing conference.

Thank you for your time and consideration. The days we are most available are March 1-4, with at least one person having to call into the meeting.

Laura Drabandt
Attorney for the Prosecution

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EXHIBIT N









