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7 BEFORE THE SAN DIEGO  
8 REGIONAL WATER QUALITY CONTROL BOARD

10 In the Matter of:

11 SAN ALTOS-LEMON GROVE, LLC,

12 ACLC NO. R9-2015-0110

) PROSECUTION TEAM REBUTTAL  
) BRIEF

- 13 ) 1. Rebuttal Brief
- 14 ) 2. Rebuttal Evidence List
- 15 ) 3. Updated Staff Costs

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February 23, 2016

16 The California Regional Water Quality Control Board, San Diego Region (San Diego  
17 Water Board) Prosecution Team submits this Rebuttal Brief in response to the evidence and  
18 argument submitted by San Altos-Lemon Grove LLC (San Altos or Discharger).

20 **BACKGROUND**

22 **I. Order No. 2009-0009-DWQ, the Statewide Construction General Storm Water**  
23 **Permit (CGP).**

24 **(a) Purpose of CGP.**

25 On September 2, 2009, the State Water Resources Control Board (State Water Board)  
26 adopted Order No. 2009-0009-DWQ, the Statewide Construction General Storm Water Permit  
27 (CGP). The CGP became effective July 1, 2010. The CGP regulates discharges of pollutants in  
28 storm water and authorized non-storm water discharges associated with construction activity to

1 waters of the United States from construction sites. The CGP does not preempt or supersede the  
2 authority of local storm water management agencies to prohibit, restrict, or control storm water  
3 discharges to municipal separate storm sewer systems or other watercourses within their  
4 jurisdiction. The purpose of regulating storm water discharges from construction sites is to protect  
5 receiving waters from pollutants generated by construction activities.

6 **(b) Protection of receiving waters is through implementation of BAT/ BCT.**

7 The CGP requires all dischargers to comply with a narrative effluent standard to “minimize  
8 or prevent pollutants in storm water discharges and authorized non-storm water discharges through  
9 the use of controls, structures, and management practices that achieve best available technology  
10 economically achievable (BAT) for toxic and non-conventional pollutants and best conventional  
11 pollutant control technology (BCT) for conventional pollutants.” (CGP § V.A.2.) The BAT/BCT  
12 technology-based standard is based on the implementation of the best technologies, or best  
13 management practices (BMPs), to control pollutants from a construction site. It is through the  
14 implementation of BMPs that meet the BAT/BCT standard that construction sites prevent and  
15 minimize pollutants in their storm water discharges and authorized non-storm water discharges.

16 **(c) San Altos is responsible for complying with CGP requirements.**

17 By enrolling in the CGP, each construction site is expected to understand and comply with  
18 the requirements of the CGP. The CGP requires each site to develop a Storm Water Pollution  
19 Prevention Plan (SWPPP), prepared by a Qualified SWPPP Developer (QSD). Implementation of  
20 the SWPPP is overseen by a Qualified SWPPP Practitioner (QSP). QSDs and QSPs are required to  
21 undergo training on the requirements of the CGP before becoming certified as QSDs and QSPs.  
22 Each construction site is required to have a SWPPP that contains the information that demonstrates  
23 the site will implement the requirements of the CGP, and a QSP is required to oversee  
24 implementation of the SWPPP and ensure the site is implementing BMPs in compliance with the  
25 CGP.

26 **II. History of Enforcement for San Altos.**

27 On Friday December 12, 2014, after two unauthorized sediment discharges to Encanto  
28 Channel and numerous efforts to encourage San Altos to come into compliance at the Valencia

1 Hills construction project (Site), the City of Lemon Grove (City) called the San Diego Water Board  
2 seeking regulatory assistance with San Altos. The City had progressively enforced against San  
3 Altos after documenting and communicating Site non-compliance with City storm water  
4 regulations and laws during the first 12 days of December 2014; issuing five inspection reports  
5 with recommended corrective actions, a Stop Work notice on December 2, 2014, and two  
6 administrative citations. (See Administrative Civil Liability Complaint No. R9-2015-0110  
7 Technical Analysis [Tech. Analysis] Exhibit No. 8, at p. 2 ¶13.) San Diego Water Board staff  
8 inspected the Site with the City on December 15, 2014. The inspectors documented multiple site-  
9 wide violations of the CGP's requirements to implement erosion and sediment control BMPs. A  
10 Notice of Violation was issued to San Altos for these violations on December 19, 2014. Failure on  
11 the part of San Altos to implement BMPs and its implementation of inadequate BMPs resulted in  
12 the discharge of pollutants (namely sediment and other pollutants associated with construction  
13 activity) that were not controlled to the BAT/BCT standard, into Encanto Channel and ultimately  
14 Chollas Creek and San Diego Bay, waters of the U.S. The Site continued to have CGP and City  
15 storm water deficiencies (missing and inadequate BMPs) resulting in at least four more  
16 unauthorized sediment discharges to Encanto Channel over the next nine months. The progressive  
17 steps in enforcement, and continued discharges and non-compliance with the CGP has resulted in  
18 the issuance of an administrative civil liability complaint to San Altos, which is now before the San  
19 Diego Water Board.

## 20 ARGUMENT

### 21 **III. The Prosecution Team submitted sufficient evidence for the Regional Water** 22 **Board to find that each alleged violation occurred.**

23 San Altos argues that there is a lack of sufficient admissible evidence to support many of  
24 the violations alleged. Specifically, San Altos contends that: (1) Inspection reports prepared by the  
25 City, or its consultants, are not reliable and are inadmissible hearsay; (2) Testimony and  
26 conclusions of the Prosecution Team lack foundation and are based on hearsay; and (3) Many  
27  
28

1 alleged violations are based on no evidence at all. The Prosecution Team responds to each of these  
2 contentions, below.

3           **(a) City inspection reports are appropriate evidence to support alleged**  
4           **violations.**

5           San Altos contends that the San Diego Water Board should not consider inspection reports  
6 prepared by the City and its consultants as sufficient evidence to find violations of the CGP since  
7 the City was inspecting for compliance with City storm water ordinances and the City's  
8 Jurisdictional Urban Runoff Management Plan ("JRMP"). This contention is misplaced and should  
9 be rejected. As explained below, City reports can and should be relied on by the San Diego Water  
10 Board to support alleged CGP violations.

11           The City is regulated by Order No. R9-2013-0001, the San Diego Regional Municipal  
12 Separate Storm Sewer System (MS4) Permit (Regional MS4 Permit) issued by the San Diego  
13 Water Board. The Regional MS4 Permit requires the City to develop the legal authority (i.e.  
14 ordinances and/or regulations) that requires the implementation of BMPs at construction sites  
15 within the City's jurisdiction. The City's ordinances require the implementation of BMPs at  
16 construction sites as described in the City's JRMP. The City's JRMP requires the implementation  
17 of project planning, good site management "housekeeping," non-storm water management, erosion  
18 control, sediment controls, and run-on and run-off control BMPs at all construction sites. The  
19 Regional MS4 Permit requires the City to enforce the requirements to implement BMPs from its  
20 JRMP at all construction sites within its jurisdiction.

21           Implementing good site management "housekeeping," erosion control, sediment control,  
22 and run-on and runoff control BMPs required by the City's JRMP generally would allow a  
23 construction site to demonstrate that the good site management "housekeeping," erosion control,  
24 sediment control, and run-on and runoff control BMP requirements of the CGP are at least being  
25 implemented to some degree, if not in full compliance with CGP requirements. Like the BMP  
26 requirements in the CGP, the City's BMP requirements are narrative requirements and do not  
27 specify the exact BMPs that are required to be implemented. The responsibility of selecting BMPs  
28 to be implemented to comply with the City's BMP requirements falls on the discharger. The City



1 is then responsible for ensuring that the BMPs selected for implementation by the discharger are in  
2 compliance with the City's BMP requirements.

3 If a City inspector is identifying issues of noncompliance with the City's BMP  
4 requirements, a San Diego Water Board inspector would almost certainly find a similar issue of  
5 noncompliance with CGP requirements. Likewise, if a San Diego Water Board inspector identified  
6 issues of noncompliance with CGP requirements, there is a high likelihood that a City inspector  
7 will find a similar issue of noncompliance with City BMP requirements.

8 The City documented several issues of noncompliance at the Site with the City's good site  
9 management "housekeeping," erosion control, sediment control, and run-on and runoff control  
10 BMP requirements during several inspections prior to and after storm events. (See Technical  
11 Analysis Exhibits 2 through 6.) It was only after San Altos claimed that the site was in compliance  
12 with CGP requirements, and thus in compliance with City BMP requirements, that the City  
13 requested the San Diego Water Board inspect the site for compliance with CGP requirements. (See  
14 Tech. Analysis Exhibit No. 8, at p. 2 ¶13.)

15 Similar to the City's findings, the December 15, 2014, San Diego Water Board inspection  
16 report (See Tech. Analysis Exhibit No. 8.) documented that San Altos was not adequately  
17 implementing good site management "housekeeping," erosion control, sediment control, and run-  
18 on and runoff control BMP requirements to be in compliance with the CGP. While the findings of  
19 the San Diego Water Board inspector did not exactly match the findings of the City's inspectors,  
20 and the San Diego Water Board inspector identified additional areas of noncompliance with CGP  
21 requirements that were also areas of noncompliance with City BMP requirements, the City and San  
22 Diego Water Board inspectors generally found that San Altos was not adequately implementing  
23 good site management "housekeeping," erosion control, sediment control, and run-on and runoff  
24 control BMPs. A listing of the Prosecution Team's Rebuttal Evidence is attached, Attachment A,  
25 Rebuttal Evidence List. Attachment A identifies the submitted evidence that rebuts each of the San  
26 Altos' claims regarding evidence and use of the Enforcement Policy's penalty calculation  
27 methodology.

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1 If an inspector knows what adequately implemented BMPs look like in the field, an  
2 inspector has the knowledge to determine whether BMPs are being adequately implemented. City  
3 and San Diego Water Board inspectors have the training, the knowledge, and the field experience  
4 to identify missing and inadequately implemented BMPs. For most of the issues of noncompliance  
5 identified by the City and the San Diego Water Board inspectors, the inspections found that one or  
6 more areas of the Site either had no evidence that the applicable BMPs were implemented, or the  
7 way the BMPs had been implemented was obviously ineffective and had failed, would fail, or lead  
8 to failure. These conclusions were made based on training received, and experience in identifying  
9 adequately implemented BMPs in the field, and is not necessarily reliant on training on what is  
10 required by the City's requirements or CGP requirements.

11 The Prosecution Team appropriately based violations on evidence provided by the City, and  
12 the San Diego Water Board may use that evidence to support findings of violations.

13 **(b) City inspection reports are admissible under the official records exception**  
14 **to the hearsay rule and thus may be used alone to support a finding of**  
15 **violation.**

16 San Altos argues that the City inspection reports are inadmissible hearsay and may not be  
17 used to support findings of violations. This is incorrect.

18 Government Code section 11513, subdivision (d) provides that "hearsay evidence may be  
19 used for the purpose of supplementing or explaining other evidence but over timely objection shall  
20 not be sufficient in itself to support a finding unless it would be admissible over objection in civil  
21 actions." Hearsay generally is an out of court statement offered in court to prove the truth of the  
22 matter asserted. In this case, City inspection reports are being offered by the Prosecution Team as  
23 evidence of violations of the CGP. There are many exceptions to the hearsay rule, including the  
24 "official records" exemption contained in Evidence Code section 1280. That section provides,  
25 "evidence of a writing made as a record of an act, condition, or event is not made inadmissible by  
26 the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or  
27 event if all of the following applies: (a) The writing was made by and within the scope of duty of a  
28 public employee, (b) The writing was made at or near the time of the act, condition, or event, [and]

1 (c) The sources of information and method and time of preparation were such as to indicate its  
2 trustworthiness.”

3 In this case, the inspection reports are writings made by and prepared pursuant to the duties  
4 of public employees or their agents, the inspections reports were prepared at or near the time the  
5 inspection occurred, and the sources of the information and the methods and time of preparation of  
6 the inspection reports indicate trustworthiness.

7 Because City inspection reports fit squarely within the official records exception to the  
8 hearsay rule, they may be used alone to support a finding of violation.

9 (c) **Staff analysis of photographs taken by City inspectors is appropriate. The**  
10 **contention that this evidence lacks foundation is unsupported.**

11 San Altos contends that any conclusion by San Diego Water Board staff regarding whether  
12 a violation occurred based on analysis of photographs taken by City inspectors is inadmissible  
13 hearsay and lacks foundation to establish a violation.

14 San Diego Water Board staff reviewed City inspection reports and photos which directly  
15 showed that there were unauthorized discharges and inadequate BMPs at the Site. Many of the  
16 violations were indicated in photographs taken by City inspectors, and were also described in text  
17 within City inspection reports. As described in detail above, City inspection reports are reliable  
18 and may be used to support findings of violations of the CGP.

19 Staff’s professional education and years of work for the San Diego Water Board have  
20 garnered them an elite level of professional judgment. They are trained and employed to determine  
21 CGP compliance, and it is reasonable for the San Diego Water Board to rely upon their  
22 professional interpretation of the photographic and otherwise documented evidence to determine  
23 CGP violations.

24 (d) **The Regional Water Board can make reasonable inferences that violations**  
25 **occurred based on evidence in the record.**

26 San Altos also contends that there are many days of violation alleged for which there is no  
27 direct evidence to support the violation. While this may be an accurate factual statement in that  
28 there are certain days of violation alleged where no inspections were performed and no pictures

1 were taken that directly show the violations, the San Diego Water Board still may logically  
2 conclude that violations occurred on those days based on evidence obtained during other  
3 inspections directly before and after the intervening days. The San Diego Water Board, as the trier  
4 of fact, is permitted to draw reasonable inferences and deductions from the evidence presented.  
5 (Evidence Code § 600, subd. (b); *Jackson v. Dept. of Motor Vehicles* (1994) 22 Cal.App.4<sup>th</sup> 730,  
6 740; See *CalBeach Advocates v. City of Solano Beach* (2002) 103 Cal.App.4<sup>th</sup> 529, 535-536  
7 [providing that the “substantial evidence” test can be met if there is enough relevant information  
8 and reasonable inferences from this information that a fair argument can be made to support a  
9 conclusion, even though other conclusions might also be reached.”]) The fact that violations were  
10 observed during an inspection on one day and then observed again several days later allows a  
11 reasonable inference to be made that the violation continued during the intervening period. San  
12 Altos has offered no evidence to the contrary that would indicate the violations were corrected  
13 throughout the site on any of the intervening days for which an inference of a continuing violation  
14 is made.

15  
16 **IV. The process provided by the Advisory Team and the Regional Water Board is**  
17 **adequate. Due Process balancing weighs against the additional procedures**  
18 **requested.**

19 San Altos contends that, because it has had less than 150 days to prepare for hearing and  
20 has been allotted “only” 90 minutes to present its case to the San Diego Water Board, it is being  
21 deprived of due process. San Altos argues that it should be afforded at least, if not more than, the  
22 15 months it took to resolve the Encinitas Hall Park Administrative Civil Liability Complaint No.  
23 R9-2013-0152, where the Complaint was issued on October 21, 2013 and the Stipulated Order was  
24 adopted on June 1, 2015. Finally, San Altos claims due process violations have continued, citing  
25 the ruling to allow supplemental evidence by the Prosecution Team after the initial evidentiary  
26 deadline.

27 As an initial matter, in assessing what process is due, substantial weight must be given to  
28 the good-faith judgments of the agency that its procedures assure fair consideration of the claims of

1 individuals. (*Mohilef v. Janovici* (1996) 51 Cal.App.4th 267, 289 citing *Matthews v. Eldridge*  
2 (1976) 412 U.S. 319, 348-349.) Adjudicative hearings before the State Water Board and the nine  
3 Regional Water Boards are governed by State Water Board regulations as authorized by Chapter 4.5 of  
4 the Administrative Procedure Act (commencing with section 11400 of the Government Code). State  
5 Water Board regulations further provide that, with certain exceptions, adjudicative proceedings will be  
6 conducted in accordance with sections 801-805 of the Evidence Code and section 11513 of Chapter 5  
7 of the Government Code. Other provisions of Chapter 5 do not apply to adjudicative proceedings  
8 before the State Water Board and Regional Water Boards. State Water Board regulations setting forth  
9 the procedures for adjudicative proceedings before the State Water Board and Regional Water Boards  
10 are codified in Division 3 of Title 23 of the California Code of Regulations (CCR) at section 648, et  
11 seq.

12 At its core, due process requires some form of notice and an opportunity to respond. The  
13 hearing procedures in this matter provide San Altos with notice of the alleged violations and a  
14 meaningful opportunity to be heard. (See, e.g., *North Georgia Finishing, Inc. v. Di-Chem, Inc.* (1975)  
15 419 U.S. 601, 605-606; *Beaudreau v. Superior Court* (1975) 14 Cal.3d 448, 458.) The opportunity to  
16 present and rebut evidence is not untethered as San Altos would like, but rather is subject to reasonable  
17 control and limitation by the San Diego Water Board. (Gov. Code, § 11425.10, subd. (a)(1).)  
18 California Code of Regulations, title 23, section 648.5, provides the San Diego Water Board with broad  
19 discretion in conducting adjudicative proceedings. In pertinent part, this regulation states that  
20 “Adjudicative proceedings shall be conducted in a manner as the Board deems most suitable to the  
21 particular case with a view toward securing relevant information expeditiously without unnecessary  
22 delay and expense to the parties and to the Board.” (Cal. Code Regs., tit. 23, § 648.5, subd. (a).)

23 Pursuant to Government Code section 11513, and as provided in the Hearing Procedures, the  
24 parties will be allowed to call and examine witnesses; to introduce exhibits; to cross-examine opposing  
25 witnesses on any matter relevant to the issues even though that matter was not covered in the direct  
26 examination; to impeach any witness regardless of which party first called him or her to testify; and to  
27 rebut the evidence against him or her.

28 ///

1           The right to procedural due process is also not violated as a result of the pre-hearing ruling  
2 allowing the Prosecution Team to provide supplemental evidence because the pre-hearing ruling  
3 does nothing to prevent San Altos from presenting legal and factual issues in an orderly manner.  
4 (*White v. Board of Medical Quality Assurance* (1982) 128 Cal.App.3d 699, 705.) Nor do the  
5 rulings preclude a reasonable opportunity to know the claims of the adverse party and to meet them  
6 (*Id.* at pp. 705-706 [evidence taken or received by a board acting in a quasi-judicial capacity  
7 without the knowledge of the party adversely affected, or without giving them a right to cross-  
8 examine must be disregarded when the case is submitted to judicial review].)

9           In *Machado v. State Water Resources Control Bd.* (2001) 90 Cal.App.4th 720, the court  
10 considered the issue of procedural due process afforded by a Regional Water Board after the  
11 issuance of a cleanup and abatement order by a discharger. The court held that the hearing  
12 procedures provided by the Porter-Cologne Water Quality Control Act minimize the risk of an  
13 erroneous deprivation of the Dairy's interests. (*Id.* at pp. 726-727.) The court based this  
14 determination on the fact that, under section 13320, subdivision (a), a party aggrieved by an order  
15 of a Regional Water Board may petition the State Water Board for review. (*Id.* at p. 725.)  
16 Although decided in the context of what process is due pertaining to a cleanup and abatement  
17 order, the court's analytical framework in evaluating what process is due is particularly relevant to  
18 this matter where San Altos is raising similar due process concerns. In *Machado*, the court  
19 followed the U.S. Supreme Court decision of *Mathews v. Eldridge* in explicating a three-prong test  
20 in evaluating what process is due as part of an adjudicatory proceeding: (1) the private interest  
21 affected by the official action; (2) the risk of an erroneous deprivation of such interest through the  
22 procedures used, and the probative value, if any, of additional, or substitute safeguards; and (3) the  
23 government's interest, including the function involved and the fiscal and administrative burdens  
24 that the additional or substitute procedural requirement would entail. (*Id.* at pp. 725-726.)

25           Taking each factor in turn, the private interest affected by the official action if imposed, would  
26 yield \$848,374 in administrative civil liability for 136 days of violation of CGP provisions. The  
27 liability amount may change depending on the final outcome of the San Diego Water Board hearing.  
28 While the proposed liability is large, it is proportional to the violations alleged. Moreover, should the



1 San Diego Water Board impose the proposed liability against San Altos, the dollar amount cannot be  
2 considered in the abstract. Rather, the “interest affected” must be considered in the factual context of  
3 this proceeding and San Altos’ financial situation. San Altos has made no claim that it is unable to pay  
4 the liability or that the liability would have an impact on its ability to continue in business. Rather, San  
5 Altos only states that the imposition of liability would result in a decrease in its average profit margin  
6 of 6.2% per home, which is below the industry standard of 12% to 15%. (See Declaration of Philip J.  
7 Downley provided by San Altos, p. 2.)

8 The second factor in due process balancing is the risk of an erroneous deprivation of a private  
9 party’s interest through the procedures used, and the probable value, if any, of additional or substitute  
10 procedural safeguards. This part of the test requires a court to determine the nature of the factual issues  
11 that are most likely to be dispositive of a class of disputes between individuals and agencies, and then  
12 to estimate the marginal contribution to the accuracy of the resolution of those factual disputes that  
13 would result from requiring the agency to add one or more procedural safeguards, e.g., more specific  
14 notice of reasons for proposed action, rights to discovery, or cross-examination. (2 Pierce,  
15 Administrative Law Treatise (2002), What Process Is Due?, § 9.5, p. 629.)

16 In this case, the hearing procedures and the ruling to allow supplemental evidence fully  
17 comports with procedural due process. Not only do these procedures provide for opening statements,  
18 presentation of evidence by parties, and cross-examination, but may also permit recross- and redirect-  
19 examination as the circumstances require, as well as a closing statement. (Gov. Code, § 11513, subd.  
20 (b); Cal. Code Regs., tit. 23, § 648.5.)

21 The third and final factor is the government’s interest, including the function involved and  
22 the fiscal and administrative burdens that the additional or substitute procedural requirement would  
23 entail. Here, the government’s interest is significant. The statewide program for water quality  
24 control is designed to ensure the health, safety, and welfare of all Californians. (Wat. Code, §  
25 13000.) Enforcement not only protects the public health and the environment, but creates an even  
26 playing field, ensuring that dischargers who comply with the law are not placed at a competitive  
27 disadvantage by those who do not. Enforcement also deters potential violators and, thus, further  
28 protects the environment. Monetary remedies, such as those imposed by an administrative civil

1 liability order, are an essential component of an effective enforcement program, provide a measure  
2 of compensation for the damage that pollution causes to the environment, and ensure that polluters  
3 do not gain an economic advantage from violations of water quality laws.

4 Second, as noted above, the court in *Machado* based its decision on the fact that under  
5 Water Code section 13320, subdivision (a), a party aggrieved by an order of a Regional Water  
6 Board may petition the State Water Board for review. Therefore, even though the Regional Water  
7 Board provided absolutely no hearing before the imposition of its cleanup and abatement order, the  
8 court still found that there was adequate due process in light of the fact that the aggrieved party  
9 could seek to petition the State Water Board to review the propriety of the order.

10 In this case, given that hearing requirements in fact do apply, unlike in *Machado*, and the fact  
11 that the same petition procedure is available to San Altos if it is aggrieved by the ruling of the San  
12 Diego Water Board, San Altos' claim that the existing procedures and pre-hearing rulings are a  
13 violation of due process must fail.

14  
15 **V. The Prosecution Team has appropriately interpreted key provisions of the**  
16 **Construction General Permit.**

17 **(a) Active vs. "Actively being used"**

18 San Altos asserts that the Prosecution Team has redefined "active areas of construction" as  
19 that term is used in the CGP. San Altos also asserts that because a City or San Diego Water Board  
20 inspector did not confirm with San Altos that an area was active or inactive, that a violation could  
21 not be established. San Altos also appears to confuse the erosion control requirements for "active  
22 areas of construction" with requirements for stockpiles that are "actively being used."

23 The importance of whether an area is considered active or inactive is related to the Risk  
24 Level that has been determined for a construction site. Risk Level 1 construction sites are only  
25 required to implement erosion control BMPs for inactive areas. Risk Level 2 and Risk Level 3  
26 construction sites are required to implement additional erosion control BMP requirements for  
27 active areas, in addition to the erosion controls for inactive areas, due to their higher potential and  
28 risk to generate and discharge sediment to more sensitive receiving waters.

1 In its Notice of Intent to comply with the CGP, San Altos identified the site as a Risk Level  
2 2 construction site, which is subject to the requirements of Attachment D to the CGP. (Tech.  
3 Analysis Exhibit No. 1). Attachment D to the CGP specifies the Good Site Management  
4 “Housekeeping,” Non-Storm Water Management, Erosion Control, Sediment Controls, and Run-on  
5 and Run-off Controls required to be implemented at Risk Level 2 construction sites.

6 In addition to the requirements to provide effective soil cover for inactive areas and all  
7 finished slopes, open space, utility backfill, and completed lots (Section D.1 of Attachment D), as  
8 required for Risk Level 1 construction sites, Risk Level 2 construction sites are also required to  
9 implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction  
10 with sediment control BMPs for areas under active construction (Section E.3 of Attachment D).

11 “Active areas of construction” are defined in the CGP as “all areas subject to land  
12 disturbance activities...all previously active areas are still considered active areas until final  
13 stabilization is complete.” In contrast, “inactive areas of construction” are defined in the CGP as  
14 “areas of construction activity that are not active and those that have been active and are not  
15 scheduled to be re-disturbed for at least 14 days.”

16 San Altos appears to assert that several areas identified as inactive were actually active.  
17 San Altos also asserts that the CGP does not require active areas to be fully protected unless there  
18 is a greater than 50 percent chance of rain predicted, and then only most, not all, of the active areas  
19 must be protected from erosion, and only prior to the onset of rain.

20 Based on the CGP’s definitions of active and inactive areas of construction, and San Altos’  
21 interpretation of the erosion control BMP requirements, San Altos would understandably want to  
22 categorize as much of the site as active for as long as possible, and the “appropriate” erosion  
23 control BMPs for those active areas would be no implementation of any erosion control BMPs  
24 until there is a greater than 50 percent chance of rain. However, under this approach a construction  
25 site would never be prepared for rain events that occurred with less than 50 percent chance of  
26 predicted rain, or unpredicted rain events, or unanticipated non-storm water discharges (e.g. water  
27 main breaks, water truck spills). Furthermore, this approach is inconsistent with the intent of the

28 ///

1 CGP, which is to prevent and minimize pollutants in storm water runoff and authorized non-storm  
2 water discharges from a construction site.

3 The CGP Fact Sheet emphasizes the importance of implementing erosion control BMPs at  
4 construction sites to prevent and minimize the potential for sediment to be eroded and transported.  
5 “The best way to minimize the risk of creating erosion and sedimentation problems during  
6 construction is to disturb as little of the land surface as possible....[p]articular attention must be  
7 paid to large, mass-graded sites where the potential for soil exposure to the erosive effects of  
8 rainfall and wind is great and where there is potential for significant sediment discharge from the  
9 site to surface waters...[t]emporary soil stabilization can be the single most important factor is  
10 reducing erosion at construction sites...[e]rosion control BMPs should be the primary means of  
11 preventing storm water contamination...” (CGP fact sheet, p. 30, section J.1.e.) The importance  
12 of erosion control BMPs for Risk Level 2 and Risk Level 3 construction sites is further emphasized  
13 in CGP requirements by including additional erosion control BMP requirements for active areas of  
14 construction, which requires runoff control AND soil stabilization.

15 The erosion control BMP most frequently included in SWPPPs and claimed to be  
16 implemented at construction sites is Scheduling. (See Exhibit No. 31.) San Altos’ SWPPP lists  
17 Scheduling as an erosion control BMP implemented at the site. “The purpose [of scheduling] is to  
18 reduce the amount and duration of soil exposed to erosion by wind, rain, runoff, and vehicle  
19 tracking...” (Exhibit No. 31, p. 1.) To implement Scheduling, the BMP states “[m]inimize the  
20 active construction area during the rainy season...[a]llow enough time before rainfall begins to  
21 stabilize the soil with vegetation or physical means...[n]on-active areas should be stabilized as  
22 soon as practical after the cessation of soil disturbing activities or one day prior to the onset of  
23 precipitation...[w]hen rainfall is predicted, adjust the construction schedule to allow the  
24 implementation of soil stabilization on all disturbed areas prior to the onset of rain...[b]e prepared  
25 year round to deploy erosion control and sediment control BMPs...[e]rosion may be caused during  
26 dry season by un-seasonal rainfall, wind, and vehicle tracking...[k]eep the site stabilized year  
27 round.” (*Id.*, p. 2.)

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1           Based on the discussion in the CGP Fact Sheet and the Scheduling BMP, San Altos' actual  
2 implementation in the field is the opposite of the approach expected to be implemented by the  
3 CGP. To comply with the requirements of the CGP, San Altos should be scheduling construction  
4 activities to minimize the areas that are active, make as much of the Site inactive for as long as  
5 possible, implement effective soil cover as soon as practical instead of waiting 14 days, and being  
6 prepared to stabilize all inactive and active areas prior to predicted rainfall events.

7           At each inspection, City and San Diego Water Board inspectors identified and documented  
8 several areas of the Site that appeared to be inactive, or could have been scheduled to be inactive  
9 that San Altos claims were active because there was vehicle traffic or materials being stored in the  
10 areas. San Altos did not provide any evidence during the inspections that these areas were required  
11 to be active and could not have been made to be inactive.

12           In addition, according to the CGP requirements and the Scheduling BMP listed in the San  
13 Altos' SWPPP, San Altos should have been implementing soil stabilization BMPs for active areas  
14 prior to the onset of rain. Implementing soil stabilization BMPs for active areas prior to the onset  
15 of rain requires having a plan and the services or materials readily available to implement year  
16 round. The CGP including its Fact Sheet do not specify any minimum "chance of rain predicted"  
17 to implement "appropriate" erosion control BMPs. Having a plan and the services and material  
18 readily available to implement is an "appropriate" erosion control BMP during dry periods.  
19 However, at each inspection conducted by the San Diego Water Board (including the March 27,  
20 2015, inspection where a San Altos representative was available to discuss the Site), San Altos  
21 never provided an adequate plan or indicated there would be adequate materials or services  
22 available to implement soil stabilization erosion control BMPs prior to the onset of rain in active  
23 areas of construction. San Altos only described runoff control BMPs (i.e. berms, which are  
24 sediment controls not erosion controls) to protect active areas of construction. (See Tech. Analysis  
25 Exhibit No. 18, p. 3.)

26           The failure to implement or be prepared to implement the Scheduling BMP was evidenced  
27 by the lack of soil stabilization erosion control BMPs on active areas throughout the Site that could  
28 be observed by City and San Diego Water Board inspectors before, during, and/or after predicted

1 rain events in December 2014, January 2015, and May 2015. While the San Diego Water Board  
2 staff found that San Altos had “largely addressed the violations identified in Notice of Violation  
3 No. R9-2015-0153” during the March 27, 2015 inspection, San Diego Water Board inspectors had  
4 also warned San Altos that creating an earthen berm (i.e. a sediment control not an erosion control  
5 BMP) to protect active areas of construction would not be an erosion control BMP that would meet  
6 the requirement to provide soil stabilization for active areas of construction (Documented in Tech.  
7 Analysis Exhibit No. 19.) This warning was a clear indication that San Altos did not have any  
8 plans or schedule to implement soil stabilization erosion control BMPs for active areas of  
9 construction prior to any rain events, and means the Site was not fully in compliance with the  
10 erosion control BMP requirements for a Risk Level 2 construction site.

11 At the time of the March 27, 2015, inspection, the San Diego Water Board inspectors  
12 expected that the warning would provide San Altos enough guidance and time to develop the plan  
13 and secure the services and materials to adequately implement soil stabilization erosion control  
14 BMPs for future rain events. However, prior to the March 27, 2015, inspection, San Altos  
15 obviously did not have “appropriate” erosion control BMPs (runoff controls and soil stabilization)  
16 for active areas of construction.

17 This was corroborated by the San Diego Water Board inspection findings on May 8, 13,  
18 and 15, 2015, (Tech. Analysis Exhibit Nos. 19 - 20) when many of the same active areas of  
19 construction observed during the March 27, 2015, inspection showed no evidence of soil  
20 stabilization erosion control BMPs implemented prior to, during, and after predicted rain events in  
21 May 2015.

22 Therefore, for most areas that San Altos asserts were active, City and San Diego Water  
23 Board inspectors provided evidence (i.e. photographs, inspection report findings, and/or deposition  
24 testimony) that these areas lacked soil stabilization erosion control BMPs before, during, or after  
25 predicted rain events in December 2014, January 2015, and May 2015.

26 There were several finished slopes and completed lots (i.e. inactive areas of construction)  
27 that were observed lacking effective soil cover by City and San Diego Water Board inspectors and  
28 documented in photographs and inspection report findings. The finished slopes and completed lots



1 observed without effective soil cover between December 2014 and May 2015 may have been  
2 different, but that does not mean the areas could not have been made inactive and provided  
3 effective soil cover, especially in preparation of predicted rain events.

4 Finally, San Altos appears to confuse the erosion control requirements for “active areas of  
5 construction” with requirements for stockpiles that are “actively being used.” San Altos asserts  
6 that the Prosecution Team is creating an interpretation that treats stockpiles, construction roads,  
7 and slopes the same and states that “[i]f the State [Water Resources Control] Board wanted to  
8 create different rules for stockpiles and construction roads, it could have done so. But the State  
9 Board didn’t provide such a definition...” However, the State Water Board did, in fact, create  
10 different requirements for stockpiles and construction roads, and the San Diego Water Board  
11 appropriately does apply different requirements to stockpiles versus construction roads and slopes.

12 Creation of construction roads and slopes involve land disturbance activities and are  
13 considered “active areas of construction” subject to the Risk Level 2 erosion control requirements  
14 under Sections D.2 and E.3 in Attachment D to the CGP. Sections D.2 has a footnote to the term  
15 “inactive” which states, “Inactive areas of construction are areas of construction that have been  
16 disturbed and are not scheduled to be re-disturbed for at least 14 days.” Section E.3 has a footnote  
17 to the term “active” which states “Active areas of construction are areas undergoing land surface  
18 disturbance. This includes construction activity during the preliminary state, mass grading stage,  
19 streets and utilities stage and the vertical construction stage.”

20 The CGP includes separate requirements for stockpiles. The CGP requires construction  
21 sites to “cover and berm loose stockpiled construction materials that are not actively being used”  
22 (Section B.1.b in Attachment D). There is no footnote for the term “actively being used,” which  
23 means that the definition of “actively being used” is *not* the same as the definition for “active” or  
24 “inactive” under the erosion control requirements. Stockpiles are placed on top of the land surface  
25 and need to be managed with BMPs that are different from disturbed land surfaces, thus the  
26 separate requirements. When San Diego Water Board inspectors evaluated compliance with the  
27 CGP stockpile requirements, the inspector was looking for evidence that a stockpile was “actively

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1 being used” which is consistent with CGP requirements, instead of whether the stockpile had been  
2 disturbed within 14 days.

3 San Diego Water Board inspectors appropriately identified violations of erosion control  
4 BMP requirements of active and inactive areas of construction, as well as violations of stockpile  
5 management BMP requirements.

6 **(b) The CGP requires compliance with Narrative Effluent Standards and**  
7 **Numeric Action Levels which trigger the need to implement and assess the**  
8 **effectiveness of BMPs. There are no Numeric Effluent Limitations in the**  
9 **CGP.**

10 The CGP has a narrative effluent limitation which requires all dischargers to “minimize or  
11 prevent pollutants in storm water discharges and authorized non-storm water discharges through  
12 the use of controls, structures, and management practices that achieve best available technology  
13 economically achievable (BAT) for toxic and non-conventional pollutants and best conventional  
14 pollutant control technology (BCT) for conventional pollutants.” (CGP § V.A.2.) The CGP does  
15 not have a numeric effluent limitation. San Altos asserts that the Prosecution Team has redefined  
16 the CGP’s BAT/BCT effluent limitation.

17 To reiterate, the BAT/BCT limitation is narrative, not numeric. San Altos correctly states  
18 that “BCT is a technology-based standard,” but incorrectly includes the Numeric Action Level  
19 (NAL) for turbidity as part of the definition of achieving the BCT standard. The BCT technology-  
20 based standard is based on the implementation of the best technology to control conventional  
21 pollutants (e.g. sediment) from a construction site. It is through the implementation of control  
22 technologies that the BCT standard is met, not by meeting a numeric value, like a NAL.

23 The requirements in Attachment D to the CGP are the BMP performance standards for the  
24 technologies that are required to be implemented to achieve the BAT/BCT effluent limitation. If  
25 one or more of the BMP requirements in Attachment D are not implemented, then the discharger  
26 has not achieved the BCT standard to minimize and prevent pollutants in storm water discharges.

27 San Altos’ assertion that compliance with NALs is compliance with the BCT standard fails  
28 to recognize that NALs are not a requirement for Risk Level 1 construction sites. Compliance with

1 BCT at Risk Level 1 construction sites can only be evaluated based on the implementation of the  
2 BMP requirements in Attachment C to the CGP, because Risk Level 1 construction sites are not  
3 required to collect samples to monitor for turbidity or required to report exceedances of NALs.

4 In contrast, NALs were added to Risk Level 2 and Risk Level 3 construction sites to  
5 monitor for the greater potential and risk of sediment discharges from these sites as compared to  
6 Risk Level 1 construction sites. “[T]echnology-based NALs...and requirements for effluent  
7 monitoring at all Risk Level 2 & 3, and LUP Type 2 & 3 sites...are essentially numeric benchmark  
8 values for certain parameters that, if exceeded in effluent sampling, trigger the discharger to take  
9 actions...[e]xceedance of an NAL does not itself constitute a violation of the General  
10 Permit...[t]he primary purpose of NALs is to assist dischargers in evaluating the effectiveness of  
11 their on-site measures...” (CGP Fact Sheet § F.2.a.)

12 If a discharger is implementing all the BMP requirements of Attachment D to the CGP,  
13 constituting the BAT/BCT effluent limitation, and NALs are being exceeded, as the term Numeric  
14 Action Level implies, the CGP requires a discharger to implement corrective actions to prevent  
15 future exceedances of the NALs. In this case an exceedance of the NAL would not by itself  
16 constitute a violation of the requirement to maintain compliance with the BAT/BCT effluent  
17 limitation.

18 If a discharger is not implementing all the BMP requirements of Attachment D to the CGP,  
19 regardless of whether NALs are exceeded, a discharger would not be in compliance with the  
20 BAT/BCT effluent limitation because not all the best technologies have been implemented to  
21 prevent and minimize sediment in storm water discharges from the site. This would also be true  
22 for Risk Level 1 construction sites, which would not have any turbidity or NAL exceedance data  
23 collected.

24 Therefore, based on the correct technology-based and narrative definition of the BAT/BCT  
25 effluent limitation, the Prosecution Team has properly concluded that San Altos was not in  
26 compliance with the BAT/BCT effluent limitation of the CGP when San Altos repeatedly failed to  
27 adequately implement several of the BMP requirements in Attachment D to the CGP, which then

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1 failed to prevent or minimize sediment and other pollutants in storm water discharges from the  
2 Site.

3  
4 **VI. The Prosecution Team has correctly applied the Enforcement Policy in**  
5 **calculating penalties.**

6 **(a) Multiple Violations**

7 San Altos contends that the Prosecution Team should have reduced the number of days of  
8 violation alleged based on either the fact that the violations are not substantially distinguishable or  
9 because the violations should have been alleged as lasting for more than 30 days with the resulting  
10 number of days collapsed per the Enforcement Policy. Neither of San Altos' suggested means of  
11 reducing the days of violations alleged is appropriate.

12 Multiple Violations Resulting From the Same Incident

13 The Enforcement Policy contains two distinct provisions related to multiple day violations.  
14 The first, provided on pages 17-18 of the Policy, addresses violations that result from a single  
15 incident and provides discretion for a Regional Water Board to treat multiple violations as a single  
16 violation for purposes of imposing liability under the following circumstances:

- 17 a. The facility has violated the same requirement at one or more  
18 locations within the facility;
- 19 b. A single operational upset where violations occur on multiple  
20 days;
- 21 c. The violation continues for more than one day;
- 22 d. When violations are not independent of one another or are not  
23 substantially distinguishable. For such violations, the Water  
24 Boards may consider the extent of the violation in terms of the  
25 most egregious violation; or
- 26 e. A single act may violate multiple requirements, and therefore  
27 constitute multiple violations. For example, a construction  
28 dewatering discharge to a dewatering basin located on a gravel bar

1           may violate a requirement that mandates the use of best  
2           management practices (BMPs) for sediment and turbidity control,  
3           a requirement prohibiting the discharge of soil, silt or other organic  
4           matter to water of the State, and a requirement that temporary  
5           sedimentation basins be located at least 100 feet from a stream  
6           channel.

7           San Altos attempts to re-write this provision by arguing that options d. and e. provide that a  
8           single base liability amount *should* be imposed when violations are not independent of one another  
9           or are not substantially distinguishable. Nowhere in the Enforcement Policy does it provide that  
10          the Water Boards “should” impose a single base liability in these circumstances. Rather, it says the  
11          Water Boards “can” impose a single base liability in these circumstances at its discretion.

12          In this case, San Altos asserts that perimeter sediment controls, linear sediment controls on  
13          slopes, run-on and runoff controls, and removal of sediment from roads should not be imposed as  
14          separate violations because they are not substantially different from each other. The Prosecution  
15          Team disagrees that they are not substantially different from each other, which is supported by the  
16          fact that there are separate requirements, thus different purposes, for implementing each of those  
17          BMPs. Each of these BMP requirements are intended to provide complementary measures that  
18          will prevent and minimize sediment (and other pollutants) in storm water discharges and  
19          authorized non-storm water discharges from a construction site.

20          The CGP requires implementation of linear sediment controls on slopes for Risk Level 2  
21          and Risk Level 3 construction sites due to their higher potential and risk to generate and discharge  
22          sediment to receiving waters (Section E.4 of Attachment D). The primary purpose of the linear  
23          sediment controls for slopes is to reduce the sheet flow lengths on slopes to reduce the distance  
24          sediment can be transported if it becomes mobilized due to erosion, and reduce the potential of  
25          increased erosion further down the slope. Failure to implement linear sediment controls on slopes  
26          increases the potential for slopes to erode and transport sediment caused by higher runoff velocities  
27          due to angles of slopes relative to flatter areas.

28          ///

1           The CGP requires all construction sites to “manage all run-on, all runoff within the site and  
2 all runoff that discharges off the site. Run-on from off site shall be directed away from all  
3 disturbed areas or shall collectively be in compliance with the effluent limitations.” (Section F of  
4 Attachment D). Recall that the effluent limitations are narrative, based upon BAT/BCT and not  
5 numerical. The primary purpose of the run-on and runoff controls is to reduce the additional  
6 pollutants and flows that could enter the site and flow through the site, as well as reduce the  
7 amount of pollutants and flow that will be able to move through a site, and potentially discharge off  
8 a site. Failure to implement the run-on and runoff controls increases the potential for pollutants to  
9 be transported from one part of the site to another part of the site, which leads to increased  
10 potential for failure of erosion control and sediment control BMPs and higher potential for  
11 discharges of pollutants offsite.

12           The CGP requires Risk Level 2 and Risk Level 3 construction sites to remove any sediment  
13 that is deposited on roads (by vacuuming or sweeping), at a minimum daily (when necessary) and  
14 prior to any rain event, due to their higher potential and risk to generate and discharge sediment to  
15 receiving waters (Section E.7 of Attachment D). The primary purpose of removing sediment from  
16 roads is to reduce the amount of pollutants that can be transported if and when a rain event or other  
17 event (e.g. spill or water main break) that may cause runoff occurs. The reduction of sediment that  
18 can be transported prevents sediment control BMPs from becoming overwhelmed.

19           The primary reason to implement perimeter sediment controls is to “sufficiently control  
20 erosion and sediment discharges from the site” (Section E.1 in Attachment D). The perimeter  
21 sediment controls, therefore, are intended to act as the “last line of defense” to prevent and  
22 minimize sediment in storm water discharges from a construction site if the good site management  
23 “housekeeping,” non-storm water management, erosion controls for inactive and active areas,  
24 linear sediment controls for slopes, and controls to manage all run-on and all run-off within the site  
25 fail.

26           Each of these BMP requirements serves a specific purpose. It is true some BMPs can be  
27 implemented to comply with one or more aspects of multiple BMP requirements of the CGP.

28       ///



1 However, multiple BMPs are needed and must be tailored to the conditions of each site to fully  
2 realize the effectiveness and meet each of these requirements of the CGP.

3 Because the BMP provisions are substantially distinguishable, the Prosecution Team asserts  
4 that imposing a single base liability for the numerous BMP violations is inappropriate. The  
5 proposed penalty calculation was applied in a manner consistent with the last three ACL  
6 Complaints issued for CGP violations in the San Diego Region (R9-2015-0166 against SANDAG,  
7 R9-2015-0015 against Jacobs Center for Neighborhood Innovation, and R9-2014-0044 against  
8 Scripps Mesa Developers). San Altos ignores these cases and instead points to the 2013 Encinitas  
9 Hall Park ACL Complaint and urges the San Diego Water Board to maintain consistency by  
10 following the method of calculating violations used in that case. In the Encinitas Hall Park ACL  
11 Complaint, multiple BMP violations were alleged as a single violation that continued over a period  
12 of multiple days. The Prosecution Team urges the San Diego Water Board to disregard the method  
13 of calculating BMP violations used in that matter for several reasons: (1) The Prosecution Team's  
14 application of the Enforcement Policy's penalty calculation methodology has evolved since 2013.  
15 San Diego Water Board Storm water staff want to underscore the need to review and address  
16 deficiencies among each of the BMP requirements listed in the CGP; lumping all the deficiencies  
17 together into one violation may simplify how to determine the period of non-compliance, but it  
18 downplays the need to inspect and address each requirement separately; and (2) In cases such as  
19 this, where San Altos has been warned many times that violations were occurring and where  
20 discharges of sediment resulted from those violations, a significant penalty which is based on each  
21 violation observed is appropriate.

#### 22 Multiple Day Violations

23 The Enforcement Policy, on page 18, also provides that the Water Boards may reduce the  
24 number of days of violation alleged in certain circumstances when the violation continues for more  
25 than 30 days. The Policy provides a method by which the days of violation may be reduced to the  
26 fewest allowable days.

27 San Altos argues that the Prosecution Team should have alleged the violations in a manner  
28 such that the violations arguably continued for more than 30 days, thus allowing for the days of

1 violation alleged to be reduced. Creating such a fiction is inappropriate. The Prosecution Team  
2 alleged violations based on the evidence obtained during its investigation. Certain reasonable  
3 inferences were drawn in order to allege violations during periods of time between two inspection  
4 dates, which San Altos vigorously contends should be disregarded based on lack of direct evidence.  
5 The fact that San Altos argues here that the Prosecution Team should have alleged the violations  
6 based on an even *greater* period of time for which no direct evidence of violations exists is ironic  
7 and shows the extent to which it is willing to make any argument which will result in a lesser  
8 liability. The ultimate liability suggested by the Prosecution Team in this matter is appropriate  
9 given the nature and circumstance of the violations observed. There is no rational basis for  
10 reducing the number of days of violation alleged.

11 **(b) Culpability**

12 San Altos argues that the Prosecution Team failed to consider prevailing industry practice  
13 when considering the culpability relating to the violations. San Altos misstates what the  
14 appropriate standard should be and fails to recognize that prevailing industry practices may not  
15 result in CGP compliance. The Enforcement Policy provides that the test for culpability is “what a  
16 reasonable and prudent person would have done or not done under similar circumstances.” The  
17 test is *not* what a reasonable and prudent person would have done or not done considering the  
18 prevailing industry practice. The standard to consider what a reasonable person would have done  
19 or would not have done is found within CGP provisions. In this case, San Altos agreed to the  
20 requirements of the CGP when it submitted its Notice of Intent and application fee. Furthermore,  
21 San Altos received numerous warnings orally and in writing from City and San Diego Water Board  
22 inspectors that its BMPs were inadequate and ineffective in preventing and reducing pollutants in  
23 storm water runoff. Implementation of BMPs is a core component of the CGP, and the City’s  
24 ordinance and JRMP. Even after receiving numerous warnings and progressive enforcement  
25 actions (including monetary citations from the City) over several months, San Altos continued to  
26 violate CGP requirements. This conduct falls well below the standard of care for dischargers who  
27 are aware of CGP requirements and the need to dedicate resources towards achieving compliance.  
28 The application of a culpability factor of at least 1.3 is appropriate.

1                   (c)       **Cleanup and Cooperation**

2           The Prosecution Team applied a Cleanup and Cooperation factor of 1.1 because San Altos  
3 violated the CGP multiple times over many months after repeated efforts by City and San Diego  
4 Water Board staff to bring about compliance. While San Altos stated in written communication  
5 with the San Diego Water Board that it was intent on complying with the storm water  
6 requirements, its consistent and long term failings spoke louder. If San Altos had wanted to  
7 cooperate with the City and the San Diego Water Board it would have obtained the expertise by  
8 hiring a consultant to advise them how to properly manage the Site in regards to storm water  
9 compliance, or acted accordingly on its own to come into compliance.

10  
11       **VII.       Other Considerations**

12                   (a)       **Any cleanup of debris and trash from the Site claimed to have been done**  
13                               **by San Altos, including costs spent on improvements, is irrelevant to the**  
14                               **imposition of liability.**

15           San Altos contends that it has made improvements to the site, including cleanup of trash  
16 and debris, at a cost of \$7 million and therefore argues that the penalty proposed by the Prosecution  
17 Team for what San Altos terms are “immeasurable and inconsequential” violations, bears no  
18 relationship to the harm and is thus “in violation of the Enforcement Policy.” On the one hand, this  
19 is a gross overstatement by San Altos regarding what the Enforcement Policy requires and, on the  
20 other, a tremendous understatement as to the harm that results from its violations.

21           San Altos’ claim that the Site has been improved with “state-of-the-art erosion control and  
22 storm water prevention systems which will protect the creek for generations” may be true when the  
23 Site is fully stabilized, construction is completed, and post-construction BMPs are fully  
24 operational. At that point, however, the requirements of the CGP will no longer be applicable.  
25 Implementation of BMPs during construction is required in the CGP to prevent and minimize  
26 pollutants in storm water and authorized non-storm water discharges during construction.

27           The ACLComplaint was issued because of San Altos’ failure to implement adequate BMPs  
28 during construction which resulted in impacts to the receiving waters in the Chollas Creek

1 watershed downstream of the construction site. The impacts that have already occurred as a result  
2 of the inadequate implementation of BMPs during construction will not be prevented by the “state-  
3 of-the-art erosion control and storm water prevention systems” constructed by San Altos to prevent  
4 and minimize pollutants in storm water discharges after construction is completed.

5 **(b) The purpose of this enforcement action is not to “make an example” of San**  
6 **Altos, as claimed.**

7 San Altos alleges that the "purpose of the ACLC was to send a message to the development  
8 industry that El Nino storms were expected during the 2015-16 wet season and RWQCB staff  
9 decided to make an example of San Altos to help ensure compliance by other developers." The  
10 San Diego Water Board selects its enforcement cases with consideration to its regional  
11 enforcement priorities, and in accordance with the Enforcement Policy (pages 7-8). The San Altos  
12 case was selected for further enforcement because of the totality of its circumstances. Page 1 of the  
13 Enforcement Policy states that "Enforcement is a critical ingredient in creating the deterrence  
14 needed to encourage the regulated community to anticipate, identify, and correct violations."  
15 While the Prosecution Team does not select enforcement cases solely for the purposes of "making  
16 an example," it does leverage from the cases selected to communicate key messages (with press  
17 releases and training opportunities) and maximize the deterrence effect; not just for San Altos, but  
18 for the regulated community as a whole.

19 **(c) Staff Costs**

20 According to paragraph 35 of the ACL Complaint, "the San Diego Water Board may  
21 choose to increase the recommended liability to recover additional necessary staff costs accrued  
22 after the complaint is issued and through the hearing." As part of Step 7 of the penalty calculation  
23 methodology in the Enforcement Policy (other factors as justice may require), the San Diego Water  
24 Board may elect to assess staff costs in the manner that it finds most appropriate. In order to avoid  
25 further allegations of surprise evidence or testimony, the Prosecution Team would like to provide  
26 an up-to-date summary of the staff costs accrued, and an estimate of the additional staff costs to  
27 bring this matter to hearing. (See Attachment B, Updated Staff Costs). As of February 23, 2016,  
28 close of business, the Prosecution Team has spent 728 hours preparing this case for a total of

1 \$55,008 in staff costs. The Prosecution Team estimates an additional 246 hours to prepare for  
2 hearing, amounting to approximately \$19,691 (and totaling \$74,699). These estimates do not  
3 include staff costs for Office of Enforcement Attorneys or incidentals incurred by any of the  
4 prosecution staff as a matter of conducting business (e.g. airfare, mileage, parking, etc.).

5

6

**CONCLUSION**

7

8 This matter is brought before the San Diego Water Board as the next step in progressive  
9 enforcement efforts to bring San Altos into compliance with the CGP. The Prosecution Team has  
10 provided extensive evidence and professional analysis from which the San Diego Water Board may  
11 reasonably infer these alleged violations occurred. Staff’s interpretation of the photographs clearly  
12 identify the violations. The proper administrative hearing steps have been taken, not only meeting  
13 but surpassing due process requirements.

14

15 The CGP is designed to protect the receiving waters of the United States from construction  
16 activities using BMPs that achieve BAT/BCT. That goal corroborates the Prosecution Team’s  
17 analyses of specific CGP terms, using reasonable and practical interpretations to implement the  
18 CGP.

18

19 Lastly, the Prosecution Team thoughtfully and adequately employed the Enforcement  
20 Policy and its penalty calculation methodology to reach the proposed liability amount  
21 commensurate with San Altos’ actions. The culpability and the cleanup and cooperation factor  
22 values chosen are consistent with San Altos’ actions taking into consideration the repeated efforts  
23 by the City and San Diego Water Board staff in attempting to bring San Altos into compliance with  
24 their storm water regulations.

24

25 After several warnings, notices, administrative citations, and numerous on-site visits by  
26 City and San Diego Water Board staff, this matter is ripe for the San Diego Water Board to hear  
27 and decide upon as the next step in enforcement. The Prosecution Team respectfully requests that

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1 after reviewing the extensive evidence and hearing the professional analyses by staff, that the San  
2 Diego Water Board impose the full administrative civil liability and recover staff costs.

3 February 23, 2016  
4

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6 Laura Drabandt,  
7 Senior Staff Counsel, Office of Enforcement  
8 State Water Resources Control Board  
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**California Regional Water Quality Control Board  
 San Diego Region  
 Prosecution Team Rebuttal  
 Attachment A, Rebuttal Evidence List**

**ACL Complaint No. R9-2015-0110  
 Tentative ACL Order No. R9-2016-0064  
 San Altos-Lemon Grove, LLC**

**Exhibit No. 33 - San Diego Water Board Photograph not in the Record**

<b>A. Photographs taken on December 15, 2014 by Wayne Chiu</b>		
	<b>Description</b>	<b>Reason</b>
1.	IMG_5026.jpg	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines."
2.	IMG_5028.jpg	
3.	IMG_5029.jpg	
4.	IMG_5041.jpg	
5.	IMG_5068.jpg	
6.	IMG_5071.jpg	
7.	IMG_5073.jpg	
8.	IMG_5074.jpg	
9.	IMG_5080.jpg	
10.	IMG_5091.jpg	
11.	IMG_5092.jpg	

<b>B. Photographs taken on May 8, 2015 by Frank Melbourn</b>		
	<b>Description</b>	<b>Reason</b>
1.	20150508_191802.jpg	Rebuts allegation that there is insufficient evidence.
2.	20150508_191855.jpg	

<b>C. Photographs taken on May 13, 2015 by Frank Melbourn and Wayne Chiu</b>		
	<b>Description</b>	<b>Reason</b>
1.	IMG_0266.jpg	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines."
2.	IMG_0271.jpg	Rebuts allegation that there is insufficient evidence.
3.	IMG_0272.jpg	
4.	IMG_0273.jpg	
5.	IMG_0274.jpg	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines."
6.	IMG_0305.jpg	
7.	IMG_5724.jpg	Rebuts allegation that there is insufficient evidence.

<b>D. Photographs taken on May 15, 2015 by Frank Melbourn</b>		
	<b>Description</b>	<b>Reason</b>
1.	IMG_0355.jpg	Rebuts allegation that there is insufficient evidence.
2.	IMG_0362.jpg	
3.	IMG_0364.jpg	

**California Regional Water Quality Control Board  
 San Diego Region  
 Prosecution Team Rebuttal  
 Attachment A, Rebuttal Evidence List**

**Exhibit No. 34 - Rainfall Data**

<b>A. NOAA Spring Valley Station, December 2014 through December 2015</b>	
<b>Reason</b>	Rebuts allegation that there is insufficient evidence.
<b>B. NOAA La Mesa Station, January 2015 through December 2015</b>	
<b>Reason</b>	Rebuts allegation that there is insufficient evidence.
<b>C. Weather Underground Calendar with data from Gillespie Field and Superimposed with NOAA data from La Mesa and Spring Valley, November 2014 through December 2015</b>	
<b>Reason</b>	Rebuts allegation that there is insufficient evidence.

**Exhibit No. 35 - Discharger SWPPP**

<b>Reason</b>	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines." Rebuts allegation in "Factual Background." Rebuts allegation that the "ACLC applies an improper culpability multiplier."
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**Exhibit No. 37 - Discharger QSP Reports**

<b>A. December 2, 2014</b>	
<b>Reason</b>	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines."
<b>B. December 3, 2014</b>	
<b>Reason</b>	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines."
<b>C. December 4, 2014</b>	
<b>Reason</b>	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines."
<b>D. December 5, 2014</b>	
<b>Reason</b>	Rebuts allegation that there is insufficient evidence.
<b>E. December 10, 2014</b>	
<b>Reason</b>	Rebuts allegation that there is insufficient evidence.
<b>F. December 15, 2014</b>	
<b>Reason</b>	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines."
<b>G. December 18, 2014</b>	
<b>Reason</b>	Provisionally accepted in the record on 08 FEB 2016 by Chair Ruling.
<b>H. January 19, 2015, BMP Walk</b>	
<b>Reason</b>	Provisionally accepted in the record on 08 FEB 2016 by Chair Ruling.

**California Regional Water Quality Control Board  
San Diego Region  
Prosecution Team Rebuttal  
Attachment A, Rebuttal Evidence List**

**Exhibit No. 38 - Discharger Photographs**

<b>A. December 16, 2014</b>		
	<b>Description</b>	<b>Reason</b>
1.	100_0050.jpg	Rebuts allegation that the "penalties applied do not meet the Enforcement Policy guidelines."
2.	100_0061.jpg	
3.	100_0074.jpg	
4.	AVALONBER MS.jpg	
5.	NORTHEAST CORNERBYM TSROAD.jpg	

# Attachment B

## Updated Staff Costs Prosecution Team

### March 2015 through September 2015

Staff hours as of February 23, 2016.

STAFF	HOURS	MONTHLY SALARY	Hourly	Hourly total	Benefits	Total
CLEMENTE	102.75	\$9,899	\$57.11	\$5,868.13	\$2,535.62	\$8,403.74
EBECKER	1.25	\$10,501	\$60.58	\$75.73	\$32.72	\$108.45
FMELBURN	537.00	\$8,915	\$51.43	\$27,619.89	\$11,934.55	\$39,554.44
JSMITH	9.00	\$12,620	\$72.81	\$655.28	\$283.15	\$938.43
WCHIUI	64.00	\$8,915	\$51.43	\$3,291.76	\$1,422.37	\$4,714.12
JHAAS	9.50	\$11,447	\$66.04	\$627.40	\$271.10	\$898.49
LWALSH	4.50	\$10,501	\$60.58	\$272.63	\$117.80	\$390.43
	<b>728.00</b>			<b>TOTAL COSTS</b>		<b>\$55,008.11</b>

ESTIMATE extended by 11 business days to hearing

STAFF	HOURS	MONTHLY SALARY	Hourly	Hourly total	Benefits	Total
CLEMENTE	66.00	\$9,899	\$57.11	\$3,769.31	\$1,628.72	\$5,398.02
EBECKER	0.00	\$10,501	\$60.58	\$0.00	\$0.00	\$0.00
FMELBURN	88.00	\$8,915	\$51.43	\$4,526.16	\$1,955.76	\$6,481.92
JSMITH	16.00	\$12,620	\$72.81	\$1,164.95	\$503.37	\$1,668.32
WCHIUI	44.00	\$8,915	\$51.43	\$2,263.08	\$977.88	\$3,240.96
JHAAS	16.00	\$11,447	\$66.04	\$1,056.67	\$456.59	\$1,513.25
LWALSH	16.00	\$10,501	\$60.58	\$969.34	\$418.85	\$1,388.19
	<b>246.00</b>			<b>TOTAL COSTS</b>		<b>\$19,690.67</b>

\$74,698.78

Attachment B  
Updated Staff Costs  
Prosecution Team Summary

Date	Description	Becker	Chiu	Clemente	Haas	Melbourn	Smith	Walsh	Total Hours
3/24/2015	Refer case to CAU (Becker 1.25 hours)	1.25	0	0	0	0	0	0	1.25
3/27/2015	Site inspection	0.00	3.00	0.00	0.00	3.00	0.00	0.00	6
4/1/2015	Discussion with Chiu	0.00	1.50	0.00	0.00	1.50	0.00	0.00	3
4/2/2015	Discussion with Chiu	0.00	1.00	0.00	0.00	1.00	0.00	0.00	2
4/14/2015	Document review	0.00	0.00	0.00	0.00	3.50	0.00	0.00	3.5
5/5/2015	Internal discussion	0.00	1.25	1.25	1.25	1.25	1.25	0.00	6.25
5/6/2015	Discussion with Chiu	0.00	0.50	0.00	0.00	0.50	0.00	0.00	1
5/7/2015	Email review	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
5/8/2015	Email review	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
5/8/2015	Site inspection	0.00	0.00	0.00	0.00	0.75	0.00	0.00	0.75
5/11/2015	Draft inspection report	0.00	0.00	0.00	0.00	2.25	0.00	0.00	2.25
5/12/2015	Email review	0.00	0.00	0.00	0.00	0.75	0.00	0.00	0.75
5/12/2015	Draft inspection report & SMARTS data entry	0.00	0.00	0.00	0.00	3.00	0.00	0.00	3
5/12/2015	Transmit inspection report	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
5/13/2015	Site inspection	0.00	3.00	0.00	0.00	3.00	0.00	0.00	6
5/14/2015	Telephone Anderson	0.00	0.00	0.00	0.00	0.75	0.00	0.00	0.75
5/20/2015	Research & draft inspection report	0.00	0.00	0.00	0.00	5.25	0.00	0.00	5.25
5/22/2015	Draft inspection report	0.00	0.00	0.00	0.00	5.50	0.00	0.00	5.5
5/26/2015	Process inspection report	0.00	0.00	0.00	0.00	1.50	0.00	0.00	1.5
6/3/2015	Document prep/review	0.00	0.00	0.00	0.00	3.75	0.00	0.00	3.75
6/5/2015	Document prep/review	0.00	0.00	0.00	0.00	6.00	0.00	0.00	6
6/8/2015	Document prep/review	0.00	0.00	0.00	0.00	6.50	0.00	0.00	6.5
6/9/2015	Document prep/review	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
6/10/2015	Document prep/review	0.00	0.00	0.00	0.00	7.00	0.00	0.00	7
6/11/2015	Document prep/review	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
6/12/2015	Document prep/review	0.00	0.00	0.00	0.00	6.75	0.00	0.00	6.75
6/15/2015	Document prep/review	0.00	0.00	0.00	0.00	7.00	0.00	0.00	7
6/16/2015	Document prep/review	0.00	0.00	0.00	0.00	2.50	0.00	0.00	2.5
6/17/2015	Document prep/review	0.00	0.00	0.00	0.00	4.25	0.00	0.00	4.25
6/29/2015	Document prep/review	0.00	0.00	0.00	0.00	4.75	0.00	0.00	4.75
6/30/2015	Document prep/review	0.00	0.00	0.00	0.00	2.75	0.00	0.00	2.75
7/1/2015	Document prep/review	0.00	0.00	0.00	0.00	0.75	0.00	0.00	0.75
7/2/2015	Document prep/review	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2
7/3/2015	Document prep/review	0.00	0.00	0.00	0.00	7.25	0.00	0.00	7.25
7/13/2015	Draft technical analysis	0.00	0.00	0.00	0.00	5.00	0.00	0.00	5
7/14/2015	Draft technical analysis	0.00	0.00	0.00	0.00	5.25	0.00	0.00	5.25
7/17/2015	Draft technical analysis	0.00	0.00	0.00	0.00	2.25	0.00	0.00	2.25
7/24/2015	Draft technical analysis	0.00	0.00	0.00	0.00	6.00	0.00	0.00	6
7/27/2015	Draft technical analysis	0.00	0.00	0.00	0.00	3.00	0.00	0.00	3
7/31/2015	Draft technical analysis	0.00	0.00	0.00	0.00	5.50	0.00	0.00	5.5
8/3/2015	Draft technical analysis	0.00	0.00	0.00	0.00	6.50	0.00	0.00	6.5
8/6/2015	Internal discussion	0.00	1.25	1.25	0.00	1.25	1.25	0.00	5
8/6/2015	Draft technical analysis	0.00	0.00	0.00	0.00	3.50	0.00	0.00	3.5
8/7/2015	Draft technical analysis	0.00	0.00	0.00	0.00	5.50	0.00	0.00	5.5
8/13/2015	Draft technical analysis	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2
8/18/2015	Draft technical analysis	0.00	0.00	0.00	0.00	4.00	0.00	0.00	4

Attachment B  
Updated Staff Costs  
Prosecution Team Summary

Date	Description	Becker	Chiu	Clemente	Haas	Melbourn	Smith	Walsh	Total Hours
8/19/2015	Draft technical analysis	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2
8/20/2015	Draft technical analysis	0.00	0.00	0.00	0.00	2.75	0.00	0.00	2.75
8/31/2015	Calculate economic benefit	0.00	0.00	0.00	0.00	2.75	0.00	0.00	2.75
9/1/2015	Calculate economic benefit	0.00	0.00	0.00	0.00	6.50	0.00	0.00	6.5
9/2/2015	Calculate economic benefit	0.00	0.00	0.00	0.00	4.25	0.00	0.00	4.25
9/3/2015	Draft technical analysis	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
9/4/2015	Draft technical analysis	0.00	0.00	0.00	0.00	4.50	0.00	0.00	4.5
9/11/2015	Draft technical analysis	0.00	0.00	0.00	0.00	4.00	0.00	0.00	4
9/14/2015	Draft technical analysis	0.00	0.00	0.00	0.00	5.00	0.00	0.00	5
9/17/2015	Draft technical analysis	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2
9/18/2015	Draft technical analysis	0.00	0.00	0.00	0.00	1.00	0.00	0.00	1
9/18/2015	Telephone City & Chiu	0.00	0.25	0.00	0.00	0.75	0.00	0.00	1
9/21/2015	Draft technical analysis	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
9/23/2015	Draft technical analysis	0.00	0.00	0.00	0.00	5.25	0.00	0.00	5.25
9/23/2015	Email to Lemon Grove	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
9/25/2015	Draft technical analysis	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
9/28/2015	Draft technical analysis	0.00	0.00	0.00	0.00	5.50	0.00	0.00	5.5
9/29/2015	Draft ACLC docs	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
9/30/2015	Draft ACLC docs	0.00	0.00	0.00	0.00	7.75	0.00	0.00	7.75
10/1/2015	Draft press release	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
10/5/2015	Discussion with OE atty	0.00	0.00	0.50	0.00	0.50	0.00	0.00	1
10/5/2015	Edits to ACLC docs	0.00	0.00	0.00	0.00	1.75	0.00	0.00	1.75
10/6/2015	Edits to ACLC docs	0.00	0.00	0.00	0.00	4.00	0.00	0.00	4
10/7/2015	Edits to ACLC docs	0.00	0.00	0.00	0.00	3.00	0.00	0.00	3
10/8/2015	Telephone Lemon Grove	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
10/8/2015	Edits to ACLC docs	0.00	0.00	0.00	0.00	3.25	0.00	0.00	3.25
10/12/2015	Edits to ACLC docs	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2
10/12/2015	Email to Lemon Grove	0.00	0.00	0.00	0.00	0.25	0.00	0.00	0.25
10/13/2015	Edits to ACLC docs	0.00	0.00	0.00	0.00	4.50	0.00	0.00	4.5
10/15/2015	Edits to ACLC docs	0.00	0.00	0.00	0.00	5.25	0.00	0.00	5.25
10/15/2015	Calculate economic benefit	0.00	0.00	0.00	0.00	1.75	0.00	0.00	1.75
10/16/2015	Edits to ACLC docs	0.00	0.00	0.00	0.00	3.50	0.00	0.00	3.5
10/19/2015	Internal discussion	0.00	0.00	1.00	1.00	1.00	1.00	0.00	4
10/19/2015	Telephone to Ozarski	0.00	0.00	0.00	0.00	0.25	0.00	0.00	0.25
10/19/2015	Distribution of ACL Complaint package	0.00	0.00	0.00	0.00	3.00	0.00	0.00	3
10/20/2015	Discussion with OE atty	0.00	0.00	0.50	0.00	0.50	0.00	0.00	1
10/20/2015	Telephone to Ozarski	0.00	0.00	0.00	0.00	0.75	0.00	0.00	0.75
10/26/2015	Discussion with OE atty	0.00	0.00	0.50	0.00	0.50	0.00	0.00	1
10/26/2015	Pre & Post discussion activities	0.00	0.00	0.00	0.00	1.00	0.00	0.00	1
11/2/2015	Edits to proposed hearing procedure	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2
11/3/2015	Staff hours documentation	0.00	0.00	0.00	0.00	2.00	0.00	0.00	2



Attachment B  
Updated Staff Costs  
Prosecution Team Summary

Date	Description	Becker	Chiu	Clemente	Haas	Melbourn	Smith	Walsh	Total Hours
11/4/2015	Draft and read emails	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
11/10/2015	Discussion with OE atty	0.00	1.00	1.00	0.00	1.00	0.00	0.00	3
11/10/2015	Review emails and QSP reports	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.5
11/12/2015	Site inspection	0.00	3.00	0.00	0.00	3.00	0.00	0.00	6
11/12/2015	Draft email	0.00	0.00	0.25	0.00	0.00	0.00	0.00	0.25
11/13/2015	Internal discussion	0.00	0.25	0.00	0.00	0.25	0.00	0.00	0.5
11/13/2015	Draft email to OE atty	0.00	0.00	0.00	0.00	1.00	0.00	0.00	1
11/13/2015	Download photos to computer	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
11/18/2015	Review schedule/response	0.00	0.00	0.25	0.00	0.00	0.00	0.00	0.25
11/20/2015	Site inspection	0.00	0.00	0.00	0.00	2.50	0.00	0.00	2.5
11/23/2015	Doc review including QSP reports & emails	0.00	0.00	0.00	0.00	4.50	0.00	0.00	4.5
11/23/2015	SMARTS entry	0.00	0.00	0.00	0.00	1.50	0.00	0.00	1.5
11/24/2015	SMARTS entry	0.00	0.00	0.00	0.00	3.25	0.00	0.00	3.25
12/1/2015	Document prep/review	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
12/1/2015	Telephone to Rosenbaum	0.00	0.00	0.00	0.00	0.25	0.00	0.00	0.25
12/2/2015	Discussion with OE atty	0.00	0.00	0.50	0.00	0.50	0.00	0.00	1
12/2/2015	Review settlement proposal	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.5
12/2/2015	Internal discussion	0.00	0.00	0.50	0.00	0.50	0.00	0.00	1
12/2/2015	Telephone to Drabandt, Rosenbaum & Tamimi	0.00	0.00	0.00	0.00	0.75	0.00	0.00	0.75
12/3/2015	Telephone to Rosenbaum	0.00	0.00	0.00	0.00	0.75	0.00	0.00	0.75
12/4/2015	Document review	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
12/7/2015	Discussion with OE atty	0.00	0.00	2.00	0.00	2.00	0.00	0.00	4
12/7/2015	Document review including settlement proposal	0.00	0.00	1.00	0.00	5.25	0.00	0.00	6.25
12/8/2015	Discussion with OE atty	0.00	1.00	1.00	0.00	1.00	0.00	0.00	3
12/8/2015	Document prep/review	0.00	0.00	0.00	0.00	4.00	0.00	0.00	4
12/9/2015	Settlement talks	0.00	3.00	3.00	0.00	3.00	0.00	3.00	12
12/9/2015	Brief AEO	0.00	0.00	0.50	0.00	0.50	0.50	0.00	1.5
12/10/2015	Document review	0.00	0.00	0.00	0.00	2.50	0.00	0.00	2.5
12/11/2015	Document review	0.00	0.00	0.00	0.00	7.25	0.00	0.00	7.25
12/14/2015	Discussion with OE atty	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
12/14/2015	Document prep/review	0.00	0.00	0.00	0.00	6.50	0.00	0.00	6.5
12/15/2015	Internal discussion	0.00	0.00	0.50	0.00	0.50	0.00	0.00	1
12/15/2015	Document review including subpoenas	0.00	0.00	1.50	0.00	6.50	0.00	0.00	8
12/16/2015	Telephone calls	0.00	0.00	0.00	0.00	1.00	0.00	0.00	1
12/16/2015	Document prep/review	0.00	0.00	0.00	0.00	1.00	0.00	0.00	1
12/17/2015	Draft response to Advisory	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.5
12/17/2015	Document prep/review	0.00	0.00	0.00	0.00	3.75	0.00	0.00	3.75
12/18/2015	Document prep/review	0.00	0.00	0.00	0.00	6.25	0.00	0.00	6.25
12/21/2015	Discussion with OE atty	0.00	0.00	0.00	0.00	0.50	0.00	0.00	0.5
12/22/2015	Discussion with OE atty	0.00	0.00	0.50	0.00	0.50	0.00	0.00	1

Attachment B  
Updated Staff Costs  
Prosecution Team Summary

Date	Description	Becker	Chiu	Clemente	Haas	Melbourn	Smith	Walsh	Total Hours
12/22/2015	Internal discussion	0.00	0.00	1.00	1.00	1.00	0.00	0.00	3
12/22/2015	Prepare record	0.00	0.00	2.00	0.00	0.00	0.00	0.00	2
12/23/2015	Document prep/review	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
12/24/2015	Document prep/review	0.00	0.00	0.00	0.00	4.25	0.00	0.00	4.25
12/28/2015	Attend depositions	0.00	0.00	0.00	0.00	6.00	0.00	0.00	6
12/28/2015	Coordinate copy service	0.00	0.00	1.50	0.00	0.00	0.00	0.00	1.5
12/28/2015	Discussion with OE atty	0.00	0.00	0.50	0.00	0.00	0.00	0.00	0.5
12/29/2015	Attend depositions	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
12/29/2015	Discussion with OE counsel	0.00	1.00	3.00	0.00	0.00	0.00	1.50	5.5
12/30/2015	Document prep/review	0.00	0.00	0.00	0.00	7.00	0.00	0.00	7
1/4/2016	Draft declaration	0.00	0.00	0.00	0.00	2.75	0.00	0.00	2.75
1/5/2016	Discussion with OE atty	0.00	0.00	1.50	0.00	1.50	0.00	0.00	3
1/7/2016	Attend Lemon Grove hearings	0.00	0.00	4.00	0.00	0.00	0.00	0.00	4
1/7/2016	Review deposition transcripts	0.00	0.00	1.50	0.00	0.00	0.00	0.00	1.5
1/8/2016	Discussion with OE atty	0.00	0.00	0.00	0.75	0.75	0.00	0.00	1.5
1/11/2016	Discussion with OE atty	0.00	0.00	1.00	0.00	1.00	0.00	0.00	2
1/11/2016	Document prep/review	0.00	0.00	0.00	0.00	2.25	0.00	0.00	2.25
1/13/2015	Deposition	0.00	0.00	8.00	0.00	8.00	0.00	0.00	16
1/14/2015	Deposition	0.00	6.50	7.00	0.00	7.00	0.00	0.00	20.5
1/15/2016	Discussion with OE atty	0.00	0.00	0.00	0.00	1.00	0.00	0.00	1
1/15/2016	Review record	0.00	0.00	1.50	0.00	0.00	0.00	0.00	1.5
1/16/2016	Document prep/review	0.00	0.00	0.00	0.00	5.50	0.00	0.00	5.5
1/18/2016	Review record	0.00	0.00	4.00	0.00	0.00	0.00	0.00	4
1/19/2015	Document review	0.00	0.00	0.00	0.00	6.75	0.00	0.00	6.75
1/21/2016	Review transcripts	0.00	4.00	0.00	0.00	8.00	0.00	0.00	12
1/22/2016	Deposition	0.00	0.00	5.00	0.00	5.00	0.00	0.00	10
1/25/2016	Review transcripts	0.00	0.00	2.00	0.00	0.00	0.00	0.00	2
1/26/2016	Review transcripts	0.00	0.00	3.00	0.00	0.00	0.00	0.00	3
1/26/2016	SMARTS database queries	0.00	0.00	1.00	0.00	0.00	0.00	0.00	1
1/28/2016	Document prep/review	0.00	0.00	0.00	0.00	6.00	0.00	0.00	6
1/29/2016	Document prep/review	0.00	0.00	0.00	0.00	3.50	0.00	0.00	3.5
2/1/2016	Document prep/review	0.00	0.00	0.00	0.00	5.75	0.00	0.00	5.75
2/3/2016	Discussion with OE atty	0.00	0.00	2.00	0.00	2.00	1.00	0.00	5
2/5/2016	Review Discharger Evidence	0.00	0.00	4.00	0.00	0.00	0.00	0.00	4
2/8/2016	Review Discharger Evidence	0.00	0.00	5.00	0.00	0.00	0.00	0.00	5
2/9/2016	Review Discharger Evidence	0.00	1.00	0.00	0.00	0.00	0.00	0.00	1
2/9/2016	Update record log	0.00	0.00	0.75	0.00	0.00	0.00	0.00	0.75
2/9/2016	Discussion with OE atty	0.00	1.00	1.00	0.00	1.00	0.00	0.00	3
2/12/2016	Document prep/review	0.00	0.00	0.00	0.00	7.00	0.00	0.00	7
2/15/2016	Document prep/review	0.00	0.00	0.00	0.00	8.00	0.00	0.00	8
2/16/2016	Document prep/review	0.00	4.00	4.50	0.00	8.00	0.00	0.00	16.5
2/17/2016	Document prep/review	0.00	8.00	7.00	2.00	8.00	1.00	0.00	26

Attachment B  
Updated Staff Costs  
Prosecution Team Summary

Date	Description	Becker	Chiu	Clemente	Haas	Melbourn	Smith	Walsh	Total Hours
2/18/2016	Prepare responses to Discharger Brief	0.00	3.50	0.00	0.00	8.00	0.00	0.00	11.5
2/19/2016	Prepare responses to Discharger Brief	0.00	7.00	4.00	0.00	8.00	0.00	0.00	19
2/22/2016	Prepare responses to Discharger Brief	0.00	4.00	4.00	2.00	8.00	2.00	0.00	20
2/23/2016	Prepare responses to Discharger Brief	0.00	4.00	4.00	1.50	8.00	1.00	0.00	18.5
		<b>1.25</b>	<b>64.00</b>	<b>102.75</b>	<b>9.50</b>	<b>537.00</b>	<b>9.00</b>	<b>4.50</b>	<b>728.00</b>