

SUPPLEMENTAL
ADVISORY TEAM SUMMARY REPORT
August 10, 2016

ITEM: 10

SUBJECT: Administrative Assessment of Civil Liability: Consideration of Tentative Order No. R9-2016-0064 Assessing Administrative Civil Liability Against San Altos-Lemon Grove, LLC for violations of State Water Resources Control Board Order No. 2009-0009-DWQ, as amended. (Beatrice Griffey)

PURPOSE: Consider adoption of Revised Tentative Order No. R9-2016-0064

DISCUSSION: On July 20, 2016, the San Diego Water Board released Tentative Order No. R9-2016-0064 (Tentative Order) assessing administrative civil liability in the amount of \$603,232 against San Altos-Lemon Grove, LLC and resolving the allegations in ACL Complaint No. R9-2015-0110, for public comment. The purpose of the public comment period was to receive comments on factual errors. The public comment notice specified that no new evidence would be accepted. The comment period ended at noon on August 1, 2016.

The San Diego Water Board received two comment letters from the Parties to the Administrative Civil Liability matter. (Supporting Document Nos. 4 and 5.) In response to these comment letters, the Tentative Order and all Attachments and Tables have been revised (in redline/strikethrough). (Revised Tentative Order, Supporting Document No. 3.) These revisions primarily correct minor typographical errors and clarify findings. However, a particularly noteworthy change is the recommended removal of one day of violation from Violation 6, "Failure to Implement Erosion Control BMPs in Active Areas." The Advisory Team recommends removal of the finding of violation on December 8, 2014, because, although there was evidence forecasting rain within 72 hours, there was no evidence forecasting rain within 48 hours. No additional evidence in the record supports a finding that erosion control BMPs may have been required in active areas on December 8, 2014. The removal of this single day of violation results in a reduction of \$7,865 for Violation 6 and a reduction of

the overall total liability from \$603,232 to \$595,367. The Revised Tentative Order finds a total of 81 days of violation.

In addition, the Advisory Team recommends that the new post-hearing evidence and associated text included in San Altos's August 1, 2016, Comments on the Tentative Order be excluded from the record. The Revised Tentative Order reflects this recommendation in revisions to Findings 27 and 38 and in Attachment 2 to the Revised Tentative Order.

RECOMMENDATION: The Advisory Team recommends adoption of Revised Tentative Order No. R9-2016-0064.

SUPPORTING DOCUMENTS:

3. Revised Tentative Order No. R9-2016-0064 (redline)
 - a. Revised Attachment 1, Penalty Methodology Decisions (includes Revised Table No. 1, Total Assessed Liability)
 - b. Revised Table No. 2, Penalty Calculator
 - c. Revised Attachment 2, Evidence Excluded and Transcript and Comments Excerpts Stricken From Record
4. San Altos-Lemon Grove, LLC's Comments on Tentative Order In the Matter of Administrative Civil Liability Complaint No. R9-2015-0110 Against San Altos Lemon Grove, LLC dated August 1, 2016
5. Prosecution Team Comments on Tentative Order No. R9-2016-0064 dated August 1, 2016