SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

SAN ALTOS-LEMON GROVE, LLC, Petitioner, **v.** **CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION,** Respondent.	Case No. 37-2017-00012461-CU-WM-CTL **[~~PROPOSED~~] ~~AMENDED~~ JUDGMENT** Date: April 23, 2018 Time: 9:00 a.m. Dept: C-65 Judge: The Honorable Joan M. Lewis Action Filed: April 7, 2017

The above-entitled action came on regularly for hearing on April 23, 2018 in Department 65, Judge Joan M. Lewis presiding, on a Petition for Writ of Mandate (Writ Petition) filed by Petitioner San Altos-Lemon Grove, LLC (Petitioner). The Writ Petition was filed pursuant to section 1094.5 of the Code of Civil Procedure, challenging the imposition of $595,367.00 in administrative civil liability issued pursuant to Water Code section 13323. Petitioner was represented by Walter E. Rusinek of Procopio, Cory, Hargreaves & Savitch. Respondent

Regional Water Quality Control Board, San Diego Region, was represented by Deputy Attorney General Kathryn M. Megli.

The record of the administrative proceedings was received into evidence and examined by the Court. The Court also reviewed the written briefings submitted by the parties on the Writ Petition, and heard oral argument. At the conclusion of the hearing, the Court determined an April 17, 2018 tentative Minute Order as amended would become the final order of the Court. A full, true and correct copy of the Court's final April 23, 2018 Minute Order denying the Writ Petition is attached to this Judgment as Exhibit "1." In accordance with the April 23, 2018 Minute Order and for the reasons stated in the Minute Order, and for good cause appearing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

The Petition for Writ of Mandate is DENIED.

Dated: May 17, 2018

Joan M. Lewis

JOAN M. LEWIS
JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 04/23/2018 TIME: 09:00:00 AM DEPT: C-65

JUDICIAL OFFICER PRESIDING: Joan M. Lewis
CLERK: Lori Urie
REPORTER/ERM: Johnell Gallivan CSR# 10505
BAILIFF/COURT ATTENDANT: J. Arnold

CASE NO: **37-2017-00012461-CU-WM-CTL** CASE INIT.DATE: 04/07/2017
CASE TITLE: **San Altos-Lemon Grove LLC vs. California Regional Water Quality Control Board San Diego Region [IMAGED]**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition

APPEARANCES
WALTER E RUSINEK, counsel, present for Petitioner(s).
Kathryn M Megli, counsel, present for Respondent(s).
Attorney Catherine Hagan is also appearing for respondent.

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

First Amended Petition for Writ of Mandate

The operative pleading in this case is San Altos' First Amended Petition for Writ of Mandate brought pursuant to CCP Sec. 1094.5. By way of this writ petition, San Altos challenges an order issued by the Respondent Regional Water Quality Control Board – San Diego Region ("Board") imposing $595,575 in administrative civil liability against San Altos pursuant to Water Code Sec. 13323.

Petitioner's prayer sought a peremptory writ of mandate pursuant to CCP Sec. 1094.5 directing the Board to take one of the following actions: (1) vacate the final order entirely and dismiss all allegations against San Altos; or (2) vacate the final order entirely and issue a new order that complies with the rulings of this Court on legal and evidentiary issues; or (3) vacate the final order and schedule a rehearing of the matter that affords San Altos the opportunity to take additional discovery as needed related to the allegations prior to the hearing and the opportunity to present its case in full at the hearing.

Background

In this case, San Altos was issued a Construction General Stormwater Permit ("CGP" or "Permit") for a project in the City of Lemon Grove ("Lemon Grove" or the "City"). According to San Altos, the project at issue was the construction of 73 affordable homes for middle class families on approximately 18 acres of

undeveloped land in Lemon Grove.

San Altos constructed homes under a Permit that was adopted by the State Water Resources Control Board (State Board), which authorizes storm water discharges associated with construction activity provided other permit requirements are followed. The Permit regulates discharges of pollutants in stormwater (and authorized non-stormwater discharges) associated with construction activities to Waters of the United States ("WOUS"). In the permit application process, San Altos identified its project as a "Risk Level 2" construction site, acknowledging any discharges from the site would likely result in discharges into impaired water bodies covered by the Clean Water Act ("CWA"). The water ways near the construction site were Encanto Channel ("Channel") and Chollas Creek ("Creek"). Based on evidence presented at the administrative hearing and under the applicable methodology, the Board assessed a penalty using established penalty multipliers associated with statutory factors. The Board reduced the ACL penalty by roughly thirty percent, from the $848,374.00 penalty recommended by the Prosecution Team, to $595,367.00 after finding some alleged violations were not adequately supported.

This dispute generally concerns the Board's findings that San Altos did not exercise appropriate Best Management Practices ("BMPs") and, as a result, issued the penalties for those alleged violations of BMPs.

The underlying complaint ("Administrative Civil Liability" or "ACL") was initiated against San Altos by the Board pursuant to Water Code Sec. 13323. ("(a) Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article . . . .") The ACL concerned charges that San Altos had violated the Clean Water Act during its construction of the project.

With respect to any penalty to be imposed, Water Code Sec. 13385 sets forth the factors to be considered:

(e) in determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at level that recovers the economic benefits, if any, derivate from the acts that constitute the violation.

The Water Quality Enforcement Policy (the "Policy")

In addition to Water Code Sec. 13385(e), guiding the Board in this case is a "Water Quality Enforcement Policy" (the "Policy"). The Policy is 40 pages long and provides various instructions and methodologies for penalties to be assessed by the Board. The Policy "[e]stablishes an administrative civil liability assessment methodology to create a fair and consistent statewide approach to liability assessment." Liabilities imposed by the Board must "[b]e assessed in a fair and consistent manner."

What the Board Did

On October 19, 2015, the Board served San Altos with the ACL and a 71-page Technical Analysis ("TA") and other attachments. The hearing was held on March 9, 2016. After the hearing, the Board directed

the Prosecution Team ("PT") to prepare and submit an amended TA showing in "redline" the supplemental evidence that been submitted at the hearing (over San Altos' objections). On July 20, 2016, the Board issued a Tentative Order ("TO") allowing comments on "factual errors" to be made.

San Altos complains that although the TO reduced the assessed liability, it increased the average penalty for each violation and changed various factors used to identify the harm, culpability and other criteria employed under the Policy to calculate liability.

In arriving at the penalties assessed, the Board had before it various documents and testimony. Included was its staff's TA and then later, the Amended Technical Analysis ("ATA"). There were photographs of the site and testimony as to what was observed. After the hearing, the Board issued a 27-page order outlining the various violations it found against San Altos. There were a total of 13 violations with many of the violations covering several days. Attached to the order, was a 41-page "Penalty Methodology Decisions" where the Board essentially examined each of the 13 violations utilizing the various steps and factors that the Policy dictate should be followed in assessing penalties.

All but a small number of the penalties (San Altos calculates it to be 95%) were imposed for "non-discharge" violations. The remaining violations were for six days where the Board contended that San Altos actually caused a discharge into the WOUS.

Standard of Review

In its opening brief, Petitioner suggests that the Court should exercise its independent judgment on the evidence, meaning – according to San Altos -- that the Court must make "its own independent findings of fact", quoting *Harlow v. Carleson* (1976) 6 Cal.3d 731, 735, and exercise its independent judgment on issues of law.

In its opposition, the Board argues that it is not the independent judgment test that applies but, rather, the substantial evidence standard is utilized. The Board explains that "[w]hen, as here, an ACL complaint is issued and adjudicated under section 13323, the substantial evidence standard applies to the trial court's review of an ACL order. (Sec. 13330(e).)"

In its reply, San Altos seems to almost concede that the substantial evidence test would apply here but argues that if statutes and precedent are to be interpreted the trial court would still exercise its independent judgment. ("The RB argues that the substantial evidence test applies here. Even if it does, the trial court still 'exercises independent judgment on pure questions of law, including the interpretation of statues and judicial precedent.' (*McAllister v. California Coastal Comm'n* (2008) 169 Cal.App.4th 912, 921.)")

Water Code Sec. 13330(e) states:

Except as provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this section. For the purposes of subdivision (c) of Section 1094.5 of the code of Civil Procedure, **the court shall exercise its independent judgment** on the evidence **in any case** involving the judicial review of a decision or order of the state board issued under Section 13320, or a decision or order of a regional board for which the state board denies review under Section 13320, **other than** a decision or order issued under Section 13323.
(Emphasis added.)

The challenge here is of the Board's decision issued under Section 13323 and the standard of review would be substantial evidence, not independent judgment. (Although the Court would agree with San Altos that for any questions of law the Court would exercise its independent judgment.)

Due Process Arguments

The writ petition raises various arguments, including that San Altos was denied certain due process rights.

In this regard, San Altos makes various arguments.

Included was that one day before San Altos' initial brief was due, the PT requested it be allowed to submit new evidence which the Advisory Team allowed. Additionally, San Altos claims the "prejudice increased" when the AT barred San Altos from additional discovery on the basis that it could use some of the 90 minutes allotted San Altos to present its case to the Board to cross-examine the PT about the new evidence.

Then, at the hearing, San Altos also complains that the PT added 10 new exhibits not included in the OAC and relied on at least 27 more photos not identified before as supporting any of the allegations.

San Altos' principal complaints appear to be that the Board (1) directed the PT to prepare and submit an amended TA showing in "redline" the supplemental evidence (Exs. 32-41) on which it had relied to support the claims and that the Amended TA added new exhibits; and (2) increased certain factors to calculate liability after the hearing.

Insofar as the Board's adjustment of the factors after the hearing, the Court agrees with the Board that San Altos had notice after the hearing was closed that the Board could "affirm, reject, or *modify*" the proposed penalty. (Emphasis added.) San Altos argues that the language utilized actually stated that "at the hearing" (San Altos' emphasis) the Board "will consider whether to adopt, modify, or reject the proposed assessment, or whether to refer the matter for judicial civil action." San Altos takes the position that if there is to be a modification it must be done "at the hearing." The Court rejects that interpretation. Under San Altos' analysis, if the Board had decided – after taking the matter under submission – to reject the proposed assessment (as San Altos would presumably desire) such action would not be effective because it occurred after the hearing. There is no logical basis for concluding that any available action to the Board must be taken only at the time of the hearing.

Also with respect to changing the factors, in its reply San Altos relied on *Tafti v. County of Tulare* (2011) 198 Cal.App.4th 891. San Altos noted that in *Tafti* the court of appeal eliminated additional penalties imposed after an administrative hearing because the petitioner (Mr. Tafti) had not been given adequate notice that such an increase could occur. According to San Altos, "[t]hat happened here as well, and based on *Tafti* and basic due process and fairness consideration, the court should reduce the additional liability that was assessed in the Order."

Tafti is distinguishable. In *Tafti,* Mr. Tafti was assessed penalties of $138,824 with respect to underground gasoline storage tanks on his property. In the enforcement order imposing those penalties was the following language under the heading "right to hearing," – "[Appellant] may request a hearing *to challenge the Order.*" (Court of appeal's emphasis.) The appellant challenged the order but instead of simply considering the appropriateness of the penalties assessed Mr. Tafti, the ALJ calculated penalties against him to be $1,148,200. In other words, Mr. Tafti's challenge to the $138,824 in penalties was

resolved at the hearing by an increase of over a million dollars in penalties.

The *Tafti* court held "that respondent failed to provide adequate notice to appellant concerning the nature of the administrative hearing involved. In particular, it was unclear whether the hearing would simply be an opportunity to challenge the factual basis – i.e., the merits – of the allegations in the enforcement Order; or conversely, whether the hearing would decide anew the full amount of the appropriate civil penalties, thereby subjecting appellant to the potential of increased civil penalties above and beyond what was determined in the Enforcement Order. We think that basic fairness requires that when a party is ordered by an agency to pay substantial civil penalties, but is given a right to request an administrative hearing concerning said order, the party should be informed of which type of hearing is contemplated so that he or she will be able to ascertain what is at stake and intelligently decide on whether or not to request the hearing . . . ."

That is unlike this case where San Altos was informed that if it elected to proceed to a public hearing, the Board would "accept testimony, public comment, and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial action."

Finally, as to San Altos' arguments that certain evidence was admitted in violation of its due process rights, it was not clear how any of this evidence prejudiced San Altos. Moreover, to the extent San Altos could demonstrate some prejudice, the Court is of the opinion that the only remedy would be to remand for further proceedings. Although *Tafti* found remand not appropriate, the facts of that case are unique and do not dictate that remand here would not be appropriate (assuming San Altos could otherwise show a due process violation and prejudice therefrom).

The Court tentatively finds there were no due process violations that prejudiced San Altos.

San Altos claims WOUS Were Not Impacted/Exhaustion of Administrative Remedies

San Altos argues that the record shows that the order by the Board was improper because the PT provided no evidence that either the Channel or Creek, which the order claims were impacted by discharges from the site and threatened by the inadequate BMPs, is a WOUS. Because, according to San Altos, neither the Channel nor the Creek were WOUS, it would be legally impossible for the Board to impose liability under Water Code Sec. 13385.

San Altos states that "[b]ecause the RB failed to prove that either the Channel or the Creek is a WUS, it cannot seek penalties under Section 13385 for the alleged violations. The Court should issue a writ directing the Board to rescind its decision based on that failure alone."

In opposition, the Board responds, in part, that San Altos failed to exhaust its administrative remedies as to this argument because the issue was not raised before the Board.

In reply to this argument San Altos states that whether or not the Channel or the Creek is a WOUS under Sec. 13385 is jurisdictional and cannot be waived. As support, San Altos cited to *Gilliland v. Medical Board of California* (2001) 89 Cal.App.4th 208 and *Buckley v. California Coastal Com.* (1998) 63 Cal.App.4th 178.

The Court finds both cases distinguishable.

In *Gilliland,* the challenged action was the Medical Board's decision to impose a penalty on the two

petitioners (Dr. Gilliland and Jose Rivera). The court of appeal noted that the statute under which the Board had fined the petitioners specified that the action must be brought by the Attorney General. The court held that "since the Attorney General is only a party in an action in court, the Board did not have jurisdiction to impose a penalty under this statute in an administrative proceeding."

In the *Buckley* case, the Coastal Commission had denied the Buckleys' request for a permit to develop a lot in Malibu. The Commission, however, was found to not have jurisdiction over the Buckleys' lot. The Commission had argued a failure to exhaust administrative remedies of this issue. The court of appeal rejected that argument because "[t]he rule of exhaustion of administrative remedies does not apply where the subject matter lies outside the administrative agency's jurisdiction."

Unlike *Gilliland* and *Buckley* where the agencies lacked jurisdiction, the Board here has jurisdiction over violations pursuant to Water Code Sec. 13385. Subdiv. (e) of that statute specifically grants the Board the powers to impose penalties. ("In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account . . . .")

Whether or not the Channel or Creek were WOUS was simply a factual issue that, under exhaustion of administrative remedies principles, should have been raised at the time of the administrative hearing if San Altos did not believe these were WOUS.

Other Exhaustion of Remedies Arguments

The Board also argued that San Altos failed to exhaust its administrative remedies in two other respects. First, as to its claim that the Board violated the Policy and/or Sec. 13385(e) factors. Second, as to its argument that the Board imposed significant penalties for non-discharge events.

The Court agrees with San Altos that its challenges to the assessed liability were sufficient to exhaust its administrative remedies and therefore rejects the Board's arguments as to these issues.

Other Board Proceedings

The Policy makes clear that it wants enforcement actions to be consistent. For example, the Policy states that "It is the policy of the State Water Board that the Water Boards shall strive to be fair, firm, and consistent in taking enforcement actions throughout the State, while recognizing the unique facts of each case." In the "Introduction" to the Policy, it also states that the Policy "[e]stablishes an administrative civil liability assessment methodology to create a fair and consistent statewide approach to liability assessment."

San Altos contends that to determine whether there is consistency, the Court should look at orders in other arguably similar matters. Specifically, San Altos cites to actions in the areas of Escondido, Encinitas, Irvine Ranch, San Diego and Scripps Mesa.

The Court disagrees with San Altos.

It is the Court's opinion that the consistency sought was to be obtained by utilizing the methodologies, definitions, etc., as found *in the Policy,* not in other matters before the Board (or other Boards).

The first paragraph of the Policy includes the following language:

. . . In adopting this Policy, the State Water Board intends to provide guidance that will enable Water Board staff to expend its limited resources in ways that openly address the greatest needs, deter harmful conduct, protect the public, and achieve maximum water quality benefits. Toward that end, it is the intent of the State Water Board that the Regional Water Boards' decisions **be consistent with this Policy**."
(Emphasis added.)

The Policy could have said that the "decisions be consistent with other decisions" but it did not. Instead, the desired consistency is obtained through use of the methodologies set forth in the Policy.

Additionally, the Court agrees with the Board that to look at other orders (without a full record of the underlying acts) would be going outside the administrative record.

The Court concludes that other ACL actions are not relevant to this dispute.

The Violations

The following violations were found for the stated number of days and penalties assessed in the amounts indicated.

- Unauthorized discharge of sediment (6 days) [$29,822];
- Failure to implement material stockpile BMPs (8 days) [$41,860];
- Failure to implement vehicle fluid leak BMPs (2 days) [$8,750];
- Failure to implement erosion control BMPs in inactive areas (22 days) [$195,105];
- Failure to implement perimeter sediment control BMPs (4 days) [$23,660];
- Failure to implement erosion control BMPs in active areas (11 days) [$97,190] ;
- Failure to apply linear sediment control (5 days) [$45,730];
- Failure to manage run-on and runoff (2 days) [$15,730];
- Failure to remove sediment or other construction materials from roads (10 days) [$80,785];
- Failure to protect storm drain inlets (2 days) [$14,550];
- Failure to contain and securely protect stockpiled waste material from wind and rain (1 day) [$3,575];
- Failure to properly store chemicals (7 days) [$35,035]; and
- Failure to prevent discharge of concrete waste to the ground (1 day) [$3,575].

In opposing the writ petition, the Board submitted a 25-page chart that was neither part of the administrative record nor mentioned in its brief. The chart struck the Court as being somewhat similar to a separate statement in support of a motion for summary judgment – i.e., the citation to evidence that supported the Board's findings.

Because the Court was concerned that this was argument/evidence outside the pleadings or record, it scheduled an ex parte with counsel to discuss the chart. At the April 4, 2018 ex parte, the Board's counsel explained that this document was simply a chart reflecting what evidence the Board had cited in its order in support of its findings. At that hearing, the Court expressed its belief that the chart was helpful and allowed San Altos to file a responsive document.

In ruling on this matter, the Court has reviewed the administrative record and also utilized the Board's chart and San Altos' response thereto (with the exceptions of the two exhibits stricken - - see ruling on request to strike, discussed below).

San Altos challenged various findings made by the Board concerning the violations and, as well, the factors utilized for certain violations.

As indicated above, the Court adjudicates this matter by applying the substantial evidence standard. "Substantial evidence has been defined as relevant evidence that a reasonable mind might accept as adequate support for a conclusion. (*Goggin v. State Personnel Bd.* [(1984) 156 Cal.App.3d 96, 102].) A presumption exists that an administrative action was supported by substantial evidence. (*Barnes v. Personnel Department* (1978) 87 Cal.App.3d 502, 502 [151 Cal.Rptr. 94].) The burden is on the appellant to show there is no substantial evidence whatsoever to support the findings of the District. (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970 [191 Cal.Rptr. 415].)" *Taylor Bus Serv. v. San Diego Bd. of Educ.* (1987) 195 Cal.App.3d 1331, 1340-41.

The administrative record and the resulting order in this case were extremely detailed. Having conducted its review of this matter, the Court finds San Altos did not meet its burden to show there was no substantial evidence whatsoever to support the Board's findings. In fact, the Court finds the opposite to be true – that there was substantial evidence to support the Board's findings of violations and its calculation of penalties as to each of the 13 violations. The Court concludes that the evidence further supports a finding that the Board utilized all relevant factors required under both the law and the Policy.

This includes findings of actual discharge on six days (December 4, 12, 17 and 31, 2014; May 8, 2015 and September 15, 2015).

With the exception of Violation No. 1 (the six days of actual discharge), the remaining violations were for "non-discharge" events. Again, the Court finds the record supports the Board's findings of violations and penalties assessed therefor.

Besides utilizing factors higher than San Altos believed appropriate, San Altos also took exception to other portions of the Board's findings.

Included was the Board's finding of a failure by San Altos to install BMPs in "active" areas for the dates of December 2-16, 2014. San Altos argues these areas cannot be "active" areas of construction because of a Stop-Work Order ("SWO") issued by the City on December 2.

The Court rejects San Altos' argument. As the Board noted in opposition, the Permit defines "active areas of construction" as "all areas subject to land disturbance activities . . . All previously active areas are still considered active areas until final stabilization is complete." Once San Altos disturbed the soil, the site was "active" until final stabilization was complete. The Court also agrees with the Board's argument that the SWO only stopped *construction*, it did not relieve San Altos of its obligation to implement BMPs to comply with the Permit.

Moreover, as the Board also noted, roads on the site were being used to access areas where the BMPs were being implemented. Therefore, even though the SWOs were in place, San Altos was working in December to bring the site within Permit-required BMPs and therefore it was "active."

San Altos also challenged the violations concerning "inactive areas." San Altos' argument appears to be (1) findings with respect to certain dates in May of 2015 are not supported because there were no site inspections on May 9-12 and May 14; and (2) the violations for "inactive" areas in December is inconsistent with the Board's findings of violations for "active" areas for those same dates.

The Court agrees with the Board that the closeness of time between inspections and observations during May supports the inference that the same violations occurring on dates of inspection were similarly occurring on May 9-12 and May 14.

And, with respect to there being violations for active and inactive areas at the same time, the Court saw no persuasive argument that a construction site could not simultaneously contain both an active area and an inactive area.

San Altos also complained that Violation No. 2 ("Failure to Implement Material Stockpile BMPs") was improper because, according to San Altos, the Board relied on standards not identified in the Permit.

Attachment D "Risk Level 2 Requirements" to the Permit provides under Section B "Good Site Management 'Housekeeping'" that "At a minimum, Risk Level 2 dischargers shall implement the following good housekeeping measures:" "[c]over and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.)"

It is undisputed that the term "actively being used" is not defined.

San Altos contends the Board's interpretation of "actively being used" is unreasonable and, instead, tries to incorporate language from other portions of the permit concerning "inactive areas of construction" to support its argument that stockpiles should only be required to be covered where they are not scheduled to be re-disturbed for at least 14 days.

The Court agrees with the Board that the interpretation urged by San Altos is inconsistent with the intent and the purpose of the Permit to prevent sediment from leaving the site.

And, the Court again finds that any days of violations not personally observed by inspection are supported by inferences given the brief time period between actual inspections and observations of violations.

Board's Objection and Request Strike Documents Attached to the Notice of Lodgment filed by San Altos on April 10, 2018

The request to strike Exs. A and B to Ex. 1 is granted. The remaining requests are denied.

Request for Judicial Notice

San Altos requested judicial notice of "attached decisions of the California Regional Water Quality Control Boards." No documents were attached to the request for judicial notice. The Court presumes that these documents were what was submitted as Exs. A through D (A, Escondido; B, Scripps Mesa; C, City of San Diego; and D, Irvine Ranch) as courtesy copies.

The Board objected to the Court taking judicial notice.

As indicated above, the Court finds that decisions in other Water Board cases are not relevant.

The request for judicial notice is denied.

Summary of Ruling

The petition for writ of mandate is denied.

The Court instructs counsel to pick up the administrative record by 4/24/18. The Court releases binders to the tendering parties.

Respondent is to give notice.

Joan M. Lewis

Judge Joan M. Lewis

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **San Altos-Lemon Grove, LLC v. Regional Water Board-San Diego, et al.**
No.: **37-2017-00012461-CU-WM-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **May 2, 2018**, I served the attached:

[PROPOSED] AMENDED JUDGMENT

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Walter E. Rusinek
Laurence R. Philips
PROCOPIO CORY HARGREAVES & SAVITCH
12544 High Bluff Drive, Suite 300
San Diego, CA 92130

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **May 2, 2018**, at San Diego, California.

Linda Jean Fraley
Declarant

Linda Jean Fraley
Signature

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