

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

RESOLUTION NO. R9-2003-0253

SETTLEMENT OF POTENTIAL LIABILITY AGAINST

SHEA HOMES

**FOR VIOLATIONS OF SWRCB ORDER NO. 99-08-DWQ, WASTE
DISCHARGE REQUIREMENTS FOR DISCHARGES OF STORM WATER
RUNOFF ASSOCIATED WITH**

**THE KELLY RANCH CONSTRUCTION SITE
CANNON ROAD AND FARADAY AVENUE
CARLSBAD
SAN DIEGO COUNTY**

Whereas, Shea Homes owns and operates an active construction site on 174 acres of land located at Cannon Road and Faraday Avenue, Carlsbad in San Diego County. This facility, referred to as the Kelly Ranch or Kelly Core construction site, (WDID No. 9 37S318049) continues to be regulated under the following waste discharge requirements “*State Water Resource Control Board (SWRCB) Order No. 99-08-DWQ (Division of Water Quality) National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRS) for Discharges of Storm Water Runoff Associated with Construction Activity*” (Order No. 99-08-DWQ); and

Whereas, on April 16, 2003, the Executive Officer issued Complaint No. R9-2003-0161 Administrative Assessment for Civil Liability (Complaint) in the amount of \$90,000 against Shea Homes for violation of SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for discharges of storm water runoff associated with construction activity; and

Whereas, the complaint alleges that Shea Homes discharged sediment laden storm water from the Kelly Ranch construction site six times on February 12, 13, 26, 27, March 16, and April 15, 2003. The complaint also alleges that sediment from the Kelly Ranch construction site discharged directly into the Agua Hedionda Lagoon. The State of California has identified the Agua Hedionda Lagoon on it’s “303(d)” list as a water body that does not meet water quality standards because sediment/siltation is a pollutant causing impairment. The Executive Officer proposed the Regional Board impose civil liability in the amount of \$60,000 on Shea Homes for the violations cited above; and

Whereas, the complaint also alleges Shea Homes failed to implement an adequate monitoring program on February 11, 26, and March 16, 2003 in accordance with Section B: Monitoring Program and Reporting Requirements of Order No. 99-08-DWQ, which

requires mandatory monitoring for all construction sites that have stormwater discharge directly to a "303(d)" listed water body. The Executive Officer proposed the Regional Board impose civil liability in the amount of \$30,000 on Shea Homes for the violations cited above; and

Whereas, On June 5, 2003, Shea Homes provided written comments disputing technical aspects of the allegations and raising questions whether the construction site discharges directly to Agua Hedionda Lagoon, or if the discharge is actually to waters of the State upstream of the lagoon or to land not waters of the State. Clarification of this issue would also help in determining whether the monitoring program is required and therefore if there is liability for not implementing the program.

Whereas, Shea Homes also offered to settle the matter without resolution of the potential liability proposed in the Complaint. The settlement offer consists of Shea Homes paying a total of \$60,000 of which \$40,000 would fund a supplemental environmental project (SEP) by the Agua Hedionda Lagoon Foundation and \$20,000 would be deposited in the Cleanup and Abatement Account administered by the State Water Resources Control Board. Shea Homes also committed to bringing the construction site into full compliance with the construction stormwater permit for the remainder of the project. As of June 9, 2003, Shea Homes has been taking cooperative action to address and resolve violations of Order No. 99-08-DWQ.

Whereas, the Agua Hedionda Lagoon Foundation established in 1990, is a non-profit corporation chartered to conserve, restore, and enhance the natural resources of the Agua Hedionda Lagoon and has an "Environmental Enhancement Account"; and

Whereas, contribution from Shea Homes to the Agua Hedionda Lagoon Foundation's "Environmental Enhancement Account" would be an adequate SEP for the settlement offer by Shea Homes; and

Whereas, the Regional Board Executive Officer accepted the offer for consideration by the Regional Board and has established a 30-day comment period to solicit public input. If the Regional Board accepts the settlement, the complaint for civil liability will be withdrawn from consideration; and

Whereas, the Regional Board has incurred costs in the amount of approximately \$9,600 to issue the Complaint. The Regional Board has also invested an estimated 90 hours as follow-up investigation and settlement of the matter at an average rate of \$90 per hour for \$8,100. The total expenditure by the Regional Board is \$17,700 regarding this matter.

THEREFORE BE IT RESOLVED, that the California Regional Water Quality Control Board, San Diego Region, hereby directs the following:

1. The Executive Officer shall execute a settlement agreement with Shea Homes involving payment of \$40,000 to the "Environmental Enhancement Account" of the Agua Hedionda Lagoon Foundation and \$20,000 to the State Water Pollution


Cleanup and Abatement Account by September 12, 2003 in lieu of any formal enforcement proceeding to impose civil liability on Shea Homes for possible violations associated with Order No. 99-08-DWQ between February and April 2003, and the Executive Officer shall withdraw the Complaint.

2. The Agua Hedionda Lagoon Foundation shall submit quarterly reports according to the schedule below on the use of the \$40,000 contribution to the "Environmental Enhancement Account". The Agua Hedionda Lagoon Foundation shall exhaust the \$40,000 in the "Environmental Enhancement Account" by February 15, 2005, and the Agua Hedionda Lagoon Foundation shall submit a final accounting report to the Regional Board by March 15, 2005.

Quarterly Reports Due Dates

September 15, 2003
December 15, 2003
March 15, 2004
June 15, 2004
September 15, 2004
December 15, 2004

This Resolution was issued by the California Regional Water Quality Control Board, San Diego Region, on August 13, 2003.


JOHN H. ROBERTUS
Executive Officer

Date Signed: 13 August 2003