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California Regional Water Quality Control Board San Diego Region

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<http://www.waterboards.ca.gov/sandiego>

August 9, 2007

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
7001 2510 0000 0788 3129

Charles D. Tourtellotte
Dakota Ranch Development Co., LLC
2533 South Highway 101, Suite 240
Cardiff by the Sea, California 92007

In reply refer to: CAU:18-2002064:melbf

**Adoption of Administrative Civil Liability Order No. R9-2007-0107 Against
Dakota Ranch Development Co., LLC, for Violations of Its CWA Section 401
Water Quality Certification Permit, File No. 02C-064**

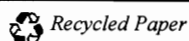
Dear Mr. Tourtellotte:

On August 8, 2007, the California Regional Water Quality Control Board, San Diego Region (Regional Board), adopted Order No. R9-2007-0107, *Administrative Assessment of Civil Liability Against Dakota Ranch Development Co., LLC, for Violation of Regional Board Order for Technically-Conditioned Certification, File No. 02C-064*. Order No. R9-2007-0107 assessed a civil liability of \$300 per day for failing to comply with Condition No. 7 of File No. 02C-064 for 1,042 days for a total liability of \$312,600.

Payment of \$52,100 shall be made payable to the "California State Water Resources Control Board" for deposit into the State Water Pollution Cleanup and Abatement Account and shall be tendered to the Regional Board at the address listed in this letterhead by 5:00 PM on September 7, 2007. Payment of the balance of \$260,500 shall be suspended until November 6, 2007. If Dakota Ranch Development Co., LLC, fails to complete the mitigation in accordance with Condition No. 7 of File No. 02C-064 by November 6, 2007, it shall pay the remaining balance of the liability imposed by Order No. R9-2007-0107, \$260,500, by 5:00 PM on November 6, 2007. If Dakota Ranch Development Co., LLC, completes the mitigation in accordance with Condition No. 7 of File No. 02C-064, the suspended liability shall be deemed satisfied.

Failure to submit payment as required by Order No. R9-2007-0107 may result in the referral to a collection agency or the Attorney General for further enforcement. You have 30 days from the date of the Regional Board's adoption of the order to appeal the action to the State Water Resources Control Board. Information on the appeal process can be obtained at the following website: www.waterboards.ca.gov. If you choose to appeal, your payment may be delayed until the State Water Resources Control Board has made a determination on the matter.

California Environmental Protection Agency



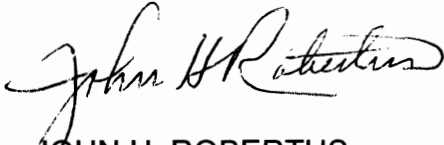
Charles D. Tourtellotte
Dakota Ranch Development Co., LLC

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August 9, 2007

Please contact Frank Melbourn of my staff at (858) 467-2973 or fmelbourn@waterboards.ca.gov if you have any questions concerning this matter. The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Sincerely,



JOHN H. ROBERTUS
Executive Officer

JHR:mja:jwr:ftm

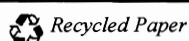
Enclosure: Order No. R9-2007-0107

Copy with enclosure to:

1. Kari Coler
U.S. Army Corps of Engineers
kari.j.coler@usace.army.mil
2. Kevin Mallory
Principal Planner
City of Santee
kmallory@ci.santee.ca.us
3. William Orme
Section 401 Program
State Water Resources Control Board
borme@waterboards.ca.gov

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California Environmental Protection Agency



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

ORDER NO. R9-2007-0107

ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
DAKOTA RANCH DEVELOPMENT CO., LLC
FOR
VIOLATION OF
REGIONAL BOARD ORDER FOR TECHNICALLY-CONDITIONED CERTIFICATION
FILE NO. 02C-064

The California Regional Water Quality Control Board, San Diego Region (Regional Board), having held a public hearing on August 8, 2007, to hear evidence and comments on the allegations contained in Administrative Civil Liability (ACL) Complaint No. R9-2005-0176, dated May 27, 2005, and deliberating on the evidence presented at the public hearing and in the record, after determining the allegations contained in the Complaint to be true, and on the recommendation for administrative assessment of Civil Liability in the amount of \$312,600 finds as follows:

1. Dakota Ranch Partners filed for and obtained a Regional Board Order for Technically-Conditioned Certification, Dakota Ranch Subdivision (File No. 02C-064) from the Regional Board on January 30, 2003, because the proposed development would result in and ultimately filled 0.26 acre of unvegetated ephemeral streambed on the site. The project consisted of brushing, grading, and filling to contour 6.17 acres prior to constructing 20 single family residences on Dakota Ranch Road. The project site is north of Princess Joann Road, east of Cuyamaca Street, and west of Keith Street in the City of Santee, California.
2. On January 31, 2003, Dakota Ranch Development Co., Inc. (Dakota Ranch) through its agent Marquez & Associates Biological Consultants notified the Regional Board in writing that it was the new owner of the Dakota Ranch Subdivision project, and that it received a copy of the Regional Board 401 Certification (File No. 02C-064), understood the permit requirements, and would implement them. The letter was signed by Viviane Marquez, Marquez & Associates Biological Consultants, Ken Gotthelf, Dakota Ranch Partners, and Stefan LaCasse, Vice President of Dakota Ranch Development Co., LLC.
3. Condition No. 7 of File No. 02C-064 required the completion of mitigation within the same calendar year as the impact occurs, or at least no later than nine months following the close of the calendar year in which impacts first occur. The January 31, 2003, letter noticing the change of ownership also notified the Regional Board that Dakota Ranch would begin grading on February 9, 2003. Therefore Condition No. 7 was to be completed no later than September 30,

2004. As of August 8, 2007, the mitigation has yet to be completed. Dakota Ranch is in violation of Condition No. 7 for 1,042 days and counting.
4. On December 22, 2004, the Regional Board inspected and confirmed that the 0.26 acre mitigation project in Mast Park in the City of Santee had not been constructed. As a result the Regional Board on January 25, 2005, issued Notice of Violation No. R9-2005-0042 to Dakota Ranch notifying them that Condition No. 7 of File No. 02C-064 had not been completed and that they were subject to possible enforcement action including issuance of administrative civil liability.
 5. On May 27, 2005, the Regional Board issued ACL Complaint Order No. R9-2005-0176 to Dakota Ranch for failing to comply with Condition No. 7 of File No. 02C-064 and scheduled a public hearing for August 10, 2005.
 6. On July 21, 2005, October 23, 2006, and January 29, 2007, Dakota Ranch requested a postponement of the ACL hearing. On July 16, 2007, after failing to hear of any new progress by Dakota Ranch after attempting to contact Dakota Ranch and contacting the City of Santee, the Regional Board notified Dakota Ranch that an ACL hearing would be scheduled for August 8, 2007.
 7. Liability in the amount of \$312,600 is based on consideration of the factors prescribed in Water Code section 13385 (e) as applied to the allegation contained in ACL Complaint No. R9-2005-0176 and described greater in detail in the Technical Analysis for Proposed Administrative Civil Liability Order No. R9-2007-0107. The liability is as follows:
 - \$300 per day for failing to comply with Condition No. 7 of File No. 02C-064 for 1,042 days for a total civil liability of \$312,600.
 - If Dakota Ranch complies with Condition No. 7 of File No. 02C-064 by September 7, 2007, it would be appropriate to reduce liability by \$250 per day.
 8. The Regional Board incurred costs of \$12,348.09 to prosecute this enforcement action, including: investigation; preparation of enforcement documents; communications with the Discharger; and preparation of materials for public review and hearing.
 9. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with Section 15521, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that pursuant to section 13385 of the Water Code, civil liability is imposed on Dakota Ranch Development Co., LLC, in the amount of \$312,600. Dakota Ranch Development Co., LLC, shall pay \$52,100 to the Cleanup and Abatement Account by September 7, 2007; payment of the balance of \$260,500 shall be

suspended for 90 days. If Dakota Ranch Development Co., LLC, fails to complete mitigation in accordance with Condition No. 7 of File No. 02C-064 by November 6, 2007, it shall pay the remaining balance of the liability imposed by this Order, \$260,500, by close of business on November 6, 2007. If Dakota Ranch Development Co., LLC, completes mitigation in accordance with Condition No. 7 of File No. 02C-064, the suspended liability shall be deemed satisfied.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on August 8, 2007.



JOHN H. ROBERTUS
Executive Officer