

EXECUTIVE OFFICER SUMMARY REPORT
August 8, 2007

- ITEM: 7
- SUBJECT: PUBLIC HEARING: Administrative Assessment of Civil Liability against Dakota Ranch Development Co., LLC for violation of its Clean Water Act Section 401 Water Quality Certification issued on January 30, 2003, for the Dakota Ranch Subdivision, Santee, California (Tentative Order No. R9-2007-0107) (Frank Melbourn).
- PURPOSE: The Regional Board will consider whether to raise, lower, or reject assessment of the \$140,000 civil liability recommended in ACL Complaint No. R9-2005-0176.
- PUBLIC NOTICE: Dakota Ranch Development Co., LLC (Dakota Ranch) and the City of Santee were notified of the public hearing in writing on July 16, 2007. A legal notice of the public hearing was published in the San Diego Union Tribune newspaper on July 17, 2007. A notice was also published on the Regional Board's web site.
- DISCUSSION: 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.
- On January 23, 2003, Dakota Ranch Partners filed for and obtained a Regional Board Order for Technically-Conditioned Certification, Dakota Ranch Subdivision (File No. 02C-064), 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.
- On January 31, 2003, Dakota Ranch through their agent, Marquez & Associates Biological Consultants notified the

Regional Board that they obtained ownership of the Dakota Ranch Subdivision from Dakota Ranch Partners, and that they agreed to the terms and conditions of File No. 02C-064.

The violation of File No. 02C-064 Condition No. 7, failure to construct 0.26 acre of mitigation, was discovered by the Regional Board during a routine inspection on December 22, 2004. While no violations were noted at the completed development site on Dakota Ranch Road, there were no signs that the mitigation had been initiated at Mast Park. Concerned that Dakota Ranch would dissolve its limited liability corporation, the Regional Board issued Notice of Violation No. R9-2005-0042 on January 25, 2005, and ACL Complaint No. R9-2005-0176 on May 27, 2005. An ACL Hearing was scheduled for August 10, 2005. The hearing was postponed at the request of Dakota Ranch.

After issuance of the ACL Complaint, Dakota Ranch informed the Regional Board that there were numerous City of Santee bureaucratic hurdles to overcome to complete the mitigation. Also, Dakota Ranch stated that if the Regional Board were to hold an administrative civil liability hearing, Dakota Ranch would be forced to expend mitigation funds for legal defense, and thus jeopardize completion of the mitigation.

Consequently, the Regional Board granted each of Dakota Ranch's three hearing postponement requests. Unfortunately, since the last extension, despite assurances to the contrary, Dakota Ranch has ceased communication with the Regional Board and terminated its association with counsel from Luce Forward. The last Regional Board communication with Dakota Ranch occurred on April 11, 2007. Without any assurance the mitigation project will go forward, the Regional Board can only go forward with this public hearing.

A full analysis of the allegation of violation and chronology of events is contained in the Technical Analysis, Supporting Document No. 3.

KEY ISSUES:

1. Is Dakota Ranch responsible for complying with the Water Quality Certification Permit for the Dakota Ranch Subdivision (File No. 02C-064)?

Yes, on January 31, 2003, Dakota Ranch submitted a signed statement by its Vice President, Stefan LaCasse that Dakota Ranch obtained ownership of the Dakota Ranch Subdivision project from Dakota Ranch Partners. Dakota Ranch Partners was the original owner of the Dakota Ranch Subdivision project that applied for and obtained the Water Quality Certification from the Regional Board on January 30, 2003 (File No. 02C-064). Furthermore, the signed statement acknowledged that Dakota Ranch received a copy of the Regional Board Water Quality Certification, understood the permit requirements, and would implement them.

2. Has Dakota Ranch completed the mitigation in Mast Park, and thus satisfied Condition No. 7 of File No. 02C-064?

No, the Regional Board inspected the 0.26 acre mitigation site in Mast Park on December 22, 2004, and documented that no work had begun. Communications with the City of Santee (owner of Mast Park) and Dakota Ranch have confirmed that Dakota Ranch has not obtained the legal authority necessary to begin construction of the mitigation, nor has construction begun.

3. What is the appropriate liability per day for failing to create 0.26 acre of ephemeral stream channel?

Regional Board Staff is recommending a per day liability of \$300 for the failure to comply with Condition No. 7 of File No. 02C-064. As of August 8, 2007, Dakota Ranch will be in violation of Condition No. 7 for 1042 days and counting because this is an ongoing violation. The total recommended liability is \$312,600. The Regional Board can issue another ACL Complaint for the violation period beginning August 9, 2007, until the mitigation requirement is completed.

An analysis of the economic benefit enjoyed by Dakota Ranch for failing to comply with and for delaying compliance with Condition No. 7 was conducted using the U.S. EPA BEN model. By failing to comply with Condition No. 7, Dakota Ranch

enjoyed an economic benefit of \$197,349, and \$34,594 if they delay construction of the mitigation until September 7, 2007. Regional Board incurred costs of \$12,348.09 to prosecute this matter. In the Technical Analysis for proposed ACL Order No. R9-2007-0176, Regional Board staff proposed an administrative civil liability of \$300 per day of violation. At the August 8, 2007, Regional Board meeting, the days of violation will be 1,042 for a total liability of \$312,600. Regional Board Staff also recommend that \$250 per day of liability be waived if Dakota Ranch can construct the mitigation by September 7, 2007, resulting in a total liability of \$52,100 after waiving \$260,500 of liability.

LEGAL CONCERNS: None have been identified.

**SUPPORTING
DOCUMENTS:**

1. Area Map
2. Tentative ACL Order No. R9-2007-0107
3. Technical Analysis

RECOMMENDATION(S): Adopt tentative ACL Order No. R9-2007-0107.