

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

TENTATIVE

ORDER NO. R9-2007-0221
ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
ASHBY USA, LLC
RORIPAUGH RANCH RESIDENTIAL DEVELOPMENT
TEMECULA, RIVERSIDE COUNTY
FOR
VIOLATIONS OF
REGIONAL BOARD ORDER FOR TECHNICALLY-CONDITIONED CERTIFICATION
FILE NO. 01C-091

The California Regional Water Quality Control Board, San Diego Region (Regional Board), having held a public hearing on December 12, 2007, to hear evidence and comments on the allegations contained in Administrative Civil Liability (ACL) Complaint No. R9-2007-0064, dated July 31, 2007, 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 \$434,561 finds as follows:

1. Ashby USA, LLC filed for and obtained a Regional Board Order for Technically-Conditioned Certification, Roripaugh Ranch Residential Development (File No. 01C-091) from the Regional Board on December 11, 2002, because construction of one bridge over Santa Gertrudis Creek and two bridges of Long Valley Wash would impact 3.38 acres of waters of the United States and require 8.20 acres of mitigation. The 800 acre residential development is located in the City of Temecula in Riverside County.
2. Condition No. 8 of File No. 01C-091 requires the existing low flow wash to remain in its natural condition, except as detailed in the amended Water Quality Certification application package, dated July 25, 2002. Between August 29, 2006 and November 30, 2006, the Regional Board observed that Ashby USA, LLC disturbed Long Valley Wash from its natural condition outside of the areas identified in the certification.
3. On October 20, 2005, Ashby USA, LLC filed for and obtained Minor Modification No. 2 to File No. 01C-091. The modification added 1.85 acres of impact to waters of the United States within Santa Gertrudis Creek and Long Valley Wash increasing the required mitigation area to 10.26 acres.

4. Condition No. 1 of Minor Modification No. 2 required a revised mitigation plan to be submitted by December 20, 2005. As of December 12, 2007, the revised mitigation plan has not been submitted. Ashby USA, LLC is in violation of Condition No. 1 of Minor Modification No. 2 for 722 days and counting.
5. Condition No. 2 to Minor Modification No. 2 required that mitigation be constructed by December 20, 2006. As of December 12, 2007, the mitigation has yet to be completed. Ashby USA, LLC is in violation of Condition No. 2 of Minor Modification No. 2 for 357 days and counting.
6. Condition No. 16 of File No. 01C-091 requires Ashby USA, LLC to fully implement the Final Water Quality Management Plan dated September 26, 2002. On August 29, 2006 the Regional Board inspected the Roripaugh Ranch Residential Development and determined that Ashby USA, LLC failed to design a detention basin implementing post-construction best management practices from August 29, 2006 through November 30, 2006 when notified by the discharger than improvements had been implemented. Ashby USA, LLC is in violation of Condition No. 16 for 32 days.
7. On July 31, 2007, the Regional Board issued ACL Complaint No. R9-2007-0064 to Ashby USA, LLC for failing to comply with Conditions 8 and 16 of File No. 01C-091 and Conditions 1 and 2 of Minor Modification No. 2 and scheduled a public hearing for October 10, 2007.
8. By letter dated August 28, 2007, Ashby USA, LLC requested a postponement of the ACL hearing. The new hearing was rescheduled to December 12, 2007.
9. Liability in the amount of \$434,561 is based on consideration of the factors prescribed in Water Code section 13385(e) as applied to the allegations contained in ACL Complaint No. R9-2007-0064 and described in greater detail in the Technical Analysis for Proposed Administrative Civil Liability Contained in Complaint No. R9-2007-0064. The liability is as follows:
 - a. \$30,411 for disturbances to Long Valley Wash in violation of Condition No. 8 of File No. 01C-091 for 93 days (August 29, 2006 – November 30, 2006).
 - b. \$56,900 for failing to submit a final revised mitigation plan in violation of Condition No. 1 of Minor Modification No. 2 for 569 days (December 20, 2005 – July 12, 2007).
 - c. \$331,250 for failing to implement mitigation in violation of Condition No. 2 to Minor Modification No. 2 for 265 days (October 20, 2006 – July 12, 2007).

- d. \$16,000 for failing to adequately designed a detention basin in violation of Condition No. 16 of File No. 01C-091 for 32 days (August 29, 2006 – September 30, 2006).
10. \$46,411 in civil liability is due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account within 30 days of adoption of this Order. The remaining balance of \$388,150 is due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account August 30, 2007.
11. The Regional Board incurred costs of \$23,776 to prosecute this enforcement action, including: investigation; preparation of enforcement documents; communications with the Discharger, and preparation of materials for public review and hearing.
11. 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 Ashby USA, LLC in the amount of \$434,561. Ashby USA, LLC shall pay \$46,411 to the Cleanup and Abatement Account by January 12, 2008 and the remaining balance of \$388,150 shall be paid to the Cleanup and Abatement Account by August 30, 2007.

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 December 12, 2007.

TENTATIVE
JOHN H. ROBERTUS
Executive Officer