



California Regional Water Quality Control Board Lahontan Region



Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

November 28, 2007

Lassen County Times

Deliver by E-Mail

REQUEST FOR PUBLICATION – NOTICE OF PUBLIC HEARING: CONSIDERATION OF AN ADMINISTRATIVE CIVIL LIABILITY ORDER FOR EVERD A. MCCAIN, B.J. DEIS, AND MCCAIN AND ASSOCIATES, LASSEN COUNTY

Please publish the enclosed Public Notice one (1) time as soon as possible, but no later than **December 4, 2007**. Please send your invoice and proof of publication to the attention of Kathleen Minsky at the address above.

If you have questions about billing, please contact Ms. Minsky at (530) 542-5575. If you have any questions about the content of the notice, please contact Harold Singer (530) 542-5412.

Nellie Davidson
Office Technician

Enclosure: Notice of Public Hearing

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

2501 Lake Tahoe Boulevard, South Lake Tahoe, CA 96150

PUBLIC HEARING

Concerning

CONSIDERATION OF AN ADMINISTRATIVE CIVIL LIABILITY ORDER

Concerning

EVERD A. MCCAIN, B.J. DEIS, AND MCCAIN AND ASSOCIATES, LASSEN COUNTY

IMPORTANT

By 5:00 p.m. on Monday, December 10, 2007, the Lahontan Regional Water Quality Control Board (Water Board) must receive the following:

- 1. Requests from persons requesting designated party status;**
- 2. Objections to these hearing procedures.**

By noon on Monday, December 17, 2007, the Water Board must receive the following:

- 1. From designated parties, written comments on the Administrative Civil Liability Complaint;**
- 2. From interested persons, written non-evidentiary policy statements.**

By noon on Friday, December 21, 2007, the Water Board must receive written evidentiary objections.

BACKGROUND

The Assistant Executive Officer of the Water Board issued a Complaint for Administrative Civil Liability in the amount of \$100,000 to Everd A. McCain, B.J. Deis, and McCain and Associates. The Administrative Civil Liability Complaint (Complaint) alleges that Everd A. McCain, B.J. Deis, and McCain and Associates violated the following:

- 1. Waste Discharge Prohibitions specified by the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) by discharging waste earthen materials into Willow Creek as a result of the failures of both Buz and Skeet Dams. These discharges adversely affected water for the beneficial uses designated for Willow Creek.**
- 2. Clean Water Act section 301 by discharging earthen materials into Willow Creek to construct Skeet Dam without a Clean Water Act section 404 dredge and fill permit from the Army Corp of Engineers and a Clean Water Act section 401 Water Quality Certification from the Water Board.**
- 3. Water Code section 13267 by failing to submit required reports and documentation by their due dates.**
- 4. Water Code section 13304 by failing to implement measures to temporarily stabilize the site as required by Cleanup and Abatement Order (CAO) No. R6T-2006-0001, as amended.**

5. Clean Water Act section 401 Water Quality Certification (401 Certification) by failing to submit required revegetation monitoring reports for the Buz Dam Repair Project.

B.J. Deis, a California corporation, (as property owner; as discharger named in the 401 Certification and CAO No. R6T-2006-0001, as amended) and McCain and Associates (as party responsible for Skeet Dam design and construction, Buz Dam repairs; and as discharger named in CAO No. R6T-2006-0001, as amended), and Mr. McCain (as an individual with substantial control over the Project and a corporate officer of B.J. Deis and McCain and Associates with control over those corporation's compliance with the CAO NO R6T-2006-0001, as amended) are referred to as the "Dischargers" in the Complaint. The Complaint may be obtained from the Water Board's website at www.waterboards.ca.gov/lahontan or by contacting Mary Fiore-Wagner at (530) 542-5425 or mfwagner@waterboards.ca.gov.

PURPOSE OF PUBLIC HEARING

Everd A. McCain, B.J. Deis, and McCain and Associates have not waived their right to a public hearing. The public hearing is intended to provide Everd A. McCain, B.J. Deis, and McCain and Associates with an opportunity to address and contest allegations set forth in Complaint No. R6T-2007-0007. Interested persons will also have an opportunity to provide non-evidentiary policy statements during the public hearing. Following receipt of testimony, the Water Board will consider whether to issue an administrative civil liability order to Everd A. McCain, B.J. Deis, and McCain and Associates in the amount of \$100,000 or some different amount, to reject any proposed order, or to refer the matter to the California Attorney General.

PUBLIC HEARING DATE AND LOCATION

A public hearing concerning this matter will be held during the Water Board's January 2008 meeting, which is scheduled for January 9 and 10, 2008. The location of the meeting has not yet been determined. An agenda announcement for this meeting will be posted at: <http://www.waterboards.ca.gov/lahontan> no later than December 20, 2007. The announcement will be sent to all designated parties and interested parties.

HEARING PARTICIPANTS

The Prosecution Team consists of staff members Robert S. Dodds, Assistant Executive Officer; Chuck Curtis, Division Manager; Scott Ferguson, Chief, Enforcement Unit; Mary Fiore-Wagner, Environmental Scientist; and Staff Counsel Yvonne West. The function of the Prosecution Team, as a designated party and advocate, is to present evidence in support of the Prosecution Team's position in order to create an administrative record that would support a decision in the Prosecution Team's favor.

The Advisory Team consists of Harold Singer, Executive Officer, and Staff Counsel David Coupe. The Advisory Team's responsibilities include receiving and distributing hearing submittals, maintaining the administrative record, mailing out hearing-related correspondence and other documents, assisting the Board Chair with conducting the hearing, and assisting the Board members with formulating a decision. The Advisory Team may select technical staff to assist them and such staff will be members of this team.

Interested persons are non-designated parties. Interested persons may present non-evidentiary policy statements. Interested persons (1) are not entitled to present evidence (either in writing or through evidentiary testimony); (2) are not subject to cross-examination; and (3) may not cross-examine other parties.

The following participants are designated as parties for this hearing:

1. Water Board Staff (Prosecution Team)
2. Everd A. McCain, B.J. Deis, and McCain and Associates

Other persons may request designated party status. The Advisory Team must receive any such requests by **5:00 p.m. on Monday, December 10, 2007**. Although the due date is December 10, interested persons are encouraged to submit such requests as soon as possible so the Chair can consider the request before the due date for written materials. The request must explain the basis for status as a Designated Party and in particular how the person is directly affected by this matter. Rulings on such requests are within the sole discretion of the Chair of the Water Board. All designated parties must comply with the deadlines below for submitting written materials and objections, even if the Chair has not yet ruled on a pending request for designated party status.

If the Chair denies a request for designated party status, any timely non-evidentiary policy statements the requestor has submitted will be included in the administrative record. If the requestor has already submitted evidentiary materials, these may be admitted into the record at the discretion of the Chair. The evidentiary materials will not become part of the record absent an express ruling by the Chair.

Copies of any request for designated party status, and all attachments, must be sent to the Prosecution Team and Everd A. McCain, B.J. Deis, and McCain and Associates. (See contact information below.)

CONDUCT OF HEARING

The procedures governing Water Board meetings may be found in California Code of Regulations, title 23, section 648 et seq. Hearings before the Water Board are not conducted pursuant to Government Code section 11500 et seq. The procedures may be obtained by accessing http://www.waterboards.ca.gov/water_laws/. Information on meeting and hearing procedures is also available by contacting Ms. Laurie Applegate at (530) 542-5414.

The Prosecution Team, Everd A. McCain, B.J. Deis, and McCain and Associates and its representatives, and interested persons may speak at the Water Board meeting, and are expected to orally summarize their written submittals. Persons making presentations should confine statements to the issues pertinent to this hearing only. Oral testimony should be brief and may be limited by the Water Board Chair to allow all interested persons time to be heard.

Each of the designated parties will have a total of **30 minutes** to present (summarize) its comments on the proposed administrative civil liability order, cross-examine witnesses, and to provide a closing statement. Interested persons will each have **5 minutes** to comment on the proposed administrative civil liability order. The Chair will preside over these proceedings and may, in her discretion, call for one or more breaks during the hearing.

Water Board members and Advisory Team members may ask questions of any Designated Party or interested person at any time during the hearing. The time for asking and answering these questions will not count against time limits.

The Water Board may deliberate on this matter in closed session. (Gov. Code §11126, subd. (c)(3).)

SUBMISSION OF WRITTEN MATERIALS

Designated parties and interested persons may submit to the Water Board and to all designated parties, written materials on the proposed Administrative Civil Liability Order. The Water Board must receive these materials by **noon on Monday, December 17, 2007**. Please note that this deadline supersedes (and is after) the due date for comments that was specified in the November 16, 2007 letter transmitting the Complaint. This material will be made available to the Water Board members. "Written materials" include documentary evidence, legal or technical argument or analysis, and non-evidentiary policy statements.

Any objections to the procedures in this Hearing Notice must be submitted in writing. The Water Board must receive the written objections by **5:00 p.m. on Monday, December 10, 2007**.

Written objections or materials received after the December 10, 2007 or December 17, 2007 deadlines will not be accepted, except at the discretion of the Chair. Untimely written material or objections will not be accepted or incorporated into the administrative record if doing so would prejudice the Water Board, or any Designated Party. The Chair may choose to modify this rule upon a showing of severe hardship. (Cal. Code of Regs., tit. 23, §§ 648.1 & 648.4.) Any person seeking to submit late written materials must justify why the materials could not have been submitted earlier.

In addition to the above written materials, Designated Parties may submit written objections to any timely evidence that another Designated Party submits by the December 17, 2007 deadline. *Written* evidentiary objections must be received by **noon on Friday December 17, 2007**. Oral objections may be made at the hearing.

INSTRUCTIONS FOR SUBMITTING DOCUMENTS

Copies of all written materials, objections, and requests for designated party status related to the proposed Administrative Civil Liability Order must be sent (via email or in paper form) to:

For the Water Board (Advisory Team):

Originals of all documents to:	And one copy to:
Harold J. Singer Executive Officer Regional Water Quality Control Board, Lahontan Region 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150 hsinger@waterboards.ca.gov Phone (530) 542-5412 Fax (530) 544-2271	David Coupe, Esq. Staff Counsel State Water Resources Control Board, Office of Chief Counsel 1001 I Street Sacramento, CA 95814 dcoupe@waterboards.ca.gov Phone (916) 327-4439 Fax (916) 341-5199

For Water Board Staff (Prosecution Team):

One copy of all documents to:	And one copy to:
Robert S. Dodds Assistant Executive Officer Regional Water Quality Control Board, Lahontan Region 2501 Lake Tahoe Boulevard South Lake Tahoe, CA 96150 rdodds@waterboards.ca.gov Phone (530) 542-5410 Fax (530) 544-2271	Yvonne West, Esq. Staff Counsel State Water Resources Control Board, Office of Enforcement 1001 I Street Sacramento, CA 95814 ywest@waterboards.ca.gov Phone (916) 341-5445 Fax (916) 341-5284

For Everd A. McCain, B.J. Deis, and McCain and Associates:

One copy of all documents to:	
Everd A. McCain, B.J. Deis, and McCain and Associates	<u>Physical Address:</u> 480-205 Belfast Road Litchfield, CA 96117
Phone (530) 254-6613 Fax (530) 254-6622	<u>Mailing Address:</u> P.O. Box 448 Susanville, CA 96130

Designated Parties must submit fifteen (15) paper copies of all written materials to Harold Singer at the above address.

Extra copies of procedural or evidentiary objections and requests for designated party status are not required. These documents can be submitted on paper, by email or by fax, as long as they are provided to all of the above individuals.

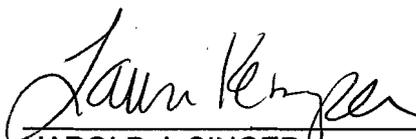
Anyone having questions on the Administrative Civil Liability Complaint, the proposed order for Administrative Civil Liability or other related documents should contact Robert S. Dodds at (530) 542-5410. Interested persons may download the above listed and related documents from the Water Board's website at www.waterboards.ca.gov/lahontan. If you do not have Internet access and would like to receive a hardcopy of these documents, you may request a copy to be mailed to you by telephoning Laurie Applegate at (530) 542-5414. These documents may be inspected and copied at the Water Board's office, Monday through Friday, excluding holidays, between 8:00 a.m. and 5:00 p.m.

HEARING FACILITIES

The hearing facilities will be accessible to persons with disabilities. Individuals requiring special accommodations are requested to contact Ms. Laurie Applegate at (530) 542-5414 at least five (5) working days prior to the hearing. TTY users may contact the California Relay Service at 1-800-735-2929 or voice line at 1-800-735-2922.

Please bring the above information to the attention of anyone you know who would be interested in this matter.

Dated: 11/28/07


HAROLD J. SINGER
EXECUTIVE OFFICER