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Environmental
Protection

State Water Resources Control Board



Gray Davis
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Division of Water Rights
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The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

NOTICE OF POSTPONEMENT OF PUBLIC HEARING AND RE-NOTICE OF PUBLIC HEARING

The State Water Resources Control Board will hold a hearing
to determine whether to impose administrative civil liability
against

Lloyd L. Phelps, Jr. (Complaint No. 262.5 – 28), Joey P. Ratto, Jr. (Complaint No. 262.5 – 29),
and Ronald D. Conn and Ron Silva, et al. (Complaint No. 262.5 – 30)

San Francisco Bay/Sacramento – San Joaquin Delta Estuary

Commencing at 10:00 a.m. on Tuesday, February 25, 2003 and continuing, if necessary,
at 9:00 a.m. on February 26, 2003 at
Joe Serna, Jr./Cal-EPA Building
Second-Floor Sierra Hearing Room
1001 I Street, Sacramento, CA

SUBJECT OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (SWRCB) to receive evidence relevant to determining whether it should affirm Administrative Civil Liability Complaints Nos. 262.5-28, 262.5-29 and 262.5-30 issued by the Chief of the Division of Water Rights to Lloyd L. Phelps, Jr. (Licenses 13444 and 13274), Joey P. Ratto Jr. (License 13194), and Ronald D. Conn and Ron Silva, et al (License 13315), respectively.

PLEASE TAKE NOTICE

That the public hearing previously scheduled to commence on January 14, 2003, has been

POSTPONED.

The hearing will be held at 10:00 a.m.
on Tuesday, February 25, 2003 and continue, if necessary,
at 9:00 a.m. on February 26, 2003
at
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor Sierra Hearing Room
Sacramento, CA

BACKGROUND

The SWRCB issued licenses to Lloyd L. Phelps, Jr. (Licenses 13444 and 13274), Joey P. Ratto Jr. (License 13194), and Ronald D. Conn and Ron Silva, et al (License 13315) as shown on the following table:

License No.	Licensee	Source	Direct Diversion Rate	Max Amount	Season
13444	Lloyd L. Phelps Jr.	San Joaquin River	1.43 cfs	335 afa	1/1 – 10/31
13274	Lloyd L. Phelps Jr.	San Joaquin River	3.16 cfs	534 afa	3/1 – 10/31
13194	Joey P. Ratto Jr.	Middle River	0.59 cfs	61.5 afa	4/1 – 11/1
13315	Ronald D. Conn and Ron Silva, et al	Middle River	3.9 cfs	604 afa	3/1 – 12/1

Each of these licenses contains Standard Term 91, which prohibits diversion of water under the license when the Central Valley Project or the State Water Project is required to release stored or foreign water to satisfy inbasin entitlements, including water quality objectives in the Delta.

Water Code section 1055, subdivision (a), authorizes the Executive Director of the SWRCB to issue a complaint to any person on whom administrative civil liability may be imposed under section 1052. On May 17, 1999, the Executive Director of the SWRCB delegated this authority to the Chief of the Division of Water Rights (Division).

On July 2, 2002, the Division Chief issued Administrative Civil Liability complaints against Lloyd L. Phelps, Jr. (Complaint No. 262.5 – 28), Joey P. Ratto, Jr. (Complaint No. 262.5 – 29), and Ronald D. Conn and Ron Silva, et al. (Complaint No. 262.5 – 30). Each of the complaints alleges that the licensee diverted water during periods when they had been notified to curtail their water diversions because no water was available under their respective licenses. The diversion or use of water without a water right is a trespass against the State. (*See* Wat. Code § 1052(a).) The complaints propose imposition of Administrative Civil Liabilities of \$3,750 on Mr. Ratto, of \$14,250 on Mr. Conn and Mr. Silva et al., and of \$22,500 on Mr. Phelps. The complaints include in substance the following allegations:

1. By letters dated June 28, 2000, the Division notified each of the licensees to curtail their water diversions for the year 2000 commencing on June 28, 2000, pursuant to Term 91. Division staff inspected the projects on August 15, 2000, and found that the licensees had irrigated even after receiving the June 28 notices of curtailment under Term 91. Each of the licensees claimed a riparian right to cover the diversion of water during the curtailment period, based on the premise that their properties are located within the Delta lowlands.
2. By letters dated August 23, 2000, the Division asked each of the licensees to submit proof of an alternate water supply or other evidence supporting their riparian claims. On behalf of the licensees, the South Delta Water Agency (SDWA) asked for additional time for research. The Division granted the additional time by letter dated December 1, 2000, and granted a second time extension on April 3, 2001. On May 21, 2001, the attorney for

SDWA submitted its response on behalf of SDWA and the licensees. The Division replied to SDWA on January 31, 2002, with copies to each of the licensees, explaining that the evidence and legal argument submitted by the SDWA was inadequate to establish the existence of an alternate water source.

3. The Division notified each of the licensees, by letter dated June 4, 2001, of the Term 91 curtailment of water diversion for the year 2001, commencing on June 4, 2001. On August 14, 2001, the Division inspected the properties served by the above referenced licenses and found that the licensees once again had planted and irrigated within the place of use of their licenses.

By letter dated July 22, 2002, the licensees, through their attorney, all submitted a request for a hearing.

KEY ISSUES

- 1.) **Should the SWRCB order liability in response to Administrative Civil Liability Complaint No. 262.5-28 against Lloyd L. Phelps, Jr. (Licenses 13444 and 13274)?**
Did the licensee divert water during the periods when Term 91 makes water unavailable under the conditions of the license? Does the licensee have any basis of right to divert water during the curtailment periods? Is the proposed administrative civil liability amount appropriate?
- 2.) **Should the SWRCB order liability in response to Administrative Civil Liability Complaint No. 262.5-29 against Joey P. Ratto Jr. (License 13194)?**
Did the licensee divert water during the periods when Term 91 makes water unavailable under the conditions of the license? Does the licensee have any basis of right to divert water during the curtailment periods? Is the proposed administrative civil liability amount appropriate?
- 3.) **Should the SWRCB order liability in response to Administrative Civil Liability Complaint No. 262.5-30 against Ronald D. Conn and Ron Silva, et al (License 13315)?**
Did the licensee divert water during the periods when Term 91 makes water unavailable under the conditions of the license? Does the licensee have any basis of right to divert water during the curtailment periods? Is the proposed administrative civil liability amount appropriate?

ABOUT THIS HEARING

In this hearing, the Division of Water Rights will be represented by an enforcement team who will be a party in the hearing. The enforcement team members will be Aaron Miller, Nick Wilcox, John O'Hagan, and Samantha Olson. The enforcement team is separated by an ethical wall from the hearing team, and is prohibited from having *ex parte* communications with members of the hearing team regarding substantive issues and controversial procedural issues within the scope of this proceeding.

The hearing team will consist of the hearing officer and the hearing staff. The hearing staff will assist the hearing officer and the other members of the SWRCB in the hearing.

HEARING PARTICIPATION

Enclosed is a List of Parties who have submitted a Notice of Intent to Appear and have indicated their intent to appear and present evidence at the above subject hearing.

Each participant should carefully read Enclosure 1, entitled "Information Concerning Appearance at Water Right Hearing." As stated in that enclosure, no later than Friday, **December 20, 2002**, each participant shall serve a copy of its Notice of Intent to Appear on each of the participants identified on the service list and shall also serve on the SWRCB and the participants on the service list a statement of service that indicates the manner of service. The Notices of Intent to Appear can also be found online at the following address: <http://www.waterrights.ca.gov/hearings/Term91-ACL.htm>. If there is any change in the hearing schedule, only those persons or entities who have filed a Notice of Intent to Appear will be informed of the change.

Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be served upon and received by the SWRCB and each of the parties who have indicated their intent to appear no later than 12:00 noon on Friday, **January 24, 2003**.

PARKING AND ACCESSIBILITY

The enclosed map shows the location of the Joe Serna, Jr./California Environmental Protection Agency (Cal-EPA) Building in Sacramento. Public parking is available in metered spaces on area streets, and in the public garages shown on the enclosed map.

The Cal-EPA Building second-floor hearing room is accessible to persons with disabilities. Individuals who require special accommodations are requested to contact Adrian Perez at (916) 341-5880 at least five working days prior to the meeting date. TTY users may contact the California Relay service at 1-800-735-2929 or voice line at 1-800-735-2922.

IF YOU HAVE ANY QUESTIONS

SWRCB Chairman, Art Baggett will be the hearing officer presiding over this proceeding. SWRCB staff hearing team members will be Barbara Leidigh, Staff Counsel IV and Ruben Mora, Water Resource Control Engineer. *Ex parte* communications with members of the Board or SWRCB staff on the hearing team regarding substantive or controversial procedural matters involved in the hearing are prohibited during the pendency of this proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding routine non-controversial procedural matters (See Gov. Code, § 11430.20, subd. (b).) should be directed to Barbara Leidigh, at (916) 341-5190.


Maureen Marché
Clerk to the Board

Enclosures

Date: December 13, 2002

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California Environmental
Protection Agency
c/o Winston H. Hickox
Secretary for Env. Prot.
1001 I Street, 25th Floor
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California Farm Bureau Fed.
c/o William Dubois
Natural Resources Consultant
11th & L Building, Room 626
Sacramento, CA 95814

The Associated Press
1215 K Street, Suite 960
Sacramento, CA 95814

Yuba-Sutter Appeal Democrat
P.O. Box 431
Marysville, CA 95901

Stetson Engineering
c/o Ali Shahrwody
2171 E. Francisco Blvd, Ste K
San Rafael, CA 94901

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2244 Walnut Grove Avenue
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c/o Alan B. Lilly
1011 Twenty-Second Street
Sacramento, CA 95816-4907

Calif. Fisheries Restoration Foundation
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P.O. Box 1790
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U.S. Bureau of Reclamation
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Mr. Larry Week, Chief
Native Anadromous Fish and Watershed
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California Department of Fish & Game
1416 9th Street, 12th Floor
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U.S. Fish & Wildlife Service
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Sierra Club
c/o Mr. Bob Rutemoeller
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City of Los Angeles
c/o Mr. Eric P. Bock, P.E.
Department of Water & Power
Los Angeles Aqueduct Division
111 North Hope Street, Rm 1469
Los Angeles, CA 90012

Pechanga Indian Reservation
c/o Mr. Vincent B. Ibanez
P.O. Box 181
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Ventura Fish & Wildlife Office
2493 Portola Road, Suite B
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G-4
Dept. of Boating & Waterways
c/o Mr. Mike Ammon
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W. Herdn/Ruben/SDWA Mailing List

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c/o Jim Crenshaw, President
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1300 Ethan Way, Suite 225
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Myrllys L. Stockdale
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Mr. Robert W. Floerke, Reg. Mgr.
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