

**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

REVISED NOTICE

IMPORTANT

By 5:00 p.m. on Friday, January 11, 2008, the Lahontan Regional Water Quality Control Board (Water Board) must receive the following:

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

By 5:00 p.m. on Thursday, January 17, 2008, the Water Board must receive any objections to requests for designated party status.

By 5:00 p.m. on Monday, January 28, 2008, the Water Board must receive the following:

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

By 5:00 p.m. on Monday, February 4, 2008, the Water Board must receive written evidentiary objections.

By 5:00 p.m. on Monday, February 11, 2008, the Water Board must receive written rebuttals to any comments on the Administrative Civil Liability Complaint or on any written non-evidentiary policy statements.

This Notice of Public Hearing supersedes the Notice of Public Hearing dated November 28, 2007.

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 was originally scheduled for January 9 and 10, 2008. At the request of Mr. McCain, the hearing was rescheduled to the Water Board's March 12 and 13, 2008 meeting. 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 February 21, 2008. The announcement will be sent to all designated parties and known 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 Counsels Yvonne West and Jorge Leon. 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 Friday, January 11, 2008** and the requests must be sent to the two designated parties. Although the due date is January 11, 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. Objections to requests for designated party status must be submitted in writing to the Water Board, attention Harold Singer, and the two designated parties no later than **5:00 p.m. on Thursday, January 17, 2008**. The Water Board Chair (Chair) will make every effort to rule on these requests by January 18, 2008. 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, § 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 **45 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 his or 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 **5:00 p.m. on Monday, January 28, 2008**. 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 Friday, January 11, 2008**.

Written objections or materials received after the January 11, 2008, January 28, 2008, February 4, 2008 or February 12, 2008 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 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 January 28, 2008 deadline. Written evidentiary objections must be received by **5:00 p.m. on Monday, February 4, 2008**. Oral objections may be made at the hearing.

Designated parties may also submit any technical reports, testimony, and other evidentiary material in response to any technical reports, testimony, and other evidentiary material that are submitted on January 28, 2008. The deadline to submit any response to comments is **5:00 p.m. on Monday, February 11, 2008**. This submittal must be sent to the Water Board and all designated parties. This deadline does not preclude the ability to present rebuttal testimony at the hearing. (Cal. Code Regs., tit. 23 § 648.4, subd. (a).)

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:	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	Jorge Leon, Esq. Staff Counsel State Water Resources Control Board, Office of Enforcement 1001 I Street Sacramento, CA 95814 jleon@waterboards.ca.gov Phone (916) 341-5180 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 Phone (530) 254-6613 Fax (530) 254-6622	<u>Physical Address:</u> 480-201 Belfast Road Litchfield, CA 96117 <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.

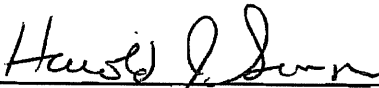
Anyone having questions on the Administrative Civil Liability Complaint, the proposed order for Administrative Civil Liability or other related documents should contact Robert S. Dodds at (530) 542-5410. Interested persons may download the above listed and related documents from the Water Board's website 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: Dec 26, 2007



Harold J. Singer
Executive Officer