

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

**MEETING OF JULY 23 AND 24, 2008  
Truckee**

**ITEM: 15**

**SUBJECT: STATUS REPORT ON SETTLEMENT DISCUSSIONS REGARDING A POTENTIAL ADMINISTRATIVE CIVIL LIABILITY ORDER FOR EVERD A. MCCAIN, B.J. DEIS, AND MCCAIN AND ASSOCIATES FOR VIOLATION OF (1) WASTE DISCHARGE PROHIBITIONS SPECIFIED BY THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION, (2) CLEAN WATER ACT 301, (3) CALIFORNIA WATER CODE SECTION 13267, (4) CALIFORNIA WATER CODE 13304, AND (5) CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION - BELFAST RANCH – SKEET DAM AND BUZ DAM, LASSEN COUNTY, W DID NOS. 6A180508N05 AND 6A180105013**

**CHRONOLOGY:** May 5, 2006 Water Board issues Cleanup and Abatement Order directing B.J. Deis and McCain and Associates to cleanup and abate the effects of the unauthorized discharge of earthen materials to Willow Creek from the unauthorized construction of Skeet Dam and the failures of Buz and Skeet Dams.

August 9, 2006 Water Board amends the Cleanup and Abatement Order allowing B.J. Deis and McCain and Associates additional time to implement a temporary stabilization plan, and submit and implement a permanent stabilization plan for Buz and Skeet Dams.

November 16, 2007 Water Board staff issues Everd A. McCain, B.J. Deis, and McCain and Associates the Administrative Civil Liability Complaint.

**15-0001**

- March 13, 2008 Water Board hearing on the matter. Hearing continued to a later meeting to allow the parties an opportunity to try to reach a structured settlement that would include stabilization of the dam sites and a penalty of some cash value.
- May 14, 2008 Status report provided at Board meeting in Tahoe City on settlement discussions.

**DISCUSSION:**

On April 7, 2008, Water Board prosecution team staff (Robert Dodds and Jorge Leon) and advisory team staff (Harold Singer and David Coupe) met with Everd and Iona McCain to discuss a settlement of the Administrative Civil Liability. Mr. McCain proposed to stabilize the dam sites by reconstructing the dams. A subsequent SWRCB Division of Water Rights decision puts the McCain's plan to stabilize the sites by rebuilding the dams in question and, at best, delayed.

On May 1<sup>st</sup> members of both the prosecution team and the advisory team met onsite with Department of Fish and Game (DFG) staff and Mr. and Mrs. McCain to review the work needed at each dam site to provide for fish passage and stabilization of both dam sites for an interim period of approximately five years (the assumed period of time that it would take for the McCains to address their water rights issue).

DFG staff had a second onsite meeting with Mr. McCain on May 28, 2008. The purpose of that meeting was to discuss specifics of effective fish passage measures that should be included in McCain's forthcoming stabilization plan to the Water Board. The fish ladders recommended by DFG will re-establish fish passage in the reach of Willow Creek affected by Buz and Skeet Dams by utilizing a step pool effect.

On June 17, 2008, Mr. McCain submitted to the Water Board a narrative summary and plan sheets describing additional stabilization work for Buz and Skeet Dams and the associated construction sites. The plan addresses the sites identified during staff's May 1, 2008 on-site meeting. The stabilization plan included measures to control erosion, prevent sediment from discharging to the creek and its associated wetland and riparian areas, and re-establish fish passage. Stabilization work proposed by McCain focused on armoring areas of unconsolidated material on the banks of Skeet and Buz Lakes and stabilizing a side-cast area and the access road. The fish passage plans incorporated DFG's

recommendations from the May 28, 2008 onsite meeting and DFG's Habitat Restoration Manual.

On July 10th, members of the prosecution team plan to meet again onsite with Mr. McCain and DFG staff to further refine his proposed stabilization and fish passage plans. We anticipate that Mr. McCain will be able to implement the plan shortly thereafter.

Based on recent and planned discussions, there still remains the potential for a settlement

**RECOMMEND-  
ATION:**

Information item only.