

Hearings Program

Wasson - ACL Complaint No. 262.5-16

NOTICE OF PUBLIC HEARING

March 1, 2000

SUBJECT OF HEARING

The purpose of this hearing is to receive evidence regarding whether to impose administrative civil liability against Mr. Phillip W. Wasson and Mrs. Geneva Wasson in the amount of \$2,000, or some other amount, for an unauthorized diversion of water.

BACKGROUND

As part of an unauthorized diversion investigation within the Navarro River Watershed in Mendocino County, the State Water Resources Control Board (SWRCB), Division of Water Rights (Division), sent a letter by certified mail, dated June 23, 1998, to Phillip W. and Geneva Wasson advising them that the reservoir located on their property was not authorized by any water right known to the Division. The letter requested them to identify an existing water right, file an application to appropriate water by permit for storage, or render the reservoir incapable of storing water. However, the letter was returned to the Division by return mail and the envelope was marked "Unclaimed." Mr. Wasson's signature appeared on the return receipt card for the certified mail. Mr. Wasson claims he did not open the letter and returned it before leaving the Boonville Post Office.

Since the Wassons did not respond to the Division's letter dated June 23, 1998, Division staff contacted Mr. Wasson by telephone on March 8, 1999, to arrange an inspection of the reservoir. During this telephone conversation, Mr. Wasson indicated that he was not receptive to the inspection and ended the conversation without allowing Division staff to further discuss the issue. On March 10, 1999, Division staff again spoke by telephone with Mr. Wasson in an attempt to arrange an inspection of the reservoir and of water right licenses held by the Wassons for direct diversion. One of these licenses (License 9425) contains a term requiring the licensee to provide reasonable access to the property for SWRCB representatives. Mr. Wasson stated he would not allow Division staffs access to his property without a court order.

The State Water Resources Control Board (SWRCB) subsequently obtained an inspection warrant from the Mendocino County Superior Court which authorized SWRCB staff to conduct an inspection of the property on July 27, 1999. Two engineers from the Division conducted the inspection, accompanied by Mr. Wasson and by a Mendocino County Deputy Sheriff. The inspection found an existing reservoir with an approximate capacity of 18 acre-feet. Division staff found that the reservoir was storing water,

and water had flowed into the reservoir from an unnamed stream evidenced by a severely incised channel. Division staff determined that the reservoir is subject to the permitting authority of The State Water Resources Control Board (SWRCB).

The Division sent a letter to Mr. Wasson by certified mail, dated August 17, 1999, advising him of the July 27, 1999, inspection findings. This letter further advised him that unless an application for storage in the reservoir, or a proposed schedule to remove the reservoir, was received by The State Water Resources Control Board (SWRCB) with 45 days from the date of receipt of the letter, enforcement action might be taken without further notice.

The Division received a letter from Mr. Wasson dated August 26, 1999, in response to the Division's August 17 letter. In this letter, Mr. Wasson claimed that the reservoir was filled by a spring but otherwise failed to provide any information or evidence that indicates that a permit is not required to divert water to storage in the reservoir. The Division sent a letter, dated September 16, 1999, that responded to Mr. Wasson's letter and stated that an application for storage or a plan to remove the reservoir was still required by October 1, 1999. Mr. Wasson did not take the necessary corrective action.

Pursuant to Water Code section 1055, subdivision (a) and delegated authority from The State Water Resources Control Board (SWRCB)'s Executive Director, the Chief of the Division of Water Rights issued Administrative Civil Liability (ACL) Complaint No. 262.5-16 on December 14, 1999, in the amount of \$2,000, against Mr. Phillip W. Wasson and Mrs. Geneva Wasson. This complaint was issued for the illegal diversion of water from an unnamed stream within the Anderson Creek watershed in Mendocino County to storage in a reservoir.

Water Code section 1055, subdivision (c) provides that a party against whom an ACL complaint has been issued may request a hearing before The State Water Resources Control Board (SWRCB). By letter dated December 16, 1999, Mr. Wasson requested a hearing to respond to the ACL. The State Water Resources Control Board (SWRCB) has scheduled a hearing on ACL Complaint No. 262.5-16 for the time and place specified above. As of the date of this notice, Mr. and Mrs. Wasson have not filed a water right application for the reservoir on their property.

The staff costs associated with issuance of the ACL complaint, including obtaining an inspection warrant from the Mendocino County Superior Court for a field inspection, conducting the field inspection, and assistance by the Office of Chief Counsel are conservatively estimated to be well over \$2,000.

PROJECT DESCRIPTION

Mr. and Mrs. Wasson are owners of Mendocino County Assessor's Parcel Number 046-170-60 within the NE ¼ of the NE ¼ of Section 34, T14N, R14W, MDB&M. Located on this property is a reservoir created by an earthen dam which is shown on the Philo quadrangle map published by the United States Geological Survey.

KEY ISSUES

1. Is the reservoir owned by Mr. and Mrs. Wasson subject to the permitting authority of The State Water Resources Control Board (SWRCB)?
2. Should The State Water Resources Control Board (SWRCB) adopt an order affirming administrative civil liability and, if so, should it be in the amount of \$2,000 or some other amount? What other remedial action, if any, should The State Water Resources Control Board (SWRCB) take?

HEARING PROCEDURES AND PARTICIPATION

The hearing will provide an opportunity for Division staff and Mr. and Mrs. Wasson to present evidence relevant to question whether administrative civil liability should be imposed on them for the illegal diversion of water to storage. Each party to the hearing may present testimony and exhibits and may cross-examine witnesses presented by the other party. Parties may present rebuttal evidence. Any rebuttal evidence is also subject to cross-examination.

Parties to this hearing are not required to submit written testimony or exhibits in advance of the hearing. However, if a party intends to present written testimony or other exhibits, 6 copies of the written testimony or exhibits shall be provided to Mr. David R. Beringer by 4 P.M. on February 28, 2000, at the following address:

Mr. David R. Beringer
Division of Water Rights
State Water Resources Control Board
901 P Street
Sacramento, CA 95814

Parties will be allowed up to 20 minutes to present testimony and exhibits. The time for presentation of a party's case may be extended upon a showing of good cause. If a party wants to offer written testimony, the witness who prepared the testimony should appear to identify the written testimony and present a brief oral summary.

The proceeding will be conducted as provided herein and in accordance with the procedures for adjudicative proceedings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6, and 760 et seq. Please note that section 648.5, subdivision (a), provides that:

"Adjudicative proceedings shall be conducted in a manner as the Board deems most suitable to the particular case with a view toward securing relevant information expeditiously without unnecessary delay and expense to the parties and to the Board."

A copy of the statutes and regulations governing SWRCB adjudicative proceedings may be accessed at The State Water Resources Control Board (SWRCB) web-site at www.swrcb.ca.gov or by calling the

staff person listed at the phone number below.

During the pendency of the proceeding, commencing no later than the issuance of the Notice of Hearing, there will be no *ex parte communications between SWRCB members and any of the parties or interested persons regarding substantive issues within the scope of the proceeding. Communications regarding non-controversial procedural matters will be permitted, but ordinarily should be directed to SWRCB staff and not to SWRCB members. The State Water Resources Control Board (SWRCB) will consider adoption of an order regarding this matter at a future time following notice to the parties.*

PARKING AND ACCESSIBILITY

The enclosed maps show the location of the Paul R. Bonderson Building and public parking sites in Sacramento. The Paul R. Bonderson Building first floor hearing room is accessible to persons with disabilities.

IF YOU HAVE ANY QUESTIONS

Questions concerning the hearing may be addressed to John O'Hagan of the Division of Water Rights at (916) 657-1940.

SIGNED BY :

*Maureen Marche
Administrative Assistant to the Board*

Dated: February 14, 2000

Staff Exhibits to be Offered into Evidence

The following public documents on file with The State Water Resources Control Board (SWRCB) were enclosed with the Hearing Notice and will be offered into evidence at the hearing as exhibits by reference:

- 1. Division letter dated March 6, 1998, to reservoir owners within the Navarro River watershed having no known water rights.*
- 2. Division Certified letter dated June 23, 1998, requesting a response to the March 6 letter within 60 days.*
- 3. Receipt card for the June 23 certified letter, showing that Mr. Wasson signed for the letter on June 26, 1998. The receipt card is also marked unclaimed.*
- 4. Contact report dated March 8, 1999, that outlines conversation between Larry Lindsay of the Division and Mr. Wasson.*
- 5. Contact report dated March 10, 1999, that outlines conversation between John O'Hagan of the Division and Mr. Wasson.*
- 6. Affidavit of John O'Hagan dated July 7, 1999, to Mendocino County Superior Court requesting*

Inspection Warrant.

7. *Inspection Warrant No. 99-1 dated July 15, 1999, issued by the Mendocino County Superior Court.*
8. *Letter dated July 19, 1999, from staff of Office of Chief Counsel to Mendocino County Sheriff's Office requesting 24-hour notice to Mr. Wasson and assistance by Deputy Sheriff during the conduct of field inspection.*
9. *Letter dated July 19, 1999, to Mr. Phillip Wasson from staff of Office of Chief Counsel providing copy of the 24-hour notice signed by The State Water Resources Control Board (SWRCB)'s Executive Director on July 19, 1999.*
10. *Proof of Service on July 21, 1999, by Personal Delivery of 24-hour notice by Mr. Ken Squires, Mendocino County Deputy Sheriff.*
11. *Inspection Reports by Division staff for the unauthorized reservoir investigation, and for the inspections of Mr. Wasson's Licenses 3943 and 9425 (Applications 13176 and 15696).*
12. *Letter dated July 29, 1999, from Mr. Wasson regarding Mr. O'Hagan's affidavit.*
13. *Division letter dated August 5, 1999, regarding parties to the Navarro River Complaint.*
14. *Division letter dated August 17, 1999, advising Mr. Wasson of inspection findings and informing him of necessary corrective actions.*
15. *August 24, 1999, letter to court returning original warrant and attached affidavit regarding execution of inspection warrant.*
16. *Mr. Wasson's letter dated August 26, 1999, responding to the Division's August 17, 1999 letter. His response did not include an application or a plan to remove the storage.*
17. *Division letter dated September 16, 1999, to Mr. Wasson stating that an application for storage was still required by October 1, 1999.*
18. *Administrative Civil Liability Complaint No. 262.5-16 against Wassons mailed December 14, 1999.*
19. *Mr. Wasson's letter dated December 16, 1999, requesting hearing.*
20. *Timeline of events pertaining to the Wasson ACL.*

The following public documents and files will also be offered in evidence as exhibits by reference:

21. *Navarro River Watershed Investigation File 262.0 (23-38-00).*
22. *Administrative Civil Liability File 262.5.*
23. *Water Right Files for licensed Applications 13176 and 15696.*
24. *Division of Water Rights Navarro River Complaint File 262.0 (23-10-et al).*
25. *Navarro River Watershed Draft Decision dated December 15, 1998.*
26. *Topographic Maps published by the United States Geological Survey covering the area under consideration.*