

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

**ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R6T-2009-(PROP)**

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

---

**INTRODUCTION**

1. By this Order, the Regional Water Quality Control Board, Lahontan Region (Water Board) imposes administrative civil liability on Everd A. McCain, B.J. Deis, and McCain and Associates (hereafter referred to as the “Dischargers”) pursuant to a settlement agreement. The issuance of an order pursuant to settlement agreement is authorized by Government Code section 11415.60.

**BACKGROUND**

2. Pursuant to Water Code section 13323, the Assistant Executive Officer of the Water Board issued Administrative Civil Liability Complaint No. R6T-2007-0007 (Complaint) to the Dischargers on November 16, 2007. The Complaint alleged that the Dischargers violated (1) waste discharge prohibitions specified by the *Water Quality Control Plan for the Lahontan Region*, (2) California Water Code section 13267, (3) Clean Water Act section 301, (4) California Water Code section 13304, and (5) a Clean Water Act Section 401 Water Quality Certification. The alleged violations were a result of the construction and failure of Buz Dam and Skeet Dam. The Complaint proposed that the Dischargers be assessed \$100,000 in administrative civil liability pursuant to Water Code sections 13268, 13350, and 13385. The specific alleged violations are listed in Attachment D of the Complaint.
3. On March 13, 2008, the Water Board held a public hearing where testimony and evidence was provided by the Dischargers and Water Board Prosecution Staff. The Water Board closed the public hearing, and without deliberating upon the testimony and evidence, directed the Dischargers and Water Board Prosecution Staff (hereinafter referred to as “the Parties”) to meet and confer with the Water Board’s Executive Officer and Water Board’s Counsel (hereinafter referred to as “the Advisory Staff”) in an effort to settle the Complaint.

4. On April 7, 2008 and again on May 1, 2008, the Parties and Advisory Staff met to discuss possible settlement, as directed to by the Water Board.
5. On July 10, 2008, the Parties met to discuss specific work needed to stabilize sites associated with Buz and Skeet Dams.
6. On October 1, 2008, Water Board staff inspected Belfast Ranch and found that Dischargers had stabilized the remaining dam structures and areas affected by dam construction such that they are no longer sources of sediment to the creek. The dam stabilization measures also provide fish passage through the remaining dam structures.
7. On November 13, 2008, the Parties signed a Settlement Agreement (Attachment A), which includes this Order in draft form. The terms of the Settlement Agreement include:
  - a. Paying a liability in the amount of \$65,000 over a three-year period.
  - b. Inspecting and maintaining the stabilization and runoff control/treatment measures, and the fish passage measures, as described in the July 12, 2008 Modified Stabilization Plan, and annually reporting on maintenance of these measures in accordance with the schedule set forth in the Settlement Agreement.
  - c. Complying with all applicable legal requirements, including but not limited to compliance with any water quality certification conditions that may be imposed by the Lahontan Water Board for all work on the dams, including but not limited to stabilization, maintenance, rebuilding, and/or partial or complete removal.
  - d. Submitting a permit application that is accompanied by design plans signed and stamped by a California registered professional engineer found to be acceptable to the Water Board in accordance with the procedures set forth in the Settlement Agreement in the event that the Dischargers propose to reconstruct one or both of the dams, and/or remove one or both of the dams and restore the creek.
  - e. Submitting a proposal addressing the final fate of the remaining dam structures if the Dischargers are unable to rebuild one or both of the dams due to decisions rendered by the State Water Board or another entity. If the Dischargers propose to leave any portion of the remaining dam structures in place, the proposal will include an impacts analysis of leaving the identified portions of the dam structures in place as proposed. The impacts analysis will at a minimum address actual and potential water quality impacts to the creek. The proposal will be submitted within 180 days of either: (a) written notice from the Executive Officer that no judicial challenge has been made within the time provided by statute for such challenge, or that such challenges were filed but all claims contained therein have been resolved denying Dischargers water rights or other permits and approvals necessary to rebuild the dams and operate the reservoirs, or (b) five years from the date of this Order, whichever occurs first.

8. Notice of the Settlement Agreement was provided to the public and the public received no less than 30 days to comment. The Water Board has considered all the comments that have been received.

## FINDINGS

9. The proposed Settlement Agreement is in the public interest.
10. The adoption of this Order accepting the Settlement Agreement is exempt from the provisions of the California Environmental Quality Act, in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2) (Enforcement Actions by Regulatory Agencies).
11. Any aggrieved person may petition the State Board to review the action in accordance with Water Code section 13320 and the State Board's regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality), and will also be provided upon request.
12. State Board and Water Board staff have spent time responding to the incident and preparing this enforcement action. Estimated staff costs for investigating the project and preparing the complaint are estimated at \$48,433.

## IT IS HEREBY ORDERED THAT:

1. The Water Board imposes administrative civil liability against the Dischargers in the amount of \$65,000.
2. The Dischargers must provide payment to the California State Water Resources Control Board, Cleanup and Abatement Account (CAA) and Waste Discharge Permit Fund (WDPF) as set forth in the Settlement Agreement and as specified below by the following schedule.

<b>Payment Due Date</b>	<b>Total Payment</b>	<b>Breakdown of Amount/ Fund</b>
February 16, 2009	\$25,000	CAA - \$23,000 WDPF - \$2,000
February 16, 2010	\$20,000	CAA - \$18,400 WDPF - \$1,600
February 16, 2011	\$20,000	CAA - \$18,400 WDPF - \$1,600

Payment checks are to be made out to the State Water Resources Control Board and marked "Cleanup and Abatement Account" or "Waste Discharge Permit Fund," as appropriate, and delivered to the Water Board by the deadline at 2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150.

3. If the Dischargers fail to make any of the specified payments to the State Board's Cleanup and Abatement Account and Waste Discharge Permit Fund by the deadline specified in this Order, any and all remaining unpaid liability shall become due and payable 30 days upon receipt of written notice (payment notice) by the Water Board's Executive Officer (Executive Officer). A payment notice will be issued only after following the procedures described in Requirement No. 8, below. The Water Board may enforce this Order to collect any and all unpaid sums by applying for a judgment pursuant to Water Code section 13328. The Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328 if the criteria specified in this paragraph are satisfied.
4. The Dischargers must inspect and maintain the stabilization and runoff control/treatment measures, and the fish passage measures described by the July 12, 2008 Modified Temporary Stabilization Plan. Inspection and maintenance must be done in accordance with the inspection/maintenance schedule specified by the July 12, 2008 Modified Temporary Stabilization Plan.
5. The Dischargers shall submit an annual Inspection/Maintenance Report by October 15 of each year, with the first report due by October 15, 2009 and the final report due by October 15, 2011. The annual reports shall include the elements described in the Settlement Agreement.
6. The Dischargers shall comply with all applicable legal requirements, including but not limited to compliance with any water quality certification conditions that may be imposed by the Lahontan Water Board for all work on the dams, including but not limited to stabilization, maintenance, rebuilding, and/or partial or complete removal.
7. For all future applications submitted to the Water Board for dam reconstruction or dam removal/habitat restoration for Skeet Dam and/or Buz Dam, the Dischargers must submit a permit application that is accompanied by design plans signed and stamped by a California registered professional civil engineer found to be acceptable to the Water Board in accordance with the procedures set forth in the Settlement Agreement.
8. If the Dischargers are unable to rebuild one or both of the dams due to decisions rendered by the State Water Board or another entity, the Dischargers will submit a proposal addressing the final fate of the remaining dam. If the Dischargers propose to leave any portion of the remaining dam structures in place, the proposal will include an impacts analysis of leaving the identified portions of the dam structures in place as proposed. The impacts analysis will at a minimum address actual and potential water quality impacts to the creek. The proposal will be submitted within 180 days of either: (a) written notice from the Executive Officer that no judicial challenge has been made within the time provided by statute for such challenge, or that such challenges were filed but all claims contained therein have been resolved denying Dischargers water rights or other permits and approvals necessary to

rebuild the dams and operate the reservoirs, or (b) five years from the date of this Order, whichever occurs first.

9. If the Dischargers fail to satisfy the obligations as described by Requirements No. 4, 5, 6 and/or 7, above, any and all remaining unpaid liability shall become due and payable 30 days upon receipt of written notice (payment notice) by the Executive Officer. A payment notice will be issued only after following the procedures described in Requirement No. 10, below.
10. The Executive Officer and the Dischargers must follow the procedures cited below prior to the Executive Officer issuing a payment notice in response to the Dischargers' failure to satisfy any obligations as described in Requirements No. 2, and/or 4 – 7, above.
  - i. The Executive Officer issues to the Dischargers a letter identifying the alleged violations that would be the basis for issuing a payment notice. The letter will offer the Dischargers an opportunity to meet with the Executive Officer and Assistant Executive Officer within 30 days of receiving the letter identifying the alleged violations. The meeting will allow the Dischargers an opportunity to address the alleged violations and explain why issuing a payment notice is not justified because of events beyond the Dischargers' control.
  - ii. The Dischargers must submit to the Executive Officer and Assistant Executive Officer a written description/explanation of the events the Dischargers believe prevented them from satisfying the relevant obligation(s) described by Requirements No. 2, and/or 4 - 7, above. The written explanation will include, but not be limited to, how the events caused the delay and were beyond the Dischargers' control, the duration of the delay, a description of all actions the Dischargers have taken and will take to minimize the delay, and a schedule of such actions. The written explanation must be received at the Water Board's South Lake Tahoe office a minimum of five days prior to the Dischargers meeting with the Executive Officer and Assistant Executive Officer.
  - iii. Within two weeks of the above-referenced meeting, the Executive Officer will issue either (1) a letter explaining why there will be no payment notice in response to the alleged violations, or (2) a payment notice that provides the basis for such a notice.
11. If the Dischargers do not comply with the payment notice upon its receipt (i.e., payment made within 30 days of receipt), the Executive Officer is hereby authorized to pursue a judgment pursuant to Water Code section 13328.
12. This Order resolves all claims and liability for the alleged violations identified in ACL Complaint No. R6T-2007-0007.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on January XX, 2009.

---

HAROLD J. SINGER  
EXECUTIVE OFFICER

Attachment:           A. Settlement Agreement

PROPOSED

**ATTACHMENT A**

PROPOSED

PROPOSED