



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
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Arnold Schwarzenegger
Governor

NOTICE OF PUBLIC HEARING

**The State Water Resources Control Board will hold a Hearing
to Determine Whether to Issue An Order Consistent with Draft Cease and Desist Order
No. 262.31-18**

**and
Whether to Impose Administrative Civil Liability as Proposed in Administrative Civil
Liability Complaint No. 262.5-40**

**against
Lake Arrowhead Community Services District**

**Little Bear Creek Tributary to Deep Creek thence Mojave River
San Bernardino County**

**Commencing at 10:00 a.m. on Tuesday, November 8, 2005, and continuing,
if necessary, on November 9, 2005**

**at
Joe Serna, Jr./Cal-EPA Building
1001 I Street, Second Floor, Coastal Hearing Room
Sacramento, CA**

SUBJECT OF HEARING

The purpose of this hearing is for the State Water Resources Control Board (State Water Board or Board) to receive evidence relevant to determining whether to adopt an order consistent with draft Cease and Desist Order No. 262.31-18 and whether to impose administrative civil liability as proposed in Administrative Civil Liability Complaint No. 262.5-40 against Lake Arrowhead Community Services District (LACSD).

BACKGROUND

Water Code section 1831, subdivision (a), provides that when the State Water Board determines that any person is violating, or threatening to violate, any requirement described in subdivision (d) of section 1831, the Board may issue an order to that person to cease and desist from that violation. The State Water Board may issue a cease and desist order (CDO) only after notice and an opportunity for hearing. Such notice shall be by personal notice or by certified mail, and shall inform the person allegedly engaged in the violation (respondent) that he or she may request a hearing within 20 days after the date of receiving the notice. The notice shall contain a statement of facts and information showing the violation. Unless the State Water Board receives a timely

California Environmental Protection Agency

written request for a hearing, the State Water Board may adopt a CDO without a hearing. In the case of the draft CDO to be considered in this hearing, the respondent requested a hearing.

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

Lake Arrowhead Community Services District

The draft CDO and the administrative civil liability complaint against LACSD allege:

1. A pre-1914 appropriative right exists that authorizes the diversion of water to storage in Lake Arrowhead to elevation 5106.7 feet above mean sea level for recreational purposes only.
2. No water right exists that authorizes the removal of water from Lake Arrowhead for municipal purposes or the filling of Lake Arrowhead in any one year.
3. LACSD's diversion and use of water from Lake Arrowhead for municipal purposes, or any other purpose, is unauthorized and constitutes a trespass against the State of California.
4. LACSD's diversion and use may also be adversely impacting recreational interests at Lake Arrowhead and vested water right holders within the Mojave River watershed and groundwater basin.

On August 1, 2005, the Chief of the Division of Water Rights issued draft CDO No. 262.31-18 and Administrative Civil Liability Complaint No. 262.5-40 to LACSD regarding the alleged unauthorized diversion and use of water listed above. The Administrative Civil Liability complaint would impose liability in the amount of \$182,500. The draft CDO would require LACSD to take specific corrective actions under a time schedule. Copies of Administrative Civil Liability Complaint No. 262.5-40 and draft CDO No. 262.31-18 are enclosed.

By letter dated August 18, 2005, LACSD requested a hearing.

KEY ISSUES

- 1.) Should the State Water Board issue a CDO to LACSD in response to draft CDO No. 262.31-18? If a CDO should be issued, what modifications if any, should be made to the measures in the draft order, and what is the basis for such modifications?
- 2.) Should the State Water Board order liability in response to Administrative Civil Liability Complaint No. 262.5-40 against LACSD? If the State Water Board orders liability, should the amount be increased or decreased, and if so on what basis?

ABOUT THIS HEARING

In this hearing, there will be a staff prosecutorial team who will be a party in the hearing. The prosecutorial team members will be Chuck NeSmith, Engineering Geologist; Chuck Rich, Senior Water Resources Control Engineer; and Dana Heinrich, Senior Staff Counsel. The prosecutorial 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 consists of the Board members and the staff assisting the Board members with the hearing.

State Water Board Members Arthur Baggett, Jr., and Richard Katz will preside as hearing officers over this proceeding. Other Board members may be present during the hearing. State Water Board staff hearing team members will include Barbara Leidigh, Staff Counsel IV; and Ruben Mora, Water Resources Control Engineer. The hearing staff will assist the hearing officers and the other members of the State Water Board during the hearing.

HEARING PARTICIPATION

IF YOU WANT TO TAKE PART IN THIS HEARING, you should carefully read the enclosure entitled "Information Concerning Appearance at Water Right Hearings." As stated in that enclosure, parties intending to present evidence at the hearing must submit a **Notice of Intent to Appear**, which must be **received** by the State Water Board no later than **noon on Thursday, October 6, 2005**.

To facilitate exchange of testimony, exhibits and witness qualifications, on or about **Tuesday, October 11, 2005**, the State Water Board will mail out a list of those parties who have indicated an intent to participate in the hearing.

Copies of witnesses' proposed testimony, exhibits, list of exhibits, and qualifications must be **received** by the State Water Board and served on each of the parties who have indicated their intent to appear, no later than **noon on Tuesday, October 18, 2005**.

PARKING, ACCESSIBILITY, AND SECURITY

The enclosed maps show the location of the Joe Serna Jr./Cal-EPA Building and public parking sites in Sacramento. The Joe Serna Jr./Cal-EPA Building Coastal Hearing Room is accessible to persons with disabilities.

Due to enhanced security precautions at the Cal-EPA Headquarters Building, all visitors are required to register with security staff prior to attending any meeting. To sign in and receive a visitor's badge, visitors must go to the Visitor and Environmental Services Center, located just inside and to the left of the building's public entrance. Depending on their destination and the building's security level, visitors may be asked to show valid picture identification. Valid picture identification can take the form of a current driver's license, military identification card, or state or federal identification card. Depending on the size and number of meetings scheduled on any given day, the security check-in could take from three to fifteen minutes. Please allow adequate time to sign in before being directed to your meeting.

IF YOU HAVE ANY QUESTIONS

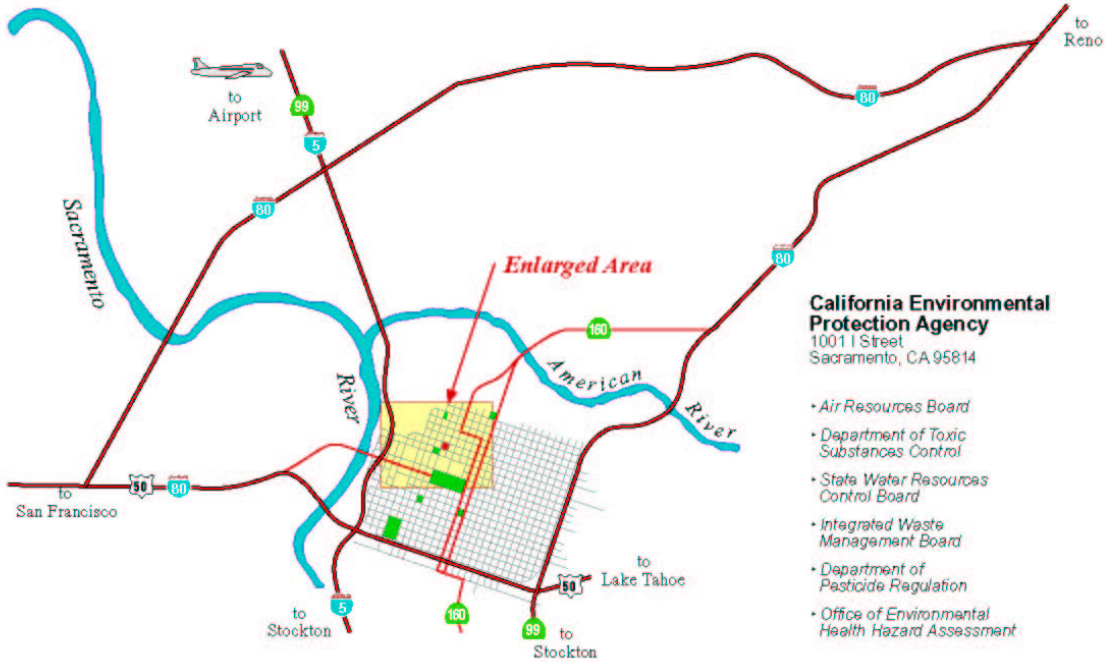
During the pendency of this proceeding and commencing no later than the issuance of this notice, there shall be no *ex parte* communications between State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive or controversial procedural matters within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Questions regarding non-controversial procedural matters (Gov. Code, § 11430.20, subd. (b)) should be directed to Barbara Leidigh, at (916) 341-5190.


Debbie Irvin
Clerk to the Board

September 19, 2005

Enclosures

Enclosure 1



Parking Lot Locations



Parking Lot Locations

- Lot 1 (7th & G St.)
- Lot 2 (7th & G St.)
- Lot A (7th & Capitol)
- Lot C (14th & H St.)
- Lot G (3rd & L)
- Lot H (10th & L)
- Lot I (10th & I, 11th & I)
- Lot K (6th & J/L, 7th & K)
- Lot P (2nd & I)
- Lot U (5th & J)
- Lot W (2nd & I St.)

LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT ENFORCEMENT HEARING

INFORMATION CONCERNING APPEARANCE AT WATER RIGHT HEARINGS

The following procedural requirements will apply and will be strictly enforced for purposes of the above-mentioned hearing.

1. **HEARING PROCEDURES GENERALLY:** The hearing will be conducted in accordance with the procedures for hearings set forth at California Code of Regulations, title 23, sections 648-649.6 and 760, as they currently exist or may be amended. A copy of the current regulations and the underlying statutes governing adjudicative proceedings before the State Water Board is available upon request or may be viewed at the State Water Board's web site: http://www.waterboards.ca.gov/water_laws/index.html.

Each party has the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even if that matter was not covered in the direct examination, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if under cross-examination. The hearing officers may extend these rights to a non-party participant or may limit the participation of a non-party participant.

Any requests for exceptions to the procedural requirements specified in this notice shall be filed in writing. To provide time for other participants to respond, the hearing officers will rule on procedural requests filed in writing no sooner than fifteen days after receiving the request, unless an earlier ruling is necessary to avoid disrupting the hearing.

2. **PARTIES:** The parties are the Lake Arrowhead Community Services District, the Division of Water Rights' Prosecutorial Team, and any other persons or entities authorized by the hearing officers to participate in the hearing as parties. Only parties and other participants who are authorized by the hearing officers will be allowed to present evidence. A person or entity that appears and presents only a policy statement will not be allowed to participate in other parts of the hearing. The rules for policy statements are discussed below.
3. **NOTICE OF INTENT TO APPEAR:** Participants in this hearing must file two copies of a Notice of Intent to Appear, which must be **received** by the State Water Board no later than **noon on Thursday, October 6, 2005**. Failure to submit a Notice of Intent to Appear and exhibits in a timely manner may be interpreted by the State Water Board as intent not to appear.

The Notice of Intent to Appear must state: (1) the name and address of the participant, (2) the name of each witness who will testify on the participant's behalf, (3) a brief description of the proposed testimony, and (4) an estimate of the time (not to exceed 20 minutes) that the witness will need to present a brief oral summary of the witness' testimony. The witness' testimony must be submitted in writing as described in Section 4

below. Participants who do not intend to present a case-in-chief but who may wish to cross-examine witnesses or present rebuttal should so indicate on the Notice of Intent to Appear. Participants who decide not to present a case-in-chief after having submitted a Notice of Intent to Appear should notify the State Water Board and the other participants as soon as possible.

In order to expedite the exchange of information and lower the cost of participating in the hearing, the State Water Board encourages participants to submit written policy statements, written opening statements, written testimony, exhibits, and Exhibit Identification Indexes to the State Water Board in electronic form. In addition, participants may exchange the foregoing documents in electronic form. Hearing participants are not required to submit these documents in electronic form or accept electronic service; however, those who choose to submit these documents electronically must comply with the requirements described in section 5, below. If you are willing to accept electronic media service in lieu of receiving hard copies of items, please check the appropriate box on the Notice of Intent to Appear.

The State Water Board will mail a service list of parties to exchange information to each hearing party who has submitted a Notice of Intent to Appear. Hearing participants who intend to make only policy statements are not required to exchange information and will not receive testimony or exhibits from the parties. The service list will indicate which participants agreed to accept electronic service. No later than **noon on Tuesday, October 18, 2005**, 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 State Water Board and the participants on the service list a statement of service that indicates the manner of service. If there is any change in the hearing schedule, only those persons or entities that have filed a Notice of Intent to Appear will be informed of the change.

4. **WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include written testimony, statements of qualifications of expert witnesses, and other documents to be used as evidence. Each participant proposing to present testimony on factual or other evidentiary matters at the hearing shall submit such testimony in writing.¹ Written testimony shall be designated as an exhibit, and must be submitted with the other exhibits. Oral testimony that goes beyond the scope of the written testimony may be excluded. A participant who proposes to offer expert testimony must submit an exhibit containing a statement of the expert witness's qualifications.

Each participant shall submit to the State Water Board either: nine paper copies of each of its exhibits or five paper copies and one electronic copy of each of its exhibits. Each participant shall also serve a copy of each exhibit on every participant on the service list. Participants may serve those parties who agree to electronic service with an electronic copy

¹ The hearing officer may make an exception to this rule if the witness is adverse to the participant presenting the testimony and is willing to testify only in response to a subpoena or alternative arrangement. In such a case, the hearing officer may allow presentation of the oral direct testimony without requiring written testimony.

of exhibits. Participants must serve paper copies of exhibits on those participants who do not agree to electronic service.

With its exhibits, each participant must submit to the State Water Board and serve on the other participants a completed Exhibit Identification Index. If possible, each participant should submit to the State Water Board and serve on the other participants an electronic copy, as well as a paper copy of the Exhibit Identification Index. Please see Section 5 for details regarding electronic submissions.

A statement of service with manner of service indicated shall be filed with each participant's exhibits. The exhibits and indexes for this hearing, and a statement of service, must be **received** by the State Water Board by **noon on Tuesday, October 18, 2005**, and served on the other participants on or before that date.

The following requirements apply to exhibits:

- a. Exhibits based on technical studies or models shall be accompanied by sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the studies or models.
 - b. The hearing officers have discretion to receive in evidence by reference relevant, otherwise admissible, public records of the State Water Board and documents or other evidence that have been prepared and published by a public agency, provided that the original or a copy was in the possession of the State Water Board before the notice of the hearing is issued. (Cal. Code Regs., tit. 23, § 648.3.) A participant offering an exhibit by reference shall advise the other participants and the State Water Board of the titles of the documents, the particular portions, including page and paragraph numbers, on which the participant relies, the nature of the contents, the purpose for which the exhibit will be used when offered in evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. A participant seeking to enter in evidence as an exhibit a voluminous document or database may so advise the other participants prior to the filing date for exhibits, and may ask them to respond if they wish to have a copy of the exhibit. If a participant waives the opportunity to obtain a copy of the exhibit, the participant sponsoring the exhibit will not be required to provide a copy to the waiving participant. Additionally, such exhibits may be submitted to the State Water Board in electronic form, using a file format readable by Microsoft Office 2000 software.
 - d. Exhibits that rely on unpublished technical documents will be excluded unless the unpublished technical documents are admitted as exhibits.
5. **ELECTRONIC SUBMISSIONS:** Participants are encouraged to submit the following documents to the State Water Board in electronic form: written opening statements, written policy statements, written testimony, exhibits, and Exhibit Identification Indexes. In

addition, the foregoing documents may be served electronically on those participants who have agreed to accept electronic service. Paper copies of all other documents must be submitted to the State Water Board and served on the other parties, unless the hearing officers specify otherwise.

Any documents submitted or served electronically must be in Adobe™ Portable Document Format (PDF), except for Exhibit Identification Indexes, which must be in a version supported by Microsoft Excel 2000 (preferred) or Word 2000. Electronic submittals to the State Water Board of documents less than 5 megabytes in size may be sent via electronic mail to: WrHearing@waterboards.ca.gov with a subject of “Lake Arrowhead Enforcement Hearing”. Electronic submittals to the State Water Board of documents greater than 5 megabytes in size should be sent by regular mail in PDF format on compact disk (CD™) media. Electronic service on participants shall be in the same format as submittals to the State Water Board, and should be submitted to the other participants by mail on CD.

Participants who agree to electronic service may request that specific documents be provided to them in paper copy. Requests should be made to the participant who submitted the document, not to the State Water Board. Participants who receive such a request shall provide a paper copy of the requested document within five days of the date the request is received. The State Water Board will post a list of all exhibits submitted for the hearing on its website at <http://www.waterrights.ca.gov/hearings>.

6. **ORDER OF PROCEEDING:** The State Water Board members serving as hearing officers will follow the Order of Proceedings specified in California Code of Regulations, title 23, section 648.5. Participants should take note of the following additional information regarding the major hearing events.
 - a. **Policy Statements:** Pursuant to California Code of Regulations, title 23, section 648.1, subdivision (d), the State Water Board will provide an opportunity for presentation of nonevidentiary policy statements or comments by interested persons who are not participating in the hearing. Policy statements will be heard at the start of the hearing, immediately after a hearing officer identifies the parties and other participants. Policy statements are subject to the following provisions in addition to the regulation:
 - i. Policy statements are not subject to the prehearing requirements noted above for testimony or exhibits, except that persons wishing to make policy statements are requested to file a Notice of Intent to Appear, indicating clearly an intent to make only a policy statement.
 - ii. The State Water Board requests that policy statements be provided in writing before they are presented. Please see Section 5, above, for details regarding electronic submittal of policy statements. Oral summaries of the policy statements will be limited to five minutes or such other time as established by the hearing officers.

- b. **Presentation of Cases-In-Chief**: Each participant may present a case-in-chief addressing the key issues identified in the hearing notice. The case-in-chief will consist of any opening statement provided by the participant, oral testimony, introduction of exhibits, and cross-examination of the participant's witnesses. The hearing officer may allow redirect examination and recross examination. The hearing officer will decide whether to accept the participant's exhibits in evidence upon a motion of the participant after the case-in-chief has been completed.
- i. **Opening Statements**: At the beginning of a case-in-chief, the participant or the participant's attorney may make an opening statement briefly and concisely stating the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 20 minutes per participant. A participant may submit a written opening statement. Please see section 5, above, for details regarding electronic submittal of written opening statements. Any policy-oriented statements by a participant should be included in the participant's opening statement.
 - ii. **Oral Testimony**: All witnesses presenting testimony shall appear at the hearing. Before testifying, witnesses shall swear or affirm that the written and oral testimony they will present is true and correct. Written testimony shall not be read into the record. Written testimony affirmed by the witness is direct testimony. Witnesses will be allowed up to 20 minutes to summarize or emphasize their written testimony on direct examination.² Each participant will be allowed up to two hours total to present all of its direct testimony.³
 - iii. **Cross-Examination**: Cross-examination of a witness will be permitted on the party's written submittals, the witness' oral testimony, and other relevant matters. If a participant presents multiple witnesses, a hearing officer will decide whether the participant's witnesses will be cross-examined as a panel. Cross-examiners initially will be limited to one hour per witness or panel of witnesses. The hearing officers have discretion to allow additional time for cross-examination if there is good cause demonstrated in an offer of proof. Any redirect examination and recross examination permitted by a hearing officer will be limited to the scope of the cross-examination and the redirect examination, respectively. Witnesses may be cross-examined on relevant subjects that are not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) Ordinarily, only a participant or the participant's representative will be permitted to examine a witness, but a hearing officer may allow a participant to designate a person technically qualified in the subject being considered to examine a witness. State Water Board members and the State Water Board's counsel may ask questions at any time, and the State Water Board members and staff may cross-examine any witness.

² The hearing officer may allow additional time for the oral direct testimony of the witness if the witness is adverse to the participant presenting the testimony and the hearing officer is satisfied that the participant could not produce written direct testimony for the witness.

³ The hearing officer may, for good cause, approve a party's request to use more than two hours total to present direct testimony during the party's case-in-chief.

- c. **Rebuttal**: After all participants have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officers will allow participants to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence presented in another participant's case-in-chief. Rebuttal testimony and exhibits need not be submitted prior to the hearing. Rebuttal evidence is limited to evidence that is responsive to evidence presented in a case-in-chief, and it does not include evidence that should have been presented during the presenter's case-in-chief. It also does not include repetitive evidence. Cross-examination of rebuttal evidence will be limited to the scope of the rebuttal evidence.
 - d. **Closing Statements and Legal Arguments**: At the close of the hearing or at other times if appropriate, a hearing officer may allow oral arguments or set a schedule for filing briefs or closing statements. If a hearing officer authorizes the participants to file briefs, four copies of each brief shall be submitted to the State Water Board, and one copy shall be served on each of the other participants on the service list. A participant shall not attach a document of an evidentiary nature to a brief unless the document is at the time in the evidentiary hearing record or is the subject of an offer of the document in evidence. Every participant filing a brief shall file a statement of service with the brief, indicating the manner of service.
 - e. **Large Format Exhibits**: Participants submitting large format exhibits such as maps, charts, and other graphics shall provide the original for the hearing record in a form that can be folded to 8 ½ x 11 inches. Alternatively, participants may supply, for the hearing record, a reduced copy of a large format original if it is readable.
7. **EX PARTE CONTACTS**: During the pendency of this proceeding, commencing no later than the issuance of the Notice of Hearing, there shall be no *ex parte* communications between either State Water Board members or State Water Board hearing team staff and any of the other participants regarding substantive issues within the scope of the proceeding. (Gov. Code, §§ 11430.10-11430.80.) Communications regarding non-controversial procedural matters are permissible, and should be directed to the State Water Board staff attorney on the hearing team, not State Water Board members. (Gov. Code, § 11430.20, subd. (b).) A memorandum regarding *ex parte* communications is available upon request or from our website at http://www.waterboards.ca.gov/water_laws/index.html
8. **RULES OF EVIDENCE**: Evidence will be admitted in accordance with Government Code section 11513. Hearsay evidence may be used to supplement or explain other evidence, but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action.
9. **SUBMITTALS TO THE STATE WATER BOARD**: Notices of Intent to Appear, written testimony and other exhibits submitted to the State Water Board should be addressed as follows:

Division of Water Rights
State Water Resources Control Board
P.O. Box 2000, Sacramento, CA 95812-2000
Attn: Ruben Mora
Phone: (916) 341-5387
Fax: (916) 341-5400
Email: WrHearing@waterboards.ca.gov
With Subject of “Lake Arrowhead Enforcement Hearing”

NOTICE OF INTENT TO APPEAR

_____ plans to participate in the water right hearing regarding:
(name of party or participant)

Lake Arrowhead Community Services District Enforcement Hearing
scheduled for
November 8, 2005

- I/we intend to present a policy statement only.
- I/we intend to participate by cross-examination or rebuttal only.
- I/we agree to accept electronic service of hearing-related materials.
- I/we plan to call the following witnesses to testify at the hearing.

NAME	SUBJECT OF PROPOSED TESTIMONY	ESTIMATED LENGTH OF DIRECT TESTIMONY	EXPERT WITNESS (YES/NO)

(If more space is required, please add additional pages or use reverse side.)

Name, Address, Phone Number and Fax Number of Attorney or Other Representative

Signature: _____ Dated: _____

Name (Print): _____

Mailing _____

Address: _____

Phone Number: () _____ Fax Number: () _____

E-mail Address: _____

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

Administrative Civil Liability 262.5 -40

LAKE ARROWHEAD COMMUNITY SERVICES DISTRICT

SOURCE: Little Bear Creek tributary to Deep Creek thence Mojave River
COUNTY: San Bernardino County

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Lake Arrowhead Community Services District (LACSD) is alleged to have violated Water Code section 1052, subdivision (a), which states:

"The diversion or use of water subject to [division 2 of the Water Code (commencing with section 1000)] other than as authorized in [division 2] is a trespass."

2. Water Code section 1052, subdivision (b), provides that the State Water Resources Control Board (State Water Board) may administratively impose civil liability in an amount not to exceed \$500 for each day that a trespass occurs.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the State Water Board may issue a complaint to any person or entity on whom Administrative Civil Liability (ACL) may be imposed. On May 16, 2002, the State Water Board delegated to the Chief of the Division of Water Rights (Division) the authority to issue an order imposing administrative civil liability when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. (SWRCB Resolution 2002-0106.)

ALLEGATIONS

4. The following facts provide the basis for the alleged trespass:
 - a) Initial construction of the Lake Arrowhead dam and reservoir began in the late 19th century to store water for irrigation use within the San Bernardino Valley. The plan for an irrigation project was abandoned prior to 1914 apparently due to problems with financing that were caused by litigation challenging the export of water to San Bernardino Valley. After the recreational potential of the partially completed project was realized, the dam was completed to its current height in about 1923.
 - b) Ownership of the dam changed hands several times since the late 19th century. In 1974, a collective of property owners in Arrowhead Woods acquired the dam and formed the Arrowhead Lake Association (ALA) to govern recreational use of the lake. In 1978, the property owners in Arrowhead Woods held an election to form the LACSD to manage a municipal water supply obtained from Lake Arrowhead.

- c) On March 24, 2003, Mr. Ted Heyck and the ALA submitted two separate water right complaints alleging that the LACSD did not have the water rights to Lake Arrowhead. Division staff investigated these complaints and released a draft report dated February 10, 2004, based on the evidence available at that time. Division staff determined that a pre-1914 appropriative right for diversion of water to storage at Lake Arrowhead had been perfected. Division staff recognized a pre-1914 right to store water to an elevation of 5085 feet and use the water only for recreational purposes. Division staff did not find a basis of right for diverting water from Lake Arrowhead for consumptive use.
- d) All parties to the complaint objected to the Division staff's findings. The LACSD submitted additional historical information to support a basis of right to store water in Lake Arrowhead at its current elevation and a legal argument supporting its position that Water Code section 1706 allows a pre-1914 right for non-consumptive use to be changed to a consumptive use.
- e) In a report dated July 18, 2005, Division staff reviewed all new evidence and LACSD's legal argument, but did not change their original conclusion that LACSD has no basis of right to divert water from Lake Arrowhead for consumptive use. However, the Division revised the February 10, 2004 finding that the pre-1914 right did not authorize storage above 5085 feet in elevation. Instead, staff found that a pre-1914 right exists at Lake Arrowhead to store water at the current capacity of Lake Arrowhead for recreational use only. The conclusion did not constitute a recognition of any right to fill the capacity of Lake Arrowhead in any one year. The information, analyses, findings and conclusions contained in the July 18, 2005 report are incorporated herein by reference.
- f) Given the above, the LACSD has been diverting and using water from Lake Arrowhead since 1978 without a basis of right. Maximum historical draw from Lake Arrowhead was 3,157 acre-feet in 2002. Due to conservation measures, LACSD's diversions were reduced to 2,565 acre-feet in 2003 and 1,915 acre-feet in 2004. (Lake Arrowhead Community Services District Annual Report 2004.) As a municipal water supplier, LACSD delivers water from Lake Arrowhead for use year-round. LACSD's diversion and use were unauthorized and constituted a trespass against the State. LACSD's annual diversions and use have adversely impacted the recreational interests of Lake Arrowhead property owners and may have adversely impacted downstream water right holders in the Mojave River watershed.

PROPOSED CIVIL LIABILITY

5. The basis of this complaint is the LACSD's unauthorized diversion and consumptive use of the water from Lake Arrowhead reservoir for fiscal years 2002-04. This unauthorized diversion and use of water constituted a trespass within the meaning of Water Code section 1052, subdivision (a).
6. The maximum civil liability that can be imposed by the State Water Board in this matter is \$500 for each day in which the trespass occurred. For the past 27 years, the LACSD diverted water from Lake Arrowhead for consumptive use without a basis of right, thereby trespassing against the State.
7. In determining the amount of civil liability, Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator. In this case, the LACSD has diverted and used water from Lake Arrowhead for consumptive use over a 27-year period without a legitimate basis of right. LACSD's diversions have adversely impacted the recreational interests at Lake Arrowhead by lowering the lake elevation below the elevation that would have existed taking into account annual evaporation and seepage losses. In addition, LACSD's diversions likely have resulted in injury to water right holders in the Mojave River watershed. In 1988, the State Water Board determined that the Mojave River was fully appropriated year-round due to the fact that the

Mojave River Basin already had been overdrafted and any additional appropriations would further deplete the subsurface water in the basin. Similarly, LACSD's diversions likely have further contributed to the state of overdraft, thereby injuring downstream water right holders.

8. While LACSD has initiated studies and reports to find alternate water supplies, LACSD continues to rely on Lake Arrowhead as its primary source of supply. By doing so, LACSD has avoided significant costs. An alternative to illegally diverting the water would be to purchase it. The LACSD completed a Water Demand and Supply Report in October 2003 that identifies a number of alternatives to diverting water from Lake Arrowhead. According to this document, a total reduction in demand or increase in supply of 3,150 acre-feet per annum could be achieved by implementing conservation programs, improving treatment plant efficiency, developing local groundwater supplies, purchasing supplemental water supplies from the Crestline Lake Arrowhead Water Agency and the State Water Project, and utilizing recycled wastewater for golf course irrigation. Table 1-2 of the report divides the various demand reduction or alternative water supply projects into three groups - milestone one, two, and three - and for each group shows the total potential reduction in diversions from Lake Arrowhead (expressed as water production) and the associated costs. Based on that table, the amount of water that could be saved or obtained and the average cost per acre-foot for each group is as follows:

Milestone	Potential Production (ac-ft/yr)	Avg. Cost per ac-ft
1	1,107	\$630
2	410	\$1,734
3	1,633	\$2,683

Using the costs set forth above, the avoided cost for diversion of water from Lake Arrowhead during 2002-04 was:

Year	Diversion (ac-ft)	Weighted Cost per ac-ft for Replacement Water	Approximate Avoided Costs
2002	3,157	\$1,840	\$5,809,000
2003	2,565	\$1,643	\$4,215,000
2004	1,915	\$1,293	\$2,476,000

According to the calculations set forth above, the total avoided cost of water diverted from Lake Arrowhead by LACSD for 2002-04 was approximately \$12.5 million. This calculation is conservative because it assumes that for years 2003 and 2004, LACSD could have reduced its diversions by an additional 1,107 acre-feet by implementing less expensive milestone one projects. In fact, LACSD probably had already reduced its diversions in those years by implementing at least some of the projects listed under milestone one. Achieving additional reductions in draw on Lake Arrowhead would probably have required implementing more milestone two or three projects, which are more expensive.

9. Having taken into consideration the factors described above, the Division Chief recommends an ACL in the amount of \$182,500. This is equivalent to a \$500 liability for each day of unauthorized diversion and use of water that occurred during a one-year period (\$500 per day x 365 days). This liability amount is the minimum liability recommended; and the State Water Board may consider a larger liability if this matter goes to hearing. The maximum liability for a 3-year period would be \$547,500 (\$500 per day x 365 days per year x 3 years).

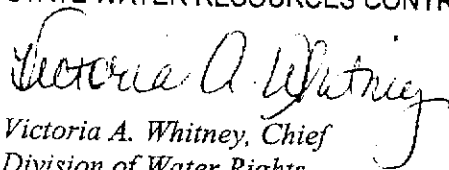
RIGHT TO HEARING

10. The LACSD may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date this notice is received. (Wat. Code, § 1055, subd. (b).)
11. If the LACSD requests a hearing, it will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of ACL by the State Water Board. Separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
12. If the LACSD requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the Water Code, and with its responsibilities under the public trust doctrine. Any State Water Board order setting ACL shall become final and effective upon issuance.
13. If the LACSD does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth in paragraph 9 above, to:

State Water Resources Control Board
Division of Water Rights
Enforcement Section
P.O. Box 2000
Sacramento, CA 95812-2000

14. If the LACSD does not request a hearing and does not remit the ACL, the State Water Board may seek recovery of the ACL as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney, Chief
Division of Water Rights

Date:

AUG 01 2005

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER WR 2005-00XX

In the Matter of Unauthorized Diversion by the
Lake Arrowhead Community Services District

Cease and Desist Order No. 262.31-18

SOURCE: Little Bear Creek tributary to Deep Creek thence Mojave River

COUNTY: San Bernardino County

The State Water Resources Control Board (State Water Board) is authorized under California Water Code section 1831 to issue a cease and desist order (CDO) when it determines that any person is violating or threatening to violate any of the following:

- (1) The prohibition set forth in section 1052 against the diversion or use of water subject to division 2 (commencing with section 1000) of the Water Code other than as authorized by division 2.
- (2) Any term or condition of a permit, license, certification, or registration issued under division 2 of the Water Code.
- (3) Any decision or order of the board issued under part 2 (commencing with section 1200) of division 2 of the Water Code, section 275, or article 7 (commencing with section 13550) of chapter 7 of division 7 of the Water Code, in which decision or order the person to whom the cease and desist order will be issued, or a predecessor in interest to that person, was named as a party directly affected by the decision or order.

On {DATE}, and in accordance with the provisions of section 1834 of the California Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against the Lake Arrowhead Community Services District (LACSD) for the violation and threatened violation of the prohibition against unauthorized diversion and use of water.

FACTS AND INFORMATION

The facts and information upon which this CDO is based are as follows:

1. Initial construction of the Lake Arrowhead dam and reservoir began in the late 19th century to store water for irrigation use in the San Bernardino Valley. The irrigation project was later abandoned apparently due to problems with financing that were caused by litigation challenging the export of water to San Bernardino Valley. The dam was later completed to its current height in 1923 after the recreational benefits of Lake Arrowhead were realized.
2. Ownership of the dam changed hands several times since the late 19th century. In 1974, a collective of property owners in Arrowhead Woods acquired the dam and formed the Arrowhead Lake Association (ALA) to govern recreational use of the lake. In 1978, the Arrowhead Woods collective held an election to form the LACSD to manage a municipal water supply obtained from Lake Arrowhead.
3. On March 24, 2003, Mr. Ted Heyck and the ALA submitted two separate water right complaints alleging that the LACSD did not have the water rights to Lake Arrowhead. Division staff investigated these complaints and released a draft report dated February 10, 2004, based on the evidence available at that time. Division staff determined that a pre-1914 appropriative right for diversion of water to storage at Lake Arrowhead had been perfected. However, Division staff

recognized a pre-1914 right to store water only to an elevation of 5085 feet and to use water only for recreational purposes. Division staff did not find a basis of right to divert water for consumptive use. The Division gave the parties an opportunity to comment on the findings and submit any additional evidence supporting their comments.

4. All parties to the complaint objected to Division staff's findings. The LACSD submitted additional historical information to support a claim of right to store water in Lake Arrowhead at its current elevation and legal argument supporting a position that Water Code section 1706 allows a pre-1914 right for non-consumptive use to be changed to a consumptive use.
5. In a report dated July 18, 2005, Division staff reviewed all new evidence and LACSD's legal argument but did not change their conclusion that LACSD has no basis of right to divert water from Lake Arrowhead for consumptive use. Division staff revised, however, their February 10, 2004 finding that the pre-1914 right did not authorize storage above 5085 feet in elevation. Instead, staff found that a pre-1914 appropriate right exists to store water at the current maximum water surface elevation for recreational use only. Division staff's conclusion did not constitute a recognition of any right to fill the capacity of Lake Arrowhead in any one year. The information, analyses, findings and conclusions contained in the July 18, 2005 report are incorporated herein by reference.
6. During an extended period of drought beginning in the late 1990's, LACSD's diversions of water from Lake Arrowhead for domestic use coupled with natural evaporation, seepage losses, and lack of inflow, resulted in extensive draw down of Lake Arrowhead. The recreational and aesthetic values of the lake were severely impaired.
7. A draft Environmental Impact Report for Tentative Tract No. 16185 - Blue Ridge at Lake Arrowhead (SCH# 2003051021) was prepared in October 2004 for the County of San Bernardino. This document contains the following statements:
 - a) As of October 2004, the LACSD had approximately 7,800 connections. (pg. 4.5-1)
 - b) During the 1990's an average of 127 new connections were added to the LACSD system each year. (Table 4.5-1, pg. 4.5-2)
 - c) Ultimate buildout of the Lake Arrowhead community, based on available private land, is expected to be approximately 10,000 connections. (pg. 4.5-8)
8. During the period November 1, 2004 to December 31, 2004, LACSD approved seventeen (17) new connections for sewer and water service even though its basis of right to divert water was under investigation. At this rate, residential use will increase over 20% by the year 2020.
9. Division staff estimates that LACSD's demand in 2020 would be over 3,700 acre feet per annum (afa). Demand at buildout will be about 3,900 afa.
10. The LACSD completed a Water Demand and Supply Report in October 2003 that identifies a number of alternatives to diverting water from Lake Arrowhead. According to this document, a total reduction in demand or increase in supply of 3,150 acre-feet per annum could be achieved by implementing conservation programs, improving treatment plant efficiency, developing local groundwater supplies, purchasing supplemental water supplies from the Crestline Lake Arrowhead Water Agency and the State Water Project, and utilizing recycled wastewater for golf course irrigation. The total cost for such a program is estimated to be \$1,838 per acre-foot. Full implementation of such a program may take several years, and even after full implementation the total available supplies will still be almost 20 percent less than total demand for projected growth within the next few years. Moreover, according to the October 2003 report, LACSD proposes to continue to rely on the lake for its water supply in wet and normal years.
11. These facts support the finding that LACSD is currently diverting and using water from Lake Arrowhead storage without authorization, and that LACSD will continue to do so unless the State Water Board takes enforcement action.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the Water Code, that:

1. LACSD shall within 60 days of the date of this order, submit a plan to initially reduce and subsequently cease the unauthorized diversion and use of stored water from Lake Arrowhead. The plan must specify deadlines for implementation of corrective actions that will ensure that LACSD reduces and ultimately ceases unauthorized diversion and use of water from Lake Arrowhead as quickly as practicable. All practical measures to reduce demand or increase supplies shall be considered, including a moratorium on new water service commitments. LACSD's plan must identify the minimum lake level(s) that will be maintained until LACSD ceases unauthorized diversion and use of water from Lake Arrowhead. LACSD shall modify the plan in accordance with the Division Chief's direction and implement the final plan after it is approved by the Division Chief. As an alternative to ceasing the diversion and use of water from Lake Arrowhead, the LACSD plan could include a proposal to pump an alternate water supply into Lake Arrowhead that will replace water diverted from Lake Arrowhead to maintain the lake levels that would exist in the absence of LACSD's diversions, provided that applicable water quality requirements would be met.
2. LACSD shall submit the following reports to the Chief of the Division of Water Rights on January 1 and July 1 of each year until such time as the Division Chief provides written notification these reports no longer need to be submitted:
 - a) a progress report identifying the conservation measures taken and estimated resulting reduction in total diversion of water from Lake Arrowhead; and
 - b) a monthly reservoir operation report for Lake Arrowhead identifying monthly storage elevation, reservoir capacity, change in storage, evaporation loss, bypass or spills, calculated natural inflow, purchase or groundwater inflows, and diversions from the reservoir.
3. LACSD shall immediately implement an interim moratorium on new commitments to provide water service. LACSD shall maintain this moratorium until notified in writing that the Division Chief has approved the plan identified in item #1.
4. LACSD shall comply with any written directive of the Chief of the Division of Water Rights regarding the unauthorized diversion of water from Lake Arrowhead until such time as the State Water Board directs otherwise.

Upon the failure of any person to comply with a CDO issued by the State Water Board pursuant to chapter 12 of the Water Code (commencing with section 1825), the Attorney General, upon the request of the State Water Board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction. (Wat. Code, § 1845 subd. (a).) Any person or entity that violates a CDO issued pursuant to chapter 12 may be liable for a sum not to exceed one thousand dollars (\$1,000) for each day in which the violation occurs. (Wat. Code, § 1845, subd. (b).) Civil liability may be imposed by the superior court or administratively by the State Water Board pursuant to Water Code section 1055.

STATE WATER RESOURCES CONTROL BOARD

Celeste Cantú
Executive Director

Dated:

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