

STATE OF CALIFORNIA  
WATER RESOURCES CONTROL BOARD  
PUBLIC HEARING

In the Matter of:

Nancy K. Donovan & Stephen J. Peters  
Administrative Civil Liability (ACL)  
And Cease and Desist Order (CDO)

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JOE SERNA, JR./CALEPA BUILDING  
1001 I STREET, SECOND FLOOR  
BYRON-SHER AUDITORIUM/HEARING ROOM  
SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 12, 2016

9:00 A.M.

Reported by:  
PETER PETTY

APPEARANCES

BOARD MEMBERS:

Mr. Steven Moore, Hearing Officer

Ms. Frances Spivy-Weber, Vice Chair

HEARING TEAM STAFF:

Ms. Samantha Olson, Senior Staff Counsel

Mr. Ernie Mona, Staff Engineer

Mr. Michael Buckman, Hearing Unit Chief

PROSECUTION TEAM - LEGAL COUNSEL AND STAFF TECHNICAL WITNESSES:

Mr. Kenneth Petruzzelli, Attorney

Mr. John Prager, Attorney

Ms. Jane Arnold, Senior Environmental Scientist

Mr. Kyle Wooldridge, Senior Staff Engineer

Mr. Matthew McCarthy, Senior Environmental Scientist

Mr. Brian Elder, Staff Engineer

Mr. Curt Babcock, California Natural Resources Agency

Mr. West Stokes, California Natural Resources Agency

INTERESTED PARTIES:

Mr. Stephen J. Peters

## P R O C E E D I N G S

1  
2 October 12, 2016

9:04 a.m.

3 BOARD MEMBER MOORE: Good morning, everyone. It  
4 is -- the clock shows -- that's hard for me to see -- 9:04  
5 a.m. I'm Board Member Steven Moore, this is Vice-Chair  
6 Fran Spivy-Weber, and we'll call this meeting to order.

7 This is the time and the place for a hearing  
8 regarding an Administrative Civil Liability complaint and a  
9 draft Cease and Desist Order against Nancy K. Donovan and  
10 Stephen J. Peters, which were issued by the Division of  
11 Water Rights Assistant Deputy Director on June 14, 2012.

12 I will be the hearing officer in this hearing and  
13 Vice-Chair Spivy-Weber will be the co-hearing officer.  
14 I'll be assisted by Senior Staff Counsel Samantha Olson and  
15 Staff Engineer Ernest Mona.

16 Now a general announcement to get started. When  
17 you speak, please be sure to use the microphone so that  
18 everyone can hear you, and make sure it's close to your  
19 mouth but not too close so that folks can hear it on the  
20 webcast or in the recording.

21 Please look around now and identify exits closest  
22 to you. Should an alarm sound, we would be required to  
23 evacuate immediately and take your valuables with you. Use  
24 the stairways, not the elevator, and exit to the relocation  
25 site across the street in Cesar Chavez Park. If you cannot

1 use stairs you'll be directed to a protected vestibule  
2 inside the stairwell.

3           This hearing is being broadcast on the Internet  
4 and both the audio and video are being recorded, so please  
5 speak into the microphone and begin by stating your name  
6 and affiliation.

7           A court reporter is present today. The  
8 transcript will be available on the State Water Board's  
9 hearing website or you may make separate arrangements with  
10 the court reporting service.

11           And finally, please take a moment to turn off or  
12 mute your cell phones. Even if you think it's already off  
13 or muted, please quickly double check. Thank you very  
14 much.

15           Now, this hearing is being held in accordance  
16 with the Notice of Public Hearing dated March 13, 2015, and  
17 the Notice of Rescheduled Public Hearing dated July 21,  
18 2016. The purpose of this hearing is to afford the parties  
19 (the prosecution team and Ms. Donovan and Mr. Peters) an  
20 opportunity to present relevant oral testimony and other  
21 evidence which addresses the noticed key issues, which are:

22           One, whether the State Water Board should impose  
23 Administrative Civil Liability upon Nancy K. Donovan and  
24 Stephen J. Peters for trespass; and if so, what amount and  
25 on what basis;

1           And two, whether the State Water Board should  
2 adopt with or without revision the June 14, 2012, draft  
3 Cease and Desist Order against Nancy K. Donovan and Stephen  
4 J. Peters.

5           Before I begin, some housekeeping items. I wish  
6 to address a few outstanding items.

7           First, we received a Motion for Default from the  
8 prosecution team on August 12, 2016, asking us to deem  
9 Ms. Donovan's failure to timely submit a notice of intent  
10 as a withdrawal of her request for hearing. In the absence  
11 of a request for hearing, the Division could proceed to  
12 issue the ACL complaint and CDO without further notice and  
13 delegated authority if appropriate.

14           As the parties know, additional time was granted  
15 to Ms. Donovan and the Notice of Intent was submitted. So  
16 we will be moving forward with the hearing and that motion  
17 is denied.

18           Number two. The parties were informed by hearing  
19 notices and further reminders from the hearing team that  
20 the deadline for receipt and the service of witnesses,  
21 proposed testimony, exhibits, lists of exhibits,  
22 qualifications, and statement of service was September 14,  
23 2015 -- is it 2016?

24           MR. MONA: 2016.

25           BOARD MEMBER MOORE: Only the prosecution team

1 submitted a case in chief.

2 So at this point I want to ask the question if  
3 Ms. Donovan is here today. Is Ms. Donovan here today?

4 MR. PETRUZZELLI: My understanding -- this is Ken  
5 Petruzzelli, attorney for the prosecution team. My  
6 understanding is that Ms. Donovan is not here today.

7 BOARD MEMBER MOORE: Okay. Is anybody here on  
8 behalf of Ms. Donovan?

9 MR. PETERS: Yeah, that would be me. I'm also  
10 responsible for her not being here.

11 BOARD MEMBER MOORE: Okay. And so could you  
12 identify yourself and your --

13 MR. PETERS: Stephen Peters, sorry.

14 BOARD MEMBER MOORE: Thank you.

15 MR. PETERS: The other half.

16 BOARD MEMBER MOORE: So are you here to act on  
17 Ms. Donovan's behalf?

18 MR. PETERS: I'm here to either straighten out or  
19 answer to. And as far as my wife is concerned, it's more  
20 of a personal matter.

21 BOARD MEMBER MOORE: Ms. Donovan is your wife.

22 MR. PETERS: I'm here.

23 BOARD MEMBER MOORE: Okay. Ms. Donovan is your  
24 wife.

25 MR. PETERS: She's my wife.

1 BOARD MEMBER MOORE: Okay.

2 MR. PETERS: And as I've been for 30 years.

3 BOARD MEMBER MOORE: So --

4 MR. PETERS: (Inaudible.)

5 BOARD MEMBER MOORE: -- my question is, are you  
6 acting on her behalf today?

7 MR. PETERS: If that's what it needs. Oh, if you  
8 need that, I'll say yes to that. If there's questions that  
9 are going to be directed at her, she's not here. I'm the  
10 one who planned it and knows it all. She wouldn't even be  
11 able to answer most of it unless I told her what it was.

12 BOARD MEMBER MOORE: So you are --

13 MR. PETERS: Yes.

14 BOARD MEMBER MOORE: What I'm hearing is you're  
15 acting on her behalf.

16 MR. PETERS: I guess so.

17 BOARD MEMBER MOORE: Do you have anything in  
18 writing that shows her consent for you to act on her behalf  
19 in this matter?

20 MR. PETERS: No, but I could call her, or anyone  
21 could call her. She's at home and happy that, more or  
22 less, that I did what I did, which she wasn't when I did  
23 it.

24 BOARD MEMBER MOORE: Thank you, you've answered  
25 the question.

1 MR. PETERS: Okay.

2 BOARD MEMBER MOORE: So at this point in time I'd  
3 like to ask the prosecution team if you have any comments  
4 on what appears to be a proposal for Ms. Donovan's husband  
5 to act on her behalf, even though that was not noticed or  
6 submitted in advance.

7 MR. PETRUZZELLI: The prosecution team has done a  
8 lot of work on this, and we complied with the hearing  
9 procedures. We submitted our notices, our Notice of Intent  
10 to Appear timely. We submitted our case in chief timely.

11 You know, the diverters, to refer to them simply,  
12 they missed that deadline. Even after submitting a Notice  
13 of Intent to Appear, the hearing team had to ask for  
14 clarification of what that meant.

15 And for us, the timing of submitting the Notice  
16 of Intent to Appear is when we really start having to put  
17 in a lot more work and a lot more time to prepare for a  
18 hearing, so that triggered significantly more time, work,  
19 and staff resources when Ms. Donovan finally submitted a  
20 Notice of Intent to Appear.

21 And I want to remind the hearing team that both  
22 Mr. Peters and Ms. Donovan are designated as parties in the  
23 ACL complaint. Both individually, not together as a  
24 married couple, but individually. Of them, only  
25 Ms. Donovan filed a Notice of Intent to Appear and she

1 listed only herself as a witness. But she's not here and  
2 they have submitted no case in chief.

3 So I would renew again our Motion for Default and  
4 request that the hearing team adopt the recommended ACL and  
5 draft CDO.

6 BOARD MEMBER MOORE: Thank you, Mr. Petruzzelli.

7 MR. PETRUZZELLI: And I would ask that the  
8 hearing team deny Mr. Peters' request to represent  
9 Ms. Donovan given that there's no written consent for  
10 representation.

11 BOARD MEMBER MOORE: Okay. Does the hearing team  
12 have any comments, and my co-hearing officer?

13 MS. OLSON: This is Samantha Olson, staff counsel  
14 for the hearing team. I just wanted to clarify that if a  
15 motion for default was granted or we were to deem the  
16 failure to appear today as a withdrawal of Ms. Donovan's  
17 request for a hearing, that would not be then the hearing  
18 team or this body issuing the order, it would basically  
19 revert back to the prosecution team to continue as  
20 appropriate under whatever delegated authority exists for  
21 those two documents.

22 BOARD MEMBER MOORE: Okay. Mr. Peters?

23 MR. PETERS: Yeah. I'd like to respond, because  
24 -- okay, so it's a learning curve, I'm getting up on it.  
25 But I thought this was going to be resolved and I was led

1 to believe there would be, make an offer. We'd work with  
2 you, as Ken had put it numerous times from August. Before  
3 that I heard from nobody, or that is, you know,  
4 occasionally someone would come out.

5 But I don't think it would -- I don't know how --  
6 why it means my wife is separate by name and -- I'm the guy  
7 that planned it, who bought the property. The property was  
8 originally in my name. I put it in her name, but I'm the  
9 one who planned it.

10 She wanted to appear and I kept saying I'm  
11 talking with the lawyer, Ken, and just give it time, give  
12 it time. And my wife is more conventional or more  
13 parochial than I am, and she, you know, was getting things  
14 separately. I wish it wasn't that way because we were then  
15 working against each other's best interests at times.

16 MR. PETRUZZELLI: The prosecution team has to  
17 object to this. I mean, Mr. Peters is not an attorney here  
18 for the parties, he's not a designated representative. To  
19 the degree that he's offering testimony, he's not a witness  
20 and he has not taken the oath.

21 BOARD MEMBER MOORE: Uh-huh. Yes.

22 MR. PETERS: I'll take the oath and I'll witness  
23 it.

24 BOARD MEMBER MOORE: Mr. Peters, I hear what  
25 you're saying that you're getting up to speed, but the

1 notice was given, the rules of the road were described, and  
2 it's not appropriate to be getting into your testimony at  
3 this time in the hearing.

4 MR. PETERS: Okay, I'm sorry.

5 BOARD MEMBER MOORE: And so --

6 MR. PETERS: That line, just flag me on that with  
7 that line.

8 BOARD MEMBER MOORE: So I'm inclined to take a  
9 brief recess to discuss these circumstances because it is,  
10 it's irregular.

11 MR. PETERS: Yeah, yeah.

12 BOARD MEMBER MOORE: You didn't declare yourself  
13 as a witness, you don't have a written consent from the  
14 person that did, so there's just not a clear cut basis for  
15 you to be here since you didn't tell --

16 MR. PETERS: Well, I was subpoenaed to be here.

17 BOARD MEMBER MOORE: -- the other opposite --

18 MR. PETERS: I was subpoenaed, though, to be  
19 here. Isn't that something?

20 MS. OLSON: This is Samantha Olson, counsel,  
21 again. Another problem that we have here is we don't  
22 really have any evidence of Ms. Donovan's acquiescence for  
23 you to appear on her behalf.

24 MR. PETERS: I understand.

25 MS. OLSON: So that is problematic for us

1 because --

2 MR. PETERS: What would do for that, then, if I  
3 might ask? Because this was done -- my decision came at  
4 three o'clock this morning, so I wasn't really well  
5 prepared. She didn't even know until she woke up. So what  
6 can I do? Can we call her, I mean? It's not proper, I  
7 know, but nothing is right now. Like you say, it's  
8 abnormal.

9 BOARD MEMBER MOORE: Okay. We want to take a  
10 break and confer about this. There is a concern that if  
11 there's not a written -- if there's no agreement from the  
12 declared party that you can testify on her behalf, then at  
13 a later time she could dispute, you know, what you're  
14 saying and there would be no connectivity to the case. So  
15 I think we need to recess because this is not what was  
16 expected and --

17 MR. PETERS: I'm sorry.

18 BOARD MEMBER MOORE: -- the hearing team may want  
19 to discuss this and decide how to proceed. But we  
20 appreciate your taking your time to be here today.

21 MR. PETERS: Thank you. Sorry I did what I did.

22 BOARD MEMBER MOORE: So we'll take 15 minutes.

23 And sorry to folks here who have come a long way  
24 yourselves and prepared for this hearing. We'll be right  
25 back.

1 (Off the record 9:19 a.m. to 9:33 a.m.)

2 BOARD MEMBER MOORE: All right, thanks. We're  
3 back. And Mr. Peters, we discussed this matter, and what  
4 we have before us today is somewhat flagrant disregard for  
5 the process of having a hearing. You know, the prosecution  
6 team has worked diligently, put together a great deal of  
7 documentation.

8 We need to administer the water rights system in  
9 an orderly manner in the state of California. There are  
10 over 1500 water right holders in your part of the state  
11 that have managed to find a way to be in compliance with  
12 these type of procedures. And so in that regard and the  
13 amount of time and effort folks have taken to be here  
14 today, we're disappointed in the treatment of the diverters  
15 of this process.

16 So although Ms. Donovan filed a revised Notice of  
17 Intent to Appear which indicated her intent to call herself  
18 as a witness to provide up to 30 minutes of testimony  
19 regarding facts specific to the ACL complaint and draft  
20 CDO, she's not here today to act as a party in this  
21 proceeding.

22 As a party, Ms. Donovan would have been afforded  
23 the opportunity to present at a minimum an opening  
24 statement and to cross-examine the prosecution team  
25 witnesses. So given the following circumstance:

1 First, Mr. Peters did not file a notice of intent  
2 to appear, which effectively withdrew his request for a  
3 hearing;

4 Number two, Ms. Donovan is not in attendance at  
5 this noticed hearing;

6 And number three, the consequences for failing to  
7 meet procedural appearance requirements have been clearly  
8 communicated through noticing and communications to the  
9 respondents, we deem Ms. Donovan's failure to appear as a  
10 withdrawal of her request and your request for a hearing.

11 From this point, we encourage the parties to  
12 discuss ways that the diverters can become in compliance.  
13 Nevertheless, the Office of Enforcement may proceed under  
14 delegated authority to issue the enforcement actions as  
15 appropriate and without further notice.

16 We are now adjourned. Thank you.

17 (Hearing Adjourned at 9:36 a.m.)

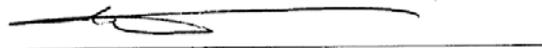
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**REPORTER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2016.



PETER PETTY  
CER\*\*D-493  
Notary Public

**TRANSCRIBER'S CERTIFICATE**

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2016.



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Terri Harper  
Certified Transcriber  
AAERT No. CET\*\*D-709